

# The President's Predicament

The recovery of national decency and integrity is too expensive in these times to permit the luxury of confusing psychological and programmatic identification with political and constitutional reality. The distinction between the office of the presidency and the man who occupies it for a few moments in history is essential, not only in civic and constitutional theory, but also in the reality of survival for a decent democratic system in these United States. Whether we believe that Richard Nixon should resign or remain in office, we must examine that question in terms of the long run of our republic and not in terms of the final 43 months of one man's active political career.

Our founding fathers were very much aware of the difference between the man and the office. For elitist confusion was the essence of family-blood monarchy and dictatorship that led them to renounce their European citizenship and sail the perilous seas in search of a new nation. Because of their bitter experience and concern with that kind of government, our founding fathers developed a Constitution very much based on a system of law that takes into full account the fallible, human nature of those few who, from time to time, have been entrusted with governing many; a Constitution quite deliberately designed to protect the body politic from the bad man in the good office and to distribute power in healthy conflict for the good of the people. They drafted a Constitution designed as much to protect the office from the man as it is to give the man who holds the office the authority he needs to serve the people.

This brings us to another element of confusion that runs through this tragic chapter of national history: the failure to recognize the distinction between the standards of proof required to protect a man's freedom against imprisonment and an official's rights against forceable removal from office, on the one hand, and the standard by which he should make a decision whether to resign from office, on the other.

For the standards for criminal conviction and impeachment are quite different from those a man should apply in determining whether he should continue to sit on a court, or hold a Cabinet post or sit in the White House. Thus, more than a dozen federal officials have resigned professing their

**"The standards for criminal conviction and impeachment are quite different from those a man should apply in determining whether he should continue to sit in the White House."**

personal innocence of criminal acts, but recognizing at least rhetorically their inability to fulfill their public trust. In this context, a man sitting in the Oval Office should impose upon himself significantly different standards in determining whether he should resign, from those the Congress should impose prior to impeachment or a jury would be required to find prior to criminal conviction. Indeed, the higher the office, the higher the standard of conduct its occupant should demand of himself.

Under the best of landslide election circumstances, it is extraordinarily difficult to assume effective policy direction and control over the 2.5 million civilian employees and 2.2 million military men and women in the Executive Branch. But the practical problems of governing in today's climate are almost beyond belief. The questions are brutally tough, but they must be asked. Suppose, for example, that a White House aide who worked for Messrs. Ehrlichman, Haldeman or Dean called your department and asked that something be done. Except for the most routine request, would the federal official he called accept the request on the blind faith and trust essential for a working relationship between the White House staff and the Executive Branch of the government? If you were Secretary of Transportation, how would you handle a White House staff personnel recommendation after Egil Krogh had been sent to you as Under Secretary? And what will the reaction of most other departments be after Odle was sent to Agriculture, Magruder to Commerce and Caulfield to Treasury? A cabinet officer or department head would be derelict in his duty to the public if he did not greet such recommendations with the most cautious skepticism.

If you were in the FBI, the CIA or the State Department, would you honor

a White House staff request that someone be investigated because he might be a subversive, a request to undertake a clandestine operation, or a request to open up all your top secret cables on U.S. intervention in the Dominican Republic? These might be legitimate requests, important to our national security. But, would you promptly honor them simply because they were not coming from Haldeman, Dean, Ehrlichman or Colson, or would you be suspicious as long as Richard Nixon was the President? For no matter the staff member who makes the request, it comes in one man's name—as it must, since all power of White House aides is derivative from the only man they report to, the President.

Perhaps the major element of effective policy direction of the Executive Branch is the people a President attracts to government service. With 43 months remaining to be served, the President must ask himself what kind of people he will be able to attract to fill key government posts. There are between 40 and 50 high policy level appointments, including assistant secretaries and above which are vacant. These are the journeymen of national policy in our nation; the men in these posts are critical to the intelligent development of that policy and they carry the burden of assuring its implementation. Can he attract bright young lawyers, analysts and economists from the major law firms, universities or major corporations to join this administration and serve in it? It is fair to assume that Mr. Nixon is as aware as the rest of Washington of the importance of bringing new blood into the White House and into the top Cabinet posts of his administration. Yet what we have seen in the shuffles of the last 10 days more nearly resembles a desperate game of musical chairs with the same old

people dancing as best they can to a cacaphonic chorus of corruption.

The government of our nation should not be directed by second-rate people or "acting" department heads and "acting" assistant secretaries for three-and-one-half years. Patrick Gray is a tragic personal example of what can happen with an "acting" appointee who yearns for permanent status. We simply cannot afford any more Grays.

Presidential relations with the Congress are delicate under the best of circumstances. After the loss of Democratic seats in the mid-term House elections in 1966, the surviving Democratic majority came to appreciate that a vote for the Great Society did not necessarily provide an insurance policy for re-election. We on the White House staff at that time came to realize that it was markedly more difficult to persuade congressmen to go along with our legislative proposals. Yet that seems a small difficulty when we try to appreciate the problems that those who work in this administration will face when they seek to convince a congressman that a vote should be cast in favor of their President's proposed program. Dealing with the Democratic majority may well be less difficult than trying to persuade Republican congressmen who are seeking as many ways as possible to separate themselves from the Watergate White House for their own survival.

*This is the first of two articles dealing with the impact of the Watergate affair on Richard Nixon's presidency. It is adapted from an address before the National Capitol Chapter of the American Society for Public Administration. The author, a Washington attorney, was special assistant for domestic affairs to President Lyndon Johnson.*

*A second article will present the views of Herbert G. Klein, Director of Communications for the Executive Branch.*



In foreign affairs, the difficulty of governing will also be attended by special problems. A Brezhnev must recognize the increased importance of concluding major detente agreements with an administration wracked by scandal than with an administration riding high on a landslide election victory. If the President went on television tomorrow night to proclaim a major new crisis in the Middle East or Southeast Asia, would the American people or the press take him at his word? Or would there

be instant analysis and newspaper columns about how such a crisis eases his Watergate problems and the historical fact that popular support for a President increases in time of foreign crises? The real danger is that the President might not be manufacturing or exaggerating such a crisis—in which event failure to believe him would indeed be a tragedy for our nation.

Mr. Nixon must also face the hard fact of the relationship that a Justice Department under his control will have with the federal judiciary. The stretching of the anti-bugging statute to cover newspapermen and White House staff and the instigation by his own staff of clandestine operations against an American citizen with the Justice Department's knowledge raise the most serious questions of credibility for U.S. Attorneys across this nation.

Finally, major interests in American society respond not to presidential orders, but to presidential political and moral leadership. Perhaps the most significant groups at the present time are big business and big labor. The restraint essential to pursue what Mr. Nixon's chief economic advisers perceive as the best economic policy for our nation can only be achieved by the ability of the President to persuade the big corporations, the major banks and the large unions to go with his leadership. What is the reaction likely to be of a businessman or labor leader when Mr. Nixon asks them not to raise their price another penny or the percentage of their wage interest another per cent? The nose dive of the stock market, the rocketing price of gold and the decline of the dollar provide grim testimony to the special problems now attendant on conducting a coherent and sound economic policy.

The point is not to convict or impeach Mr. Nixon without a trial. Nor is this an attempt to present the case for resignation. The point is, however, to help bring to the public dialogue some sense of the standards that should govern a decision to remain or resign.

Americans must not ignore or sweep under the rug the resignation option of their President. Robert Louis Stevenson tells us that "The cruelest lies are often told in the silence." To silence public debate on this issue is contrary to the way our entire system is designed to achieve political truth. It is difficult for any American citizen to raise this issue because belief in the President is so deeply ingrained in our lives. It is undoubtedly even more difficult for a man as private and remote as Mr. Nixon seems to be to ask himself these questions or to tolerate a debate on the issue of whether he should resign or remain.

There was a time in the history of the world when the Duke of Windsor abdicated because he did not think he could govern England and marry the woman he loved. That seems like a quaint fairy tale compared to our national dilemma.

There was a time, just five years ago, when Lyndon Johnson withdrew as a presidential candidate because he considered his credibility on peace in Southeast Asia and domestic economic problems more important to the nation than his personal presidency.

Perhaps it is a measure of the times that Mr. Nixon seems not to have considered his option to resign in favor of the country. If so, he may end up as the Nero of the 1970s, fiddling with personnel shakeups and legal maneuvers, while Washington burns out as the leader of a free people and the free world.