AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 4 The Early National Era – Judicial Power and Constitutional Authority

Debate on the Impeachment of Justice Samuel Chase (1804)

Jeffersonian attacks on Federalist justices did not abate after the Judiciary Act of 1801 was repealed. The 1802 national election gave Republicans the committed congressional majority necessary to impeach those federal justices they believed were abusing judicial power. John Pickering, a federal district judge in New Hampshire, was an easy first target. Pickering was frequently drunk in court, constantly swore at counsel, and may have been insane. In what were largely party votes, the House voted to impeach and the Senate to convict.

Associate Justice Samuel Chase was next. Republicans condemned Chase for engaging in what they believed was highly partisan behavior on the federal bench. Chase, who had been appointed to the Court by George Washington in 1796, was the most hard-line partisan of the Federalist justices and had stumped for President John Adams during the 1800 presidential campaign. After the passage of the Repeal Act of 1801, Chase urged his fellow justices to refuse to comply with the law, but he was unable to persuade his brethren. Chase had made himself a special object of hatred among the Jeffersonians who swept into power in the 1800 congressional and presidential elections. While riding circuit in the volatile states of Pennsylvania and Virginia, Chase oversaw several politically charged trials and was widely viewed as an aggressive enforcer of the Sedition Act of 1798. It was his conduct in those trials that formed the basis of most of the articles of impeachment against him. The immediate trigger for his impeachment, however, was a fiery lecture to a federal grand jury in 1803 denouncing the Republicans in Congress and the Maryland state legislature as Jacobins and calling for their defeat in the next election.

In January 1804, Chase was impeached by the House of Representatives. Just over a year later he was narrowly acquitted in the Senate and allowed to continue his service on the Court. On the eve of his impeachment trial in the Senate, Chase wrote to Chief Justice John Marshall requesting his assistance in assembling the evidence for Chase's case. Marshall was of little help, but in response he suggested—over a year after the Marbury *decision—that perhaps Congress should be given the power to overrule the Supreme Court on points of law, making Congress rather than the Court the supreme legal tribunal in the federal system.*

The judicial monopoly on constitutional interpretation was one central issue in the Chase impeachment trial. The first charge against Chase accused him of prohibiting counsel during the treason trial of tax resister John Fries of arguing the law of treason to the jury. John Randolph, who led the prosecution team, declared that juries had the right to hear evidence on and determine both fact and law. This power to determine law, Chase's accusers asserted, included the power to determine the meaning of relevant constitutional provisions. Chase and his defenders insisted that judges must determine the law in all cases, that legislative declarations of constitutional meanings had no legal status, that constitutional interpretation was the exclusive province of the judiciary, and that juries had no authority to determine whether federal laws were unconstitutional.

The Senate voted not guilty on all charges. A majority (18 of 34) rejected the article on the right of juries to determine the law. But a majority (19 of 34) voted guilty on the charges related to the speech Chase gave attacking the repeal of the Judiciary Act of 1801. That vote fell four short of the two-thirds necessary to convict, however. Chase quietly served out the rest of his tenure on the bench. The Senate failure to convict is regarded as a crucial event in the development of judicial independence. Legislators gave up on politically oriented impeachments of federal judges, but federal judges learned to curb their partisanship.[1]

[1] Keith E. Whittington, "Reconstructing the Federal Judiciary: The Chase Impeachment and the Constitution," *Studies in American Political Development* 9 (1995): 55.

Letter of John Marshall to Samuel Chase (1804)[2]

My dear Sir

. . . .

Admitting it to be true that on legal principles Colo. Taylor's testimony was admissible, it certainly constitutes a very extraordinary ground for an impeachment.[3] According to the ancient doctrine of a jury finding a verdict against the law of the case was liable to an attaint[4] & the amount of the present doctrine seems to be that a Judge giving a legal opinion contrary to the opinion of the legislature is liable to impeachment. As, for convenience & humanity the old doctrine of attaint has yielded to the silent, moderate but not less operative influence of new trials, I think the modern doctrine of impeachment should yield to an appellate jurisdiction in the legislature. A reversal of those legal opinions deemed unsound by the legislature would certainly better comport with the mildness of our character than a removal of the Judge who has rendered them unknowing of his fault. The other charges except the 1st & 4th which I suppose to be altogether unfounded, seem still less to furnish the cause for impeachment. . . .

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Senate Trial of Justice Chase (1804)[5]

Article I of the Impeachment

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2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions, upon which they intended to rest the defense of their client:

3. In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give. . . .

Justice Samuel CHASE:

. . . .

. . . . [I]t is the duty of the jury to govern themselves by the laws of the land, over which they have no dispensing power; and their right to expect and receive from the court, all the assistance which it can give, for rightly understanding the law. To withhold this assistance, in any manner whatever . . . . would be an abandonment or forgetfulness of duty, which no judge could justify to his conscience or to the laws. In this case, therefore, where the question of law arising on the indictment, had been finally settled by authoritative decisions, it was the duty of the court, and especially of this respondent as presiding judge, early to apprise the counsel and the jury of these decisions, and their effect, so as to save the former from the danger of making an improper attempt to mislead the jury in a matter of law, and the jury from having their minds preoccupied by erroneous impressions.

. . . . 3dly, The constitution of the United States is the fundamental and supreme law, and having defined the crime of treason, Congress could not give any legislative interpretation or exposition of that crime, or of the part of the constitution by which it is defined. 4thly, The judicial authority of the United States is alone vested with power to expound their constitution and laws.

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[2] John Marshall, "Letter to Samuel Chase, January 23, 1804," in Albert J. Beveridge, *The Life of John Marshall*, vol. 3 (Boston: Houghton Mifflin Company, 1919), 177.

[3] Chase had not allowed the jury to hear John Taylor's testimony for the defense in the sedition trial of James Callender.

[4] An attaint was a proceeding that could lead to the punishment of the members of the jury.

[5] *The Trial of Samuel Chase*, eds. Samuel H. Smith and Thomas Lloyd, vol. 1 (Washington, D.C.: Samuel Smith, 1805), 5, 35, 44, 51–52, 110, 113–115, 326–327, 332.

Mr. John RANDOLPH [Republican, Virginia] [House manager for the impeachment]:

. . . .

. . . . The learned and eminent judges, to whose example [Justice Chase] appeals . . . exercised the acknowledged privilege of the bench in giving an opinion to the jury on the question of law, after it had been fully argued by counsel, on both sides. They never attempted, by previous and written decisions, to wrest from the jury their undeniable right, of deciding upon the law as well as the fact, necessarily involved in a general verdict, to usurp this decision to themselves, or to prejudice the minds of the jurors against the defense.

. . . .

We are prepared to prove . . . . that the prisoner [Fries] was debarred by [Justice Chase], from his constitutional privilege of addressing the jury, through his counsel, on the law, as well as the fact, involved in the verdict which they were required to give--and that he attempted to wrest from the jury their undeniable right to hear argument, and, consequently, to determine upon the question of law which in a criminal case it was their sole and unquestionable province to decide. . . . . What is to hinder an honest jury from deciding, especially after the aid of an able discussion, whether . . . such other overt acts set forth in an indictment, constituted a levying war against the United States--and to what purpose has treason been defined by the constitution itself, if overbearing arbitrary judges are permitted to establish among us the odious and dangerous doctrine of constructive treason? . . . .

Mr. Peter EARLY [Republican, Georgia] [House manager for the impeachment]:

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. . . . But judge Chase predetermine the law; then prohibits counsel from proving to the jury that the law was not as laid down. This was in effect an extinguishment at once of the whole right of jury trial. . . . Of what avail is it, sir, that the jury should be made judges of the law and of fact, when the law is not permitted to be expounded to them? Of what avail is it that the accused should have a trial by jury, when he is prevented from stating and explaining to the jury the only grounds upon which his case is defensible? . . . The right of the accused to be heard upon the facts to the jury, is not more his right, than the right of being heard upon the law to the jury. To deprive him then of the privilege of being heard upon the law to the jury, is as much a violation of his rights, as to deprive him of the privilege of being heard upon the facts to the jury.

. . . .

. . . . [I]t is not the right of the judge in criminal, and especially capital causes, to determine that any case is not law; for if he can determine that question as to a single authority, and upon that ground arrest it from the jury, he may do so as to all, and thus as effectually abolish the great privilege of trial by jury. . . . .

Mr. Joseph HOPKINSON [counsel for Chase]:

. . . .

Why sir, we have heard something about a legislative construction of the constitution; and that these acts of Congress defining sedition and other offences, might be used and were important to show what was intended by the constitution in the description of treason. . . . The construction of the constitution, in common with every other law, belongs exclusively to the judiciary, as best qualified both from its permanency and independence as well as from legal learning to exercise so important a right. The necessity of a power existing somewhere to judge of the constitution, and of the conformity or non-conformity of laws to the provisions of it, results from the very nature of a written constitution. It is in vain we have an instrument paramount to ordinary legislation, if there is no authority to check encroachments upon it, and there is no department of government with whom this power can be so safely lodged, or by whom it can be so ably and impartially exercised as the judiciary. If the legislature, the very branch of government most controlled by the constitution, and intended to be so, shall be permitted to assume the wide and unlimited right of construction, the constitution will sink at once into a dead and worthless letter; molded into various, fantastic shapes at the will of the legislature, and purporting one thing to-day and another to-morrow, and nothing at last. . . .