



Mercy Without Justice

When Richard Nixon resigned I expressed to several friends a hope that he would not have the pleasure of seeing the spirit he brought to public life live on in the gloating attitudes of his enemies. For 25 years the man had massaged the baser instincts of politics. Now he was going, and it would be enough, I thought, simply to be rid of him, without rancor. Let the law take its course, but let the vindictive spirit go with him; the harm he had wrought could only increase if those who fought him came in the end to imitate him.

That was a month ago, and I assumed then Nixon would one day be pardoned by his successor. But I believed Gerald Ford first would permit the tale to be told, so we could know more fully how Watergate came to be and how to guard against its recurrence. Once the trials of Haldeman, Ehrlichman and their cohorts were behind us, the special prosecutor, armed with evidence from Nixon's own tapes, could issue a full report. The conclusions of the Senate Watergate committee and the House Judiciary Committee are already a part of the record; this last effort would complete the task of laying out an account of high crimes against the public trust by a President and his counselors. There would come a moment, then, when a pardon for Nixon would be in order; we could leave him to his failed hopes and turn to the happy prospect of politics without him. With so ample an investigation by Congress, the courts and the Department of Justice of what Watergate has come to mean, we would have staked out some discernible limits to arbitrary power.

FAVORITISM

Now I am not so sure. The manner of President Ford's decision to pardon Nixon is a serious setback to our recovery from the Watergate mentality. It resurrects the huge fiction long nurtured in the White House—that "whatever pleases the emperor has the force of law"—and suggests that Gerald Ford, too, is willing to put himself above the binding procedures of society. A President's power to pardon is of course constitutional, but Ford used it arbitrarily, prematurely and imperiously. He pleads the need "to show mercy." But mercy without justice is favoritism.

In the case of Watergate, justice requires neither Richard Nixon's hide nor his contrition; it requires that safeguards be fashioned against a return of the spirit of lawless absolutism which he inspired

in government. This is more likely to happen if Nixon acknowledged that the White House scandals were more than "mistakes and misjudgments" and cooperated in making the whole story public. But with Spiro Agnew lately insisting that the charges against him were never proven, we have a preview of what to expect from Nixon. Already his apologists are quoting the Supreme Court pronouncement in 1866 that a pardon makes the offender "as innocent as if he had never committed the offense." And last week the former President suggested that his guilt is not in his conduct but in the minds of other people.

BALONEY

Why did Ford change his position so suddenly? Well, he said, by failing to pardon now, "ugly passions would again be roused, our people would again be polarized in their opinions and the credibility of our free institutions of government would again be challenged at home and abroad." This is baloney from the man who four weeks ago was insisting that society is held together by the glue of truth. The season's award for ugly passions goes to Nixon zealots like Rabbi Korff. And if you want to know who polarized the nation, compare the demeanor of Sirica, Doar, Jaworski and Rodino to the tactics of Ziegler, Buchanan, Clawson and Father McLaughlin. As for "the credibility of our free institutions," it soared when in open debate, with the world looking on, the House Judiciary Committee came to grips with articles of impeachment. The Republic not only survived but was buoyed by a powerful surge of self-esteem in a Congress that decided not to shirk its duty.

Yet Ford seems to be selling short the majority of people who have borne a series of incredible events for two years now with considerable maturity. If anyone has an excuse to rage, it is the people who voted for Nixon in 1972 and were betrayed by him. Yet I sense no thirst for revenge among them. There is, instead, a desire to know how they were double-crossed and a belief that Nixon should give an honest accounting.

Another disturbing part of Ford's statement was his compulsion to let us know that in making his decision he searched for the guidance of God "and my own conscience." Maybe the public finds such piety fetching, but our experience with officials who make a public virtue out of private prayer hasn't been very encouraging, and we had better

keep our skepticism intact. There is nothing quite so suffocating of liberty as an overwrought conscience in a "humble servant of God" who, arriving in high office, confuses his will for that of Providence. A few centuries of that kind of thing convinced Western man to find a better way to resolve differences in society than by submitting to the personal chapel of a prince. We call it law.

To succeed, the process of law needs to be persuasive enough for all of us voluntarily to make a habit of it. In the last decade, kicking the habit has almost become fashionable in high places. After the disorders and illegalities of the Vietnam era and the pernicious effects of Watergate, Gerald Ford could have inspired a renewed willingness to submit freely to the legitimacy of law. But by treating the Nixon affair so capriciously, he has added to the shambles.

WILLING TOOL

Why he did so remains a puzzle; none of his explanations hold up. But we should not forget Ford insisted from the beginning that Nixon had nothing to do with Watergate, despite mounting evidence. Nothing in the record suggests he was insincere. Furthermore, his whole career in Congress had been spent in partisan causes and in serving political friends like Melvin Laird and Richard Nixon who found the genial Ford a willing tool for their intrigues. A man who has spent that much time on the Hill would know something of the power of legislatures to grant pardons in the form of indemnity—anticipatory pardon for acts done in the public interest that might be illegal. Ford could have had something like that in mind. I suspect that he believes his old friend from the Chowder and Marching Club did no wrong, that he was brought down by flawed subordinates, or at least that the wrong he did was for a good cause. A pardon, then, would come as naturally as patronage for an old colleague who has lost his seat in Congress.

It is not very elevating, but the game is played that way and men like Ford come instinctively to abide by the rules. The distance from the cloakrooms of Congress to the Oval Office in the White House, where higher loyalties should prevail, is a long way to travel for men swathed in old habits.