Letters to the Editor

Of Impeachable Offenses

To the Editor:

In the Dec. 27 editorial "Impeachable Offenses" you cite statements by Madison and Gouverneur Morris which indicate that impeachment was designed to comprehend non-criminal offenses. Still other statements by the Founding Fathers could be cited to the same effect; and the proposition is confirmed by the structure of the constitutional provision which separates impeachment and removal from indictment and criminal punishment for the same offense, and by the double jeopardy and trial by jury provisions which would come into play were impeachment stamped as criminal in nature. But when you go on to cite Ben Butler, one of the House managers of the Andrew Johnson impeachment in 1868 and other House managers in subsequent impeachments, you go astray.

No prosecutor may be trusted to define the offense for which the accused is to be tried; no litigant may lay down the law under which he seeks relief. The logical extension of such discretion was made by Representative Gerald Ford when, arguing for the impeachment of Justice William O. Douglas, he stated that "an impeachable offense is whatever a majority of the House of Representatives considers it to be." And it was even more nakedly stated by Attorney General Richard Kleindienst when he said Congress didn't need witnesses, only votes to impeach. "You don't need evidence to impeach a President," he said. Such statements represent a repudiation of "a government of laws, not of men."

Happily that was not the view of Madison, who rejected George Mason's suggested "maladministration" because it was "so vague" as to leave the tenure of the President at the "pleasure of the Senate." It was precisely because the framers did not intend to leave the President at the mercy of Congress that they adopted "high crimes and misdemeanors," knowing that these words had a "limited," "technical meaning." For that meaning we are remitted to the English practice at the adoption of the Constitution and to the various statements by the Founders that exhibit their understanding of the range of impeachable offenses.

But whatever the scope of impeachable offenses, it cannot be left to the prosecutor to furnish the governing definition; he may not be allowed to tailor the law to the occasion, to frame the law under which the accused is to be condemned. This is not to obliterate the separation of the prophylactic impeachment from the criminal indictment, but to emphasize that although impeachment does not turn on criminality it yet, in the words of Hamilton, dooms "to honor or to infamy . . . the most distinguished characters of the community," and should therefore be surrounded by all the safeguards of traditional fair play and due process. We cannot deny to the President what we claim for the lowliest offender.

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Concord, Mass., Dec. 27, 1973

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Why Nixon Should Stay

To the Editor:

Like the author of "Fear and Loathing in the Bunker" [Op-Ed Jan. 1], I voted for Dick Gregory in 1968, thus insuring a right-wing victory headed by Mr. Nixon, even preferring such a dubious prospect to any further truck with the L.B.J. scheme of things in foreign affairs or a revised edition of it by way of Humphrey.

But unlike the author, now I am not so much alarmed at what Mr. Nixon might do to extricate himself as by what his eager-beaver opponents might force upon him in the way of deceptive solutions, especially when there's no actual need for haste, since his condition now is scarcely distinguishable from that of some poor old toothless paper tiger, sorry caricature of his former state of splendid savagery.

So why credit Mr. Nixon with the kind of political malevolence he simply does not possess? Opportunism, yes; but diabolism seems too far-fetched.

There's nothing to be lost and much to be gained by leaving Mr. Nixon on display for another three years. Time is not of the essence, except for reflection on some twenty years of executive excesses. After all, it was the Democrats who paved the way for Richard Nixon.

HERBERT WILKE

New York, Jan. 1, 1974