

JUL 25 1974

# WXPost *Impeachment: The Ex Post Facto Issue*

**F**AIRNESS REQUIRES the House of Representatives to limit its articles of impeachment to actions that President Nixon knew to be wrong and harmful when he engaged in them. The point has been made well by Professor Charles L. Black Jr. of Yale University, some of whose views on impeachment are offered elsewhere on this page. The whole spirit of our Constitution opposes the 18th century British practice of passing laws to penalize individual citizens for acts that were not illegal at the time they were committed. Lawyers call it *ex post facto* legislation, and the American tradition has always denounced it.

Mr. Nixon's defenders in the House now appear to be moving toward this issue. Whatever specific charges the House Judiciary Committee ultimately chooses, it will be possible to reply that no President was ever impeached on those charges before. Is it not *ex post facto* legislation to draw up an accusation against him that only now defines an impeachable offense?

The answer offered by Professor Black is both clear and persuasive: we conform to the Constitution if we "treat as impeachable those offenses, and only those, that a reasonable man might anticipate would be thought abusive and wrong, without reference to politics or differences of opinion on policy." One guide is whether an act is a crime under the present law. In the articles of impeachment now under discussion in the committee, most of the charges are, in fact, federal crimes. But some are not—for example, the broad charge that Mr.

Nixon has abused the powers of the presidency. Everything here depends upon the character of the specific incidents on which the charge is based. One of them, certainly, might be the President's encouragement of his staff to use the Internal Revenue Service to harass his administration's opponents. That might not break any present statute, but it is clearly and grossly wrong according to the longstanding and accepted standards of American government.

Does the impeachment process hold Mr. Nixon to a higher standard than past Presidents have set? Is Congress now prosecuting him for acts that, in other times, other Congresses let pass without notice? It is self-evident that Presidents in the past have committed acts that were unethical and, one may suspect, occasionally illegal. But it is also self-evident that no previous Congress has ever been confronted with such a mountain of evidence of widely different offenses, together forming a consistent pattern of willfully breaking all past limits and boundaries to personal power. The impeachment process is not an attempt to apply new and untried standards to Mr. Nixon's conduct of the presidency. It is, instead, an attempt to enforce the old and traditional standards. To argue otherwise—that it is unfair to impeach and remove a President in the absence of precise precedents in law and in history—is to argue that there can never be a resort to the process of impeachment.