

George F. Will

Impeachment For the Right Reason

Post 10/23/73

With Archibald Cox gone, so, too, is Congress' ability to avoid either fighting or shutting up. Congress should impeach Mr. Nixon or cooperate with his compromise.

Mr. Nixon's "compromise" bears a strong family resemblance to compromises suggested months ago by some of those now clamoring for Mr. Nixon to be impeached. Impeached for what? For firing Mr. Cox? Incredible.

To impeach Mr. Nixon because he fired Mr. Cox would be akin to hang-

The writer is Washington editor of National Review and a frequent contributor to these pages.

ing John Wilkes Booth because he disrupted a theatrical performance. Certainly the cause of law-and-order is not served by denying that Mr. Nixon had the *rightful power* to dismiss a disobedient employee of the executive branch. Such dismissal is not an executive privilege, it is an executive duty.

Mr. Cox's conscience may have compelled him—may have *rightly* compelled him—to disobey. But Mr. Cox's conscience lacks legal force.

Mr. Cox's "solemn pledge" to the American people was public spirited and deeply felt. But it lacks legal force.

Mr. Cox's authority to "contest" any "assertion of executive privilege or any other testimonial privilege" came from Mr. Nixon, who retained the legal *right* to withdraw it. He may not have had the moral right to do so, but let's stick with the hard path of law: it is adequate to take us through this thicket.

Now Congress has another reason to act if it wants action. Today it is clear beyond peradventure that Mr. Nixon is guilty of not complying with a court order.

Mr. Nixon's lawyers talk about his "compromise" being compliance with the "spirit" of the order. But compromise is not a game at which one can play alone.

Anyway, Mr. Nixon's lawyers also say that the chief merit of the "compromise" is that it will give the Watergate grand jury the information that the court says it has a right to have, but that it will do so without setting the dangerous precedent of a court *compelling* a President to make his documents public. That is, Mr. Nixon has compromised "confidentiality" to mollify a court, *but he has gone out of his way to do so without complying with a court order.*

Is this refusal to comply with a court order an impeachable offense? Intelligent men and good will differ about whether it represents a defensible interpretation of the doctrine of separation of powers. But the question can be answered. Surely by now, after

"If Congress feels strongly about Mr. Nixon's non-compliance with a court order, Congress should fight it out on that issue. Forget the firing of Mr. Cox."

wasting months with the doomed maneuvering of a special prosecutor in the executive branch, it is time for Congress to fish or cut bait. If Congress feels strongly about the non-compliance and the doctrine that underlies it, Congress should fight it out on *that issue.*

Forget Mr. Cox. Leave aside, for the moment, Mr. Nixon's possible involvement in the cover-up. The first thing is to address the general question of presidential immunity from court proceedings. By impeaching Mr. Nixon on the issue of non-compliance, Congress will be treating the issue as what it is—a "political" issue in the most serious and reputable sense. It is no disparagement of the intellectual seriousness of the dispute to acknowledge that it is "political" in the sense that it represents a collision between forcefully reasoned views about the nature of our constitutional system.

There is no longer any way to avoid the victory of one interpretation or the other. If Mr. Nixon is not impeached and removed from office, his view of the doctrine of separation of powers will have triumphed. If Congress does not want that to happen, it must impeach and remove him for the *offense of non-compliance with a court order.*

Mr. Cox has been a distraction long enough. The intellectual seriousness of Mr. Nixon's construing of the Constitution deserves the definitive ruling that only the Congress can provide. Congress can rule on it either way—by fighting with impeachment or by shutting up.