

AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 9: Liberalism Divided – Separation of Powers

Congressional Hearings on the Pardon of Richard Nixon (1974)¹

On August 9, 1974, in the face of impeachment inquiries, President Richard Nixon resigned from office. Although Nixon had won reelection by a landslide in the fall of 1972, his administration was dogged by the Watergate scandal. In June 1972, several individuals associated with Nixon's reelection campaign were caught attempting to wiretap the offices of the Democratic National Committee in the Watergate Hotel in Washington, D.C. In the spring of 1973, federal prosecutors determined that the Watergate burglars were encouraged to commit perjury to hide the extent of White House involvement in the plan to spy on the Democratic campaign, leading to the resignation of senior White House aides. By the fall of 1973, the White House was under siege from investigating congressional committees and special prosecutors. When several aides were indicted for obstruction of justice and the courts gained access to White House audiotapes indicating the extent of the president's involvement with the cover-up, Nixon's position became untenable. The president was potentially liable to criminal charges for obstruction of justice, and the special prosecutor contemplated a number of possible charges against Nixon.

Gerald Ford, a Republican from Michigan, served as the minority leader in the U.S. House of Representatives during the Johnson and Nixon administrations. In October 1973, Vice President Spiro Agnew resigned from office in the midst of a criminal investigation for bribery. At the urging of congressional leaders, Nixon nominated Ford for the vice presidency, and Ford was confirmed by the House and Senate in November. Ford was the first and only president to be appointed and confirmed, in accordance with the procedures laid out in the Twenty-Fifth Amendment, rather than elected. Upon Nixon's resignation, Ford ascended to the presidency (former New York governor Nelson Rockefeller was nominated and confirmed to be vice president).

On September 8, 1974, a month after Nixon's resignation, President Ford granted Nixon a pardon for any criminal offenses he might have committed during his last years in office. Ford defended the pardon in a televised address, in a press conference, and ultimately in testimony before Congress. The pardon, Ford argued, was the best way to end "years of bitter controversy and divisive national debate" and to avoid the political and legal difficulties of attempting to provide a fair trial for the former president. The pardon was deeply controversial, leading to the resignation of the White House press secretary and charges that Ford had entered into a "corrupt bargain" to gain the presidency. The pardon was widely seen as hamstringing Ford's presidency and costing him the 1976 presidential election. After the Clinton administration, many commentators, including Senator Edward Kennedy, looked back on Ford's pardon of the former president as a courageous and helpful move.

A subcommittee of the U.S. House of Representatives opened hearings investigating the pardon. On October 17, 1974, Ford appeared before the committee and gave testimony on the pardon. He was the first sitting president to testify before Congress in over a century, leading committee members to praise the president's "commitment to be open and candid with the American people" and to emphasize the consistency of the president's voluntary appearance before a congressional committee with the dignity of the office and the continued vitality of the separation of powers. In his testimony, Ford affirmed that he did neither negotiate a pardon for Nixon as part of the process leading to the Nixon's resignation from office nor did negotiate with the former president over the timing or

¹ Excerpt taken from *Public Papers of the Presidents: Gerald R. Ford, 1974-77* (Washington, D.C.: Government Printing Office, 1975); *Pardon of Richard M. Nixon, and Related Matters: Hearings before the House Subcommittee on Criminal Justice, 93rd Cong., 2nd sess. (1974).*

terms of the pardon. Ford required only a statement from Nixon indicating that the latter would accept the pardon if it were issued. The House did not pursue the matter further. The special prosecutor did not pursue an indictment of Nixon in the face of the presidential pardon. In 1975, a federal district court in Michigan heard a lawsuit against President Ford that sought a judicial declaration that the pardon was unconstitutional and void. Relying on Ex Parte Garland (1867), the district judge upheld the pardon as valid and dismissed the case.

Did Ford have the constitutional power to pardon Nixon before he had been indicted or convicted of any crimes? Should Ford have pardoned Nixon? Could the House of Representatives have impeached Ford for issuing the pardon? Could the House of Representatives have compelled President Ford to testify about the pardon and/or release White House documents regarding the president's consultations on the pardon? Should Ford have refused to appear before a congressional committee?

President FORD, *Remarks on Signing a Proclamation Granting Pardon to Richard Nixon*

. . . . I have learned already in this office that the difficult decisions always come to this desk. I must admit that many of them do not look at all the same as the hypothetical questions that I have answered freely and perhaps too fast on previous occasions.

. . . . To procrastinate, to agonize, and to wait for a more favorable turn of events that may never come or more compelling external pressures that may as well be wrong as right, is itself a decision of sorts and a weak and potentially dangerous course for a President to follow.

I have promised to uphold the Constitution, to do what is right as God gives me to see the right, and to do the very best that I can for America.

. . . .
As we are a nation under God, so I am sworn to uphold our laws with the help of God. And I have sought such guidance and searched my own conscience with special diligence to determine the right thing for me to do with respect to my predecessor in this place, Richard Nixon, and his loyal wife and family.

Theirs is an American tragedy in which we have all played a part. It could go on and on and on, or someone must write the end to it. I have concluded that only I can do that, and if I can, I must.

There are not historic or legal precedents to which I can turn in this matter, none that precisely fit the circumstances of a private citizen who has resigned the Presidency of the United States. But it is common knowledge that serious allegations and accusations hang like a sword over our former President's head, threatening his health as he tries to reshape his life, a great part of which was spent in the service of this country and by the mandate of its people.

After years of bitter controversy and divisive national debate, I have been advised, and I am compelled to conclude that many months and perhaps more years will have to pass before Richard Nixon could obtain a fair trial by jury in any jurisdiction of the United States under governing decisions of the Supreme Court.

I deeply believe in equal justice for all Americans, whatever their station or former station. The law, whether human or divine, is no respecter of persons; but the law is a respecter of reality.

The facts, as I see them, are that a former President of the United States, instead of enjoying equal treatment with any other citizen accused of violating the law, would be cruelly and excessively penalized either in preserving the presumption of his innocence or in obtaining a speedy determination of his guilt in order to repay a legal debt to society.

During this long period of delay and potential litigation, ugly passions would again be aroused. And 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.

In the end, the courts might well hold that Richard Nixon had been denied due process, and the verdict of history would even more be inconclusive with respect to those charges arising out of the period of his Presidency, of which I am presently aware.

But it is not the ultimate fate of Richard Nixon that most concerns me . . .

As President, my primary concern must always be the greatest good of all the people of the United States whose servant I am. As a man, my first consideration is to be true to my own convictions and my own conscience.

My conscience tells me clearly and certainly that I cannot prolong the bad dreams that continue to reopen a chapter that is closed. My conscience tells me that only I, as President, have the constitutional power to firmly shut and seal this book. My conscience tells me it is my duty, not merely to proclaim domestic tranquility but to use every means that I have to insure it.

I do believe that the buck stops here, that I cannot rely upon public opinion polls to tell me what is right.

. . . .

"Now, therefore, I, Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2, of the Constitution, have granted and by these presents do grant a full, free, and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from July (January) 20, 1969 through August 9, 1974."

House Hearings on the Pardon of Richard Nixon

Rep. ABZUG (Democrat, New York) . . . President Ford says the pardon was motivated, at least in part, by his desire to heal the wounds of Watergate. He clings to this rationale despite the clear evidence that this totally premature, confusing, and unprecedented pardon is opposed by a majority of Americans and is viewed as a further coverup of Watergate.

The wounds have, in fact, been reopened, leaving to fester suspicions of White House deals, deception, abuse of Presidential power, and perhaps further blanket pardons of the Watergate culprits. Most wounding of all is what Mr. Ford's action has done to our concept of equal justice for all and the belief that the President is accountable for his actions and not above the law. . . .

. . . . [T]he House can still vote on impeachment, and if there is no other way to enter on the record books the political crimes for which Richard Nixon was forced to resign, then I believe the House should proceed to a vote.

. . . . I disagree with those who claim the pardon was a constitutional exercise of Presidential power and cannot be overturned. President Ford himself asserted in his statement announcing the pardon that "there is no historic or legal precedents to which I can turn in this matter," and there is already serious debate within the legal community as to the constitutionality of Ford's granting a pardon before formal charges were filed and without a formal admission of guilt from Mr. Nixon.

. . . . The need for either a confession or judgment in a pardon case is evident from the language of the Constitution itself: the power to grant pardons only goes to "offenses." Without either a confession or at the very least an indictment, there is no offense. Richard Nixon has made no confession or admission of guilt and there has been no indictment. Instead, in collaboration with President Ford, he has made a statement of "contrition" which is religious rather than a legal concept.

. . . . It would appear . . . that the Watergate grand jury is free to proceed with an indictment of Richard Nixon, as it had indicated earlier that it wished to do. The court does not have to take notice of President Ford's pardon of Richard Nixon unless Mr. Nixon pleads it in court. If he should plead that he has been pardoned, he would have to state for which offenses he has been pardoned.

. . . . If it is shown that the pardon was intended to prevent an indictment or a trial . . . and if it's shown that the agreement on the tapes was intended to prevent further information from becoming public, then these are very serious actions which might well be construed to be an abuse of power by President Ford and/or an obstruction of justice. . . .

President FORD. . . . If, with your assistance, I can make for better understanding of the pardon of former President Nixon, then we can help to achieve the purpose I had for granting the pardon when I did.

That purpose was to change our national focus. I wanted to do all I could to shift our attentions from the pursuit of a fallen President to the pursuit of the urgent needs of a rising nation. Our Nation is under the severest of challenges now to employ its full energy and efforts in the pursuit of a sound and growing economy at home and a stable and peaceful world around us.

We would needlessly be diverted from meeting those challenges if we as a people were to remain sharply divided over whether to indict, bring to trial, and punish a former President, who is already condemned to suffer long and deeply in the shame and disgrace brought upon the office that he held. Surely, we are not a revengeful people. . . .

Yet, to forgive is not to forget the lessons of evil in whatever ways evil has operated against us. And certainly the pardon granted the former President will not cause us to forget the evils of the Watergate-type offenses or to forget the lessons we have learned that a government which deceives its supporters and treats its opponents as enemies must never be tolerated.

The pardon power entrusted to the President under the Constitution of the United States has a long history and rests on precedents going back centuries before our Constitution was drafted and adopted. . . .

When a pardon is granted, it . . . represents "the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed."

However, the Constitution does not limit the pardon power to cases of convicted offenders or even indicted offenders.

Thus, I am firm in my conviction that as President I did have the authority to proclaim a pardon for the former President when I did.

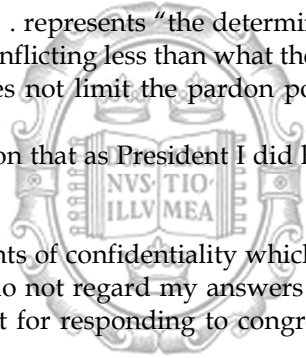
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. . . I remain mindful of the rights of confidentiality which a President may and ought to exercise in appropriate situations. However, I do not regard my answers as I have prepared them in the present circumstances to constitute a precedent for responding to congressional inquiries different in nature or scope or under different circumstances.

. . . .

The acceptance of a pardon, according to legal authorities, and we have checked them out very carefully, does indicate that by the acceptance, the person who has accepted it [the pardon] does, in effect, admit guilt.

. . .



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