

Resolution: Impeachment to be Resolved by a Jury of Ordinary Citizens

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SHORT VERSION

Suggested as an Amendment to the Constitution of the United States

Removal from Office of a Sitting President may be Resolved through an Impeachment Trial of the President by a Jury of Fifty or more Anonymous Voting Citizens, chosen Randomly from the Population, said Jury to Exclude Attorneys and Sitting Politicians. Two-thirds of Aye votes of said Jury Shall be Sufficient to Remove the President from Office. An Impeachment Trial shall Commence upon a Majority Vote of the House of Representatives Finding that the President is Considered Guilty of certain High Crimes or Misdemeanors. The Chief Justice of the Supreme Court shall Preside over an Impeachment Trial, which shall follow Standard Federal Trial Criminal Procedures as Practiced in the District of Columbia.

WHEREAS,

(a) the impeachment process of President Donald J. Trump was decided in the Senate by the whole Senate in the year 2019, failing to remove the impeached President from office by a required two-thirds vote, and

(b) that Senate happened to consist of a slim majority of Republican senators, each of whom decided *and stated publicly in advance* that they would support the Republican President, with the exception of one Senator and his one vote, and

(c) the Senate majority leader, a Mr. McConnell, announced publicly in advance that he would work closely with the President and the Whitehouse staff to ensure that Mr. Trump would receive all votes of the Republican majority in the jury against removal from Office, regardless of the strength of the evidence for removal to be presented by the House Managers, and

(d) while the Founders decided that the President was to be elected not by popular vote, but by a separate body of Electors, and

(e) although the Founders decided that an appropriate jury would be the full Senate, they clearly had in mind that the Senate would be an august non-political body, elected by the state legislatures, not by the people; that was changed to elect Senators by direct popular vote in 1917 through passage of the 17th Amendment,

AND WHEREAS, the impeachment trial of 2019 was in fact decided along strict party lines in the Senate, with all but one Republican Senator voting *against* removal from office on both of the two counts, and every Democratic Senator voting *for* removal; and the Senate voting against hearing any witnesses, on a strictly party-line vote, and the Republican House Managers chose not to challenge any of the evidence brought to the charge for impeachment by the Democratic House Managers,

RESOLVED,

That any impeachment trial of a sitting president shall be conducted as any trial of a major crime in a federal court, with certain requirements and exceptions, as follows.

- (a) The jury shall consist of fifty-one citizens chosen randomly from a national pool, each authorized to vote in their respective local elections, each of sound mind, none of whom currently hold an elective office, and none of whom hold a law degree.
- (b) Sufficient alternate jurors shall be called, to serve in the event of incapacity or refusal of any regular juror to serve, or to be removed from duty through a pre-trial challenge process.
- (c) The jury candidates shall be chosen through a mechanically random process from a much larger pool of potential candidates, without regard to political party membership, gender, age, or state of residence.
- (d) The jury shall be sequestered and protected from outside influence, and their identities shall be protected as private persons, both prior to, during, and after the trial.
- (e) The jury shall be reasonably compensated for their time, travel, meals and lodging expenses associated with their impeachment trial association.
- (f) Three designated members of the House shall act as prosecuting attorneys (e.g. House Managers), chosen by vote of the full House of Representatives.
- (g) Three persons shall act as defense attorneys for the President, chosen by the President, and compensated from public funds.
- (h) The Chief Justice of the Supreme Court shall preside over the trial.
- (i) The trial shall be conducted as any Federal criminal trial by jury in the District of Columbia.
- (j) The prosecution and defense each to be given time to query the jurors, in private session, each to reject no more than a fixed number of jurors. That fixed total shall not exceed ten jurors on either side.
- (k) The prosecution and defense shall each be entitled to one half hour of public opening statements.

- (l) Up to eight witnesses may be called by each side, each subject to cross examination, in public session.
- (m) Any question put to a witness by either side may be challenged by the other side by naming the objection, whereby the presiding judge shall rule on the admissibility of the question.
- (n) The prosecution and defense shall each be entitled to a half hour of public closing statements.
- (o) The jury shall vote in closed session, returning their verdict in a reasonable time.
- (p) The verdict shall be returned as the counts of those voting *aye*, of those voting *nay*, and of those voting *undecided*.
- (q) Should the verdict be ambiguous, given one or more undecided votes, the judge shall instruct the jury to again meet in an effort to reduce the undecided vote count.
- (r) Should two such jury sessions to resolve the undecided votes fail, the judge shall declare the impeachment to fail.
- (s) Each jury member shall be asked to confirm that they agree that the verdict is correct, but *not* whether he or she voted *aye*, *nay* or *undecided*.
- (t) Upon a verdict of *guilty*, the President shall be removed from office, and his/her successor elevated to the office of President of the United States.

DISCUSSION

While any such politically charged process as an impeachment has the potential for corruption, we believe that the system that currently prevails under the Constitution is subject to considerable corruption, to the detriment of the People of the United States.

That process and its history is well documented. The following appear to be the salient corrupt tendencies of the existing system, with respect to the impeachment trial of Donald Trump in 2019.

- (a) The Senate acted as an ordinary Senate body in voting for or against various procedural issues that came up during the trial. For example, the Senators voted not to hear witnesses during the trial, as an ordinary Senate process, under majority rule. They were therefore asked to serve as both jurors and trial process judges.
- (b) The entire Senate served as the jury. This appears to us to be consistent with the Founder's view that the President should be selected by vote of the *state* legislatures, in an effort to partially insulate the removal of a President from the direct democracy of the People. That action was reversed in the 17th amendment, but that amendment does not speak to the issue of impeachment, and its archaic specification of the Senate as a jury in this particular situation.
- (c) In the 2019 trial, the Senate was not only divided along party lines, but all but one of the Republican Senators voted against impeachment. All of the Democratic Senators voted for impeachment.
- (d) The votes were also public, making it clear just how each Senator voted on impeachment. That alone made the process inherently political, and invited retribution or reward toward individual senators.
- (e) Both sides clearly saw their duty as serving their party and its political interests, rather than as serving the People. Yet each Senator could also claim that his or her vote was made in accordance to their conscience and their interpretation of the facts of the case. This occurred in spite of a special oath administered to the Senators to consider and vote as an objective juror might in a case in which they had no personal interest.
- (f) Given no particular Constitutional rules, the Senate leader (Senator Mitch McConnell) announced *in advance, and contrary to his oath*, that he would be working "closely" with the Whitehouse, clearly to protect the President.
- (g) Mr. McConnell also implied that he would be using his powers as majority leader to ensure that his fellow Republican Senators would not vote for impeachment, no matter the power of evidence and the gravity of the issues.
- (h) This action by the Senate leader suggested that any Republican Senator who voted *for* impeachment would be subject to some form of discipline by his or her Party, for example, by being denied financial support from his party in a forthcoming election, and finding oneself running against a well-supported alternative Republican candidate in that election. Further *legal* punishment could take the form of being deprived of election funding for any other office, or being the subject of harassment in any attempt to resume one's nonpolitical career. Such is the power available to a political party backed by significant financial resources. This form of discipline apparently was of some concern to the founders, but the Constitution carries no remedy for this obviously unfair distortion of what should otherwise be a typical jury trial. Given these real circumstances, administering the required oath and asking for individual signatures to that oath, was nothing less than a blatantly cynical exercise, leaving any voting citizen with yet another piece of evidence that all politics is corrupt.
- (i) All the Republican House members voted *nay* on both articles of impeachment, with one exception, Senator Mitt Romney of Utah, who voted *aye* on one of the two articles of impeachment. Each of the Democratic House members voted *aye* on both articles.
- (j) There is no evidence that the Democratic senators were asked by their party or by the Speaker of the House to vote for impeachment, nor that was there any actionable threat made by their party or the Speaker to elicit such a vote.

This 2019 situation, along with the long tradition that the House and the Senate should jealously protect their respective

independence, and in the absence of clearly defined rules of impeachment in our Constitution, has resulted in an arbitrary process with little or no respect for the principles of trial by jury justice for ordinary crimes.

In fact, that impeachment process and its end verdict only cemented a cynical view in the minds of many voters that all politics is corrupt.

We note that many GOP Senators served as trial lawyers in their previous practice. Law school training therefore gave us large numbers of Senators who were perfectly comfortable with defending a client (their President) at trial, although all the evidence and testimony indicated guilt. We therefore conjecture that many of the Republican House members, given that training, simply justified their verdict as an extension of their practice.

Our proposal is intended to bring a trial for removal from office under impeachment into line with an ordinary criminal trial by jury. In all ordinary trials, the jury is composed of ordinary citizens drawn at random from a voter registration database.

Instead, our Constitution now asks that this important impeachment trial be judged by a block of partisan politicians voted into office, most of whom are lawyers, and many formerly trial lawyers, in an open court in which each jury member's vote is made public.

The guiding principle of this amendment is to remove the jury selection and deliberations in an impeachment trial from the arena of partisan politics and restore it to the People, to the extent possible. It should be out of the hands of the legal profession and elected representatives as jurors.

The size of the jury should be sufficiently large to provide for a variety of backgrounds and political persuasions, but not so large as to become unmanageable. Impeachment is a rare event compared to the day-by-day activities of trials by jury carried out in our nation, but when it occurs, our nation is surely able to provide the necessary travel, lodging, and other expenses involved in asking for the service of about fifty ordinary voting citizens.

Unlike an ordinary jury trial, a verdict of guilty would be reached by a two-thirds vote of the jury. This comports with our Constitution's impeachment clause.

The juror identification and how each juror voted should remain secret to the extent possible.

A crime of obstruction of justice through jury tampering should of course apply, with appropriate penalties, starting with a mistrial. Although the President's life and property would not be affected by a negative verdict, there would obviously be considerable incentive from both parties to influence the jury selection or verdict, and that must be curbed.

ALTERNATIVES

One objection to impeachment, proposed by many political commentators, Senators and Congress persons, was to simply wait until the next election. In the case of Mr. Trump, his removal from office, should the election go against him, would take almost a year. That would be a year in which Mr. Trump would have continued certain actions, which were grounds for impeachment as found by vote in the House. His actions also suggested more sinister and destructive actions to come, including foreign interference in the next election. While that argument was plausible, it remained as a political issue. It also may have provided the justification and cover for various Republican politicians to justify their election in November.

Another alternative might be to have the national voting public carry out a special election to confirm or reject the current President in office. That would also require much the same political process as was used to elect such a President in the first place. It is a lengthy and expensive process, requiring an expensive effort by every county in the nation.

Political rallies and speeches may be how we choose our representatives, but they are a poor way to achieve timely justice. Yet justice is what an impeachment calls for – we think there has been a crime, and that crime calls for a fair trial, with minimal delay. If the President were to commit serious offences while in office, he or she should be tried through a court of law, following well-established trial court procedures, and not subjected to yet another election.

FEDERALIST PAPER NO. 65

The founders of our republic gave considerable thought to the possibility of our democratic system electing a president, who, upon taking office, would find a way to become an imperial all-powerful King. Since the article of impeachment is quite short, and lacking in detail about exactly why and how an impeachment should take place, Alexander Hamilton, in particular, wrote a great deal about this issue. It is found in the Federalist Papers, number 65, and continues through number 66, for about 3 pages of argument, and review of reasonable alternatives.

I feel totally inadequate to summarize this work here. However, let me quote the first several paragraphs of paper number 65 below, in which Alexander Hamilton details his considerations in arriving at our current impeachment form, and why he chose the Senate as an impeachment jury.

The following is an exact transcription of key portions of article No. 65 of the Federalist Papers. I have tagged each paragraph with a letter, e.g. (a), (b), etc., for reference in my discussion of this article, which follows the article.

No. 65. A FURTHER VIEW OF THE CONSTITUTION OF THE SENATE, IN RELATION TO ITS CAPACITY AS A COURT FOR THE TRIAL OF IMPEACHMENT.

- (a) *The remaining powers which the plan of the convention allots to the senate in a distinct capacity, are comprised in their participation with the executive in the appointment to offices, and in their judicial character as a court for the trial of impeachments. As in the business of appointments, the executive will be the principal agent, the provisions relating to it will most properly be discussed in the examination of that department. We will therefore conclude this head, with a view of the political character of the senate.*
- (b) *A well-conditioned court for the trial of impeachment is an object not more to be desired, than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated Political, as they relate chiefly to injuries done immediately to the society itself. The prosecution of them, for this reason will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly, or inimical, to the accused. In many cases, it will connect itself with the preexisting factions, and will enlist all their animosities, partialities, influence, and interest on one side, or on the other and in such cases, there will always be the greatest danger, that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.*
- (c) *The delicacy and magnitude of a trust, which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs, speak for themselves. The difficulty of placing it rightly, in a government resting entirely on the basis of periodical elections, will as readily be perceived, when it is considered that the most conspicuous characters in it will from that circumstance, be too often the leaders, or the tools of the most cunning or the most numerous faction; and on this account, can hardly be expected to possess the requisite neutrality towards those whose conduct may be the subject of scrutiny.*
- (d) *The convention [of 1787], it appears, thought the Senate the most fit depository of this important trust. Those who can best discern the intrinsic difficulty of the thing, will be least hasty in condemning that opinion, and will be most inclined to allow due weight to the arguments which may be supposed to have produced it.*
- (e) *What, it may be asked, is the true spirit of the institution itself, is it not designed as a method of Natural Inquiry into the conduct of public men? If this be the design of it, who can so properly be the inquisitors for the nation as the representatives of the nation itself? It is not disputed that the power of originating the inquiry, or in other words of preferring the impeachment, ought to be lodged in the hands of one branch of the legislative body [the House]: will not the reasons which indicate the propriety of this arrangement, strongly plead for an admission of the other branch of that body to a share of the inquiry? The model, from which the idea of this institution has been borrowed, pointed out that course to the convention. In Great Britain, it is the province of the house of commons to prefer the impeachment, and of the house of lords to decide upon it. Several of the state constitutions have followed the example. As well the latter, as the former, seem to have regarded the practice of impeachments, as a bridle in the hands of the legislative body upon the executive servants of the government. Is not this the true light in which it ought to be regarded?*
- (f) *Where else than in the Senate, could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel **confidence enough in its own situation**, to preserve unawed and uninfluenced, the necessary impartiality between an **individual** accused, and the **representatives of the people, his accusers**.*
- (g,h) [omitted - two paragraphs arguing against the use of the Supreme Court to decide impeachment]
- (i) [omitted - a paragraph arguing against a combination of the Supreme Court with the Senate]
- (j) *Would it have been desirable to have composed the court for the trial of impeachments, of persons wholly distinct from the other departments of the government? There are weighty arguments, as well as against, in favor of such a plan. To some minds it will not appear a trivial objection that (1) it would tend to increase the complexity of the judicial machine, and to add a new spring to the government, the utility of which would at best be questionable. But an objection which will not be thought as any unworthy of attention, is this: (2) a court formed upon such a plan, would either be attended with heavy expense, or might in practice be subject to a variety of casualties and inconveniences. It must either consist of permanent officers, stationary at the seat of government, and of course entitled to fixed and regular stipends, or of certain officers of the state governments, to be called upon whenever an impeachment was actually depending. (3) It will not be easy to imagine any third mode materially different, which could rationally be proposed. As the court, for reasons already given, ought to be numerous; (4) the first scheme will be reprobated by every man, who can compare the extent of the public wants with the means of supplying them; (5) the second will be espoused with caution by those who will*

seriously consider the difficulty of collecting men dispersed over the whole union; (6) the injury to the innocent, from the procrastinated determination of the charges which might be brought against them; (7) the advantage to the guilty, from the opportunities which delay would afford for intrigue and corruption; and in some cases (8) the detriment to the state from the prolonged inaction of men whose firm and faithful execution of their duty might have exposed them to the persecution of an intemperate or designing majority in the house of representatives. Though this latter supposition may seem harsh, and might not be likely often to be verified; yet it ought not to be forgotten that the demon of faction will, at certain seasons, extend his scepter over all numerous bodies of men.

RESPONSE TO FEDERAL PAPER NO. 65

(William Barrett)

I beg you, the reader, to forgive my presumption of questioning the excellent and detailed argument written by Mr. Hamilton in support of using the Senate body as the jury for an impeachment trial.

However, it should be needless to point out that this was written in the late eighteenth century, when travel over any distance was dangerous and time-consuming; when no electronic communication was possible; when suitable temporary lodging arrangements for a large body of persons were unavailable even in one of the nation's largest cities, Philadelphia, and even less so in the nation's capital of Washington; and when the general public was considered so untutored and unmannerly as to constitute a hazard rather than an asset to determinations as a reasonably large body. It was also written in the infancy of our Republic under a revolutionary new Constitution. Hamilton was guided by various classical philosophers of political systems, and the English Parliamentary system. He also had a reasonably clear understanding of human behavior – such as was possible in the eighteenth century.

Having said that, let us examine each of Hamilton's arguments in favor of using the Senate as what he hoped would act as an impartial jury in a trial of impeachment.

We first observe that Hamilton's view of the Senate was to be that of a body of distinguished, civic-minded, non-political senior citizens, serving long terms, and whose duties approached those of a senior judge. Senators were to be selected by state legislators, not the public. Their long, staggered terms were to approach the life-long tenure of federal judges. Their duties as senators were principally to review presidential appointments to office, to review and approve treaties proposed by the President, and to review and vote upon bills passed by the House.

Senators were intended to act and vote in a non-partisan manner. The Senate was not expected to write new bills to be sent to Congress, merely to review and either approve or disapprove bills sent to it by the House.

However, the Senate rather quickly turned political, since its members had to win an election each six years, and that required a party apparatus to fund their election costs. Its partisan political nature was further cemented by the passage of the seventeenth amendment, by which Senators were to be elected by popular vote within each state. A state-wide election requires massive financial and political support, making a non-partisan election of a Senator impractical. Such an election is comparable to the election of a state Governor, with all its concomitant need for party support. The speeches and votes of any Senator would also be scrutinized by his/her state party apparatus, and any significant departure from the prevailing state political power agenda usually led to a defeat in the next senatorial election.

Nevertheless, Hamilton clearly saw our Senate as comparable to the House of Lords in the English system. However, only titled peers could serve in the House of the Lords, whereas America has no such peerage. I can understand why Hamilton felt guided by the English model, but I must fault his judgement in assuming that our version of it would serve. Of course, the House of Lords had little real power in 1787, and eventually lost all power, whereas our Senate has survived. The English Lord at best considered himself as above politics, or at least, required by the circumstances to always appear to be so. Our Senators quickly discovered that they were only a little better than the political hacks running for Congress or a seat in a state legislature.

With that in mind, we can better understand and follow Hamilton's arguments in paper numbers 65 and 66.

In section (e) of paper 65, Hamilton refers to an impeachment process that was used many times by the English Parliament in the 17th century, by which Parliament might vote an impeachment of an agent of a King, or the King himself, who would then stand for trial before an impeachment jury drawn from the House of Lords. By curbing the actions of various lords who were faithful to the King, Parliament was eventually able to wrest control from the King. It was clear from this history that impeachment could be an effective means for Parliament – or Congress – to wrest power from a powerful ruler.

Impeachment in England was most recently employed in November 2004 in an attempt to remove Tony Blair from office, who was accused of lying to Parliament regarding the war on Iraq. That motion to impeach was quickly tabled and never

called up for debate. An earlier impeachment motion was made in 1848, in an attempt to remove Lord Palmerston. It, too, failed on a vote of Parliament.

An obvious flaw in using the English version of impeachment in the American system is the absence of a royal class in America. Who should be empowered to judge the actions of a President in a classless society? To Hamilton, the answer was obvious – our Senate was to be designed to serve the role of the Lords of England. But our Senators were to be selected from a political body – a state legislature – and not to be from a hereditary class of Lords. The 17th amendment also called for their election by their state’s citizens, which further cemented our Senators into a political, rather than into a more judicial role.

Let us now consider Hamilton’s arguments in section (j) of letter 65, which are addressed to the idea of a special jury of citizens for the purpose of impeachment.

The general progress since 1787 in communications, travel, accommodations for the traveler, and improvements in general education, have rendered obsolete several of Mr. Hamilton’s arguments in section (j). In particular, we can safely ignore objections (j1) through (j4). These appear to refer to a form of permanent court constituted for the purpose of impeachment, which Hamilton considered, but which was not adopted. That court would have to rise to the level of a regularly appointed or elected body, but with nothing to do until an impeachment would occur. Hamilton – and others – weighed the likelihood of that happening in the long run. They looked at the example of George Washington, a man of impeccable honor, clearly slated to be the first President of the new republic, and very unlikely to be impeached. If he were to set the standard for President, impeachment was unlikely to occur for many decades, if ever.

As to objection (j5), Hamilton was concerned for the safety and expense of a newly chosen impeachment jury in travelling long distances to some large trial chamber. The risk, time and expense for such travel in the eighteenth century were certainly a major issue then, but are hardly an issue today. An entire jury could be quartered, fed and secured in any of several modern motels.

I’m not sure what Hamilton is referring to in objection (j6). It appears to be about possible threats or bribes to the jury members and their families, i.e. *jury tampering*. Jury tampering sometimes arises in an ordinary criminal jury trial, and is taken seriously by the judge. An impeachment trial will be of considerable interest to the press, the public in general, and to the interested parties in the dispute, and that calls for unusually strong protection of the jury by means that should by now be well understood by the chief justice of our Supreme Court.

Objection (j7) appears to be addressed to the eighteenth-century problem of long delays due to travel, etc., in assembling the trial jurors, and the difficulties of securing their identity and residences while waiting for all the jurors to appear, and during the trial. The dangers of travel then, and the difficulty of securing a jury against tampering seemed formidable. This would not be an issue today. Even the expense of quartering fifty jurors would not be a significant problem.

Objection (j8) appears to be related to the idea of Hamilton’s of maintaining a permanent body of jurors, separate from the Senate, whose sole duty is to serve in an impeachment trial. My proposal requires no such body. Hamilton himself appears to realize that impeachment would likely be rare. Creating a permanent body for the purpose made no sense. He has therefore chosen an existing body, the Senate. With its long-staggered terms, and with other duties compatible with those of a select body similar to the House of Lords, it appeared to him to be the ideal jury in an impeachment trial. Hamilton clearly hoped that the Senate would behave as a group of distinguished, experienced nonpolitical men all of whom would be dedicated to the support and improvement of the American public and to the Constitution. Instead, the Senate rather quickly succumbed to the realities of our two-party political system, and – now – to the directions of a single partisan leader of the Senate, who declared his total loyalty to the President prior to the trial.

Suppose it were possible to resurrect Mr. Hamilton. I would help him discover the advances in communications, in travel, in computer systems, and in the improved education of our public. I would ask him to consider the intensely partisan nature of our Senate, and to review the video record of Mr. Trump’s impeachment trial. I would ask him to review the appalling failure of Mr. Trump in responding to the Covirus pandemic, and the subsequent needless loss of thousands of lives, along with the collapse of thousands of small businesses. And that *followed* a failed impeachment, leaving the People with no means of removing this man from office other than waiting for over a year to vote him out of office.

My belief is that Hamilton would agree that a major reform to our impeachment system is called for, and that a solution in favor of a randomly selected panel of jurors engaged in a standard judicial proceeding, would be preferred to our current corruptly political Senators pretending to act as unbiased impeachment jurors.

IN CONCLUSION

Removal from office, and carrying the stain of being unable to hold any other elected office, for any President, is serious. However, the impeached President will not be imprisoned, nor fined, and – in general – can return to whatever was his

enterprise prior to his election to that office. The President would continue to be constitutionally protected from indictment under our Constitution. Donald Trump, were he so voted out of office by the Senate, could have returned to his business of real estate management, or whatever it was prior to his election to the Presidency. As the People, we would not have wanted him to continue holding the highest office in the land, responsible for administering thousands of laws and a hundred thousand or more civil servants of our government. We therefore acted in support of our House representatives to launch an expensive, time-consuming impeachment process.

A process which history will very likely show, *failed*. We may be living with the consequences of that failure for at least a generation.

Mr. Trump's children may well try to run for that office, and may be in a better position to carry out his mission of creating an absolute dictatorship, having learned from his mistakes. There are surely hundreds, if not thousands, of would-be dictators with a similar motivation.

Having said that, the events of 2018 through 2020, and the difficulty that our nation has experienced in attempting to remove Donald Trump from office, in spite of his hundreds of lies and dozens of obviously criminal activities, some of which rise to the level of treason, clearly suggests that *something is wrong with our process of impeachment*.

What is surprising to me is that the Constitutional mechanism of impeachment has not changed since 1785. The world has changed in immense ways since then. Our nation survived a bloody civil war, and has fought in two major world wars, along with dozens of other military conflicts. This particular challenge by Donald Trump to our constitutional government has never arisen before, but it must be met. The alternative of yet another chief executive with the same goals as this one, but with a yet more clever approach, will surely doom our free nation to the autocratic rule of a corrupt despot. We were at the brink in the 2020 election. At this writing, it is not yet even clear that president Trump, having clearly lost an election, will leave office next January, and not further damage our nation out of anger in the process.

Mr. Trump has shown us that it is possible for someone to win that office through deceit, hiding serious crimes and treachery, and often acting covertly, very likely under the influence of a foreign power. How he managed to win an election after a vigorous campaign opposed by a seasoned, well-liked opponent, Mrs. Clinton, and after defeating over a dozen reasonably qualified fellow Republican candidates, is still not clear. That will be studied for decades.

What is clear is that our nation needs a more effective way of removing such a person from office. We were fortunate that our nation was not in a major war. It took over 1000 days of witnessing his lies, his many obviously undemocratic, destructive and unsympathetic actions, for a majority of us to decide that his election in 2016 was a mistake. Even so, almost half the nation continues to believe in his presidency, for whatever reason, and that evidently is sufficient to cause an entire political party to continue to support, if not excuse, his actions as President.

Our Nation, as a democratic republic, is doomed if we cannot find a more effective and timely way of removing such a President, through a timely and effective impeachment, in the future. Our Senate has failed a basic test of impeachment, and I have argued that it is unlikely ever to serve as an impeachment jury.

It is time to send the impeachment jury function back to the people.

JURY SELECTION

The issue before us in this section is to explore a way of selecting a jury of – say – 51 ordinary citizens, one per state in the Union, to be called to decide on the impeachment of a president through a suitable trial. That trial should be conducted much as any other criminal trial by jury, except that the jury in this case would be unusually large, should be held in anonymity, and the decision rendered shall be to remove the President from office on a jury vote of two-thirds or more of the jury, *not* necessarily a unanimous verdict. The identities and the votes of each juror should be protected and remain unknown for some period of years after the trial.

I predict that this issue will be heavily contended, should our proposal reach the level of a congressional debate. Thus, we consider some mathematical detail, drawn from the work of a distinguished Stanford University mathematician, Donald Knuth.

Theory of Random Selection from a Finite Set of Integers

The mathematics of the uniform random selection of a subgroup from a group through a computer program is well known to professional software engineers.

Professor Donald Knuth studied the issue in depth [Knuth]. The central issue is how to select a random integer from a range 1 through N, such that the probability of drawing any particular integer shall be $1/N$.

Machine software programs are internally mathematically deterministic. Given an algorithm that depends only on its own prescribed table of constants and no other external data, any single-tasking program for that algorithm that claims to generate

a random sequence of numbers will in fact generate the *identical* sequence each time it is run.

For example, if the random set is of size 10, we expect the program to deliver a random sequence of the digits 0 through 9. It matters not at all how complicated may be the function that delivers each of the members of the sequence, that function will always deliver identically the same sequence. If that sequence is (say) 8,3,5,2, 1, 9, 4, 6, 0, 7, such a program will *always* deliver exactly that sequence. How can that possibly be a random sequence? That sequence might as well be baked into the software when it was written, and would therefore *not* be considered random for our purposes.

We instead need a method in which each application of the method will deliver some completely unpredictable digit in a range 1 through N. That would have to include the first digit delivered when the computing machine is first switched on, or restarted.

Professor Knuth explains how to do that. He also suggests ways in which each of those random numbers may be generated, given a mechanism for generating a random digit drawn from any sequence.

A common means is to just sample the computer's time clock. That clock, contained in every computer system, counts fractional seconds at a very high rate. Each such clock tick is typically one-fifth of a billionth of a second. That clock rate is carefully adjusted to be a particular frequency, so that it can be used to accurately deliver the current time, but the particular numeric value carried by that clock at any real time is unpredictable. The particular count carried by that clock at any later moment would be exactly proportional to the real time passed since the computer was started, but the low-order bits grabbed by some random number function would be unpredictable.

All that's required to acquire a random number *R* is to grab the current count carried by that clock, and calculate the remainder of dividing that count by *N*, where we want a random number between 0 and *N*-1. That remainder will also be a number, but one that is essentially random – its value will depend on the precise instant that the clock value was grabbed, and there is no correlation between that current value and the instant in which the value was captured.

That random number *R* can then be used in a simple formula to generate a pseudo-random sequence of integers. Or just be used by itself to select a member of a list of *N* items, by dividing *R* by *N* and choosing the remainder, which will be an integer between 0 and *N*-1, inclusive.

More random numbers required in a single program should be acquired by a system of multiplication and truncation of the previous number, rather than relying on the clock, as Knuth suggests.

The whole point of using such a mathematically secure means of selecting a random number is that such a number cannot be influenced by the political preferences of whoever needs that number. Nor be predicted by anyone or any computer in advance of acquiring such a number – or any sequence of such numbers.

Why Our Process Should be More Just

Would our proposal yield a more democratic process, more like an ordinary trial by jury for a crime?

We contend that it would, given that the trial is conducted as any other criminal trial, and that the jury is selected from the people in a way that minimizes the current politicized jury and its open processes and voting.

Selection of the Jury

The randomized process of jury selection from a large pool of ordinary citizens, which we propose, is clearly very different from our current process of running for office and being elected, which is how every Senator is selected.

Consider these alternative means of selecting an impeachment jury:

- **Select jury members by political appointment?** Who should make that selection? If a single person, how could the selection not involve a political position? And, if political, would not the selection of jury members quickly turn into a nakedly political process essentially the same as that now constituting our Senate? And would not those jury members be known to the public, and thereby be subject to various political pressures to vote according to a party dictate?
- **Select jury members by running for that "office", through an election?** The first problem here is that this is essentially how the Senate is chosen. A second issue is that this particular jury would be selected only rarely when needed, and their term of "office" will expire at the end of this particular trial. Setting up and carrying out such a special election would be very time-consuming and expensive. One might as well organize a special election on the impeachment issue itself, and dispense with an impeachment trial.
- **Why not a special election** on whether to remove the president from office? If it were possible to easily and quickly organize and conduct such a special election, that might solve our problem. But our election system now requires a year or more to organize. Financing one would fall on the separate counties. And then, such an election falls far short of the high standards set for a jury trial. A trial by jury process is not at all like an election – it is more like taking a course on a particular topic, then asking the member to choose an *aye* or *nay* at the end, depending on their interpretation of the guilt of the President.

Impeachment in England

Consider how the removal of a chief executive is handled in most parliamentary systems. In England, a special election is typically launched through a vote in Parliament that the *People have no Confidence in the current Government*. That essentially fires the prime minister and his cabinet, but it also calls for a special election, in which *every* member of parliament must return to his/her home district and run for re-election. Or resign. By law, an English parliamentary election must be completed in six weeks. That is effectively the time in which the nation is without an effective government. Of course, the existing prime minister and cabinet continues in power, though with limited powers, during that period.

Note, also, that a prime minister is typically chosen from among the members of Parliament. He or she would be a person familiar to the other members from speeches, public appearances, writings, etc.

No attorneys or politicians

We also ask that the jury members not be attorneys, nor politicians. The reason should be obvious. Most attorneys are trained in practicing before a court as a defense or prosecution attorney. In that role, the attorney just assumes that his/her client is either guilty or not, depending on the charge. We claim that creates a form of bias in which every attorney sees his role as carrying out a particular duty to a client. In particular, those Senatorial lawyers in the same party as the president will be thinking *defense*, whereas those in the opposite party will be thinking *prosecution*. That tendency by itself should be considered sufficient bias to be rejected from a jury.

Anonymity of the Jurors

We also insist that the identity of the jury members be protected from discovery, and that the particular vote of each member not be publicly revealed. Again, the current system calls for a jury of elected officials well known to the press and the public, and – to add insult to injury – each Senator's vote is publicly noted, and that vote will very likely be to influence his/her constituents in the next election.

The almost completely partisan vote in the case of Donald Trump's impeachment could have been predicted, since the votes of each of the Senators were made public. That meant that any Senator that fell out of line with his party's favor – and this was a highly partisan issue – would be subject to some form of punishment. Indeed, one Republican Senator did cast one vote for impeachment of Mr. Trump, Mr. Romney of Utah. It remains to be seen whether he will be punished in some way for his decision. Mr. Romney delivered a detailed speech prior to his vote explaining how he had struggled with his decision, and why he chose to vote against his party's preference.

To further corrupt and politicize the impeachment process, those same senators who would be expected to openly vote for or against impeachment, were also asked to vote as Senators on various procedural issues.

Judicial Process to be Followed

In previous American impeachment trials, a Senate committee was charged with designing the impeachment process, and those votes followed party lines. That would be like a judge in a murder trial asking the jury to vote on critical process issues, knowing that the jury already carried strong incentives to vote for or against the defendant.

The Senate was asked several times to vote – as Senators - on whether witnesses would be called. Again, in any ordinary trial, that decision would be left to the prosecution and defense attorneys, with the judge authorized to rule against calling irrelevant witnesses. Certainly, a real jury would never be asked to vote on this.

Consequences of Being Impeached

We first note that after a President is deposed through impeachment, the Vice President will be seated as President. Our election system currently places two persons for these two offices. Each is typically of the same party, honoring the same party platform. The vice presidential candidate is also chosen by the presidential candidate.

A deposed President would not be executed or punished in any way, except for prosecution for state crimes, or crimes committed prior to his/her presidency. The deposed President would also be deprived of his or her salary and the protection of various Treasury guards, but even that may not be the case if Congress votes for the continuation of these public benefits. The deposed President may or may not be declared ineligible for any subsequent public office. He or she should also be kept out of any consultation or other involvement with the affairs of the new President, but there is no general rule or law to guarantee this.

In short, a successful impeachment will likely result in a new government that may in fact operate exactly like the previous one, and likely with many of the same cabinet officers.

There is currently no mechanism to prevent the impeached President to work out some arrangement of advising – or compelling – his successor to continue certain corrupt activities. The chances of just that happening are very good.

In short, Mike Pence was chosen by Donald Trump. We do not know how independent Mr. Pence would be as President,

and whether his office would be following the same corrupt practices as Mr. Trump, but it is clearly likely.

It is also very likely that a future president Pence would pardon Mr. Trump of any possible crimes, and then subsequently consult with him on the future direction of our republic. Trump is a wealthy individual, while Pence has been a public servant for most of his career. I find it very unlikely that much would change in the presidency, or in its corrupt activities, should Mr. Pence ascend to that high office.

Something ought to be done about that situation, perhaps by requiring the Vice President to separately run for office, with some real responsibilities, and not just be a hand-picked buddy of the presidential candidate. Or else, find some way to insulate the presidency against continued direction of the nation by an impeached president, through a toady vice-president.

Details of Selection of a Randomized Impeachment Jury

We propose the following process of selecting a randomized impeachment jury from the national voter lists. This process should be carried out by a small national team of experts monitored by observers from both major parties, plus a small number of interested citizens and members of the press.

That team should obviously be selected and managed through a House committee. We suggest a committee that was involved in framing the impeachment articles. The team should *not* be managed by the administration, for that would put the team under the very thumb of the President being considered for impeachment.

The end result of this process is to select one jury candidate from each state willing and qualified to serve, in a randomized manner. That is where our suggested jury size of 51 comes from - one impeachment jury member per state in the union. We like the idea that each state in the union would be equally represented in the impeachment process, much as the Senate was designed by the founders to represent the interests of whole states, and not just a few cities or counties in a state.

We start with *two* randomly selected congressional districts within each state. Each congressional district should contain - by census data and reapportionment - approximately the same number of citizens. Thus, this selection should grant each voting citizen approximately the same probability of being selected for our impeachment jury.

1. Why choose only *two* districts? Why not consider them all? We suggest this as a way of reducing the phone calling effort (see item 9 in this list, below) to a manageable level without sacrificing a reasonable pool of voters. More districts will mean a larger subset of phone queries and a larger number of persons being considered, but ultimately not chosen for this task.
2. From each state, consider all the voters from two congressional districts chosen at random. There are 51 states (D.C. included), 3,007 counties and 435 Congressional districts in the United States. Each district is contained within a particular state, but may bridge more than one county.
3. We note that by federal law and the Constitution, each state is allocated a certain number of House representatives, based on the most recent census results, and that each state should be divided into congressional districts in such a manner as to contain approximately the same count of citizens.
4. We note that the *citizen* count may not accurately correspond to the *voter* count, but that is also how the House representatives are chosen. Thus, it makes sense to use these numbers for the selection of an impeachment jury.
5. We ask for the *complete* voter registration list in each such selected Congressional district. Each list could be in the form of a simple spreadsheet whose fields should include a full name, address, phone number, birthdate, and party preference. No alterations, deletions or selections may be imposed on any list by a state bureau.
6. Each of these lists will likely be large, containing at least several hundred to as many as several hundred thousand names. However, the accurate transmission of even a very large list should not take more than a few minutes of high-speed internet transmission. There is a potential for political corruption of such a list at the sending end, but we feel that could be detected by subsequent checks by the receiving impeachment bureau.
7. Note that within any particular state, there would be no way for that state to know in advance which two districts will be selected for impeachment jurors. Thus, someone bent on corrupting this jury would have to somehow corrupt *each* election bureau in the state in a way that could corrupt the subsequent trial.
8. Each registration list will be examined, tested, and reduced in the following ways by the central impeachment bureau:
 - a. The relative proportion of political parties in each list should be roughly as expected from past election history in that county. In any case, one would expect to find a reasonable number of members of each political party in each list. No county can be expected to be almost wholly Republican or Democrat, although most will show a preponderance of one party.
 - b. A selection of a few dozen voters from each list will next be chosen at random from that list. Given roughly 100 lists, and - say - 20 each, we will then have a pool of 2000 voters, chosen at random from the national voting population, with each state having 40 voters represented. By "random", we mean with no consideration given to *any* of the particular attributes of the voters.
 - c. These 40 voters chosen randomly from each state should roughly correspond to the two senators elected

- from that state. Of course, they were chosen randomly from two different congressional districts.
- d. The final selection of a single principal impeachment jury member will next be chosen from each pool of these 40 voters now representing one state.
9. Each of the 40 members of each state's pool (e.g. a *Candidate*) will next be contacted by telephone. These phone calls (about 2000 in all) could be carried out in two to three days by a professional polling team or organization, again under some supervision by political party monitors. We suggest the following telephone pool organization:
 - a. Candidate will be rejected if the phone is disconnected, person has moved, e.g. the party cannot be reached in two or three days. Caller should make several attempts to reach the party.
 - b. Candidate will be informed of the purpose of the call. The impeachment process could be couched in the form of a paid vacation at a nice resort in the nation's capital. *Would he or she be willing to serve on an impeachment jury?*
 - c. Candidate address, name and party affiliation to be confirmed and corrected if necessary. Corrections will be noted – the corrections count should be reviewed by the monitors for possible voter bureau corruption. That is, has this list been adjusted by someone in that voter bureau, or is the correction a reasonable one caused by the person moving, changing their party affiliation, etc.?
 - d. Candidate should not be an attorney at law or a political figure holding an office.
 - e. Candidate should be asked if they could follow the trial witnesses and other evidence, and reach a verdict regardless of whether or not they favor this President.
 - f. The result of these 40 calls should be at least four candidates qualified for the impeachment jury, able and willing to serve. The total list qualified out of the 40 should be kept for further selection as needed.
 - g. Note that the results within each state of the 40 contacts might be used to clear or confirm suspicions that the voter list has been tampered for some political objective, e.g. clearing or convicting the sitting president. One should be suspicious of a list consisting wholly of members of one party, or of numerous errors discovered in the phone calls.
 - h. If four candidates cannot be found, a new set of 40 chosen at random from the voter list will be chosen.
 - i. It seems unlikely, but some voting districts may be unable or unwilling to provide at least four candidates to serve. Note that this decision must *not* be due to party affiliation, only for other personal reasons.
 10. From each of the qualified state pools, one candidate will be chosen by random selection. Note that each qualified pool will contain at least four persons, and some will contain as many as 40.
 - a. That candidate will be invited to join the impeachment jury.
 - b. Arrangements for travel, lodging, reimbursement expenses, reimbursement for lost income, meals, etc. to be made.
 - c. Several personal guides, e.g. professional tour guides, to be responsible for all the arrangements.
 - d. Protection against tampering, press, etc. for the group is vital.
 - e. It makes sense to rent an entire motel with a restaurant, pool, gym, bar, etc. for the occasion. Easier to guard, provide transportation, meals, mail, etc. Should also be secured against jury tampering, news photographers, etc.
 - f. Each candidate may bring a mate, double rooms, but warned against discussing the trial issues, per standard court jury process.
 11. Portions of the selection process above may have to be repeated for jury alternates selection.

Citations

[Knuth] Donald Knuth, *The Art of Computer Programming, vol. 2, Seminumerical Algorithms*, Addison-Wesley, pp. 1-160.