



A COMPARATIVE ANALYSIS OF IMPEACHMENT PROCEEDINGS UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999, AND THE UNITED STATES OF AMERICA CONSTITUTION, 1787

Professor Daniel O. Odeleye*
University of Abuja, Nigeria

Dr Pius Olakunle Osunyikanmi**
Directorate of Technical Aid Corps, Ministry of Foreign Affairs, Abuja, Nigeria

Toyo Jimmy***
National Assembly, Nigeria

ISSN 2957-8647

Vol. 2

pp. 1-22, March 2023

www.cavendish.ac.ug

email: secretaryculj@cavendish.ac.ug

How to cite this article:

Odeleye, D; Osunyikanmi P & Jimmy T. (2023). A Comparative Analysis of Impeachment Proceedings under the Constitution of the Federal Republic of Nigeria, 1999, and the United States of America Constitution, 1787. CULJ Vol2.

Abstract

Central to presidential system of government, as practised in Nigeria and the United States, is the concept of the separation of power, which harmoniously apportions power between the three branches of government: the Legislature, the Executive and the Judiciary. Closely related to the concept of separation of power is the principle of checks and balances, which permits a branch of government to reasonably monitor and check the exercise and administration of apportioned powers by other branches. Power of impeachment, which empowers the legislature to remove the President and Vice President and other officials of government, is a potent derivative of the principle of checks and balances. The power is an important device in a presidential system, a system that in itself is named after the President, and where the President exercises enormous, plenary powers. Thus, the ultimate check on presidential power is impeachment and removal. This paper undertakes a comparative enquiry into the impeachment proceedings under the Constitutions of Nigeria and the United States. The paper finds the impeachment procedure in Nigeria and United States appropriate and suited for the different climes but however recommends clearer definition of impeachable offences in Nigeria and the improvement in the quality of panel members set up to investigate impeachment allegation in Nigeria. Professional bodies, for instance, Nigerian Bar Association, which panel members belong, should be on alert to discipline panel members found wanting

Keywords: Impeachable Offences, Impeachment Proceedings, Legislature, Removal of President

* LLB, BL, LLM, Ph.D (Law), Notary Public, Former Dean of Law, Faculty of Law, University of Abuja, Abuja Nigeria.

**BSc, MSc, PhD (Political Science), LLB, LLM, Director-General, Directorate of Technical Aid Corps, Ministry of Foreign Affairs, Abuja, Nigeria.

*** LLB, BL. A Legislative Aide to a Member of the National Assembly, Abuja, Nigeria.

Introduction

It has long been recognised that the concentration of two or more powers in one body is antithetical to the rule of law. According to Montesquieu, ‘there would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and that of trying the causes of individuals.’¹ It has therefore become imperative for states to separate power between the legislative, executive and judicial arms of government. Not only must power be separated; one power must be a check to another to prevent abuse because ‘constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go.’²

Nigeria and the United States have followed the tradition of separation of powers. The Constitution of the Federal Republic of Nigeria, 1999 in sections 4, 5, and 6 separate powers between the Legislature (National Assembly), the Executive, and the Judiciary (the Courts and other judicial bodies), respectively. Similarly, the Constitution of the United States of America, 1787 in Articles I, II and III separate powers between the Legislature (United States Congress, the Executive (the President and other executive bodies) and the Judiciary (the Courts and other Judicial Bodies) respectively.

Corollary to the principle of separation of power propounded by Montesquieu is the doctrine of checks and balances, a fundamental offshoot from Montesquieu principle. The doctrine of checks and balances, in the main, is a system in constitutional democracy whereby each arm of government operate in a manner that checks the other arms to prevent any one arm becoming too powerful. One of the sets of systems in-built in most constitutions of the world for checks and balances is the power of impeachment, which empowers the legislature to remove the President, Vice President and other high ranking government officials from office before the expiration of their term of office. The impeachment power enables the legislature to check and restrain the exercise of executive powers. Thus, the executive heads of government must exercise their powers within constitutional limits or face removal from office by the legislature in the exercise of its impeachment power. Impeachment is therefore a potent weapon in the hands of the legislature to curb the excesses of the executive arm of government.³

¹[Charles de Secondat baron de Montesquieu](#), *The Spirit of Law* (Hafner Publishing Company, 1949).

²[Charles de Secondat baron de Montesquieu](#), n.2.

³M. A. Owoade, *Impeachment of Chief Executives under the 1999 Constitution: New Problems, New Solutions*” [2007] (7) (4) *Journal of Constitutional Development*, 1.



Section 143 of the Constitution of the Federal Republic of Nigeria, 1999 vests in the National Assembly the power to remove the President and Vice President. Similarly, Article II(4) of the United States Constitution vests in the United States House of Representatives the power of impeachment while Article I(3)(6) of the Constitution vests in the United States Senate the power to try all impeachments. There is remarkable difference between the mode, process and objects of impeachment in the Nigerian legal context and the American legal context, which this paper will explicate, but the end result is the same – either removal from office or continuation in office. In Nigeria, no public official has been impeached before at the federal level.⁴ However, there had been three successful impeachment proceedings in the US House of Representatives. They were against President Andrew Johnson, Bill Clinton, and Donald Trump. They were all tried and acquitted by the US Senate. The power of impeachment given to the legislature is a sacred and fundamental duty, which should be exercised only in deserving, extreme cases. This is because the power appears to be a shortcut to removing from office a public official elected by the public, in most cases, by a small group of people through a political process rather than a democratic process of election. Thus, the power of impeachment, as rightly observed by Professor Nwabueze, is not meant to give the legislature a control over the president's tenure or administration of government.⁵ Impeachment proceedings seem to be governed not necessarily by law but by partisan considerations. Impeachment, though a creation of law, is characterised with more of politics than law. The intention of the legislators is often not legitimate and altruistic but self-serving. Thus, Perkins observed that 'impeachment in the United States is not, and has never been, a matter of law. It is, and always has been, a matter of politics. Throughout American history, no congressional majority party has ever attempted to impeach and remove a president from the same party.'⁶ It is in this light that we have also devoted part of this paper to understanding factors, outside law, that influence impeachment.

⁴ There has been several impeachment proceedings and attempts at the state level in states like Kaduna, Plateau, Bayelsa, Anambra, Nasarawa, etc.

⁵ Nwabueze, B.O. *The Presidential Constitution of Nigeria*, (C. Hurst & Company & Nwamife Publishers, 1982).

⁶ William B. Perkins, 'The Political Nature of Presidential Impeachment in the United States' in Jody C. Baumgartner and Naoka Kada (eds), *Checking Executive Power: Presidential Impeachment in Comparative Perspective* (Praeger Publishers, 2003), 21-44.



The paper sets out to compare the impeachment proceedings under the Nigerian Constitution with the American Constitution. The paper considers impeachment basically at the federal level in the two countries. The paper is divided into 8 Parts: Part 1 - Introduction and Conceptual Clarification - gives a background to the subject of impeachment proceedings in Nigeria and United States and clarify some concepts that frequently appear in the paper; Part 2 - Factors that Condition the Process of Presidential Impeachment – examines the cause of impeachment, why there has not been an attempt to impeach any president in Nigeria and why impeachment is slightly rampant in the United States; Part 3 - Constitutional Basis and Procedure for Impeachment in Nigeria - explains the legal basis and procedure of impeachment in Nigeria; Part 4 - Constitutional Basis and Procedure for Impeachment in the United States - explains the legal basis and procedure of impeachment in the United States; Part 5 - Effect of Impeachment - examines the legal effect of impeachment on the public official successfully impeached; Part 6 - Judicial Intervention and Impeachment as Non-justiciable Political Question – x-rays judicial attitude towards impeachment proceedings in Nigeria and United States; Part 7 – Comparing Impeachment Proceedings Under the Constitution of Nigeria and the Constitution of the United States – draws similarities and dissimilarities in the impeachment proceedings between Nigeria and United States; and Part 8 – Conclusion and Recommendation – contains concluding thoughts on the work and recommendations.

The paper maintains that the procedure for impeachment of the President and Vice President in Nigeria is appropriate and fitting of Nigerian situation. It finds that the American procedure is somewhat complicated, and not fitting for adoption in Nigeria. It recommends a clear definition of ‘misconduct’ so as not to leave it to the whims and caprices of the legislators as the country’s democracy advances.

Conceptual Clarification

It is necessary to make clarification of certain terms and words which are employed in this paper for proper appreciation of the subject under review.

a. Impeachment and Impeachment Proceedings



Impeachment is defined by the Black's Law Dictionary⁷ as the act (by a legislature) calling for the removal from office of a public official, accomplished by presenting a written charge of the officials alleged misconduct; especially the initiation of a proceeding in the United States House of Representatives against a federal official, such as the President or a judge. Similarly, Oxford Advanced Learner's Dictionary⁸ defines impeachment as the act of charging an important public figure with a serious crime. From the above definitions, it does show that there have been two misconceptions about the word impeachment, classified by us into: (a) global; and (b) local (Nigeria). The global misconception arises from the way and manner scholars and journalists construe the word impeachment as a successful 'trial' of a public official in the House of Representatives. The local misconception arises from Nigerian construction of the term as a successful removal of public officials from office. Contrary to the general perception or conception of impeachment as being a removal of a public official especially in the Nigerian context, the above definition indicates that impeachment is the act of charging or calling for removal of a public official. Impeachment is an act, which may succeed or fail. Under the American Constitution, impeachment is the first of a two-step-process for the removal of a public officer from office. An office holder that has been successfully impeached must be tried and convicted in the Senate before he or she could be removed from office. The term also has a broader cover in the United States; the term includes impeaching all Civil Officers including judicial officers of the United States.

In Nigeria, the Constitution uses the word 'removal' when making provision for the legislative act of vacating the President or Vice President from office before the expiration of their tenure in section 143 of the Constitution. The Constitution, however, in six provisions, uses the word 'impeachment' in a similar connotation with removal.⁹Dr.Udofa¹⁰ views the definition of

⁷ Bryan A. Garner (ed) *Black's Law Dictionary* (9th Ed., Thomson Reuter 2009).

⁸ Albert Sydney Hornby, *Oxford Advanced Learner's Dictionary* (9th Ed. Oxford University Press, 2020).

⁹ The word impeachment is used in the following constitutional sections and circumstances: (a) the proviso to section 84(5), and section 124(5), which disentitle a President or Vice President and a Governor or Deputy Governor, respectively, from benefitting from pension or gratuity; (b) section 146(1) and section 191(1), which make impeachment one of the grounds for a Vice President and Deputy Governor to succeed a President and Governor, respectively; and (c) section 146(3)(a) and section 191(3)(a), which make impeachment one of the grounds for vacancy of the Vice President and the Deputy Governor respectively.

¹⁰ Imo Udofa, 'The Impeachment Power of the Legislature under the Nigerian and American Constitutions Compared' [2015] (2) (4) *International Journal of Law and Legal Jurisprudence Studies*, 1 <<http://ijlljs.in/wp->



impeachment by the Black's Law Dictionary as technical and restricted. He however defined impeachment in a general/popular sense to denote 'the removal of a public officer from office by the legislature before the expiration of his official term.' He noted, and rightly so, that the general/popular definition is the sense in which the term impeachment is understood in Nigeria.

In this paper, for purpose of scholarship, the original or technical meaning of the word impeachment will be used with two limited exceptions. First, the use of the term impeachment will be limited mainly to the impeachment of the President or Vice President of the United States.¹¹ Second, the term will be used to include the impeachment trial at the United States Senate.

Proceedings means an event or a series of actions. Impeachment proceedings, therefore, is a series of actions that occur during or in the course of impeachment.

b. Impeachable offence

The ground that will necessitate the National Assembly to impeach the President or the Vice President in Nigeria is gross misconduct. This is specified in section 143(2)(b) of the Constitution. Section 143(11) defines 'Gross Misconduct' to mean 'grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct.' Udofa finds the definition unhelpful because it is not precise as to the actions or inactions of the President or Vice President that would make him liable for removal from office by impeachment.¹²

Akande¹³ has proposed three possible constructions of the term "gross misconduct" within the meaning of section 143(11) of the Constitution as follows:

- (i) Any action which specifically violates the provisions of the Constitution, may amount to failure to meet legal obligations.

<content/uploads/2015/06/THE-IMPEACHMENT-POWER-OF-THE-LEGISLATURE-3.pdf>> accessed on June 25, 2022.

¹¹ In Nigeria, removal of public officer within the context of impeachment only applies to the President, Vice President, Governor and Deputy Governor. It does not extend to other government officials like judicial officers, as it is the case in the United States.

¹² Imo Udofa, n. 11.

¹³ J. O. Akande, *Introduction to the Constitution of the Federal Republic of Nigeria 1999* (Spectrum Books Ltd. 2000).



- (ii) Any offence constituting criminal offences punishable under the criminal law of the land;
- (iii) Any action, which gets the disapprobation of the National Assembly whether or not it amounts to a violation of the Constitution or a criminal offence.

Akande’s analysis is very helpful in the understanding of the term ‘gross misconduct.’ However, we disagree with second construction on the term. This is because the Constitution in section 143(2)(b) expressly limits the circumstances under which ‘gross misconduct’ could occur i.e., ‘in the performance of the functions of his office.’ Hence, not all offences constituting criminal offences can be impeachable, if such criminal offence did not occur in the performance of the functions of his office. Therefore, if the President assaults a staff working under him in the office because of his or her failure to carry out a particular official task, that may amount to gross misconduct. But if such assault were to occur outside the performance of his duty, say the President assaults his girlfriend during a tête-a-tête in a social gathering, such conduct will not amount to gross misconduct.¹⁴ Thus, the view of E. Michael Joye & Kingsley Igweike that misconducts which are not connected with the performance of the functions of President’s office, no matter how grave, would not constitute grounds for removal,¹⁵ is the correct position. It is further submitted that the discretion left to the National Assembly to determine what in their opinion is a gross misconduct is not totally subjective when read with the phrase ‘gross misconduct in the performance of the functions of his duties’ in section 143(2)(b). It means whatever the National Assembly think is misconduct must be in relation to the performance of the functions of the President’s or Vice President’s office.

In *Inakoju v Adeleke*¹⁶, the Nigerian Supreme Court held that “gross misconduct” included, but was not limited to “grave violation or breach of the provisions of the Constitution, breach of oath of allegiance, corruption, false declaration of assets, breach of oath of office, and so on.”

Impeachable offences under the US Constitution is ‘Treason, Bribery, or other high Crimes and Misdemeanours.’¹⁷ Treason and bribery are not contentious because they have definite meaning

¹⁴ In any case, such conduct may amount to gross misconduct in the eyes of the National Assembly under Akande’s third construction.

¹⁵ E. Michael Joye & Kingsley Igweike, *Introduction to the 1979 Nigerian Constitution* (Macmillan, 1982).

¹⁶ (2007) 4 NWLR (Pt. 1025) 423.

¹⁷ Article II (2) of the US Constitution.

under the criminal law of United States. However, the phrase ‘other high Crimes and Misdemeanours’ has been a subject of most controversy and the courts have refused to address any of the important constitutional questions that may arise from impeachment proceedings on the ground of non-justiciable political question. It does appear that despite the use of the words ‘other high’ before ‘Crimes and Misdemeanours,’ which presupposes special category of crimes and misdemeanours, misconduct alleged against a US President or Vice President does not have to be: (a) of special category, and (b) a statutory crime, before such conduct can ground impeachment. We are going to analyse this assertion based on opinions of authors and practical experience since there is paucity, or total absence, of judicial authority on the subject for reliance. It is generally agreed that an impeachable offence needs not be a statutory crime.¹⁸ Thus, Bowman III & Sepinuck¹⁹ stated, ‘[A] President would certainly be subject to impeachment for refusing to organize the defence of the country against foreign invasion, or refusing to cooperate with military officers charged with command and control of the nuclear arsenal, or firing all cabinet officers and refusing to name replacements. Likewise, it is inconceivable that Congress could not remove a President who drank himself into insensibility by lunchtime on a daily basis.’ Supporting this view is the fact that President Johnson was successfully impeached for the noncriminal act of removing the Secretary of War without the consent of the Senate as required by statute. The Articles against President Nixon included misusing federal agencies to discredit his political opponents and for refusing to comply with congressional demands for information; neither alleged misconduct was criminal. (Nixon resigned before the House voted on the charges).²⁰

¹⁸ Jesse H. Choper and Others, *Constitutional Law: Cases-Comments-Questions* (West, 2006).

¹⁹ Frank O. Bowman III and Stephen L. Sepinuck, “‘High Crimes and Misdemeanors’: Defining the Constitutional Limits on Presidential Impeachment” [1999] (72) *California Law Review*, 1517.

²⁰ Jesse H. Choper and Others, n.19. However, Michael Gerhardt has argued that “[The words ‘other high Crimes and Misdemeanors] constitute technical terms of art that refer to political crimes [which] the Framers considered [to] consist of ‘great’ and ‘dangerous’ offenses committed by certain federal officials. Oftentimes, these offenses were characterised further as serious abuses of official power or serious breaches of the public trust.” - Michael J. Gerhardt, ‘The Lesson of Impeachment History’ [1999] (67) *Washington Law Review*, 603. See also Rackove’s comment that “an expansive reading of ‘other high Crimes and Misdemeanors’ simply cannot be squared with the Framers’ desire to insulate the presidency as much as possible from the danger of domination by the legislature.” – Jack Rackove, ‘Statement on the Background and History of Impeachment’ [1999] (67) *George Washington Law Review*, 682.



Turley has argued that every crime should be an impeachable offence. He argued that “Labelling some criminal act as ‘private’ creates an obvious anomaly in retaining a President under his oath to fully and faithfully enforce federal laws in office, despite a presumption that he has violated those same laws in office. Criminal conduct by a President should create a presumption of submission to the Senate”²¹In conclusion, what amounts to impeachable offence in the United States is as fluid as impeachable offence in the Nigerian constitutional context. The reason for this is mainly because of the political shade of impeachment. This is summed up in the statement of Gerald Ford, a Congressman from Michigan who proposed the impeachment of Supreme Court Justice William Douglas largely because of Douglas’s liberal views, that: “An impeachable offence is whatever a majority of the House of Representatives considers it to be.”²²

Factors that Condition the Process of Presidential Impeachment

Five factors have been identified that condition the emergence and outcome of presidential impeachment attempts.²³ These factors affect the likelihood that an impeachment attempt will be made and how successful it might be, and include: (a) the institutional balance of power between the various branches of government, (b) the constitutional and statutory provisions for impeachment; (c) the structure of party politics; (d) presidential popularity prior to allegations of presidential wrongdoing; and (f) other factors, including the media environment, economic conditions, and international pressures.

a. The Institutional Balance of Power

A description of the constitutional framework of government and the institutional balance of power between the various branches of government is necessary to set the stage for a discussion of impeachment in a particular country. At least one other national institution besides the president is involved in the impeachment and removal process, so understanding the regime structure and the relationship between the various institutions of government is critical to

²¹ Jonathan Turley, ‘Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President [1999] (67) *George Washington Law Review*, 735.

²² 116 Congressional Record 11913 (1940) cited in Erwin Chemerinsky, *Constitutional Law* (ASPEN Publishers, 2009).

²³ Jody C. Baumgartner, ‘Introduction: Comparative Presidential Impeachment’ in Jody C. Baumgartner and NaokaKada (eds.) *Checking Executive Power: Presidential Impeachment in Comparative Perspective* (Praeger Publishers, 203), 1-17.

establishing a baseline for a discussion of impeachment. It matters, for example, if the presidency is fairly weak (i.e., has few legislative powers) vis-a-vis the legislature. Here we might expect to see a greater likelihood of an impeachment attempt, if, for example, a president tried to exert influence over the legislature. Conversely, if the president is strong in relation to the legislature, impeachment may be the only constitutional-legal way for a legislature to exert any control over the executive. If the selection process for members of the high courts (e.g., a Constitutional or Supreme Court) or the upper house of the legislature is dominated by the president, and if either (or both) are involved in the trial to remove the president, the removal attempt might theoretically have less chance of success. Importantly, the institutional balance of power varies in its effect on the impeachment process across cases. In other words, the explanatory power of this variable alone may approach insignificance, but explicating it adds needed context.

b. Constitutional and Statutory Provision for Impeachment

In almost all countries, presidential impeachment is difficult. This is by design, since one of the motivations for settling on some form of presidential system of government as opposed to strict parliamentarism is to achieve a greater degree of executive stability. Presidential system is a form of Government which denotes that there is only one person who is the head of the state and government, i.e. the President. The election of the President is made directly by the citizens of the country or sometimes by the members of the electoral college for a fixed period.²⁴ Parliamentarism, on the other hand, is a form of democratic government wherein the executive branch is derived from the legislative body, i.e. the Parliament. Here, the executive is divided into two parts, the Head of the State, i.e. President, who is only the nominal executive and the Head of the Government, i.e. Prime Minister, who is the real executive.²⁵ This said, in some systems, impeaching and removing a president is more difficult than in others. A discussion of the legal provisions for impeachment, both constitutional and statutory, is necessary for understanding both the emergence and course of an impeachment attempt. In

²⁴<https://keydifferences.com/difference-between-parliamentary-and-presidential-form-of-government.html#:~:text=In%20the%20Parliamentary%20form%20of,the%20Parliament%20for%20its%20acts>. Accessed on 27th March 2023.

²⁵ibid



particular, which institutions of government are responsible at what stage, and what size majority is required for successfully moving the process to the next phase? Although lower houses of the legislature are in most cases responsible for the actual impeachment (authorizing a trial) itself, in some countries an upper house of the legislature conducts the trial, while in others the high court(s) does so, and in some few others, either the lower house itself or both the high court(s) and the upper house are involved. Of course, more institutions involved in the process mean more potential veto points, making it theoretically more difficult for an impeachment attempt to succeed.

c. The Structure of Party Politics

Presidential impeachment is played out between institutions of government that are comprised (with the exception of some presidents) of members of political parties. Unsurprisingly therefore, presidential impeachment typically has distinct partisan undertones. Thus, an overview of the shape of party politics in each country is critical to understanding presidential impeachment especially when discussing the organization of the legislature, the partisan composition of legislative committees, and the manner and history of judicial appointments. A focus on party system includes, for example, whether the party system has two or multiple parties, how institutionalized the party system is, the degree of discipline parties display in voting, what ties (if any) the president has to any particular party, how strong those ties might be, and why.

It matters, for example, if the country in question has a fairly well established two-party system, where divided government is the rule (as in the U.S.); here we might expect to see the president and legislature at odds with greater frequency, and thus, a greater likelihood that an impeachment attempt will emerge. Or, if a president is elected with few or no formal ties to a political party, we might be less surprised if a legislature initiated impeachment proceedings based on a presidential scandal. If that legislative majority displays a fair amount of party cohesiveness in voting, we would similarly be less surprised if impeachment was successful. If, on the other hand, the president and a majority of the legislature were from the same, fairly disciplined party, it would be theoretically harder to impeach and remove the president, given the same scandal.

These examples serve to suggest, again, that we are hard-pressed to understand presidential impeachment without first understanding its partisan foundations.

d. Presidential Popularity

Another factor important to understanding the emergence and outcome of a presidential impeachment attempt is presidential popularity. Simply put, it is more difficult (and politically costly) to impeach and remove a popular president than an unpopular one. Most commentators who, for example, compared the Clinton and Nixon impeachment attempts, often dwelled on the nature of the crimes involved, downplaying (perhaps conveniently) the fact that in one sense the two cases were completely different: unlike Nixon, Clinton enjoyed consistently high public approval ratings throughout the course of the impeachment scandal. Of course presidential popularity does not by itself determine the course of an impeachment attempt, and, as with all of the factors that comprise the impeachment setting, examples counter to this rule can be found. Russian President Yeltsin, for example, was extraordinarily unpopular the last six years of his tenure, and successfully survived the 1998-99 impeachment attempt by the Russian State Duma. On the other hand, Brazilian President Collor was quite popular when his investigation began. It was only when impeachment proceedings uncovered compromising information that people began to demand his impeachment.

Nevertheless, presidential popularity does affect whether and how impeachment proceedings are conducted. Presidential popularity might affect the likelihood that a president will be subjected to formal investigation; conversely, it might change public opinion so that an ongoing investigation becomes more vigorous. In short, even though the level of presidential popularity of prior to an impeachment attempt is necessarily a good indicator of the president's fate, it should be taken into account, given its impact on the elected politicians and magistrates who decide the president's future.

e. Other Factors

Finally, in terms of setting, there are other factors that may facilitate or impinge upon the emergence and course of a presidential impeachment attempt. These might include a liberal

impeachment in a media environment in which professional norms are oriented toward investigative journalism. In a setting like this (for example, the U.S.), all other things being held equal, reports of presidential wrongdoing are more likely to be transformed into a political scandal than in a country where journalists are threatened or otherwise censored by state authorities or journalistic norms do not stress investigative journalism. Adverse economic conditions might make a population more willing to support an impeachment attempt, especially if the president is perceived as being responsible for those conditions; this may have been a factor in the cases of Russian President Boris Yeltsin and several Latin American presidents. International pressure may also play a role, as it may have done, albeit counterproductively, in the impeachment attempt of Colombian President Ernesto Samper in 1996, where ordinary Colombians rallied against U.S. intervention.²⁶

Constitutional Basis and Procedure for Impeachment in Nigeria

The 1999 Constitution stipulates a strict procedure for impeachment, to guard against abuse and ensure that affected public officers have a fair trial before they are removed from office. The input of ‘outsiders’ is required in the process to avert a situation where a weak legislature may be pressured by the government not to impeach the chief executive even in the face of genuine grounds. Thus, an independent body is involved in the investigation of the allegations whilst leaving the final decision on removal to the legislature.

The procedure for impeachment of a President and Vice President consists of three stages.²⁷ At the first stage, the Constitution stipulates that an allegation of gross misconduct against an office holder in the performance of his functions must be stated in a written notice with detailed particulars, signed by not less than one-third of the members of the National Assembly²⁸ and presented to the President of the Senate. Within seven days of the receipt of the notice, the President of the Senate shall cause a copy thereof to be served on the President or Vice President and each member of the legislature, and shall cause any reply to the allegation to be served on

²⁶ Jody C. Baumgartner, n. 24.

²⁷ See section 143(2)-(9), CFRN 1999 as altered. Also, see MammanLawal, ‘Abuse of Power of Impeachment in Nigeria’ *The Journal of Modern African Studies* [2010] (48) (2) Cambridge University Press, 311.

²⁸ The one-third of members may be from a particular House of the National Assembly or may be members of both Houses given the Constitution is silent on the nature of members to sign the notice of allegation.



each of the members.²⁹ Whether or not there is a reply to the allegation, each House of the National Assembly shall, within 14 days of the presentation of the notice, resolve by motion without debate whether or not the allegation shall be investigated.³⁰ A motion to investigate shall be declared as having been passed if it is supported by the votes of not less than two-thirds of all the members of each House of the National Assembly.³¹

It is the second stage that the process goes beyond the legislature. Within seven days of the passing of the motion, the Chief Justice of Nigeria is to, at the request of the Senate President, appoint a panel of seven persons who in his opinion are of unquestionable integrity to investigate the allegation. These persons must not be members of any public service, legislative house or political party.³² In order to ensure fair hearing, the office holder is entitled to defend himself in person or to be represented by a legal representative of his own choice during the proceedings.³³ The Panel shall have powers and exercise functions as prescribed by the legislature; and shall report its findings to each House of the National Assembly within three months of its appointment.³⁴ Where it is found that the allegation has not been proved, the impeachment proceedings is terminated.³⁵ If, however the Panel reports that the allegation has been proved, the final (third) stage of the procedure starts. Within fourteen days of receipt, each House of the National Assembly shall consider³⁶ the report, and if the report is adopted by a resolution of each of the House of the National Assembly, supported by not less than two-thirds majority, the holder of the office stands removed as from the date of the adoption.³⁷ The jurisdiction of the

²⁹Section 143(2). The requirement for service on the officer holder accused is in compliance with the fair hearing provision of section 36. It serves as an advance fair hearing to enable the office holder have necessary time and facilities to prepare before the sitting of the Panel.

³⁰Section 143(3). It will appear that restraint on debate by the Constitution on members of the National Assembly is to avoid a situation where the opinions of the members of the Panel to investigate the allegation will be prejudiced. It is left to be seen whether the court will set aside impeachment proceedings on the ground that members debated the allegation at this stage.

³¹Section 143 (4). It should be noted that the Constitution raises the bar from one-third to two-third in respect of the motion for the investigation of the allegation.

³²Section 143(5). The requirement for the members of the Panel not to belong listed organizations is to ensure the independence of the Panel.

³³Section 143(6).

³⁴Section 143(7).

³⁵Section 143(8).

³⁶ The word ‘consider’ here will include to deliberate and debate on the report.

³⁷Section 143(9).



court is ousted from entertaining any question regarding the proceedings or determination of the Panel or the National Assembly or any matter relating thereto.³⁸

Constitutional Basis and Procedure for Impeachment in the United States

The American Impeachment process places in the legislative branch the exclusive authority to remove the President, Vice President and other federal civil officers in the executive and judicial branches for misconducts. This is one of the checks and balances grounded in the American constitutional structure.³⁹ Essentially, the impeachment process, under the American Constitution, consists of two parts, namely; Impeachment, which is the responsibility of the House of Representatives,⁴⁰ and Impeachment Trial, which is the sole responsibility of the Senate.⁴¹

Impeachment Proceedings at the House of Representatives

The responsibility and authority to determine whether to impeach and to draft articles of impeachment is vested in the House of Representatives. Thus, impeachment will only apply where articles of impeachment are brought alleging that the office holder to be impeached has engaged in conduct amounting to treason, bribery or other high crimes or misdemeanours. The articles of impeachment therefore constitute the formal allegations levelled against the office holder. Upon bringing the articles of impeachment, impeachment proceeding is held by the House through its Committee present evidence for the impeachment of the President or Vice President. Witnesses are called and questioned by the House and the person accused. After the presentation by the House, the President or the Vice President is allowed to defend himself and call witnesses too. The House work often times with professional lawyers handling of the impeachment proceedings. The House of Representative must then vote on the articles of impeachment; and the impeachment of the office holder is successful by a simple majority of the members present and voting. Thereafter, the articles of impeachment are transmitted to the Senate for trial.

³⁸Section 143(10).

³⁹Bazan, E.B. "Impeachment: An Overview of Constitutional Provisions, Procedure and Practice" Congressional Research Service, 2010, available at <http://fas.org/sgp/crs/misc/98-186.pdf>, (accessed on June 25, 2022).

⁴⁰ Article II(4) of the US Constitution.

⁴¹ Article I(3)(6) of the US Constitution.



Impeachment Trial at the Senate: The trial of an impeached office-holder is the responsibility of the Senate of the United States Congress. Where the case involves the trial of an impeached President, the Chief Justice of the United States will preside over the proceedings.⁴² With regard to the trial of any other officer, the Senate usual presiding officer will preside as the Constitution is silent on the particular person to preside. Thus, if the Vice President does not preside, the President Pro Tempore of the Senate will preside. Pursuant to the Rules that govern impeachment trials before the Senate, the Impeachment Trial Committee shall first hear evidence against the impeached office holder, which is done through the House Managers, appointed by the House to manage the impeachment proceedings at the Senate. The Committee also has the right to compel the attendance of witnesses and to require witnesses to answer in the same way as they do in ordinary courts. The members must take an oath to perform their duty fairly and honestly.⁴³ On completion of its work, the Trial Committee must submit a certified record of its proceedings to the full Senate and file its report summarizing the articles of impeachment and the evidence received. The office holder successfully impeached will be given the opportunity to cross examine witnesses of the House, call his own witnesses and defend himself. In making its determination in an impeachment trial, the full Senate may rely upon the evidence collected by the Senate Impeachment Committee or may gather further evidence. The determination whether to convict or acquit on any article rests with the full Senate, as does the determination, upon conviction of the judgment to be imposed. The decision to convict on each of the articles of impeachment must be made separately; and conviction can only be secured by the concurrence of two thirds of members present.⁴⁴ A conviction on any one of the articles of impeachment brought against the office holder is sufficient to constitute conviction in the trial of the impeachment.⁴⁵ Where the office holder is convicted, the Senate must determine the appropriate judgment in the case. The Constitution of United States limits the judgment to either removal from office or removal and prohibition against holding any future offices of “honour, Trust or

⁴² Article I(3)(6) of the US Constitution.

⁴³ Mowoe, K.M. *Constitutional Law in Nigeria* (Vol. 1, Malthouse Press, 1996).

⁴⁴ Article 1(3)(6).

⁴⁵ Imo Udofa, n. 11.

Profit under the United States.”⁴⁶ Based on precedents in the Senate since 1936, removal from office flows automatically from conviction on an article of impeachment. However, a separate vote is necessary should the Senate deem it appropriate to disqualify the individual convicted from holding future federal offices of public trust. Such a vote requires a simple majority.

Effect of Impeachment

In Nigeria, a President or Vice President who has been successfully impeached vacates his office and is not entitled to any pension.⁴⁷ However the Constitution is silent on whether a President or Vice President successfully impeached can hold public office again. It is submitted that such a person can hold office since impeachment is not a ground for disqualification for contesting an election. *We wonder whether this was a deliberate action on the part of the drafters of the Constitution not to make impeachment and removal from office a bar from holding public office in view of the fact that a President or Vice President that is successfully impeached for gross misconduct in the performance of his duty is not fit to occupy any other public office. If this was not an oversight, a reasonable explanation will be that the drafters understood the political nature of the impeachment, i.e., that the President or Vice President could be impeached for no real misconduct, hence decided not to bar any person impeached from public office.*

Another question that may arise will be whether a public officer impeached and removed from office can be tried in a court of law for similar misconduct. The answer is in the affirmative because impeachment proceedings is not part of the judicial bodies recognised by the Constitution in section 6 for trial of crime. Furthermore, the punishment for a successful impeachment is removal from office and not conviction and jail term as it is the case in the regular judicial trial. Hence, a public official impeached can be criminally proceeded against.

In the United States, the effect of impeachment and conviction at the Senate is made clear. The Senate is given the liberty to convict only or convict and bar public official from holding public

⁴⁶ Article 1(3)(7) of the US Constitution.

⁴⁷Section 143(9) and Proviso to section 84(5).



office of honour, Trust or Profit.⁴⁸ The Constitution further expressly states that a public official convicted is liable and subject to Indictment, Trial, Judgment and Punishment according to law.⁴⁹

Judicial Intervention and Impeachment as Non-Justiciable Political Question

In the United States, the courts regard challenges arising from impeachment as non-justiciable political question, hence refuse to entertain such challenges.⁵⁰ Commenting on the non-justiciability of legal question arising from impeachment, Louis Fisher⁵¹ noted that, “If Congress decides that an office holder has committed ‘high crimes and misdemeanours’, even if the crime is not prosecutable in the courts, and it builds a record to demonstrate that the individual acted in a manner harmful to the political system and must be removed, there is no recourse to the judiciary. It must be noted that there is no express rule of law that prohibits the court in the United States from entertaining impeachment question, but a principle established by the court. In Nigeria, however, the Constitution in section 143(10) outs the jurisdiction of the court on proceedings or determination of the Panel or the National Assembly. In other words, just as is in the United States, challenge on impeachment proceedings is non-justiciable in a court of law.

There is however an exception to the non-justiciability of impeachment challenge in Nigeria and, to some extent, in the United States. This exception is to the effect that if the procedures laid down by the law for impeachment of the President or Vice President is not followed, the court will have no option but to entertain an impeachment challenge. Thus, in *Inakoju&Ors v Adeleke&Ors*, the Supreme Court readily agreed with the Court of Appeal that the entire section 188 (1) – (11) of the Constitution of the Federal Republic of Nigeria, 1999, which governs impeachment proceedings at the state level and which is analogous to the impeachment provisions at the federal level, must be read together; and that a proper reading of the whole section will reveal that the ouster clause in sub-section (10) can only be properly resorted to and

⁴⁸ Article 1(3)(7). This bar is quite wide because it will prevent a convicted elected public official not just from holding public office but running certain type of business and being on certain boards like on a University Board, etc.

⁴⁹Supra.

⁵⁰ See *Nixon v United States* 506 US 224 (1963) where Justice Souter agreed with the majority that the case presented a non-justiciable political question. See also *Hastings v United States* 837 F Supp. 3 (DDC 1993).

⁵¹See Fisher, L. *Constitutional Conflicts between Congress and the President* (5th Ed., University Press of Kansas, 2007).



invoked after due compliance with sub-sections 1 - 9. Sub-section 11 makes it abundantly clear that it is the House of Assembly that decides whether or not a conduct is gross misconduct to warrant the removal of a Governor. Failure to comply with any of the provisions of subsection 1 – 9 will mean that the ouster clause of subsection (10) cannot be invoked in favour of the House of Assembly.⁵² Similarly, in *Dapianlong v. Dariye*,⁵³ it was held that, “It is true that section 118(10) of the Constitution of the Federal Republic of Nigeria, 1999 ousts the jurisdiction of the courts in respect of the impeachment of a Governor or Deputy Governor, but that must be subject to the rule that the Legislature or House of Assembly complied with all the constitutional requirements in section 188 needed for the impeachment as the courts have jurisdiction to determine whether the said constitutional requirements have been strictly complied with.”

It will appear that the Supreme Court of the United States followed this exception when it entertained the case of *Nixon* even though it finally held that it was a non-justiciable political issue. In the case, *Nixon*, a judge convicted and removed by the Senate of the United States, challenged constitutionality of the procedure⁵⁴ adopted at the Senate in his trial; contending that the full Senate must sit as judge and jury. He argued that the Senate’s failure to give him a full evidentiary hearing before the entire Senate violated its constitutional duty to “try” all impeachments; therefore, his conviction by the Senate was void. Both the District Judge and the Court of Appeal decided that the claim was not justiciable. The Supreme Court held that the Senate had sole discretion to choose the procedures to be used for impeachment trial.

It can be seen from the case that even though the Supreme Court of the United States eventually held that the matter was a non-justiciable political question, it nonetheless answered on the procedure adopted by the Senate posed to the court.

Comparing Impeachment Proceedings in the Nigerian Constitutional Context and the United States

⁵²*Per.* Tobi JSC at 653.

⁵³(2007) 8 NWLR (Pt. 1036) 332, Per Onnoghen JSC.

⁵⁴ A committee of twelve senators conducted an impeachment hearing and then presented a report to the full Senate, which then voted on each article of impeachment. See David M. Brian, *Constitutional Law and Politics* (Vol. 1, W. W. Norton & Company, 1997).



In this part of the work, there shall be a comparison between impeachment proceedings under the Constitution of Nigeria and the Constitution of the United States. This will be done under two headings: (a) Similarities and (b) Dissimilarities.

a. Similarities in Impeachment Proceedings Between Nigeria and United States

- i. The power of impeachment is machinery to check the excesses of the executive in the two countries.
- ii. The power is domiciled in the legislative arm of government. In Nigeria, the National Assembly, while in the United States, the United States Congress.
- iii. Questions relating to impeachment proceedings are not to be entertained or questioned in a court of law, except in Nigeria where the procedures for impeachment were not followed.
- iv. Impeachment proceedings, i.e., successful impeachment and removal, is a joint task involving both the lower and upper chambers (the House of Representatives and the Senate). It is unlike other legislative assignment of confirmation of presidential appointments, which task is carried out only by the Senate both in Nigeria and the United States.

b. Dissimilarities in Impeachment Proceedings Between Nigeria and United States

The following are differences inherent in the impeachment proceedings of the two countries:

- i. Impeachment proceedings in the United States involves two distinct processes with each House of legislature given a distinct assignment. Impeachment Proceedings is initiated and conducted in the House of Representatives, while Impeachment Trial and Conviction or Acquittal is conducted in the Senate. In Nigeria, there is no such two-tiered processes or peculiar responsibilities to each House.
- ii. In the United States, impeachment proceedings must first be initiated in the House of Representatives and the proceedings, if successful, transmitted to the United States Senate. In Nigeria, impeachment proceedings does not have to be initiated



in the House of Representatives. It can either be initiated in the House of Representatives or the Senate or jointly.

- iii. In the United States, the power of impeachment extends beyond the chief executives, i.e., President, and Vice President to all civil Officers of the United States, which include federal judicial officials. In Nigeria, the power is only exercisable against the President and Vice President.⁵⁵
- iv. The nature of impeachable offences in the United States is express and clearer (although in theory) than in Nigerian context where impeachable offences are largely left in the opinion of the National Assembly.
- v. Impeachment proceedings in United States is majorly internal and without the involvement of external body, except doing the impeachment of the President of the United States, in which case the Chief Justice is required to preside over the Senate proceedings. (The Chief Justice does not do much in such a case but to only direct proceedings, and such direction is based on the rules and procedures set by the United States Senate).
In Nigeria, however, impeachment proceedings is not majorly internal. In fact, one of the major components of the proceedings is carried out by external body – investigating panel. Furthermore, the investigating panel is appointed by another external person - the Chief Justice of Nigeria.
- vi. The outcome of successful impeachment proceedings in the United States has broader, impinging effect. The Senate may decide to bar the removed public official from holding public office and any office of honour, trust or profit. However, the outcome of successful impeachment in Nigeria is removal from office and disentanglement from pension.

⁵⁵ It is submitted that the power of the Nigerian Senate to approve the removal of judicial officers and other heads of government agencies like the Governor of Central Bank of Nigeria is not impeachment power. This submission is anchored on two grounds. First, the removal process of such officers do not commence within the legislative branch of government; the exercise is external and only requires the imprimatur of the Senate as a final act unlike impeachment exercise, which does commence and end within the legislature. Secondly, the power of approval is exercised only by the Senate unlike in impeachment exercise where the power of removal is domiciled in both Houses.



Conclusion and Recommendations

The work has compared impeachment proceedings in Nigeria and the United States at the federal level under their respective constitutions. The work finds that impeachment proceedings, though regulated by law, is much of a subject of politics and partisanship. In other words, politics also regulate impeachment. The impeachment procedures in Nigeria is considered appropriate especially the requirement for appointment of external and independent panel for investigation of the allegation of misconduct which gives non-political credibility to the process. The procedures are easier than the procedures in the United States. The problems associated with impeachment proceedings in Nigeria, as can be seen at the state level, seem not to be with the constitutional procedures for impeachment but with the actors in the impeachment process. The problem also flows from the lack of independence of our institutions and lack of commitment to the rule of law. There is however the need to redefine the term ‘gross misconduct’ in a clearer way and removing it from the subjecting thinking of the legislators to avoid abuse. There is also the need to ensure that the persons appointed to the panel to investigate the allegation of crime are not partisan but independent and credible. Professional bodies who have their members appointed into investigative panel should police the action of their members to ensure that it complies with the dictates of the law. Where members are found wanting, professional bodies should not hesitate in disciplining such members or reporting them to appropriate disciplinary bodies for sanction. Also, there is a need for harmonizing the use of the words “removal” and “impeachment” under the Nigerian Constitution because they both connote different stages in the Constitution of the United States of America.