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The Nixon Legacy

Presidents stamp their eras as no other public servant can. Presidential style and purpose necessarily become the heart of the national agenda and shape the moral tone.

To some degree, the presidency is "an institution made a piece at a time," as Yale University political scientist James D. Barber put it in his book, "The Presidential Character."

Barber goes on to recall for us that: "Jefferson reached out to Congress to put together the beginnings of political parties; Jackson's dramatic force extended political partisanship to its mass base; Lincoln vastly expanded the administrative reach of the office, Wilson and the Roosevelts showed its rhe-

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torical possibilities—in fact every President's mind and demeanor left its mark on a heritage still in lively development."

As matters now stand, there is hardly any question that Watergate and the abuse of executive power will be among the principal legacies of the current administration.

It is too early to guess how the behavior of this administration will affect those that follow it. Nonetheless some concern for the future of the presidency is in order, based on some aspects of the current debate about the behavior of this administration, the mode of its defense and the rhetoric of some of its defenders.

Two recent cases in point deserve to be examined against that background. Last week President Nixon's Watergate lawyer, James St. Clair, put out a brief on his conception of an impeachable offense.

"Not only do the words [high crimes and misdemeanors] inherently require a criminal offense," Mr. St. Clair asserted, "but one of a very serious nature committed in one's governmental capacity."

Authorities on the subject flatly contradicted Mr. St. Clair on that point. Raoul Berger, for example:

"In sum, 'high crimes and misdemeanors' appear to be words of art confined to impeachments, without roots in the ordinary criminal law, and which, so far as I could discover, had no relation to whether an indictment would lie in the particular circumstances."

Berger, law professor at Harvard and author of "Impeachment: The Constitutional Problems," quotes another au-

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thority on the origins of impeachment, Richard Wooddeson, author of "The Laws of England."

Wooddeson, Berger reports, "furnishes collateral evidence when he states that impeachments are framed to execute the law where it is 'not easily discovered in the ordinary course of jurisdiction by reason of the peculiar quality of the alleged crimes.' What lends a 'peculiar' quality to these crimes is the fact that they are not encompassed by criminal statutes or, for

that matter, by common law cases . . ."

The Founders gave us the impeachment process precisely to deal with those kinds of crimes that only a civil officer can commit. Yet, the language of the Constitution and the history of the law are bent by Mr. Nixon's defenders as if they were pretzels to suit the needs of this President.

If such performances were not disturbing enough, others of Mr. Nixon's defenders very nearly give absurdity a bad name.

William Safire, once Mr. Nixon's speechwriter and now his chief defender on the op-ed page of The New York

Times, recently took up the matter of H. R. Haldeman's indictment for perjury and made of it something hardly anyone else I know of could have managed.

Mr. Safire's central thesis is that Mr. Haldeman was indicted through a misunderstanding on the part of the Watergate special prosecutors and the grand jury that sat through 20 months of this case.

What's more, even though the grand jury had documents, tapes and sworn testimony that one would presume were not available to Mr. Safire, he nonetheless resolved the misunderstanding for us in a weekend.

The grand jury indicted Mr. Haldeman on one count of perjury for testifying under oath before the Senate Watergate Committee that Mr. Nixon added five crucial words to John Dean's version of the hush money discussion.

Dean testified the President said it would be no problem to raise \$1 million to keep the Watergate defendants quiet.

When Haldeman testified before the committee, he supplemented that language with words he said the President added, namely, "but it would be wrong."

Mr. Safire assures us that:

"If Mr. Haldeman, recounting three months later what he heard on the tape of that meeting, were giving his general impression of what was said, he might not have been indicted."

Safire knows that, he also assures us, because he went back to the original

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statement of Haldeman before the committee and those five fateful words are not in direct quotes in Haldeman's statement.

Safire divines that, because the grand jury misunderstood the lack of direct quotation, it made the gross error of indicting Haldeman for stating what should have been judged as a paraphrase of the President's general intent.

To reach that conclusion, Safire had to read the minds of the grand jurors. He also had to ignore the important colloquy that occurred between Haldeman and Sen. Baker, and which forms a part of the indictment.

In that exchange, Haldeman said he was "absolutely positive" the tape contained those five words. "Did you hear it with your own ears?" Baker asked. "With my own ears," Haldeman responded. The grand jury said that was part of the basis for charging perjury.

To think that a grand jury that worked as hard as this one did, had the evidence this one possessed and that was as long in sitting as this one sat, could have accused the defendant of a felony in a case of this magnitude over a quotation mark—only the defenders of this President could manage it.

When public debate on matters of this import is reduced to the level of the absurd and the ridiculous, we are left to wonder what is coming next. Not just from this President's defenders, but from those in the future.

No one can say how grave that danger is, whether such rhetoric has poisoned the well of public debate for future generations, but it is the price we pay because the Founders wanted the office of chief magistrate—as they were sometimes pleased to call the presidency — to evolve gracefully through experience.

"As yet," Jefferson said in 1788, "our spirits are free. Our jealousy is only put to sleep by the unlimited confidence we repose in the person to whom we all look as our President. After him [George Washington] inferior characters may perhaps succeed, and awaken us to the danger which his merit has led us into."

Mr. Safire, meet Mr. Jefferson.