

HOW TO TALK ABOUT IMPEACHMENT: PREVENTING HARM TO THE COUNTRY

In the Atlantic, Yoni Appelbaum has a very long article making the case that the House should start the process of impeaching Donald Trump as a way to start reining in his abuses. At its core, the article argues that impeachment serves as a check on abusive Executive power, whether or not it succeeds. It describes five benefits of starting an impeachment proceeding.

In these five ways—shifting the public’s attention to the president’s debilities, tipping the balance of power away from him, skimming off the froth of conspiratorial thinking, moving the fight to a rule-bound forum, and dealing lasting damage to his political prospects—the impeachment process has succeeded in the past. In fact, it’s the very efficacy of these past efforts that should give Congress pause; it’s a process that should be triggered only when a president’s betrayal of his basic duties requires it. But Trump’s conduct clearly meets that threshold. The only question is whether Congress will act.

I don’t agree with everything in the article. I’ll also note that it dismisses the possibility Trump will be charged with bribery, with virtually no real consideration of the issue.

The Constitution offers a short, cryptic list of the offenses that merit the impeachment and removal of federal officials: “Treason, Bribery, or other high Crimes and Misdemeanors.” The first two items are comparatively straightforward. The Constitution

elsewhere specifies that treason against the United States consists “only in levying War” against the country or in giving the country’s enemies “Aid and Comfort.” As proof, it requires either the testimony of two witnesses or confession in open court. Despite the appalling looseness with which the charge of treason has been bandied about by members of Congress past and present, no federal official—much less a president—has ever been impeached for it. (Even the darkest theories of Trump’s alleged collusion with Russia seem unlikely to meet the Constitution’s strict definition of that crime.) Bribery, similarly, has been alleged only once, and against a judge, not a president.

I’ve argued there’s a good deal of evidence Trump *did* enter in a *quid pro quo* agreement – Trump Tower and dirt on Hillary for sanction relief and help with Syria and Ukraine – that would meet even the narrowed standards of bribery laid out in John Roberts’ McDonnell decision.

In any case, the Atlantic piece is very worthwhile. And it serves as welcome background for what I was initially trying to write when I wrote that bribery post.

First, there are more reasons than just Trump’s compromise by Russia to pursue impeachment. Rashida Tlaib laid out the following in the op-ed that preceded her “motherfucker” comment.

We already have overwhelming evidence that the president has committed impeachable offenses, including, just to name a few: obstructing justice; violating the emoluments clause; abusing the pardon power; directing or seeking to direct law enforcement to prosecute political adversaries for improper purposes; advocating illegal violence

and undermining equal protection of the laws; ordering the cruel and unconstitutional imprisonment of children and their families at the southern border; and conspiring to illegally influence the 2016 election through a series of hush money payments.

David Leonhardt laid out the reasons this way:

He has repeatedly put his own interests above those of the country. He has used the presidency to promote his businesses. He has accepted financial gifts from foreign countries. He has lied to the American people about his relationship with a hostile foreign government. He has tolerated cabinet officials who use their position to enrich themselves.

Appelbaum describes all the ways Trump violated his oath of office this way:

The oath of office is a president's promise to subordinate his private desires to the public interest, to serve the nation as a whole rather than any faction within it. Trump displays no evidence that he understands these obligations. To the contrary, he has routinely privileged his self-interest above the responsibilities of the presidency. He has failed to disclose or divest himself from his extensive financial interests, instead using the platform of the presidency to promote them. This has encouraged a wide array of actors, domestic and foreign, to seek to influence his decisions by funneling cash to properties such as Mar-a-Lago (the "Winter White House," as Trump has branded it) and his hotel on Pennsylvania Avenue. Courts are now considering whether some of those payments violate the Constitution.

More troubling still, Trump has demanded that public officials put their loyalty to him ahead of their duty to the public. On his first full day in office, he ordered his press secretary to lie about the size of his inaugural crowd. He never forgave his first attorney general for failing to shut down investigations into possible collusion between the Trump campaign and Russia, and ultimately forced his resignation. "I need loyalty. I expect loyalty," Trump told his first FBI director, and then fired him when he refused to pledge it.

Trump has evinced little respect for the rule of law, attempting to have the Department of Justice launch criminal probes into his critics and political adversaries. He has repeatedly attacked both Deputy Attorney General Rod Rosenstein and Special Counsel Robert Mueller. His efforts to mislead, impede, and shut down Mueller's investigation have now led the special counsel to consider whether the president obstructed justice.

As for the liberties guaranteed by the Constitution, Trump has repeatedly trampled upon them. He pledged to ban entry to the United States on the basis of religion, and did his best to follow through. He has attacked the press as the "enemy of the people" and barred critical outlets and reporters from attending his events. He has assailed black protesters. He has called for his critics in private industry to be fired from their jobs. He has falsely alleged that America's electoral system is subject to massive fraud, impugning election results with which he disagrees as irredeemably tainted. Elected officials of both parties have repeatedly condemned such statements,

which has only spurred the president to repeat them.

These actions are, in sum, an attack on the very foundations of America's constitutional democracy.

Russia is but one of the reasons why Trump should be impeached.

Indeed, in the last day two new pieces of evidence about the damage Trump has done with his conflicts of interest have come out. A CREW report cataloging all the conflicts of interest generated from the use of Trump properties to curry favor with him.

- CREW has identified 12 foreign governments that have made payments to Trump properties during his first two years in office, each of which is likely a violation of the Constitution's foreign emoluments clause. At least three foreign countries held events at Trump properties during his second year in office, and two of them did so after having held similar events elsewhere in previous years.
- Instead of pushing back on President Trump's refusal to divest from his business, allies in Congress have embraced the arrangement. 53 U.S. senators and representatives made more than 90 visits to Trump properties during his second

year in office, up from 47 visits by 36 members the prior year, and similarly, at least 33 state-level government officials visited Trump properties, likely resulting in taxpayer funds going into Trump's coffers.

- More than 150 political committees, including campaigns and party committees, have spent nearly \$5 million at Trump businesses since he became president. In Trump's second year in office, CREW tracked 33 political events held at Trump properties—13 of which Trump himself attended, meeting and speaking with wealthy donors.
- Special interests held at least 20 events at Trump properties during the president's second year in office. Since Trump took office, at least 13 special interest groups have lobbied the White House, some for the first time, around the same time they patronized a Trump property, suggesting that making large payments to Trump's businesses is viewed as a way to stay in his administration's good graces.

- Over the past year, President Trump made 118 visits to properties he still profits from in office, bringing his two-year total to 281 visits. CREW also identified 119 federal officials and employees who visited Trump properties over the past year, up from 70 the prior year.
- In addition to making frequent visits to his properties, President Trump and other White House staff have promoted Trump businesses on at least 87 occasions. Trump himself mentioned or referred to his company 68 times during his second year in office, more than double the 33 times he did so the prior year.
- Paying members at Trump's resorts and clubs have received benefits beyond getting occasional face time with the President. Four Mar-a-Lago members have been considered for ambassadorships since his election, and three other members—with no federal government experience—acted as unelected, non-Senate-confirmed shadow officials

in Trump's Veterans Administration.

Yesterday, the Inspector General for the General Services Administration released a report showing that GSA recognized that Trump's Old Post Office property might present a problem under the Emoluments Clause, but basically blew off reviewing what to do about it.

We found that GSA recognized that the President's business interest in the OPO lease raised issues under the Constitution's Emoluments Clauses that might cause a breach of the lease; however, GSA decided not to address those issues in connection with the management of the lease. We also found that the decision to exclude the emoluments issues from GSA's consideration of the lease was improper because GSA, like all government agencies, has an obligation to uphold and enforce the Constitution; and because the lease, itself, requires that consideration. In addition, we found that GSA's unwillingness to address the constitutional issues affected its analysis of Section 37.19 of the lease that led to GSA's conclusion that Tenant's business structure satisfied the terms and conditions of the lease. As a result, GSA foreclosed an early resolution of these issues, including a possible solution satisfactory to all parties; and the uncertainty over the lease remains unresolved.

Congress doesn't have to wait for Mueller to begin reviewing Trump's conflicts of interest. Indeed, it'd be a far better use of the Oversight Committee's time to chase down these issues than to interview Michael Cohen and in the process endanger a witness central to the Mueller probe.

Importantly, by focusing on the other ways – other than potential Russian compromise – that Trump has placed his self-interest above the good of the country, an impeachment inquiry might step beyond the debate as it currently stands, where impeachment is considered a political question, to one where it becomes a question of preventing ongoing damage to the country (on top of the legal remedy provided by the Constitution, as I noted in my bribery post).

Sure. An impeachment inquiry may not get 20 Republican votes in the Senate to impeach. But it might. In his first post after laying out why impeachment is necessary, Leonhardt laid out numbers showing that Trump is actually weaker than a lot of people assume.

In the days after I revealed that I had shared information with the FBI, I met with a few Republicans – that was a big part of the reason why I did go public. Remember, I didn't go to the FBI about Trump, I went about information about the election year attack; but I suspected – and indeed confirmed – that even key members of Congress did not understand the full scope of the attack. My goal in meeting with those Republicans was to point out the damage they were doing by running interference for Trump instead of making sure that the country mounted an adequate response to those aspects of the attack that were not public. I started one meeting with a key Republican member of Congress (we both agreed we would not reveal we had met) literally by saying I was taking a leap of faith in even meeting with him. We agree on literally nothing in politics, except that we love our country. As I left that meeting, that member of Congress told me we may agree on more than I knew.

But that conversation was not about Donald Trump. It was, instead, about how the focus on winning a political fight *over* Donald Trump was distracting from ensuring the well-being of the country.

We are almost four weeks into a government shutdown that serves just one purpose: to ensure that Donald Trump doesn't have to face Ann Coulter's criticism, and the ego damage, of admitting he failed to implement a campaign promise he never delivered over two years of two-house Republican rule. We've had stupid government shutdowns before. But never before have we failed to fund the government because one narcissistic man put his own ego above the good of the country.

Now, more than ever, it should be easy to talk impeachment *not* as a way for Democrats to win partisan advantage by taking down Donald Trump, but as a way to protect the country from the harm he is doing. For the same reason, Democrats should be especially careful about how they talk about impeachment (as this great Balkans Bohemia thread argues); because to actually prevent further damage, impeachment needs to be a sober, legitimate process. That's what impeachment needs to be about: not a political question. But a question about how to protect the one thing we all share – this country.