

By William Safire

WASHINGTON, March 20—"He had been attacked by the most formidable combination of enemies that ever sought the destruction of a single victim."

So wrote Lord Macaulay in his essay on Warren Hastings, England's governor-general of India in the late eighteenth century, and the man whose career was destroyed at the most famous successful impeachment trial in history.

Richard Nixon is under attack by an even more formidable combination: not only the Nixon-haters of old but former supporters who want to unhitch their wagons from a falling star, as well as conservatives like Senator James Buckley, concerned about the nation's safety and moral climate.

Impeachment momentum, given impetus by the new possibility of the previously unthinkable, is—in the phrase of a former colleague—"going to get worse before it gets worse."

In the face of such a coalition of opposition no wonder the President and his men wear grimly fixed smiles reminiscent of figures in the Goldwater and McGovern campaigns. But there is a special desperation in a campaign to avoid such a heavy "historic first."

Presidential impeachment and removal from office is the capital punishment of politics. Removing and perhaps imprisoning an elected leader is a sanction so extreme that it has been tried only once in our history.

With this ultimate punishment possible, responsible citizens—for or against the President—should be encouraging, even demanding, a most vigorous and outspoken defense. Not to slap arguments down, but to consider the arguments with great care.

Unfortunately, the first point raised by the President's defenders was that only an indictable crime could be considered an impeachable offense. This was a weak skirmish line. Were the President to refuse to deliver a State of the Union report from time to time, as the Constitution directs, that would not be a crime for which he could be indicted and failed, but it could be an offense for which Congress might legitimately impeach him.

A more cogent argument, I think, deserves more than automatic and gleeful rebuttal. It seems only fair for the President to ask those who would impeach him to delimit and define the charges before demanding the run of the White House.

The separation of powers is no defense ploy, it is the essence of our system and the best insurance against tyranny. Granted that impeachment reaches across that separation to a substantial extent; is it wise to hold there should be no restraint at all?

If that separation could be totally breached by the action of the House

voting an impeachment investigation, that action—or its threat—could wipe out the separation completely. It would be as wrong as the executive branch getting a grand jury to indict a Supreme Court justice and using that as an excuse to examine all the notes of the Court's deliberations.

Common sense and institutional civility are never out of place: there is no circumstance in which any one branch of government can act without the possibility of restraint by at least one of the other two branches.

Let us assume that reason prevails and the House accepts less than absolute power: what, then, is an impeachable offense? In my view, we should no more impeach a President for "misprision of a felony," tax chiseling or other "low" crimes than we should impeach him for reckless driving—needed is a "high" crime.

To determine that, consider the reason why the job of making the accusation—impeachment—is given to the House, while the trial of that accusation is given to the Senate.

In olden times, the House of Commons represented the English people and the House of Lords the nobility. A "high crime" was a crime against the interest of the people. Since, in common law, no victim could be a judge of his own case, the people's representatives in Commons could not be the judge of misconduct against the people. Commons could only make the charge, as plaintiffs do, leaving it for "another place"—the House of Lords—to judge.

Similarly, the House of Representatives speaks for the American people in complaint, and the Senate—originally not chosen by direct vote, and still more lordly—is the "other body" that can try the case.

This means that an impeachable offense must be an act that strikes against the people in a fundamental way, murdering a constitutional right with malice aforethought. A "high crime" is not a mountainous accumulation of low crimes or misjudgments that "in their totality" amaze and appall us.

Impeachment, like capital punishment, is irrevocable; it admits of no second thoughts; and after what has already happened to the Nixon Administration, is impeachment really a deterrent to future Presidents?

A generation after Parliament had stripped Warren Hastings of his office, "public feeling had undergone a complete change," wrote Macaulay. "The nation had now forgotten his faults, and remembered only his services."

Visting the House of Commons, the ruined old man was given a standing ovation: the managers of his impeachment, their former heroism turned to villainy, slunk down in their seats.