

"The criminal law sets a general standard of conduct which all must follow . . . In an impeachment proceeding a President is called to account for abusing powers which only a President possesses."

In those two succinct sentences, the memorandum prepared on a bipartisan basis by the impeachment inquiry staff of the House Judiciary Committee argue that criminally indictable offenses are not the only bases on which a President can be removed from office. This view is not directly contradicted by a Justice Department study released late yesterday, which concludes that while the language of the Constitution may suggest that only criminal offenses are impeachable, the preceding debate indicates that a much broader concept was envisaged by the framers.

The House report notes that in impeachment cases, the emphasis historically has been upon the failure of an official to take care that the laws were carried out fairly or to administer his office in the spirit of the laws and the Constitution. Those are high offenses that only a great public figure would have the opportunity to commit, and they cannot be spelled out in advance in a statute. The framers of the Constitution, therefore, left it to the House of Representatives to punish such offenses by impeachment.

The phrase "high crimes and misdemeanors" is a lawyer's term with a specific historical meaning. In exploring that meaning, the memorandum quotes from George Mason, the great Virginian who inspired Jefferson and Madison and who participated significantly in drafting the impeachment clause in the Constitution. Objecting to the initial wording that specified only treason or bribery, Mason cited the impeachment trial of Warren Hastings, the first Governor-General of India, then under way in London.

"Treason as defined in the Constitution will not reach many great and dangerous offenses," Mason said. "Hastings is not guilty of treason. As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend the power of impeachment.

Mason then moved to add the word "maladministration" as an additional ground for impeachment. When Madison objected that the word was too vague, they compromised upon the phrase used in British law, "high crimes and misdemeanors."

Mason and Madison renewed their discussion in the Virginia state convention called to ratify the Constitution. Since the Watergate cover-up and obstruction of justice are central to an impeachment of President Nixon, it is pertinent to recall their exchange. Mason raised the danger that the President might use his pardoning power to "pardon crimes which were advised by himself" or, before indictment or conviction, "to stop inquiry and prevent detection." Madison replied "If the President be connected, in any suspicious manner, with any person and there be grounds to believe he will shelter him the House of Representatives can impeach him."

Today there is widespread concern that although former cabinet members and former members of the President's staff have been indicted, he may escape any punishment for acts that were committed in his political interest. During the Constitutional Convention, some members argued against including an impeachment clause on the grounds that a President is powerless without "coadjutors" (assistants and those aids could always be punished. To that argument, Mason responded in words that ring down the intervening years:

"Shall any man be above justice? Above all shall that man be above it, who can commit the most extensive injustice?" When great crimes were committed Mason was for punishing the principal as well as the coadjutors.