

NHT 9/9/74 The Failure of Mr. Ford

In giving former President Nixon an inappropriate and premature grant of clemency, President Ford has affronted the Constitution and the American system of justice. It is a profoundly unwise, divisive and unjust act.

Like many lesser public figures who have commented at various stages of the long Watergate controversy, President Ford has sadly confused his responsibilities to the Republic and his understandable sentiments toward one who has inflicted grave damage upon the body politic. Both are valid and compelling but they should be clearly distinguished.

The four reasons that President Ford cites for his decision lay bare this confusion. In summary, he asserts that Mr. Nixon has already suffered enough, an adjudication of his offenses would be divisive; a fair trial would be difficult to achieve; and ultimately, in any event, he—Mr. Ford—would have to decide the matter in the light of his own conscience and sense of compassion.

The adjudication of Mr. Nixon's offenses and the character of the criminal trial in which those offenses would be weighed and argued are one set of concerns. Mr. Nixon's suffering and his claims on President Ford's conscience as a political sponsor, friend and fellow human being are another set of concerns.

President Ford's overriding duty was to his public responsibilities. It is essential that the crimes committed by several of Mr. Nixon's closest associates and apparently by Mr. Nixon himself be determined in a court of law by the same rules of evidence and the same procedures of due process that apply in the American system of justice to every citizen.

Nothing less would satisfy the natural sense of justice of the American people and of a Government founded upon principles of equality and legality. Given the historic significance of Mr. Nixon's offenses that led to his becoming the first President ever to resign, it was essential that the historical record be unmistakably clear.

After the exact nature of the wounds that Mr. Nixon and his associates had inflicted upon the body politic had been determined and after the exoneration or conviction of those accused, only then could those wounds begin to heal.

Once the processes of justice had run their course, it would be possible and timely for the President and the nation to take into account the personal merits of the offenders and try to mitigate the penalties of law by recourse to the enduring human values of mercy and charity. If clemency had followed conviction rather than preceded it, there would have been wide acceptance of President Ford's exercise of his power to pardon.

As it is, by recklessly pushing aside special prosecutor Leon Jaworski and the grand jury and the trial jury as well, President Ford has fallen short in his duty to the Republic, made a mockery of the imperative claim of equal justice before the law, promoted renewed public discord, made possible the clouding of the historical record, and undermined the humane values he sought to invoke.

His duty was to see that the law was enforced and wrongdoers punished. His duty was to see to it that those who have already served in prison for their crimes

such as E. Howard Hunt, Donald Segretti and Egil Krogh; those now serving their sentences such as Charles Colson and John W. Dean 3d; and those who stand accused of grave crimes such as H. R. Haldeman, John N. Mitchell and Mr. Nixon himself would all be treated the same.

Instead, he has laid American jurisprudence open to the severe and lingering accusation that there is one kind of justice for the agents and underlings and another for the ex-President in whose name and for whose supposed benefit the misdeeds were committed.

President Ford speaks of compassion. It is tragic that he had no compassion and concern for the Constitution and the Government of law that he has sworn to uphold and defend. He could probably have taken no single act

of a non-criminal nature that would have more gravely damaged the credibility of this Government in the eyes of the world and of its own people than this unconscionable act of pardon.

Rather than calm public passions and restore a fundamental sense of national unity, Mr. Ford has ignited fresh controversy. How bitter that controversy is sure to become was shown by the immediate resignation in protest of the President's own press secretary, J. F. terHorst, acting as "a matter of conscience." It might have stirred less public outrage if the President, in what amounted to secret and discreditable plea bargaining with his predecessor, had insisted on a frank and forthright confession of guilt. Instead he settled for an unctuous, guileful statement from Mr. Nixon in which the former President admits nothing specific and skillfully blurs the issues. The Justice Department's deal with former Vice President Agnew last year was seriously questionable; yesterday's arrangement sinks below even that poor precedent.

Moreover, the arrangement avoids nothing in the way of publicity and public controversy. Presumably, the cover-up trial involving six of Mr. Nixon's former aides is still to be held and he is sure to be called as a witness. He will have to testify at length under oath to all the demeaning details of the cover-up.

Because his pardon has immunized him, he cannot avoid testifying by claiming the Fifth Amendment privilege against self-incrimination inasmuch as he cannot now be prosecuted. If he testifies falsely, he is still open to prosecution for perjury. In short, nothing has changed except that the defendants and the jurors are to be confronted with the savage irony that the man who ordered the cover-up, benefited from it and repeatedly lied to the American people and to his own Congressional defenders about it is now to be a principal witness in the trial of those who did his bidding. They face the possibility of terms in prison while he can look forward to well-paid retirement in his luxurious seaside villa.

Senator Mike Mansfield, the majority leader, and others who urged at the time of Mr. Nixon's resignation that the Congress go forward with the constitutional process of impeachment by the House and trial by the Senate have now been vindicated. Because of the House's refusal

to follow through with impeachment and Mr. Ford's pre-emption of the courts by granting this pardon, neither the political nor the judicial institutions of this country have had an opportunity to weigh all the evidence concerning Mr. Nixon's offenses and reach a clear, final judgment.

In a time when the nation has been repeatedly dismayed by so many acts of corruption, intrigue and deceit, President Ford has signally failed to provide courageous and impartial moral leadership. When asked less than a year ago whether he would do precisely what he has now done, Mr. Ford indicated to Congress that he would not, adding, "I do not think the public would stand for it."

At his first news conference on Aug. 28, President Ford again pledged himself to respect the special prosecutor's obligation to take necessary action against "any and all individuals." Although not ruling out the ultimate exercise of clemency, the President observed: "There have been no charges made. There has been no action by the courts; there has been no action by any jury, and until any legal process has been undertaken I think it's unwise and untimely for me to make any commitments."

Instead of adhering to those wise public pronouncements, Mr. Ford has now moved secretly and suddenly to block the normal workings of justice. It is an act of flagrant favoritism. It can only outrage and dishearten millions of his fellow citizens who thought that at last the laws of this nation would be enforced without fear or favor. This blundering intervention is a body blow to the President's own credibility and to the public's re-
viving confidence in the integrity of its Government.