



'Impeachment' is not a four-letter word

By: Gene Healy, *Vice President at the Cato Institute*
May 21, 2013

You may be appalled about IRS inquisitions for Tea Party groups and dragnet subpoenas for investigative reporters, but what's really outrageous, according to some commentators, is that a couple of Republicans recently dared to use the "I-word" -- "impeachment."

I'm not convinced that any of President Obama's recent scandal eruptions constitute an "impeachable moment." But surely something's gone wrong with our constitutional culture when opinion leaders treat the very invocation of the "I-word" as akin to screaming obscenities in a church.

"The notion of impeachment is industrial-strength insane," Michael Tomasky fumes in the *Daily Beast*. Over at the Atlantic, "communitarian" guru Amitai Etzioni moans "I see no way to protect the president and all of us from the second term curse."

"First among" the serious issues that confront us, Etzioni insists, is "the threshold for impeachment." It's distressingly low, he argues in a piece entitled "Why it should be harder to impeach the president."

"Harder"? We've impeached a total of two presidents in our 224-year constitutional history: Andrew Johnson and Bill Clinton (Richard Nixon resigned before the full House had a chance to vote on articles of impeachment). Let's be charitable and call it three. The question that should have occurred to Etzioni is, if we only manage to impeach a president once every 75 years or so, just how easy can it be?

As Alexander Hamilton explains in *Federalist No. 66*, the impeachment power was supposed to serve as "an essential check in the hands of [the legislature] upon encroachments of the executive." Unfortunately, that power has been too rarely used against presidents, and, on occasion, it's been abused.

One such case, argues constitutional law professor Jonathan Turley, was the 1868 impeachment of President Andrew Johnson for firing his secretary of war and, through various intemperate speeches, "excit[ing] the odium and resentment of all good people of the United States against Congress," which is hardly a "high crime."

"The Johnson case shows the danger majority factions may pose if the constitutional standards for impeachment are ignored," Turley writes, but given how infrequently presidents are impeached, "a more significant danger lies in impeach[able] conduct that is ignored by the majority," as when presidents assert "a relativistic view of their authority to claim extraconstitutional powers at times of crisis."

That was a worry shared by many of the Framers. As Virginia's Edmund Randolph noted at the Philadelphia Convention, the impeachment power was essential, given that "the executive will have great opportunities of abusing his power; particularly in time of war. ... Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections."

In this regard, the Atlantic's Conor Friedersdorf makes a key point: "The biggest Obama scandals are proven and ignored." Among other offenses, Friedersdorf writes, the president has "violated the War Powers Resolution ... when committing U.S. troops to Libya without Congressional approval" and "ordered the assassination of ... American citizens in secret without due process," while "refus[ing] to reveal even the legal reasoning he used."

"People may be starting to use the I-word before too long," Sen. James Inhofe, R-Okla., said last week in relation to the Benghazi scandal. But impeachment talk is relegated to the fringes of the Republican Party, and it's usually invoked for the wrong reasons. The real Benghazi scandal is how we got there in the first place. The president launched an illegal war in a country that his own secretary of defense admitted wasn't "a vital interest" for the United States.

One thing is clear, however: Given the massive abuses of power and public trust that modern presidents have committed, we've had far too few presidential impeachments. We should stop treating the "I-word" like it's a curse.

Washington Examiner Columnist Gene Healy is a vice president at the Cato Institute and author of *"The Cult of the Presidency."*