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## The Nixon Pardon

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## The Nixon Pardon

How was the Nixon pardon a constitutional crisis?\*

First, congratulations on becoming an American citizen. Sometimes it is new Americans who have the most probing questions about our country's history.



Richard M. Nixon resigned 34 years ago. He was the only president in U.S. history to do so. Two other presidents, Andrew Johnson and Bill Clinton, were impeached in the House of Representatives, but neither was convicted in the Senate and so not forced out of office. Since the Constitution explicitly provides for presidential succession, you are right to ask how the unravelling of the Nixon presidency entailed a constitutional crisis.

To answer, I should first point out that the United States of America has, in practice, two constitutions. (1) Our nation has the written document as amended, which you no doubt became familiar with on the road to citizenship; the U.S. Constitution is the fundamental law of the land. (2) Our nation also has what is called an "unwritten constitution" that involves the political customs by which we have agreed to live. Take, for example, the existence of political parties. Our fundamental law says nothing about parties, yet it is impossible to imagine how we'd constructively channel political differences without them. We live as though the Democratic and Republican establishments were engraved in stone. Maddening as our two-party system can be, it has effectively organized Americans' disputes around the most basic political question of all: How shall we live together?

If you accept the notion that the U.S. has both a written and unwritten constitution, then it becomes easier to see the ways in which 1974 was the most severe constitutional test to our nation since the Civil War. The test unfolded on many civic battlefields, and in a single essay I cannot possibly do your question justice. But in essence the battles involved Democrats duking it out with Republicans, and the executive branch of government resisting the legislative and judicial branches.

1. To get at the constitutional crisis, you have to understand the broader sense of crisis in the early 1970s. Americans were deeply divided over Vietnam. The nation was being dragged down by a war that was disastrous to American morale. Because of Vietnam, 1972 was shaping up to be an especially tense election year. Nixon was seeking re-election and was ahead in the polls, which frustrated the Democrats who despised him. Zealots in both parties engaged in illegal tactics to weaken the opposition. Daniel Ellsberg leaked Pentagon papers to the media to discredit the Nixon administration's handling of the war. Nixon aides authorized breaking into Democratic party offices in the Watergate Hotel in June 1972 to gather unflattering information of their own. While both Democrats and Republicans broke the law to get the upper hand in an election year, it was the Republican president who exacerbated the situation by participating in the cover-up of the Watergate break-in. By participating in the cover-up, Nixon opened himself to potential impeachment in the U.S. House of Representatives. When news of the break-in and cover-up tumbled into public view, a battle between two branches of government was triggered.

2. It gets worse. After Vice President Spiro Agnew resigned in disgrace in October 1973, several elected Democrats on Capitol Hill, led by New York Congresswoman Bella Abzug, hatched a plan to circumvent the Twenty-fifth Amendment. They intended to block Nixon's nomination of a new vice president. By blocking the Republican nominee, they hoped to force Nixon to nominate the Democrats' choice of VP, so that when Nixon later resigned or was impeached, a Democrat would become president. To House Speaker Carl Albert's eternal credit, he refused to go along with the blantly unconstitutional scheme. This is the closest to a coup d'etat that the country has ever come.<sup>[1]</sup>

3. Nixon's choice of House Minority Leader Gerald R. Ford to replace Spiro Agnew was itself cynical. According to Tom DeFrank, a journalist who covered the White House, Nixon viewed Ford as "impeachment insurance." I.e., the 37th president did not think the Congress would see Ford as presidential material, and thus would never press to impeach Nixon.<sup>[2]</sup>

4. Nixon fought the judiciary tooth and nail over releasing Oval Office tapes. He made a credible case for executive privilege and indicated through a press secretary that he might refuse to turn the tapes over, regardless of how the U.S. Supreme Court ruled. Had Nixon refused to obey the Supreme Court, the nation would have descended quickly into a constitutional crisis. Despite the shadow boxing, Nixon did comply with the Court's order to turn over the tapes. The conversations on them damaged the president's credibility further, and within weeks he was out of office.

5. How strange was it when, upon Nixon's resignation, a successor was sworn in who had never been elected either vice president or president? Had the Founders ever anticipated that happening in our constitutional republic? Not at all -- it's the stuff of which riddles are made.

6. Within 30 days of becoming president, Ford granted former President Nixon a full pardon, giving rise to speculation (proven untrue) that Nixon and Ford had agreed to the Mother of All Plea Bargains: Nixon would resign if Ford would pardon him. The pardon dismayed many Americans, and cast severe doubt on the moral legitimacy of the American presidency. There were two assassination attempts on Gerald Ford in the year following the pardon.

All of these events and others brought the nation to the brink of a constitutional crisis in the early 1970s. There was enough blame to go around both Republican and Democratic camps. In retrospect, however, most historians and even many prominent Democrats give President Ford credit for shepherding the nation through the "long national nightmare."

*(Question from Diep N. of Tustin, California)*

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\* I recently became an American citizen and have been reading about how difficult it was for the nation when Nixon resigned and Ford became president 30 years ago. How was it a constitutional crisis, though?

<sup>[1]</sup> For an overview of this startling episode, see the new PBS documentary, *Time and Chance: Gerald Ford's Appointment with History*, produced by Mike Grass (Grand Rapids: WGVU productions, 2004).

<sup>[2]</sup> Tom DeFrank quoted in *Time and Chance*