



## BRIEFING PAPER

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# Impeachment

By Jack Simson Caird

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## Summary

Impeachment was a means by which Parliament could prosecute and try individuals, normally holders of public office, for high treason or other crimes and misdemeanours. The first recorded impeachment in Parliament was in 1376 and the last in 1806.

Impeachment is considered obsolete, as it has been superseded by other forms of accountability, and the rules underpinning the procedure have not been adapted to modern standards of democracy or procedural fairness.

# 1. What is impeachment?

Impeachment was a means by which Parliament could prosecute and try individuals, normally holders of public office, for high treason or other crimes and misdemeanours. The impeachment process was invented prior to the creation of popular political parties and the establishment of the conventions of collective and individual ministerial responsibility. When impeachment was used, for example in the 16<sup>th</sup> and 17<sup>th</sup> century, it represented the only means by which Parliament could dismiss an individual holding office under the Crown.

No Prime Minister has ever been impeached. Ministers have been impeached, but those instances occurred before the modern concept of the Cabinet was established.

The first edition of Erskine May, published in 1844, describes impeachment as: “the commons, as a great representative inquest of the nation, first find the crime and then, as prosecutors, support their charge before the lords; while the lords exercising at once the functions of a high court of justice and of a jury, try and also adjudicate upon the charge preferred”.<sup>1</sup>

## 1.1 How did the impeachment procedure work?

The impeachment process is not provided for in legislation or the Standing Orders of the Commons. The procedure is described in the first edition of Erskine May:

It rests, therefore, with the House of Commons to determine when an impeachment should be instituted. A member, in his place, first charges the accused of high treason or of certain high crimes and misdemeanours, and after supporting his charge with proofs, moves that he be impeached. If the house deem the grounds of accusation sufficient, and agree to the motion, the member is ordered to go to the lords, “and at their bar, in the name of the House of Commons, and of all the commons of the United Kingdom, to impeach the accused; and to acquaint them that this house will, in due time, exhibit particular articles against him, and make good the same.” The member accompanied by several others, proceeds to the bar of the House of Lords, and impeaches the accused accordingly.<sup>2</sup>

The next steps of the ancient procedure, including the trial, are outlined in the report of the Joint Committee on Parliamentary Privilege in 1998-99, which is based on the descriptions in early editions of Erskine May:

A Commons committee is then appointed to draw up articles of impeachment which are debated. When agreed they are ingrossed and delivered to the Lords. The Lords obtain written answers from the accused which are communicated to the Commons. The Commons may then communicate a reply to the Lords. If the accused is a peer, he is attached by order of that House. If a commoner, he is arrested by the Commons and

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<sup>1</sup> Erskine May, *Parliamentary Practice* 1<sup>st</sup> ed 1844 p38

<sup>2</sup> Erskine May, *Parliamentary Practice* 1<sup>st</sup> ed 1844 p376

delivered to Black Rod. The Lords may release the accused on bail. The Commons appoints 'managers' for the trial to prepare the evidence; but it is the Lords that summons witnesses. The accused may have summonses issued for the attendance of witnesses on his behalf, and is entitled to defence by counsel. When the case, including examination and re-examination, is concluded, the Lord High Steward puts to each peer, (beginning with the junior baron) the question on the first of the charges: then to each peer the question on the second charge and so on. If found guilty, judgment is not pronounced unless and until demanded by the Commons (which may, at this stage, pardon the accused). An impeachment may continue from session to session, or over a dissolution. Under the Act of Settlement the sovereign has no right of pardon.<sup>3</sup>

The procedure described predates the regulation of parliamentary business by the House of Commons Standing Orders. For example, the precedence of government business was codified in sessional resolutions in 1832 and then became a Standing Order in 1852.

The trial was normally held in Westminster Hall, which was fitted for the purpose, though no trial has taken place since the destruction by fire of the old Palace of Westminster in 1834.

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<sup>3</sup> Joint Committee on Parliamentary Privilege, First Report, HL Paper 43-1 HC 214 1998-99 para 16, fn 71; A fuller description of the historical procedure of impeachment in Great Britain is given by Hatsell in vol. 4 of his *Precedents: Hatsell's Precedents vol 4 1818*

## 2. When was impeachment used?

The first recorded use of the procedure was in 1376, when Lord Latimer was impeached. The procedure was last used, unsuccessfully, in 1806 for Lord Melville (Dundas). There have been fewer than seventy impeachments during the whole course of English history.

There are two distinct periods in which impeachment was relatively common; firstly in the 14th century until the establishment of the Tudor dynasty and secondly in the 17th and 18th centuries.<sup>4</sup> A quarter of all of them occurred between 1640 and 1642, when parliamentarians revived the ancient right.

Two of the most well-known cases, against the Earl of Strafford and Archbishop Laud were dropped in favour of bills of attainder,<sup>5</sup> due to the flimsy nature of the charges of high treason.<sup>6</sup> During the Oxford Parliament in 1681 the impeachment of Fitzharris was rejected by the Lords, and the Commons passed a resolution "That it is the undoubted right of the Commons to impeach before the Lords any Peer or commoner for treason or any other crime or misdemeanour, and that the refusal of the Lords to proceed in Parliament upon such impeachment is a denial of justice and a violation of the constitution of Parliament". The Commons also decided that any civil law court which should dare to deal with the case of Fitzharris should be answerable to them for its action.

The last case on purely political grounds was that against the Tory Ministers in 1713 for their part in the negotiating the Treaty of Utrecht. The Jacobite lords were impeached in 1716 and 1746 for rebellion. The last attempt to persuade the Commons to bring an impeachment was against Palmerston as Foreign Secretary, when private members alleged a secret treaty with Russia. The preliminary motion was not successful.<sup>7</sup> Articles for the impeachment of Walpole were drawn up after his fall in 1742, but not proceeded with, indicating the gradual establishment of political toleration following the Revolution of 1688.<sup>8</sup>

<sup>4</sup> See R M Perceval "Impeachment" *Table* 1973 pp 31-33 for an interesting discussion of the development of this procedure

<sup>5</sup> Bills of Attainder are an alternative form of ancient punishment. Such a Bill declared an individual attainted, thereby nullifying his civil rights, transferring all his property to the Crown and forfeiting any peerage. Unlike impeachment Bills of Attainder are legislative rather than judicial in nature and Parliament therefore had considerable latitude in imposing an appropriate punishment. The first use of attainder was in 1321 and its last use was in 1798 against [Lord Edward FitzGerald](#) for leading the [Irish Rebellion of 1798](#). Bills of attainder were used through the 18th century in England, and were applied to British colonies as well. American dissatisfaction with British attainder laws resulted in their being prohibited in the U.S. Constitution ratified in 1789.

<sup>6</sup> GW Keeton "The passing of impeachment" in *The Passing of Parliament* 1952 p46

<sup>7</sup> Hansard's Parliamentary Debates 23 February 1848 cols 1132-1242; *Times* 4 March 1848 cited in *A case to answer* <http://image.guardian.co.uk/sys-files/Politics/documents/2004/08/26/impeach.pdf>

<sup>8</sup> G.W. Keeton "The passing of impeachment" in *the Passing of Parliament* 1952 p46

### 3. Why is impeachment considered obsolete?

The 1967 Select Committee on Parliamentary Privilege listed impeachment as being among the existing privileges of the House in its corporate capacity. The committee recommended that the right to impeach should be formally abandoned via legislation.<sup>9</sup> No such legislation was introduced. The recommendation was repeated in the third report from the Committee on Privileges in 1976-77.<sup>10</sup> More recently the Joint Committee on Parliamentary Privilege Report stated, in 1999, that ‘the circumstances in which impeachment has taken place are now so remote from the present that that the procedure may be considered obsolete.’<sup>11</sup>

Impeachment operated in an era when Parliament and the courts had very limited oversight of government power. Different mechanisms have developed in modern politics to allow for the scrutiny of the executive. These include parliamentary questions, inquiries by select committees and independent committees of inquiry. The growth of the doctrine of collective cabinet responsibility, and the use of confidence motions have both contributed to the disuse of impeachments in modern times.<sup>12</sup> Judicial review also now provides an effective check on the legality of the actions of public officials and government ministers.

The impeachment process described above cannot easily be transposed into a modern parliamentary or judicial context. The process, last attempted in 1806, has not been revised to reflect the fundamental changes that have occurred in Parliament. It is by no means clear whether the judicial elements of the procedure would meet any modern procedural standards of fairness.<sup>13</sup>

*Parliament and Congress*, by Sir William McKay (the former clerk of the House of Commons) and Charles W Johnson’s, explains the status of impeachment in Parliament in the following terms:

In the UK, despite a flurry of political interest recently, the doomsday weapon of impeachment, though not formally abandoned, is (at any rate in its traditional form) neither a credible nor a practical parliamentary weapon and has not been so for many years. Its formal abandonment was recommended by a Commons committee forty years ago. Reviving classical impeachment in the UK defies all logic. It was a medieval means of removing the protection given to a royal servant whom the Commons found objectionable but could not otherwise persuade the Crown to dismiss. Ministerial responsibility to the House is the modern means of tackling that

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<sup>9</sup> HC 34 1967-68 para 115

<sup>10</sup> HC 417,1976-77 para 16

<sup>11</sup> HL Paper 43-1 HC 214 -1 1998-99 para 16

<sup>12</sup> See Library Research Paper 04/82 *The collective responsibility of ministers: an outline of the issues* for a discussion of the issues; Library Standard Note SN/PC/2873 Confidence Motions and Library Standard Note SN/PC/6111 Fixed-term Parliaments Act 2011

<sup>13</sup> See H Woolf, A Le Sueur et al (eds) *De Smith’s Judicial Review* (2013) Chapter 6

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problem. There being no formal separation of powers on the US model, if the character of the action brought against a public officer is political, so ought to be its disposal, without quasi-legal trappings. Moreover, the prospect of a universally elected Commons solemnly seeking a political judgement from an unelected or partially elected Lords, using forms dusted off from the last impeachment in 1805, is absurd. Impeachment in Britain is dead and will rise from its grave—if ever it does—only in political circumstances which cannot now be envisaged, and certainly in a form different from that which it previously assumed. These considerations alone may be sufficient barriers against its resurrection.<sup>14</sup>

In other constitutional democracies where impeachment is used, for example in the United States of America and Ireland (See Section 5 below), detailed constitutional rules and parliamentary procedures have to be developed and maintained for the procedure to operate effectively.

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<sup>14</sup> W McKay and C W Johnson, *Parliament & Congress* (2010) p511

## 4. Recent parliamentary material

Impeachment has been referred to a number of times by Members in connection with the former Prime Minister, Tony Blair, over his conduct in advocating the use of force prior to the Iraq war.

### 4.1 Motion

In 2004, Mr Price and ten other MPs, including Alex Salmond, Boris Johnson and Nigel Evans declared their intention to table a motion calling for impeachment of Tony Blair.<sup>15</sup> After discussion with the parliamentary authorities, the following motion was tabled on 25 November 2004:

#### 4 CONDUCT OF THE PRIME MINISTER IN RELATION TO THE WAR AGAINST IRAQ

Mr Edward Garnier

Mr Douglas Hogg

Mr Elfyn Llwyd

Mr Alex Salmond

Mr Richard Taylor

Dr Jenny Tonge

Mr David Amess

Mr Richard Bacon

Mrs Angela Browning

Mr Nigel Evans

Annabelle Ewing

Mr Roger Gale

Angus Robertson

Mr Simon Thomas

Mr Michael Weir

Hywel Williams

Pete Wishart

Mr George Galloway

Mr John Gummer

Mr Boris Johnson

Mr Paul Marsden

Richard Ottaway

Adam Price

That a select committee of not more than 13 Members be appointed to investigate and to report to the House on the conduct of the Prime Minister in relation to the war against Iraq and in particular to consider

(a) the conclusion of the Iraq Survey Group that in March 2003 Iraq did not possess weapons of mass destruction and had been essentially free of them since the mid 1990s,

(b) the Prime Minister's acknowledgement that he was wrong when in and before March 2003 he asserted that Iraq was then in possession of chemical or biological weapons or was then engaged in active efforts to develop nuclear weapons or was thereby a current or serious threat to the UK national interest or that possession of WMD then enabled Iraq to inflict real damage upon the region and the stability of the world,

(c) the opinions of the Secretary General of the United Nations that the of Iraq in 2003 was unlawful, and

(d) whether there exist sufficient grounds to impeach the Prime Minister on charges of gross misconduct in his advocacy of the

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<sup>15</sup> "MPs plan to impeach Blair over Iraq war record" 26 August 2004 *Guardian*

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case for war against Iraq and his conduct of policy in connection with that war; and

That the Committee shall within 48 days of its appointment report to this House such resolutions, articles of impeachment or other recommendations as it shall think fit.

The motion set out the possible grounds for impeachment, following loosely the procedure used against Lord Melville in 1806, where accusations were also referred to a select committee of the Commons.<sup>16</sup> It appeared formally in the list of future business for that day, but the motion did not have precedence in terms of the business of the House. The motion was repeatedly re-tabled as an item of business which could in theory have been taken on the floor of the House, but no parliamentary time was found to debate it before the resignation of Tony Blair as Prime Minister and a Member of Parliament in 2007.

The issue of impeachment relating to the conduct of Tony Blair and others has been raised on a number of other occasions in parliamentary questions and debates.

### 4.2 Parliamentary questions

**Asked by:** Elfyn Llwyd

On the issue of respect, does the Prime Minister respect the views of General Sir Michael Rose, who believes that he should be impeached for his role in the Iraq debacle?

**Answered by:** Tony Blair | **Department:** Prime Minister

I do not agree with him, obviously, for reasons that will not surprise him. I think the great thing about a democracy is that people are entitled to different views, but I must tell Sir Michael, and indeed the hon. Gentleman, that I think it is also a great thing when 10 million or more Iraqis vote in a democratic election for the first time. If we are under pressure in Iraq from people who are trying to stop them from having a democracy, our job is to stand up for the democrats against the terrorists and insurgents. I think, with respect, that that is the right position.

[HC Deb 18 Jan 2006 c837-8](#)

**Asked by:** Sir Peter Tapsell (Louth and Horncastle) (Con)

Is the Prime Minister aware of the growing sentiment that, as the publication of the Chilcot report has been so long delayed, the ancient but still existing power of Back Benchers to commence the procedure of impeachment should now be activated to bring Mr Tony Blair to account for allegedly misleading the House on the necessity of the invasion of Iraq in 2003?

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<sup>16</sup> See Hatsell's *Precedents* volume IV 1818. Appendix 15 sets out extracts from the Commons Journal which illustrate the procedure followed once the Commons had voted for impeachment

**Answered by:** David Cameron | **Department:** Prime Minister

I would say to my right hon. Friend and Father of the House that it is important that we see the results of the Iraq inquiry. It has had access to all of the papers, all of the officials and all of the Ministers. Frankly, if the Iraq inquiry had started when the Conservative party and indeed the Liberal Democrats suggested it, the report would have been published by now. But Opposition Members, including, incidentally, the Leader of the Opposition, voted against starting the Iraq inquiry on no fewer than four occasions.

[HC Deb 18 Jun 2014 c1105](#)

## 4.3 Parliamentary debates

### House of Lords (Expulsion and Suspension) Bill [Lords] – Report Stage

**Sir Tony Baldry:** [...] Lord Lovat, whom I mentioned earlier, was impeached for high treason in this House and found guilty by the House of Lords. Indeed, he suffered the ignominy of being hung, drawn and quartered—no one is suggesting, of course, that any Member of the House of Lords who might be expelled in future should suffer such a fate. In his judgment against Lord Lovat, the Lord High Steward said:

“The Commons found your Lordship to be one of the principal Conspirators, who contrived and carried on the late detestable Rebellion, to destroy our Religion and Liberties, and to subvert that Legal Settlement of the Crown in His Majesty, and His Royal Family, under which alone we can live Free and Happy.”

Other ways have been found of removing Members of the House of Lords. Impeachment was a procedure used by both Houses, under which all peers could be prosecuted and tried by the two Houses for any crime whatsoever. The House of Commons determined when an impeachment should be instituted. It related largely to high treason, but it could relate to other crimes and misdemeanours. There was a whole process involving the two Houses that could lead to the expulsion of a Member of the House of Lords.

[HC Deb 27 Feb 2015 cc635-7](#)

### Debate on the Address (1<sup>st</sup> Day)

**Sir David Amess:** [...] I look forward to the publication of the Chilcot report. The Gracious Speech always ends with the statement that other measures will be laid before us. This House must never, ever allow an inquiry to drag on for seven years. That is ridiculous and has cost the British taxpayer a huge amount of money. The report is to be published on 6 July. We should not draw a line under it; we should look at the way that inquiries are held in the future. In 2004 I and a group of MPs laid a measure to impeach the then Prime Minister, Tony Blair. I intend,

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through negotiation with the Clerks of the House of Commons, to see if we can use that procedure again if the Chilcot report finds that the then Prime Minister was guilty of misleading the House about the weapons of mass destruction reaching this country in 45 minutes. [.....]

[HC Deb 18 May 2016 cc82-4](#)

## 5. Impeachment elsewhere

### 5.1 The United States of America

In the United States of America, impeachment is a constitutional remedy, provided for by Articles I and II of the Constitution, used to enable Congress to remove Federal officials from office. The purpose is to maintain government integrity rather than personal punishment,<sup>17</sup> Alexander Hamilton, in Federalist Paper no 65, sets out that the process is designed to try “those offences which proceed from the misconduct of public mean, or in other words from the abuse or violation of some public trust”.<sup>18</sup> The House of Representatives makes the charges, and the Senate tries impeachments.

Impeachment proceedings have been initiated in the United States Congress more than sixty times. Notable examples include President Nixon in 1974, who brought proceedings to a halt by resigning, and President Clinton in 1998, who was found not guilty by the Senate in 1999. It is important to note that impeachment investigations in the United States Congress are governed by specially designed detailed rules, which have been developed by precedent, so as to reflect the constitutional importance of the procedure.

The use of impeachment in the United States’ context, where there is a strict separation of powers between the executive and the legislature, is of course different from the Westminster parliamentary system.

### 5.2 Ireland

Ireland’s constitution, in Article 12.10, provides for a mechanism for the Houses of the Oireachtas to impeach the President for “stated misbehaviour”. This has been expanded upon by s 16 of the *Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013*. To begin proceedings thirty or more members of either the Dail or the Seanad must sign a notice of motion that the President shall be removed. To succeed the motion must secure the support of two-thirds of the total membership of the relevant chamber of the House of the Oireachtas.<sup>19</sup> The other House then conducts the investigation, but there are no detailed rules for such investigations, partly as a result of the fact that the procedure has never been used.

The Irish constitution, under Article 35, enables the Houses of the Oireachtas to remove a senior judge from office. These constitutional rules are supplemented by the *House of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013*, which sets out how the Oireachtas should conduct their inquiries on the removal of judges from office. The impeachment procedure came close to being used

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<sup>17</sup> W McKay and C W Johnson, *Parliament & Congress* (2010) p 506

<sup>18</sup> *Ibid*

<sup>19</sup> M Forde and D Leonard, *Constitutional Law of Ireland* (2013)

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on two occasions (Judge Sheedy and Judge Curtain), although in each case the judge in question resigned.

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