

## PRESIDENTIAL IMPEACHMENT IN THE UNITED STATES OF AMERICA & THE REPUBLIC OF KOREA

A Comparative Analysis of Presidential Impeachment Procedures  
in the United States of America and the Republic of Korea

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**Abstract** Presidential impeachment serves as a constitutional mechanism to safeguard against executive overreach and uphold democratic principles such as the rule of law and separation of powers. This paper examines presidential impeachment processes and outcomes in the United States of America (USA) and the Republic of Korea (ROK), addressing the extent to which they reflect the principles of the rule of law. In the USA, impeachment rests within the legislative branch, with trials conducted by elected politicians, leading to minimal presidential accountability. Conversely, in the ROK, the impeachment process is overseen by an independent judiciary and demonstrates greater accountability, justness—through precedent-based decisions—and impartiality—reflecting democratic representation. The approach of the ROK, while more challenging to implement directly due to the structure of its parliamentary system, highlights ways in which the impeachment process in the USA could potentially be enhanced, emphasising the importance of institutional independence in upholding the rule of law.

## I. Introduction

Presidential impeachment is a constitutional mechanism intended not only to prevent abuse of power by the President, but to guarantee democratic principles such as the separation of powers and popular sovereignty (Hannes, 2017). It plays a crucial role in enforcing the concept of the rule of law, which is important in keeping the government inside the boundaries of the Law, especially within the Constitution (constitutionality) and ensuring the fulfilment of the State's duties to its people (World Justice Project, 2022).

In the USA recurrent controversies surrounding presidential impeachments have fuelled ongoing political and legal debate. As the archetype of modern democracy, the USA and its President occupy a unique position in global politics. Despite several instances of impeachment, including the recent case of Donald Trump, no US president has ever been removed from office (Silverstein, 2021). This pattern suggests a barrier to the practicality of impeachment in the USA, raising concerns about the enforcement of this mechanism as a tool to maintain the rule of law. The apparent difficulty in removing an impeached President in the USA poses risks to democratic principles, potentially allowing for abuses of power and the infringement of fundamental rights. (World Justice Project, 2022).

This paper adopts a legal perspective to address and comparatively analyse the principles of the rule of law which are threatened under the US presidential impeachment process. For this purpose, the US presidential impeachment process is compared to that of the ROK. Notably, the successful removal of the ROK's President Park from office through impeachment in 2017 serves as an instructive case in understanding how impeachment can function effectively. It underscores the critical role of the rule of law in ensuring accountability and maintaining democratic governance. This comparative analysis covers the entire history of the USA from the Declaration of Independence in 1776, and the ROK from its establishment in 1945. It will provide a contrasting yet illuminating perspective on the principles and outcomes of presidential impeachment. First, an overview is provided of the impeachment process in both countries to answer the research question: How is the outcome of presidential impeachment in the USA impacted by the extent to which the presidential impeachment procedure ensures presidential accountability, justness of law, impartial justice and democratic representation compared to the ROK? Then a comparison is made between the two countries for each principle of the rule of law, highlighting if and how these are guaranteed and result in the successful removal of an impeached President. The conclusion summarises the arguments and provides a final answer to the research question.

## 2. Presidential Impeachment in the USA

This section provides a brief overview of the impeachment process up to the removal of the President from office in the USA. Presidential impeachment is covered in the US Constitution under article 1(2) fifth clause, article 1(3) sixth and seventh clauses and article 2(4).

The US procedure for presidential impeachment and removal from office includes four main steps. Unlike in the ROK, the entire process rests within the legislative branch (Congress). When a President is suspected of having committed treason, bribery or other high crimes and misdemeanours (US Constitution art. 2(4)), the House of Representatives, as stated in article 1(2) fifth clause (US Constitution), has the sole power of impeachment. Any member of the House can introduce an impeachment resolution which will then be referred to the House Judiciary Committee. The Committee then drafts articles of impeachment and sends them to the full House of Representatives. Based on the draft, the House votes on each of the charges separately and if one or more charges receive a simple majority of the votes, the President is impeached. Once the President is impeached, the Chief Justice of the Supreme Court presides over the Senate during the trial, instead of the Vice-President (US Constitution art. 1(3) 6th clause). The President is then tried by the Senate and if a two-thirds majority of the Senators vote in favour, the President is convicted and removed from office (US Constitution art. 1(3) 6th clause).

A President who is impeached and removed from office remains liable to indictment, trial, judgment and punishment by the law (US Constitution art. 1(3) 7th clause). So far, three Presidents have been impeached (Trump was twice). However, none of these impeachments led to their removal from office (Silverstein, 2021).<sup>1</sup>

## 3. Presidential Impeachment in the ROK

This section provides a brief overview of the impeachment process up to the removal of the President from office in the ROK. Presidential impeachment is covered in the Constitution of the ROK under article 65, article 111(1) and article 113(1) as well as the Constitutional Court Act.

The procedure for presidential impeachment and removal from office in the ROK comprises six steps. The first three consist of legislative oversight and the

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<sup>1</sup> Andrew Johnson in 1868, Bill Clinton in 1998, Donald Trump in 2019 and 2021 (USAGov, n.d.).

last three, of judicial oversight. First, when a ROK President is suspected of having violated the Constitution or other Acts in the performance of official duties, the National Assembly has the power to initiate a proposal for a motion of impeachment (Constitution of the ROK, art. 65(1)). This proposal must be supported by an absolute majority to be introduced and referred to the Justice Committee (of the National Assembly), which reviews the motion based on the Act of the Inspection and Investigation of State Administration (Constitution of the ROK, art. 65(2)). Then, to impeach the President, the motion must be approved by at least two-thirds of the total members of the National Assembly (Constitution of the ROK, art. 65(2)). Once it has been approved, the motion is sent to the Constitutional Court (CC) (Constitution of the ROK, art. 49(2)). Unlike in the USA, the CC rules on whether to remove the impeached President from office. The CC then has 180 days to rule on the motion (Constitution of the ROK, art. 63(1)). With a minimum attendance of seven Justices, at least six Justices must vote in favour for President to be removed from office (Constitution of the ROK, art. 113(1), Constitutional Act, art. 23(1), (2)(1)). In such event, elections for a new President must be held within 60 days (Constitution of the ROK, art. 68(2)).

Meanwhile, once the motion of impeachment is approved by the National Assembly, the presidential powers are suspended until adjudication (Constitution of the ROK, art. 65(3)). The impeached President is not exempted from civil and/or criminal liability (Constitution of the ROK, art. 65(4)). To date, two Presidents have been impeached in the ROK and one President (Park Gun-Hye) was removed from office in 2017 (Song, 2019).

## **4. Three Key Principles of the Rule of Law**

### **4.1 Presidential Accountability**

The principle of accountability ensures that everyone, including the government, is accountable to the Law (OECD, 2013). In the ROK, the 2017 impeachment case leading to President Park's removal from office, showed that the rule of law and presidential accountability are not only theoretically present but are also practically enforceable in a democratic state (Kelly, 2020). The CC's guilty verdict against Park confirmed that even a democratically-elected Head of State, can be held accountable under the Law (Yun, 2020). By contrast, in the USA, this principle of accountability has never been practically enforced, despite numerous presidential impeachment cases. While in theory no American is beyond the law's reach (Shapiro, 2020), no conviction has never resulted from presidential impeachment and it appears very unlikely to happen due to the influence of the

well-established two-party system on Senate trial results (Ohnesorge, 2020).

In the USA, as previously explained, Senators vote at the trial of an impeached President (US Constitution, art. 1(3)). Unlike in the ROK where CC judges try impeachments, in the USA politicians (along with one judge, the Chief Justice of the Supreme Court) decide on whether to remove the President. It is argued that having Senators try cases of impeachment allows for the strict separation of powers, preventing judicial interference in politics. However, regardless of the grounds for impeachment, rulings are strongly influenced by the political-party composition of the chamber (Baumgartner, 2003). Since the USA is a two-party system, voting results will tend to reflect the Democrat-Republican distribution of the seats (Baumgartner, 2003). Therefore, the two-thirds majority required for a President to be convicted and removed from office will not be attained unless the opposing party occupies two-thirds of the seats in the chamber or some Senators in the President's party vote in favour of his conviction. Consequently, in practice the US President tends to be less accountable to the rule of law than in the ROK due to politics interfering in the impeachment trial and results.

In contrast, a key factor in the successful removal of Park from office in the ROK was the tasking of independent judges, rather than politicians, with the impeachment trial (Ohnesorge, 2020). Justices of the CC are independent judges, who act outside the political sphere as part of the judiciary branch, to guarantee the operation of public authorities under the ROK Constitution (Song, 2019). Thus, since the decision is based solely on the extent of compliance with the law and not on political motivations (or other influences), the possibility of removing the President is comparably more realistic (Song, 2019).

On comparing the effectiveness of US and ROK impeachment procedures in guaranteeing presidential accountability to the Law, it appears that while Presidents in both countries are theoretically accountable, in practice there is a higher probability of Presidents in the ROK being held to account than in the US because of the impeachment trial procedure and results.

## 4.2 Justness

The principle of justness in the rule of law ensures that laws are clear, publicised, fair, stable and evenly applied (OECD, 2013). Both the US Constitution and the Constitution of the ROK use rather broad terms when setting out the grounds for impeachment (Yoo, 2020). Grounds for impeachment under article 2(4) of the US Constitution are treason, bribery, or other high crimes and misdemeanours. However, no specification is given regarding of what "other high crimes and misdemeanours" consist. Similarly, article 65(1) of the Constitution of the ROK identifies violations of the Constitution or other Acts in the performance of official

duties as grounds for impeachment, without further specification. The broadness of these terms allows for different interpretations of what they include, and what presidential actions might be deemed grounds for impeachment (Barker, 2018; CC, 2001; Ginsburg et al., 2021). For example, former House member Gerald Ford famously remarked that impeachable offenses are “whatever a majority of the House considers them to be”, underscoring the discretionary nature of impeachment proceedings. The burden falls on proponents of the impeachment to convince the House and Senate of the severity of the President’s alleged offenses. While the US Congress generally prefers to avoid impeachment where possible, it also seeks to maintain impeachment as a flexible tool for addressing exceptional circumstances (Ginsburg et al., 2021). In contrast, research conducted by the ROK’s CC on the impeachment systems in different countries discusses, in the case of the USA, the conflicting interpretations of “high crimes and misdemeanors” as well as how such unclarity impacts the role of the impeachment system. It explains that the expression “high crimes and misdemeanors” is vague to determine the specific types of acts that fall under it. Thus, if the need for impeachment is recognised, this creates doubt as to whether the grounds are limited to the aforementioned “high crimes and misdemeanors”, or if the scope is broader (Constitutional Court, 2001). For these reasons, it can be argued that justness is more present in the ROK’s presidential impeachment procedure than that of the USA because the CC supplements the lack of specificity in the Constitution with precedents to ensure clearer, consistent and evenly-applied decisions on presidential convictions (Ohnesorge, 2020).

Precedents can help specify the grounds for impeachment by clarifying the broad terminology used in the Constitution, thus making rulings more consistent and stable (CC, 2001). However, in the USA, Congress does not apply the *stare decisis* concept, meaning that neither the House of Representatives nor the Senate considers impeachment or attempted impeachment precedents (Ohnesorge, 2020). Therefore, “other high crimes and misdemeanours” can be interpreted by the Senate as “whatever offense or offenses two-thirds of the [Senate] considers to be sufficiently serious to require removal of the accused from office” (Broderick, 1974). Therefore, provided that it respects constitutional provisions, Congress is free to decide on what it considers a ground for impeachment on a case-by-case basis. Consequently, impeachment procedure and outcomes in the USA tend to be less clear and consistent, thus less “just” in terms of the rule of law principle.

In contrast, in the ROK, the CC uses precedents to establish details that the Constitution fails to specify. For example, it used a 1994 impeachment motion to establish an intention-based condition, deeming an offense liable for impeachment only if “the president intentionally does not execute the duties imposed

upon her by law and thereby breaches the respective law and violates the basic rights of citizens”. Pursuant to the 2004 impeachment trial, the court also provided that the removal of a President from office shall either be a consequence of the no-longer-accepted continuation of his/her presidential office in regards to the protection of the Constitution, or the no-longer-valid position to manage state affairs following the loss of public trust (Hannes, 2017). By setting these clauses, the CC enforced consistency and clarification. Furthermore, it is argued that a CC, is more competent in implementing evidence-based standards than a chamber of elected representatives, thus making the process fairer compared to the USA (Ohnesorge, 2020). Therefore, the ROK’s impeachment procedure can be regarded as more just than the USA’s.

### **4.3 Impartial Justice (and Democratic Representation)**

The principle of impartial justice ensures that justice is neutral and reflects the communities that judges serve (OECD, 2013). It can be asserted that the impeachment procedure and outcome in the ROK ensures the principle of impartial justice more effectively than in the USA, particularly with respect to “reflecting the communities they serve”.

When comparing the overall impeachment process, the concept of representational democracy is better incorporated into the ROK’s procedure than the USA’s. In the USA, a sole representative of the House can introduce an impeachment resolution (US Constitution, art. 1(2)), whereas in the ROK a motion of presidential impeachment must be supported by an absolute majority of the National Assembly (Constitution of the ROK, art. 65(2)). However, a US president is impeached if a simple majority of the House of Representatives votes in favour of their impeachment, which is less representative than the two-thirds majority of the National Assembly required in the ROK. Concerning the presidential impeachment trial, in the USA impeached presidents are tried by directly-elected Senators (US Constitution, art. 1(3), 17th amendment) so the resulting conviction and removal of the President is highly unlikely, due to the aforementioned political bipolarisation of the Senate (Baumgartner, 2003). This means that public opinion is barely factored into presidential impeachment decisions in the USA. In contrast, the ROK successfully impeached and removed its president in 2017, through the ruling of a CC requiring at least six votes of Justices in favour of said removal (Constitution of the ROK, art. 113(1)). Some may argue that this decision was not representative because it was made by an independent body of the judiciary. However, unlike Supreme Court Justices in the USA, who are appointed by the President (US Constitution, art. 2(2)), CC Justices in the ROK are respectively appointed by the President (executive), selected by the National Assembly

(legislative) and selected by the Chief Justice of the Supreme Court (judiciary) (Constitution of the ROK, art. 111(4)(3), (4). Therefore, decisions made by the CC judges are indirectly representative while being an independent body.

Thus, when comparing impeachment procedures and outcomes overall, the ROK ensures greater neutrality (both in terms of branches and politics) and is more representative than the USA.

## 5. Conclusion

This paper conducted a comparative analysis of the USA's and the ROK's presidential impeachment procedures and outcomes. It aimed to address the issue of presidential impeachment in the USA which, having failed to remove the president from office, has raised concerns regarding the principle of the rule of law. The research question asked: *to what extent do the presidential impeachment procedure and outcomes in the ROK reflect the principles of the rule of law, compared to in the USA (and vice-versa)?*

The conclusion, based on the analysis, can be summarised as follows. Overall, the ROK's presidential impeachment procedure and outcomes better reflect the principle of the rule of law than those of the USA. Firstly, because tasking a bi-polarised chamber composed of politicians (the Senate) with conducting such a procedure reduces the likelihood of presidents being held accountable, compared to tasking an independent body of Justices to make an assessment based on the Law. Secondly, the ROK managed to close constitutional loopholes through precedents that effectively increased justness, whereas the USA Congress preferred to not restrain the scope of their constitution's interpretation, leading to less consistency and stability. Thirdly, the ROK impeachment process, overall, focused more on neutrality and democratic representation by requiring higher thresholds in voting, and involving all three branches in the composition of the CC, whereas the USA restricted the impeachment procedure to the legislative branch and set lower voting thresholds.

Lastly, the two countries have different parliamentary systems (unicameralism and bicameralism), which makes the presidential impeachment process theoretically harder to implement in the ROK than in the USA. It would therefore be interesting to analyse the impact that having impeachments tried by an independent court or by judges appointed by all three branches of power could have in the USA.



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