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Five Grounds for Impeaching the

By Henry Steele Commager

Opinion in the Nixon and the anti-Nixon camps has come around to supporting impeachment rather than resignation as the proper solution for the Watergate crisis, and for the soundest of reasons: impeachment will answer fundamental questions about Presidential power and the nature of the American constitutional system, whereas resignation will leave these questions forever unanswered.

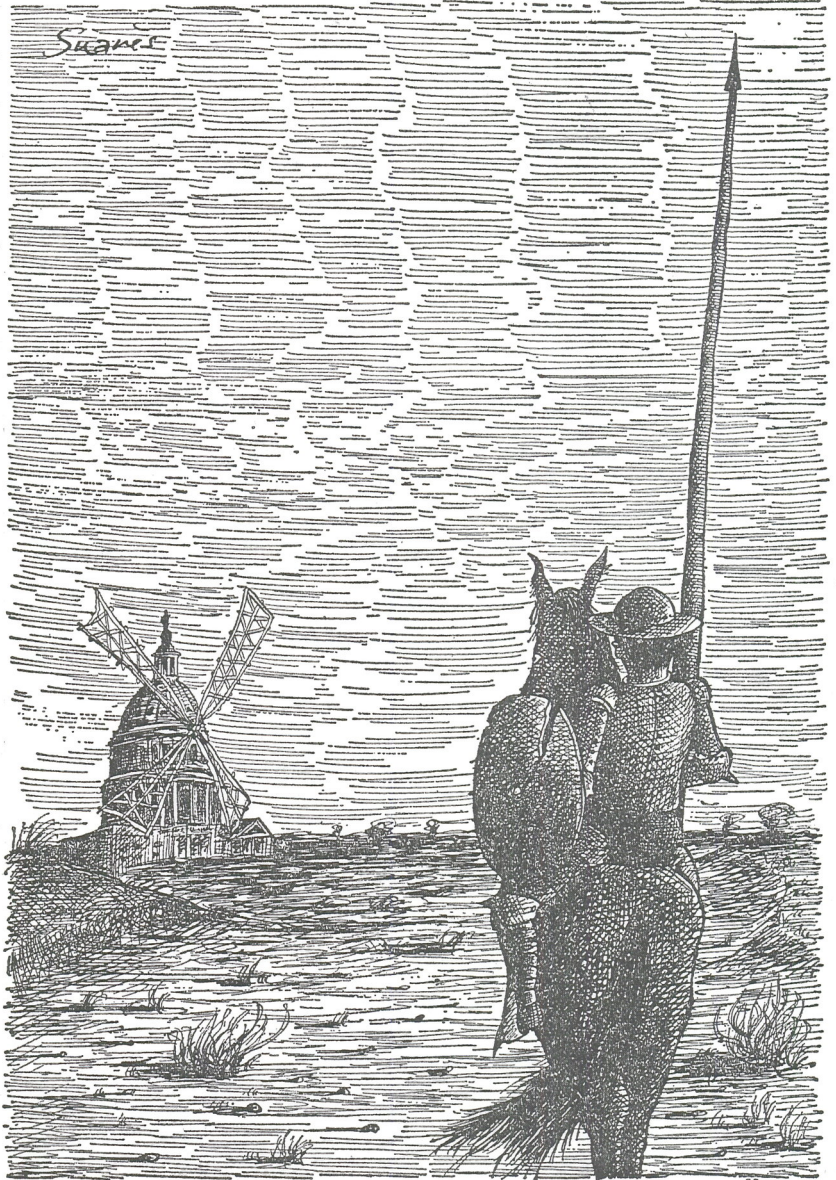
But Presidential tactics, together with Congressional timidity and confusion, may forfeit the advantages of impeachment. For if Richard M. Nixon has his way, his guilt or innocence will be judged almost wholly on technical issues of complicity in ordinary crimes and will therefore neither solve nor illuminate the great questions that confront us.

The President has so far won two strategic victories in the realm of public, and perhaps even of Congressional, opinion. First, he has succeeded in concentrating attention on Watergate and its associated chicaneries to the exclusion of most of the great constitutional issues that his conduct has raised. Second, he has won widespread, if uncritical, support for the wholly erroneous argument that impeachment is a "criminal" trial and that the Senate must find him guilty of some ordinary "criminal" act in order to remove him from office.

This argument finds no support in law or in history. It was contradicted by the three men who contributed most to writing the Constitution: James Madison, Alexander Hamilton and James Wilson. It was specifically rejected in the Federalist Papers—still the best explanation of what the authors of the Constitution meant.

If the House Judiciary Committee accepts the Richard M. Nixon-James D. St. Clair interpretation of impeachment, the consequence will be to make the whole process irrelevant and faintly absurd and to deny to the country an opportunity to clarify once and for all the great constitutional issues that are in controversy.

For we do not, after all, need a Congressional verdict to know that Watergate was a crime, that the break-in at the office of Dr. Daniel Ellsberg's former psychiatrist was a crime, and that payoffs to burglars are a crime. Nor do we need further



evidence to prove that Mr. Nixon is totally unfit to be President. The character of the men he chose as his associates and as instruments of his will and the transcripts of his conversations with them amply demonstrate this.

The real crimes for which Mr. Nixon should be tried by the Senate fall into five major categories:

- First is the usurpation of war power in the secret war against Cambodia. The Constitution lodges the power to declare war in the Congress. President Nixon had no more right to bomb Cambodia without Congress-

sional authority than he would have had to bomb China or France.

- Second is the denial to the Congress of those powers that are confined to it by the Constitution—a denial particularly dangerous in the realm of foreign relations.

How is the Congress to fulfill its constitutional function to declare war, to advise and consent to treaties and to vote appropriations if it is not allowed to know when the President makes war, or against whom; not allowed to know the contents of secret agreements with foreign powers; not allowed to know what the Central

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Intelligence Agency—which is a quasi-war agency and a quasi-foreign affairs agency—is up to, and not allowed to know how its money is being spent.

● Third is the effective nullification of the legislative power over the purse, the most important weapon in the arsenal of Congressional independence and the most important instrument of democracy.

By “impounding” some \$15 billion appropriated by the Congress, Mr. Nixon has not only usurped a basic Congressional function and denied to the people the right to spend their money as they see fit, he has gone far to destroy the delicate mechanisms set up to control Presidential vetoes. If he is vindicated here, Presidents will no longer need to pay any attention to a two-thirds vote overriding their veto; they can simply refuse to execute Congressional laws.

● Fourth is the nullification of the guarantees of the Bill of Rights in the effort to apply prior censorship over the press; in the intimidation of the television media; in the illegal arrest of 12,000 Americans exercising their constitutional rights of assembly and petition; in the use of that most-hated device of the police state, the *agent provocateur*; in the use of electronic surveillance in the face of Supreme Court prohibitions; in the wholesale invasion of privacy.

● Fifth is the corruption of the democratic political processes by the readiness to resort to “dirty tricks” against political opponents and to undermine elections by violating laws regulating campaign gifts and expenditures; by character assassination of political enemies; by using the instrumentalities of the Government such as the Federal Bureau of Investigation, the Central Intelligence Agency, the Secret Service, the Internal Revenue Service and even administrative agencies for political harassment or profit; and by endorsing Tom Charles Huston’s plan for a police state.

These are the “high crimes and misdemeanors” that the Founding Fathers had in mind when they wrote the impeachment clauses into the Constitution. These are the issues we must clarify if we are to avoid a recurrence of them in the future. These are the grounds for impeaching Mr. Nixon.

Henry Steele Commager, the historian, is author of the newly published “Britain Through American Eyes.”
