Impeachment drive strives for permanent damage to Presidency

by Edward Spannaus

Since early 1994, we at *EIR* have characterized the attacks on President Clinton as an "Assault on the Presidency"—specifying that the institution of the Presidency itself, not just Bill Clinton, is the target. In the introduction to the famous "Assault on the Presidency" pamplet issued by *New Federalist* newspaper in March 1994, Lyndon LaRouche described the essential role and unique capacity of the U.S. President, under the U.S. Constitution, to take emergency action to deal with the economic and financial crisis. LaRouche wrote: "For the sake of our nation, and for the welfare of all of our citizens and our posterity, we need to have a U.S. Presidency intact which is ready and able to do that. . . . We cannot permit a pack of hysterical London freaks to destabilize our U.S. Presidency, or interfere with the functioning of our elected President."

That was 1994. At the beginning of 1995, Newt Gingrich's wild-eyed band of Conservative Revolutionaries roared into Washington, determined to dismantle the Federal government, brick by brick. We wrote at the time that the Republicans' "Contract with America" was aimed at the U.S. Constitution, and that it would take the nation back to the weak and impotent government which existed under the Articles of Confederation prior to the adoption of the Constitution of 1787 ("GOP 'Contract with America' Aimed at U.S. Constitution," *EIR,* Jan. 20, 1995).

Congressional hearings

After the Nov. 9 hearings on the history and background of impeachment, held by a House Judiciary subcommittee, there can be no doubt whatsoever that, for many of the most fanatical proponents of impeachment, their objective is *a permanent weakening of the institution of the Presidency*. Many of the expert witnesses appearing at that hearing told the proponents of impeachment that what they are doing, will amount to a rewriting of the Constitution, and it will take the United States toward a parliamentary or quasi-parliamentary system of government.

The lead-off witness on Nov. 9 was Gary McDowell, director of the Institute for United States Studies at the University of London, and also a fellow of both the Royal Historical Society and the Royal Society of Arts in Britain. McDowell, a personal friend of the Anglophilic independent counsel Kenneth Starr, is also on the board of directors of the Richard Mellon Scaife-funded Landmark Legal Foundation.

As might be expected, the thrust of McDowell's presentation was to cite one English authority after another to explain what "high crimes and misdemeanors" meant in Merry Olde England. "Their constant use in English impeachments stretch back to 1386," McDowell said.

Father Robert Drinan of Georgetown University, a member of the House Judiciary Committee during the Watergate hearings, was one of many to draw a sharp contrast between the function of impeachment in Britain and in the United States. Drinan noted that the Framers of the Constitution knew that "the United States was creating not a parliamentary democracy, but a system in which the majority of the members of Congress could not win a vote of no-confidence. . . . The Framers sharply curtailed the availability of impeachment, which had been liberally used and abused in England."

Professor Jack Rakove of Stanford University made a similar point, saying that if George Mason was "reaching back into 17th-century history when he summoned 'high crimes and misdemeanors' from the annals of the English past, he was invoking a history and a structure of government very different from the one the Framers were creating in 1787."

Following are excerpts from some of the most significant statements presented during the Nov. 9 Judiciary subcommittee hearing, addressing this subject:

Prof. Arthur Schlesinger, City University of New York

The evidence seems to me conclusive that the Founding Fathers saw impeachment as a remedy for grave and momentous offenses against the Constitution. . . . The question that your committee will confront in the weeks ahead is whether it is a good idea to introduce a new theory of impeachment and to lower the bar to this action.

The charges levied against the President by the independent counsel plainly do not rise to the level of treason and bribery. They do not apply to acts committed by the President in his role as public official. They don't involve grave

breaches of official duties. At best, if proven, they would perhaps be defined as "low crimes and misdemeanors."

They arise from instances of private misbehavior. All the independent counsel's charges thus far derive from the President's lies about his sex life. His attempts to hide personal misbehavior are certainly disgraceful. But if they are to be deemed "impeachable," then we reject the standards laid down by the Framers in the Constitution and trivialize the process of impeachment.

Madison in the Constitutional Convention said, "Making impeachment too easy would be to the make the President's term equivalent to a tenure during the pleasure of the Senate." Lying to the public was far from an unknown practice among Presidents. Recall President Reagan's lies during the Iran-Contra imbroglio. . . .

Lies about private behavior told under oath certainly heighten the Presidential offense, but they are not political offenses against the state. . . .

The Framers were much concerned about what we would now call the legitimacy of the impeachment process. They believed that if the impeachment process is to acquire legitimacy, the bill of particulars must be seen as impeachable by broad sections of the electorate. The charges must be so grave and the evidence for them so weighty that they persuade members of both parties that removal must be considered. The Framers were deeply fearful of partisan manipulation of the impeachment process. As Hamilton wrote in the 65th Federalist, "The process will seldom fail to agitate the passions of the whole community and to divide it into parties. There will always be the greatest danger," Hamilton said, "that the decision will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt.". . .

Lowering the bar to impeachment creates a novel, indeed revolutionary, theory of impeachment, a theory that would send us on an adventure with ominous implications for the separation of powers that the Constitution established as the basis of our political order. Let us recall the impeachment of President Andrew Johnson. That effort failed the legitimacy test and it failed in the Senate of the United States by a single vote. President Johnson was rescued in 1868, but even the failed impeachment had serious consequences for the Presidency.

The aftermath bound and confined the Presidency for the rest of the century. . . . Had the impeachment drive against Johnson succeeded, the constitutional separation of powers would have been radically altered, and the alteration would have been protected and maintained by the lowered threshold of impeachment. The presidential system might have become a quasi-parliamentary regime in which the impeachment process would serve as the American equivalent of the vote of confidence. The Presidency would have changed—would have been permanently weakened, and our polity permanently changed. . . .

The republic could afford a period of congressional government in the 19th century when the U.S. was a marginal actor on the world stage. Today, the U.S. is the world's only superpower; the American government is irrevocably involved in international affairs. It plays an essential role in the search for peace in Ireland, in the former Yugoslavia, in the Middle East and South Asia. It seeks to contain the consequences of economic collapse in East Asia, to prevent the dissemination and testing of nuclear weapons, to stop the plagues of terrorism, drugs, poverty and disease. And in such a time, we cannot afford, surely, the enfeebled and intimidated Presidency the revolutionary theory of impeachment would inevitably produce.

Susan Low Bloch, Georgetown University

. . .The inquiry is not whether the President is fit or unfit for office. That's clearly not the terminology adopted by the Constitution. It's much too broad and amorphous. I agree that a President who does commit treason, bribery or other high crimes and misdemeanors is unfit for office. But those are the only actions for which he can be impeached and removed by the Congress. Any other transactions which some believe might make him unfit for office are to be judged not by the Congress but by the electorate.

I cannot stress enough the fact that the Framers deliberately rejected a parliamentary system and that if we lower the bar of what constitutes and warrants impeachment, we will be moving unconstitutionally toward a parliamentary system. . . .

A weak President, subject to recall by the Congress, is not how our system of separation of powers is supposed to work, and we should do everything in our power to avoid that.

Prof. Lawrence Tribe, Harvard University

To impeach on the novel basis suggested here . . . would lower the bar dramatically. . . . It [impeachment] may be a caged lion, but it will lose its fangs if we use it too promiscuously and would permanently weaken the Presidency and the nation, leaving a legacy I believe all of us in time would come to regret deeply. . . .

The Framers of the Constitution . . . clearly, unambiguously, deliberately decided that not all crimes are impeachable. They decided that when, for example in the impeachment clause, they said "treason, bribery or other high crimes and misdemeanors." They weren't fools! They knew how to say "treason, bribery or other crimes." Indeed, when they wrote the extradition clause they said that a governor would have to extradite someone to another state who was wanted for treason, felony or other crimes. They knew how to say that.

And so it is not we who are creating an exception, it is you who are being—I hope not, but potentially—seduced into violating your constitutional oath by rewriting without Article Five that is, rewriting the impeachment clause. And I could not be more serious about that.