

Nixon's Fate and the

Washington

PRESIDENT NIXON'S best hope of avoiding impeachment and conviction now lies in the fact that there is no agreement in the Congress, the press or even in the legal fraternity about what the grounds for impeachment of a president should be.

White House counsel is arguing that "the words 'treason, bribery or other high crimes and misdemeanors' . . . mean criminal offenses. Not only do the words inherently require a criminal offense, but one of a very serious nature committed in one's governmental capacity."

Counsel for the House Judiciary Committee, on the other hand, argues that this is far too narrow a definition, but that a president can be impeached and convicted if he does not meet his wide constitutional responsibilities and "take care" for "the over-all conduct of the executive branch which the Constitution vests in him alone."

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THE ISSUE is not likely to be settled by trying to figure out what was in the minds of James Madison, James Wilson and the other architects of the Constitution, who knew a lot about human weakness and the corruption of power and secrecy but not much about tapes, MIRVs and other modern abominations.

This does not mean that the constitutional precedents are not useful. They are a far better guide than Gerald Ford's conclusion, when he was trying to impeach Mr. Justice William O. Douglas, that an impeachable offense was whatever the House and the Senate consider it to be, or former Attorney General Richard Kleindienst's cynical re-

mark that "you don't need facts, you don't need evidence" to impeach the President, "all you need is votes."

If the debate on what is impeachable is left to a controversy over the meaning of half a dozen words in the Constitution, or on the whim of members of the Congress, it could be incomprehensible and interminable.

Left to historical precedent alone, it would probably end in a scoreless tie.

Left to the tests of Ford and Kleindienst, it could deny the President a fair trial.

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ACCORDINGLY, there may be no remedy for the members of the House and Senate other than to listen to the conflicting definitions of what is impeachable, study the evidence and have recourse to common sense in judging what is best — not for the past, but for the future of the republic.

The Congress will have to consider, for example, the White House argument that a President can be impeached only if guilty of a specific crime, and also Mr. Justice Story's argument that impeachment also applies to "political offenses, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the duties of political office."

The fate of Richard Nixon may very well rest on whether the Congress accepts the narrow test that they must find him to be a "criminal" or the broader tests, including misconduct, abuse of power, neglect of duty and subversion of the Constitution.

White House Counsel James D. St. Clair, in his brief to the Judiciary Committee, Feb. 28, 1974, argues that broadening the definition of impeach-

Congress

ment beyond specific criminal offenses "of a very serious nature" would be "destructive to our system of government" whereas the Judiciary Committee staff argues that a president can be impeached for "undermining the integrity of office, disregard of constitutional duties and oath of office, abrogation of power, abuse of the governmental process, adverse impact on the system of government.

"Clearly," the committee staff concludes, "these effects can be brought about in ways not anticipated by criminal law."

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NO DOUBT White House counsel can make a good case among the lawyers on Capitol Hill with this argument that you either have to prove the President a criminal or acquit him, but the common sense of the people may long for something better than a clever defense and a hung jury.

After all, if you have to prove that a president is a criminal to get rid of him, and that anything less than criminal action is acceptable, then we're in trouble. For on this ground a vice president can be dismissed and disbarred for cheating on his income taxes and a president can be retained even if he cheated on the American people.

On this ground too, a president could be a drunk or a liar, except under oath, or abuse his

power or neglect his duty or ignore his cabinet and leave things to men like Ehrlichman, Haldeman, Dean and Colson,

None of this is clearly "criminal."

Still, even men like Senator Hugh Scott, the Republican leader of the Senate from Pennsylvania, are hung up between their moral and legal principles.

Scott was deceived by the White House about what was on the tapes, and had defended the tapes without being able to hear them, but when he did read the transcripts, he found them "deplorable, disgusting, shabby, immoral performances."

But even then, he insisted, he didn't find anything "definitely impeachable."

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THIS IS PRECISELY what the President is now counting on: that people will ask, as he did, not what was right but what could he get away with, what was not clearly "criminal."

After all the clever tragedies of the last year, he is not only arguing that "criminality" is the only fair and constitutional test, but he is getting away with it much better than most people suppose.

For the Congress is composed primarily of politicians and lawyers, whose tendency is to seek compromise. They don't like to vote things up or down. They hate this moral and historical question they see coming up, and they cannot make up their minds what is "impeachable."

In that confusion lies Nixon's last chance.

New York Times