

# The Voice of History

By Anthony Lewis

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## AT HOME ABROAD

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LONDON, May 16—The Convention that wrote the Constitution of the United States debated on July 20, 1787, the clause making the Chief Executive of the new Government removable on impeachment and conviction. The surviving notes of the debate, by James Madison, make highly pertinent reading in 1973.

Opinion in the Convention was divided. Some thought a limited term of office would be sufficient assurance against executive misbehavior. But three of the Convention's leading figures argued for impeachment: Benjamin Franklin, Madison himself and his fellow Virginian, George Mason.

"No point is of more importance," Mason said. "Shall any man be above Justice? Above all shall that man be above it who can commit the most extensive injustice?"

Dr. Franklin warned that the absence of an impeachment provision would leave the removal of an "obnoxious" executive to more violent methods. Madison thought the clause "indispensable . . . for defending the community against the incapacity, negligence or perfidy of the chief Magistrate."

The clause was approved in general terms. On Sept. 8 it came before the Convention again in final draft form, listing as grounds for impeachment "treason and bribery." Mason thought that was too narrow.

"Attempts to subvert the Constitution," he warned, "may not be treason." He first suggested adding "maladministration," then substituted "other high crimes and misdemeanors." The amendment carried.

The framers of the Constitution plainly intended impeachment to play a broad role as one of their several defenses against abuse of power. That was still the view fifty years later, when de Tocqueville said the main object of the clause was "to take power away from a man who makes ill use of it."

It is a historical anomaly, therefore, to treat the idea of impeaching a President as almost sacrilegious. The notion that kings rule by divine right was pretty well undermined by the 18th century, and those who made the American Revolution hardly meant to enshrine it afresh in the Presidency.

Of course the importance of the Presidency in the American system, and in the world, has grown beyond what the men who met in Philadelphia in 1787 could have imagined. It is inconvenient to change Presidents in mid-term; it is risky. But the risks are not only one way.

We can live with a weakened Presidency; we have done so before, and the Presidential mystique is overdue for deflation. But can we live with ourselves under a leadership that we know is tainted? For the inevitable obscurity about exactly what Richard Nixon did cannot hide what everyone

must know: that the lawlessness we call Watergate could not have taken place except in an atmosphere created and permitted by this President.

It is true that no American President has been removed from office, and that is an important gloss of history on the constitutional text. But then no President in office has had so many close associates charged with such grave abuse of power—or has had called into question the honor of the terms on which he was elected.

In thinking about the difficulties of changing Presidents, we should not forget how a democracy may benefit from a cleansing change in leadership. After the disastrous Suez affair in 1956 Britain changed Prime Ministers without changing parties. Even that was enough to lift much of the cloud from public life, for all the lasting impact of Suez.

The American system is less flexible than the parliamentary, but it does not condemn us to the rigid embrace of a President unfit for office. The Constitution speaks not only of "removal" but of "resignation." Those words were used again just six years ago, in the 25th Amendment.

Is there any serious possibility of resignation? It is an act of self-denial hard to imagine in any man ambitious enough to have become President. But once before on a momentous occasion Richard Nixon put his country ahead of his own ambition—when he decided not to challenge the 1960 election. One cannot exclude a decision that only his resignation could open the way to a healing of American politics.

The succession of Spiro Agnew to the Presidency would still leave us, however, under the shadow of doubt about the integrity of the 1972 election. The necessity is to remove that shadow without leaving the country riven by partisan rancor. As it happens, the 25th Amendment offers a way out.

A little-noted section of the new amendment provides that when there is no Vice President—as, for example, when one has succeeded to the Presidency—the President shall nominate a successor, subject to confirmation by majority vote of both houses of Congress. If Mr. Agnew undertook to resign when a successor qualified, he would set in motion a process bipartisan in its nature. Such an idea is still staggering to contemplate, but we shall have to begin opening our minds to the constitutional possibilities.

At the Convention of 1787 Gouverneur Morris of Pennsylvania at first opposed the impeachment clause but changed his mind after the debate. The President was not to be a king, he said: "The people are the king." How ironic it would be if we now bound ourselves to a king of shreds and patches.