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What is to be Done?



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The odds do not favor Donald Trump being impeached or indicted, but there is an unusual alternative without precedent. In 1963, following the assassination of President John F. Kennedy, a bipartisan effort led by Senators Kenneth Keating and Estes Kefauver enacted legislation for a procedure to replace a president unable to discharge the duties of the

office. Like impeachment and indictment, however, the use of the 25th Amendment is unlikely.

Since Trump will not be removed from office before 2020, it is important to focus on approaches to contain his worst impulses and protect the country. If the Democrats gain control of the House of Representatives in the November 2018 election, there are initiatives that could be pursued.

The presidential assault on our governance and the meanness of Trump's social and economic policies will require dialogue and conciliation to ameliorate the political damage that has been done. We cannot wait for a progressive and pragmatic occupant in the White House in view of Trump's efforts to reduce non-military spending and bludgeon important federal programs and regulations. It will be necessary to review, reinvigorate, and reinvent the federal government in the wake of the destruction caused by the Trump presidency.

Congress should establish an independent and nonpartisan entity to oversee the process of "real reform" in order to repair the damage wrought by Trump's ideological political appointees, who succeeding in weakening and, in some cases, destroying government programs. We will need a round of "reinventing government" so that agencies and departments can be reinvigorated, and important rules and regulations can be restored.

Such a commission would undertake a serious accounting of the damage done to governance and our participatory democracy, particularly voter suppression. This effort would resemble the truth and reconciliation commissions created after the tragic developments in Africa and East Europe during the Cold War. Such a commission could explain the importance of dedicated public servants such as those at FEMA, the Coast Guard, and law enforcement, who provide the essential services that citizens favor.

In order to renew a functioning and participatory democracy, it will be necessary to create a time of internal reflection and public cleansing. We should all work to bring a halt to the ugliness of our civil discourse avoiding discussion of "deep state," "fake news," "witch hunts," and "secret societies" in order to revive our political culture.

There are larger issues that must be addressed as well. Trump is a symptom of the systemic problems associated with social and economic inequality, and the growth of cynicism toward government due to inequality. While the lower and middle-classes lack advocates in Washington to deal with the high cost of health insurance and college education, there has been an increase in corporate lobbying that enhances the wealth of the richest people in the United States. Fewer people have trust in government, which leads to

the anger and discouragement that resulted in the election of a demagogue and an authoritarian such as Trump. Once upon a time, a personality such as Trump would not have survived the nomination filters in his own party, let only a presidential election that garnered him over 63 million votes.

The corruption in government finds former lawmakers and government officials remaining in Washington to lobby for corporate clients who helped to craft the tax bill in 2017 that benefitted the rich, and increased defense spending at the expense of non-defense priorities. For the past 25 years, Newt Gingrich and his “Republican Revolution,” the Tea Party; and Trump’s campaign to “Make America Great Again” have focused on demonizing government and reducing its role, outsourcing important functions of governance to private enterprise.

Accompanying this demonizing of the bureaucracy is what Senator Elizabeth Warren has termed the “privatization of lawmaking” that finds K Street lobbyists drafting our laws and legislation. She has targeted the efforts of Republicans to reduce the role of government as well as the influence of corporate money and lobbyists to draft our laws. As a result, Warren has called for an end to the revolving door between public service and lobbying; a ban on lobbying on behalf of foreign governments; and presidents and vice presidents releasing their tax returns and cooperate with conflict-of-interest laws.

Upon taking office, Trump moved immediately against Warren’s signature achievement, the creation of the Consumer Financial Protection Bureau to launch investigations into corrupt institutions and practices. In November 2017, he appointed his director of the Office of Management and Budget, Mick Mulvaney, to be the acting director of the CFPB. Mulvaney, in turn, fired the Bureau’s Consumer Advisory Board, which was required under the 2010 Dodd-Frank financial law designed to address the financial crisis of 2007-2008.

Something must be done about the problem of student debt, particularly in view of the Trump administration’s efforts to erase the efforts to make for-profit institutions more accountable. The typical student borrower will take out nearly \$7,000 in a single year, averaging around \$25,000 in debt by graduation. The Congress needs to address college affordability, and to create more educational opportunities for low-income students. A college education should not be a debt trap for students.

Senator Bernie Sanders has addressed the problem of inequality by introducing measures to promote Medicare for all as well as eliminate college tuition. It has been difficult to attract co-sponsors for these measures, but 24 progressive and health care advocacy groups

have supported a comprehensive single-payer system similar to most industrial countries. Of course, Trump would veto such measures, but it is time for Congress, commissions, and the citizenry to be doing the planning and positioning to restore good governance in 2020.

The steady erosion of checks and balances in U.S. governance over the past several decades, particularly the decline of Congress, has allowed Trump to create the very swamp that he campaigned against. The constitutional requirement for oversight of the executive branch has been observed in the breach. Congressional committees have been particularly inept in monitoring foreign policy and defense policy. The Senate committees responsible for oversight of national security—the Foreign Relations Committee and the Armed Services Committee—hold fewer hearings than in the past. As a result, the defense budget does not receive the scrutiny that it needs, and foolish American wars in the Middle East and Southwest Asia are interminable. The longest war in U.S. history involves Afghanistan, which has no relevance to American national security.

Congress has been dysfunctional, refusing to address, let alone challenge, the harm that Trump has done in the fields of national security, particularly issues of war and peace; trade, particularly protectionism; and foreign policy. The Pentagon has been funded at record levels with no real congressional oversight. The defense budget for 2019, which was named after the late Senator John McCain, set a new record at \$716 billion. Meanwhile, the Department of State has disappeared as a major force in conducting American foreign policy.

The disappearance of bipartisanship on the congressional intelligence committees has been particularly harmful. The chairman of the House intelligence committee, Rep. Devin Nunes (R-CA), has gone rogue, providing exculpatory intelligence documents to the White House. The chairman of the Senate intelligence committee, Senator Richard Burr (R-NC), has not used his subpoena power in the investigation. Senator McCain acknowledged that the congress “no longer had the credibility to handle” the possibility of collusion between Russia and the Trump administration and the cover-up of the contacts.

Trump’s political appointment of so many mediocrities has led directly to an exodus of senior executives. As of October 2018, only 357 of 705 key executive requiring Senate confirmation were filled. At the same point in Obama’s presidency, 721 appointees had been confirmed. The Trump administration has driven out some of the best and the brightest in the bureaucracy, which is a loss of expertise and mentoring for junior

officials. As a 42-year “lifer” with several government departments and the U.S. Army, I find this particularly reprehensible.

Trump has nominated 36 court of appeals judges and 99 district judges. The Senate has confirmed 24 of Trump’s picks for the federal bench in Trump’s first 18 months. As a result, two circuit courts—the Sixth and the Seventh—have been flipped from liberal to conservative; and two more—the Eighth and the 11th—will soon follow. Senate Democrats have been insufficiently aggressive in fighting these confirmations taking place at a record rate.

At this rate, President Trump will have replaced nearly one-third of the nation’s judges by the end of his first term. These judges will have an impact on the lives of Americans for decades. No president since Franklin Roosevelt has been more successful in shaping the judicial branch of government. In the Roosevelt era, the Supreme Court was moving to the right as the administration and the nation were moving to the left; in the Trump era, the nation is moving to the left on a variety of social and political issues as the president moves to the right.

Fortunately the federal courts are serving as the most important guardrail for our democracy, fighting the administration on a series of political, economic, and social issues. These issues include the Muslim travel ban, which required intervention from the Supreme Court to allow the Trump administration to keep its ban. There were three significant rulings in the summer of 2018 that rolled back executive actions that would have weakened access to health care and reined in federal unions. In June 2018, a Federal District Court in Washington stopped a Kentucky plan to introduce work requirements that would have caused 95,000 low-income people to lose Medicaid coverage.

In August 2018, the same court struck down executive orders that would have made it easier to fire employees and weaken their representation. For the past several years, the Republican Party has made a special effort to rein in public-sector trade unions by ending mandatory union dues for government workers. The judge in the case determined that most of the key provisions of Trump’s executive orders “conflict with congressional intent in a manner that cannot be sustained.” Federal courts also blocked Trump’s efforts to close a program that shielded some 700,000 young undocumented immigrants from deportation and to deny federal money to so-called sanctuary cities.

The most unusual ruling of the summer involved a lawsuit against President Trump. A federal court made history in August 2018 when Judge Peter J. Messitte allowed a lawsuit to go forward against the president that alleged he violated the Constitution by conducting

business with foreign and domestic governments. This is the first time in history that a federal judge ruled on the meaning of the “emolument” clauses in the Constitution. No president in history has “monetized” the office of the presidency in Trump’s fashion.

The charges against Donald Trump as well as the trials of his campaign manager, Paul Manafort, and his lawyer, Michael Cohen, point to the need for a new Office of Public Integrity to make sure that government works for all American citizens. Overall, the Senate Ethics Committee has failed to monitor and punish members of Congress who are guilty of ethics violations. The Senate has done a poor job of monitoring lobbying documents that have not been filed with the Senate Office of Public Records; pursuing lobbyists who do not register; and making sure that the largest lobbying firms file the required forms with the Congress. Several years ago, there was a bipartisan effort to create an independent Office of Public Integrity, but the chairman and ranking minority member of the Ethics Committee’s successfully opposed such legislation.

As long as Congress defers to the president on the conduct of national security; the Supreme Court intervenes to prevent any challenge to the power of the president; and the media defer to official and authorized sources, it will be difficult to track the deceit of the Trump administration. Trump’s attitudes toward nuclear forces, nuclear proliferation, the use of force, and the creation of a space force demand greater scrutiny throughout the legislative process as well as a national constituency that applies pressure on the legislature. Whistleblowers are particularly important due to the overuse of secrecy, which limits national debate on foreign policy and deprives citizens of information needed to participate in genuine life-or-death issues.

The weakening of the U.S. democracy did not begin with the election of Trump. Prior to his election, extensive gerrymandering, voter suppression and the sanctioning of corporate money in the electoral process contributed to the U.S. decline in governance. Gerrymandering and voter suppression did far more damage to U.S. democracy than the Russian effort to compromise our democracy and defeat Hillary Clinton. Unfortunately there is political and legal tension between the Supreme Court and the federal court system on the issue of gerrymandering, one of the most serious threats to democratic representation in the United States.

Gerrymandering refers to the efforts of a Massachusetts governor, Elbridge Gerry, using his electoral victory to create an unusually shaped congressional district in the shape of a salamander to benefit his party. In recent times, Republicans in the state of Wisconsin captured the State Assembly and drew new districts in 2011, which allowed the

Republicans to capture 65 percent of the seats in the assembly with 45 percent of the vote. A similar development took place in Pennsylvania and North Carolina, where Republicans won large majorities with less than 50 percent of the vote.

In August 2018, a federal three-judge panel repudiated North Carolina's outrageously gerrymandered congressional map, declaring that the Constitution "does not allow elected officials to enact laws that distort the marketplace of political ideas so as to intentionally favor certain political beliefs, parties, or candidates and disfavor others." The judges ruled that several constitutional provisions were violated, including Article I, which "preserves inviolate the right of the People to elect their Representatives," and the equal protection clause that declares the State must govern "impartially."

Nevertheless, when the Supreme Court received previous cases against gerrymandering in Wisconsin and Maryland, no action was taken. The Court also upheld congressional and legislative maps in Texas that discriminated against black and Latino voters, according to the lower courts. Gerrymandering on the face of it violates the 14th Amendment, which assures "one person/one vote," but the Court believes that the Legislative branch of government must solve the problem, not the Judicial branch.

The Supreme Court also issued a series of decisions on voting rights that favored entrenched Republican majorities. In January 2013 in *Shelby County v. Holder*, the Court struck down the heart of the Voting Rights Act of 1965 that required certain states and local governments to obtain federal clearance before implementing change to voting practices. The increasingly ideological Supreme Court has been finding ways to weaponize its judgment, beginning in January 2010 with the *Citizens United* ruling that gave the green light to corporations and unions spending unlimited amounts of money on advertising and other political tools.

In the wake of the *Shelby County v. Holder* decision, the federal government has been far less active in protecting voter rights for minorities. According to the head of the United States Commission on Civil Rights, discrimination against minority voters has become "enduring and pernicious," and not being addressed by federal law. The Congress must return to the Voting Rights Act of 1965 in order to expand the protections of the Act and restore some of the enforcement powers nullified by the Supreme Court. The Court's decision in 2013 ended the Department of Justice's power to block and litigate changes in voting rules in 15 states, mostly in the south. Since the decision, more than 60 lawsuits have been filed regarding election practices that violate the Voting Rights Act, but only four of these suits were brought by the Justice Department, all under President Obama.

The lack of enforcement to protect voting by the disabled is even more egregious than the failure to protect minorities.

While a majority of the Supreme Court has been given over to the Republican party, the federal appeals courts have issued important rulings to limit the damage that Trump has caused. In addition to the decision to ban a controversial pesticide, the courts may eventually block the Trump administration's efforts to deny green cards or citizenship to any immigrant who has benefited from safety-net programs such as the Children's Health Insurance Program (CHIP) or health insurance purchased on the Obamacare exchanges. This policy would even apply to immigrants in the United States legally, which reflects the cruelty of the president and his administration. There has never been greater need for the rule of law in this country against the willful and casual cruelty of Donald Trump.

The Trump Administration will come to an end one of these days, and repairing the damage to our democracy will be a long-term struggle. This time of reckoning will require stamina and vigilance as well as greater enthusiasm about simply going to the polls. Trump is not alone in the cockpit: he has a compliant congress, a Supreme Court, and an enabling number of voting constituents who do not object to an authoritarian commander-in-chief who has done significant damage to our democracy. Eventually the American populace will learn whether Trump was a comet across the sky or someone who changed this nation forever.

It is up to the American people to make sure that we are not too late in learning this lesson. We cannot wait for the Mueller investigation to expose the various facets of Trump's corruption. Cynicism and apathy have compromised democratic government in numerous arenas. As Benjamin Franklin left the Constitutional Convention in Philadelphia in 1787, an anxious citizen asked, "Well, Doctor, what have we got, a republic or a monarchy?" With no hesitation, Franklin responded, "A republic, if you can keep it."