

ST. CLAIR REBUKED ON LEGAL DEFENSE

Nixon Attorney's Theories Scored by Raoul Berger, Impeachment Scholar

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WASHINGTON, May 14—

Raoul Berger, the legal scholar, has given James St. Clair, President Nixon's chief defense attorney, an academic scolding for basing his impeachment defense on what Mr. Berger calls "instant history," "far-fetched theories" and "sheer effrontery."

In an article in The Yale Law Journal to be published tomorrow, Mr. Berger accuses Mr. St. Clair of drafting a legal memorandum on impeachment from "a pastiche of selected snippets and half-truths, exhibiting a resolute disregard of adverse facts."

"When Mr. St. Clair . . . wraps himself in the cloak of pseudo-history," Mr. Berger declared, "he lays himself open to the suspicion that he is not so much engaged in honest reconstruction of history as in propaganda whose sole purpose is to influence public opinion in favor of a client who is under grave suspicion."

A Legal Analysis

The Berger article is based on a legal analysis made by Mr. St. Clair late last February and does not reflect any information obtained from the release of edited transcripts of Watergate-related White House tapes.

In a 44-page article replete with footnotes, Mr. Berger argues that a President can be impeached for offenses that would not constitute an indictable crime and that "high crimes and misdemeanors" set by the Constitution as the basis for impeachment are historically "offenses against the state" rather than acts subject to criminal prosecution.

"What we are witnessing is

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a Presidential effort to abort the accountability to Congress that the Founders designed in the impeachment process," the legal scholar asserts in his article. "This process does not endow Congress with unlimited power, for it must act within the confines of 'high crimes and misdemeanors.'" Mr. Berger added:

"Mr. St. Clair, however, would confer illimitable power on the President by making him unaccountable in an impeachment proceeding except on terms that the President lays down. As well may a banker under suspicion dictate the terms of investigation to a bank examiner."

Author of 'Impeachment'

Mr. Berger, now Charles Warren Fellow in American legal history at Harvard Law School, has gained prominence by his book "Impeachment: The Constitutional Problems," based on a 1970 law review article that anticipated without predicting the present crisis.

Mr. Berger devoted a dozen pages to his theory that a sitting President can be indicted for alleged criminal activity by a grand jury, just like any other citizen.

Mr. St. Clair and a number of other legal authorities believe that, under the Constitution, impeachment is the only legal weapon available against a President and that he can only be indicted after he has been removed from office. Many lawyers also hold that there is no way to compel a President to obey a court order.

Academic Offense

In the course of his article, Mr. Berger accuses Mr. St. Clair, who is a Harvard Law School graduate, of the ultimate academic offense: misleading and selective quoting of Edmund Burke, the 18th-century British political philosopher and statesman.

Mr. St. Clair, seeking to establish that impeachment must



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be based on a crime, quoted Burke as having argued at the trial of Warren Hastings, Royal Governor of India, that the key offense involved was the fact that "he was a giver and receiver of bribes."

But Burke also declared, Mr. Berger notes, that when the House of Lords tried an impeachment, "it is by this tribunal that statesmen who abuse their power . . . are tried . . . not upon the niceties of a narrow jurisdiction, but upon the enlarged and solid principles of morality."

"To ignore this statement while concentrating attention on 'bribery,'" Mr. Berger said, "is to deal in half-truths and to stray from candor."

Historically, Mr. Berger argues, "high crimes and misdemeanors" that are grounds for impeachment have included such charges as "abuse of power," "neglect of duty" and subversion of the Constitution, none of which would necessarily support a criminal indictment.

A telephone call to Mr. St. Clair, seeking a comment on the Berger article, was not returned by the White House.