

Acquittal Vindicated the Constitution, Not Trump

Impeachment isn't a moral tribunal. It is a specific tool with a narrow purpose: restraining government officers

By Mitch McConnell

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Jan. 6 was a shameful day. A mob bloodied law enforcement and besieged the first branch of government. American citizens tried to use terrorism to stop a democratic proceeding they disliked.

There is no question former President Trump bears moral responsibility. His supporters stormed the Capitol because of the unhinged falsehoods he shouted into the world's largest megaphone. His behavior during and after the chaos was also unconscionable, from attacking Vice President Mike Pence during the riot to praising the criminals after it ended.

I was as outraged as any member of Congress. But senators take our own oaths. Our job wasn't to find some way, any way, to inflict a punishment. The Senate's first and foundational duty was to protect the Constitution.

Some brilliant scholars believe the Senate can try and convict former officers. Others don't. The text is unclear, and I don't begrudge my colleagues their own conclusions. But after intense study, I concluded that Article II, Section 4 limits impeachment and conviction to current officers.

Everyone agrees that "treason, bribery, or other high crimes and misdemeanors" exhaust the valid grounds for conviction. It follows that the list of persons in that sentence—"the president, vice president, and all civil officers"—likewise exhausts its valid subjects.

If that list of current officers is not exhaustive, there is no textual limit. The House's "sole power of impeachment" and the Senate's "sole power to try all impeachments" would constitute an unlimited circular logic with no stopping point at former officers.

Any private citizen could be disqualified. This is why one House manager had to argue the Senate possesses “absolute, unqualified” jurisdiction. But nobody really accepts that.

I side with the early constitutional scholar Justice Joseph Story. He observed that while disqualification is optional, removal is mandatory on conviction. The Constitution presupposes that anyone convicted by the Senate must have an office from which to be removed. This doesn’t mean leaving office provides immunity from accountability. Former officials are “still liable to be tried and punished in the ordinary tribunals of justice.” Criminal law and civil litigation ensure there is no so-called January exemption.

There is a modern reflex to demand total satisfaction from every news cycle. But impeachment is not some final moral tribunal. It is a specific tool with a narrow purpose: restraining government officers. The instant [Donald Trump](#) ceased being the president, he exited the Senate’s jurisdiction.

I respect senators who reached the opposite answer. What deserve no respect are claims that constitutional concerns are trivialities that courageous senators would have ignored.

One House manager who lauded the Constitution when the trial began now derides it as “a technicality.” Another called this pivotal question “a loophole.” Talking heads fumed that senators had let legal niceties constrain us. I even heard that only senators who voted for conviction had any right to abhor the violence. That’s antithetical to any notion of American justice. Liberals said they condemned the former president’s rules-be-damned recklessness. But many apparently cannot resist that same temptation.

Consider the claim that I could have steered around the jurisdictional issue by recalling the Senate between Jan. 14 and Jan. 20, while Mr. Trump was still in office.

The salient date is not the trial’s start but the end, when the penalty of removal from office must be possible. No remotely fair or regular Senate process could have started and finished in less than one week. Even the brisk impeachment process we just concluded took 19 days. The pretrial briefing period alone—especially vital after such a rushed and minimal House process—consumed more than a week.

President Biden, who knows the Senate, stated as early as Jan. 8 that his swearing-in was the “quickest” possible path to changing the occupant of the White House. Especially since the House didn’t vote until Jan. 13, any legitimate Senate process was certain to end after Inauguration Day.

Here’s what the scheduling critics are really saying: Senate Republicans should have followed a rushed House process with a light-speed Senate sham. They think we should

have shredded due process and ignited a constitutional crisis in a footrace to outrun our loss of jurisdiction.

This selective disregard for rules and norms is a civic disease that is spreading through the political left. Senate Democrats relished the legislative filibuster and used it frequently when they were the minority party. Now only two of them pledge to respect it. Majority Leader Chuck Schumer has threatened Supreme Court justices by name, and other Democrats submitted a brief demanding the court rule their way or be “restructured.” As recently as September, fewer than half of Democrats professed confidence that elections are free and fair. In November, that number shot up to more than 90%—because they liked the result.

The nation needs real constitutional champions, not fair-weather institutionalists. The Senate’s duty last week was clear. It wasn’t to guarantee a specific punishment at any cost. Our job was to defend the Constitution and respect its limits. That is what our acquittal delivered.

Mr. McConnell, a Kentucky Republican, is U.S. Senate minority leader.