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Impeachment 101

How Donald Trump's business relations could see him ousted

With 250,000 protestors turning up in Washington DC on the day of Donald Trump's Presidential inauguration, there's no shortage of people who would love to see him kicked out of office. Anja Pappenfuss asked North America expert Christian Lammert about the likelihood, and legality, of such a scenario.

Before he's even been sworn in, some Democrats in the US Congress are already speculating about how Trump could be impeached. What conditions would need to be met for this to happen?

Impeachment proceedings are possible if the President is found guilty of treason, corruption or other serious crimes whilst in office. Impeachment on political grounds is not possible. A simple majority in the House of Representatives is required for the impeachment process to be initiated, with the Senate tasked with enacting the procedure itself. The most senior judge would preside over proceedings with a two-thirds majority required in the Senate for a guilty verdict to be passed. The process itself features two stages: firstly, a vote on whether the President is guilty or not and, secondly, a vote on whether the President should consequently be relieved of his post. So far, impeachment proceedings have only been brought against two Presidents, Andrew Johnson in 1868 and Bill Clinton in 1999. Neither was removed from office in the end. Following the 1974 Watergate affair, impeachment proceedings were initiated against Richard Nixon but he avoided indictment by resigning.

What would Trump have to do to be impeached?

There are several scenarios which could result in impeachment proceedings being initiated against Trump, with many of them centred on his personal business dealings. It is unclear to what extent Trump will seek to separate his official duties from his private business dealings. The US Constitution does not set out clear limitations but it does forbid the President from being indebted in any way to a foreign government. A US President is allowed to increase his own personal wealth during his time

in office as long as doing so does not involve foreign governments. The US Constitution states very clearly that no person holding an office shall accept any gift from a King, Prince or a foreign country. These limitations, stated in Article 1 of the Constitution, could spell imminent disaster for Trump given that he owes debts to a string of foreign banks. The same rules apply to his family members, who will also play a prominent role in the next government.

Furthermore, Trump's apparent lack of interest in every-day political matters could prove to be his downfall if, for example, he posts strictly confidential information on Twitter or if breaks the law, even unwittingly. Whilst there are currently several pending lawsuits against Trump, the Constitution is not entirely clear as to what constitutes a serious crime, with clarification needed on whether, for example, potential tax fraud would constitute such an offence. In short, Trump would have to lose the trust of a string of Republican Congressmen or women and Senators for impeachment proceedings to come to pass.

Speaking of the Senate, how much power does the President actually have in a system of checks and balances?

Even political scientists don't agree on this issue, with views ranging from "the world's most powerful man" to "the world's most powerless Head of State". The former of these views is based on the different roles that the Constitution confers upon the President, which include Chief Executive, Chief of State, Chief Diplomat and Commander-In-Chief. On the other hand, the US Constitution provides a complex system of checks and balances designed to reign in an overly-powerful President through the establishment of sufficient control mechanisms.

What do these control mechanisms look like?

The US government consists of three branches (Legislative, Executive and Judiciary) which keep each other in check. The institutions have to cooperate to implement policy. The President relies in particular on the support of the legislative branch, i.e. Congress, which is the only body that can pass laws and draw up the budget. The President's ability to legislate is very limited and he is unable to introduce a bill personally. However, he does have the ability to veto bills, although this can be overturned by a two-thirds majority in Congress. The President's role is to execute and implement acts that have been approved by Congress, a task which, depending on how precise the legal texts are, offers the President a certain degree of wiggle room.

Does this include the so-called 'executive orders'?

Yes. The executive orders, just like all the President's unilateral instruments of power, are nothing new: they're referred to in the Constitution. Presidents use executive orders to ensure that laws are interpreted in a certain way, meaning that they can influence the implementation, and therefore also the impact, of laws.

Presidents have always used such powers. They were heavily used in wartime and in the 1930s for Franklin D. Roosevelt's New Deal, with the President signing around 290 executive orders during his time in office. Obama signed an average of just 33 executive orders per year. Presidents are only as powerful as the other institutions, especially Congress, allow him to be. After the 9/11 terrorist attacks in 2001, Congress practically gave George W. Bush carte blanche for the War on Terror. He made excessive use of this power and many of the provisions he introduced remained in force under Obama.

So, will Congress cooperate with Trump?

Trump will have to reckon with resistance from the Democrats in both chambers of Congress. This has become common practice in a time of extreme political polarisation and, at least with a divided government (when at least one chamber of Congress is controlled by a party other than the party of the President), led to a political stalemate.

Trump can currently count on a majority in both chambers. However, the Republican majority is not large enough to prevent the Democrats from filibustering – obstructing legislation through lengthy speeches and other delaying tactics – meaning that the Democrats could use the Senate as a blockade. In addition, there are some Republican Senators of whose support Trump cannot be sure, especially given the different views they hold on foreign trade and relations with Russia. How powerful Trump will be depends on how successful he is at forming specific reform coalitions in Congress whilst also winning over public opinion: if he succeeds in doing this, he will be powerful. However, if, as expected, he finds this extremely difficult, he will be a weak President.

Are the constitutional checks and balances, i.e. the Legislative and Judicial branches, enough of a guarantee that there will be no authoritarian excesses under Trump?

The US Constitution poses a significant hurdle for those seeking to shift the cornerstones of representative democracy. A two-thirds majority in both chambers of Congress and the approval of three quarters of all US States are necessary for the Constitution to be amended. The current political polarisation means that such a majority is virtually impossible to

obtain. The checks and balances system also features many veto powers which can be used to substantially reduce the room for manoeuvre a President has. In addition to the separation of powers, the federal structure of the US is also significant in this regard.

Trump will need Congress for his reform plans and federal States and municipalities could make the implementation of certain policies either more difficult or even impossible. What is more, government measures could be challenged in court if they infringe laws or the Constitution. Without coalition partners, Trump will be able to do relatively little. So a lot depends on the extent to which the Republican Party is willing to lend its support to such reforms.

The Republicans currently control the Senate and the House of Representatives as well as both chambers of the Legislature in 33 States. In addition, they have 25 State Governors. However, the approval of three quarters of US States is required to amend the Constitution and the Republicans don't have the required majority. If they did have such a majority, voting rights, citizen's rights, abortion rights, the separation of Church and State and much more could be jeopardised and Trump could develop into an authoritarian ruler. However, the chances of this happening are very remote.

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