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Do we intend to keep our republic?

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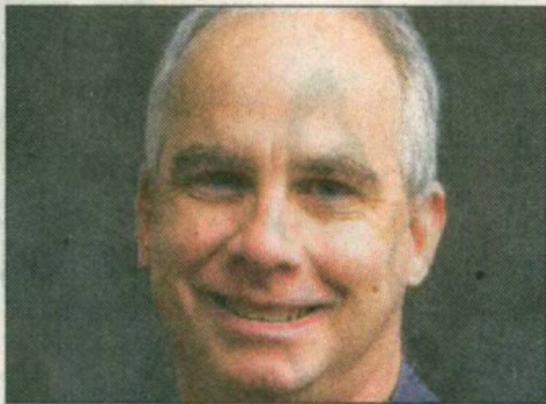
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Do we intend to keep our republic?



JOHN GREABE

Constitutional Connections

Commentators recently have reminded us of a famous statement Benjamin Franklin allegedly made upon exiting Independence Hall on the final day of the 1787 Constitutional Convention. When asked whether the proposed Constitution would establish a monarchy or a republic, Franklin supposedly answered: “A republic, if you can keep it.”

The anecdote, which both inspired the title of Supreme Court Justice Neil Gorsuch’s recent book and was re-

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counted by Speaker of the House Nancy Pelosi when she announced the impeachment inquiry into the conduct of the president, reminds us that our republican form of government is not to be taken for granted.

It is like a marriage: It requires ongoing attention and nurture.

The manner in which the Senate tried the two articles of impeachment the House levied against the president, and the arguments advanced by the president's defense team during that trial, have left many to wonder whether our republican experiment is like a marriage that is on the rocks.

As readers well know, the Senate majority made the unprecedented decision at trial neither to seek additional relevant evidence nor to call witnesses who could provide first-hand accounts of the president's efforts to coerce Ukraine into announcing an investigation designed to

harm one of his political rivals.

Even more astonishingly, the majority delivered a quick acquittal after hearing an argument by defense counsel that the president's conduct was perfectly okay so long as he subjectively believed that his re-election would be in the national interest, and doing little to repudiate such a shocking claim.

Naturally, those upset by what has transpired have tended to focus their anger on Senate Majority Leader Mitch McConnell and the other senatorial members of the president's political party who, with the lone exception of Utah Sen. Mitt Romney, voted in lockstep to ignore the president's attack on foundational democratic norms and trampling of the prerogatives of the supposedly coequal branch they represent.

Recall with respect to this latter point that the first article of impeachment denounced an illegal presidential hold on a congressional appropriation of funds to sup-

port an important ally, while the second targeted the president's wholesale defiance of Congress as it sought to carry out constitutionally assigned oversight responsibilities.

Admittedly, it is difficult to understand why all Republican senators except one have chosen to risk the harsh judgment of history in order to remain part of a subservient institution that has forfeited its power and independence to a rogue president. After all, none of them is living paycheck to paycheck.

But really, focusing on the spinelessness of our representatives can cause us to fail to ask more important questions, such as *why* they acted as they did and *how* "We the People" in fact want them to exercise the power with which they are entrusted.

More specifically: Do a sufficient number of Americans still want our representatives to observe basic norms necessary for our government to continue to function as a republic? Or does a critical mass now prefer to see its

party obtain and hold power at all costs?

We should be extremely concerned that the answers to these questions are, respectively, no and yes.

In a remarkable op-ed published in the *New York Times* last Wednesday, Ohio Sen. Sherrod Brown revealed that, in private conversations, "many of (his) colleagues agree that the president is reckless and unfit. They admit his lies. And they acknowledge what he did was wrong. They know this president has done things that Richard Nixon never did. And they know that more damning evidence is likely to come out."

Why then did they vote to acquit? The title of the op-ed says it all: "In Private, Republicans Admit They Acquitted Trump Out of Fear."

Fear of what?

Sadly, fear that the voters to whom they must answer would turn them out of office for vindicating basic constitutional norms whose observance is necessary if we are not to become a de facto

monarchy.

And if that last point seems overstated, consider that, on the evening of his acquittal, the president posted to his Twitter account a video of a doctored *Time* magazine cover showing a Trump running for and presumably winning every presidential election for the next thousand years.

The Framers understood that our constitutional system and tools for avoiding a lapse into autocracy – e.g., separating powers among the three branches of the federal government and between the federal government and the states, protecting individual rights, judicial review, Congress's impeachment-and-removal power – are not self-executing.

As James Madison put it in Federalist No. 48, "parchment barriers" will not hold "against the encroaching spirit of power" without vigilant superintendence. In using the term "parchment barriers," Madison was referring to the limits on power and the

various checks and balances written into the text of the Constitution. His point was that words on paper will only matter to those who hold power if "We the People" demand it.

A republic in which one's party wins some and loses some, and which is designed to move slowly and to generate outputs that are products of compromise that often please no one, can be frustrating. But we have constituted ourselves on the premise, informed by hard experience, that such a republic is far better than the alternatives.

This fall's election may well prove to be a referendum on whether we still believe this.

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