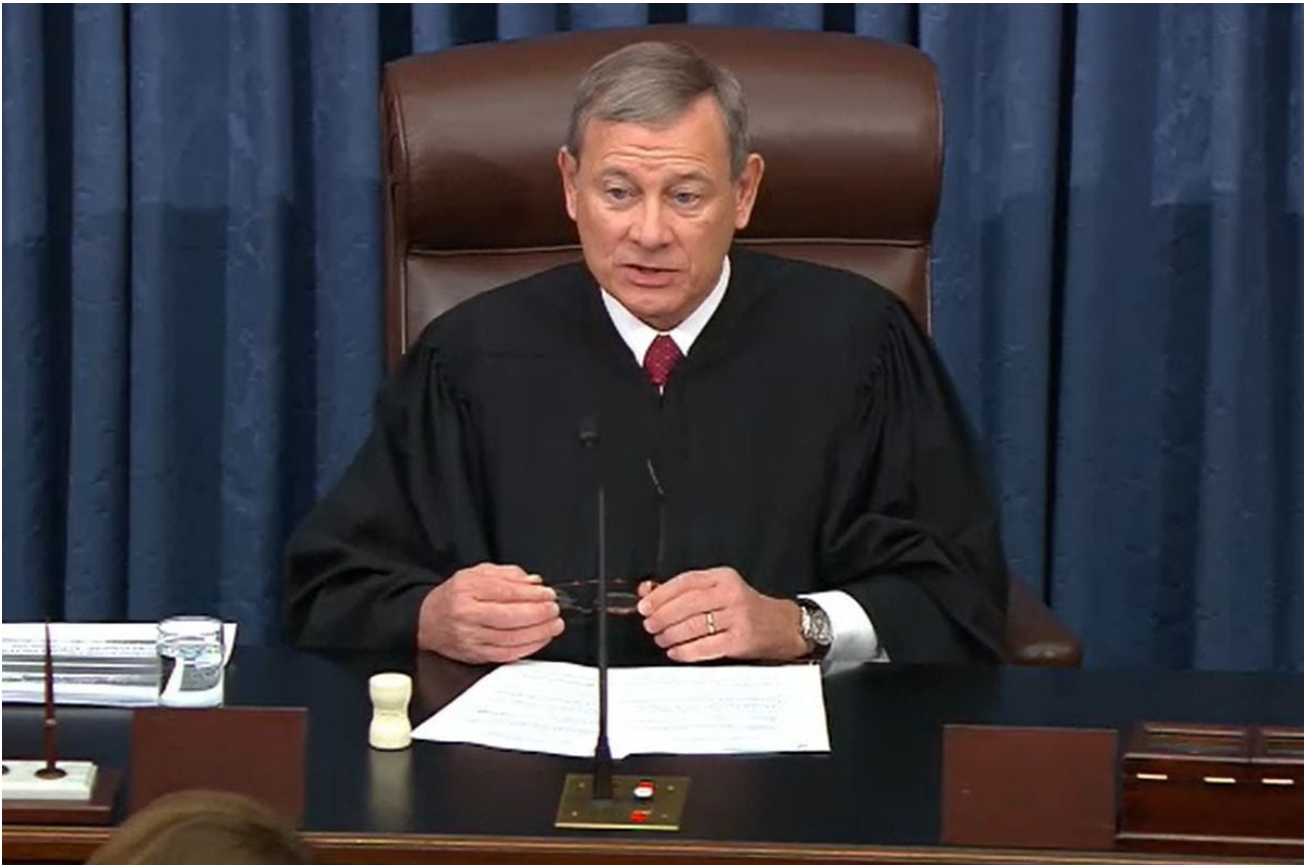


# Please Speak Out, John Roberts

After the trial ends, the chief justice should state openly what a farce it was.

by Conrad Black



What should result from the Democrats' nonsensical attempt to remove President Trump, by failing to prove that he committed acts that were in any case unexceptionable and not impeachable, is a clarification of the causes for recourse to such a drastic remedy. It is well established that this remedy was intended by the principal authors of the Constitution to be employed only when a president was judged by two-thirds of the Senate to be guilty beyond a reasonable doubt of high crimes or equivalent misdemeanors that disgraced his office or grievously breached the Constitution. What has unfolded in this instance is referred to in the Book of Practice as

“frivolous and vexatious litigation.”

The only plausible source for a clarification of proper recourse to impeachment is the chief justice, John Roberts, as the only impartial person in sight and a presiding officer renowned for his desire to equivocate in many circumstances. (He was undoubtedly correct to state he would not cast a deciding vote when a tie on some motions seemed likely, and to distinguish Chief Justice Chase’s procedural tie-breaking votes in the Andrew Johnson impeachment of 1868.) Following the president’s acquittal, it would be appropriate for Chief Justice Roberts to say how inappropriate it was to send unimpeachable offenses to the Senate on the basis of thin evidence and a proceeding in the House of Representatives that completely ignored the constitutionally guaranteed rights of the defendant.

Any such statement would not be binding or make law in itself, but it would carry great weight. There is not the slightest doubt that the impeachment of a president was never intended to be used in a completely absurd distortion of the plain meaning of the terms justifying impeachment stated in the Constitution and the learned opinions expressed in the constitutional debates that led to the composition and enactment of the Constitution in 1789. Many legal experts, legislators, and commentators and the president himself have warned that the country is on the brink of entering an era where impeachment could be resorted to as a routine tactic to delay and harass an administration and heap nasty publicity and imputations of corrupt or dictatorial practices on a president, which is effectively what happened in this case. This is a radical departure, and not only from the intention of those who devised the Constitution and from the practice in the country for 185 years prior to the Watergate debacle of 1972–74; it entails a sharp and unconstitutional change to the balance of powers between the three coequal branches of government in favor of the legislative at the expense of the

executive.

As some of us predicted at the time, the ability of a hostile Congress to drive President Nixon from office whetted the appetites of congressional leaders and the electoral strategists of both parties and created an addiction that is clearly becoming perennial and possibly almost incorrigible: The congressional leaders of a party hostile to the president can't resist the temptation to criminalize policy differences. Mr. Nixon, like President Trump, had one of the most successful first terms in presidential history: He ended the Vietnam War while retaining a non-Communist government in Saigon, ended racial segregation, triangulated Great Power relations with China and Russia, signed the greatest arms-control agreement in history with the USSR, avoided the court-ordered busing of millions of schoolchildren all around metropolitan areas out of their neighborhoods, founded the Environmental Protection Agency, started a Middle East peace process, and ended the military draft.

Nixon was a traditional patriotic American with the Roosevelt-Truman-Eisenhower broad view of what national security would justify in executive discretion. There has never been any convincing evidence that he committed any crimes, but his authorization of measures to protect less circumspect underlings caused the evaporation of his political capital under relentless media pounding, and he did the honorable thing and retired to spare the country the indignity of an impeachment trial, though his own errors were not impeachable and the charges leveled against him were nonsense and appear so today. The vagaries of Mr. Nixon's personality prevented him from seeing the dangers of Watergate and succeeding events to his presidency and, once his presidency ended, the temptation to abuse of power thus vested in Congress. It was against this abuse of power that Professor Jonathan Turley warned in the opinion he gave to the House Judiciary Committee at the outset of the current impeachment process.

The Democrats were clearly sorely tempted in the Iran-Contra affair, and the media jumped like gazelles at the prospect of tearing down President Reagan, the next elected Republican president after Nixon. But in that case the law was more ambiguous, it was late in the second term of a popular president, and an aide, national-security adviser Admiral John Poindexter, took the bullet and said, "The buck stops here. The president knew nothing" of the legal problems. The Republicans showed that they had been infected by the same virus when they had a chance at destroying the next Democratic president, Bill Clinton, after special prosecutor Ken Starr started with real-estate transactions when Clinton was governor of Arkansas and got all the way to sex with an intern in the Oval Office. The Senate, though it had a Republican majority, rightly judged that although the president had almost certainly lied to a grand jury about his extramarital affairs, he did not commit an offense of such gravity as to justify his removal from office.

President Trump was too tempting a target to resist, as he had attacked the entire political establishment and is radically deconstructing many policies, as he promised to do. And his style of leadership and conducting his office, though it has enabled him to take complete control of the Republican congressional party and the machinery of his party in the country, all of which had been hostile to him even when he was inaugurated, has antagonized and frightened the devotees of traditional Bush-Clinton bipartisanship, with a Washington political establishment relatively amicably shared by both parties. Their aggressive response to Trump is understandable, but that does not justify utilization of a Democratic majority in the House to put through an impeachment charge of two articles that are unfounded in law and in fact, inciting the customary inundation of vilification from the Trump-hating national media.

Perhaps the parties will draw back from this dangerous

brinkmanship, but it is just as likely that, if the chief justice says nothing except to record the verdict, Republicans will wish to mete out to a Democratic president the same kind of smear job when that chance comes around. But a word of unrepentant clarification, that in his personal opinion, Chief Justice Roberts believes the Senate is not bound to hear impeachment charges that result from a proceeding that does not give full normal rights to the defendant, and that does not involve charges that on their face meet the criteria the Constitution established for an impeachable offense by the president, could greatly reduce the likelihood of such an escalation.

Andrew Johnson, Richard Nixon, William J. Clinton, and especially Donald Trump should not have been impeached. One impeachment in 185 years and then three (counting Nixon) in 45 years shows where this trend is going. It is not only presidents who can be impeached; if something isn't done, this dangerous process could turn into a general melee of attempted pseudo-legal evictions of elected officials and their principal appointees. The chief justice would render a great service if he could put the brakes on now. What we have seen in Washington in the last few weeks should never have happened. If the chief justice does nothing, we are apt to see a lot more of it, and a very destructive time, with a potential for virtual chaos, could develop quite quickly. Now is the time to stop it.

First published in