**Hist 108**

**Writing Assignment #4**

**Point Value: 20**

**Due Date: Sunday November 22nd, 2020 by Midnight**

Read the following primary document and article: “Benjamin Franklin’s Final Speech in the Constitutional Convention” and “Inside the Founding Fathers’ Debate Over What Constituted an Impeachable Offense” by Erick Trickey. The Benjamin Franklin document is thoughtful but dense with ideas so please read carefully. After reading the material, answer the following questions with as much summary and insight as possible. Each question is worth five (5) points each and strive for one-two paragraphs for each response.

To submit the assignment, send via Canvas to the Assignments Module (preferred) for Writing Assignment #4 and or send via a Word or PDF file to my email address: robert.henry@gcccd.edu.

1. What appears to be **Benjamin Franklin’s feelings** on the completed Constitution? Does he think it’s an unqualified triumph? Does he believe it has potential problems? Or does he mix optimism with pessimism about the document’s success? Summarize his feelings as best you can.

2. In Erick Trickey’s article on the history of the impeachment clause, describe the pivotal role that **George Mason** played in placing the impeachment proceedings in the Constitution and the derivation of the phrase “high crimes and misdemeanors.”

3. Describe how Trickey traced the constitutional impeachment proceedings ultimately placed in Article II **to the British parliamentary system**. What did Mason and other Founding Fathers draw and learn from British ideas, case studies and legal procedure?

4. Trickey also analyzes the historical question if the standards for presidential impeachment were balanced or set a “vague standard.” How does Tricky use the impeachment history of President Andrew Johnson and the near impeachment of Richard Nixon to show the difficulty in pinpointing the right reasons for presidential impeachment?

**Benjamin Franklin's Final Speech in the Constitutional Convention
from the notes of James Madison**Mr. President:
I confess that I do not entirely approve of this Constitution at present, but Sir, I am not sure I shall never approve it: For having lived long, I have experienced many Instances of being oblig'd, by better Information or fuller Consideration, to change Opinions even on important Subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow the more apt I am to doubt my own Judgment, and to pay more Respect to the Judgment of others. Most Men indeed as well as most Sects in Religion, think themselves in Possession of all Truth, and that wherever others differ from them it is so far Error. Steele, a Protestant in a Dedication tells the Pope, that the only Difference between our two Churches in their Opinions of the Certainty of their Doctrine, is, the Romish Church [Catholic Church] is infallible, and the Church of England is never in the Wrong. But tho' many private Persons think almost as highly of their own Infallibility, as of that of their Sect, few express it so naturally as a certain French Lady, who in a little Dispute with her Sister, said, I don't know how it happens, Sister, but I meet with no body but myself that's always in the right.

In these Sentiments, Sir, I agree to this Constitution, with all its Faults, if they are such; because I think a General Government necessary for us, and there is no Form of Government but what may be a Blessing to the People if well administered; and I believe farther that this is likely to be well administered for a Course of Years, and can only end in Despotism as other Forms have done before it, when the People shall become so corrupted as to need Despotic Government, being incapable of any other.

I doubt too whether any other Convention we can obtain, may be able to make a better Constitution: For when you assemble a Number of Men to have the Advantage of their joint Wisdom, you inevitably assemble with those Men all their Prejudices, their Passions, their Errors of Opinion, their local Interests, and their selfish Views. From such an Assembly can a perfect Production be expected? It therefore astonishes me, Sir, to find this System approaching so near to Perfection as it does; and I think it will astonish our Enemies, who are waiting with Confidence to hear that our Councils are confounded, like those of the Builders of Babel, and that our States are on the Point of Separation, only to meet hereafter for the Purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure that it is not the best.

The Opinions I have had of its Errors, I sacrifice to the Public Good. I have never whispered a Syllable of them abroad. Within these Walls they were born, and here they shall die. If every one of us in returning to our Constituents were to report the Objections he has had to it, and use his Influence to gain Partisan in support of them, we might prevent its being generally received, and thereby lose all the salutary Effects and great Advantages resulting naturally in our favor among foreign Nations, as well as among ourselves, from our real or apparent Unanimity. Much of the Strength and Efficiency of any Government, in procuring and securing Happiness to the People depends on Opinion, on the general Opinion of the Goodness of that Government as well as of the Wisdom and Integrity of its Governors. I hope therefore that for our own Sakes, as a Part of the People, and for the sake of our Posterity, we shall act heartily and unanimously in recommending this Constitution, wherever our Influence may extend, and turn our future Thoughts and Endeavors to the Means of having it well administered.

On the whole, Sir, I cannot help expressing a Wish, that every Member of the Convention, who may still have Objections to it, would with me on this Occasion doubt a little of his own Infallibility, and to make manifest our Unanimity, put his Name to this instrument.

**Inside the Founding Fathers’ Debate Over What Constituted an Impeachable Offense**

**If not for three sparring Virginia delegates, Congress’s power to remove a president would be even more limited**

By Erick Trickey

smithsonian.com
October 2, 2017

The Constitutional Convention in Philadelphia was winding down, the draft of the United States’ supreme law almost finished, and George Mason, the author of Virginia’s Declaration of Rights, was becoming alarmed. Over the course of the convention, the 61-year-old had come to fear the powerful new government his colleagues were creating. Mason thought the president could become a tyrant as oppressive as George III.

So on September 8, 1787, he rose to ask his fellow delegates a question of historic importance. Why, Mason asked, were treason and bribery the only grounds in the draft Constitution for impeaching the president? Treason, he warned, wouldn’t include “attempts to subvert the Constitution.”

After a sharp back-and-forth with fellow Virginian James Madison, Mason came up with another category of impeachable offenses: “other high crimes and misdemeanors.” Americans have debated the meaning of this decidedly open-ended phrase ever since. But its inclusion, as well as the guidance the Founders left regarding its interpretation, offers more protection against a dangerous executive power than many realize.

Of all the Founders who debated impeachment, three Virginians—Mason, Madison and delegate Edmund Randolph—did the most to set down a vision of when Congress should remove a president from office. Though the men had very different positions on the Constitution, their debates in Philadelphia and at Virginia’s ratifying convention in Richmond produced crucial definitions of an impeachable offense. And their ultimate agreement—that a president should be impeached for abuses of power that subvert the Constitution, the integrity of government, or the rule of law—remains essential to the debates we’re having today, 230 years later.

The three men took on leading roles at the Constitutional Convention almost as soon as it convened on May 25, 1787. In the first week, Randolph, the 33-year-old Virginia governor, introduced the Virginia Plan, written by Madison, which became the starting point for the new national government. Mason, one of Virginia’s richest planters and a major framer of his home state’s new constitution, was the first delegate to argue that the government needed a check on the executive’s power. “Some mode of displacing an unfit magistrate” was necessary, he argued on June 2, without “making the Executive the mere creature of the Legislature.” After a short debate, the convention agreed to the language proposed in the Virginia Plan: the executive would “be removable on impeachment and conviction of malpractice or neglect of duty” – a broad standard that the delegates would later rewrite.

Mason, Madison, and Randolph all spoke up to defend impeachment on July 20, after Charles Pinckney of South Carolina and Gouverneur Morris of Pennsylvania moved to strike it. “[If the president] should be re-elected, that will be sufficient proof of his innocence,” Morris argued. “[Impeachment] will render the Executive dependent on those who are to impeach.”

“Shall any man be above justice?” Mason asked. “Shall that man be above it who can commit the most extensive injustice?” A presidential candidate might bribe the electors to gain the presidency, Mason suggested. “Shall the man who has practiced corruption, and by that means procured his appointment in the first instance, be suffered to escape punishment by repeating his guilt?”

Madison argued that the Constitution needed a provision “for defending the community against the incapacity, negligence, or perfidy of the Chief Magistrate.” Waiting to vote him out of office in a general election wasn’t good enough. “He might pervert his administration into a scheme of peculation”— embezzlement—“or oppression,” Madison warned. “He might betray his trust to foreign powers.”

Randolph agreed on both these fronts. “The Executive will have great opportunities of abusing his power,” he warned, “particularly in time of war, when the military force, and in some respects the public money, will be in his hands.” The delegates voted, 8 states to 2, to make the executive removable by impeachment.

The Virginia delegates borrowed their model for impeachment from the British Parliament. For 400 years, English lawmakers had used impeachment to exercise some control over the king’s ministers. Often, Parliament invoked it to check abuses of power, including improprieties and attempts to subvert the state. The House of Commons’ 1640 articles of impeachment against Thomas Wentworth, Earl of Strafford, alleged “that he... hath traiterously endeavored to subvert the Fundamental Laws and Government of the Realms... and in stead thereof, to introduce Arbitrary and Tyrannical Government against Law.” (The House of Lords convicted Strafford, who was hanged in 1641.)

The U.S. Constitution lays out a process that imitated Britain’s: The House of Representatives impeaches, as the House of Commons did, while the Senate tries and removes the official, as the House of Lords did. But unlike in Britain, where impeachment was a matter of criminal law that could lead to a prison sentence, the Virginia Plan proposed that the impeachment process lead only to the president’s removal from office and disqualification from holding future office. After removal, the Constitution says, the president can still be indicted and put on trial in regular courts.

Still, by September, the delegates hadn’t resolved impeachment’s toughest question: What exactly was an impeachable offense? On September 4, the Committee on Postponed Matters, named to resolve the convention’s thorniest disputes, had replaced the “malpractice or neglect of duty” standard for impeachment with a much narrower one: “treason and bribery.”

Limiting impeachment to treason and bribery cases, Mason warned on September 8, “will not reach many great and dangerous offences.” To make his case, he pointed to an impeachment taking place in Great Britain at the time—that of Warren Hastings, the Governor-General of India.

Hastings had been impeached in May 1787, the same month the U.S. constitutional convention opened. The House of Commons charged Hastings with a mix of criminal offenses and non-criminal offenses, including confiscating land and provoking a revolt in parts of India. Hastings’ trial by the House of Lords was pending while the American delegates were debating in Philadelphia. Mason argued to his fellow delegates that Hastings was accused of abuses of power, not treason, and that the Constitution needed to guard against a president who might commit misdeeds like those alleged against Hastings. (In the end, The House of Lords acquitted Hastings in 1795.)

Mason, fearful of an unchecked, out-of-control president, proposed adding “maladministration” as a third cause for impeaching the president. Such a charge was already grounds for impeachment in six states, including Virginia.

But on this point, Madison objected. The scholarly Princeton graduate, a generation younger than Mason at age 36, saw a threat to the balance of powers he’d helped devise. “So vague a term will be equivalent to a tenure during pleasure of the Senate,” he argued. In other words, Madison feared the Senate would use the word “maladministration” as an excuse to remove the president whenever it wanted.

So Mason offered a substitute: “other high crimes and misdemeanors against the State.” The English Parliament had included a similarly worded phrase in its articles of impeachment since 1450. This compromise satisfied Madison and most of the other Convention delegates. They approved Mason’s amendment without further debate, 8 states to 3, but added “against the United States,” to avoid ambiguity.

Unfortunately for everyone who’s argued since about what an impeachable offense is, the convention’s Committee on Style and Revision, which was supposed to improve the draft Constitution’s language without changing its meaning, deleted the phrase “against the United States.” Without that phrase, which explained what constitutes “high crimes,” many Americans came to believe that “high crimes” literally meant only crimes identified in criminal law.

Historians debate whether the Founders got the balance on impeachment just right or settled for a vague standard that’s often too weak to stop an imperial president. Consider the 1868 impeachment of President Andrew Johnson, who escaped removal from office by one vote in the Senate. John F. Kennedy, in his 1955 book *Profiles In Courage,* celebrated Senator Edmund Ross’ swing vote for Johnson’s acquittal. Kennedy, echoing Madison’s fears of a Senate overthrowing presidents for political reasons, declared that Ross “may well have preserved for ourselves and posterity Constitutional government in the United States.”

But Johnson spent most of his presidency undermining Reconstruction laws that Congress passed, over his vetoes, to protect the rights and safety of black Southerners. “To a large degree, the failure of Reconstruction could be blamed alone on President Johnson’s abuse of his discretionary powers,” Michael Les Benedict wrote in his 1973 book, *The Impeachment and Trial of Andrew Johnson.* Yet the House rejected a broad attempt to impeach Johnson for abuse of power in 1867, because many congressmen felt a president had to commit a crime to be impeached. Instead, Johnson was impeached in 1868 for firing Secretary of War Edwin Stanton in violation of the [Tenure of Office Act](https://www.britannica.com/topic/Tenure-of-Office-Act). That law was arguably unconstitutional – a factor that contributed to the Senate’s decision to acquit.

The 1974 House Judiciary Committee put the British example favored by Mason to use during Nixon’s Watergate scandal. “High crimes and misdemeanors,” the committee’s staff report argued, originally referred to “damage to the state in such forms as misapplication of funds, abuse of official power, neglect of duty, encroachment on Parliament’s prerogatives, corruption, and betrayal of trust,” allegations that “were not necessarily limited to common law or statutory derelictions or crimes.”

The committee approved three [articles of impeachment](http://www.presidency.ucsb.edu/ws/?pid=76082) against Nixon on these grounds, charging him with obstructing justice and subverting constitutional government. The full House never voted on impeachment, but the proposed articles helped force the president’s resignation two weeks later.

When Madison, Mason, and Randolph reunited in Richmond in June 1788 for Virginia’s convention to ratify the Constitution, they continued their debate on the question of impeachable offenses. By then each man had taken a different position on the Constitution. Madison had emerged as its main architect and champion, and Mason as a leading opponent who declared “it would end either in monarchy, or a tyrannical aristocracy.” Randolph, meanwhile, had voted against the Constitution in Philadelphia in September 1787, but swung his vote to yes in 1788 after eight other states had ratified it. Their disagreement illuminates the discussion over presidential powers in the modern era.

When Mason argued that “the great powers of Europe, as France and Great Britain,” might corrupt the president, Randolph [replied](https://memory.loc.gov/cgi-bin/ampage?collId=lled&fileName=003/lled003.db&recNum=497&itemLink=r?ammem/hlaw:@field(DOCID+@lit(ed00317))%25230030498&linkText=1) that it would be an impeachable offense for the president to violate the Constitution’s emoluments clause by taking payments from a foreign power. Randolph was establishing that violations of the Constitution would constitute high crimes and misdemeanors – and so would betraying the U.S. to a foreign government.

And in an argument with Madison, Mason warned that a president could use the pardon power to stop an inquiry into possible crimes in his own administration. “He may frequently pardon crimes which were advised by himself,” Mason argued. “If he has the power of granting pardons before indictment, or conviction, may he not stop inquiry and prevent detection?”

Impeachment, Madison responded, could impose the necessary check to a president’s abuse of the pardon power. “If the President be connected, in any suspicious manner, with any person,” Madison stated, “and there be grounds to believe he will shelter him, the House of Representatives can impeach him.”