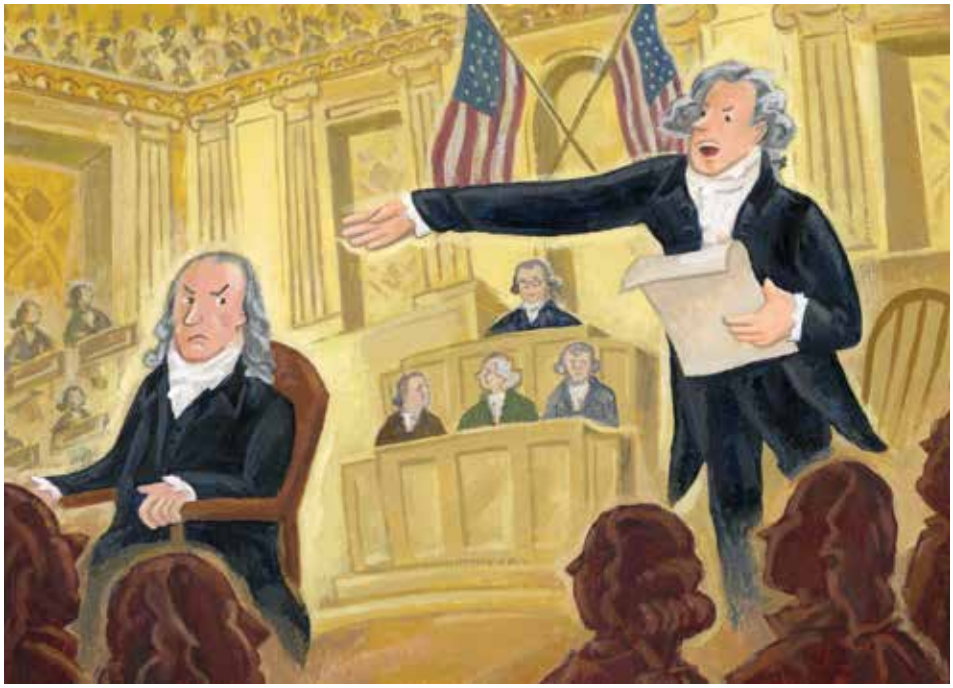

LEGAL LORE

The Impeachment of Justice Samuel Chase and the Rise of Judicial Review

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Only one justice of the U.S. Supreme Court has ever been impeached—Samuel Chase—but he was not convicted by the Senate. The story of his impeachment proceedings in 1804 and 1805, most notably published exactly a century ago in the third volume of former senator Albert Beveridge's *The Life of John Marshall* (Houghton Mifflin Co. 1919), may show we were even more divided as a country during Chase's time than we are now.

In the waning days of President John Adams's administration, the Federalists passed the Judiciary Act of 1801. It reorganized the federal circuits and provided for the appointment of a number of additional judges, who, of course, were Federalists. But with the election of a Republican wave in 1800, Congress rescinded that act. There was open warfare between the parties, not only as to who the judges should be but also as to what they should be able to do.

The Federalists were believers in judicial review. In *Federalist* No. 78 Alexander Hamilton wrote, "The interpretations of the laws is the proper and peculiar province of the Courts." This was certainly general understanding of the key framers of the Constitution. But Jefferson and his Republicans were adamantly opposed to such review. He wrote, "To consider the judges as the ultimate arbiters of all constitutional questions would place us under the despotism of an oligarchy." Republicans believed the ultimate power was in the state and that an individual state legislature could declare an act of Congress to be unconstitutional.

Jefferson was many things, including a cutthroat politician. His view was to replace as many Federalist judges as possible. Those he could not replace he would try to get impeached. This general Republican position was reinforced by Justice Marshall's decision in *Marbury v. Madison*, which established the principle of judicial review. Republican Senator William Branch Giles of Virginia was heard to comment, "We want your offices for the purpose of giving them to men who will fill them better." The Republicans believed that judges could be removed for any cause the majority party deemed sufficient.

The first target for Republicans was Judge John Pickering of New Hampshire, who held Federalist views. President Jefferson sent information to the House of Representatives charging Pickering with "unlawful rulings" and being intoxicated while on the bench, and demanded his impeachment. There was no dispute as to the intoxication charge. Judge Pickering was also insane. Nonetheless, the Federalists objected that he had

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committed no "high crimes or misdemeanors." The House voted impeachment. Pickering was convicted in March 1804. Henry Adams, a great admirer of Jefferson, in his classic history of the United States, called the result "an infamous and certainly an illegal conviction."

Within one hour of the conviction of Judge Pickering, the House voted impeachment against Justice Samuel Chase. Chase was a partisan Federalist. He had incurred the wrath of Republicans by presiding over many trials under the Alien and Sedition Act, which resulted in convictions for what we would now regard as an exercise of free speech but what was then proscribed by the act. These trials were *causes célèbres* of the time. Chase also expressed his political views in open court, and he was often rude and demeaning to counsel whose positions he did not favor. There were eight counts in the impeachment—many based on conduct at particular trials, such as charging a grand jury with an "intemperate and inflammatory political harangue," and some as vague as "prostituting" his judicial character. John Quincy Adams noted that "[t]hese articles contained in themselves a virtual impeachment not only of Mr. Chase, but of all the Judges on the Supreme Court from the first establishment of the national judiciary."

Chase's trial in the Senate did not commence until a year later, in February 1805. The delay was due to two things: the election of 1804 and the Louisiana Purchase. Jefferson did not want to make a direct issue of judicial review in the campaign. And there was a dispute about whether the Louisiana Purchase was legal. If an approach oriented toward states' rights was truly how the nation should be governed, how could such states legally acquire such vast land masses? The ability to make such an acquisition was much more consistent with the Federalist view of the Constitution—that a central government had such powers.

Vice President Aaron Burr, fresh from his famous duel with Alexander Hamilton, presided over Chase's trial. Burr was under indictment in two states arising from the duel. He had only four weeks left to serve as vice president. There was a big outpouring of spectators for the trial. The senators were joined by many members of the executive branch and by Chief Justice John Marshall and the associate justices of the Supreme Court—who could be the next targets of impeachment if Chase were to be convicted.

Fifty-four witnesses were called. As John Quincy Adams noted, "hours of interrogation and answers were consumed in evidence to looks, to bows, to tones of voice and modes of speech—to prove the insufferable grievance that Mr. Chase had more than once raised a laugh at the expense of Callender's [one of the defendants in an Alien and Sedition case] counsel, and to ascertain the tremendous fact that he had accosted the Attorney General of Virginia by the appellation of 'Young Gentleman.'" Marshall himself was called as a witness and, by all accounts, was very nervous and hesitating. The Republicans examined him about his conduct of high-profile trials, trying to establish that he was "more" fair and judicious than Chase.

The closing arguments took several days. The House trial managers prosecuting Chase argued that this was an inquest on Chase's arbitrary and overbearing conduct and that he did not deserve to be a judge. Chase's defenders argued that he had committed no high crimes and misdemeanors—at most, he had violated principles of politeness but not principles of law.

The rebuttal proved disastrous for the House managers. Shifting positions on the standard for conviction, Joseph Nicolson of Maryland made the argument that Chase was indeed guilty of criminal acts. The other House managers were aghast and tried to repair the damage done by these remarks. The closing arguments had focused the senators on the importance of the standard of "high crimes and misdemeanors," but there was not consistent agreement on that among the Republican advocates of impeachment.

At the time, the Senate had 34 members; 22 votes were necessary for conviction, and there were eight separate counts. The Senate voted on March 1, 1805—only days before Burr's term expired. The votes differed by count, but the highwater mark for conviction was only four-fifths of what was necessary. Six Republicans voted not guilty on every count.

Chase had been acquitted and the attack on Federalists judges was over. John Marshall was never impeached. And judicial review became an accepted part of American government. ■