

Abuse of Constitution: Trump's Indictments Signal Dangerous Political Trend



In this March 11, 1989, photo Donald Trump shakes hands with former President Richard Nixon at a tribute gala to Nellie Connally at the Westin Galleria ballroom in Houston, Texas.

by Conrad Black

What we are witnessing in this roll-out of very questionable and even spurious indictments of former President Trump is a systematic abuse of the Constitution to which both parties have become addicted.

In the first 190 years of its history, the only impeachment of a president of the United States was of Andrew Johnson in 1868. It was an entirely partisan move against Johnson, a

Tennessean and the only southern U.S. senator who remained loyal to the Union following the outbreak of the Civil War. Lincoln selected him to rally loyalist Democratic votes in his re-election campaign and re-christened the Republican Party the National Union Party, a change whose credibility rested largely on Johnson as his second vice president. Following the assassination of President Lincoln, the Republican militants who wanted to punish the South and treat the whole former Confederacy as traitors except for the emancipated slaves, overran sensible opinion and impeached Johnson for exercising his right to fire a cabinet secretary for insubordination. The law that was invoked for the impeachment was ultimately determined to be unconstitutional, and Johnson survived by only one vote in the Senate.

For more than a century after that, no consideration was given to an impeachment of a president until the Watergate affair, 1972–1974. Now that the cant and emotionalism of that time have receded, it is easy to see what insubstantial and partisan piffle the three counts of impeachment voted against President Richard Nixon by the House judiciary committee in July 1974 were. The first charge alleged that Nixon had “made it his policy and acted directly and through subordinates and agents to delay, impede, and obstruct, the investigation” of the Watergate events. This was an extreme rendering of Nixon’s actions and in any case did not constitute a crime, let alone a crime equivalent to treason as the Constitution cites as justifying removal from office.

The second count claimed that Nixon had “endeavored to misuse the IRS,” not that he actually had misused it as some of his predecessors did, and that he had not “fulfilled his oath faithfully to execute the laws and had violated the constitutional rights of other citizens.” We now know that this was a disgraceful and unjust charge, and that Franklin D. Roosevelt, J. Edgar Hoover, the Kennedys, Lyndon Johnson, and others, certainly including those who have abused high offices

to bedevil Donald Trump, are more guilty than was Richard Nixon.

The last count was the allegation of impeding the proceedings by noncompliance. This was nonsense, as Nixon ultimately complied with all subpoenas.

Watergate has passed into the mythology of America as a challenge to constitutional government and an attempt to establish an imperial presidency. But a brief perusal of the relevant facts shows that this is nonsense. Unfortunately, Mr. Nixon's personality made him vulnerable to this kind of charge and compromised his judgment, but he has effectively won his battle before objective historians, and there remains no proof that he personally committed any illegalities, though his conduct in these and related matters was not exemplary. With that said, Richard Nixon was a traditional patriotic American who thought it would be an intolerable indignity to subject the country to an impeachment trial, just as he manfully declined President Eisenhower's urgings to contest the questionable 1960 presidential election result because he thought it would be bad for the country.

It was at this point that the political class and the national political media of the United States became terminally addicted to the criminalization of political and policy differences. Impeachment had rarely been mentioned for a century despite many times of intense partisanship, but in recent years rarely has a month gone by without impeachment being raised, even if only very conditionally.

Thoughts of impeachment were bandied about very frequently and noisily during the Iran-Contra affair in the second term of President Reagan; again, this was nonsense. The administration did not comply entirely with constitutionally questionable legislation, according to the Congress, rights it does not constitutionally possess to supervise the president's role as commander-in-chief. A complicated and absurd train of events

unfolded whereby some weapons were sold to Israel, which sold them to Iran, and with profit generated on the resale subsidized the opposition to the communist regime in Nicaragua. The whole business was foolishness, but it certainly did not constitute a serious crime and was not ultimately found to be a crime. Fortunately for President Reagan, his national security advisor, Admiral John Poindexter, said that the buck stopped with him and that the president was not aware of the details of what had occurred. It was late in his second term and Reagan was a popular president, but he still had a brush with pseudo-legal political mortality.

Barely a decade later, the Republicans had the chance to roll back the temptation to rush to impeachment of a president, but instead they impeached President Clinton over his questionable response to a grand jury over a tawdry but hardly unprecedented affair he'd had with a young White House intern, and the implications of his infamous evasion that "it all depends on what the meaning of 'is' is." Of course, it wasn't a suitable basis for impeachment, and it failed.

This brings us to the risible Trump-Russia collusion fraud, the two fatuous Trump impeachments, and the pre-electoral indictorama that has been visited upon the former president. The impeachments were unutterable nonsense, like the Russia fiction that was cooked up by the Clinton campaign and circulated by the FBI and national and central intelligence agencies. This politically motivated and legally almost unfounded sequence of indictments is a terrible abuse of the justice system to harass and defame the leader of the opposition/former president. It is the final escalation of this corrupt and profoundly dangerous practice of escalating authentic political controversy to be determined by the voters to settling political disputes in the criminal courts.

This practice is particularly odious given that the American criminal justice system has been so hideously contorted by the

plea-bargain system and a few other wrinkles, so that it is not a system of laws at all. With a 98 percent conviction rate in federal cases, 95 percent of them without trial, it is simply a conveyor belt to America's bloated prison system. The United States has 5 percent of the world's population and 25 percent of its incarcerated people. It is a welcome thing that current polls supporting President Trump against his accusers indicate that the scales have fallen from the eyes of Americans who long regarded their justice system and the FBI with some pride.

Chief Justice Roberts should have given an obiter dictum at the end of the first Trump impeachment trial and warned the Congress against frivolous and vexatious use of the power to impeach a president. The present unspeakable hypocrisy of the pseudo-legal assault on Trump appears not to be working. The courts abdicated their responsibility to judge the constitutionality of the voting and vote-counting rules in the last election. The people will have to decide in the next election whether they approve of this hideous mutation of the constitutional system.

If it does not stop here, America will cease to be a serious or respectable democracy or to have any political moral credibility in the world. This would create a vacuum in world affairs so dangerous it does not bear thinking about.

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