



Written by [Joe Wolverton, II, J.D.](#) on July 22, 2019

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Is It Useless to Impeach?

High Crimes and Misdemeanors: A History of Impeachment for the Age of Trump, by Frank O. Bowman III, Cambridge, England: Cambridge University Press, 2019, 465 pages, paperback.

Since the inauguration of Donald J. Trump as the 45th president of the United States, the calls for his impeachment have been nearly constant. While most of those sponsoring such an extreme act are members of the Democratic Party, recently a Republican — Representative Justin Amash of Michigan — has added his voice to the chorus of those calling for the president’s removal from office.

The latest book by Frank O. Bowman III — *High Crimes and Misdemeanors: A History of Impeachment for the Age of Trump* — makes a timely appearance on the “Current Events” shelves of local bookstores.

Rather than simply a chronological recitation of the federal officers who have suffered this ultimate constitutional censure, Bowman’s book offers a take on the topic that is at once learned and approachable, wide-ranging and specific.

“This is a book about how to interpret and apply the provisions of the U.S. constitution which govern impeachment of the president,” Bowman explains in the book’s opening line. From that point on, he puts flesh on the constitutional skeleton that is impeachment of the president of the United States of America.

One of the most unusual and useful aspects of Bowman’s book is that he does not endorse the interpretation of impeachment and its purpose that is currently in vogue — namely, that impeachment of a sitting president is futile unless the process that begins with impeachment ends with the president’s conviction by the Senate and removal from office.

Bowman points out that “the history of impeachments — English and American — teaches that conviction of the target officeholder is not the only measure of a successful impeachment. Indeed, impeachments that did not result in convictions often succeeded in attaining most, if not all, of the objectives of those who initiated them.”

From that point, Bowman begins a brief but illuminating summary of such successful impeachments, beginning with the British side of the Atlantic.

“Impeachment was invented by the British Parliament in the 1300s as a tool to counteract the dictatorial tendencies of the monarchy. Parliament could not remove an unsatisfactory king short of bloody rebellion,” Bowman reports. “But impeachment gave it a means to check abuses of royal power by removing — and sometimes imprisoning, impoverishing, banishing, or beheading — the officials who carried out objectionable royal policies.”

In the early days of its use as a tactic to thwart tyranny, impeachment was considered effective if the monarch was made to retreat back inside the boundaries of his power as defined in the British constitution. As Bowman writes:

Through the roughly four centuries during which impeachment was in active use by Parliament, a great many officials were impeached by the House of Commons but never convicted by the House of Lords. Sometimes the House of Lords acquitted the defendant outright. More often, it simply failed to act, or the process was blocked when the monarch “prorogued” (dissolved) Parliament before a trial could be held. The Earl of Suffolk (1450), the Duke of Buckingham (1626), and the Earl of Danby (1678) were all



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impeached but never tried because the king prorogued Parliament. Nonetheless, for each of these men and the king he served, impeachment was a personal and political blow.

Bowman then goes on to provide specifics in each of the impeachment efforts listed above. His recitation of these reprimands is instructive to any country with a constitution that provides for a bifurcated process of removing a politician from office, such as is the case in the U.S. Constitution.

The bottom line, in Bowman's opinion, is not the end of the impeachment process, but its effect, its real-world results. If, as the author explains, the would-be usurper is "impeded" in that effort or suffers "a decisive repudiation" of his despotic design, then the impeachment has been successful.

It is at this point that Bowman distinguishes the Americans' application of the concept from that of their English cousins. "The American founders abandoned British impeachment's sometimes grisly criminal penalties (in part to make impeachment more palatable) but retained the distinctive procedural features of parliamentary practice — the lower house of the legislature brings the impeachment charges, and the upper house tries them," explains Bowman.

When our Founding Generation undertook to craft what Bowman correctly calls "a foundational document in a way that no previous constitution had been," they met in Philadelphia in 1787 to begin that historic undertaking.

On the first day of deliberation, the Virginia Plan — written by James Madison and presented by Virginia governor Edmund Randolph — included a provision granting to the national judiciary the power of "impeachment of all national officers." It is important to note, however, that that provision did not specifically name the executive as one among those "national officers."

On June 2 of that year, the venerable John Dickinson of Pennsylvania proposed placing the power of removing the executive in the hands of Congress. His provision required that a majority of the legislatures of the states call for impeachment before the process could begin in Congress.

As recorded by James Madison, here is how Dickinson explained his position on impeachment: It was necessary, he said, to place the power of removal somewhere. He did not like the plan of impeaching the great officers of state. He did not know how a provision could be made for removal of them in a better mode than that which he had proposed.

Roger Sherman of Connecticut rose and spoke in support of Dickinson's motion, adding that in his opinion, "The National Legislature should have power to remove the Executive at pleasure."

George Mason of Virginia — the universally admired coauthor (along with the much younger Madison) of that state's Declaration of Rights — also backed Dickinson's proposal.

"Some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen. [I oppose] decidedly making the Executive the mere creature of the Legislature, as a violation of the fundamental principle of good government," Mason declared.

Mason's fellow Virginian, James Madison, joined with James Wilson in speaking against Dickinson's motion. In his *Records of the Debates of the Federal Convention of 1787*, Madison recorded the reasons for his and Wilson's opposition. Madison wrote that he and Wilson observed in Dickinson's proposed impeachment process



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that it would leave an equality of agency in the small with the great States; that it would enable a minority of the people to prevent the removal of an officer who had rendered himself justly criminal in the eyes of a majority; that it would open a door for intrigues against him in States where his administration, though just, might be unpopular; and might tempt him to pay court to particular States whose leading partizans he might fear, or wish to engage as his partizans. They both thought it bad policy to introduce such a mixture of the State authorities, where their agency could be otherwise supplied.

The debate continued off and on for nearly three months. On September 4, delegates agreed to the following language: “He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for treason or bribery,” and on September 12, the convention approved the version of the process we have.

Using that same approved text as a guide, Bowman provides a chart tracking the impeachment of American officials since the Constitution went into legal effect in 1789. This is an immensely valuable contribution to the corpus of impeachment treatises, as one can more carefully consider whether Bowman’s thesis — that impeachment can be as effective without as with conviction — is borne out in the history of the United States.

After addressing the fact that not a single president has been impeached, convicted, and removed from office in nearly 230 years of presidents of the United States, Bowman redirects the reader’s attention away from that irrefutable fact and toward evidence of the effectiveness of recent American attempts at impeaching presidents. He asserts: “Richard Nixon resigned because congressional hearings, including a formal impeachment inquiry, convinced an initially resistant American public and their congressional representatives that he committed constitutionally consequential misdeeds. Democrat Bill Clinton was acquitted because his impeachment inquiry disclosed tawdry and dishonorable, but constitutionally inconsequential, misbehavior. In the next presidential election, Republican George W. Bush, though confronted with Clinton’s strong economic legacy, ran on restoring ‘honor and dignity’ to the White House ... and won.”

It is strange that Bowman’s point is so rarely made. In fact, the thinking that prevents representatives from impeaching a president for fear of failing to get a conviction would, in a more commonly encountered setting, prevent police from arresting a suspect just because he might not be found guilty of the crime they reasonably believe he committed.

Do not most people agree that the stigma of arrest is sufficient to deter many from committing crimes they otherwise might be tempted to commit? Why, then, by that same logic, would not the threat of impeachment be enough to blunt the despotic designs of some politicians? This question is particularly important given the ample evidence presented by Bowman that such has been the case historically.

Finally, while there will be many who reject Bowman’s recommendation that impeachment is worthwhile whether the president is removed from office, so long as the president is put back on the correct constitutional track, no one who reads *High Crimes and Misdemeanors* will be able to dismiss the deep dents in despotism caused by the political punch that is impeachment.



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