A Sufficient Body of Evidence

Charles L. Mee, Jr.

New York, NY — To impeach or not to impeach is indeed the question in many people's minds today, and I don't understand why Senator McCarthy does not address himself to that question beyond his simple assertion that he thinks the President should not be impeached. It would be interesting to know whether the Senator bases his opinion on any particular grounds or arguments. The Senator's other observations — on resignation, Senatorial procedures, wage-and-price controls, questions on individual liberties, Constitutional amendments, and so forth — are interesting questions, too, and ought to be addressed. But, our interest in those questions will vary according to the context in which we discuss them.

The President should be impeached for at least three distinct reasons, the second two of which proceed from the first. The first reason is that a sufficient body of prima facie evidence exists, and has already been placed before the public, to indicate that the President may have committed high crimes and misdemeanors. When George Mason asked, in 1787 at the Constitutional Convention, "Shall any man be above justice?" — the framers of the Constitution properly answered "no." To place any man above justice, let alone the one man who is meant to express and represent the will and aspirations of all the people, would mock all our notions of justice, equality before the law, and many other values on which our system of government must rest, or fall. The framers of our Constitution thus provided for such a moment as the one President Nixon has presented to us by writing the impeachment clause of the Constitution. The question today is simply whether a body of evidence is to be placed against the requirements of our Constitution, or not. If not, we shall have allowed our most fundamental values, our basic framework of a lawful society, to be flouted.

That reason for impeachment is sufficient; it is certainly sufficient in the mind of any citizen who himself tries to obey the law and abide by the prescriptions of a civilized society. The second reason, which goes to the question of the unique position our President occupies in our system, is that if the President is not impeached, we shall have effectively created a precedent whereby no President is likely ever to be impeached. For, we might reasonably conclude that if this President is not impeached — with a list of alleged offenses that surpasses any Americans have ever seen drawn against a President, no President can ever be impeached. We shall, therefore, have effectively amended our Constitution by virtue of a most forceful precedent.

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Charles L. Mee, Jr. is on leave from the Editor's chair at Horizon Magazine. *He is the founder and Chairman of The National Committee on the Presidency, a non-partisan organization devoted to impeachment of the President. This essay is his rebuttal to Eugene McCarthy.*

With the removal of this last sanction against misconduct of a President, a future President may be trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent — but he will not need to be. He could, if he chose, be tyrannical and lawless; he could assault, at will, any law or set of laws or Constitutional provisions he cared to; he could expect to be unchecked by Congress, unaccountable to the people; he would rightly understand himself to function under a form of government that would not necessarily bear any resemblance to our present Constitutional system. According to the formulation of that old Communist trimmer, Bertolt Brecht, if anything *can* get worse, it *will*. We can say at the very least that if anything can get worse, it might; and, to coin a phrase, an ounce of prevention is worth a pound of tyranny. If one removes the ultimate sanction against presidential tyranny, one has made all other sanctions weak, and possibly useless. No Congressional debating society, no freedom of the press, not the combined power of Walter Cronkite, Dr. Joyce Brothers, and the Kankakee Chowder Band will be able to keep in check a President who, by definition, always behaves with unimpeachable conduct.

The third reason goes to the structure of our government. Senator McCarthy asserts, as the only justification he offers for letting impeachment proceedings slide by the way, that "the courts will curb the excesses of presidential power and protect the integrity of the Constitution." If the Senator is right, Congress itself must be supererogatory. He's wrong. Our system was not designed to leave to the courts the checking of Presidential power; and our system

will not work if that job is left to the courts.

Our Founding Fathers, flawed men that they were, assumed that all men were flawed; they assumed that all men, like themselves, craved riches and power. Because they had this tough-minded view of human beings, they built a system of law to hold tyrannical ambitions in check. They assumed — and here, perhaps, they were mistaken—that men would always vie hard for power. They did not foresee a generation or two of Congressmen who would positively *want* to surrender their autonomy and potency; they did not dream Senators would step aside to leave the disposition of political power to courts; they did not count on a lust for impotence. Nor will our system require that Congress work tirelessly to preserve its dignity and potency.

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For these three reasons, then — that no man should ever stand above the law, that the Presidency must be subject to an ultimate sanction against its power, and that Congress must exercise its Constitutionally provided powers — I believe the President must be impeached. I repeat: the first reason is sufficient; the second two go to implications of failing to pursue the dictates of justice in this particular case.

The other questions that Senator McCarthy raises are interesting, and we ought one day to debate whether or not we favor propositions 1, 3, and 5, or propositions 2 and 4. But such debate is merely idle chatter unless we first ensure that we have a system of government in which our preferences at all matter. If we do not, then all our talk about wage-and-price controls is only hot air.

Hamlet in Congress

A Soliloquy

By Clare Boothe Luce

To impeach, or not to impeach: that is the question.
Whether 'tis better for the Party to suffer
the slings and arrows of outrageous Nixon,
Or now to drown him in his sea of troubles,
And by voting, end him. Impeach; convict;
No more; and by convicting say we ended
Watergate, restored the public trust,
Upheld the Constitution, purified
Our politics, and got Sam Ervin off
Of Television. 'Tis a consummation
Devoutly to be wished. Impeach, Convict.
Convict: perchance acquit! Ay, there's the rub:
For in that long and bitter process
Of Impeachment, what evils may befall us
While we are shuffling off his White House coil
Must give us pause: To deepen those divisions
Now dividing us the more, to down
Dow Jones to Davy's locker deeper, drive
Bankrupted brokers to despairful leaps
From Wall Street's darkened windows, stoke the fires
Of wild inflation, court depression,
And be left ourselves to ration gasoline!
Impeach: Whilst wav'ring allies, heeding not
Th' unmastered Henry, yield to Cairo's will
And Moscow slyly strokes the Arab hand
That holds the bung of Sheikdom's oily drums,
And whispers in the vengeful Moslem ear,
The plotted Disapora of the Jews.
Impeach: To strike the sword from his command—
That U.S. sword he only holds to guard
Our skies and shores from Russian infestation—
And in this hour of the sheathed sword
And unhailed Chief, to court atomic doom!
For who would bear the whips and scorns of Nixon's
Insolence in office, his oppressive vetoes,
His scrambled tapes, his plumbers, his Bebe,
His vaunted innocence, the law's delay,
The exile of the Court of Camelot
And noble Galbraith, Reston, Schlesinger,
The pangs of unrequited Liberalism,
The long-drawn martyrdom of Alger Hiss,
When we ourselves might Dick's quietus make
With bold impeachment? Ay, what Party
With e'en a tarnished Kennedy in hand
Would grunt and sweat out three more years of Dick
But that the dread of pitfalls on the road
To his conviction puzzles still the will,
And makes us rather bear the ills we have
Than fly to others that we know not of?
Thus conscience doth make cowards of us all,
And thus our native hue of partisanship,
Is sicklied o'er by the pale cast of patriotism.
And politics of great pitch and moment,
With these regards their currents turn awry,
And lose the name of action. Soft you now!
The fair Kay Graham! Nymph, in thy columns, please
Be all our fears remembered.

Clare Boothe Luce is a playwright, journalist and former United States Ambassador to Italy.