

NYTimes — APR 16 1973

Executive Obligation

By Fred M. Hechinger

The issue of executive privilege dominates the political debate, but little attention is paid to executive obligation or accountability. "We cannot savor the fullness of the President's duties," wrote the late Prof. Clinton Rossiter in 1956, "unless we recall that he is held primarily accountable for the ethics, loyalty, efficiency, frugality and responsiveness to the public's wishes of the two and one-third million Americans in the national administration." These are the same people whom Attorney General Richard Kleindienst last week took under the protective umbrella of executive privilege.

Mr. Nixon's accountability for the ethics of his aides, however, cannot be spirited away by any such magic. The Senators who have asked for the testimony of such White House aides as John W. Dean 3d, the President's legal counsel, are not denying Mr. Nixon's right to his own privileged relationship with Mr. Dean; they are challenging the extension of that privilege to cover Mr. Dean's alleged involvement with the men who financed, planned or executed the illegal political espionage in the cause of Mr. Nixon's re-election.

The President's advisers apparently believe that Mr. Nixon's general popularity is more potent than the wrath of Congress. Many Americans undoubtedly do give to the White House an extra political status that borders on the quasi-royal. The Presidency is the only elected office whose purity the people truly want to believe, and are therefore loath to question.

Furthermore, the basic concept of executive privilege is reasonable. Government could not function without a privileged relationship between the Chief Executive and his staff.

There are growing indications, however, that the stress on executive privilege has become a cover for something quite different. It seems of a piece with Mr. Nixon's general desire to play his cards close to the chest and to act unpredictably. It is the domestic equivalent of secret covenants secretly arrived at.

Such a doctrine is not necessarily unpopular as long as it works and requires no public sacrifice. Since its application paid off in the secret missions to Peking and Moscow, why not extend similar Presidential powers to the home front? There is an undeniable attraction to the "Let Richard do it" concept of government.

In using the executive privilege issue as a means of extending executive power, the President's hand is strengthened by a widespread feeling that the President is better equipped than Congress to deal with crises. Congress is slow and argumentative; the President, though secretive, it at least quick and decisive.

Unfortunately, these views clash head-on with the original prospectus of American government, one that has not worked too badly for almost 200 years. Even in hard contemporary terms, moreover, the concept of a fast-acting, privileged, tight-lipped executive is not all that commendable. Call Congress talkative or deliberative; yet, without it, the President would have imposed a disruptive and probably unconstitutional antibusing order before last year's elections. The Congressional scrutiny of Mr. Nixon's proposals on crime and punishment may avert some serious mischief.

The question now is whether—or how long—the red herring of executive privilege can effectively divert public attention from the Administration's efforts to make the Presidency an inscrutable command post.

Mr. Kleindienst, undoubtedly reflecting the President's mood of confidence, said bluntly last week that White House aides will defy Congress "if the President so commands."

Yet, Mr. Nixon's apparent tactical advantages will not make him immune to an unexpected stiffening of opposition. The American character usually rebels against official arrogance, and the intricate system of American government is carefully rigged to encourage resistance.

In "The Power of the Contemporary Presidency," Prof. Robert S. Hirschfield of Hunter College recalls that Franklin Roosevelt lost the Supreme Court packing battle "because the same public which had just given him the greatest electoral mandate in history refused to support his attempt to invade judicial independence."

In the current test of strength between the President and Congress, Mr. Nixon has strained the use of his power in a way that arouses suspicion that he is shielding associates whose ethics are questionable.

The American people are quite permissive about political ethics—except within the sanctity of the White House. Thus, the growing rebellion among Republican Senators. Mr. Kleindienst may feel confident of the voters' mandate, but Senator Barry Goldwater warned that the Republicans will pay dearly if the President fails to clean up the scandal.

The new undercurrent of concern suggests that the issue now transcends the Nixon Administration. The American people are beginning to think about the future of the Presidency. They may have become aware that, as Professor Rossiter put it, the President's most important task in safeguarding the ethics of government is "to transmit a clear lead downward through his chief lieutenants to all who help shape the policies by which we live."

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