

# The National Commission to investigate the January 6th attack

by Luigi Melica

**Abstract:** La commissione nazionale per investigare sull'attacco del 6 gennaio. – The article discusses the extraordinary events that took place on January 6<sup>th</sup>, 2021 on Capitol Hill and the subsequent actions undertaken by the US Congress in this regard, included the second impeachment of Donald Trump and the attempt to establish an ad hoc National Commission to investigate over the events that have threatened a peaceful transition of powers from Trump to Biden.

**Keywords:** Capitol Hill; 6<sup>th</sup> January Attack; President Trump.

## 1. The Attack on the Capitol: an unprecedented act in the history of the United States that had only been imagined until then

Until the fateful date of January 6<sup>th</sup>, 2019, for the people of the United States the image of Capitol hill under attack recalled the imagination and creativity of Thomas Cole, an English naturalized American painter.<sup>1</sup> His romantic portrayal of the American wilderness, indeed, culminated in five landscape paintings symbolizing the history of the United States, and one of them, the Destruction,<sup>2</sup> depicted the crowd of enemies attacking and burning down Capitol hill during a storm, in the final moment of the sack and destruction of the city.

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<sup>1</sup> He founded the Hudson River School in the mid-19<sup>th</sup> century.

<sup>2</sup> Other images were the Savage State, the Arcadian or Pastoral State, the Consummation of Empire, and Desolation.



T. Cole, *The Course of Empire, Destruction*, 1836.

Hardly anyone could have figured that Cole's imagination forecasted an actual barbaric attack. Nobody would have imagined that in 2021, the famous complex of buildings would be attacked and vandalized by rioters,<sup>3</sup> Donald Trump's fans, to the point of forcing Capitol Police to evacuate and lock down both chambers of Congress. Nobody would have imagined that these rioters would have threatened the Vice President of the State by erecting gallows outside the building. Definitely, no one would have forecasted an attack from the inside rather than the outside by an external enemy.<sup>4</sup>

More to the point, the just defeated Trump's supporters had a particular goal in targeting Capitol Hill complex: keeping Trump in power by preventing a joint session of the Congress from counting the electoral college votes, avoiding the formalization of the victory of President-elect Joe Biden. In other words, they did not want to attack the Congress as a symbol of the United States democracy, as the epilogue of a civil revolution. They wanted, on the contrary, to occupy the location where Biden was about to be declared President of the United States. It can be assumed that if the Electoral Count Act had set the counting in another location (for example, a Tribunal), the attack would have been carried out there.

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<sup>3</sup> They have vandalized and looted the offices of House Speaker Nancy Pelosi and the furniture and furnishings of several other offices and buildings.

<sup>4</sup> About the event, see G. Poggeschi, *The assault on Capitol Hill of January 6, 2021: freedom of expression or rather freedom to impeach and to acquit?*, in *DPCE online*, 1, 2021, 1301 ff.



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Notably, the attack had a clear push factor, if not a *condicio sine qua non*. Donald Trump's claims of irregularities had a huge influence on the more than 2,000 rioters' determination to enter the Capitol buildings. Inevitably, his slogan "*If you don't fight like hell, you're not going to have a country anymore*", coupled with the declaration that elections had been "*stolen by emboldened radical-left Democrats*", plus the appeal to Vice President Mike Pence and Congress to reject Biden's victory, impacted on most of his supporters.<sup>5</sup> Furthermore, his behavior as a President of the Country was also influential. Despite Trump still being the sitting President, he did not order the National Guard to promptly quell the mob; only in the afternoon, after reaffirming that the election was "*fraudulent*", he invited his supporters to "*go home in peace*", permitting the prosecution of the counting, only completed in the first hours of 7<sup>th</sup> January.

Clearly, the events left their mark on people minds, at least on part of the population of a fragmented and divided country. Notably, the man who allegedly attacked House Speaker Nancy Pelosi's husband at the end of October 2022, posted on Facebook about conspiracies related to the 2020 election; after two years from the elections, the number of those still considering Joe Biden an abusive occupier of the White House remains incredibly high.

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<sup>5</sup> See about this G. D'Ignazio, *Un anno dopo l'assalto a Capitol Hill*, in *DPCE Online - Osservatorio: La transizione: l'America dopo Trump*, 15.01.2022 who points out that "The Big Lie, la grande bugia continua, sorprendentemente, ad attecchire in gran parte degli elettori repubblicani, che ritengono ancora Trump il vero vincitore delle elezioni del 2020 e Biden un Presidente delegittimato perché eletto soltanto grazie agli imbrogli nel conteggio dei voti", cit. p. 2.



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Considering this, Democrats took the decision to immediately prosecute the President, trying to impeach him.

## 2. The attempt to impeach Donald Trump as the instigator of the attack

A week after the riot, the House of Representatives, being Trump still the sitting President, starts the impeachment procedure for incitement of insurrection. According to the Resolution, President Trump infringed the constitutional oath to faithfully execute the office of US President: he stood false to his oath to preserve, protect, and defend the Constitution of the United States. Additionally, “[...] in violation of his constitutional duty to take care that the laws be faithfully executed, Donald John Trump engaged in high Crimes and Misdemeanors by inciting violence against the Government of the United States”.<sup>6</sup> Stressing his declaration that election results were “the product of widespread fraud and should not be accepted by the American people or certified by State or Federal officials”, the text of the resolution emphasized Trump’s attempt to exacerbate the protests, telling rioters at the Ellipse in Washington DC that “*we won this election, and we won it by a landslide*”. Accordingly, a causal link between Trump’s behavior and the rioters’ attempt to interfere with the Joint Session’s certification of the results of 2020 Presidential election was at the basis of the impeachment.<sup>7</sup> The breach and vandalization of the Capitol, the injuries and the killing of the law enforcement personnel, the menaces addressed to Members of Congress, to the Vice President, to the Congressional personnel, and all

<sup>6</sup> See US Senate’s Resolution, January 25, 2021, <https://www.congress.gov/bill/117th-congress/house-resolution/24/text>.

<sup>7</sup> See M. Conklin, *Capital Offense: Is Donald Trump Guilty of Inciting a Riot at the Capital?*, in 15 *U. St. Thomas J.L. & Pub. Policy* 2, 483 (2022).

other seditious acts, had the precise scope of avoiding Biden's proclamation as President, leaving Trump in charge. Another aspect of the investigation was his phone call, on 2<sup>nd</sup> January 2021, to the Secretary of State of Georgia, Brad Raffensperger, that was threatened in case of not "finding" enough votes to overturn Georgia Presidential election results.<sup>8</sup>

To sum up, President Trump:

- gravely endangered the security of the United States and its governmental institutions;
- threatened the integrity of the democratic system;
- interfered with the peaceful transition of power and imperiled a coequal branch of Government.

He "*acted in a manner grossly incompatible with self-governance and the rule of law*", becoming "[...] *a threat to national security, democracy, and the Constitution*", and therefore he must be removed from the office.<sup>9</sup>

As well known, it was the second attempt to impeach Donald Trump, making him the only US President to be impeached twice.<sup>10</sup> Clearly, Democrats aspired to definitively get rid of him, declaring his disqualification, preventing him from holding and enjoying, in future, any office of honor, trust, or profit under the United States. However, like in the previous impeachment, Democrats gained most votes in the House of Representatives, whereas Senators voted 57-43, falling short of the necessary 67 votes needed for conviction. Trump was then acquitted, as the

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<sup>8</sup> The full transcript and the audio of the call are available on Transcript and audio: Trump call with Georgia Sec. of State Brad Raffensperger - The Washington Post.

<sup>9</sup> At the constitutional level, the debate obviously concerns the alternative between the application of the impeachment procedure and one of those envisaged by the XXV Amendment. On last one in the case of Trump, see J.K. Goldstein, *Talking Trump and the Twenty-fifth Amendment: Correcting the Record on Section 4*, in 21 *University of Pennsylvania Journal of Constitutional Law*, 79 (2018); C.R. Sunstein, *Does the 25th Amendment Apply to Trump? Quite Possibly*, in *www.bloomberg.com*, 7.01.2021. In the Italian doctrine see on this point G. Delledonne, *Potenzialità e limiti del XXV emendamento*, in *DPCE Online – Osservatorio - La transizione: l'America dopo Trump*, 4.02.2022. In general, about impeachment in the USA, see C. Black, Jr., P. Bobbitt, *Impeachment: A Handbook New Edition*, New Haven and London, 2018; L. Tribe, J. Matz, *To end a Presidency: the Power of Impeachment*, New York, 2018.

<sup>10</sup> On December 18, 2019, after weeks of discussions, the House of Representatives voted to impeach the 45th President of the USA, Donald J. Trump. The articles of impeachment adopted by the House of Representatives were two: abuse of power and obstruction of Congress. Both articles of impeachment came after a formal House inquiry found out that Trump solicited foreign interference in the 2020 Presidential elections, with added further interference for his re-election. On February 5, 2020, the Senate acquitted Trump from both charges. For a full chronology of the core documents on Trump's first impeachment see: Chronology & Core Documents - Trump First Impeachment 2019 - Subject Research, Course Guides, Documentation at Union College. The postum impeachment of Trump is without precedent in the US History. See on this F. Spagnoli, *Trump 2021: un impeachment diverso dagli altri?*, in *DPCE Online – Osservatorio: La transizione: l'America dopo Trump*, 19.01.2022; for a full overview on the cases of impeachment foreseen by the US Constitution and its evolutions in the last years see Michael J. Gerhardt, *The Federal Impeachment Process, A Constitutional and Historical Analysis*, 2<sup>o</sup> ed, Chicago, 2000. There has been much debate on this point in US doctrine. For a summary of the opposite visions see G.F. Ferrari, *An endless story?*, in *DPCE Online – Osservatorio - La transizione: l'America dopo Trump*, 13.01.2021.

two-thirds majority prescribed by the Constitution was not reached. Notably though, in the second impeachment – unlike in the first one – a significant number of Republicans joined the Democrats: 10 in the House and 7 in the Senate.

### 3. The idea to establish a National Commission to investigate the January 6th Attack modelled on the well-known 9/11 Commission

After the impeachment failure, the Capitol complex attack was about to be investigated by a bipartisan institution, modelled on the “9/11-type commission”.<sup>11</sup> Suggested by two members of the USA Congress, one per party, this Commission, likewise its source of inspiration, consisted of an equal number of Democrats and Republicans. Despite the initial enthusiasm, Republicans later rejected the proposal in the Senate.<sup>12</sup>

Republicans’ interest was initially caught by the fact that such Commission could have expanded the subjects of investigation. Beside the inquiry on Trump’s involvement in the attack, laying bare the record, as referred by the Democrat Chris Coons of Delaware, “of just how responsible and how abjectly violating of his constitutional oath Trump really was”, the Commission – as underscored by the Republican senator of South Carolina Lindsey Graham – should have also focused on the reasons for the failure of Capitol complex security system. Furthermore, it should have proposed, at the end of the inquiry, the proper measures to enhance its defenses so that Capitol “footprint can be better defended next time”.

Speaker Nancy Pelosi was involved in the field of investigation. Notably, four prominent Republicans had addressed her a letter asking for clearer information concerning the reasons of the delay of the National Guard intervention. Speaking on behalf of the people of the United States (“The American people deserve answers to a few straightforward questions regarding the security of the Capitol on January 6<sup>th</sup>”), Jim Jordan,<sup>13</sup> Rodney Davis,<sup>14</sup> James Comer<sup>15</sup> and Devin Nunes<sup>16</sup> had the clear purpose to identify, among Pelosi’s staff, including herself, who initially denied, or ordered the deny, of such intervention.<sup>17</sup>

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<sup>11</sup> The 9/11 Commission was formed to investigate the terrorist attacks of Sept. 11<sup>th</sup>, 2001. It was equally divided between Republican and Democratic appointees — co-chaired by former New Jersey Gov. Thomas Kean, a Republican, and former Rep. Lee Hamilton, D-Ind. — with both parties having subpoena power. For a full overview on the “9/11 type Commission” see J. Guillemin, *American Anthrax. Fear, Crime and Investigation of the Nation's Deadliest Bioterror Attack*, New York, 2011. The full text of the 9/11 Commission Report is available in: The 9/11 Commission Report (9-11commission.gov).

<sup>12</sup> R. Nobles, T. Barrett, M. Raju, A. Rogers, *Senate Republicans block January 6 commission*, CNN, May 28<sup>th</sup>, 2021.

<sup>13</sup> He was Ranking Member Committee on the Judiciary

<sup>14</sup> He was Ranking Member Committee on House Administration

<sup>15</sup> He was Ranking Member on Oversight and Reform

<sup>16</sup> He was Ranking Member Permanent Select Committee on Intelligence

<sup>17</sup> Specifically, they demanded: “When then-Chief Sund made a request for national guard support on January 4<sup>th</sup>, why was that request denied? Did Sergeant at Arms Paul Irving get permission or instruction from your staff on January 4<sup>th</sup> prior to denying

Focusing on the timing of the decisions taken by the whole chain of command in those crucial moments, the above politicians asked the following questions.

- “When then-Chief Sund made a request for national guard support on January 4<sup>th</sup>, why was that request denied?

- Did Sergeant at Arms Paul Irving get permission or instruction from your staff on January 4<sup>th</sup> prior to denying Chief Sund’s request for the national guard?

- What conversations and what guidance did you and your staff give the Sergeant at Arms leading up to January 6<sup>th</sup> specific to the security posture of the campus?

- What conversations did you have during the attack on the Capitol and what response did you give security officials on January 6<sup>th</sup> when Chief Sund requested National Guard support that required your approval?

- Why are your House Officers refusing to comply with preservation and production requests to turn over request materials relevant to the events of January 6<sup>th</sup>?”

Conclusively, a 9/11-type Commission, autonomous, independent and bipartisan, stand a chance of success because it could have made an all-around investigation, including all gaps and errors committed in the defense of the Capitol complex.

#### 4. The draft law establishing the National Commission to investigate the January 6th Attack

Given the above-described wide range of issues, Nancy Pelosi, in her function of the House Speaker, presented to the Congress an outside, independent and 9/11-type Commission. Due to its source of inspiration, the Commission was called to investigate whether on “the domestic terrorist attack upon the United States Capitol Complex, including the interference with the peaceful transfer of power” and on “those facts and causes related to the preparedness and response of the United States Capitol Police and other Federal, State, and local law enforcement in the National Capitol Region and other instrumentality of government”.<sup>18</sup> Properly, the ten Commissioners were also asked to identify “the influencing factors that fomented such attack on American representative democracy while engaged in a constitutional process”.<sup>19</sup> Finally, at the end of the investigation, they

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Chief Sund’s request for the national guard? What conversations and what guidance did you and your staff give the Sergeant at Arms leading up to January 6<sup>th</sup> specific to the security posture of the campus? What conversations did you have during the attack on the Capitol and what response did you give security officials on January 6<sup>th</sup> when Chief Sund requested National Guard support that required your approval? Why are your House Officers refusing to comply with preservation and production requests to turn over request materials relevant to the events of January 6<sup>th</sup>?”

<sup>18</sup> The announcement was made through a letter addressed by Speaker Pelosi to the members of Congress.

<sup>19</sup> Properly, the draft recommended Commissioners to avoid unnecessary duplication by reviewing the findings, conclusions, and recommendations of the other executive branch, congressional, or independent bipartisan or non-partisan commission of investigations.

were expected to produce, beside the conclusions, a set of “recommendations for corrective measures that may include changes in law, policy, procedures, rules, or regulations that could be taken to prevent future acts of targeted violence and domestic terrorism, including to prevent domestic terrorist attacks against American democratic institutions”. These measures should have improved “the security posture of the United States Capitol Complex while preserving accessibility of the Capitol Complex for all Americans and strengthen the security and resilience of the Nation and American democratic institutions against domestic terrorism”.

Proving, once again, that those gaps in the defense of the Capitol complex had the same importance of the responsibilities of the attack, the draft did not limit the material of the investigations in any way: all the needed information from the whole chain of command could be obtained, without exceptions.<sup>20</sup>

Furthermore, Commissioners could ask for information about structure, coordination, operational plans, policies, and procedures of the Federal Government, “including as such relate to State and local governments and nongovernmental entities, and particularly with respect to detecting, preventing, preparing for, and responding to targeted violence and domestic terrorism”. Thus, upon request, they could also focus, respectively, on each policy, protocol, processes, procedure, and systems for interoperability between the US Capitol Police and the National Guard, the Metropolitan Police Department of the District of Columbia, and other Federal, State, and local law enforcement in the National Capitol Region on or before January 6<sup>th</sup>, 2021. As said, the draft did not provide limitations in the collection of data and information useful to the investigation, neither of those in possess of State’s federal department or agency information, nor of those in the hands of the intelligence community.<sup>21</sup> In sum, everything relating the Capitol complex security, nothing excluded, must be put at the disposal of the Commission. These powers were strengthened by the draft with a set of legal instruments. Not differently from the Special Counsel regulation, the draft made the investigations quicker and as efficient as possible, enabling the ten Commissioners to hold hearings, collect evidence and request subpoenas. These prerogatives were assigned not only to the Commission as a whole, but, following the Chairperson and the Vice-Chairperson’s

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<sup>20</sup> More specifically, they were free to get information respectively on the activities of intelligence agencies, law enforcement agencies, and the Armed Forces, other entities of the public and private sector as determined relevant by the Commission. Communications included: the command, control, and communications of the US Capitol Police, the National Guard, the Metropolitan Police Department of the District of Columbia, and other Federal, State, and local law enforcement in the National Capitol Region on or before January 6<sup>th</sup>, 2021.

<sup>21</sup> Specifically, the draft provides that, in general, the Commission may secure directly from any Federal department or agency information, including any underlying information that may be in the possession of the intelligence community, that is necessary to enable it to carry out its purposes and functions under this Act. Upon request of the Chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, the head of such department or agency shall furnish such information to the Commission.

approval, to any subcommittee or other members of the Commission, including consultants and staff. Additionally, following either an agreement between Chairperson and Vice Chairperson, or a vote of the majority of the members, the Commission could also issue subpoenas requiring the attendance and testimony of witnesses, and the production of evidence.<sup>22</sup> These acts may be required from any place within the United States at any designated place of hearing within the United States. In case of failure – i.e., if a person does not obey a subpoena issued under subparagraph – the Commission could also enforce its requests by applying to a United States district court for a specific order.<sup>23</sup>

As above, the Commission was structured on bipartisan criteria, from the appointment of the 10 Commissioners to the selection of experts and staff. According to section 5 of the draft, 5 out of 10 Commissioners would be indicated by the Republicans and 5 by the Democrats;<sup>24</sup> the president would be Democrat and the Vice President Republican. Similarly, the recruitment and the staff's salary were up to a joint decision taken by the Chairperson (a Democrat, see above) and the Vice-Chairperson (a Republican, see above).

Like its predecessor (the 9/11 Commission) and in line with the Special counsel's investigation's approach,<sup>25</sup> Commissioners must not be in conflict of interest in relation to those individuals potentially under investigation. Therefore, while having a high qualification, they may not be neither officers, nor employee of the Government; additionally, their skill should embrace at least two of the following areas: (A) Governmental service; (B) Law enforcement; (C) Civil rights, civil liberties, and privacy; (D) The Armed Forces; (E) Intelligence; (F) Counterterrorism; (G) Cybersecurity; (H) Technology; (I) Law.

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<sup>22</sup> The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

<sup>23</sup> The order may indifferently require the person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. Last part of section 6 (lett. D) provides that the application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business, adding that any failure to obey the order of the court may be punished by the court as a civil contempt.

<sup>24</sup> "(1) One member shall be appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate to serve as Chairperson of the Commission; (2) one member shall be appointed jointly by the minority leader of the House of Representatives and the minority leader of the Senate to serve as Vice Chairperson of the Commission; (3) two members shall be appointed by the Speaker of the House of Representatives; (4) two members shall be appointed by the minority leader of the House of Representatives; (5) two members shall be appointed by the majority leader of the Senate; and (6) two members shall be appointed by the minority leader of the Senate".

<sup>25</sup> In detail for a comprehensive analysis on the practices and procedures of special investigations in the US system see L. Melica, *Special investigations e comparabilità dagli U.S.A. all'America Latina*, Napoli, 2021.

## 5. The National Commission failure: House approval, Senate rejection

The proposal, despite rejected by the Senate, passed in the House thanks to the support of 35 Republicans. It means that while Republicans agreed on its creation in the first phase, they changed their mind in the second one. I will try now to explain the reasons of this change.

The two-month negotiations before the presentation of the draft were conducted by the chair and ranking member of the House Homeland Security committee, Democrat Thompson, and by Republican John Katko.<sup>26</sup> It is worth acknowledging that most of the Republicans' requests were met; therefore, they assured they would neither whip votes against, nor organized any form of opposition in the Congress. However, after the success in the House, the situation collapsed in the Senate, where they were unable to control an internal movement against the draft. The idea of boycotting the draft approval grew among Republicans when two minority leaders, McCarthy and McConnell, come out against the proposal, persuading other Republicans to do the same.

They were clearly concerned about the risk of putting media and public opinion spotlights on Trump's concrete involvement in the riots. They feared that Trump's responsibility, declared by a bipartisan institution – established by a bipartisan legislation rather than, as usual, by the opposite political side – would have negatively impacted on the whole party. It was a risk to be avoided in view of the upcoming elections.

Certainly, Republicans aimed at investigating Nancy Pelosi and her staff, given the failure in taking the needed decisions for the Capitol defense. It would have represented a weapon against the whole Democrat party: their incapability to defend the Capitol complex would have been perceived as an unsuitability to defend the whole Country. Notably, this would be declared by a bipartisan judgement. For these reasons, they wanted to provide the Commission with the power to get a wide range of information, reflecting the spirit and the content of the letter addressed to Nancy Pelosi (see above). The Commission would be able to depict a full picture of the Congress internal structure and tasks organization, making the reporting line clear, stressing the level of involvement of House and Senate sergeants at arms in the decision-making process; pointing out whether decisions required to be signed off by congressional leaders or not, etc.

However, at some point, this interest just cooled down, for a different vision of the phenomenon. On closer inspection, such bipartisan Commission, being empowered to ascertain facts and responsibilities about a serious and severe national political event, could have ended the logic of the political enemy to be eliminated, in favor of the more correct view of the political opponent to be contrasted. This logic, it must be said, is shaping USA politics in the recent years. Clearly, a bipartisan legislation creating such a Commission, implied the submission of end-of-work bipartisan conclusions and recommendations to the Congress, setting a first important step for a national reconciliation in a fragmented and divided country.

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<sup>26</sup> He is the third Republican who voted for former President Donald Trump's second impeachment.

Thus, against this background, the key question was: would a reconciliation be a fruitful political decision? Maybe not, at least for some of the Republicans.

Notably, still at that moment, a considerable number of Republican voters were convinced that President Biden was not the legitimate winner of the presidential elections, and that he was illegally occupying Capitol building. A few of them even denied the evidence of the attacks to Capitol complex. They blindly believed to the fake of the Capitol attack supported by Georgia Republican Clyde's words: "if you didn't know it was January 6, the footage would look like just ordinary tourists at the Capitol".<sup>27</sup>

Thinking about the above feelings, some Republicans begun to mature the idea to boycott the draft in the Senate, rejecting the idea of a cohesion with Democrats. A divided country would probably favor them more than their opponents. Supposedly, the cohesive narrative that was behind the Commission lost many votes and so, in the end, between those who wanted to ban the love/hate approach in politics and those who considered it to be politically expedient, the latter prevailed.

Officially, the Commission was deemed to be unnecessary, since, as reported by senator McConnell, two Senate committees were already looking into the events of January 6<sup>th</sup>. In his opinion, it was not opportune that an "extraneous commission that Democratic leaders want would uncover crucial new facts or promote healing".

Nobody ignored that the debate was also affected by the pro/against Donald Trump controversy, which is pervading the whole America, Republicans included: getting rid of him or accepting his multifaceted personality, having in mind that, in the logic of the enemy to be eliminated, he remained the best candidate for the next presidential election?

Among Republicans, Maine's Susan Collins, one of the most moderate Republicans in the Senate, felt the need to clarify what happened in those two days: "I want to see a Commission. We need a commission", she said, empowered to respond to the numerous "unanswered questions".<sup>28</sup>

The same Donald Trump, in turn, corroborated the crucial Hamlet dilemma that was behind the bipartisan legislation, attacking the effort of creating the panel as a "Democrat trap". Notably, if the Commission moved forward, Trump would have likely been called to testify over his role in inciting the insurrection and his administration response to the attack. A risk better to be avoided, for him and the whole party: it was better to go on without being distracted from the 2022 midterm elections, as remarked by Senate minority Whip John Thune. "A lot of our members [...] want to be moving forward" he replicated, adding that "anything that gets us rehashing the 2020 elections is, I think, a day lost".

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<sup>27</sup> Georgia Rep. Andrew Clyde (R) asserted: "Watching the TV footage of those who entered the Capitol and walked through Statuary Hall showed people in an orderly fashion staying between the stanchions and ropes taking videos and pictures", adding "if you didn't know the TV footage was a video from January the 6th, you would actually think it was a normal tourist visit".

<sup>28</sup> See on this J. Naranjo, *Collins expresses support for Jan. 6 commission, with conditions*, in *Politico*, May 23<sup>rd</sup>, 2021.

On the opposite side, most of the Democrats were effectively targeting the former President as evinced by the statement of the majority leader Chuck Schumer. After the vote, he described the outcome asserting: “[O]ut of fear of - or fealty to - Donald Trump, the Republican minority just prevented the American people from getting the full truth about Jan. 6”. Then, he added: “shame on the Republican Party for trying to sweep the horrors of that day under the rug because they're afraid of Donald Trump”.

To sum up: better to move forward, definitively forgetting the 2020 elections or put an end to these events, identifying all the responsables?

With this background in mind, Republicans, after voting the draft in the House of Representatives (35), rejected it in the Senate, staging their first filibuster since President Biden took office to block the plan. The final vote on 28<sup>th</sup> May was 54-35, but Republicans withheld the necessary votes to bring the bill up for debate. Just 6 Republican senators joined the Democrats, falling short on the 60 votes needed to proceed.

Conclusively, while both rules and homeland security committees in the Senate begun the investigations on the response to the insurrection by the police and the National Guard, as for the focus on the events leading to the incitement of the attack, an option could have been to set up a Select Committee. That is what the House Speaker Nancy Pelosi did. However, it is easy to imagine that such a Commission, not a bipartisan initiative, composed by a clear majority of Democrats (7 Democrats, 2 Republicans), would have not received a significant support by Republicans; the logic of the enemy to be defeated would not be replaced with that of the political opponent to be contrasted through ideas and proposals.

Luigi Melica  
Dipartimento di Scienze Giuridiche  
Università del Salento  
luigi.melica@unisalento.it