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"Trump Trial Challenges American Democracy and  
Rule of Law"

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A reader's question has captured the history-making nature of the forthcoming trial of former President Donald Trump: "What are the implications of the trial for the Constitution, presidential power and the rule of law?"

The gravity of the nation's first federal indictment of a former president cannot be overestimated. The rule of law, constitutional government, presidential power and, we should add, American Democracy, are on trial.

Defenders of President Trump, like the former chief executive himself, decry the indictment as part of a long-running "witch hunt," a "political trial" that reflects, they claim, partisan corruption in the FBI and the Department of Justice. This weaponization theme is destabilizing and dangerous, and it raises the question of the citizenry's interest in, and commitment to, an evidence-based system of justice.

There is little exaggeration in saying that our system's credibility is at stake. The previous convergence of political and legal challenges, as seen in the Watergate scandal or the 2000 presidential election, was resolved by a commitment to the rule of law and belief in the process by all parties involved.

President Richard Nixon, for example, did not try to tear down the system after the Supreme Court

ordered him to turn over the Watergate Tapes, including the smoking gun tape that convinced the nation of his criminal activity. To his credit, Democratic presidential candidate Al Gore did not try to destroy the legal system when the Court delivered a ruling that awarded the presidency to George W. Bush after a bitterly contested presidential election. Both Nixon and Gore demonstrated their commitment to the rule of law.

Implementation of the rule of law lay at the heart of the Constitutional Convention's creation of a new system of government. For the Framers, the rule of law meant the subordination of the president to the law. James Wilson, second in importance to James Madison as an architect of the Constitution, laid bare the founders' understanding of the presidency and executive power in a speech to his colleagues at the Pennsylvania State Ratifying convention. The founding period's most acute constitutional theorist and future member of the first Supreme Court declared, "Not a single privilege is annexed to his character; far from being above the laws, he is amenable to them in his private character as a citizen, and in his public character by impeachment."

The subordination of the president—and former presidents—to the Constitution and the laws of the nation, including amenability to judicial process, includes the expectation of compliance with subpoenas. On this score, the founders brooked no exceptions. Chief Justice John Marshall, presiding over the treason trial of Aaron Burr, wrote in 1807, "it is not known ever to have been doubted" that the president "may be served" with a subpoena. President Thomas Jefferson, who was subpoenaed in the Burr Trial, agreed with Chief Justice Marshall. Counsel for Jefferson, Alexander McRae, stated that "a subpoena may issue against the President as well as against any other man."

The speeches, lectures, testimony and judicial rulings at the founding demonstrate the subordination of all citizens, without exception, to the rule of law and the judicial process. The Framers' implementation of the rule of law, a grand achievement in the evolution of constitutional government, represented an American rejection of the English principle that "the King can do no wrong." In the early years of the republic, despite political wrangling and disagreements, there was honest adherence to the American ideal that all men are equal in the eyes of the law, which justified calling a president, even Thomas Jefferson, before a court of justice.

It is this history, and lessons and teachings of those who founded the nation, that justify the federal indictment of Donald Trump. Let us remember that the trial is an event of Trump's own doing. If he had simply complied with the court-ordered search warrant and the subsequent subpoena that required the former president to turn over government documents that he had taken to Mar-a-Logo, there would be no indictment and no forthcoming trial, at least on these issues. The essence of the indictment is the unlawful, indeed, willful retention of the documents.

Instead of turning over the documents, Trump, according to the indictment, organized an elaborate scheme to hide the papers and then lied to officials seeking them. Trump also showed the secret documents to people without security clearance and said that he knew he was not supposed to do that.

It is the maintenance and enforcement of the rule of law that has compelled Special Counsel Jack Smith to indict Trump. There is little doubt that the indictment will further inflame Trump supporters, but let us hope that the American people will focus on the evidence introduced at trial and, after a speedy and fair trial,

featuring an impartial judge and jury, will accept the verdict.

To say, as the founders said, that nobody is above the law should not be reduced to a cliché. It is that principle that is under scrutiny today, more so than ever in our history. The rule of law, like democracy itself, rests on Americans' belief in facts and evidence. They must govern Trump's trial and our reaction to its outcome.