

The Politics of Trump's Impeachment

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Several features stand out in the impeachment quest against President Donald J. Trump. There is constitutional discourse as mythology and fetish. There is outrage that the executive office could have been used to actually investigate political opponents through foreign agents. There is cattiness over whether the conduct of the president veered into the territory of criminality, or fell somewhat short in his incessant obstruction.

One theme stands out: The sheer divisiveness of this effort, which tore at the Democratic camp even as it encouraged Trump. As Democrats reflected over the House vote (230 to 197) to give Trump the constitutional heave-ho to the Senate, no sores have been healed, or divisions patched across the country. House Speaker Nancy Pelosi was also careful not to give an explicit show of delight. Trump the symptom remains, his voting base not necessarily convinced or persuaded.

This is something Trump is reaping with manic persistence. In [a letter to Pelosi](#), he blustered that, "More due process was afforded those accused in the Salem Witch Trials." He had been "denied the most fundamental rights afforded by the Constitution, including the right to present evidence." The Democrats had been, he charged, obsessed by a "partisan impeachment crusade".

He also reiterated the basis of murky political strategy, something that resists the parameters of legal fettering. "You know full well that Vice President Biden used his office and \$1 billion dollars of US aid money to coerce Ukraine into firing the prosecutor who was digging into the company paying his son millions of dollars." This is a less than noble reminder that US politics remains, at its heart, darkened, a condition that refuses to heal.

The position taken by moderate Democrats is that voting for the measure might not have been a politically sound thing from a self-interested point of view, but was inevitable.

"If I lose my seat, so be it," [reflected](#) New York Democratic Rep. Anthony Brindisi. "At the end of the day, I had to do what I felt was right for our country and the rule of law."

What the impeachment process cannot escape from is politics. As Gerald Ford [stated](#) while a House Rep., an impeachable offence might be best described as "whatever a majority of the House of Representatives considers to be at a given moment in history." The very idea of what consists of "high crimes and misdemeanours" outlined in Article II, Section 4 encourages sufficient vagueness and manipulation. That particular edition was George Mason's [contribution](#) nine days before the Framers signed the Constitution, one made out of concern that "treason" failed to appropriately net other attempts "to subvert the Constitution". But in Law's empire, there [is no agreement](#) as to whether such words

suggest a criminal threshold.

Even then, terms such as “bribery” are up for debate. Philip Bobbitt of Columbia University [suggests](#) that President Trump did sail close to it in his dinner with then-FBI director James Comey. The occasion saw Trump inquiring of Comey as to whether he wanted to keep his job, suggesting that he terminate the Russia investigation. But even Comey was reluctant to suggest that there had been such an explicit point.

The [relevant part of the Constitution](#) highlighting the powers of the Senate vis-à-vis impeachment can be found in Article I, section 3, clause 6: “The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.” The requirement for the Chief Justice’s presence furnishes a legal gloss, but nothing more.

However framed, be it legal or judicial, the senators will not be required to have legal training or awareness of the finer points of law to deal with the matter. The Senate now assumes the position of judge and jury, a problematic state of affairs that involves, as Charles L. Black Jr. [wrote in 1974](#), “the conscience of each senator, who ought to realize the danger and try as far as possible to divest himself of all prejudice. I see no reason why this cannot produce a satisfactory result.”

Black’s confidence in senatorial capacity is charming and misplaced. It challenges the senators to shed partiality and examine the evidence with sobriety and confidence. Perhaps it is for that reason that his words, as Akhil Amar suggests in a foreword to a second edition of Black’s [Impeachment: A Handbook](#), “are cool, not hot.” Be mindful of haste and impulse; “shrink from this most drastic of measures”, he cautions. Only when “the rightness of diagnosis and treatment is sure” should such a process be deployed.

Already, we know what Senate Majority leader Mitch McConnell [has promised](#). “I’m not an impartial juror. This is a political process. There’s not anything judicial about it.” For Senator McConnell, the entire episode regarding Trump has been a matter of highest and most venomous partisanship. “The House made a partisan political decision to impeach. I would anticipate we will have a largely partisan outcome in the Senate.”

The Republicans have trained their weapons upon the Democrats, expecting a vengeful US electorate to be suitably punitive come 2020. They, like the Democrats, have also made a gamble on Trump, albeit from the opposite side of the chamber. “Today, December 18, 2019,” [posed](#) Representative Mike Kelly of Pennsylvania, “is another date that will live in infamy.” How that infamy translates in Trumpland promises to be decidedly toxic and volatile.

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