

No Deal

The most redeeming element in the Watergate tragedy has been the confirmation its denouncement is providing that no citizen is above the law. That reaffirmation of a concept basic to democracy and social responsibility will be subverted if eagerness in Washington to speed President Nixon's departure from office results in serious contemplation of a "deal" to induce his resignation.

The last thing the country would want to see would be a mood of vindictiveness against a fallen President, a man who voluntarily or involuntarily surrenders the powers of the Presidency. But there is no case in Constitution, law, morality or even practical politics for an advance commitment granting Mr. Nixon immunity from prosecution after he leaves the White House. Whether or not he should be prosecuted is a separate issue that cannot be decided now; it would be the ultimate degradation to engage in extralegal "plea bargaining" in a situation already so full of sordid chapters.

Once out of office, either by resignation or conviction on impeachment, Mr. Nixon could theoretically be vulnerable to indictment as any ordinary citizen, on Federal charges that might range from obstruction of justice to personal income tax fraud. There could also be civil suits filed by individuals—at least one is already in the courts—for illegal wiretapping or other intrusions on the civil rights of citizens.

The first necessity would be for the Government prosecutors, including special Watergate prosecutor Leon Jaworski, to complete their marshalling of evidence in the many still only partly explored facts of this far-flung conspiracy. Then a decision would have to be made by Mr. Nixon's successor in office and his Attorney General. They would undoubtedly take careful readings of Congressional sentiments in such a delicate situation, and would give weight to the public's sense of fairness and the general interests of the society.

But the suggestion is untenable that Mr. Nixon could negotiate some legal protection before leaving office. In the first place, it is dubious that any legal or constitutional way exists to do it. The Congress could not sustain an act of legislation to exempt one citizen from the provisional of Federal statutes. It would be the height of improvidence for Vice President Ford, whatever his personal inclinations, to enter any deal for future leniency that would have the effect of gaining for him the Presidency.

Any blanket immunity for Mr. Nixon would be patently offensive while his lieutenants—from H. R. Haldeman and John Mitchell all the way to Gordon Strachan—were facing prosecution and the threat of prison terms. Some have already gone to jail. Their proved or alleged crimes were some of the same that could be charged against Mr. Nixon. How could they in fairness be punished when the man they were serving was left invulnerable to the law? How could thousands of prisoners across the country be confident in the system of criminal justice once it is bent for one man?

Any prosecutor or judge has adequate flexibility within the law to consider special and extenuating circumstances. Cooperation with the prosecution, the giving of testimony and evidence, the degree of punishment inflicted by circumstances even before the law is invoked—these factors arise in the courts daily, and have already figured routinely in the various Watergate-related prosecutions. In Mr. Nixon's case, no one would want to minimize the degree of punishment that any man would suffer upon being removed from the Presidency.

As long ago as April 17 of last year, President Nixon stated that "no individual holding . . . a position of major importance in the Administration should be given immunity from prosecution." Though this statement was clearly directed toward his then chief accuser, John W. Dean 3d, it applies equally well to the President.

We are confident that the nation will have no interest or desire to hound Mr. Nixon once he is returned to private life. But just as he was not above the strictures of the law while in office, so can he not stand above the law when out of office. The rule of law was what the tragedy of Watergate was all about; the lesson must not be undermined the moment it is confirmed.