

The Damage Ford's Done

By Anthony Lewis
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"In cases of impeachment the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

—The Constitution of the United States, Article I, Section 3

Boston

On August 9, after taking the oath of office of President, Gerald Ford said: "The Constitution works." One month later, in a sudden and ill-considered gesture, he has frustrated the process of law and the Constitution. The damage to his own hopes will be grave, perhaps irreparable.

He pardoned Richard Nixon for any and all crimes he committed while President — and did so without knowing in any detail the special prosecutor's evidence on the extent of those crimes, official and personal. He issued the pardon without requiring even the minimal plea of guilty that was widely considered inadequate in the case of Spiro Agnew. He gave the pardon to a man who has spoken not a word of confession or contrition for acts that injured many human beings and wounded his country.

Mr. Ford acted in the name of mercy, speaking of his obligation to the laws of God. His motives were surely of the best, to show charity to a fallen friend and spare his country continued trauma.

But his good intentions only make the occasion sadder, for the result must be the opposite of what he hoped for America: More rancor, more division, more cynicism about government and law.

The Nixon story was "an American tragedy" the President said. He gave emphasis to the suggestion that punishment for Mr. Nixon, or the threat of it hanging over him, might "threaten his health."

But punishment — a jail term, that sort of thing — has never been the issue.

Judges and prosecutors have ample discretion to help those who are ill or who have suffered enough, and presidents can pardon them when the cause of justice has been served. Those I know who were most concerned about principle in the Nixon case in fact believed that, however the criminal process worked, he should not end up in prison.

The issue was the law. It was well put by the Times of London, a newspaper that showed much concern for fairness to Mr. Nixon throughout Watergate. The very purpose for the long struggle for the truth in Watergate, the Times said, was "to reassert the supremacy of law over executive power. Not the least of the principles to be reasserted is that no man is too great or too special to be exempt from the rule of law or the processes of justice."

Now the whole country will presumably see the spectacle of a former President's principal aides being tried for obstruction of justice, with his self-incriminating words as critical evidence, while he is untouched. That will be the image of equal justice for this generation of Americans.

President Ford relied, in his explanation for the pardon, on the advice that it would be difficult to find an unbiased jury to try Mr. Nixon for many months. It

is true that the impeachment process has spread the evidence against him widely, and that care would have to be taken to assure a jury that would stick to the trial evidence. But that would hardly be an insuperable task.

The Supreme Court has said that jurors trying a notable case need not be "ignorant of the facts and issues involved." Indeed, the court said, to exclude jurors as prejudiced merely because they had "any preconceived notion as to guilt or innocence of an accused would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence."

In using his pardoning power on the basis of possible jury bias, Mr. Ford has effectively nullified the clause of the Constitution explicitly authorizing criminal prosecution as well as impeachment of any federal officer. Of course there was no television in 1787 to publicize the impeachment process. But if John Adams, say, had been impeached and then prosecuted, the details would have been well known to most Americans — and certainly to the men of property who served on trial juries.

The effect of Mr. Ford's gesture on the system of criminal justice is the most

appalling prospect. All along in Watergate, many ordinary Americans have said that the rich and powerful would escape justice in the end. Those who believed in the system told them they were wrong. On August 9 it appeared that they were. Now they will know otherwise.

The United States has a terrible crime problem. Just the other day Attorney General William Saxbe called attention to its dimensions once again. In considerable part, the problem is one of a system of criminal justice in whose efficacy and integrity the citizen does not believe. The case of Richard Nixon was for most Americans by far the most important test in their life times of that system's integrity. Who can argue against cynicism now?

"Someone must write 'the end'" to the Nixon tragedy, Ford said, and "only I can do that."

An ending is what America deeply desires, but it had to be a real ending — one reached by going through the whole process. We have to finish something for once, without compromises, without deals. We needed the tranquility that comes only by working a problem through. We needed to proceed, in the words of the Constitution, "according to law."

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