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More Impeachments, Please

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“In the bitter end,” fumed a Wall Street Journal editorial the day after Donald Trump’s impeachment trial concluded, “what has all of this accomplished? The House has defined impeachment down to a standard that will now make more impeachments likely.”

Let’s hope so.

Impeachment wasn’t meant to be the extreme rarity it has been throughout American history. Like other legislative checks and balances — the power to override vetoes and to reject judicial nominees, for example — the power to impeach a president (or any federal official or judge) for what Alexander Hamilton called the “abuse or violation of some public trust” was expected to be used by Congress as needed. The framers of the Constitution knew that regular elections wouldn’t suffice to protect the public from a bad president. That’s why it was “indispensable,” as James Madison told the delegates in Philadelphia, “that some provision should be made for defending the community against the incapacity, negligence, or perfidy of the Chief Magistrate.”

If that was true more than 200 years ago, when American presidents wielded far less power than they do today — when there were no nuclear missiles, no multitrillion-dollar federal budgets, no sweeping executive orders — it is even truer today.

Yet the idea long ago took hold that impeachment should almost never be resorted to, and then only in cases of serious criminal conduct. To hear Trump and his supporters tell it, the impeachment of the president was a “coup” — an illegitimate assault on the rule of law and an “end run around the ballot box.” Exactly the same language was used two decades ago by Democrats when President Bill Clinton was impeached.

“When impeachment talk is in the air,” observed the Cato Institute’s Gene Healy in a 2018 monograph, “normally sober and judicious scholars resort to violent hyperbole.” He quoted Charles Black, the renowned Yale law professor, who wrote during the Nixon impeachment hearings that, given the “dreadfulness” and “deep wounding” of impeachment, Americans should “approach it as one would approach high-risk major surgery.” In 1998, Harvard law professor Laurence Tribe testified that impeachment was “truly the political equivalent of capital punishment.” Last September one prominent Trump backer warned that removing the president through impeachment would trigger something akin to a second civil war, “from which this country will never heal.”

These overwrought analogies are grounded in cultural superstition rather than good governance. The Founding Fathers regarded the impeachment process not as an unspeakable constitutional crisis, but as a mechanism for resolving such a crisis. So should we.

What would have happened if Trump or Clinton had been convicted in their Senate trials and removed from office? The president would have moved out of the White House, and the vice president — a handpicked member of his own party — would have moved in. Would that have been so awful? The closest historical example, the resignation of Richard Nixon to avoid being impeached, suggests the opposite.

“My fellow Americans,” said Gerald Ford on being sworn in as president, “our long national nightmare is over.”

If Clinton had been forced to yield the presidency to Al Gore, or Trump to Mike Pence, pretty much the same thing could have been said. The skies wouldn't have fallen, markets wouldn't have crashed, blood wouldn't have pooled in the streets. In both cases the country would have been better off — a lying scoundrel would have been peacefully removed from office — yet the party controlling the White House would have remained in charge of the Executive Branch.

The Trump and Clinton impeachments didn't end with the president's conviction, but that doesn't mean impeaching them was futile. In both cases, the nation got a hard look at bad behavior in the White House. In both cases, presidents were forced to defend themselves before Congress — a reminder that presidents are not kings, and that the legislative branch, which has relinquished so much of its authority in recent decades, is supposed to be preeminent. And in both cases presidents of bad character had no choice but to submit to the staining of their reputation with a scarlet “I,” a stain that will remain in the history books long after the passions of the day have dissipated.

Impeachment shouldn't be a once-in-a-lifetime event. It was designed to keep powerful officials accountable, and to eject them from office when their “incapacity, negligence, or perfidy” is intolerable. That applies not only to presidents, but other federal officials as well: cabinet secretaries, agency heads, ambassadors.

And it ought to apply with particular force to federal judges. The Constitution doesn't say that judges serve for life. It says they “shall hold their Offices during good Behavior.” Most of the nation's hundreds of federal judges are honorable and competent. But some have been arrogant and abusive, or rendered terrible decisions. Impeachment exists to get rid of judges who take bribes, no less than those who lose the public's confidence or issue unconscionable rulings. Yet in all of US history, only 15 judges have been impeached by the House, and only eight have been convicted by the Senate. The result has been an ever-more-autocratic federal judiciary.

Let's break the taboo against impeachment. Let's replace it with a taboo against retaining dishonest, destructive, or despicable officials in office. The Constitution provides a useful tool for preserving the integrity of our government and mitigating the electorate's gravest mistakes. That tool has grown rusty from disuse, but it's not too late to clean it off and put it to the use the Founders intended.