NYTimes

Letters to the Editor

JUL 25 1974

To Impeach a President: The Meaning of the Constitution

To the Editor:

In addition to your sound and timely July 14 editorial on "Impeachable Offenses," your readers will be assisted in being adequately enlightened as to the historical background if they consider the following definition—of a controllingly authoritative nature due to authorship and circumstances of publication. This is taken from "The Federalist" No. 65 by Alexander Hamilton (with concurrence of James Madison, co-author of these essays), and impeachable offenses are defined as follows:

". . . offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated *political*, as they relate chiefly to the injuries done immediately to the society itself. . . . designed as a method of *national inquest* into the conduct of public men . . . [In several state constitutions, as in Great Britain, they] regarded the practice of impeachments as a bridle in the hands of the legislative body upon the executive servants of the government. . . . the nature of the proceeding . . . can never be tied down by such strict rules either in the delineation of the offence by the prosecutors [House of Representatives], or in the construction of it by the judges [Senate], as in common cases serve to limit the discretion of courts in favor of personal security." (Emphasis Hamilton's.)

These essays, and this definition, expressed the intent of the Constitution as understood by the framing convention and accepted by the state ratifying conventions (whose understanding is controlling as to the meaning), being written by these two leading members of the framing convention in 1787-1788 and then widely disseminated while the ratifying process was being effected.

"The Federalist" was accepted in that day, and has been ever since, as a most authoritative exposition of the Constitution's meaning, by leaders and competent scholars including the Supreme Court, and there is nothing in the historical records which permits the above definition to be even questioned, much less successfully challenged.

Impeachable offenses are not limited to criminal offenses.

HAMILTON A. LONG
Philadelphia, July 14, 1974

To the Editor:

Thomas F. Fennell 2d, in his letter published on July 20, claims President Andrew Jackson's response to the Supreme Court's decision in *Worcester* v. *Georgia* as a case "where a President openly defied the Supreme Court, and refused to implement a mandate of the Court, but was not impeached." Jackson's response to *Worcester* v. *Georgia* was hardly his finest hour, but Mr. Fennell's contention that President Nixon can find therein a precedent is without merit.

For in *Worcester* v. *Georgia* the Supreme Court issued no order of any kind to the President. Its command was to the superior court of Gwinnett County, Georgia, and it was this court, and not Andrew Jackson, that defied the Supreme Court. (Nor is there any serious evidence that Jackson ever said, "John Marshall has made his decision, now let him enforce it," though this was no doubt how he felt. The story was first printed by Horace Greeley in his "American Conflict" a third of a century later, and the authority cited was George Nixon Briggs, an anti-Jackson Congressman.)

In short, Professor Raoul Berger is right in saying that no President has rejected a command by the Supreme Court that he do, or refrain from doing, something. In recent years the Court divested President Roosevelt of much of the early New Deal and President Truman of the steel industry. If it now orders President Nixon to divest himself of his precious tapes, disobedience to such an order would constitute another Nixon first.

ARTHUR SCHLESINGER Jr.
New York, July 20, 1974

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To the Editor:

Press reports that some members of the House Judiciary Committee have polled their constituents on the question of the President's impeachment are disturbing. A member whose vote whether or not to recommend impeachment is influenced by political considerations is violating his oath of office.

Every member of Congress takes an oath to "bear true faith and allegiance" to the Constitution. Under the Constitution, impeachment is a quasi-judicial question. Therefore, each member of the committee is obligated to cast his vote based solely on the evidence. The opinions of constituents who have not heard all of the evidence are not relevant.

JEFFREY A. WEINBERG
Washington, July 20, 1974

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To the Editor:

There is no quarrel with Henry Steele Commager (Op-Ed June 28) that the President should not be allowed privately to bomb Cambodia, to not let Congress in on his secret, to impound Congressionally appropriated funds, to exercise arbitrary and despotic censorship, and to run a dirty election campaign.

That these acts are high crimes is beyond cavil, but whether, as Commager proposes, the impeachment process should hinge on them raises doubts. The great debates on these issues that Commager envisages and believes we need to get ourselves out of the hole will, if we have learned anything at all from past experiences, serve as the springboard for massive Presidential equivocation and launch once more a series of familiar, inapposite and semantically tortured defenses relating to national security, executive privilege, historical precedent, separation of powers and the intactitude of the Presidency.

It is not intended to imply that we do not need these debates and a new and clear articulation and untangling of the powers of the President. But they should not form the basis of impeachment when more incisive and less controversial grounds exist. If the evidence points to the President as a liar, a thief and a suborner of perjury, it would make better sense to try him for these trangressions rather than engage him and his hired defenders in lofty debate over constitutional issues.

JACOB S. HURWITZ
Woodmere, L. I., July 12, 1974