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RECHT BERATUNG WEITERBILDUNG

Introduction to US business law

III. Constitutional Law/Impeachment

FS 2024

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Repetition last class

- > Introduction
 - > Postware America
 - > Famous US Presidents
 - > Esp. Abraham Lincoln (Gettysburgh Address)
 - > Sister Republics
 - > Americanisation of common law
 - > Pierson v. Post
 - > Declaration of Independance 1776
 - > Confederation 1776 – 1789
 - > Three branches of government
-

27 Amendments

- > Amendments to the Constitution subsequent to the Bill of Rights cover a wide range of subjects.
- > One of the most far-reaching is the fourteenth, ratified in 1868, which establishes a clear and simple definition of citizenship and guarantees equal treatment under the law.
- > Other amendments have limited the judicial power of the national government; changed the method of electing the president; forbidden slavery; protected the right to vote; extended the congressional power to levy taxes to individual incomes; and instituted the direct election of U.S. senators.
- > The most recent amendments include the twenty-second, limiting the president to two terms in office;
- > The twenty-third, granting citizens of the District of Columbia the right to vote for the President and the Vice President;
- > ~~The twenty-sixth, lowering the voting age to 18~~

US Constitution (2)

Amendments

- > 1-10 Amendment - Bill of Rights (1791)
 - > 1: Freedom of speech, press, assembly (important)
 - > 2: right to bear arms
 - > 3: Housing of soldiers
 - > 4: Search and arrest warrants
 - > 5: rights in criminal cases (important)
 - > 6: rights to a fair trial
-

US Constitution (3)

Amendments

- > 7: rights in civil cases
 - > 8: bails, fines and punishments
 - > 9: Rights retained by the people
 - > 10: powers retained by the states and the people
 - > 11: lawsuits against states (1798)
 - > 12: election of the President and Vice-President (1804)
 - > 13: Abolition of slavery (1865)
-

US Constitution (4) Amendments

- > 14: civil rights (1868) (important)
 - > 15: black suffrage (1870)
 - > 16: income taxes (1913)
 - > 17: direct election of senators (1913)
 - > 18: prohibition of liquor (1919)
 - > 19: woman suffrage (1920)
 - > 20: terms of the President and Congress (1933)
-

US Constitution (5) Amendments

- > 21: repeal of prohibition (1933)
 - > 22: limitation of Presidents to 2 terms (1951)
 - > 23: suffrage in the District of Columbia (1961)
 - > 24: poll taxes (1964)
 - > 25: Presidential disability and succession (1967)
 - > 26: suffrage for eighteen-year-olds
 - > 27: Congressional salaries (1992)
 - > Proposed 1789
-

2 fundamental principles to limit the power of federal Government

- > The US constitution (1789) was a direct answer to dissatisfaction with the British colonial government
 - > Therefore, directed toward limiting the powers of (federal) government rather than enhancing them
 - > 2 fundamental principles
 - > Federalism
 - > Separation of powers
-

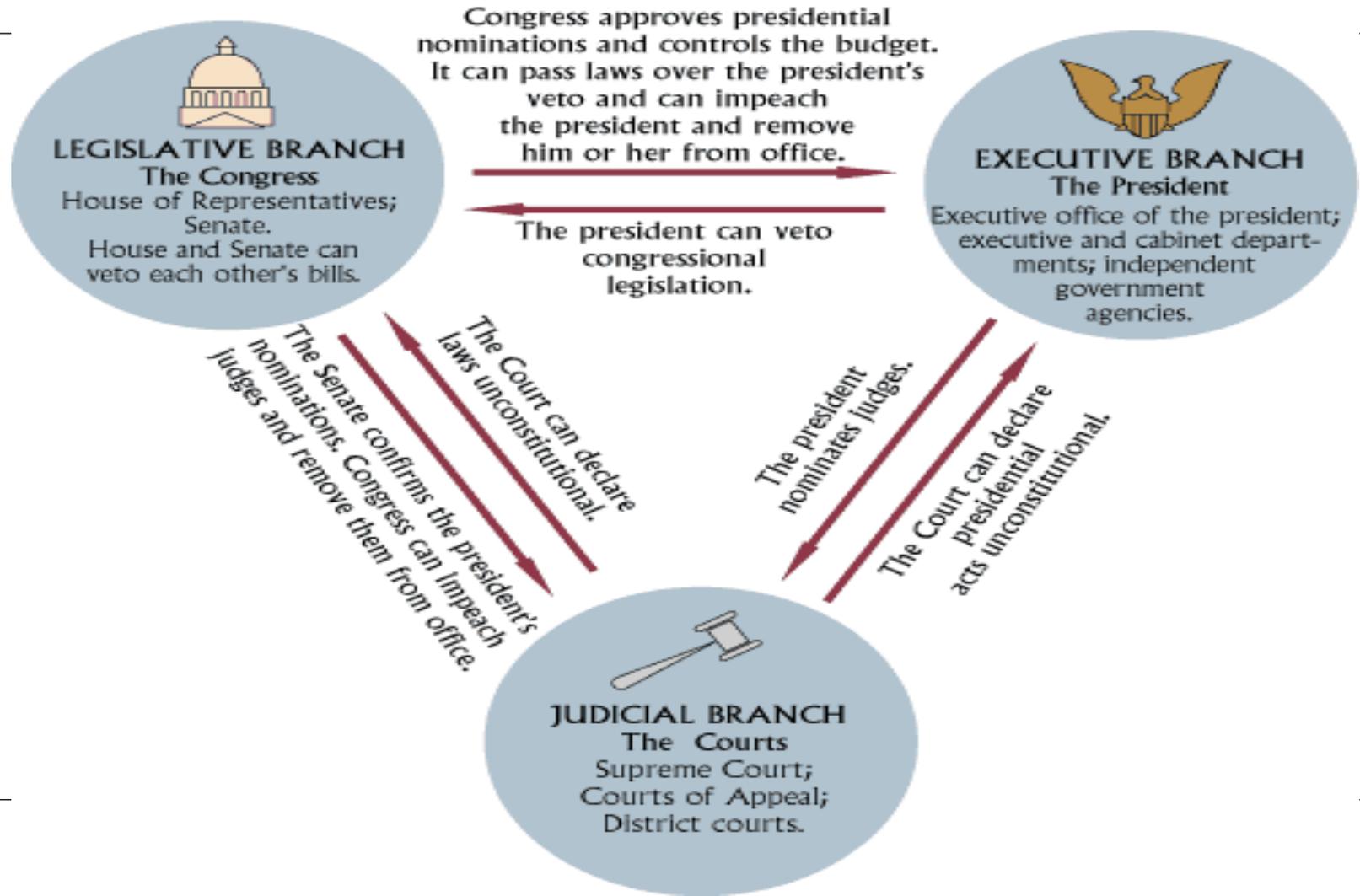
Federalism

- > Limiting governmental power by fragmenting it
 - > Enumerated powers
 - > Art. 1 Section 8, 9 and 10 USC
 - > State vs. Federal government
 - > Balance of powers
-

Separation of powers

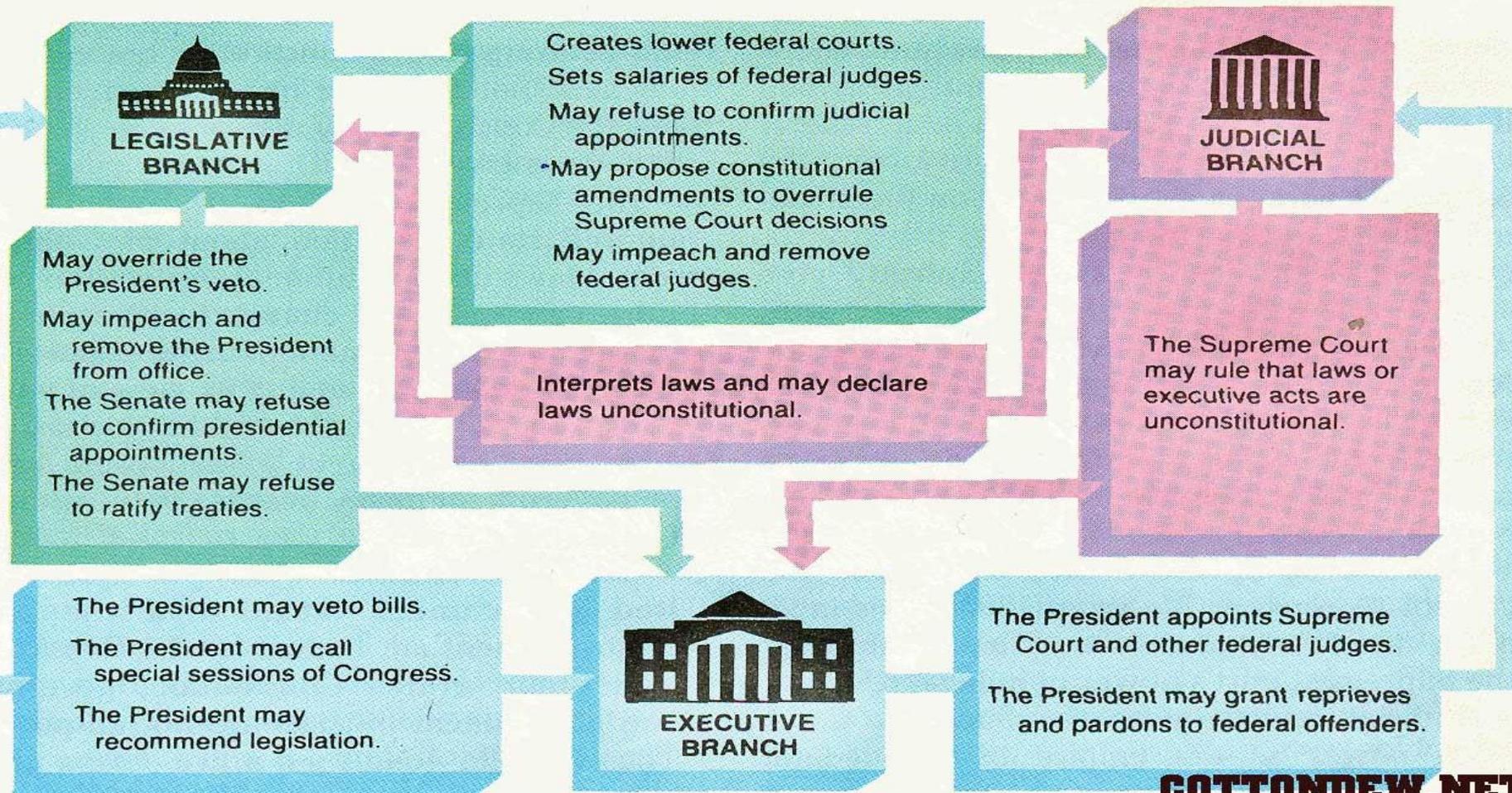
- > Separation of powers and checks and balances
 - > Limiting the authority of each branch of Federal government to act without the concurrence of the others
 - > 3 branches
 - > Congress
 - > President
 - > Supreme Court
-

Checks and balances



Checks and balances

CHECKS AND BALANCES IN THE FEDERAL GOVERNMENT



Congressional powers

- > Art. 1, Section 8 USC
 - > 18 clauses
 - > Commerce clause (clause 3)
 - > Wide interpretation (impact on interstate trade)
 - > Dormant commerce clause: used to prohibit state legislation that discriminates against, or unduly burdens, interstate or international commerce
 - > Necessary and proper clause: that Congress can exercise powers which are merely 'incidental' to Congress's enumerated powers.» (wide interpretation)
 - > Supremacy Clause (Art. VI, Section 2)
 - > Art. VI, Section 2 USC
-

Powers of the President

- > Art. II USC
 - > The executive branch
 - > Commander in Chief
 - > Treaty, Judges (Senate)
 - > State of the Union
 - > Etc.
-

Third branch – the federal Courts

- > Art. III USC
 - > US Supreme Court and inferior Courts
 - > 12 Courts of Appeal
 - > District Courts
 - > Jurisdiction
-

How Supreme Court became supreme (1)

> Marbury v. Madison (1803)

> Facts:

- > Marbury got appointed by the outgoing Secretary of State John Marshall as justice of peace in DC
 - > Republicans v. Federalists
 - > The new secretary of State James Madison did not deliver the already signed and sealed document, based on a statutory act
 - > Marbury applied directly to the Supreme Court as provided by the Judiciary Act of 1789
 - > Chief Justice was John Marshall (!) - Bad luck!
-

How Supreme Court became supreme (2)

- > Constitution is the fundamental law of the land
 - > In cases of conflict between it and a statute, „an Act of the Legislature repugnant to the Constitution is void“
 - > Moreover, „it is emphatically the province and duty of the judicial department to say what the law is“.
 - > Judicial review is exercised not only by the SC but also by the lower federal courts and the state courts.
 - > Actions of the executive branches of government as well as those of Congress and the state legislature are subject to judicial review!
 - > Courts can control each action by President or Congress on their constitutionality!
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- > Question: Who controls the courts?



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Trump – impeachment - Candidate

timeline

- > 2014 – Donald Trump announces candidate President
 - > Trump wins selection within Republican Party
- > 2015 – Trump becomes 45th President against Hillary Clinton
 - > Big surprise!
- > 2016-2020 – President Trump's new approach (NATO, Korea, Russia,
 - > Ukraine, internal policy, Supreme Court, etc.)
- > 2020 – first impeachment – Ukraine
- > 2021 – second impeachment – Feb. 6 2021
- > Denial of lost election
- > Several court cases
- > Election 2024

Prior important cases - **impeachment**

- > U.S. v. Nixon (1974)
 - > Criminal trial against Nixon aides
 - > Tapes of White House conversations
 - > Nixon: separation of powers
 - > Court: no, Marbury v. Madison
 - > No general immunity for Presidents
 - > Court can decide what is needed
 - > Balancing White House confidentiality v. evidence in a pending criminal trial
-

What is impeachment (1)

> Impeachment in the United States

- > the process by which a legislature (usually in the form of the lower house) brings charges against a civil officer of government for crimes alleged to have been committed, analogous to the bringing of an indictment by a grand jury.
- > Impeachment may occur at the federal level or the state level. The federal House of Representatives can impeach federal officials, including the president, and each state's legislature can impeach state officials, including the governor, in accordance with their respective federal or state constitution.

What is impeachment (2)

- > There are several provisions in the US Constitution relating to impeachment:
- > Art. I, Section 2, Clause 5 provides: The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.
- > Article I, Section 3, Clauses 6 and 7 provide: The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. 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 II, Section 2 provides: [The President] ... shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.
- > Article II, Section 4 provides: The Resident, 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**

Impeachment (3)

- > **Impeachable offenses: "Treason, Bribery, or other high Crimes and Misdemeanors»**
 - > Jurisdiction (only sitting officers?)
 - > Founding fathers?
 - > Commentators?
 - > Previous impeachment procedures?
 - > Courts?
 - > Who decides?
 - > Political decision – elections?

Impeachment

Three-step procedure

- > First, the Congress investigates. This investigation typically begins in the House Judiciary Committee, but may begin elsewhere. For example, the Nixon impeachment inquiry began in the Senate Judiciary Committee. The facts that led to impeachment of Bill Clinton were first discovered in the course of an investigation by independent Counsel Kenneth Starr.
- > Second, the House of Representatives must pass, by a simple majority of those present and voting, articles of impeachment, which constitute the formal allegation or allegations. Upon passage, the defendant has been "impeached".
- > Third, the Senate tries the accused. In the case of the impeachment of a president, the Chief Justice of the United States presides over the proceedings. For the impeachment of any other official, the Constitution is silent on who shall preside, suggesting that this role falls to the Senate's usual presiding officer, the President of the Senate, who is also the Vice President of the US. Conviction by Senate requires the concurrence of two-thirds supermajority of those present. The result is removal from office.

Impeachment 1

History - before Trump

- > The House has initiated impeachment proceedings 62 times since 1789
- > The House has impeached 20 federal officers. Of these:
 - > 15 were federal judges: thirteen district court judges, one court of appeals judge, and one Supreme Court Justice.
 - > three Presidents: Andrew Johnson, Bill Clinton and Donald Trump (all were later acquitted by the Senate)
 - > The case against Richard Nixon!
 - > one was a Cabinet secretary
 - > one was a U.S. Senator.
 - > Of the 20 impeachments by the House, two cases did not come to trial because the individuals had left office, seven were acquitted, and eight officials were convicted, all of whom were judges.
 - > Additionally, an impeachment process against Richard Nixon was commenced, but not completed, as he resigned from office before the full House voted on the articles of impeachment. To date, no president or vice president has been removed from office by impeachment and conviction.

Impeachment 1

Prodecure against Donald Trump

- > The **impeachment trial of Donald Trump**, the 45th and incumbent president of the United States, began in the Senate on January 16, 2020, and concluded with his acquittal on February 5 2020.¹
- > After an inquiry between September to November 2019, President Trump was impeached by the House of Representatives on December 18, 2019;
 - > All Democrats against him, all Republicans for Trump
 - > The articles of impeachment charged him of **abuse of power** and **obstruction of Congress**.
 - > It was the third impeachment trial of a U.S. president, preceded by those of Andrew Johnson and Bill Clinton.

Impeachment 1

Facts against Donald Trump

The articles of impeachment charged him of 2 crimes:

1. abuse of power
 1. Military assistance to Ukraine only under condition to open investigation into a Ukraine company on the board of which the son of Joe Biden was sitting
2. obstruction of Congress
 1. To forbid his aids, secretaries, chief of staff, etc. to cooperate with the House of Representatives

Arguments (1)

Prosecution

- > On January 22, the first day of opening arguments, Democrats presented evidence from House impeachment inquiry testimony, the Trump–Zelensky phone call and Trump's statements. Schiff started by asserting that Trump needs to be removed from office because he has shown he is ready and willing to cheat in the 2020 elections. Schiff told the Senate, "The president's misconduct cannot be decided at the ballot box because we cannot be assured the vote will be fairly won.
- > Jerry Nadler and Sylvia Garcia discussed Trump's lawyer Rudy Giuliani's smear campaign against Ambassador Marie Yovanovitch.
- > Jason Crow and Hakeem Jeffries discussed the significance of the Trump–Zelensky phone call, and Schiff and Zoe Lofgren detailed how the scheme was exposed to the public. Lofgren mentioned that Pentagon officials wrote to the Office of Management and Budget warning that freezing aid to Ukraine might be illegal.

Arguments (2)

Prosecution

- > During his statements, Schiff referenced a *quid pro quo* in Trump's actions.
- > On day two, House managers presented arguments to assert the evidence warranted Trump's removal from office. Jerry Nadler argued that abuse, betrayal, and corruption, or the "ABCs" of impeachment make a strong case for removal. He played videos from the impeachment trial of Bill Clinton arguing that impeachment does not necessitate the breaking of a law;
- > On their final day, Democrats discussed how they expected the Trump defense might respond and asked the Senate to call witnesses. Jerry Nadler called Trump a dictator and said, "The president has declared himself above the law. He has done so because he is guilty."

Arguments Defence

- > The primary arguments were a lack of direct evidence of wrongdoing, and that Democrats were attempting to use the impeachment to steal the 2020 election.
- > Sekulow cited the conspiracy theory that Ukraine had interfered in the 2016 election, suggesting that this gave Trump a basis to investigate corruption in Ukraine.
- > Despite White House resistance to witness testimony during the impeachment inquiry and trial, deputy White House counsel Patrick Philbin said, "cross-examination in our legal system is regarded as the greatest legal engine ever invented for the discovery of truth."^[120]

Impeachment I

- > Arguments in favour of impeachment (House Managers)
 - > Crimes were committed
 - > Hearing witnesses
 - > Precedent for impeachment in general
- > **Impeachment state of play: House Democratic managers to make key closing arguments cnn video**
- > **Adam Schiff:**
- > https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=video&cd=1&ved=0ahUKEwjS1veJ_JHoAhWN_CoKHXPBBzcQtwlIKjAA&url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F01%2F24%2Fus%2Fpolitics%2Fadam-schiff-closing-remarks.html&usg=AOvVaw2irw1rqWG96ZxhU0rjklfJ

Impeachment 1

- > Argument in favour of restrictive interpretation (pro President)
 - > Political proceeding (should be left to elections)
 - > Along party lines
 - > President did not do anything illegal
 - > Protection of President's office

- > Trump team chose to end argument cnn video

- > the guardian.com – trump impeachment trial closing arguments – five key takeaways
 - > <https://www.theguardian.com/us-news/2020/feb/03/trump-impeachment-trial-closing-arguments-five-key-takeaways>

Impeachment 2 developments

- > Trump's behaviour during and after Presidential election
- > Not only recounting but accusations without proof
- > No cooperation with the new administration
- > **Culmination point: January 6 2021**
- > Rally against „election fraud“
- > Storm of Congress
- > Violations, threats, deaths
- > Risks for Vice-President and the Speaker of the House
- > Slow police actions
- > Role of the President?

Impeachment 2 treason?

- > Democrats and some Republicans began Impeachment in January
- > House decided to impeach Trump before departure of Trump from office
- > Senate delaid Impeachment until Trump had left
- > During hearings Repulicans argued
 - > No impeachment for former officials (no jurisdiction)
 - > „special“ defence team
 - > „special“ argumentation by the leader of the Republicans
- > Representative of the House arguments
 - > Trump started riot, did not stop it
 - > movies

movies

- > Impeachment trial: Managers argue Trump campaigned for months to undermine election and incite rioters
<https://www.cnn.com/2021/02/10/politics/senate-impeachment-trial-day-2/index.html>

Goal of the 2nd impeachment

- > Not sanction Trump
- > But bar him from any future federal office
- > Attempt has failed
 - > Almost all republicans voted against conviction

Impeachment instrument today

- > The two impeachments against Trump have weakened that instrument
 1. along party lines
 2. Impeachment shall not change election outcome
 3. President does not have to cooperate with Congress
 4. leaving office destroys jurisdiction
- > a next impeachment will be more difficult to be successful as there are precedents now!

January 6, 2021

- > Mob in Washington (Trump)
- > March to the Parliament
- > Storm
- > Violence
- > Who is responsible?
 - > Trump?
 - > Republican Party?
- > Investigation
- > Political or legal case?
- > Where do we stand today?

Cases against Donald Trump 1

- > **New York State: Fraud** - 2022, civil suit, alleging a years-long scheme in which Trump fraudulently reported the value of properties in order to either lower his tax bill or improve the terms of his loans, all with an eye toward inflating his net worth.
 - Justice Arthur Engoron [ruled on February 16](#) that Trump must pay \$355 million plus interest, the calculated size of his ill-gotten gains from fraud. - pending
- > **Manhattan: Defamation and Sexual Assault** - E. Jean Carroll said that Trump sexually assaulted her in a department-store dressing room in the 1990s. When he denied it, she sued him for defamation and later added a battery claim. – 83.3 mio - pending
- > **Manhattan: Hush Money** - felony charges against Trump, alleging that the former president falsified business records as part of a scheme to pay hush money to women who said they had had sexual relationships with Trump – trial March 2024

Cases against Donald Trump 2

- > **Department of Justice: Mar-a-Lago Documents** Jack Smith, a special counsel in the U.S. Justice Department, has charged Trump with 37 felonies in connection with his removal of documents from the White House when he left office. – pending
- > **Fulton County: Election Subversion** - In Fulton County, Georgia, which includes most of Atlanta, District Attorney Fani Willis brought a huge racketeering case against Trump and 18 others, alleging a conspiracy that spread across weeks and states with the aim of stealing the 2020 election. - pending
- > **Department of Justice: Election Subversion** - Special Counsel Smith has also charged Trump with four federal felonies in connection with his attempt to remain in power after losing the 2020 election. This case is in court in Washington, D.C. - pending
- > **State courts banning Trump as a candidate** – USSC decided not possible, federal matter

Next time

US Court Systems/Jurisdiction