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The Presidential Pardon

BECAUSE HE APPROACHED the problem of disposing of the Watergate scandals from the wrong direction, President Ford came out in the wrong place. The issue has never been the personal fate of Richard Nixon — either as a figure some wished very much to “punish” and others wished equally strongly to spare further “suffering.” The proper approach — and one we had thought had been accepted by President Ford as recently as the week before last — would have been to begin with the objective of sparing the country and its constitutional system of any further losses from the unprecedented scandals and crimes that have come to be known by the general name of Watergate. President Ford was in no danger of losing his power to pardon Richard Nixon for any offenses with which Mr. Nixon might have been charged. And he had already indicated a disposition to come down on the side of personal leniency in this matter. By acting prematurely and abruptly he has thus not added measurably to anything but Mr. Nixon's immediate ease of mind. And he has done so at a terrific cost.

That cost has, first, to do with the dignity and vitality of our system of government. One way and another Mr. Nixon managed to use the powers of his office to abort and/or subvert every solemn and orderly process undertaken in the past two years to make a full public accounting of the Watergate misdeeds. If you believe that those misdeeds were somehow the private personal business of Mr. Nixon and his aides and that they had no effect more important than the suffering their disclosure might have caused him, then Mr. Ford's summary grant of a preemptive pardon might make sense. But for those of us who believe that the consequences of Watergate were *public* consequences having to do with an office and a system of government which were not Mr. Nixon's personal property, then this newest use of the powers of the presidency to curtail inquiry and to relieve Mr. Nixon of responsibility for this action will strike you as nothing less than a continuation of a cover-up. We do not believe Mr. Ford intended his action to have that as its primary purpose. But that will be its primary effect. This is the more so when you consider that in connection with the pardon, Mr. Ford also granted Mr. Nixon ultimate control over access to tapes, documents and other presidential papers which almost certainly would shed further light on one aspect or another of the Watergate scandals.

In return for this very special treatment, the former President appears to have yielded nothing in relation to the grave charges that have been leveled against his conduct of the presidency. Elsewhere on this page today we present For The Record some material demonstrating how stark is the discrepancy between what Mr. Nixon has been prepared or obliged to acknowledge and what responsible members of Congress of both parties, including some of his most devout supporters, have been prepared to charge him with having done. It is true that the very concept of pardon presumes at least a very strong likelihood of guilt. There is no need to par-

don the innocent. Still Mr. Nixon once again showed, in his miserly and misleading statement of “acceptance” of the pardon, that he is either unwilling or unable to acknowledge facts that everyone else has agreed on. We are aware of an undercurrent of rumors and half-stated hints that Mr. Ford in fact acted when and as he did

because his predecessor in office was actually in a state of mental and emotional distress. Mr. Ford, indeed, made reference to a concern for Mr. Nixon's health. Like many other people, we are inclined to believe that this or some other unknown reason propelled President Ford into his precipitous action: the consequences of his acting now are too numerous and too serious to believe otherwise.

Just to begin with, there does not seem to be any other reasonable explanation for announcing a pardon for Mr. Nixon only three weeks before the scheduled beginning of the Watergate cover-up trial. That announcement is bound to have an impact on the Special Prosecutor's ability to prosecute that case. Nor can it conceivably be argued that Mr. Ford was under any pressure from the prosecutor himself in terms of some imminent move against Mr. Nixon. Mr. Jaworski had made plain that he would do nothing, and that he wished nothing to be done, that could affect that trial until a jury had been impanelled and safely sequestered. Again, Mr. Ford's action aggravates the problem of dealing fairly with all Watergate defendants—both in terms of their individual legal liability and of the public's unquestioned interest in seeing that justice is done. Is it fair to continue to prosecute Mr. Nixon's aides while sparing Mr. Nixon himself? And if it is not, what is the justice of others'—who cooperated with the authorities—continuing to serve sentences for crimes committed in Mr. Nixon's name and in his behalf? What of the “suffering” of these men and their families? And what of the “suffering” of those who have been disbarred and/or have completed their prison terms?

There are problems raised by what Mr. Ford has done, especially in relation to the deal on the disposition of the presidential papers, for which there may still be some remedies and to which we shall return shortly. But there are other issues for which there is no remedy, or at least no rolling back of the impact of Mr. Ford's precipitous act. One such problem is the undermining of the rule of law. Just in case it is necessary, we will state once again our own sense that the rule of law would not have suffered from an ultimate show of mercy in relation to Mr. Nixon. There would have been a proper time in the orderly development of judicial proceedings for intervention by President Ford, if in fact the courts themselves had not seen fit to spare Mr. Nixon the ultimate consequences of any conviction. To spare Mr. Nixon *any* of the legal consequences that would have confronted an ordinary

citizen, however, is to misread and misjudge what Watergate has been all about from the beginning: an arrogant, arbitrary distinction between common people and their government leaders when it comes to the faithful observance of the law. And in the case of government leaders who are also expected to execute the laws—not merely to abide by them—the lapse is all the greater. Richard Nixon and his fallen fellow conspirators seem to believe that government office afforded them a license to disregard the law rather than an obligation to observe and enforce it. No surprisingly, the public's perception of this fact went a long way toward eroding peoples' confidence that ours is in fact a government of laws and not of men. That erosion can only have been compounded by President Ford's premature pardon of Mr. Nixon.