

“You’re Fired”

A Comparative Analysis of Presidential Impeachment
in the United States and South Korea

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Purpose

- What are the main differences?
- Do those influence the outcomes?
- How? : Review the case(specific precedent)

Key Articles in S. Korean Constitution

Article 65 (1) In case the President, the Prime Minister, Justices of the Constitutional Court, judges, and other public officials designated by Act have violated the Constitution or other Acts in the performance of official duties, **the National Assembly may pass motions for their impeachment.**

(2) That a motion for **the impeachment of the President shall be proposed by a majority of the total members** of the National Assembly and **approved by two thirds or more of the total members** of the National Assembly.

(3) Any person against whom a motion for impeachment has been passed **shall be suspended from exercising his power** until the impeachment has been adjudicated.

(4) A decision on impeachment shall not extend further than removal from public office: Provided, That it shall **not exempt the person impeached from civil or criminal liability.**

Article 111(1) The Constitutional Court shall have jurisdiction over the following matters: 2. Impeachment:

Article 113 (1) When the Constitutional Court makes a decision of impeachment, **the concurrence of six Justices or more** shall be required.

Key Articles in the US Constitution

Article 1 section. 2.

The House of Representatives - shall have the sole Power of Impeachment.

Section. 3.

The Senate shall have the sole Power to try all Impeachments. - When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of **two thirds of the Members present.**

Judgment in Cases of Impeachment shall **not extend further than to removal from Office, and disqualification to hold and enjoy any Office** of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless **be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.**

Article 2 Section. 4.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, **Treason, Bribery, or other high Crimes and Misdemeanors.**



What are the differences?

- ❑ Who can be impeached?
- ❑ Who impeaches and convicts?
- ❑ What are the grounds for impeachment?
- ❑ How do the procedures work?

Who can be impeached?

[S. Korea]

the President, the Prime Minister,
Justices of the Constitutional Court,
judges, ~and other public officials
designated by Act

- 2 motions approved
- all Presidents
- 1 convicted

Who can be impeached?

[US]

The President,
Vice President
All civil Officers of the United States

- over 60 times in the impeachment process
- 20 impeached
 - 15 Federal Judges, 3 Presidents, 1 Cabinet Secretary, 1 Senator
- 8 convicted
 - all Federal Judges



❏ Who impeaches and convicts?

[S. Korea]

- The National Assembly
 - passes motions for the impeachment
- The Constitutional Court
 - has the jurisdiction over the Impeachment

❏ Who impeaches and convicts?

[US]

- The House of Representatives
 - Has the sole power of impeachment

- The Senate
 - Has the sole power to try all impeachments

❏ What are the grounds for impeachment? [S. Korea]

- [CONSTITUTION]
 - The violation of Constitution or other laws
- [CONSTITUTIONAL COURT ACT]
 - Valid ground
 - ANY violation?

In Roh Moo-Hyun's case(The first impeachment case of S. Korea)

➤ “Grave violation”

1. Non-democratic behavior: Affirmative act threatening the basic order of free democracy- the principle of the rule of the law, fundamental human rights, separation of powers, the independent judiciary
2. Issues of trust: Betrayal of the people's trust: corruption, harming state interests, infringing upon people's fundamental rights

What are the grounds for impeachment? [US]

- [CONSTITUTION]

- Treason

- Bribery

- High Crimes and Misdemeanors

High Crimes and Misdemeanors

- Not limited to criminal conduct.
- Abuse of power and the obstruction of congress or justice
- the grounds might be different for federal judges? Judges were impeached for drunkenness, biased decision-making, or inducing parties to enter financial transactions



Process of Motion: Impeachment

[S. Korea]

1. Proposal

A majority of the total members for Presidential impeachment

-One third or more of the total members for other officials

2. Investigation

By Legislation and Judiciary Committee

In Park's case

- On Dec. 3 2016, Impeachment bill was proposed
 - On Dec. 8 2016, Motion was reported to the plenary session
 - On Dec. 9 2016, Motion was passed
- No Investigation?
- Investigation is left to the discretion of The National Assembly

3. Voting


- Two thirds or more of the total members for President
 - A majority of the total members for other officials
- A Secret vote
- Separately voted on the grounds for impeachment?
 - the discretion of the National Assembly members proposing



Process of Motion: Impeachment

[US: House of Representatives]

1. Request By member/Non member; Special prosecutor
2. Adoption of Resolution, Referral to a House committee
3. Investigation
4. Voting to determine whether grounds exist by The House Judiciary Committee


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5. Making Articles of Impeachment
 6. Debating the Resolution
 7. Voting
 - As a Whole or vote on each Article
 - A simple majority
 - Managers are Selected



Trial

[S. Korea]

- The impeachment process in Judicial oversight
 1. To assess if the president has acted as stated in the Impeachment motion
 2. To inquire whether such an act is in violation of the Constitution or law
 3. Determine whether the act meets the requirement of qualifying as a “grave violation”

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- By applying the Constitutional Court Act and Rules
 - Conducted through oral arguments
 - Reviewed with the attendance of 7 or more judges
 - Vote of 6 or more justices to remove president from office (all opinions are made public.)
 - **Park's case**: 3 pretrial conferences, 17 oral arguments, 26 witnesses, 19 inquiries



Trial

[US]

- Set of rules for each impeachment trial
- Presided by the Chief Justice in presidential impeachment
- Deliberation in private
- Voting in an open session: two thirds of the Members present
By roll call

Effects

[S.Korea]

- Impeachment of Motion

suspension

- Result of conviction

removed from office, stripped of post presidential benefits such as retirement pension

- Criminal liability

Not exempt from criminal liability

Effects

[US]

- Not suspended
- No further punishment except removing from office
The Senate can disqualify the impeached person from holding office
- Criminal liability
Depending on the reasons of impeachment

Why is there Judicial Oversight in S.Korea?

- Polity
 - Unicameral
- Unicameral/ Bicameral
- History
 - Military Dictatorship
- Misuse/ Useless
- Trust
 - Lower trust in the politician
- Court/Legislature

What is the big main difference?

- Execution of the Trial, specifically the body that conducts the trial
- US: the Senate → Impeachment Trial is politicized
- S. Korea: the Constitutional Court → Impeachment Trial is based on the legal process

How the differences influence the outcomes?

- How to shape out the procedures of the trial?
 - The Senate's discretion to play out the impeachment trial process
 - The Constitutional Court adjusts the rules on procedure
- How to interpret the grounds for the impeachment?
 - “whatever *the Senate* considers [it] to be at a given moment in history.”
 - The grave violation of the Constitution and the law
- What is the main factor in decision?
 - political factors: party divisions in Congress, approval rating and concern about a election
 - legal factors: legal requirements and applicable standards for conviction



The case of President Roh

- The first impeachment trial case
- Admitted to violate the Constitution and the law
- Deemed the violation to not meet the requirements for “grave violations” to warrant removal from office



The case of President Park

[Background]

- July and October 2016, Press reports: Blue house's intervention in the establishment of foundations/the leak of key documents to Park's old acquaintance, Choi
- November 2016, Choi and Secretaries of the president were detained and indicted. Park was stated as an accomplice.

[Decision]

- Holding

The respondent, President Park Geun-hye, is removed from office.

- Reasoning

1. Violation of the obligation to serve the public interest (violation of Article 7 Section 1, etc. of the Constitution)
2. Infringement of the freedom and property rights of enterprises (violation of Article 15 and Article 23 Section 1, etc. of the Constitution)
3. Violation of the duty of confidentiality(Article 60 of the State Public Officials Act)

Conclusion

- Different political situations/historical backgrounds
- Different impeachment system

- which is better?
- A lot of other institutional, cultural, and historical factors beyond processes.

- Whether the system works well depends on whether those who have the power have a good understanding of impeachment

THANK YOU