

post
12-11-70

Preserving Presidential Records

ONE OF THE MANY national traditions which Richard Nixon has compelled Americans to re-examine is the idea that the records of a presidency are the personal property of the President involved. That concept goes back to the earliest days of the republic, when George Washington took his presidential files off to Mount Vernon in 1797. Some experts argue that Mr. Washington might never have done that if the National Archives had existed then. The fact is, however, that through whatever combination of circumstance and design, the notion of private ownership of presidential records has become traditional—though never formalized by law.

In recent years, this situation has been tolerable only because former Presidents and their heirs have recognized the large national interest in preserving and eventually making available a full, accurate record of each man's tenure in office. That key part of the tradition—the regard for the public interest—is what has broken down in Richard Nixon's case, given the circumstances of his departure from office and the voluminous evidence of attempts to hide and falsify the facts of Watergate. The now-suspended deal between Mr. Nixon and the Ford administration—the deal which, among other things, provided for the eventual destruction of the tapes—suggested what private control of presidential records can portend when the President involved has such an adversary relationship with the truth. And so litigation over the records has piled high in federal district court, and so the Congress has stepped in to safeguard the tapes and documents of the Nixon years, especially those that have not entered the public domain as evidence in legal proceedings.

The bill just approved by Congress would override the Nixon-Ford arrangement and put the Nixon materials under the protective custody of the National Archives. Access policies are to be drawn to meet the needs of the special prosecutor, to enable the public to learn as much as possible about Watergate, and to serve the interests of history. Such policies should be carefully devised. For example, there is good reason to restrict public access to some presidential records, primarily

some of those unrelated to Watergate, until the passage of time has cooled partisan tempers and reduced the possibility of damage to foreign governments and private citizens.

Quite wisely, the bill does not try to resolve the issue of who owns the tapes and documents of the Nixon years. That question, reasonably clear by tradition but relatively undefined in law, is now before the courts. Instead of preempting the matter, the bill simply provides for public compensation to Mr. Nixon if the courts should find that the protective-custody approach constitutes a taking of his property.

If President Ford signs the measure, as he should, the immediate problem of protecting the Nixon records will have been largely resolved. What will remain is the more difficult task of setting sound future policies. It is all too easy to say that the records of every president in the future should be public property, preserved by a public agency for public benefit and use. Archivists and other students of the subject emphasize, however, that the matter is not as simple as it may seem. For example, should every piece of paper collected by a president—including family correspondence—be considered public property? What about political files? Should former presidents relinquish to the next administration all control over what documents should be released and when? Would certain policies encourage presidents to purge their files before leaving office, or to do even more business on the telephone? Finally, what about the records of other executive officials, members of Congress and justices of the Supreme Court?

Recognizing the complexity of such questions, the measure would set up a study commission to make recommendations on the future handling of historical records of all federal officials. Some may think that the country has had enough commissions, but this one could give Congress valuable guidance in a field where future policies must be thoughtfully drawn. The weakness in the traditional approach to presidential records has been fully exposed. This legislation is a long step toward insuring that the nation's historical resources will be more surely protected from now on.