

Connecticut Debate Association

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Shepaug Valley High School, Westhill High School and Wilton High School

Resolved: Impeachment should be based solely on criminal offenses and tried through the judicial system.

Do Americans want impeachment proceedings? It's the wrong question to ask.

By DANIELLE ALLEN, WASHINGTON POST, reprinted in The Hartford Courant, SEP 23, 2019

As an impeachment inquiry of sorts trundles along in the House, both Judiciary Committee Chairman Jerrold Nadler, D-N.Y., and Speaker Nancy Pelosi, D-Calif., agree that the House "cannot impeach the president against the will of the American people." Reporters pivot from this point to poll numbers, such as those from the Politico-Morning Consult poll released Wednesday that shows that 37 percent of voters support beginning impeachment proceedings, while 50 percent are opposed. So on whether impeachment should move forward, it's a closed case, correct?

No, it is not.

The problem is that the American people want contradictory things. For the past 18 months, I've had the pleasure of working on an American Academy of Arts and Sciences commission on the practice of democratic citizenship. That's a mouthful, but it poses an important question: What do we want for the future of our democracy? To try to deepen our understanding of the range of potential answers to that question, our commission has held 50 engagement sessions around the country with Americans of a remarkable range of backgrounds — ethnic, religious, socioeconomic and ideological.

One consistent theme is that Americans of all kinds are tired of information overload and the challenge of sorting out good from bad information in the sound and fury of our hurricane-force media ecosystem.

As one organizer of youth civic leaders from across the political spectrum put it, young people routinely tell them: "Just tell it to me straight." They want clear verdicts on facts.

The word verdict comes from the Latin, *vera dicere* — to speak the truth. To tell it straight. The purpose of an impeachment by the House, which is an indictment, and of a trial in the Senate, is to achieve a verdict — straight talk on matters of fact.

Did our president break the law? I believe that America wants a clear verdict on this question. I also suspect America no longer believes it can have such a thing.

A fair, sound and decent impeachment process, in which our lawmakers remember that their duty is to uphold and enforce the law, ought to yield a verdict — whether of guilt or innocence — that provides a genuinely stable point for our understanding of what we have been living through for the past three years. I believe America does want such a stable anchoring point.

The problem, as best as I can tell, is that Americans do not believe that politicians will vote according to what the law demands — or worse, that they will actively work to obscure the facts throughout the proceedings. As a result, we face an impeachment process with little legitimacy, and the prospect of an outcome that the losing side will spin as purely political. Our division and our factionalism make it hard for us to get past the problem of misinformation. This is what Americans definitely do not want.

This means that the only way for an impeachment process to work — in the sense of reaching a clear verdict and not in the sense of removing a president — is for those who are leading it to make blindingly clear that their interest is the law and not politics. In this regard, Nadler's tight focus on legal questions and his willingness to buck Pelosi's hyperpolitical approach to the question of impeachment provide the only possible path to a legitimate proceeding that the American people could come to support.

We do need to work collectively to rebuild the legitimacy and viability of the processes we use for fact-finding and truth-telling. Impeachment is a process that is supposed to deliver not the removal of a president but, in the first instance, just a verdict. It is a process that, like any other judicial proceeding, is supposed to deliver a stable picture of the facts of the matter and their significance. An honest approach to impeachment requires accepting that you do not know upfront where the proceedings will come out. You can't start with a verdict, or else the process is worth nothing.

So do the American people want impeachment proceedings? That's not the right question. Instead, pollsters should be asking: Do the American people indeed want a clear verdict on whether our president has broken the law? I believe — and hope — that they do.

Impeachment's Role in History: Part Legal Creature, but Mostly Political

By Brent Kendall, The Wall Street Journal, Sept. 29, 2019 1:05 pm ET

The legal definition of the phrase 'high Crimes and Misdemeanors' was left flexible by the framers of the Constitution to protect against abuses of power

WASHINGTON—The impeachment process is a delicate blend of constitutional law and political calculation, with even the definition of the phrase "high Crimes and Misdemeanors," which refers to allegations of misconduct by officials, remaining extraordinarily flexible.

That phrase—part of Article II of the Constitution, which provides for the removal of the president, vice president and other civil officers for treason, bribery or other high offenses—was meant to be malleable from the start.

The framers of the Constitution "were sufficiently practical to know that no charter of government could possibly anticipate every future contingency, and they therefore left considerable room for play in the joints," former Chief Justice William Rehnquist wrote in his book "Grand Inquests," about the impeachments of President Andrew Johnson and Justice Samuel Chase. (Both men were acquitted.)

The concept of impeachment was taken from English law, where the definition of what constituted a removable offense was developed ad hoc, on a case-by-case basis. But the power was viewed at its core as a legislative check to protect the republic from executive abuses, said University of Missouri law professor Frank Bowman, author of "High Crimes and Misdemeanors: A History of Impeachment for the Age of Trump."

"Certainly among the key ideas was that abuses of executive power would be impeachable," he said.

A call record released by the White House shows President Trump asked Ukrainian President Volodymyr Zelensky to "look into" former Vice President Joe Biden and his son. WSJ reads the key moments from the rough transcript of the call.

President Trump's interactions with Ukraine could open him up to three main types of abuse-of-power allegations, Mr. Bowman said: That he abused his authority as commander in chief, as well as his powers in the U.S. diplomacy and law enforcement arenas, by seeking to work with a foreign state against a domestic political adversary.

If the House of Representatives charges a president or other government official by approving articles of impeachment, a trial is held in the Senate, where a two-thirds vote is required for conviction.

It's well accepted that not all crimes are impeachable. On the flip side, some alleged abuses of power have been deemed impeachable, even if they aren't crimes.

President Johnson's impeachment in 1868, for example, was the product of a bitter post-Civil War battle between the White House and the Congress over Reconstruction. Whether Congress used its impeachment power properly in that case continues to be debated today.

In modern times, Congress impeached U.S. District Judge Alcee Hastings of Florida in 1988 and removed him a year later because of bribery and perjury concerns, even after a jury acquitted him of similar charges in a federal-court case. (He was elected to Congress in 1992 and remains in office.)

In total, the House has voted to impeach 19 federal officeholders; eight have been removed from office by the Senate. The most recent came in 2010, with the removal of U.S. District Judge Thomas Porteous Jr. after the Senate found him guilty of taking bribes and making false statements.

No president has been removed from office by Congress. President Richard Nixon resigned in 1974 rather than face impeachment.

Bill Clinton was the only other president to be impeached, based on charges of lying under oath and obstruction of justice stemming from the Monica Lewinsky affair. The Republican-led House Judiciary Committee in recommending impeachment said Mr. Clinton "has undermined the integrity of his office, has brought disrepute on the presidency, has betrayed his trust as president, and has acted in a manner subversive of the rule of law and justice."

The Senate acquitted him in 1999. No Democrat voted against the party's standard-bearer.

Senators at the time cited an array of factors in their deliberations, such as whether Mr. Clinton did what was alleged, whether it was a crime, whether it was a high crime, and whether the offenses justified the political equivalent of the death penalty.

Democratic Sen. Tim Johnson of South Dakota said that while Mr. Clinton's conduct was "deserving of public condemnation, and even possible prosecution within the judicial system, it simply does not rise to the level of extraordinary danger to the nation that justifies removal from office."

Sen. Robert Byrd (D., W.Va.) among other things cited poll numbers showing the public didn't want Mr. Clinton removed, which he said helped "tip the scales" for allowing the president to remain in office.

Republicans in turn argued that impeachment wasn't a popularity contest, and they sought to stick more closely with standards in a criminal trial—proof beyond a reasonable doubt—which most believed were met.

Sen. Mitch McConnell (R., Ky.) said the evidence firmly established Mr. Clinton's guilt, adding, "Perjury and obstruction hammer away at the twin pillars of our legal system: truth and justice."

That case, of course, came during a period of deep partisan politics. The House's current impeachment inquiry against Mr. Trump comes at a time when the political rancor is perhaps even more intense. This time, Democrats are likely to favor impeachment and Republicans to oppose it.

Legal experts said that, unlike a court case, impeachment proceedings are intended to have a political dimension, because the decision about whether to remove someone from office is inevitably a political judgment.

Harold Krent, a professor at the Chicago-Kent College of Law, said lawmakers in the Trump deliberations will be confronted with a range of political concerns, including the type of hearings to conduct and "whether this is something you want to do right before an election."

"There is this notion of having the impeachment power only when you really need it," Mr. Krent said.

Members of Congress, he said, will be mindful of how their impeachment deliberations will be received by voters, and more broadly about the precedents they'll set.

"The future," he said, "is a restraint on what you do today."

Congress Can't Ignore a Clearly Impeachable Offense

By Cass R. Sunstein, Bloomberg, September 23, 2019 12:34 PM

If Trump pressured Ukraine to investigate Biden, that's "an egregious abuse of authority" and the Constitution would require the House to act.

There are a lot of misconceptions about impeachment. Incompetence isn't impeachable. It's terrible for a president to violate the oath of office, but doing so is not, by itself, an impeachable offense. Even posing a danger to the American people isn't a legitimate basis for impeachment.

Under the Constitution, what is necessary is a "high crime or misdemeanor," meaning an egregious abuse of presidential authority. Some crimes would not count; consider shoplifting or disorderly conduct. An action that is not criminal might be impeachable; consider a six-month vacation, an effort to jail political enemies or an abuse of the pardon power (by, for example, pardoning associates who have engaged in criminal activity at the president's behest).

If you want to understand what counts as impeachable, read the Declaration of Independence. The Constitution's impeachment provisions were written against the background set by the Declaration.

Read against that background, one thing becomes blindingly obvious: If the president has clearly committed an impeachable offense, the House of Representatives is not entitled to look the other way.

Impeachment is the mechanism by which "We the People" are supposed to be protected against such abuses as treason, bribery or systematic violation of civil liberties. In the face of such abuses, the House is not permitted to decide that because of political considerations, it will stay its hand.

It is not yet clear what happened during a July 25 telephone conversation between President Donald Trump and Ukrainian President Volodymyr Zelenskyy. It has been reported that Trump repeatedly pressed Zelenskyy to work with his personal lawyer, Rudy Giuliani, on an investigation into largely discredited allegations of misconduct by former Vice President Joseph Biden and his son, Hunter Biden. It has also been suggested that Trump reviewed and reassessed foreign aid to Ukraine with the specific goal of pressuring Zelenskyy to undertake that investigation.

Viewed in the light of the founding period, these are grave matters. At a critical moment during the Constitutional Convention of 1787, Virginia's George Mason drew a direct link between the impeachment provision and presidential selection:

No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? ... Shall the man who has practiced corruption & by that means procured his appoint in the first instance, be suffered to escape punishment, by repeating his guilt?

An effort to press a foreign government to investigate a political adversary and his son is a uniquely horrific constitutional wrong. It is a violation of civil liberties as well as democratic processes. In Massachusetts, where the American Revolution began, defenders of the proposed Constitution saw a clear connection between the impeachment power and protection of freedom: "Thus we see that no office, however exalted, can protect the miscreant, who dares invade the liberties of his country," wrote a pseudonymous author (probably James Sullivan, under the name "Cassius") in the Massachusetts Gazette on Dec. 21, 1787.

If Trump did use foreign aid as a mechanism for pressuring Ukraine to investigate a political adversary, the constitutional answer is clear: He committed an impeachable offense.

If he did not use foreign aid for that purpose, but merely (merely?) pressed the nation's president to work with his personal lawyer to investigate Biden and his son, the answer is almost equally clear. It's an egregious abuse of authority for the president — who has a lot of leverage over economically dependent allies, including Ukraine — to ask foreign leaders to initiate an inquiry into alleged misconduct by a potential political opponent.

It's important to note that reports about conversations between Trump and Zelenskyy are merely that. Because of their seriousness, the House is right to investigate them — and to do so in a way that respects the office of the presidency and the millions of Americans who voted for Trump.

For Democrats, of course, it's tempting to focus on political considerations, above all the 2020 election. No one can rule out the possibility that from the Democratic point of view, impeachment might prove counterproductive.

In a constitutional gray zone in which it's not clear whether presidential misconduct rises to the level of a high crime or misdemeanor, elected officials are entitled to exercise their discretion. They can stay their hand. But if a president has committed an unambiguously impeachable offense, political considerations are not supposed to matter.

If you're doubtful, you might consider the words of James Madison, a driving voice behind the impeachment provision and the Constitution as a whole. During the lengthy debate at the Constitutional Convention on July 20, 1787, Madison noted that the president "might pervert his administration into a scheme of speculation or oppression." Speaking just 11 years after the signing of the Declaration of Independence, he feared that presidential "corruption" might be "fatal to the Republic."

Madison did not use the word "fatal" very often, and he never used it lightly. It's worth keeping that word in mind.

Cass R. Sunstein is a Bloomberg Opinion columnist. He is the author of "The Cost-Benefit Revolution" and a co-author of "Nudge: Improving Decisions About Health, Wealth and Happiness."

Trump Doesn't Need to Commit a Crime to Be Kicked Out of Office

By Neal K. Katyal, *The New York Times*, Sept. 25, 2019

The Constitution is clear that the standard for an impeachable offense is political, not criminal.

An important line of defense for President Trump against the House decision to formalize impeachment proceedings is that he did not commit a crime. In this view, asking a foreign government to investigate your chief political rival is not a "thing of value" for purposes of campaign finance statutes, meaning that there was technically no violation of federal criminal law.

But the potential criminality of the president's conduct is not the full picture. Our founders deliberately drafted the Constitution's impeachment clause to ensure the potential grounds for impeachment would cover more than criminal activity.

The White House memo summarizing the president's July 25 phone call with Ukraine's new president (it's not really a transcript) contains devastating facts. It shows that the president of Ukraine asked President Trump for help buying Javelins (an antitank weapon system) and that Mr. Trump's next words were, "I would like you to do a favor, though," after which he requested information about CrowdStrike (an American cybersecurity firm) and his leading 2020 opponent, Joe Biden.

That is brazen conduct — and it took place the day after Robert Mueller testified in Congress, perhaps when Mr. Trump felt liberated from the shadow of the Russia investigation. It shows the president trying to outsource his political opposition research to a foreign government in exchange for enabling the purchase of weapons from the United States. Even Richard Nixon, who knew a thing or two about opposition research, never thought to outsource the Watergate break-in to a foreign government.

To make matters worse, before the call record of that conversation was released on Wednesday, President Trump pointed to it as exculpatory evidence. It makes you wonder what will be revealed about other calls, contacts or additional forms of impropriety that informed a whistle-blower complaint that led to leaks to reporters about the phone call. Mr. Trump's attempt to gain a personal political favor is not simply astoundingly bad judgment, it is antithetical to our democracy. If Americans cannot trust that their elections are immune from foreign interference, there will be a legitimacy crisis in American democracy itself. Furthermore, by doing this, Mr. Trump opened himself up to blackmail. He gave the Ukrainian government a weapon to wield over him — if he didn't do their bidding, they could have gone public with what he had done.

That's why our founders wrote the impeachment clause to be broader than criminal activity. Many crimes are not impeachable (jaywalking, for example). Other activity isn't necessarily criminal but is obviously a basis for impeachment (not defending the United States against a foreign attack).

For our founders, the touchstone of presidential unfitness to serve was always abuse of the public trust. They viewed the president as having a fiduciary obligation to the American people — just like trustees — and if the president violated that duty, he should be impeached. The first Congress discussed as one of the obvious bases for impeachment the

possibility that a president dismissed “meritorious officers.” Or as Charles Black, the greatest scholar of impeachment, once reasoned, if the president announced a policy that he would give pardons to every police officer who killed someone in Washington, D.C., that wouldn’t be criminal but would be obviously impeachable.

Mr. Trump’s administration tried to hide the full whistle-blower complaint by attempting an end-around a federal law that requires that the full report be sent to Congress. His own Justice Department (once again) is working hard to clear him of wrongdoing. This time, the president’s appointees in that department did not even have the veneer of first allowing a special counsel investigation to proceed before trying to undermine its conclusions; they tried to stop the investigation before it even began.

The Justice Department’s involvement in this affair is striking for another reason: It is the department’s official position that Mr. Trump cannot be indicted on a charge of obstruction of justice as a sitting president. Every responsible scholar who takes the view that a president cannot be indicted says that the remedy instead is to impeach the president. But the Justice Department is trying to interfere with that impeachment process as well, going so far as to take tendentious legal positions to try to avoid the information being turned over to Congress.

To the department, the only remedy the American people have is the 2020 election — the very election that it appears Mr. Trump sought to skew by getting help from a foreign government. And if it were up to the Justice Department, the American people would have never even learned about any of this — because it issued what was a secret legal opinion to justify ignoring the Intelligence Community Whistleblower Protection Act, which requires the information to be turned over to Congress within days.

The American people need to know whether their president sought help — indeed, continues to seek help — from a foreign government to bolster his attempt to win an election. To say “wait until after the 2020 election” is to reward the problematic behavior; the whole point is that the president is trying to corrupt the democratic process by getting help from a foreign power. The president and his advisers were warned about this beginning in 2016 (remember all the fallout after his son’s “if it’s what you say, I love it, especially later in the summer”). He cannot plead ignorance. This looks like activity coldly calculated to undermine American democracy.

Neal K. Katyal (@neal_katyal), an acting solicitor general under President Barack Obama, is a law professor at Georgetown.

Beware of Impeaching Trump. It Could Hurt the Presidency.

By John Yoo, The New York Times, Sep. 24, 2019

We must avoid doing long-term harm to the president’s ability to conduct foreign policy and protect our nation.

House Speaker Nancy Pelosi authorized the opening of an impeachment inquiry over accusations that President Trump abused his foreign-relations powers to target political rivals. Realizing the gravity of the affair, the president had announced that the White House would release an unclassified and unredacted transcript of a phone call at the center of the whistle-blower complaint.

Mr. Trump already acknowledged that he had called Ukraine’s president, Volodymyr Zelensky, in July to investigate Joe Biden and his son, Hunter, for corruption. He also reportedly told his chief of staff, Mick Mulvaney, to withhold \$400 million in military aid to Ukraine.

“If the president is essentially withholding military aid at the same time he is trying to browbeat a foreign leader into doing something illicit, providing dirt on his opponent during a presidential campaign,” Adam Schiff, chairman of the House Intelligence Committee, said on Sunday, then impeachment may be the “only remedy that is coequal to the evil.”

But we should beware that rushing into an impeachment may do long-term harm to the presidency and our national security.

The Constitution vests the president with the authority to conduct foreign policy and the responsibility to protect the nation’s security. A president, even one who is possibly engaging in wrongdoing, must have confidence in the confidentiality of his communications or he will be unable to perform his constitutional duties and our international relations will fall victim to government by committee.

The framers sought to reverse the failures brought by legislative control over foreign policy. In Article II of the Constitution, they vested “the executive power” in the president, which they understood to include the power over national security and foreign affairs.

“Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand,” Alexander Hamilton wrote in Federalist 74.

The framers concentrated these powers in the president so the nation could act effectively in a dangerous world. “That unity is conducive to energy will not be disputed,” Hamilton observed in Federalist 70. “Decision, activity, secrecy and dispatch will generally characterize the proceedings of one man.”

Congressional interference into presidential conversations with foreign leaders would violate Article II. According to

Mr. Trump’s critics, the inspector general for the intelligence community can forward any whistle-blower complaint to Congress if it involves a matter of “urgent concern.”

But Congress cannot subject the president to the supervision, control or review of a subordinate officer. As the Supreme Court made clear in a 1926 case, all executive branch officials exist to assist the president in the performance of his constitutional duties. An intelligence officer cannot file a whistle-blower complaint against the president, because the president is not a member of the intelligence community; nor does a presidential phone call with a foreign leader qualify as an intelligence operation. The intelligence community works for the president, not the other way around.

Under the Constitution and long practice, the president alone conducts foreign relations. As Justice George Sutherland wrote for the majority in a 1936 Supreme Court opinion (quoting Chief Justice John Marshall), the president “is the sole organ of the nation in its external relations, and its sole representative with foreign nations.”

Beginning with George Washington’s 1796 refusal to provide the House with the Jay Treaty negotiating record, presidents have claimed the right not just to communicate with foreign leaders but also to keep national security information secret. Thomas Jefferson even expanded executive privilege to protect national security information against the courts in 1807, when he refused to testify in the treason trial of Aaron Burr (Chief Justice Marshall, presiding as trial judge, accepted Jefferson’s claim).

Here, good constitutional structure matches good policy. If Congress could regulate presidential discussions with foreign leaders, presidents and foreign leaders would speak less candidly or stop making the calls altogether. United States foreign policy — approved by the American people at each election — would be crippled.

Congress would seize the upper hand in foreign affairs, which has produced disasters such as the War of 1812 and restrictions on aid to the Allies before American entry into World War II. In the 1970s, congressional interference after Watergate handicapped the efforts of Gerald Ford and Jimmy Carter to respond to the Soviet military buildup, Communist expansion in Latin America and Africa, the fall of Vietnam and Iran’s revolution. Only with Ronald Reagan’s restoration of executive power could the United States carry out the strategy that ultimately won the Cold War.

Democrats may regret again wounding the presidency when Mr. Trump’s successors grapple with the rise of China as a global power, Russia’s revanchism, Iran’s quest for regional hegemony and North Korea’s nuclear proliferation.

But suppose the worst suspicions about Mr. Trump come true. Suppose he offered \$400 million in aid to Mr. Zelensky for damaging information about Mr. Biden.

The framers believed that “high crimes and misdemeanors” included a president who used his foreign affairs powers for personal or political gain. A special congressional committee could review classified information in secret and bring United States and foreign officials to testify under oath. The House could meet any stonewalling by cutting intelligence, military and diplomatic funding. Congress’s traditional oversight powers will force the intelligence agencies and the White House to provide the facts behind the Trump-Zelensky call and any delay in Ukrainian aid. Mr. Trump will also have his opportunity to provide a transcript of the call and to make the case that his official acts remained uninfluenced by any ulterior political motives — the same argument that won the day in the travel ban case at the Supreme Court last year.

But the founders believed that impeachment should come only as a last resort. At the end of four years, the president may be turned out of his office, Gov. Edmund Randolph said in 1788 as Virginia weighed ratifying the Constitution. “If he misbehaves he may be impeached, and in this case he will never be re-elected.”

Democratic presidential candidates are calling for impeachment. But they should realize that they themselves remain the framers’ primary remedy for presidential abuses of power. The Constitution trusts the American people, acting through the ballot box, to render judgment on President Trump. Democrats should trust the framers’ faith in the American people, too.

John Yoo is a law professor at the University of California, Berkeley, a visiting scholar at the American Enterprise Institute, and a visiting fellow at the Hoover Institution.

Constitution of the United States

Article I, Section 2: The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Article I, Section 3: 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 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.
