

# Trump, Insurrections and the 25th Amendment

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*How strange it must have seemed for US lawmakers to be suddenly facing what was described as a “mob”, not so much storming as striding into the Capitol with angry purpose. A terrified security force proved understaffed and overwhelmed. Members of Congress hid. Five people lost their lives.*

With the US imperium responsible for fostering numerous revolutions and coups across the globe during its history, spikes of schadenfreude could be found. China’s state paper *Global Times* found it irresistible to use the pro-democracy protests in Hong Kong [as a point of comparison](#). House Speaker Nancy Pelosi’s remark that the Hong Kong protests were “a beautiful sight to behold” was rubbed in the face of US lawmakers. Chinese Foreign Ministry spokesman **Hua Chunying**, remarking on the gloating reaction of Chinese netizens, also referred to remarks by US lawmakers on the Hong Kong protests.

It did not take long for carelessly chosen words such as “coup” to find their way into the political stuttering, as if **President Donald Trump** had somehow been having beer hall meetings in an atmosphere thick with plotting. Presidential historian Michael Beschloss [was one](#). “This is a coup d’état attempted by the president of the United States.”

Many members of Congress concurred.

“What happened at the US Capitol yesterday was an insurrection against the United States, incited by the president,” [concluded](#) Democratic **Senator Chuck Schumer** in a statement. “This president should not hold office one day longer.”

Republican **Senator Mitt Romney** also [stated](#) that “an insurrection, incited by the president of the United States,” had taken place. Republican **Rep. John Curtis** went further, [calling](#) the move on the Capitol “an act of domestic terrorism inspired and encouraged by our president.”

Meaty words for scenes more nastily absurd than politically planned or devised, despite [assertions](#) by Republican **Rep. Liz Cheney** of Wyoming that “the president formed the mob, the president incited the mob, the president addressed the mob.”

This summation is all too tidy. It would have been far better to see the rioters much as the commander-and-chief himself: disposed to chaos, unrepentant in petulance. There was the QAnon conspiracy theorist Jake Angeli, sans shirt but donning a fur hat with Viking horns and spear, treating the occasion like a Christmas panto. There was Richard “Bigo” Barnett, [who occupied](#), for a moment, the chair of House Speaker Nancy Pelosi, leaving a note reading: “Nancy, Bigo was here, you bitch.”

There is no denying that such protestors had been offered rich encouragement by the president to protest the certification of the election results by Congress. “You’ll never take back our country with weakness,” he said coaxingly. Preoccupied with his own version of the stab-in-the-back theory involving a “stolen” election, Trump is crafting a version of history that, should it stick, will propel him for a future campaign to retake the White House.

The Capitol incident had tickled and teased out the prospects of a real coup, currently being hatched by a rerun of the impeachment narrative and suggestions that the 25<sup>th</sup> Amendment of the US constitution be invoked. Section 4 of the amendment establishes a process by which the president can be declared “unable to discharge the powers and duties of his office” provided the vice president and a majority of “the principal officers of the executive departments” think so. The prospect of a hazardous use of that amendment is in the offing.

The wording of the amendment is broad and undefined, even though the original intent of it remains one of removing an executive who suffers true incapacity. The idea of medical emergency lies at its core. Even then, a letter has to be signed to the speakers of the House of Representatives and the Senate. The president is also given a chance to offer a written response contesting the finding, leaving it to Congress to decide. A supermajority of two-thirds in both congressional chambers would then be required.

Press outlets such as the *New York Times* and *Washington Post*, and organisations such as the National Association of Manufacturers have not bothered themselves too much about the original nature of the provision and its purpose. President and CEO of the latter, Jay Timmons, took [the broadest interpretation](#) for the sake of urgency. “Vice President Pence, who was evacuated from the Capitol, should seriously consider working with the Cabinet to invoke the 25<sup>th</sup> amendment to preserve democracy.”

Various lawmakers have also adopted an expansive, if cursory interpretation. In [the view](#) of Vermont’s Republican Governor Phil Scott, “President Trump should resign or be removed from office by his Cabinet, or by the Congress.”

Democratic members of the House Judiciary Committee, in [their note](#) to Pence, urge him along with a majority of Cabinet secretaries, to find Trump unable to discharge the powers and duties of his office. They even go for a layman’s diagnosis of his mental wellbeing. “Even his video announcement this afternoon, President Trump revealed that he was not mentally sound and is still unable to process and accept the results of the 2020 election.”

When the Democrats refused to believe the results of the 2016 elections, showing a persistent inability to process and accept it, they could never be said to be mentally unwell. Unhinged and delusional, maybe, but hardly a case of mental corrosion.

Law academic Brian Kalt, a keen student of the 25<sup>th</sup> amendment, [advances](#) two scenarios where section 4 might be used. The first involves “a president whose impairment is severe enough that the helm is, effectively, unmanned, even if he is still somehow able to claim that he is able to discharge his powers and duties.” Examples might entail severe strokes, a psychotic break or moderate dementia.

The second instance, which still suggests psychotic behaviour, would involve impairment “to the point of teeing up a disaster,” much like General Jack D. Ripper’s flight of murderous

fancy in Stanley Kubrick's *Dr Strangelove*. "Consider, for example, an unhinged president who orders a capricious nuclear strike against another county – the problem here is not that the president is 'unable' so much as all too able to wipe out millions of lives."

While Kalt was writing this in 2019, his views [convinced](#) Jack Goldsmith of Harvard Law School and David Priess, chief operating officer at *Lawfare*, that Trump had met the standard of removal set by the 25<sup>th</sup> Amendment. He had shown an "inability or unwillingness for weeks to distinguish reality from fiction about the results of the election" and had shown a "detachment from exercising the basic responsibilities of the office".

Andrew C. McCarthy in the *National Review* prefers, with much justification, that this is simply pushing things too far, confusing delusion and character flaws with incapacity and inability. He [has pointed out](#), with some accuracy, that the amendment was "not applicable to a situation in which the president is alleged to be unfit for reasons of character, or due to the commission of political offences that may arise to the level of high crimes and misdemeanours." Trump might be delusional and self-interested, but these were not "competent diagnoses of mental instability."

Within the various disturbed readings of the 25th Amendment lie the same rages that caused Caliban to despair at seeing his own face. Trump is the symptom, the agent of chaos, the disrupter making much of a bedridden Republic, a good deal of it the making of his opponents. To use the language of constitutionalism masquerading as an insurrection is intended to finally entomb Trumpism. What this risks doing is politically martyring a man who will leave office on January 20.

So far, Pence is resolutely opposed to using the measure and has the support of various Trump cabinet officials. According to the [New York Times](#), "Those officials, a senior Republican said, viewed the effort as likely to add to the current chaos in Washington rather than deter it." Utilising it would add the most combustible fuel to the argument Trump has been making all along: that establishment forces, always keen to box him during his administration, are now intent on removing him.

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