

Experts Assert Some Nixon Legal Problems Remain

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WASHINGTON, Sept. 9—The pardon President Ford gave Richard M. Nixon has not ended the former President's legal problems, but it may have indirectly improved the outlook for a number of his former associates, both in prison and out.

Legal authorities assessing the pardon and its impact today were virtually unanimous in agreeing that there was no way to challenge Mr. Ford's action in the courts. Most lawyers said they thought it had been a constitutional exercise of Presidential power.

There was less unanimity on the intricate legal questions involving Mr. Nixon's future as a witness in the Watergate trial, his ability to shield himself and his former associates by pleading self-incrimination and the likelihood that some of those associates may benefit from a sort of clemency fallout.

The principal conclusion of criminal and constitutional experts was that the "blanket" pardon absolving Mr. Nixon from any Federal prosecution had not covered many of the problems facing the former President. They cited the following:

¶Mr. Nixon is still subject to prosecution in the courts of any state that can establish his participation in a crime over which it has jurisdiction. He will still, as a result, be entitled to refuse to answer questions as a witness—in the Watergate cover-up trial, for example—on the grounds that he might incriminate himself in some future state prosecution.

¶He is still subject to civil liability for past unpaid taxes, although absolved of any criminal liability for tax violations occurring during his years in the White House.

¶He is still liable to civil lawsuits for damages, such as a claim by Dr. Lewis Fielding, Dr. Daniel Ellsberg's former psychiatrist, that the White House burglary of his office was a violation of his civil rights.

Court Review Doubted

¶He is still subject to contempt proceedings if he fails to comply with a subpoena directing him to deliver tapes and other White House documents for use in subsequent investigations and court actions.

With one notable exception, the law professors and other authorities agreed that the Presidential pardon, while without precedent in the law, had been constitutional and, as a practical matter, could not be subject to any court review as to its validity.

Prof. Paul A. Freund of Harvard Law School said that the

1866 Supreme Court decision reinstating a pardoned Confederate officer as a member of the bar established that a pardon can be granted before, during or after a criminal act.

"It's customary for Presidents to grant a pardon for a specific offense," Professor Freund said, "but the general rule here favors breadth and this sort of act is always liberally interpreted. I would not suggest any constitutional doubt."

Prof. Charles L. Black Jr. of Yale Law School said that a pardon in advance of trial was "no novelty" and there were a number of English cases in which defendants had indictments on the basis of a prior pardon.

But Prof. Philip B. Kurland of the University of Chicago Law School, a recognized constitutional authority, said, "It is certainly not clear that the power to pardon an individual may properly, i.e. constitutionally, be invoked prior to indictment and conviction."

Move Uu to Jaworski

Press International, Professor Kurland said there was "a serious constitutional question" about the pardon and "certainly there are grave dangers in the use of a pardon to exonerate a government official for crimes while in office, even

before he charged with any."

All the lawyers questioned indicated there was no way in which President Ford's action could be tested in the courts, short of the special Watergate prosecutor, Leon Jaworski, obtaining an indictment of the former President and thus forcing him to plead his pardon as a defense.

There was no evidence that Mr. Jaworski would take any such action although some members of his staff reportedly favored the move. A spokesman for the special prosecutor said yesterday he accepted the President's decision.

Generally, the authorities agreed that no private citizen or member of Congress would have the requisite legal standing to ask the courts to review the President's action. Professor Black said that a pardon was "a thing of grace or favor" that no one had the right to challenge.

The only way in which a court test of the President's act might arise, lawyers said, was if a state — California, for example, decided to bring disbarment proceedings against Mr. Nixon, he then pleaded his pardon as a defense and the prosecution countered that the pardon had been invalid.

Mr. Nixon, however, plans to resign from the bar in Cali-

fornia a Nixon attorney said today.

Some lawyers predicted that pardoning the President for all crimes he may have committed in the White House was likely to raise a strong constitutional issue for Watergate defendants seeking reduction in sentences already imposed or the dismissal of pending charges.

One constitutional authority, John P. Frank of Phoenix, said that President Ford's act had created "an appalling inequality" for any other Watergate defendant who might be convicted and sent to jail for acts he undertook at the direction of Mr. Nixon.

There was some dispute over the likelihood of a state prosecution of Mr. Nixon but complete agreement that the Ford pardon would be ineffective to prevent one. One law professor said he thought California could prosecute Mr. Nixon as a participant in the Fielding burglary if he had sent one of his associates into the state for that purpose.

This authority predicted that Mr. Nixon would avoid answering a large number of questions as a witness in the Federal Watergate cover-up trial by pleading possible self-incrimination in such a state case. Others discounted the possibility of such an opportunity's arising.