

EXPLAIN IT TO ME: WHAT DOES IMPEACHMENT MEAN NOW?

[NB: check the byline, thanks! /~Rayne]

Trump was impeached Tuesday evening under two Articles of Impeachment – one for abuse of power, and another for obstruction of Congress.

Got it. This is pretty straightforward.

The House has “the sole Power of Impeachment” according to Article I, Section 2, subsection 5 of the Constitution.

Understood, no problem. That’s what the House exercised under Nancy Pelosi’s leadership.

We’re now to Article I, Section 3, subsection 6 after last night:

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.

Nothing between Article I, Section 2, subsection 5 and Article I, Section 3, subsection 6 says that the House MUST or SHALL forward any impeachment to the Senate for a trial.

I think we’re all of us watching to see how this shakes out. Since Senate Majority Leader Mitch “Sits on 400 Bills” McConnell said last week he is coordinating the handling of the senate trial with the White House – a gross conflict of interest undermining Congress’s separate powers – and senators like Majority Whip Lindsey Graham

have already decided to vote to acquit Trump, it doesn't make much sense to forward the impeachment if already moot.

It makes sense to hang on to the impeachment articles until there is clarification about the Senate acting in good faith, "on Oath or Affirmation" as Article I, Section 3, subsection 6 says.

~ ~ ~

Now we arrive at my first question: is Trump still qualified to run for re-election?

See Article I, Section 3, subsection 7:

Judgment in Cases of impeachment shall not extend further than to removal from Office, and **disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States:** but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Emphasis mine. Does "judgment" refer solely to conviction by the Senate after a trial once the impeachment has been forwarded to them? Or is the "judgment" when the impeachment has been pronounced by the House since the House has the sole power of impeachment? The Constitution says "Indictment, Trial, Judgment and Punishment" in subsection 7 but the wording, "Judgment in Cases of **impeachment**" may not mean "Judgment in Cases of **conviction**" – the latter would clearly limit the outcome of the House's impeachment to a pre-indictment or indictment determination before the Senate's trial.

This subsection occurs under Section 3 which defines the Senate's composition and its most fundamental powers – specifically, trying the subject after impeachment – so we might assume this is the Senate's "judgment." But the Constitution's wording is muddy.

We don't have the benefit of precedent to rely

upon for guidance. Andrew Johnson, impeached by the House in 1868 but not removed by the Senate, did not win his party's nomination that year and left office in 1869 having never been elected to the presidency. In 1998 Bill Clinton was impeached by the House during his second term, though not removed by the Senate; he was ineligible to run for re-election.

~ ~ ~

My second question relates to a point Robert Reich made about a pardon for the impeached president:

... Regardless of whether a sitting president can be indicted and convicted on such criminal charges, Trump will become liable to them at some point. But could he be pardoned, as Gerald Ford pardoned Richard Nixon 45 years ago?

Article II, section 2 of the Constitution gives a president the power to pardon anyone who has been convicted of offenses against the United States, with one exception: "In Cases of Impeachment."

If Trump is impeached by the House, he can never be pardoned for these crimes. He cannot pardon himself (it's dubious that a president has this self-pardoning power in any event), and he cannot be pardoned by a future president.

Even if a subsequent president wanted to pardon Trump in the interest of, say, domestic tranquility, she could not. ...

Apart from the specific reference to the House's sole power to impeach, is this why the two Articles of Impeachment do not use the words "bribery" or "extortion" to describe what Trump did with regard to Ukraine – to limit the described crimes against the U.S. for which Trump could be pardoned by an interim successor or the next elected president?

Or if the crime(s) have not been spelled out in an impeachment, identified as a violation of specific U.S. law, can Trump still be pardoned for them, in essence given *carte blanche* after the fact?

Is this why the Articles were scoped so narrowly, to prevent an over-broad pardon?

So often it's said the president's pardon power is absolute, but impeachment appears to place the single limit. Where and when is that limit placed?

~ ~ ~

These questions have been chewing at me since Pelosi's second gavel upon completion of the vote on the second article. I imagine the Republican Party will do as it's done since 2015: roll over and let Trump run an obnoxious and corrupt re-election campaign, looking every bit as repulsive as he did Tuesday evening during his Battle Creek rally.

It's also been niggling at me that twice in the text of the Articles of Impeachment it was written, "the President '**shall** be removed from Office on Impeachment for, and Conviction of, Treason, **Bribery**, or other high Crimes and Misdemeanors'."

Shall, not may, be removed, on conviction for Bribery.

I noted also the use of the word "betrayed" in the Articles' text:

... He has also **betrayed** the Nation by abusing his high office to enlist a foreign power in corrupting democratic elections. ...

It's not treason as we've discussed in comments, but a traitor shouldn't get a pass for selling out his country's national security interests for personal gain.

You can bet McConnell and Graham would already

have ensured the conviction and removal of a Democratic president who likewise betrayed the nation. If only they moved with the same alacrity on those 400 bills sitting on McConnell's desk.