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The Senate itself is on trial

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The third impeachment in United States history has launched two trials, one of President Trump and the other of the Senate itself. If the Senate refuses to convict Trump either because it refuses to hold a full and fair trial or because it simply disregards the grave nature of his abuses, its action will severely undermine American constitutional government.

The first question is whether Senate Republicans will hear all the relevant evidence or merely orchestrate a coverup. There are many fact witnesses who have not yet testified, including the president himself, and floods of relevant new documents emerge virtually daily. To actually try the case, the Senate must hear those witnesses and consider those documents. To refuse to do so is to deny the implicit constitutional mandate requiring an honest and good faith proceeding in the Senate to establish the truth.

Revealingly, some Republicans have proclaimed that they will ignore that mandate. Senate Majority Leader Mitch McConnell and Senate Judiciary Committee Chairman Lindsey Graham have announced that they will not act as impartial jurors, while they and other Republicans have conspired with Trump and his legal team to develop a shared defensive strategy.

Spotlighting their clearly brazen constitutional infidelity, those same Republicans were willing to take an oath swearing that they would be impartial in the Senate

trial. The numerous contrary statements and collaborative efforts they made with Trump, however, have disqualified them as impartial jurors in the Senate trial and condemned them before everyone who believes that oaths are not merely binding but sacred.

Those Republicans feel compelled to engage in such transgressions for an imperative political reason. They recognize that they must exclude those witnesses and documents because they would further support the case against Trump. Indeed, their determination to exclude that very evidence testifies to their recognition that, if it is considered fairly, the additional information would almost certainly require that they convict Trump.

The resolve by Republicans to exclude those witnesses and documents shows that they understand their legal significance as most Democrats do. Both groups are convinced that the witnesses and documents would confirm that Trump is guilty. Both their positions exemplify the invariable conflict that is the hallmark of every trial. One side seeks to introduce evidence because it helps, while the other side strives to exclude because it hurts. The opposition by Republicans to new witnesses and documents fits that classic pattern and corroborates the conclusion that Republicans themselves understand the damning nature of that evidence to Trump.

Some of the purported defenses that Republicans raise demonstrate the logically untenable position they take. They contend, quite falsely, that evidence against Trump is only “hearsay.” If they truly believed that, they would in basic fairness have no choice but to allow the introduction of “nonhearsay” evidence, and would be obligated to secure the testimony of those critical witnesses, including John Bolton, Mick Mulvaney, Rudy Giuliani, Rick Perry, and other, who could provide “nonhearsay” evidence. Republicans cannot legitimately justify refusal to convict on the ground that the prosecution has only hearsay evidence when they refuse to allow the prosecution to present evidence that does not qualify as hearsay.

Republicans contend, again quite falsely, that Trump cannot be convicted because he broke no law. Relying on that contention, Republicans cannot properly refuse to allow into the record the finding of the Government Accountability Office that the president did in fact break the law when he ordered appropriated funds for Ukraine to be withheld. They cannot justify refusal to convict because there is no evidence that Trump broke the law when they refuse to allow in evidence that he did exactly that.

The second question is whether, in spite of all the conclusive evidence, Republicans will retreat to the claim that the actions by Trump do not rise to the level of impeachable offenses. If Republicans do so, they will have endorsed the dangerous principle that a president may use his power, and override Congress and its mandated appropriations, in order to defame a political rival and gain an unfair personal advantage in the next election.

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That abuse of power is precisely what the Founders feared most in that a president might exploit his own office by conspiring with foreign forces to sacrifice the interests of the nation in order to pursue his own. The threat of foreign corruption, Alexander Hamilton warned, meant that those “of great preeminence and power may find compensations for betraying their trust.” Accepting the principle that abuses by Trump are not impeachable offenses would raze a foundational principle of our constitutional system.

If Senate Republicans refuse to convict Trump by preventing a fair trial or denying that his actions are impeachable, their verdict will not acquit him of anything. It will, however, convict Senate Republicans of betraying their own constitutional duty. Future presidents will know they can abuse their power without limit as long as they can entice or intimidate a third of the Senate to join them. The rule of law in this nation will have collapsed, and little will remain but the selfish and destructive drive for raw party power