

Re-Rethinking Impeachment After the Mueller Report

By Elliot Benjamin, Ph.D.

Author's Note: *The present article is a modified and updated version of my previous article under the same title, which is available at www.integralworld.net/benjamin99.html References and notes for the present article are available from lavoz@esperanzcenter.org (or at the above website).*

Well, I read the full (redacted) Mueller report—all 448 pages of it^[1]. In my opinion, even the redacted version is incredibly flagrant in regard to a number of obstruction of justice violations of the United States constitution by President Donald Trump. But I always believed that President Trump committed impeachable offenses, and my change of perspective that I have previously described, in regard to no longer favoring impeachment, was for totally pragmatic reasons^[2]. In regard to defeating Trump in 2020, I went along with Democratic House Majority Leader Nancy Pelosi's perspective of promoting the House investigations of Trump as the least dangerous way of ending Trump's presidency, via the 2020 national election^[2].

However, now I must explore the serious possibility that the game may have changed. For Trump, apparently, has thus far managed to essentially thwart these House investigations, though perhaps there are some recent hopeful signs that the investigations may be able to at least partially resuscitate themselves^[3]. Trump's brazen attacks on the U.S. constitution have taken the form of him doing all in his power to thwart the testimonies of key witnesses to House investigations, inclusive of Robert Mueller himself, and Trump's former attorney Don McGahn, who Trump urged to fire Mueller; utilize Executive Privilege to prevent the release of the full unredacted version of the Mueller report; and block the release of his income tax returns, which may include who-knows-what about his various activities with Russia^[4]. The situation is so extreme that esteemed Harvard Law professor Laurence Tribe, co-author of the book *To End a Presidency: The Power of Impeachment*^[5], and whom I quoted from in some of my previous Impeachment articles (cf.^[2]) has changed his tune. Tribe (and co-author Joshua Matz) had advocated for restraint and caution in regard to impeachment, and their arguments appeared to me to be directly related to the case for impeaching Trump (cf.^[2]). However, on April 21, 2019, Tribe published an article entitled *I've Warned that Impeaching Trump is Dangerous but the Time Has Come: Laurence Tribe*^[6]. In this article, Tribe said the following:



Robert Mueller, photo by: Pete Souza



Trump, photo by: Gage Skidmore

Congress has a duty to provide a beacon of principle and democratic values to the American people. It must pick up the baton that Mueller has offered and come to a judgment of its own, with the understanding that conduct that falls short of criminal conspiracy may nonetheless be impeachable. . . . The report is unequivocal in concluding that even if Trump is criminally innocent of obstruction, it is not for lack of trying. The main reason the investigation wasn't completely thwarted was not that the president didn't "endeavor" to thwart it—the definition of criminal obstruction—but rather that Trump's subordinates refused to comply.

A number of presidential candidates have now joined Elizabeth Warren in favoring the initiation of impeachment proceedings, and even the current Democratic presidential candidate front-runner, moderate Joe Biden, is open to impeachment^[7]. Furthermore, a number of impactful grassroots progressive organizations, inclu-

sive of *Indivisible* and *Stand Up America*, have changed their tunes and now favor initiating impeachment proceedings, and on Saturday, June 15, there will be a national demonstration day of impeachment^[8]. And, even Nancy Pelosi has demonstrated a somewhat more open perspective on undertaking impeachment proceedings^[9].

But, what is it that I myself now think about impeachment, all things considered? Do I still think that the dangers of impeachment outweigh its benefits, in regard to defeating Trump in 2020? The truth is that I don't know, but I don't think anyone else knows, either. However, what I do know is that the Democratic House investigations are in danger of not going where myself and virtually all progressives had hoped they would go, with the effect of weakening Trump and making him "unelectable" in 2020 (though see Note 3]. I have been concerned that the Mueller report may get buried, unless a forceful assertive approach is taken to make it publicly revealing, such as prominent display through the testimonies of key witnesses on public television. However, now that Robert Mueller has made his public statement that reinforces his report in regard to Trump not being "exonerated" for obstruction of justice, I am more confident that the Mueller report will not get buried^[10].

My biggest concern about impeachment, as I have described

previously (cf. ^[2]), is that perhaps as moderate Democrats fear, undertaking impeachment proceedings would end up in Trump's hand, motivating his base and alienating enough middle-of-the-roaders to ensure his being elected for four more years in 2020^[11]. But then again, perhaps "not" undertaking impeachment proceedings would alienate enough millennial and minority voters to insure that Trump is elected for four more years in 2020^[12]. Perhaps Mueller will publicly testify and reinforce his public statement about his report, and the aftermath will be that more middle-of-the-roaders will favor impeachment^[13]. But, then again, perhaps Mueller will publicly testify and there will be no effect whatsoever in what people think about impeachment. And, perhaps, Mueller will not publicly testify, and there will be no significant effect on impeachment from his public statement.

No easy answers here. It seems to me that the momentum can go in either direction, and therefore there are persuasive arguments in both directions (^[11], ^[12]). But if I were to go with my gut, my gut says: **IT IS TIME TO IMPEACH.** And as long as Trump continues to stonewall the House investigations then my intellect is able to join my gut, essentially as Joe Biden, the Democratic presidential candidate, whom I still think has the best chance of defeating Trump in 2020^[14] has said: **"If in fact they block the investigation, they have no alternative but to go to the only other constitutional resort they have, [which] is impeachment."** (cf.^[7]).

Of course impeachment proceedings can only begin if Democratic House Majority Leader Nancy Pelosi agrees to them, and at this point she is still not there, even after Mueller's public statement, though there are indications that she may be moving in that direction^[9]. But, perhaps, instead of going down the impeachment path, at least initially, instituting fines as part of "Imminent Contempt" for witnesses who ignore House subpoenas would be a reasonable approach to obtain cooperation of testimonies from these witnesses (cf.^[13], ^[15]). And, then again, perhaps Alan Lichtman, a professor at American University in Washington, D.C. who predicted Trump's victory in 2016 and reportedly has correctly predicted the Electoral College winner in nine straight presidential elections, all the way back to 1984, is correct that Democrats "need" to impeach Trump in order to have a chance in 2020^[15]:

Nancy Pelosi seems to think that some history would celebrate not Catherine the Great, but Catherine the Faint-hearted. She is leading the Democrats down the primrose path of playing not to lose, of being timid, of being afraid, the path that has always caused the Democrats to lose. This is a truly turning-point historic moment in the history of the United States. We now have a rogue president. Absolutely right about that, but we have a rogue president who cannot be checked by what Nancy Pelosi is proposing. The only way to check this president is to hold him accountable, to strike at his power and his brand, and that can only be done by beginning an impeachment investigation. The argument that the House should not impeach because the Senate might not convict is constitutionally unsound, politically unsound and morally bankrupt. . . . If the House votes on articles of impeachment, that automatically triggers a trial in the Senate . . . the prosecutors from the House can point the finger at Donald Trump, accuse him of impeachable offenses, and force his lawyers to defend him with credible arguments and real evidence, not spin. That's the only way to check

Donald Trump. . . . You're not going to beat him by walking down the center path, that's never worked in the history of the country. In fact, if you were to impeach him, and try him in the Senate, that would turn one of my keys to the White House. It would put a blot on his record, and make it much more difficult for him to achieve re-election. . . . So while I think Pelosi is absolutely correct that Donald Trump will do everything to maintain his power, and doesn't care about the law and the Constitution, or American traditions, I think she's taking the Democrats in exactly the wrong direction. So what is it that I now think about impeachment? Well I must admit that it is still scary for me to think of the Trump four more years consequence of impeachment backfiring. But as Lichtman powerfully conveyed, it may very well be the case that there is no viable alternative other than impeachment to publicly expose Trump's flagrant violations of the Constitution to enough middle-of-the-roaders to defeat him in 2020. I strongly believe that whatever it takes to secure the testimonies of witnesses such as Trump's former personal attorney Don McGahn should be undertaken, even if it means putting him in jail (cf.^[13], ^[15]). I also think that as much as he does not want to do so, Mueller should be called upon to publicly testify before Congress, hopefully voluntarily, but if necessary then by subpoena, as I think this will significantly extend the public favorable response to impeachment (cf.^[13]). And I agree with Lichtman that the fact that there is virtually no chance that Trump will be convicted and removed from office in the Senate is not in itself a reason to forgo impeachment in the House.

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However, it is also the case that there have been some recent indications of progress in the direction of exposing Trump's violations of the Constitution, in particular in obtaining some of his financial records, as well as the probability that Mueller will publicly testify and reinforce his public statement that Trump has not been "exonerated" for obstruction of justice (^[3], ^[13]). Furthermore, a "compromise" has been reached where now at least some members of Congress are able to view a "less redacted" Mueller report (cf.^[3]).

The bottom line for me is that **YES** I do think impeachment is now called for, but I think we should wait "a little longer" before initiating the proceedings. Not much longer, and I'll be very specific here. I think that first Mueller should publicly testify before Congress, and in addition that the Democrats should do everything in their power to get Don McGahn to testify, so that the public can hear him say loudly and clearly that Trump urged him to fire Mueller. If it takes Inherent Contempt along with fines, and even imprisonment, to induce McGahn to testify, so be it. But if Trump and the Republicans succeed in tying this up in court past let's say the end of the summer of 2019, then I say **WAIT NO LONGER AND BEGIN IMPEACHMENT PROCEEDINGS.** And this is what I now think about impeachment.

BIO: Elliot Benjamin is a philosopher, mathematician, musician, counselor, writer, with Ph.Ds in mathematics and psychology and the author of over 150 published articles.

