

Constitutional Corner – Impeaching Obama

I'll try to keep this short; I've written about impeaching the President in the past and there's not much more to say about the matter. But Barack Obama continues to press the boundaries of presidential powers, and, even though he is not going to be impeached, it is still important for you, indeed all Americans, to understand the process and the circumstances under which impeachment is appropriate. Besides, lower officials can be impeached as well, and so when impeachable offenses occur at their level, we need to keep pressure on Congress to do its duty.

"[T]he president doesn't have the authority to simply ignore Congress and say, we're not going to enforce the laws..." so said Barack Obama in January 2012. That was then, this is now, apparently. Just as Hillary was against homosexual marriage before she was for it, the President was against ignoring the Constitution before he was for it.

Before I launch into a discussion of why I think this president has earned impeachment let's ensure you understand the landscape.

We begin with Article 2 Section 4, which reads:

"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."

Two facts of note here: impeachment and subsequent conviction can only result in removal from office, and "disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States," no other penalty is available under the Constitution itself. This does not prevent a separate prosecution in civil or criminal court if a statute law was violated.

Second, impeachment can only proceed under charges of treason, bribery or "other high Crimes and Misdemeanors." The meaning of treason is itself defined in the Constitution in Article 3, Section 3, but what constitutes "levying War against" the United States, "adhering to the Enemies" of the United States, or "giving Aid and Comfort" to the enemies of the United States, leaves much to be interpreted.

Congress has impeached judges for bribery in the past and what constitutes bribery is reasonably straight forward. In 1981, Congress [impeached](#)¹ Judge Alcee Hastings, sitting as a U.S. District Judge for the Southern District of Florida, and removed him from the bench (he had been acquitted in a criminal trial of accepting a \$150,000 bribe in exchange for a defendant's lenient sentence, among other charges). Once off the

¹ http://www.senate.gov/artandhistory/history/common/briefing/Impeachment_Hastings.htm

bench, the citizens of Florida's 23rd District amazingly sent Hastings to Congress as their Representative. I'm not making this up! How was Hastings able to hold the "high office" of Representative after being impeached? Although disqualification can be a penalty of impeachment, it is not automatic, and the Senate did not so vote, so to Washington Hastings went.

But what in the world are "high Crimes and Misdemeanors?" The Framers didn't take the time to be more specific. The phrase has a long history, going back to the 14th Century and it clearly has two components: crimes, that is, violations of criminal law by a high official are one aspect; and "misdemeanors" by a high official make up the other. But what is a misdemeanor? It is not the same as a misdemeanor under criminal law, this "term of art," as it is considered, encompasses a very broad scope of misbehavior that does not result in actually breaking a law.

In 1868, President Andrew Johnson was impeached on eleven counts. These ranged from dismissing the sitting Secretary of War, to conspiring to unlawfully prevent the old Secretary from continuing in office, to conspiring to "seize, take, and possess the property of the United States in the Department of War." The final charge against Johnson was "Making three speeches to the citizens of the U.S. with intent to show disrespect for the Congress." Wow!

If you examine the eleven charges carefully it becomes evident that most are just a restatement of a single affront: not doing what Congress had ordered in the Tenure of Office Act. Johnson survived his trial in the Senate, and thus retained his office, by a single vote. He had believed the Tenure of Office Act was an unconstitutional infringement on the powers of the President and had acted accordingly. One more than 1/3 of the Senators agreed.

In 1974, impeachment articles were being prepared when Richard Nixon resigned the office. There were three charges: obstruction of justice, abuse of power and contempt of Congress, all sparked by the President's involvement in the Watergate affair. It was clear that the votes were present to convict him and when Senator Barry Goldwater brought this sad news to the White House, Nixon jumped on "Marine One" for the last time. Nixon proclaimed his innocence until his death in 1994, but in a famous 1977 interview, he uttered one of the most amazing statements by any U.S. President: "When the President does it that means it isn't illegal."

In 1998, President Bill Clinton was impeached over the Monica Lewinsky Affair. The charges: perjury before a grand jury, obstruction of justice, a second count of perjury

concerning the Paula Jones case and abuse of power. Only the first two charges passed in the House. Clinton was acquitted of the two charges by 12 and 17 votes respectively.

From these examples we can see that lying under oath, obstructing justice and abusing the power of the Presidency have been the primary focus of impeachment in the past. What has this president done that fits these criteria, and should other criteria be considered?

[Proposed \(and lengthy\) articles of impeachment](#)² can readily be found on several webpages.

Some complain of the President's actions in trying to disarm the American people; in refusing to protect our borders and by refusing to deport illegal immigrants. Others focus on his abuse of power in unleashing the IRS on conservative groups (and if you believe the IRS's actions were merely the result of overzealous agents in Cincinnati, I have a bridge I'd like you to look at).

Some believe the President should be impeached for signing into law the Patient Protection and Affordable Care Act, an unconstitutional bill in several respects (despite the "opinion" in *NIFB v. Sebelius*).

I think the President's most important power is one only obliquely mentioned in Article 2: as Commander in Chief, the President is responsible to keep the country safe from attack and/or invasion. What is happening on our southern border is nothing less than an invasion; an invasion with a simple, political purpose: to fundamentally transform America by keeping Democrats in power. The President has not only not carried out the will of the people as expressed in current law; the administration has even encouraged this invasion.

Although the President's actions may not fit the legal definition of treason, in my view they come as close as one can without crossing that line. Mexico is not formally our enemy and this is probably the only factor preventing the crossing of that line. But it is clearly a violation of the President's oath to preserve, protect and defend the Constitution, by placing party politics above our citizens' security.

Connected to this, of course, is the President's refusal to enforce an act of Congress by deporting those illegal immigrants who are caught. Although I have not read the legislation in question myself, I'm reasonably confident you will not find the phrase "catch and release" on its pages.

² <http://www.impeachobamacampaign.com/articlesofimpeachment/>

So why hasn't Barack Obama already been impeached? In 2013, Representative Steve Stockman (R-TX) gave every member of Congress a copy of Aaron Klein's book: "Impeachable Offenses: The Case for Removing Barack Obama from Office."³ The response: crickets!

Obama hasn't been and will not be impeached simply because the votes are not there to convict in the Senate. "The votes weren't there in 1998 and yet the House impeached Bill Clinton," you may retort, and you would be right; but politics sits on ever shifting sands, and today's Republicans in Congress apparently feel more harm than good will come from a failed impeachment. Besides, polls show that 2/3 of Americans do not favor impeachment of this president.⁴

But what about other administration officials? For one, I think Eric Holder should have been impeached. Instead, Congress [was reportedly preparing](#)⁵ a contempt citation when Holder stepped down. How about impeaching the IRS Commissioner for the continued harassment of conservative groups applying for non-profit status?

In Federalist 51, James Madison wrote: "*A dependence on the people is no doubt the primary controul (sic) on the government.*" I concur.

It comes down, as I think it should, to the American people. But rather than speaking with one voice, on this and other important issues, we speak with a multitude of different voices. As I've written before: we have never been so fractured in this country -- culturally, morally and politically -- as we are today; thus we will continue to muddle along in this sort of "constitutional confusion."

Americans must become educated about their Supreme Law of the land and begin exerting the sovereignty that originates in "We the People."

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³ <http://www.amazon.com/Impeachable-Offenses-Removing-Barack-Office/dp/1938067193>

⁴ <http://www.newsmax.com/Newsfront/CNN-Obama-Palin-impeachment/2014/07/25/id/584827/>

⁵ <http://www.cbsnews.com/news/replicans-prepare-contempt-citation-against-eric-holder-over-fast-and-furious/>