

President Nixon's Personal Finances (I)

"There is nothing sinister in so arranging one's affairs to keep taxes as low as possible. Everybody does so, rich and poor; and all do right, for nobody owes any public duty to pay more than the law demands; taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is cant."—Judge Learned Hand.

In an effort to form some judgments on the voluminous material that has now been made public concerning the President's personal finances, we would begin by asserting that Judge Hand's doctrine of the right to avoid any more taxes than are required by law is as applicable to Mr. Nixon as it is to any private citizen. We would not argue that Mr. Nixon has some high moral obligation to give money away to the federal government—merely that he has a special obligation as President to uphold as well as to obey the law and that this applies to his taxes as well as to his conduct in every other respect. So we would not fault the President for the extraordinary care he has obviously taken to avail himself of every conceivable benefit available to him under the Internal Revenue Code. Still less are we prepared today to question the accuracy of his tax returns in detail. The specific questions raised by his financial records are enormously intricate and technical, and subject to honest differences of opinion—so much so that they could hardly be dealt with in a single editorial. Leaving these questions aside, however, it seems to us that there are two things that can fairly be said about any President who claims a private citizen's right to pay not a penny more in taxes than is required:

The first is that he ought not to do so while publicly claiming that he is doing just the opposite.

The second is that he ought not to do so unless he is prepared to submit to the same process of tax law enforcement that awaits any other private taxpayer bent on pushing the regulations to the absolute limit in an effort to receive every benefit available under law.

Until the President felt obliged to make public the actual details of his financial dealings and his tax records, as a consequence of rising public and political concern, what we knew about his approach to tax-paying consisted largely of an exchange during his press conference with the Associated Press managing editors at Disney World. And in this particular episode of Operation Candor, it seems fair to say, Mr. Nixon was not invoking the doctrine of Judge Hand. On the contrary, in response to a question about his "nominal" tax payments in 1970 (\$792.81) and in 1971 (\$878.03), Mr. Nixon gave us to believe that this had entirely to do with deductions deriving from his gift of his vice presidential papers to the government.

"Now why did I pay this amount?" the President responded. "It was not because of the deductions for, shall we say, a cattle ranch or interest or all of these gimmicks that you have got where you can deduct from, which most of you know about, or if you don't your publishers do."

Now, if the President's tax records tell us anything, they tell us that Mr. Nixon knew a little something about "these gimmicks" himself. Consider the interest deduction "gimmick": In the four years for which he made tax information public (1969-1972), he claimed deductions of more than a quarter of a million dollars

for interest payments. Over the same years of his presidency, he took deductions for "depreciation of personally owned White House office furniture" and for the use of both his Key Biscayne and San Clemente homes for "official purposes." And finally, he deducted almost a half million dollars from his taxable income for his vice presidential papers. As "gimmicks" go, the principal distinction between a cattle ranch and a gift of papers by prominent citizens, it might be added, is that the latter "gimmick" was terminated by Congress in the Tax Reform Act of 1969 while the former is still allowable.

So much for Mr. Nixon's contempt for "gimmicks." Contradictory arguments have been made about the validity of his claimed deductions and the legitimacy of other aspects of the President's tax returns. The point is that the President is himself trying to have it both ways. On the one hand he is asserting to the hilt the claims that any private taxpayer is entitled to make. On the other hand, he is refusing to submit to the procedures by which any private taxpayer would be judged, and either vindicated or punished. True, he is most emphatically unlike any other private citizen in that he presides over the tax enforcement system, which creates in this instance a problem not unlike the crisis which has developed over the Watergate Special Prosecutor. There are, however, means by which the President could have submitted his tax questions to the same forum in which ordinary taxpayers are judged; he could, for one example, pay any even faintly questionable tax liability in an amended return and then test the rightness of his claims by filing suit in the federal court for a refund. That would be the course open to a private citizen.

Instead, Mr. Nixon invoked presidential prerogatives and indulged a tendency of his administration, when under challenge, to shop around for the most congenial tribunal, without respect to ordinary procedures of law. Just as Vice President Agnew sought to remove his case from the Baltimore federal prosecutor's office to the House of Representatives, and the President himself tried to resolve the controversy of the Watergate tapes through the intercession of Senator Stennis, so Mr. Nixon has persuaded the Joint Committee on Internal Revenue Taxation to review just two of the questions concerning his taxes—the deduction arising out of the donation of his papers, and the capital gain, or lack thereof, deriving from the sale of part of his land holdings at San Clemente. He has promised to pay whatever taxes the congressional committee finds are due; nevertheless, this penalty-free and punishment-free procedure, it almost goes without saying, is not one that is generally available to the ordinary taxpayer.

When Judge Hand spoke of "arranging one's affairs to keep taxes as low as possible," surely he did not have in mind the use of a President's power to arrange, for his own interests, the duly constituted processes of tax review and enforcement.