Separation of powers, partisanship and impeachment: How can we overcome the partisan propaganda?

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In Pittsfield, the inadequacy of adequacy is staggering

By JOHN FREEMAN and DOUG HALL
For the Monitor

For Pittsfield last school year, the state claimed that $2,690,333 would be sufficient. Pittsfield's school budget last year was $10,302,402, nearly four times what the state had decided was adequate. Here's how the actual budget would have had to be cut to bring it down to the state's "adequate" budget of $2,690,333.

During this re-budgeting exercise, we made every attempt to keep in place as much of the "core" teaching as possible at all grade levels. We made the following changes:
- Eliminated five of the 16 teachers at the elementary school
- Eliminated all art, music and physical education classes in all grades
- Eliminated all school nurses and any medical support
- Eliminated all regular and special education transportation services (parents to transport their children to and from school)
- Eliminated one of the two office secretaries at the elementary school
- Eliminated one of the two office secretaries at the middle/high school
- Eliminated teachers for Business Education, Family and Consumer Science, and Health
- Eliminated one of four science teachers

Separation of powers, partisanship and impeachment

Our constitutional system divides power horizontally, among the three branches of the federal government, and vertically, between the federal government and the states. We refer to the former division as our "separation of powers" and the latter as our "federalism."

The framers designed the Constitution in this way because they believed that politicians, like people generally, tend to be self-interested and lacking in virtue. They thought that the structural checks and balances imbedded in the system would prevent "factions" (think "interest groups") from seizing power and imposing their will on the rest of us.

They also thought that the constant striving by politicians to press the advantage of their own governmental branches (which they called "departments") would force compromise, maintain balance and dilute factional power. The framers' expectations regarding the virtue of politicians have been amply confirmed over time. But their expectation that politicians usually would seek to advance the interests of their own governmental departments, which is a central premise of separation-of-powers theory, has not.

Partisanship, a type of factionalism whose form and nature the framers did not fully anticipate, has time and again trumped if you will pardon the
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pun) departmental loyalty.

Consider how the impeachment of President Trump is playing out. Put to the side for a moment the allegations regarding the president's solicitation of foreign interference in our 2020 presidential election, which are set forth in the first article of impeachment charging an abuse of power.

Focus instead on the second article of impeachment. That article charges the president with unlawfully obstructing Congress by directing executive branch offices, agencies and officials not to comply with subpoenas issued by the House of Representatives in furtherance of the "sole Power of Impeachment" conferred upon it by article I, section 2 of the Constitution.

Sen. McConnell has expressed an unwillingness to call witnesses at the Senate impeachment trial and an eagerness to deliver a quick acquittal.

He also stated: "Everything I do during this impeachment trial, I'm coordinating with the White House counsel. There will be no difference between the president's position and our position as to how to handle this to the extent that we can."

And he later added: "I'm not an impartial juror. This is a political process. There's not anything judicial about it. The House made a partisan political decision to impeach. I would anticipate we will have a largely partisan outcome in the Senate. I'm not impartial about this at all."

Compare the approach Sen. McConnell contemplates with the substance of the oath he will swear when the Senate trial of President Trump commences: "I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment . . . now pending, I will do impartial justice according to the Constitution and laws: so help me God." (Article I, section 3 expressly requires that senators "be on Oath or Affirmation" while trying articles of impeachment.)

You are not alone if you perceive an inconsistency.

... so what is to be done when our political leaders exceed constitutional limits or fail to discharge constitutional obligations, and partisanship prevents the proper functioning of constitutional processes to hold them accountable?

The obvious answer is nothing unless and until "We the People" communicate in overwhelming numbers that we value constitutional fidelity more than partisan victories. The primary (but by no means exclusive) way we can send this message is with our votes this fall.

But does a sufficient percentage of us actually prefer principled constitutional governance to the raw exercise of partisan power?

The upcoming election will be a referendum on this question. I am convinced, however, that an overwhelming majority of us would hold this preference if we were able to cut through partisan propaganda and soberly evaluate the downsides of governance by the victors in all-out partisan war.

So, how can we overcome the partisan propaganda? This is an enormous problem. But a renewed national commitment to robust civics education would be a good place to start.

In his 2019 Year-End Report on the Federal Judiciary, Supreme Court Chief Justice John Roberts argued powerfully for just such a recommitment. "We have come to take democracy for granted, and civic education has fallen by the wayside," Roberts wrote. "In our age, when social media can instantly spread rumor and false information on a grand scale, the public’s need to understand our government, and the protections it provides, is ever more vital."

He also opined: "Each generation has an obligation to pass on to the next, not only a fully functioning government responsive to the needs of the people but the tools to understand and improve it."

Hear, hear. "We the People" need to understand that, notwithstanding its many undeniable flaws, governance through our constitutional order is far preferable to governance by crude tribal partisanship. And a commitment to civics education is necessary to such an understanding.

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