

Chalmers M. Roberts

# Will Mr. Nixon

## 'Take the 25th'?

President Nixon's troubles keep mounting so relentlessly that even a careful reading of the morning paper and close attention to the evening television news seems hardly sufficient to keep up with events. Somehow, at this moment, I have the uneasy feeling that Mr. Nixon may decide to turn to what would seem to be the worst of all possible solutions: a resort to the 25th Amendment to the Constitution.

In 1965 the Congress proposed, and by 1967 sufficient states had ratified, this amendment on presidential disability and succession. The operative clause in the current situation is the third of four. It reads: "Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President."

The 25th Amendment was an outgrowth of the two illnesses of President Eisenhower and of the compact that Ike made with then Vice President Nixon to let the Vice President be, in effect, Acting President, though without the title until the President recovered, died or resigned. A similar compact was drawn up by President Johnson with then Vice President Humphrey. There is no evidence that at either time, or when the 25th was under consideration, anyone conceived of the present situation of the presidency.

Yet there certainly is no legal reason why Mr. Nixon could not opt to "take the 25th," as some around town put it in a mocking reference to "taking the 5th," the amendment offering protection against self-incrimination. If Mr. Nixon were to "take the 25th," it would not be the first time a Constitutional provision was used for purposes that those who wrote it, either the original document or the various amendments, had not even thought of, let alone discussed and considered.

Why might Mr. Nixon go this route? The two other options are resignation and the impeachment route. The President has insisted over and over that he will not resign. That, of course, does not mean he may not resign; former Vice President Agnew once was just as firm. But I still find it hard to believe

July, it appears, and, assuming a pro-impeachment vote, the Senate trial would come this fall, running on perhaps to the eve of the November congressional elections. The current Republican panic about the debacle feared at those elections, if Mr. Nixon is then still in office, clearly has added to the pressures on him to "do something."

This is where "taking the 25th" comes in. Suppose Mr. Nixon, even before a House vote for impeachment or at least after it and before a Senate trial, were to announce that he was taking advantage of the Constitutional provision, stepping aside temporarily on the

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grounds that in this nuclear age the very process had so undercut his ability to "discharge the powers and duties of his office." Gerald Ford would then become "Acting President" and Mr. Nixon would step into a form of limbo we have never experienced and never anticipated.

Presumably, he would still be the President. The amendments say he can reclaim the office at any time simply by stating that the disability has been removed; he alone has the power to make that judgment. Would he still live in the White House? Be paid his presidential salary, have all the presidential perquisites?

What would be the effect on the impeachment proceedings now legally under way? The Constitution says nothing about impeachment of a President who has given way to an Acting President. Would Mr. Nixon, in this state of limbo, be available as a witness in Watergate cases whereas he would not be as President? Could he be indicted, whereas he could not be were he a full scale President? Anyone can add a host of other intriguing and largely unanswerable questions that would arise if Mr. Nixon "took the 25."

And what would be the status of "Acting President Ford"? Presumably there would be no doubt he could sign or veto acts of Congress, direct the Executive Branch, negotiate with foreign powers, order the armed forces about and otherwise exercise stated presidential functions. But he would never know when he went to bed whether he would be Acting President, or only Vice President, when he woke up next morning. Nor would anybody else—expect Richard Nixon.

The New York Times recently called on Mr. Nixon to "take the 25th". To me that is an appalling suggestion but a live possibility. If the tapes transcripts tell us anything, they tell us about a President Nixon willing to go to almost any lengths to hang onto his office. The character of the man has hardly changed since those conversations were spoken. But the pressures on him to "do something" have escalated. Judging from what we have learned from the transcripts, he might very well seize on the 25th as a way to hang on, hope the storm somehow will blow over and serve out his term.

"Taking the 25th," however, is a prescription for both Constitutional and public confusion of the worst kind. We ought all to be raising a public storm against the idea. Fish or cut bait; face the full impeachment process or resign. The United States has been through too much already; to "take the 25th" would be intolerable.

But that is a long time off, given the slow impeachment proceedings that have now finally begun in the House Judiciary Committee. The timetable keeps slipping and more slippage is likely, given the many unresolved conflicts between the committee and the White House, not to mention the related, and relevant, conflicts between the special prosecutor and the White House and other aspects of the Watergate scandal and trials. At best the House may vote on impeachment in

that Mr. Nixon will resign, short of the time that, having been impeached by the House, he is faced with a Senate vote count showing him beyond doubt that the upper house lacks even the one-third vote to keep him in office. I think he would resign the night before such a vote.

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