



## Chief Executive Exit

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June 29, 2018

### **Sober thoughts on the constitutional tool of presidential impeachment.**

In the wake of Donald Trump’s 2016 election victory, one of America’s leading constitutional scholars exhibited classic signs of “PTSD”: Post-Trump Stress Disorder. Impeachment “should begin on Inauguration Day,” Harvard’s Laurence Tribe howled in December 2016. The next month, Tribe demanded Trump “be impeached for abusing his power and shredding the Constitution more monstrously than any other President in American history”—a land-speed record for somebody entering his second week in office. In the months that followed, the dean of con-law profs urged Trump’s defenestration for everything from emoluments clause violations to mean tweets.

Given that backdrop, when I opened Professor Tribe’s new book, To End a Presidency: The Power of Impeachment, coauthored with Joshua Matz, I was braced for an impeach-at-all-costs jeremiad. The last thing I was expecting was an earnest plea for “cool and evenhanded reflection, informed by the Constitution and lessons from history.”

That, however, is exactly what Tribe and Matz have produced. Their intelligent and informative book insists that impeachment is an awkward weapon, one that can’t be “readily fired twice during a single presidency,” and that holds no magic bullet for the problems of American democracy—useful reminders for #Resistance enthusiasts and Never Trumpers alike.

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And yet, they lay it on pretty thick: Impeachment, Tribe and Matz insist, is “a great power and a terrible one,” its use fraught with “extraordinary danger.” If, God forbid, we ever need to deploy it, “we can hope only that the nation survives with its spirit intact and the strength to rebuild all that’s broken.” *To End a Presidency* turns out to be a sober, conventional case for approaching impeachment with fear and trembling.

*Too* sober and conventional, for my money: The case for impeachment-phobia has by now been adequately made. It permeates our political culture and dominates respectable opinion, whether it’s Senator Jeff Flake—who has compared Trump to *Stalin* while insisting impeachment is out of bounds—or Stephen Colbert, who rejects it as an “extreme” remedy. Exaggerating the dangers

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Few if any of the Framers viewed the prospect of presidential impeachments with the dismay and perturbation Tribe and Matz demand. “A good magistrate will not fear them,” Massachusetts’s Elbridge Gerry insisted during the Constitutional Convention. “A bad one ought to be kept in fear of them.” North Carolina’s Hugh Williamson thought there was “more danger of too much lenity than of too much rigour towards the President.” Given our paltry record of presidential impeachments—only three serious attempts in 230 years—he was more right than he knew.

So it smacks of projection when Tribe and Matz assert that “you can feel the Framers’ anxiety” when considering the structural safeguards they erected around the remedy: “Impeachment was the power they most grudgingly included in the Constitution.”

The authors’ own account of the deliberations in Philadelphia refutes that notion. Opposition to presidential impeachment was a minority view, held by only a handful of delegates who were all but shouted down by George Mason, James Madison, Ben Franklin, and others. The two-thirds requirement for removal more likely reflects exhaustion than anxiety. That innovation came late in the convention and was approved without debate and apparently without notice.

Whether they quite intended to or not, the Framers made it extraordinarily hard to remove a president. Yet our political culture makes it harder still by conjuring up specters of wounded democracy and constitutional collapse. Tribe and Matz fuel those cultural superstitions throughout the book. “There can be little doubt that a successful impeachment campaign would inflict enduring national trauma,” they insist.

But recent experience provides very little evidence for that. As the authors concede—somewhat grudgingly—the Watergate-era crisis of confidence in government helped Americans demystify the presidency and institute necessary checks on executive power. Contra Gerald Ford, the real “national nightmare” was what Nixon and his predecessors had been able to get away with for far too long. And though Tribe and Matz assert that “Watergate permanently scarred a generation of Americans,” the journalist Jeff Greenfield is hardly alone in his assessment: “I’ll tell you what I remember most about Watergate. It was fun.”

During the Clinton imbroglio, despite claims of looming apocalypse from Tribe, among others, late ’90s prosperity rolled on, unimpeded by Bill’s struggles. Lately, though, in the wake of the #MeToo movement, many liberals have begun to rethink their defense of a predatory, lawbreaking executive. Even failed attempts at removal can help vindicate important presidential norms.

Discussing the Clinton impeachment, Judge Richard Posner predicted, correctly, that the episode’s “most abiding effect . . . may be to make it difficult to take Presidents seriously as superior people.”

Maybe that’s a lesson we could stand to have refreshed.

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