

Points of clarification

From the Editors in the [February 17, 1999](#) issue

Soon, perhaps in a matter of days, the impeachment trial of President Clinton will be over. Clinton will, presumably, remain in office after receiving some kind of censure. Lots of people will heave a sigh of relief simply because the ordeal is over. Indeed, the temptation will be to want to forget entirely about the whole tawdry saga, from Linda Tripp to Robert Livingston.

That would be unfortunate insofar as the issues of character in public life, the relation of public and private morality, and the scandal-mongering, litigious nature of contemporary politics demand further discussion. In addition, there are some specific questions that require clarification before another president, whether Democrat or Republican, is investigated and faced with impeachment.

First, what is an impeachable offense? As Senators seek to bring an orderly end to an impeachment trial that should never have been brought, they should be able to clarify that "high crimes and misdemeanors" refers to serious violations of the integrity of the constitutional order.

Second, should the president be immune from civil and criminal prosecution? The Clinton-Lewinsky scandal first arose because a federal judge ruled that Paula Jones could press her civil suit against the president. Kenneth Starr, the independent counsel, has recently indicated that, in the face of all legal precedent and constitutional advice, he might indict the president on criminal charges.

There are good political and constitutional reasons for giving a sitting president's immunity from such prosecution. Though the rhetoric of "no person is above the law" is superficially appealing, the issue is not whether the person of the president is above the law but whether the office of the president, which represents one of the three branches of government, should be protected from legal charges. We think it should, for the sake of the separation of powers under the Constitution. Impeachment or defeat at the polls is the constitutional remedy for a sitting president's misdeeds.

Third, what is the proper role of the independent counsel? As we have said before in this space, Congress needs to ensure that future independent counsels have very specific mandates and do not become, as Starr's office did, a semipermanent independent institution with enormous legal authority to investigate any and all suspicions of wrongdoing. And the independent counsel should be a fact-finder on behalf of Congress, not a prosecutor.

Fourth, what constitutes perjury? Clearly, lying (except under some extraordinary circumstances) is wrong, and lying to judicial officials is wrong. But it also seems reasonable that lies that are not material to the case at hand, and that do not concern a criminal act, should be considered less grave than other lies. Legal precedent and legal opinion appear to be mixed on when and whether such lies should be prosecuted.

Finally, there is the very large topic of sexual harassment: what is it, and how should it be prosecuted? Monica Lewinsky entered national consciousness, it will be recalled, as a potential witness in Paula Jones's sexual harassment suit. Jones's lawyers thought Lewinsky could provide evidence of Clinton's behavior that would support Jones's case. Though the political aims of Jones's lawyers and the close connection between those lawyers and Starr's staff have been properly criticized, the fact remains that in claiming the right to investigate a suspected harasser's previous conduct, Jones's lawyers were pursuing a legal angle that many women's groups have recommended.

Were the questions that Clinton was asked about his consensual relation with Lewinsky indeed the kind of questions anyone accused of harassment might expect to face? Can we protect the victims of harassment without intruding carelessly and needlessly into people's private lives--or is such intrusion a necessary price to pay? Is any sexual relationship between a supervisor and an employee by definition suspect? When the partisan impeachment struggle is over, these questions need some thoughtful answers.