



A case for impeaching all living presidents of the United States

BY JONATHAN TURLEY, OPINION CONTRIBUTOR — 11/23/19 10:00 AM EST
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Every year, shoppers wait for the next big thing in holiday gifts. The “must have” this year, at least for 43 percent of them, is the impeachment of President Trump. Like frenzied shoppers, Democrats are rushing to obtain impeachment before Christmas, despite pursuing an impeachment that seems designed to fail with an incomplete and conflicted record. It also is the narrowest impeachment in history that conspicuously omits thus far the crimes that Democratic leaders in Congress insisted for years would be proven by the Russia investigation but ultimately were not.

For an academic or legal commentator, it has become perilous to even raise obvious flaws in this impeachment from historical or constitutional perspectives. It is like trying to explain to panicked shoppers on Christmas Eve that the new “Tickle Me Elmo” is an overpriced and poorly designed toy. Whether it lasts does not matter. It is all about the sheer joy of opening and playing with it for a short time before it breaks.

It really does not matter that Democrats are moving forward with an undeveloped record. They have yet to subpoena John Bolton, the former national security adviser mentioned by every public witness. They have dismissed the problem of removing a sitting president on the basis of military aid being briefly withheld but eventually released. They have brushed off the fact that two of the three direct conversations with Trump contained express denials of a quid pro quo, including one in August, before the whistleblower complaint was sent to Congress. There may be an impeachable case to be made with Bolton, who teased about an undisclosed back story, but it will not be sustainable on this record.

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More importantly, there is growing exasperation over any questions about the criminal allegations raised in the House Intelligence Committee hearings. Chairman Adam Schiff and House Speaker Nancy Pelosi have accused Trump of bribery, and Schiff repeatedly raised the elements of that crime in the hearings. Yet when some of us pointed out that his interpretation seems strikingly like the “boundless interpretation of the federal bribery statute” rejected unanimously by the Supreme Court in *Robert McDonnell versus United States*, he and others dismissed such legal definitions because “this is impeachment.” Why claim bribery at all if the definition and elements of that crime do not really matter?

Writing for the [Washington Post](#) this week, former prosecutor Randall Eliason has the answer. He argues that the actual elements of the crime are less important because “impeachable offenses are not governed by the strict terms” of the federal criminal code. Eliason has also argued that Trump saying he could pardon border agents for shooting undocumented immigrants could qualify as bribery. He said Donald Trump Jr. attending the 2016 meeting with Russians to hear alleged evidence of criminality by Hillary Clinton could constitute a vaguely defined conspiracy.

Apparently, the Clinton campaign hiring a former British spy to gather such information from Russian intelligence and other foreign sources was just politics. Now there seems to be a clear case for bribery, even if there is a problem on the elements or definition of that crime. Why? Because as Eliason concludes, the Constitution “specifically names bribery as a basis for impeachment” and that is “reason enough alone to choose that term” for the conduct of Trump. Why not call it “treason” as others have?

The fact is that past impeachments have always looked to the federal criminal code to judge the gravity of such criminal allegations. This is not bribery, but it sounds better than “quid pro quo” or some nebulous “abuse of power.” Opponents of Trump seek to use the term “bribery” precisely because it is a serious crime, but they do not want to deal with the actual legal definitions of that crime. In other words, stay away from my “Tickle Me Elmo.” It may not last long, but my kid thinks it is actually Elmo.

I have had enough. It is no fun to constantly state the obvious when no one wants to hear it. While I have objected to the conduct of Trump in Ukrainian matters as highly inappropriate, that is not enough when others demand impeachment as a way of upholding the ideals of the presidency and the aspirations of a nation. I have, therefore, decided to get into the holiday spirit and join the rush. For years, there has been an academic debate over the ability to retroactively impeach our officials. I do not think it is constitutional, but this is not the season for such technicalities.

President Obama made unjustified and extreme claims in withholding witnesses and documents when Congress investigated such matters as the “Fast and Furious” scandal. Democrats backed Obama but now claim Trump can be impeached for obstruction for going to court to challenge such demands. Seeking judicial review now appears to be impeachable, and there is a line of presidents who should have been removed for asking courts to resolve conflicts with the legislative branch.

Obama also pledged during his campaign to deal with the infamous CIA terrorist torture program but, soon after entering office, assured agency employees that no one would be prosecuted, a legal question that was supposed to be left to the Justice Department. The Obama administration then pressured other countries, with threatened loss of support, to drop investigations against those responsible for the torture program.

President Bush suspended military aid to 35 countries simultaneously to pressure them to guarantee United States immunity in potential cases at the International Criminal Court. He implemented a terrorist torture program and gave false information to Congress to justify a war that killed tens of thousands and cost hundreds of billions of dollars. He refused to comply with subpoenas from Congress and had the audacity to go to the courts, like Trump has been doing in the impeachment inquiry.

President Clinton committed perjury, as a federal court later found, but Democrats in Congress insisted that some “crimes do not raise to the level of impeachable offenses.” Now, however, even poorly defined noncrimes are fair game for the same Democrats who voted against the Clinton impeachment. Besides, Clinton committed a host of other violations like Trump, such as pardoning his half brother and a Democratic donor who was not only a fugitive but entirely unrepentant over his crimes.

Once we are untethered from constitutional language, there is no reason we cannot retroactively include posthumous impeachments. The range of such impeachable actions go back to George Washington, who refused material evidence to Congress on a costly failed military campaign and later refused to show Congress the Jay Treaty with Great Britain. While he eventually relented under pressure, he should have been impeached and removed within a few short weeks, or at least before Christmas.

Some of these retroactive impeachments might appeal to the 57 percent of Americans who do not support the current impeachment, including the 45 percent expressly opposed to it. So let us simply give everyone in the country a happy holiday and impeach them all. Anyway, who needs “Tickle Me Elmo” when you have the “Endlessly Impeachable Potus”?

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