

William F. Buckley Jr.

Punishing the Sovereign

I DO NOT BELIEVE that President Nixon knew about the impending Watergate operation, let alone that he commissioned it. It is significant that, as the polls reveal, forty percent of the American people believe otherwise.

Significant because what forty percent of the American people believe is, America being a republic, translatable into political pressure.

IT IS PREDICTABLE that that pressure will find voice in Congress; and that we shall soon be hearing discussion over what is the appropriate punishment to mete out to Richard Nixon.

Even those who decline to believe that Mr. Nixon had foreknowledge of the affair believe — many of them — that Nixon's supervision of the Watergate investigation was at best self-serving; at worst criminal. Nixon is not otherworldly in his habit of operations. His character is well known to the American people.

Mr. Gallup has not released the figures, but it is likely that a considerable majority of the American people believe that Richard Nixon knew way before April 17 that people surrounding him were not merely standing aside from the Watergate investigations but were in fact conspiring — a word used here with precision — to obstruct justice.

That belief will in due course crystallize into a legal formulation: namely that President Nixon was guilty of misprision of felony. Misprision of felony is itself a felony. It is predictable that a motion would then be introduced to impeach President Nixon, and it is imperative that that motion should be defeated.

One's mind goes back to a relevant historical episode. After the debacle, General Douglas MacArthur was sent to Tokyo to govern the defeated country of Japan. He ordered the Japanese parliament to devote itself to the formulation of a constitution. A

draft submitted to MacArthur for his approval called for extraordinarily severe penalties to be visited on anyone who attempted to assassinate the Emperor. MacArthur for all that his habits were imperious, was profoundly republican by training, and he vetoed the suggestion, insisting that in a democratic society no one should be above, or below, anyone else, where punishment was concerned.

In America, the President is the emperor in addition to being the prime minister. He is, no matter that his term as such is limited, the sovereign. When it is contemplated to execute the king, it is necessary to think first about the consequences on the people, rather than on the judicial poetry of the sentence. *Salus populi, suprema lex.*

If Nixon were impeached, the punishment would be visited primarily on the state. It is necessary to remind oneself that the sovereign is unique: that the punishment of the whole of the state is never justified.

I am an enthusiast for Spiro Agnew. But I would not wish him to be President as a result of the impeachment of Nixon, nor would I think it a just imposition on those Americans who for whatever reason believe that Agnew would not serve them as President.

FOR SUCH REASONS it is critical to begin now to focus on what punishment should be meted out if it should be established that President Nixon was guilty, as so widely believed, of obstructing justice. An appropriate punishment tough on the malefactor, but intelligent and magnanimous upon the innocent state, would be the censure of the President by the Congress.

Such a censure, in the typical Western country, would result in resignation of the chief executive. But America's government is different, and it is imprudent not to shape the penalty with a view to such differences.