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Impeachment as Last Resort to Safeguard Democracy? Removing the Head of Government in Different Institutional Settings

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Abstract Democracy would essentially fail if, despite an electoral defeat, the government refused to concede office. This possibility is a constant uncertainty that democracy has to deal with, which makes it fragile in terms of its survival. This was on full display after the 2020 U.S. presidential election, including the resulting denials by then President Trump and his followers and their attempts to have the results overturned, with the dramatic conflict culminating in the storming of the Capitol. Trust, but also mistrust, is constitutive for democratic regimes: Trust makes democracies exist, and mistrust makes them survive. Recent studies have pointed out that institutionalized mistrust has long been ignored as relevant for democracies; however, there is little if any research attention given to the most pivotal tool in terms of institutionalized mistrust, namely the vote of no confidence or the early removal of the head of government from office. In parliamentary systems, parliament can remove the head of government for political reasons, whereas presidentialism lacks this option, although impeachment provides a way of removal on legal grounds. This article aims to prompt further reflection in comparative government on how these tools of institutionalized mistrust are defined in the context of different institutional settings and what potential risks they entail. Do the principles of trust and mistrust actually differ between the various governmental systems? Finally, does impeachment strengthen democratic principles, or is it pathological in a sense that it might even foster autocratization?

Keywords Parliamentarism · Presidentialism · Democratic Backsliding · Mistrust · Autocracy

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Impeachment als letzte Waffe zur Rettung der Demokratie? Zur Abberufung des Regierungschefs in unterschiedlichen institutionellen Kontexten

Zusammenfassung Demokratien würden im Kern scheitern, wenn sich eine Regierung trotz Wahlniederlage weigerte, ihr Amt zu übergeben. Diese Möglichkeit stellt eine ständige Unsicherheit dar, mit der die Demokratie umgehen muss, was sie in Bezug auf ihr Überleben zerbrechlich macht. Nach den Präsidentschaftswahlen in den USA 2020 wurde diese Fragilität deutlich, als der damalige Präsident Trump das Ergebnis leugnete und seine Anhänger versuchten, die Ergebnisse zu annullieren, was in der Erstürmung des Kapitols gipfelte. Für demokratische Regime sind Vertrauen, aber auch Misstrauen konstitutiv: Vertrauen lässt Demokratien existieren, Misstrauen lässt sie überleben. Jüngere Studien zeigen, dass institutionalisiertes Misstrauen lange Zeit zu Unrecht in seiner Relevanz für Demokratien unterschätzt wurde. Es mutet seltsam an, dabei dem wichtigsten Instrument für institutionalisiertes Misstrauen, nämlich dem Misstrauensvotum oder der vorzeitigen Amtsenthebung des Regierungschefs, kaum bis keine Aufmerksamkeit geschenkt zu haben. In parlamentarischen Systemen kann das Parlament den Regierungschef aus politischen Gründen absetzen, während im Präsidialsystem diese Möglichkeit nicht besteht, obwohl ein Amtsenthebungsverfahren eine Möglichkeit zur Absetzung aus rechtlichen Gründen bietet. Dieser Artikel soll zu weiteren Überlegungen in der vergleichenden Regierungslehre anregen, wie diese Instrumente des institutionalisierten Misstrauens im Kontext unterschiedlicher institutioneller Rahmenbedingungen definiert werden und welche potenziellen Risiken sie mit sich bringen. Unterscheiden sich die Prinzipien von Vertrauen und Misstrauen tatsächlich zwischen den verschiedenen Regierungssystemen? Und schließlich: Stärkt das Amtsenthebungsverfahren die demokratischen Grundsätze, oder ist es in dem Sinne pathologisch, dass es sogar eine Autokratisierung fördern könnte?

Schlüsselwörter Parlamentarismus · Präsidialismus · Entdemokratisierung · Misstrauen · Autokratie

1 Introduction

Referring in particular to the second half of the 20th century, Kyvig (2008, p. 383) asked whether the United States had entered the age of impeachment. Indeed, after Donald J. Trump's presidency with two unsuccessful impeachment trials, this question may be even more pertinent today. Moreover, it has gained further currency, if not urgency, when considered with the broader question of how democracy can effectively protect itself against internal threats to democracy.

Among other things, democratic constitutions are characterized by periodic competitive elections. This characteristic links, in turn, to the basic democratic requirement that those in power be elected and (can be) voted out of office, directly or indirectly by the people. Democracy would essentially fail if, despite an electoral defeat, the government refused to concede office, making this possibility a constant

uncertainty that democracy has to deal with, and which makes it vulnerable and fragile in terms of its survival (Manow 2020). This fragility was on full display after the 2020 U.S. presidential elections, when then President Trump denied the election results and his followers attempted to have the results overturned, with the dramatic conflict culminating in the storming of the Capitol on January 6, 2021. This borderline revolt was an exceptional event in the United States, though not entirely unique, but in line with the phenomenon of democratic backsliding, given that today's democracies tend to erode and decline incrementally (Bermeo 2016, p. 14).

In general, executives can pose a serious hazard through aggrandizement, which is why there are safeguards to curb them, not least through means of removing heads of government early. The different procedures to this end, moreover, touch upon a defining feature distinguishing different types of democratic government: In parliamentary systems, parliament can remove and change the head of government for political (and even for any) reasons, whereas in presidentialism, the legislature enjoys certain checks vis-à-vis the executive in decision-making processes, but “the executive cannot be deposed by the legislature during the term” (Cheibub and Przeworski 1999, p. 223). These differences in structuring the executive–legislative relationship bear tremendous significance for government. However, a variety of questions about votes of no confidence and early executive removal and their use remain underexplored or, rather, have fallen out of focus in political science, both on a theoretical and an empirical level (but for an exception, see, e.g., Hazan and Rasch 2022). Nevertheless, as “[d]emocracy requires vigilant protection against presidential tyranny” (Tribe and Matz 2018, xxi), impeachment could be seen as a last resort to halt democratic backsliding. Hence, the mechanisms of executive removal, as aforementioned, appear as timely as ever.

Largely, trust within democracies toward its institutions such as parliaments has diminished in recent decades (Foa and Mounk 2016, p. 6; Lührmann 2021, p. 1021), though this does not pose an entirely new trend (e.g., Lipset and Schneider 1983, p. 401). At the same time, while scholars often tend to interpret the decline of political trust as a crisis of democracy, this does not necessarily have to mean an increase in mistrust.¹ The latter is not merely the absence of the former, certainly not in political terms. Instead, both are essential and thus constitutive for democratic regimes: Trust makes democracies exist, and mistrust makes them survive. Without trust that enables democracy's existence in the first place, democracy would simply lack its foundation (e.g., via elections and representation), and yet this existence is maintained only by mistrust all along. Mistrust safeguards a democratic order by setting compulsory rules, e.g., for preventing concentration of power and instead institutionally limiting power. Recent studies have pointed out that the relevance of institutionalized mistrust to democracies has long been ignored (Rosanvallon 2008; Suntrup 2018; Van De Walle and Six 2014; Warren 2018). However, even in this context, little research attention is given to the most pivotal tool in terms of institu-

¹ Following Matthew Carey (2017, p. 12), I chose the term “mistrust” and not “distrust.” “Mistrust” describes a general sense of the unreliability of a person or thing, whereas “distrust” is based on a specific past experience. For the purpose of this article, this seems to be appropriate and plausible.

tionalized mistrust, namely the vote of no confidence or, in broader terms, the early removal of the head of government from office: “The mechanism through which the legislature may terminate the government ... remains significantly understudied” (Lento and Hazan 2022, p. 503). Similarly, research dedicated to impeachment has focused on its process, feasibility, and judicial aspects or on its historical development (Kyving 2008; see also, e.g., Gerhardt 2019) but has not so far considered impeachment as a tool of institutionalized mistrust.

This raises two overarching research questions. First, how can institutionalized mistrust be embedded in each of the two basic systems of democratic government? Do the principles of trust and mistrust actually differ between the various governmental systems, or are they in principle equivalent but rather “translated” in institutionally different ways? Second, the aforementioned recent trends in the United States as well as in multiple democracies beg the question of how impeachment affects the survival of democratic orders. Does the impeachment proceeding safeguard democracy? Or is it pathological in a sense that it might even foster autocratization? By addressing these questions, this article aims to respond to research gaps.

As a guiding premise, I assert that institutionalized mistrust is crucial for a functioning democracy. A further key premise is that parliamentary systems are based on trust, and, accordingly, there are institutional mechanisms for mistrust. In presidential systems, the reverse is the case: Mistrust is already embedded in the institutional–governmental arrangement itself; therefore, hardly any further institutional precaution of mistrust is in place. Impeachment may not, or may no longer, prove to be an effective tool of mistrust, not only by its nature and its current design but especially as a result of the rigid bipartisan polarization in the United States. This circumstance likewise motivates the analysis at hand. Given that democratic governmental systems are also configured institutionally with trust or mistrust, a clear distinction between parliamentary and presidential governmental systems must be made. This is necessary not only for comparative government in general but to capture in particular the potential shortcomings of the institutional arrangements of executive removal in presidential systems. The United States is an exemplary type of presidential government, but again, tendencies of growing polarization (see also the introduction to this special issue), especially toward democratic backsliding, warrant an examination of executive removal. As a contrasting comparative case, the governmental system of the Federal Republic of Germany is considered, since there exists a stable parliamentary system with a constructive vote of no confidence. This concrete case can also be considered particularly appropriate because this variant of institutionalized mistrust has been the role model for many new constitutions as well as constitutional amendments in the recent past, with the general trend in parliamentary systems moving toward introducing the constructive vote of no confidence (see Lento and Hazan 2022).

Accordingly, in a first conceptual step, this article addresses the concepts of trust and mistrust in connection with representative democratic government forms. From this point of departure, we can make a general distinction between separation of powers (mistrust) and fused powers (trust), which comprise different institutional arrangements but that furthermore coincide with different logics of mistrust, such as unified or divided government or the crucial role of parties or party groups.

Second, the article revisits the classic typology between presidential and parliamentary government and, informed by the concept of institutionalized mistrust, provides for a more systematic delineation between these two types. Building upon this compounded analytical framework, the article next revisits in compact fashion the constructive vote of no confidence in Germany, which appears to fulfill its primary purpose of ensuring political, even executive, stability without executive aggrandizement. This comparative frame will enable a more comprehensive insight into impeachment in the context of institutionalized mistrust, as well as into potential reforms. Thus, the study subsequently examines impeachment in the United States anew on the basis of the prior conceptual and comparative basis. As will be shown, impeachment proceedings are to a certain extent political, but they nevertheless remain subject to a judicial character conceived in a late 18th-century context, before the development of modern representative democracy. As a result of social and party political polarization, impeachment seems at risk of becoming dysfunctional. Finally, the conclusion will reflect on whether the United States may need to adapt its constitutional provisions for removing the chief executive in order to protect the political system from antidemocratic subversion. The comparative contrast with the German parliamentary case with an adapted constructive vote of no confidence can prove particularly informative to this end. The rigid impeachment arrangements in the United States might wind up protecting authoritarian presidents. Concerns for safeguarding democratic government could hardly be a more timely matter for political science, which the United States in particular reveals.

2 Trust, Mistrust, and Democracy

It would be difficult to conceptualize democracy without trust, as the main idea is already a deeply trustworthy one—that is, when people come together to build a society and live by rules they have agreed on. After all, in democracies, those in power rely on citizens to voluntarily comply, which requires trust, especially considering that those in power have been previously entrusted with authority in elections. This nexus has long been conceptualized from a variety of political science scholars (see, e.g., Dahl 1989; Hooghe and Stiers 2016; Luhmann 2014; Warren 1999), but there is also an emphasis on horizontal interpersonal trust (Inglehart 1999), which—or at least one major facet of which—is expressed in social capital: “Democracies are more trusting—and trusting countries have a larger share of their citizens joining voluntary associations” (Uslaner 1999, p. 141). It involves, moreover, a reciprocal relationship, one that is a central underpinning for democratic processes, especially over time, as trust, for instance in system-theoretical terms, translates not only into specific support for current policies or politicians but also into diffuse support for the (democratic) political system (Easton 1965). This close relationship is echoed by scholars such as Robert Putnam (1994) and Francis Fukuyama (1996), who assert a crucial impact of trust on democratic system performance.

In the end, however, trust and democracy constitute a far more complex relationship because democracy requires a certain degree of mistrust as well (Warren 2018, p. 91). This suggests that trust and mistrust are similarly valuable and do not

represent counterparts or two extremes across a continuum, nor are they mutually exclusive, as often intuitively assumed, but rather are able to coexist and fruitfully complement one another. Yet both have their potential perils: Too much trust could be tantamount to being, e.g., naïve or overly obedient, while excessive mistrust may lead to, e.g., paranoia, proliferation of conspiracy beliefs, and the like. If mistrust fosters centrifugal dynamics, this may in turn be a breeding ground for populist and disintegrative democracy (Mühlfried 2019, p. 18). However, healthy mistrust does not preclude trust but rather includes it, but then also implies calculating the possibility of failure and preparing for it in anticipation (Mühlfried 2019, p. 12). Obviously, trust is indispensable for a functioning political system, though simultaneously, abuse of trust can only be deterred by institutionalizing mistrust (Schaal 2004, p. 167), and researchers increasingly regard mistrust at least as important as trust for democratic regimes (Suntrup 2018; Rosanvallón 2008; Warren 2018). They argue that in order to emphasize the positive inherent value of mistrust, it must be institutionalized. Thus, constitutions as such can be viewed as both an act of trust *and* of mistrust, since they have both a power-enabling and a power-limiting impact. As such, separation of powers is already an integral part of mistrust, since it is supposed to prevent an abuse of power by diffusing power among different branches and, moreover, by allowing them to control, or at least check and moderate, each other.

Finally, the option to remove the head of government from office presents a sort of ultima ratio to prevent various abuses of power. Remarkably, though, the growing discourse regarding mistrust and the attested importance of institutionalized mistrust has not yet led to a more in-depth study and analysis of what is not only an already readily available but also a rather specific and far-reaching procedure to express mistrust—the vote of no confidence/impeachment—in democracies.

3 Parliamentary and Presidential System, or Trust and Mistrust

To this day, scholars of political science have been unable to establish a consistent typology on governmental systems, as there is still disagreement on what criteria are necessary to define them. Most authors use two features: (1) the survival and (2) the origin of the executive branch (Ganghof 2021; Lijphart 1992; Mainwaring 1993). Based on this scheme, presidential systems typically entail separate elections of legislative and executive branches that also enjoy fixed terms of office. The origin of the executive is thus separated from parliament, though exceptions are possible. More important, the survival of the head of the government is independent of parliamentary confidence, trust, or support. In parliamentary systems, both the origin and survival of the executive are said to depend on the legislative. However, Lento and Hazan (2022, p. 503) correctly emphasize that, while all parliamentary systems provide the parliament with a vote of no confidence, not all of them stipulate the need of a parliamentary vote to take office (e.g., Scandinavian countries and the United Kingdom, to name a few). As a consequence, the investiture is negligible, and there is only one decisively distinguishing feature, namely the survival of the executive branch (Laver 2006; Steffani 1979; Tokatlı 2020). Instead of building mixed types

or independent hybrids that supposedly combine the best of both worlds, a “return” to a dichotomous classification appears to be reasonable, enabling a more sophisticated subclassification by adding other characteristics (e.g., form/structure of the dual executive or direct election of the head of government). Based on this clear and consistent definition (Tokatlí 2020, p. 136), practically every system of government—even the difficult cases of semipresidential (e.g., France), assembly-independent (Switzerland), and prime-ministerial systems (e.g., Israel)—can be categorized² and thus assigned to one of the two basic concepts of institutionalized trust or mistrust.

There are many reasons to undertake this reclassification and return to the dichotomous distinction, also in the context at hand. For one, its key feature touches upon another scholarly controversy. With the academic debate about which government system is more advantageous (see, e.g., Horowitz 1990; Linz 1990), conventional wisdom has long been that presidentialism has a propensity to become autocratic. However, the empirical evidence provided so far for this claim seems wanting. Of course, parliamentary systems exhibit benefits, as they enable the parliament to remove governments from office early for political reasons, though votes of no confidence can ultimately be carried out for any reason, whereas in presidential systems, removing the chief executive from office is subject to specific constraints and usually has a countermajoritarian character (e.g., qualified majority). As such, the parliamentary form allows parliament to flexibly respond³ to governmental crises and thus might be less vulnerable to autocratic tendencies (Gerring et al. 2009). But even presidential systems have experienced trends to make impeachment proceedings easier, leading to a sort of “parliamentarization” (Kailitz 2007, p. 190). These considerations have occasionally been voiced in the United States, with some groups demanding an institutional adoption of no-confidence votes and thus a transformation to a parliamentary system (Reuss 1974).

Despite being both a defining and a crucial feature, the vote of no confidence has been poorly researched to date (see, e.g., Lento and Hazan 2022, p. 504). Although research and studies on the origins of government (e.g., coalition formation) are plentiful (see Chaisty et al. 2018; Cheibub et al. 2004; Diermeier et al. 2002; Müller and Strøm 1997; Strøm et al. 2010; Strøm and Nyblade 2009), there is little research on the termination of government. Typically, those studies dealing explicitly with the no-confidence vote address other accompanying phenomena such as the process itself or the factor of party congruence in multilevel settings (Browne et al. 1986; Martínez-Cantó and Bergmann 2020), or they deal instead with the vote of confidence and its function in the context of governing (e.g., Diermeier and Feddersen 1998; Huber 1996).

From a historical perspective, the parliamentary vote of no confidence emerged from the British impeachment procedure that was then in place, which, although a political ruling, was based on a judicial act aimed at holding a governing authority accountable (Rosanvallon 2008, pp. 206–207). Thus, while political accountability

² An exception might be the European Union.

³ A further feature of the vote of no confidence, not expressed in its use but in its very existence, is its anticipatory effects. Because all actors know about it, it holds the majority together.

replaced judicial accountability in the British parliamentary system, presidential systems such as those in the United States and several Latin American countries founded in the late 18th and 19th centuries did not take this leap. This leaves democratic systems with two basic options to end the term of their chief executives early: a lumbering judiciary or a more efficient political accountability tool.

While there are clearly substantial differences between these approaches, both involve the precaution of removing governments as a last resort, effectively, to safeguard democracy. However, the different governmental systems are based on diverging concepts of trust in general. In parliamentary systems, the relationship between the two core governmental powers of parliament and executive can be regarded as being based on trust, expressed, as well, via the fusion of powers. On the other hand, in presidential systems the cooperation between the two branches could be characterized by mistrust. Generally, separation of powers is supposed to hinder misuse of power, or as Constant puts it, “every constitution is an act of distrust” (cited in Rosanvallon 2008, p. 7). It seems as if the founders of the U.S. Constitution felt especially obliged to this principle when they built several checks and balances into the written constitution (see Hamilton et al. 2001). Both branches can check and counteract each other, but trust cannot simply be withdrawn. It requires overcoming significant obstacles to voice mistrust or to exercise institutionalized mistrust, which is precisely limited by the constitutional design. Thus, in other words, even the mistrust is mistrusted by the constitution. In a similar vein, Schaal (2004, p. 150) perceives “mistrust as a vanishing point of democratic hope” in the United States. He argues that the endemic mistrust of Americans toward their own political system derives as a consequence from the vote of no confidence incorporated into the Constitution, without its having explicitly established such a vote (Schaal 2004, p. 82). While an intriguing interpretation, at the same time it seems quite naïve because it neglects the significance of impeachment or the possibility of removal as the last resort for addressing institutionalized mistrust when the constitutional requirements are fulfilled.

Against this backdrop, in parliamentary systems trust usually can be given and withdrawn at any time, which makes the relationship between the legislative and executive branches characterized by trust. The branches form a unit of action, and at the same time they also share a common destiny and embody the so-called new dualism as in fused powers (the government and legislative majority vs. the opposition), as opposed to the “old dualism” of stricter separation between legislative and executive branches. This, in turn, quite often necessitates coalitions of at least two parties. In a first step, parliament grants the government trust, and then the government enjoys the trust, which is usually expressed in stable legislative majorities, and governs until the trust is withdrawn one day (or the legislative period ends). Put short and simple: When majority governments⁴ are formed, they typically can rely on that legislative majority, at least until the trust is withdrawn for whatever reason by parliament. In contrast, in presidentialism the relationship between the two core powers is shaped by mistrust. With its stricter structural separation of powers coupled with

⁴ Minority governments, which are not as rare as one might think, work differently. Typically, they have to gain the trust of other members in parliament in order to achieve a legislative majority.

functional power-sharing, the system is engineered to prevent the executive branch from dominating governance by rendering cross-institutional compromise pivotal for political practice. Also, at the level of parties and parliamentary groups, the basic arrangements of institutionalized trust and mistrust play out in political practice: In parliamentary systems parliamentary groups vote collectively as an essential part of group discipline, whereas in presidential systems this discipline tends to be rather weak.

Thus, if the object of analysis is the form of government and thereby the relationship between the two core branches of power, then the fundamental distinction lies in the relationship of (in)dependence or (mis)trust. Since both possible forms—parliamentary or presidential—are expressions or specifications of democratic regimes, the presidential system also has an institutional provision built in to remove the chief executive. However, impeachment does not exhibit a political character, which is indicative of this type of government system, but a democratic character as a signifier of an institutional mistrust. In this case, we move up a notch on Sartori's (1970, p. 1044) ladder of abstraction and grasp the political regime as the object of our analysis. However, this provision—presidential impeachment—operates as a matter of ultimate principle, namely after all other checks and balances have failed, and then only according to particular arrangements. After all, separation of powers already mistrusts the executive *a priori*, but at the same time it also mistrusts the legislature and denies it the power to remove the chief executive at will. Nevertheless, the (mistrusting) constitution still calculates a possibility of failure into the equation and provides for early removal of the chief executive from office in certain cases such as incapacitation, abuse of power, or other risks to democratic government.

In consequence, the vote of no confidence can be conceived as a distinguishing feature when it comes to differentiating within democratic governmental systems, one that is given in the case of parliamentary democratic government and not given for presidential ones. Strøm (2000, p. 285) refers to the parliamentary system as a delegation regime, and thus a vote of no confidence becomes a manifestation of the chain of legitimacy as an elementary part of the type of government. More generally at the level of political regimes, a removal procedure *vis-à-vis* the executive is indispensable for every democracy. All of this indicates how not only trust but also mistrust are necessary and essential for democratic orders as well (Rosanvallon 2008). Or as I would put it: Trust makes democracies exist; mistrust makes them survive.

4 Origins of Removal in the Constitution and its Process

Although criticism and discontent with governments are indispensable in democracies and are vital parts of democratic rule, early removal of chief executives from office, though theoretically an option, is rarely exercised in practice. This is not just the case in presidential systems. For example, in German parliamentary democracy, in which the constitution envisages a comparatively more restrictive form of vote of no confidence (Lento and Hazan 2022, p. 514), speculations were

raised about an early removal of former Chancellor Angela Merkel during her third term (2013–2017) in office, when there was a rare numerical left-wing majority in parliament that could depose the conservative Christian Democratic government. Regardless of the arithmetic opportunity for the center to left parties, as well as their likely higher political–programmatic congruence, the use of the constructive vote of no confidence was never seriously considered at any point during her 16-year chancellorship.⁵ Here it is important to note that majority coalitions often are the outcome of highly complex (e.g., reaching consensus within parties and across different levels) and multilayered negotiations (see, e.g., Siefken 2022; Hornung et al. 2020). While multiple motives may be at play, the parties take pains in order to be able to survive as a government as long as possible, practically ruling out using the vote of no confidence as a spontaneous act.

In the United States, as usually the case in presidential systems, the anticipation or “shadow” of a potential early removal is not applicable, certainly not for popularly elected chief executive, nor even typically for the regular course of governing. However, recent developments in the United States cast doubt on the validity of this long-held schematic distinction. Impeachment discussions have become highly noticeable at least since Donald Trump’s presidential election victory in 2016, and his presidency even witnessed two⁶ impeachment trials. This is remarkable given that—including those two—there has been a total of only four such proceedings against three different presidents in the history of the United States so far, i.e., in more than 250 years. However, while a major factor, this development is not solely a result of the polarizing figure Donald Trump but is also due to the rising political polarization of the country since the second half of the 20th century, in which discussions of (potential) impeachments have become increasingly popular and prevalent (Kyvig 2008, pp. 388–389). Surprisingly, the 44th U.S. president, Barack Obama,⁷ is the only president since Jimmy Carter (1977–1981) against whom no articles of impeachment were filed in the United States House Committee on the Judiciary (Ginsburg et al. 2021, p. 114; Tribe and Matz 2018, p. 184), though serious calls in the House of Representatives were made. These exceptions aside, the debates have increased in nearly all presidencies, and more impeachment proceedings have actually been initiated. These developments have been accompanied by party polarization, which has increased in the United States in recent decades (Sonnicksen 2022, p. 248) and coincides with growing party discipline. In this respect, there is a tendency toward logics of parliamentary systems resembling “government versus opposition” dynamics and thus also toward a respective—and actually nonpresidential government—concept of trust. As political actors adopt this tendency and carry out the impeachment process with mechanisms of trust, this last resort of institu-

⁵ Likewise, there are already preliminary discussions about removing the current German government—the first coalition of three party groups—early from office, although there is no viable alternative option to the current cross-camp coalition (Tokatlı 2022, p. 169).

⁶ It is worth noting that Donald Trump was impeached the second time while still in office, but the Senate trial took place after he was voted out of office by the electoral college.

⁷ However, there were several efforts to impeach the president but without getting into serious talks about initiating a trial (see Tribe and Matz 2018, pp. 182–184).

tionalized mistrust becomes contradictory, if not pathological, to the presidential institutional settings.

In the following, I will shed light on the aforementioned two tools, impeachment and the constructive vote of no confidence. Subsequently, the following examines the impeachment procedure in the United States, turning then to a condensed depiction of the German constructive vote of no confidence, which will be used as a comparative reference for a better understanding of the specific case of impeachment. This serves both to draw a sharp contrast between the two tools and to illustrate why modifying the nature of impeachment may offer a more effective way to protect democracy in the long run.

4.1 Impeachment in the United States

Although institutional mistrust has been addressed more frequently in recent studies, far more can be found on trust. Similarly, regarding impeachment, much work has examined its historical development and even increased politicization in the past few decades. However, there is much reason to take the novel approach of assessing impeachment with regard to its character as an instrument of institutional mistrust and its potential weakening or strengthening of the democratic order. The power to remove the head of government in the United States embodies a fundamental idea of the U.S. Constitution, namely checks and balances. Obviously, it is also related to Montesquieu's understanding that one power should be able to stop another if one abuses its power. Or as Benjamin Franklin put it in his plea to the Constitutional Convention: There has to be another option other than assassination to remove a person from office abusing her or his power (Tribe and Matz 2018, p. 1). However, the constitutional framers, predominantly from the camp referred to as Federalists, also mistrusted the legislature, so they deprived—more or less—the impeachment procedure of its political character and emphasized judicial elements.

Surely any impeachment proceeding may have political roots or motives, and yet such proceedings must be initiated only when specific relevant legal—or judicial—incidents have occurred. Thus, every constitutional scholar today is supposed to be familiar with Article 2 in Section 4: “[t]he President, (...), shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” Whereas “treason” and “bribery” are quite well defined and commonly understood, “high crimes and misdemeanors” are not. With this wording, the framers extended the scope for interpretation yet also obscured the meaning. A closer study of the *Federalist Papers* confirms this mixture of political and judicial elements (Hamilton et al. 2001, Art. 65):

“A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL [emphasis in original], as they relate chiefly to injuries done immediately to the society itself.”

While British procedures served as a model for impeachment in general, unlike its British predecessors, impeachment in the U.S. Constitution should not lead to a legal punishment as a result, indicating or suggesting its political purpose and, to an extent, the political nature of grounds for impeachment (e.g. “violation of some public trust”).

Moreover, the further proceedings are also inspired by the British case, since the dual legislature shares duties in that the House of Representatives initiates the impeachment process, and the Senate is in charge of conducting the trial and ultimately decides the verdict (Kyvig 2008, p. 387). Commonly, the very first step is initiated by a Judiciary Committee investigation, which may recommend one or more articles of impeachment to the House of Representatives. Then the House may adopt the articles or vote by an absolute majority to impeach, regardless of the recommendations. Subsequently, the Senate, chaired by the Chief Justice of the Supreme Court, conducts the trial against the president and eventually convicts or acquits. For a successful impeachment, a two-thirds majority of the Senate present is required. There is no possibility of appeal against the judgment of the Senate, nor is the president capable of pardoning anyone from impeachment (Art 2, Section 2, Clause 1.). Furthermore, the convicted president can be excluded from office for life in a separate vote. Thus, in addition to a temporary withdrawal of trust, Congress is able to clearly express its mistrust of the president by permanently disqualifying him or her from public office. This can be understood as an effective safeguard in order to secure democracy or, in the terminology of the Federalists, the republic.

There are two further means of removing the president from office, both of which were included in constitutional amendments designed to respond to particular historical events. Thus, the third section of the 14th Amendment deals with the possibility of disqualifying persons in public office if they participate in an insurrection or rebellion against the country and/or the constitution. Likewise, the 25th Amendment enables the president to be declared incapable of holding office, without or against his or her will, by the vice president and a majority of secretaries. For this, a written declaration is required attesting his or her incapacity. While presidents can assure in such cases, also in written form, that they are capable of holding office, the Congress is called on, and both houses must confirm the incapacity by a two-thirds majority.

4.2 Constructive Vote of No Confidence in Germany

After the second World War, the constitutional founders and occupying powers endeavored to avoid the flaws of the *Weimarer Reichsverfassung*, or what they perceived as factors contributing to the downfall of the Weimar Republic, in order to prevent a repetition of the totalitarian catastrophe of the Nazi regime (Friedrich 1949, p. 465). One main issue was the vote of no confidence, which in combination with other issues (fragmented parliament, party polarization, popularly elected president, etc.) led to fragile governments on account of the possibility of removing the government from office early by negative majorities. In fact, the very threat of doing so was sufficient, and governments stepped down preemptively (Birke 1977, p. 80; Fromme 1999). Only two governments were deposed by the *Reichstag* in the Weimar Republic following successful votes of no confidence (Berthold 1997,

p. 82), yet simply this threat caused premature government terminations. On average, governments lasted barely a year, and none managed to hold office for more than 2 years (Felker 1981, p. 363; Saalfeld 2002, p. 113); therefore, the vote of no confidence was considered harmful, and efforts were made to change this in the Basic Law of the Federal Republic of Germany.

Considerable controversy arose on this issue during negotiations for the Basic Law, and indeed, concrete proposals varied significantly (Birke 1977, pp. 86–88). Although the constructive vote of no confidence was eventually developed and passed after long negotiations, members of the Christian Democratic Union (CDU) and Christian Social Union (CSU) in particular advocated for a fixed term of government, thus, what is known as *the* defining element of presidentialism.⁸ In addition to the perils of negative majorities destabilizing governments, a further concern was the potential vacancy in government as a result of removal or resignation. Due to their fragility and lack of legitimacy, caretaker governments⁹ ought to be prevented, hence the proposal for a fixed term of government with no option of early removal was made. Another model that was debated at the time could be referred to as the “suspensive no-confidence vote,” which had been introduced in a number of *Länder* constitutions. Any parliamentary vote to remove the head of government becomes effective only if parliament elects some other candidate in a specified time span. A third model with minor deviations is what I would call a “semiconstructive vote of no confidence.” Following a successful vote of no confidence, parliament has a certain amount of time in which a new successor has to be elected; when the deadline is not upheld, parliament is dissolved, and snap elections will be scheduled. Again, there are examples of this third variant from the German *Länder*,¹⁰ but currently at least one example can be found at the national level, namely Croatia (and, to a lesser extent, Belgium¹¹). Yet those concerns also served as a bridge that led to the arrangement of a constructive vote of no confidence, finally proposed by the Social Democratic Party of Germany, which combined a vote of no confidence with the election of a new chancellor following a “uno-actu-principle” (Birke 1977, p. 91).

Throughout the more than 70-year history of the Federal Republic of Germany, the Bundestag was only twice asked to vote on a constructive vote of no confidence in line with Article 67 of the Basic Law. Given the rigid design as well as the two-and-a-half party system that prevailed for a long time, the sparse use of the vote

⁸ Interestingly, in the Bavarian state constitution to this day, there is no explicit provision specifying the way a no-confidence vote is to be implemented, but rather merely a reference that the government has to resign if the relationship of confidence between government and parliament has been damaged. Admittedly, this leaves room for interpretation as to whether a vote of no confidence exists, but past experiences as well as other passages in the Bavarian constitution indicate that it does.

⁹ In this sense, “caretaker government” refers to a government that replaces the government for different reasons; it is in place for an interim period until an election is held or a new government is formed.

¹⁰ These examples are the state constitutions of Berlin, Hesse, Rhineland-Palatinate, and Saarland.

¹¹ In Belgium, the parliament has two options: It can directly elect a new candidate, which would vote the government out of office, or it can submit a motion without a successor. If this last motion is approved by a majority, i.e., the parliament does not elect a successor but expresses a vote of no confidence in the government, then the monarch may dissolve parliament.

of no confidence is not at all surprising. While the only two votes at the federal level had different outcomes, they reveal several parallels: Although the first one failed and the second one resulted in a coalition change, both were followed shortly thereafter by a “vote of confidence” (*Vertrauensfrage*) instigated by the chancellor and followed by snap elections, which confirmed the “winner” of the parliamentary vote on Article 67 in each case (Tokatlı 2022, p. 170).

However, the constructive vote of no confidence turns into a problem whenever the government loses its majority yet a new candidate is incapable of gathering an absolute majority in parliament, as was the case in the chancellorship of Willy Brandt in 1972 (Meinel 2019, pp. 75–76). Only the head of government may be able to unravel the political dilemma if she or he resigns ahead of time. If she or he does not intend to do so, then there is just one alternative option that could only be initiated by the chancellor. It lies solely at the disposal of the chancellor to pose a “vote of confidence” to parliament. In the event that this is answered negatively, she or he can request the federal president to dissolve parliament and call early elections. The “vote of confidence” can thus be seen as an institutional complement to the constructive vote of no confidence. On the one hand, it helps to ensure government stability, and on the other hand, it creates an opportunity to free the system from possible institutional paralysis due to the high hurdles of the constructive vote of no confidence.

Furthermore, it is possible to design the constructive vote of no confidence in a less complex manner. For example, instead of an absolute majority, a relative majority may be required, as is the case in Hungary. Besides a constructive vote of no confidence, there is also the possibility to have the right of self-dissolution of parliament, as this would lead to the same effect as voting the government out of office. The bottom line is that institutionalized mistrust even within parliamentary systems can take various faces. Although there is no perfect solution for the most appropriate type or variant, it is nevertheless worthwhile to abandon rigid processes and sharpen tools of institutionalized mistrust. The constructive vote of no confidence in Germany, as well as its modified versions in other countries, may serve as a model for making institutionalized mistrust more effective and simultaneously protecting it from any parliamentary abuse. Against this background, the U.S. impeachment process will be examined next.

5 Cases of Impeachment Against U.S. Presidents

First, it is worth noting that the unclear and vague definition of “high crimes and misdemeanors” allows for different interpretations, and with that, different party strategies. No matter which party seeks to initiate impeachment, they are quicker to identify an impeachable act, whereas the party that holds the presidency tends to reject the charge—or, as the case may be, its qualification as an impeachable offense—and claim that it has been politicized by the other party’s supporters. Accordingly, the most crucial questions pertain to who is able to impeach and acquit or convict the president and at which point, all of which, of course, raise both conflicts and controversies. Although the saying of former President Gerald Ford that an im-

peachable offense is “whatever a majority of the House of Representatives considers it to be” (Tribe and Matz 2018, p. 25) may exaggerate the power of Congress, nevertheless, in the end, the final judgement is indeed located in Congress (Lichtman 2017, p. 18), without any other superior authority being able to check or revise this ruling. Party polarization and the subsequent trend into a parliamentarization of the U.S. system have the potential to impart a different character to the process. Still, it would be misleading to conclude that impeachment is equivalent to the no-confidence vote in parliamentary systems (Horst 2020, p. 67), since the Constitution was not intended to be used in this way nor is impeachment designed to be used for (purely) political motives.

As in other areas in political science, it is important to note that only cases that actually have occurred can be considered here; cases in which Congress may have knowingly refrained from action (i.e., did not initiate impeachment), even though a trial would have been appropriate, are not. However, in the latter case, a deliberate refraining could have or could contribute to negative institutional consequences, as in the Iran–Contra affair under the presidency of Ronald Reagan and the growth of the imperial presidency (Kyvig 2008, p. 390; Hinojosa and Pérez-Liñán 2006, 670).

Against this backdrop, it was Andrew Johnson, a Democrat, who was the first president to be impeached, yet he survived the Senate trial despite a clear majority of Republicans in the Senate. Retrospectively, his impeachment was not a surprise. His path to the presidency had been peculiar, as the Republican Abraham Lincoln nominated him as his vice president within the National Union Party during the Civil War. However, only a few months after his reelection in 1865, Lincoln was assassinated, and Johnson suddenly became president. His presidency was affected by major challenges, such as the contested post–Civil War “Reconstruction,” which resulted in various disputes between Congress and president and ultimately led to the first impeachment. Johnson, a Democrat, faced a Republican majority in both houses. Also, because of his unpopular approach to Reconstruction, Congress enacted the Tenure of Office Act,¹² which Johnson vetoed, only to be overridden by Congress with the required two-thirds majority. Nevertheless, the actual breach of the Tenure of Office Act was not the real cause for impeachment; rather it was to prove that a president should not pursue a policy rejected by the legislature (Berger 1974, p. 274).

Eventually Johnson was acquitted because seven Republicans joined the Democrats, with one vote short of the required two-thirds majority for conviction. A main reason for this was the rules of presidential succession for a vice president at the time, which would have elevated the controversial speaker pro tempore of the Senate, Benjamin Wade, to the presidency. In the end, Johnson managed to not get impeached only because several Republican senators thought the successor would have been worse than him (Lichtman 2017, p. 17). Even though there was a large political majority supporting his removal from office, interestingly, the remainder of Johnson’s presidency was rather calm after the failed voting (Lichtman 2017, p. 18).

¹² This law was designed to constrain presidents by requiring Senate consent for dismissals of secretaries. This was even more grave back then, considering the Senate did not meet regularly and frequently, and thus larger impacts could be expected.

Ironically, the only president who lost his office as an indirect result of the impeachment process was not actually impeached at all. Instead, Richard Nixon resigned beforehand in anticipation of a likely recall by the Senate because he learned that a vast majority of Republicans, i.e., his own party, in Congress would support the charges (Hinojosa and Pérez-Liñán 2006, p. 669; Jacobson 2020, p. 772). In the wake of the Watergate scandal, the Senate had almost no choice but to signal the president's conviction in potential impeachment proceedings. This case stresses the point that political majorities are not necessarily a determining factor insofar as the abuse of power is both obvious and tremendous. Additionally, public opinion matters, and with Nixon, too, a correlation can be found between public opinion and incentive to vote for impeachment (Jacobson 2020, p. 772). Here, impeachment somehow served its purpose properly even though it was not invoked; the very threat of being removed from office was sufficient (Kyvig 2008, p. 387). Yet it appears as if successful impeachment depended on, or was strongly influenced by, public opinion.

According to Tribe and Matz (2018, p. 21), the impeachment against the 42nd president, Bill Clinton, was misused by partisans opposed to him and thus “exemplifies bad judgment in the realm of impeachment.” Actually, an extramarital affair with an intern was the trigger, and perjury and misuse of office by not answering, and even falsely answering, to Congress were regarded as “high crimes and misdemeanors” and thus were the official reasons for the impeachment. When compared to the reasons for “impeaching” Nixon, the Clinton case may seem like a minor issue, and indeed, the partisan aspect of the impeachment process should not be ignored. After all, the proceedings were initiated at a time when the Republicans controlled both houses by a majority, which was the first time this had occurred for four decades. During the impeachment trial against Clinton, public opinion was in favor of the president, which likely prompted Democrats in the Senate to vote on behalf of their fellow Democrat president (Jacobson 2000, p. 16). The disparity between the proposers and the public was striking in that the public considered impeachment to be too harsh. This played out in the 1998 midterm elections by, unusually, giving the Democrats a gain of five additional House seats and leaving “unchanged the Senate’s partisan balance in a marked departure from most midterm elections where the president’s party generally loses seats” (Hritzuk 2000, p. 470). After all, removal was regarded as an unreasonably punitive punishment for such a minor crime as this (Horst 2020, p. 76).

Both an exception and an interesting case is the 45th president, Donald Trump. In his term of office, he managed to double the total number of impeachment cases in the government’s history of about 230 years. Thus, in a span of just four years, he became the first president for whom the House of Representatives initiated an impeachment trial twice. The first charges were abuse of power, for one, and obstruction against Congress (Jacobson 2020, p. 771), for another, and the second case was initiated on the grounds of incitement of insurrection (Jacobson 2021, pp. 276–278).¹³ The latter is particularly notable for several reasons because on

¹³ Other than impeachment, two further articles of the Constitution were seriously discussed to evoke an early removal and, at the same time, permanent disqualification from any office. Both the 14th and

January 13, 2021, the House of Representatives initiated the impeachment process. This was barely one week after the official confirmation by Congress of the electoral vote results of the presidential election, which Donald Trump had lost, and thus it had become clear that his term would end anyway with the inauguration of Joe Biden on January 20. Therefore, this measure also meant that Trump would become the first president to be judged by the Senate after leaving office. In other words, it was less about the concrete removal from office as a withdrawal of trust than it was about a permanent declaration of mistrust and the denial of any public office in the future. The Democrats considered the damage done by Trump to the Constitution, the institutions of democracy, and democracy itself to be so substantial that this step—as unlikely as it was to ultimately succeed due to the majority situation, not to mention most Republicans’ overt lack of support—had to be taken.

Essentially, impeachment was intended as a last resort to safeguard democracy from an unhinged executive branch before it misuses its power. That this can be viewed as a serious threat to democracy is reflected by the efforts to invoke additional articles besides the regular impeachment process in an attempt to prevent Trump from being elected in the future. And indeed, the images of January 6 in the wake of the storm on the Capitol were quite disturbing. While they did trigger unease among observers, they also exposed the fragility of democracy. Both the refusal to recognize legitimate election results and the incitement of the masses not to recognize those results were considered impeachable offenses. Although seven Republican senators voted for conviction, the vote ultimately fell short, indicating that impeachment has pathological dimensions when even blatantly democracy-threatening offenses are committed but left unsanctioned. Eventually, that restrictive constitutional design of institutionalized mistrust, coupled with the increasing party polarization that has been apparent in the United States for quite some time, yields to that pathology. Additionally, Republicans could have acted strategically and voted for conviction to disqualify Trump as a candidate in future elections. However, it appears that partisan political concerns outweighed the final vote.

Ultimately, party polarization has two consequences: While it facilitates the use or initiation of the process, it also leads to difficult execution. The fronts might harden between the parties, and parties might be more likely to impede presidents’ lives by impeachment, but parties are now so cohesive internally that voting against one’s own president is unlikely. As well, in the case of the Republicans, fear of their own (radicalized) partisan base and supporters appears to be a relevant factor in their decision not to vote against Trump, thus emphasizing a pathological thesis of the instrument. As party polarization increases, the dynamics of trust and mistrust in the presidential system are shifting to the expense of mistrust, making impeachment as a safeguard against abuse of power increasingly overshadowed by party-political strategies. An already weak institutionalized mistrust is decreased further, but without providing any institutional counterbalance as is typically available in parliamentary systems of government. Clearly, neither of these are appropriate settings

25th Amendments to the Constitution were explored, but neither was applied. While the former is generally ambiguous in its application, the latter concerns the declaration of the president’s incapacity and the delegation of duties to the vice president.

for protecting the democratic order. Moreover, it appears urgent to consider ways of revising the removal procedure in order to ensure its effectiveness as a safeguard.

6 Conclusion

In short, there is good reason for having institutionalized mistrust in a democratic system of government, and recent developments in the United States all the more so invite revisiting the impeachment process. Both the constructive vote of no confidence as it exists in Germany and impeachment as it exists in the United States are rather rigidly designed mechanisms and thus cumbersome tools. But unlike in the Federal Republic of Germany, the impracticality, if not the *de facto* utter impossibility, of executive removal in the United States may result in serious challenges for the democratic regime. As a result of increasing party polarization and the coinciding strategic changes in both parties, the U.S. presidential system loses its inherent character of institutionalized mistrust. The long-observed polarization of parties, both between parties and within them, has significant implications for the instrument and contributes to its pathologization. Furthermore, the judicially founded impeachment process is becoming both increasingly politicized and obsolete due to the high thresholds for exercising this mechanism of institutionalized mistrust to safeguard democracy. As things stand, impeachment proceedings display highly pathological characteristics. Of course, impeachment does not have to be either abandoned outright or rendered overly “user friendly” (e.g., through simple majorities or passage by the House of Representatives alone). Instead, the tool itself must be made applicable to fulfill its purpose. Similar to the constructive vote of no confidence, the very (applicable) existence of such a tool—not necessarily just the ongoing use of it—may be sufficient because it could prompt anticipatory effects.

Conversely, a historical perspective on the Weimar Republic may suggest that overproportioned use of the vote of no confidence—one that also had relatively low thresholds and, in combination with a directly elected president, could lead to an unchecked government—led to, contributed to, or at least facilitated destabilization. Thus, both systems would be well advised to adjust removal options in their respective circumstances by ensuring that these instruments are protected from misuse. For the United States, this might mean simplifying the impeachment process without losing its legal character. For example, the majority requirement in the Senate could be reduced to a three-fifths majority, or the trial in the Senate could be foregone.

There is an obvious lack of effective institutional mistrust toward the president in the U.S. political system, which can foster, if not promote, the process of autocratization. In the shadow of this pathologically used tool, authoritarian presidents may feel well protected, with only periodically held elections as the only way to remove them from office. Moreover, when this democratic prerequisite is also challenged, in the way Trump did during the last presidential election, constitutional crises will be inevitable.

In the absence of an effective mechanism to remove a power-abusing president as a matter of last resort, democracy in the age of populism is losing essential safeguards and seems to be more or less vulnerable to antidemocratic complots. It

is clear that trust is essential for a democracy; at the same time, however, the lack of institutionalized mistrust can seriously jeopardize democracy. How American politics functions has changed a great deal since its establishment less than three centuries ago. The prior analysis should reveal that it is high time to explore ways of finally adapting political mistrust institutionally for the survival of democracy.

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