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Separation of Powers and Parliamentary Government

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Government under the U.S. Constitution is not *parliamentary.* To be certain of this, we need notice only two features of American government. First, the person primarily responsible for administering the American government is chosen independently of the national legislature in most circumstances. Second, that person does not depend for continuation in office on majority support in the House of Representatives.

During the century of the American founding, the British government was evolving a practice whereby the national legislature's choice of persons to administer the nation from day to day was consistently accepted by the monarch. Those who could assemble majority support in the elected chamber of the British Parliament were appointed by the monarch as his ministers. Those appointees served formally at the monarch's pleasure, but in fact their appointments depended on parliamentary support and did not last longer than Parliament's confidence in them. Parliamentary systems of government are distinguished by their conformity with the British prototype in four respects, the first two essential and the other two usual. First, the choice of those who will administer government is directly or indirectly determined by a legislature in most circumstances, and second, the chosen ministers depend for their continuation in office on continued majority support in the legislature. Where a legislature is bicameral, control over who will administer government belongs to the legislative chamber that is most representative of the whole population. In addition, in most parliamentary systems, those who will administer government are chosen from among incumbent legislators, and the office of national chief executive is a formal one that does not normally involve actual administrative decision making. There is said to be a separation of "head of state" from "head of government."

Beyond these generally shared characteristics, parliamentary systems vary widely. Some are constituted under documents that cannot be amended by ordinary legislative action. Others, like the British original, function under a general principle of "parliamentary supremacy." Some are federal systems. Others are not. Some explicitly separate the judiciary from the rest of government. Others do not. In all of these respects, British parliamentary government differs sharply from government under the U.S. Constitution.

In this chapter, we will explore two salient features of British parliamentary government that help to illuminate the strengths and weaknesses of the American founders' institutional choices.

PARLIAMENTARY SUPREMACY IN THE UNITED KINGDOM

The U.S. Constitution claims to be created by "We the People of the United States" and provides for "[a]ll legislative powers herein granted" to "be vested in a Congress of the United States." No comparable document creates or controls the British Parliament. As British courts and executive departments now receive their powers from Parliament, British constitutional law presents a puzzle: Is there anything that Parliament *cannot* lawfully do? When Justice Robert Jackson observed that the U.S. Constitution must not be construed as a "suicide pact" (*Terminiello v. Chicago*, 337 U.S. 1, 36 (1949)), he was referring to the risk that the Constitution's limitations on government power might cause the American form of government to collapse into anarchy. British constitutionalism poses the obverse question of self-preservation: Might the *lack* of limitations on Parliament's power cause the British form of government to collapse into tyranny? Consider that question as you read Dicey's classic account of parliamentary supremacy.

Albert Venn Dicey, Introduction to the Study of the Law of the Constitution, 39–40, 61 n. 2, 91 38–39, 59 n. 1, 87 (10th ed. London: Macmillan, 1965) (first edition published 1885):

> Parliament means, in the mouth of a lawyer (though the word has often a different sense in ordinary conversation), the King, the House of Lords, and the House of Commons; these three bodies acting together may be aptly described as the "King in Parliament," and constitute Parliament.
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> The principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.
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> A law may, for our present purpose, be defined as "any rule which will be enforced by the courts." The principle then of Parliamentary sovereignty may, looked at from its positive side, be thus described: Any Act of Parliament, or any part of an Act of Parliament, which makes a new law, or repeals or modifies an existing law, will be obeyed by the courts. The same principle, looked at from its negative side, may be thus stated: There is no person or body of persons who can, under the English constitution, make rules which override or derogate from an Act of Parliament, or which (to express the same thing in other words) will be enforced by the courts in contravention of an Act of Parliament. Some apparent exceptions to this rule no doubt suggest themselves. But these apparent exceptions, as where, for example, the Judges of the High Court of Justice make rules of court repealing Parliamentary enactments,

are resolvable into cases in which Parliament either directly or indirectly sanctions subordinate legislation. …

Another limitation has been suggested more or less distinctly by judges such as Coke (*Bonham's Case* (1610) 8 Co. Rep. 118, and *Case of Proclamations* (1610) 12 Co. Rep. 74, at p. 76; K. & L. 78, and *see* Hearn, *Government of England* (2nd ed., 1887), pp. 48, 49); an Act of Parliament cannot (it has been intimated) overrule the principles of the common law. This doctrine once had a real meaning (see Maine, *Early History of Institutions* (7th ed., 1905), pp. 381, 382), but it has never received systematic judicial sanction and is now obsolete.…

These then are the three traits of Parliamentary sovereignty as it exists in England: first, the power of the legislature to alter any law, fundamental or otherwise, as freely and in the same manner as other laws; secondly, the absence of any legal distinction between constitutional and other laws; thirdly, the non-existence of any judicial or other authority having the right to nullify an Act of Parliament, or to treat it as void or unconstitutional.

These traits are all exemplifications of the quality which my friend Mr. Bryce has happily denominated the "flexibility" of the British constitution. Every part of it can be expanded, curtailed, amended, or abolished, with equal ease. It is the most flexible polity in existence, and is therefore utterly different in character from the "rigid" constitutions (to use another expression of Mr. Bryce's) the whole or some part of which can be changed only by some extraordinary method of legislation.

If Parliament can by statute "make or unmake any law whatever," can Parliament change itself?

H.M. Government White Paper, House of Lords: Reform,
¶¶ 3.6, 3.26, 4.18, 6.1, 7.1, 10.11, 12.2 (February, 2007):

The crisis over the Lords' rejection of the 1909 budget led to the Parliament Act 1911, which was passed only under the threat of the creation of a large number of Liberal peers. The Act ensured that a Money Bill could receive Royal Assent without the approval of the House of Lords, if not passed by the Lords without amendment within one month. The Act also provided that any other Public Bill (except one extending the life of a Parliament) would receive Royal Assent without the consent of the House of Lords, if it had been passed by the Commons in three successive sessions, as long as two years had elapsed between its second reading in the first session and its final passage in the Commons. The Act also shortened the maximum length of a Parliament from seven to five years.……

In 1999, the Government introduced the House of Lords Bill to remove the hereditary peers, as the first stage of Lords reform.……

The Government is committed to holding a free vote on composition of the House of Lords in both Houses.…

The Government believes that there are certain principles that should underpin a reformed House of Lords, whatever its composition:

- Primacy of the House of Commons
- Complementarity of the House of Lords
- A More Legitimate House of Lords

- No Overall Majority for Any Party
- A Non Party-Political Element
- A More Representative House of Lords
- Continuity of Membership…

Broadly speaking, there are three main options, an all-appointed House, an all-elected House, or a hybrid of the two.… The Government has been clear that in a modern democracy it is unacceptable that individuals still qualify for a seat in Parliament on the basis of their ancestry. The transitional arrangements made in 1999 should therefore come to an end by formally ending the right of the remaining hereditary members to membership of the second Chamber.…

The Government believes that the centre of gravity on opinions for a reformed House lies around the hybrid option, with elections run on a partially-open list system in European constituencies at the same time as European elections. A hybrid House can deliver a second chamber which is a complement to the House of Commons, and delivers the important principles of representation which are essential for an effective House of Lords.

Notes and Questions

1. During the nineteenth and twentieth centuries, Parliament extended the franchise for electing the House of Commons, redrew and reapportioned electoral districts for the House of Commons, reduced the powers of the unelected House of Lords, and altered the rules for creation and duration of peerages. Each of these changes served to make Parliament more representative of the British people. Could Parliament just as validly change itself into a *less* representative body? Could Parliament, for example, by statute provide for incumbent members of the House of Commons to hold their positions for life? If there are intrinsic limits on Parliament's ability to change itself into a less representative body, might Parliament not even be able to repeal the nineteenth- and twentieth-century statutes by which it made itself more representative?

2. *Regina (Jackson and others) v. Attorney General*, [2006] 1 A.C. 262 (House of Lords, decided October 13, 2005). The Parliament Act 1911 converted the absolute veto formerly enjoyed by the House of Lords over proposed legislation into a power in the House of Lords to do no more than delay the adoption of statutes on which the House of Commons insisted. The Parliament Act 1949 amended the 1911 Act to shorten the maximum period of delay, and was adopted without the consent of the House of Lords pursuant to the provisions of the 1911 Act. In 2004 a statutory ban on fox hunting received royal assent pursuant to the 1949 Act, having passed the House of Commons but not the House of Lords. In the course of rejecting a challenge to the 2004 statute, the Law Lords addressed the question whether the 1949 Act violated basic constitutional principles. The question was phrased in this way: "The Parliament Act 1949 is not an Act of Parliament and is consequently of no legal effect." The Law Lords held that the 1949 Act was an Act of Parliament because the 1911 Act's provision for reducing the power of the House of Lords could be relied on when passing an act that further reduced the Lords' power.

   The 1911 Act also reduced the maximum period between elections for the House of Commons to five years and provided that any bill to extend that period would still require the House of Lords' consent. Note the Law Lords' discussion

of whether Parliament's provision for enacting statutes without the consent of the House of Lords could be amended without the consent of the Lords to cover attempts to enact statutes extending the maximum period between parliamentary elections. Consider also the following extract from the speech of Lord Steyn:

> ¶102…The classic account given by Dicey of the doctrine of the supremacy of Parliament, pure and absolute as it was, can now be seen to be out of place in the modern United Kingdom. Nevertheless, the supremacy of Parliament is still the *general* principle of our constitution. It is a construct of the common law. The judges created this principle. If that is so, it is not unthinkable that circumstances could arise where the courts may have to qualify a principle established on a different hypothesis of constitutionalism. In exceptional circumstances involving an attempt to abolish judicial review or the ordinary role of the courts, the Appellate Committee of the House of Lords or a new Supreme Court may have to consider whether this is a constitutional fundamental which even a sovereign Parliament acting at the behest of a complaisant House of Commons cannot abolish.

Were a future British judiciary to declare an ostensible Act of Parliament invalid in the exceptional circumstances to which Lord Steyn referred, would their decision be legally justified? How would any legal basis for their decision differ from the legal basis of U.S. Supreme Court decisions that declare Acts of Congress invalid? Is the legal basis of such U.S. Supreme Court decisions stronger? If so, why?

RESPONSIBLE GOVERNMENT AND REMOVAL OF EXECUTIVE OFFICERS IN THE UNITED KINGDOM

Although current legislation sets the maximum period between parliamentary elections at five years, the monarch has discretion, exercisable on the advice of incumbent ministers, to dissolve Parliament sooner, leading to fresh elections for the House of Commons. Prime ministers sometimes seek early dissolution simply because they consider their electoral prospects particularly favorable at the time of the request. But a constitutionally compelling reason to seek early dissolution of Parliament is a majority vote in the House of Commons that the incumbent ministry has lost the confidence of the House. This may occur in times of political crisis where governing multiparty coalitions break down or where a party that hitherto held a majority in the House suffers defections or a loss of factional discipline. It may also occur due to a governing party's loss of majority status through deaths and resignations of members. Another situation in which an incumbent ministry may lose the confidence of the House arises where a "minority government" loses the support of those members of the House who, though not members of a governing coalition, had previously contributed to majority support for the government.

Votes of no confidence may be directed by the House of Commons against an entire incumbent ministry, requiring fresh elections unless a majority of members coalesce in support of an alternative ministry. Each of the last century's three successful "no confidence" votes was framed as a vote against the whole government. Votes of no confidence may alternatively be

directed against particular ministers, and might appear to permit an incumbent government to continue sans the censured ministers, much as the U.S. Constitution contemplates that an administration may continue even though particular "civil Officers of the United States" have been removed through impeachment proceedings. In practice, a vote of no confidence, at least when based on government policy, is treated by an incumbent ministry as a vote against them all. When in 1895 the House passed a motion to reduce the salary of the Secretary of War, the whole ministry resigned. Consider the following colloquy concerning an attempt to target Prime Minister Tony Blair individually by instead invoking the impeachment mechanism.

Hansard, House of Commons, September 9, 2004, Columns 871–872:

Adam Price (East Carmarthen and Dinefwr) (PC): When the Leader of the House chaired the Young Liberals he supported a campaign to impeach the then Lord Advocate of Scotland. Does he still believe that impeachment is a sanction available to the House when seeking to hold Ministers to account, or will he oppose any moves to introduce a motion for debate under that procedure?

Mr. Hain: The hon. Gentleman is an admirable researcher who digs up all sorts of facts, some of which are uncomfortable for the Government. I cannot for the life of me recall that campaign, which was over 30 years ago. However, he has dug it up from a file somewhere, so I acknowledge his research expertise.

The House of Commons has already voted overwhelmingly to back the Government's position on Iraq. That was the House's clear decision. For the first time, the Government brought to the House a motion on a decision to go to war, and gave it an opportunity to authorise it or not. That decision was made, but the hon. Gentleman is seeking to circumvent it.

I am advised by the Clerk of the House that impeachment effectively died with the advent of full responsible parliamentary government, perhaps to be dated from the second Reform Act of 1867, and a motion of no confidence would be the appropriate modern equivalent. The Joint Committee on Parliamentary Privilege in 1999 concluded that

"The circumstances in which impeachment has taken place are now so remote from the present that the procedure may be considered obsolete."

Perhaps the hon. Gentleman should research the matter more carefully.

William Searle Holdsworth, A History of English Law 379–385, Vol. 1 (3d ed. Boston: Little, Brown, 1922):

An impeachment is a criminal proceeding initiated by the House of Commons against any person. The person impeached is tried before the whole House of Lords presided over by the Lord High Steward if a peer is impeached for treason or felony, or by the Lord Chancellor or Lord Keeper in all other cases. The judgment is given in accordance with the vote of the majority of the House, and, on the demand of the House of Commons made through its Speaker, the House passes sentence. The last instance of an impeachment was the case of Lord Melville in 1805; and, as it is improbable that this procedure will ever be revived, it might almost be regarded as another case of the

obsolete jurisdiction of the House of Lords. On the other hand it is still legally possible, so that, whatever may the political probabilities, it is impossible to treat it as wholly obsolete. . . .

The Origin of Impeachments.—Impeachment means accusation and the word gradually acquired the narrower technical meaning of an accusation made by the House of Commons to the House of Lords. The first impeachment comes from the year 1376, and the practice of impeachment originated in the prevalent political ideas and conditions of that period. Firstly, at that period, and indeed all through the Middle Ages, political thinkers and writers throughout Western Europe taught that the ideal to be aimed at by all rulers and princes and their officials was government in accordance with law. Secondly, the House of Commons and the House of Lords were united in desiring to limit the activities of the royal officials or favourites and to prevent them from breaking the law. Thirdly, the limits of jurisdiction of the House of Lords were ill defined. It was open to receive petitions and complaints from all and sundry; and it could deal with them judicially or otherwise as it saw fit. It was essentially a court for great men and great causes; and it occasionally seems to have been thought that it could apply to such causes a *lex Parliamenti*—a law which could do justice even when the ordinary law failed. Probably some such thought as this was at the back of the minds of those who in Edward III.'s Statute of Treason gave the king and Parliament a power to declare certain acts to be treasonable.

It was thus only natural that the Commons, when they discovered that royal officials or others had broken the law, and that the government of the state was therefore badly conducted, should make a complaint to the House of Lords, which took the form of an accusation against the delinquents; and that the Lords should entertain and deal with it. Probably therefore the practice of impeachment arose partly from the prevalent political ideal—government according to law, partly from the alliance of the two Houses to secure the sanctity of the law as against royal officials or favourites, and partly from the wide and indefinite jurisdiction which the House of Lords exercised at that time. . . .

The Constitutional Importance of Impeachments.—The last mediaeval impeachment was in 1459. During the Wars of the Roses the place of impeachments was taken by Acts of Attainder, which were used by the rival factions much as criminal appeals had been used in Richard II's reign. During the Tudor period these Acts of Attainder were used to get rid of the ministers whom the king had ceased to trust, or of persons considered to be dangerous to the state. But, in the later period, the accused was often heard in his defence; and, at a time when the legislative and judicial function of Parliament were not clearly distinguished, it was possible to regard them, as Coke regarded them, as judgments of the full Parliament—a point of view which is still maintained by modern writers. The practice of impeachment was revived in 1620–1621 with the impeachment of Sir Giles Mompesson. Between that date and 1715 there were fifty cases of impeachments brought to trial. Since that date there have only been four. Thus the great period of impeachments was the seventeenth and the early years of the eighteenth centuries. It is therefore in the impeachments of this period, and more especially in the impeachments of the period before the Revolution of 1688, that we must seek reasons for their constitutional importance.

The Parliamentary opposition in the reigns of the two first Stuart kings was, as we shall see, essentially a legal opposition, based on precedents drawn from the records of the mediaeval Parliaments, and aiming at the attainment of the mediaeval ideal—the maintenance of the common law. Under these circumstances the impeachment was its natural weapon. By means of it the greatest ministers of state could be made responsible, like humbler officials, to the law. Thus the greatest services rendered by this procedure to the cause of constitutional government have been, firstly the establishment of the doctrine of ministerial responsibility to the law, secondly its application to all ministers of the crown, and, thirdly and consequently the maintenance of the supremacy of the law over all. The two impeachments which have contributed most to the attainment of these results are Buckingham's impeachment in Charles I's and Danby's impeachment in Charles II's reign; and of the two the latter is the most important. It was Buckingham's impeachment which decisively negatived Charles I's contention that not only was he personally above the law, but also his ministers acting under his orders. It was Danby's impeachment which decided that the king could not by use of his power to pardon stop an impeachment.[1] A pardon could be pleaded to an indictment; but an indictment was a proceeding taken in the king's name. An impeachment was a proceeding taken in the name of the Commons; and he could no more stop it by granting a pardon than he could stop a criminal appeal brought by a private person. It was also resolved in *Danby's Case* that, though the House, if a peer is impeached for treason, sits under the presidency of the Lord High Steward, it has "power enough to proceed to trial though the king should not name a High Steward;" and this fact was emphasized by a change in the form of the High Steward's commission. Thus although the trial nominally takes place before the king in Parliament, the king plays no active part. As we have seen, this elimination of the crown from all active share in the judicial functions of Parliament was taking place concurrently in the case of Parliament's civil jurisdiction. The influence of the crown being thus eliminated, impeachments became as the Commons said in 1679, "the chief institution for the preservation of the government."

Thus the practice of impeachment has had a large share in establishing English constitutional law upon its modern basis. But its efficacy was or should have been strictly limited to prosecuting offenders against the law. It is because its efficacy was thus limited that, during the eighteenth century, it has fallen into disuse.

The Disuse of Impeachments.—So soon as the aim of the Commons came to be, not only to secure the observance of the law by the king's ministers, but also to secure their adhesion to the line of policy which they approved,

[1] Maitland took a different view, and argued that Parliament's subsequent provision in the Act of Settlement 1701 against royal pardons stopping impeachments was transformative, not declaratory: Frederic William Maitland, The Constitutional History of England 318, 480 (Cambridge, 1931) (first published 1908). The House of Commons in Danby's Case had compromised the precedential value of its action by switching tactics from impeachment to attainder. Even after the Act of Settlement, royal pardons could prevent execution of sentences imposed by the House of Lords for conviction on impeachment.

the weakness of impeachments as a constitutional weapon began to appear. This further aim of the House of Commons was clearly manifested in the Long Parliament; and the weakness of this weapon appeared in the case of the Earl of Strafford. The success of his policy would have been fatal to constitutional government, but it was impossible to prove that its pursuit was treasonable. That the House saw this weakness in their favourite remedy is clear from the clause of the Grand Remonstrance, in which it was pointed out to the king, "that it may often fall out that the Commons may have just cause to take exception at some men for being councillors and yet not charge these men with crimes, for there be grounds of diffidence which lie not in proof." But, until the growth of the system of Cabinet government, impeachment was the only remedy open to them. The king chose his ministers; and, unless they could be convicted of crimes, there was no way of getting rid of them. It is for this reason that the charges made against unpopular ministers in the latter half of the seventeenth century were often supported by very little evidence. It is for this reason that claims were sometimes made to put ministers on their trial for offences created for that purpose by Parliament. Mediaeval precedents might no doubt have been invoked for taking such a course, but they were obviously inapplicable in an age which had learnt to draw the modern distinction between judicial and legislative acts. Clearly the weapon of impeachment was breaking down; and it ceased to be necessary to use it for political purposes when it became possible to get rid of ministers by an adverse vote of the House of Commons. The four last impeachments—those of Lord Macclesfield (1724), Lord Lovat (1746), Warren Hastings (1787), and Lord Melville (1805)—were not occasioned by the political conduct of the accused, who were all charged with serious breaches of the criminal law.

The case of Warren Hastings showed that the remedy of impeachment was far too clumsy and dilatory a remedy in a case of any complication; and therefore it is improbable that it will ever be used again, even in a case where it is desired to put a minister on his trial for a criminal offence. But, if the procedure upon it could be altered to suit modern needs, it might still be a useful weapon in the armoury of the constitution. It does embody the sound principle that ministers and officials should be made criminally liable for corruption, gross negligence, or other misfeasances in the conduct of the affairs of the nation. And this principle requires to be emphasized at a time when the development of the system of party government pledges the party to defend the policy of its leaders, however mistaken it may be, and however incompetently it may have been carried out; at a time when party leaders are apt to look indulgently on the most disastrous mistakes, because they hope that the same indulgence will be extended to their own mistakes when they take office; at a time when the principle of the security of the tenure of higher permanent officials is held to be more important than the need to punish their negligences and ignorances. If ministers were sometimes made criminally responsible for gross negligence or rashness, ill considered activities might be discouraged, real statesmanship might be encouraged, and party violence might be moderated. Ministers preparing a legislative programme or advocating a policy would be forced to look beyond the immediate election or the transient notoriety which they hope to win by this means, because they would be forced to remember that they might be called to account for neglecting to consider the probable consequences of their policy. If officials

were sometimes made similarly responsible for their errors, it might do something to freshen up that stagnant atmosphere of complacent routine, which is and always has been the most marked characteristic of government departments.

What structural factors might have contributed to impeachment's demise in Britain even as a mechanism for removing ministers whose misconduct does *not* relate to government policy? Motions of no confidence have not visibly filled the function of policing *non-policy* conduct. How do you think that the British system would address conduct by a minister of the kind for which President William Jefferson Clinton was subjected to impeachment proceedings in the United States? Having regard to the basis on which ministers acquire and hold office in Britain, what features of that basis might make British ministers more likely to leave office preemptively, before any prospective parliamentary censure occurs?

As we have noticed, parliamentary dissatisfaction with government *policy* is now addressed through motions of no confidence. But what causes a government that loses a no-confidence vote to resign or to submit to a new election for the House of Commons?

Albert Venn Dicey, Introduction to the Study of the Law of the Constitution, 10th ed., 449–51 (1965) (first edition published 1885):

[L]et us consider for a moment the effect of disobedience by the government to one of the most purely conventional among the maxims of constitutional morality, the rule, that is to say, that a Ministry ought to retire on a vote that they no longer possess the confidence of the House of Commons. Suppose that a Ministry, after the passing of such a vote, were to act at the present day as Pitt acted in 1783, and hold office in the face of the censure passed by the House. There would clearly be a prima facie breach of constitutional ethics. What must ensue is clear. If the Ministry wished to keep within the constitution they would announce their intention of appealing to the constituencies, and the House would probably assist in hurrying on a dissolution.... Suppose then that, under the circumstances I have imagined, the Ministry either would not recommend a dissolution of Parliament, or, having dissolved Parliament and being again censured by the newly elected House of Commons, would not resign office. It would, under this state of things, be as clear as day that the understandings of the constitution had been violated. It is however equally clear that the House would have in their own hands the means of ultimately forcing the Ministry either to respect the constitution or to violate the law. Sooner or late the moment would come for passing the Army (Annual) Act or the Appropriation Act, and the House by refusing to pass either of these enactments would involve the Ministry in all the inextricable embarrassments which (as I have already pointed out) immediately follow upon the omission to convene Parliament for more than a year. The breach, therefore, of a purely conventional rule, of a maxim utterly unknown and indeed opposed to the theory of English law, ultimately entails upon those who break it direct conflict with the undoubted law of the land.... The conventions of the constitution are not laws, but, in so far as they really possess binding force, derive

their sanction from the fact that whoever breaks them must finally break the law and incur the penalties of a law-breaker.

Notes and Questions

The U.S. Constitution empowers the U.S. Congress to remove "[t]he President, Vice President and all civil Officers of the United States" by impeaching for and convicting of "Treason, Bribery, or other high Crimes and Misdemeanors." U.S. CONST. art. II § 4, read with art. I § 2 cl. 5 and § 3 cl. 6. Does the impeachment power, or any other feature of the Constitution, protect against executive officers whose conduct is not criminally proscribed, but merely unethical, misguided, or dangerously ineffectual? The 25th Amendment's provision to protect against Presidential "inability" did not arrive until 1967, and requires an initiative from within the Executive. Did the American founders mean to create an Executive that was *more* entrenched in office than were those who held executive power in England? Consider the extent to which the American founders relied on purported descriptions of the British system when designing the U.S. Constitution's provisions for interbranch checks and balances. *See* Laurence Claus, *Montesquieu's Mistakes and the True Meaning of Separation*, 25 OXFORD J. LEGAL STUDIES 419 (2005). Is protection from misuse of power by political actors better achieved by the U.S. Constitution's provision for impeaching the Executive, or by the British Constitution's convention that executive officers serve only for so long as they have the confidence of the House of Commons? (Include within your conception of political actors the members of each branch of government.)