

Sooner or later, those in Congress and in the country who resist the case for impeachment of President Nixon will have to ask themselves the climactic questions: How much evidence is enough? What more is needed? The moment is rapidly approaching when the move to impeachment will require not new factual disclosures, but a dispassionate and convincing statement of the evidence already on record, and its real meaning for the Constitution and citizens of the United States.

Many Americans who long feared disruption and political chaos from an impeachment proceeding are coming to realize that—divisive though it would be—impeachment would be no worse than the disruption that would attend three more years of the present aimlessness and siege. Refusal to impeach could be equally divisive and politically dangerous.

At the same time, certain legal obscurities about the process of impeachment are gradually becoming better understood, notably the question of what constitutes an impeachable offense, what the Constitution cited so vaguely as a high crime or misdemeanor.

Some of Mr. Nixon's loyalists still argue that the President cannot be impeached unless he can be proved in violation of a specific law, a criminal act. This narrow interpretation has historically been used by officials threatened with impeachment. But of the four cases in which the Senate has convicted on impeachment charges since the founding of the Republic—all involving judges—three were decided on grounds of noncriminal offenses. Many Constitutional scholars view impeachment primarily as a political, not a criminal, process; it touches only on tenure in an office of public trust, and thus need not necessarily derive from specific violation of the criminal code.

A committee of the Bar Association of the City of New York is the latest legal body to make this argument, in a succinctly worded study of the constitutional precedents and the body of English law from which American jurisprudence derives.

"The phrase 'high crimes and misdemeanors' was historical terminology which encompassed breaches of public trust not amounting to crimes," the bar committee declared. "We believe that acts which undermine the integrity of government are appropriate grounds [for impeachment] whether or not they happen to constitute offenses under the general criminal law."

A firm judgment on this issue is expected to be one of the early major decisions of the House of Representatives as its Judiciary Committee considers the preparation of articles of impeachment.

In formulating the particulars against Mr. Nixon, a certain loss of perspective has developed amid the welter of disclosures about buggings, missing tapes and failing memories. To repair this myopia, the former Special Watergate Prosecutor, Archibald Cox, has tentatively outlined a format which the House of Representatives might follow in stating an impeachment charge, if it chooses to do so.

One way of framing an impeachment charge, Mr. Cox suggests, might be to note that the President failed for many months to intervene against his associates, even when confronted with evidence of an obstruction of justice; further, that he refused evidence to legal investigators and allowed his aides to cooperate with those seeking to avoid indictment and conviction—all this despite the President's constitutional duty to see that the laws are faithfully executed.

Another possible charge could involve a finding that Mr. Nixon gave his approval to illegal intelligence-gathering operations, that he "set in motion a small force of his own irregulars . . . (to) operate from the Executive Office outside all the regularizing rules and procedures of the established agencies in order to effectuate Administration policy and political objectives and to hamper inquiry into their activities."

If impeachment is to mean anything at all—and the framers of the Constitution certainly meant it to be used—it is a special constitutional process to protect the Republic against "acts which undermine the integrity of government." Posed in this form, a case for impeachment of Mr. Nixon by the House of Representatives seems to exist quite apart from allegations of specific criminal misconduct.