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Laurence Tribe's Impeachment Hysteria

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In a way, you can't blame conservatives for thinking the fix is in on impeachment. A broad swathe of the liberal intelligentsia has been hell-bent on removing Donald Trump from office since before Day One of his presidency. The worst among them seem to have taken a cue from Marlon Brando in *The Wild One*: What are the charges? "Whaddya got?"

Former labor secretary Robert Reich says we should impeach Trump for "abridging the freedom of the press" by . . . calling the media names and "choosing who he invites to news conferences." In his rushed-to-publication tome, *The Case for Impeachment*, American University's Allan J. Lichtman argues that Trump can be removed for the "crime against humanity" of global-warming skepticism.

Are these really the sorts of offenses that qualify as "high Crimes and Misdemeanors"? To divine the meaning of that phrase, it would help to have the guidance of a preeminent constitutional scholar — someone such as Harvard's Laurence Tribe, whose treatise *American Constitutional Law* has been "cited more than any other legal text since 1950."

Unfortunately, Trump's election seems to have rattled Tribe hard enough to knock loose both his constitutional standards and his sense of proportion. The dean of con-law professors has spent the administration's opening months frantically hurling charges at Trump, and managing mainly to impeach his own reputation in the process.

Impeachment "Should Begin On Inauguration Day," Tribe declared in December; by January 28, he had concluded that Trump "must be impeached for abusing his power and shredding the Constitution more monstrously than any other president in American history" — pretty impressive for a man entering the second week of his presidency.

In the first months of Trump's tenure, Tribe floated everything from violations of the Emoluments Clause to the "cruel brand of bigotry" that supposedly motivates the travel ban to a State Department blogpost touting the "winter White House" at Mar-a-Lago, even suggesting that the president could be defenestrated on the basis of a single tweet: his March 4 claim that Obama had his "wires tapped" in Trump Tower. When law professor Johnathan Turley laughed off the idea on *Morning Joe*, back in March, Tribe had a mini-conniption on Twitter: "Using power of WH to falsely accuse [Obama of an] impeachable felony does qualify as an impeachable offense whether via tweet or not," he huffed.

What's funny about all this is, when it was Bill Clinton's political life on the line, Tribe nearly threw his back out trying to raise the constitutional bar for removal. In his November

1998 testimony before the House Judiciary Committee, Tribe insisted that “an impeachable offense must itself severely threaten the system of government or constitute a grievous abuse of official power or both.” Perjury and obstruction to cover up an illicit affair weren’t nearly grave enough.

Hell, back then even *murder* was a close call in Tribe’s eyes, if the president did the deed himself, for personal reasons. In his testimony, Tribe emphasized the fact that “when Vice President Aaron Burr killed Alexander Hamilton in a duel in July 1804 . . . Burr served out his term, which ended in early 1805,” without getting impeached. “There may well be room to argue,” Tribe grudgingly conceded, that a contemporary president could be impeached for an extracurricular homicide — but that exception “must not be permitted to swallow [the] rule.” Whack a guy in Weehawken and we might have to let you get away with it; lie about him on Twitter, though, and you’ve got to go.

Charges of “Trump Derangement Syndrome” are often just a debater’s dodge, used to change the subject from the president’s behavior to his critics’ alleged hang-ups. Spend any time following Laurence Tribe on social media, though, and you’ll begin to think of it as an actual, clinical condition.

It turns out that Donald J. Trump isn’t the only septuagenarian who’s too excitable to be trusted with a Twitter account. Tribe’s feed has become a “vector of misinformation and conspiracy theories on Twitter,” as Dartmouth political scientist Brendan Nyhan puts it. The distinguished professor of constitutional law has become a sucker for crackpot theories about the Trump-Russia connection, and a fan of those who spread them, such as “the incomparable Louise Mensch.” “Incomparable” is right. Mensch, the “paranoid bard of the age of Trump,” claims, among other things, that Vladimir Putin had Andrew Breitbart assassinated, and that “the Marshal of the Supreme Court” has notified President Trump of secret impeachment proceedings that are already underway. (I like to think that the mysterious “Marshal” sports a Stetson and swaggers around like Raylan Givens.)

More conventional grounds for impeachment emerged in May, when the president sacked FBI director James Comey over “this Russia thing.” As that story was breaking, Tribe took to the *Washington Post* op-ed page to insist that “Trump must be impeached” for obstruction of justice. Trump’s actions, Tribe argued, read like a replay of the charges against Richard Nixon: “making misleading statements to, or withholding material evidence from, federal investigators or other federal employees . . . [and] dangling carrots in front of people who might otherwise pose trouble for one’s hold on power.” “To say that this does not in itself rise to the level of ‘obstruction of justice,’” Tribe thundered, “is to empty that concept of all meaning.”

Not quite: Reasonable legal minds differ about whether Trump’s behavior rises to that level. Besides, those charges also read like a replay of the rap against Clinton. And as Tribe stressed during *that* imbroglio, whether obstruction is impeachable depends in part on how serious a thing the president was trying to cover up. It’s entirely possible that further investigation won’t yield evidence of collusion, and the entire episode will end up looking less scandalous than Clinton’s romp with Monica Lewinsky. By Tribe’s own indulgent standard, then, without “the threat of

substantial harm to the nation required to establish a high crime or misdemeanor,” Trump should get a pass.

As it happens, the scope of the impeachment power is considerably broader than partisans such as Tribe led people to believe back when they were trying to save Clinton’s hide. But that’s the problem with tailoring your constitutional interpretations to the political needs of the moment: As Tribe put it in 1998, it’s “short-sighted . . . to approach the task of defining ‘high Crimes and Misdemeanors’ from a narrowly result-oriented perspective,” because you “may live to regret” the standard you’ve set when the presidency changes hands.

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