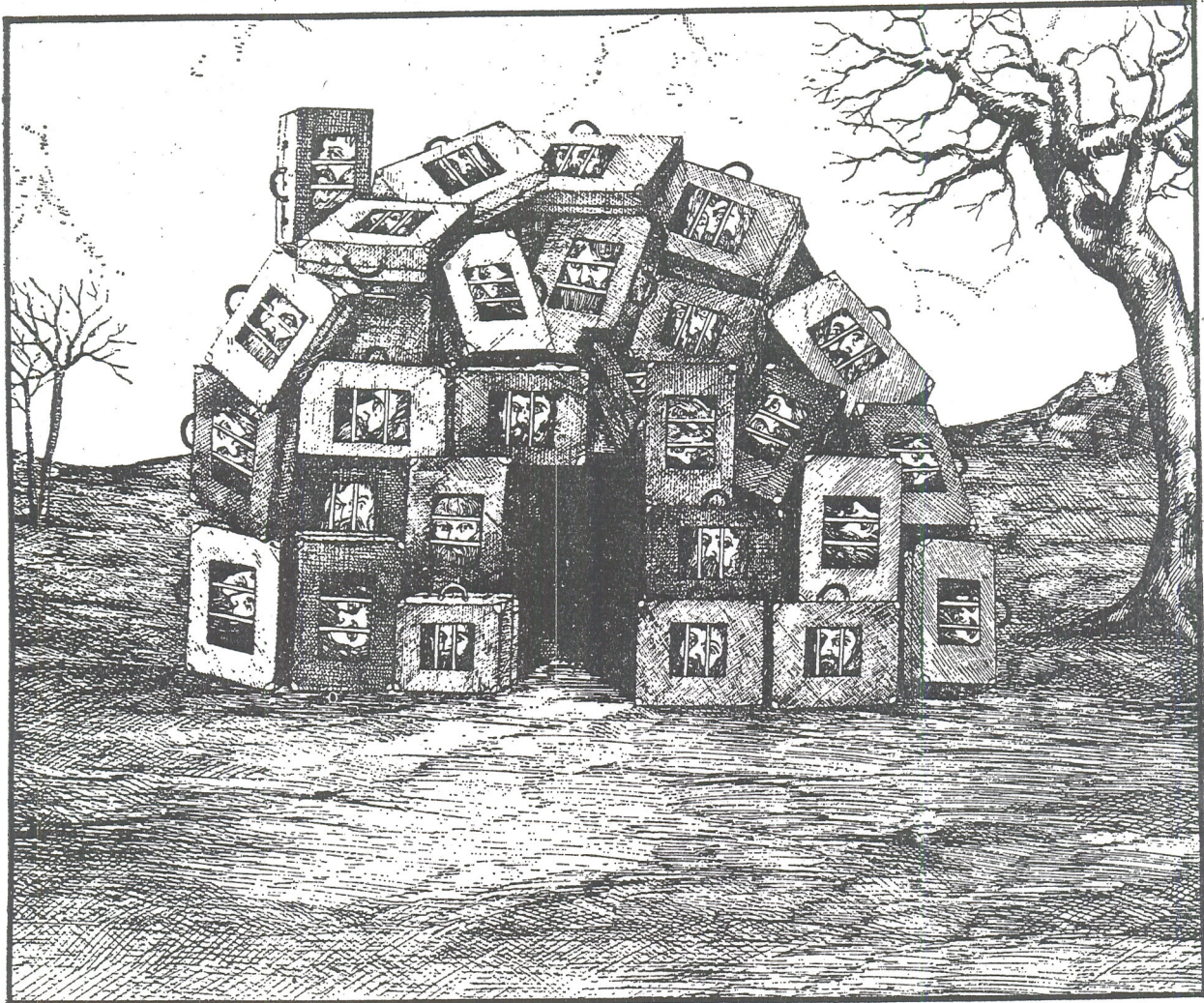


Rockefeller, Attica and Pardons



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Three years ago today, 39 inmates and correction officers died in a police assault at the Attica State Correctional Facility made necessary because the Governor of New York State, Nelson A. Rockefeller, believed that it would be an abuse of executive power to grant the inmates immunity from prosecution for their part in the uprising.

Last Sunday, Gerald R. Ford in a decision defended by Vice President-designate Rockefeller as "an act of conscience, compassion and courage," used his executive power to grant Richard M. Nixon full and unconditional immunity from Federal prosecution for any crimes committed by him during his nearly six years in office.

Both decisions raise substantial questions concerning our commitment to the principle of equal justice under law.

For four days before the police assault at Attica, the state had bargained with the inmates to release their hostages and end the uprising. Most of the prisoners' demands for long-overdue reform at the penal institution were accepted by the state. But the authorities, at Governor Rockefeller's direction, rejected the inmates' insistence that because their uprising was provoked by state neglect of the prisons they be given immunity from prosecution for all acts committed

during the uprising.

Stressing that as chief executive he had the "responsibility for the preservation of an effective framework of government," Governor Rockefeller later told the New York State Special Commission on Attica (the McKay Commission) that the granting of immunity from prosecution "could lead to a very serious breakdown both of the structure of government, the freedom of the individual and the security of the individual."

To suspend the enforcement of the law against rebelling inmates for crimes committed during the uprising within the prison walls, while prosecuting other citizens for similar or

less serious crimes committed on the streets, was seen as undermining public respect for law and the evenhanded administration of justice.

Thus, once it became clear that the negotiations were stalemated over the issue of immunity from prosecution, the Governor believed he had no alternative but to direct an armed police assault on the institution in which the 39 persons, including ten hostages, died of bullet wounds.

The commission, while criticizing the Governor's refusal to go to Attica before ordering the assault, agreed that immunity from prosecution for serious offenses could not be granted without eroding public confidence in the rule of law.

But on the third anniversary of that day, it is appropriate to ask whether Mr. Rockefeller, and the man who has now designated him for the highest office he has ever held, have been true to the principles of equal justice proclaimed at Attica.

Consider the aftermath of Attica

itself. The special prosecutor, appointed by Governor Rockefeller to investigate all crimes occurring at Attica—Robert E. Fischer, who was succeeded by Anthony G. Simonetti—has succeeded in returning over 42 indictments against 61 inmates, some for relatively minor offenses. But as the McKay Commission found, the recapture of the prison was marked by unauthorized and excessive firing, and hundreds of inmates were badly beaten by correction officers and troopers in an orgy of reprisals after the uprising had ended.

Yet three years have passed without a single indictment against a policeman or correction officer. Nor was there ever any criticism by Mr. Rockefeller of the excesses of police and correction officers, nor any expression of concern about the one-sided prosecutions. Instead, the Governor commended the police for their role in the assault.

The principle of evenhanded enforcement of the laws has now been dealt a far more serious blow by the grant of full immunity to Mr. Nixon. If the President of the United States, who has sworn to uphold the laws, is not to be held accountable for vio-

lating them, who should be? The Bernard L. Barkers, Eugenio R. Martinezes, the Virgilio R. Gonzalezes of Watergate, whose suffering apparently escapes official sympathy because they had not so far to fall, but not the man who had the ultimate responsibility? The inmates at Attica, but not the correction officers and police officers?

President Ford, at the hearings on his confirmation as Vice President, sounded very much like Mr. Rocke-

feller at Attica when he said "the public will not stand for" granting Mr. Nixon immunity from prosecution if he resigned from office. Mr. Nixon himself, in his March 21, 1973, taped conversation, rejected as "wrong" the notion of granting clemency to the Watergate burglars. Is it less wrong for President Ford to have granted immunity to Mr. Nixon? Have Attica and Watergate conditioned the public to accept discrimination in the enforcement of the laws?

President Ford's act in granting unconditional immunity to Mr. Nixon has, as Senator Sam J. Ervin Jr. said, done "infinite damage" to our principles of equal justice and the respect for law, which Mr. Rockefeller said he was promoting by rejecting the pleas for immunity at Attica. One can readily understand why cynicism toward law pervades our prisons and defeats all efforts at rehabilitation when leaders escape prosecution while their subordinates are jailed.

While the pardon of Mr. Nixon is final and irrevocable, the "infinite damage" can be at least partly repaired. There are things that can be done if we wish to restore the credibility of our justice system and reinfuse our law with some moral force. We suggest the following:

- For Richard Nixon, the cover-up cannot be permitted to continue any longer. He should be brought before the Watergate grand jury or a special Warren-type commission and cross-examined about every aspect of the allegations against him—Watergate, his tax returns, the break-in of the office of Dr. Daniel Ellsberg's former psychiatrist, his financial dealings with C. G. Rebozo, the milk-producers' contribution, among other things.

His grand jury testimony can be re-

leased with court authorization after the pending Watergate trial before Judge John J. Sirica has been concluded. If despite his pardon he invokes the Fifth Amendment Mr. Nixon should be granted "use immunity," which merely bars use of his testimony against him in a subsequent prosecution.

But neither the Presidential pardon nor the grant of use immunity would protect Mr. Nixon from prosecution for perjury. And, thus, on pain of losing the benefits of his pardon, Mr. Nixon should be made finally to give the public the full story—and not a self-serving one we can expect at \$10 a copy in any forthcoming book.

- For Nelson Rockefeller, we suggest that he be closely questioned during his confirmation hearings about how he reconciles his advocacy of the pardon for Mr. Nixon and his praise of the conduct of the police at Attica with his unwillingness, on grounds of principle, to consider immunity for the Attica inmates.

The purpose of such questions would not be to score debating points or to embarrass him, but to impress upon him that Congress and the public will no longer tolerate a double standard of justice by a man who could some day have the final responsibility for carrying out and enforcing the Constitution and the laws of the United States.

- For President Ford, the proper recourse against his abuse of the pardoning power will be at the polls, where two years from now he will have to face an electorate whose memory of these past tragic months will not so easily fade.

- For our country's commitment to the principle of equal justice, legislation or a constitutional amendment should be adopted prohibiting the granting of pardons or immunity from prosecution to any President or Vice President for acts committed while in office, at least until after trial and conviction. The most cruel legacy that could possibly be left by Watergate would be a precedent that resignation under the certainty of impeachment suffices to immunize the President from prosecution for crimes committed while in office.

These measures, even more than the belated prosecution of the police and correction officers who broke their oaths and the laws at Attica, would be a first step toward a meaningful implementation of the principles of equal justice that Mr. Rockefeller evoked on that horrible day three years ago.

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