

Sec. 2—Powers, Duties of the President

Cl. 1—Commander-In-Chiefship

The President cannot pardon by anticipation, or he would be invested with the power to dispense with the laws, King James II's claim to which was the principal cause of his forced abdication.²⁶²

Offenses Against the United States: Contempt of Court.—

The President may pardon criminal but not civil contempts of court. The Court “point[ed] out that it is not the fact of punishment but rather its character and purpose that makes the difference between the two kinds of contempts. For civil contempts, the punishment is remedial and for the benefit of the complainant, and a pardon cannot stop it. For criminal contempts the sentence is punitive in the public interest to vindicate the authority of the court and to deter other like derelictions.”²⁶³ In upholding the President's power to pardon criminal contempt, Chief Justice Taft, speaking for the Court, resorted once more to English conceptions as being authoritative in construing this clause of the Constitution. He wrote: “The King of England before our Revolution, in the exercise of his prerogative, had always exercised the power to pardon contempts of court, just as he did ordinary crimes and misdemeanors and as he has done to the present day. In the mind of a common law lawyer of the eighteenth century the word pardon included within its scope the ending by the King's grace of the punishment of such derelictions, whether it was imposed by the court without a jury or upon indictment, for both forms of trial for contempts were had. [Citing cases.] These cases also show that, long before our Constitution, a distinction had been recognized at common law between the effect of the King's pardon to wipe out the effect of a sentence for contempt in so far as it had been imposed to punish the contemnor for violating the dignity of the court and the King, in the public interest, and its inefficacy to halt or interfere with the remedial part of the court's order necessary to secure the rights of the injured suitor. Blackstone IV, 285, 397, 398; Hawkins Pleas of the Crown, 6th Ed. (1787), Vol. 2, 553. The same distinction, nowadays referred to as the difference between civil and criminal contempts, is still maintained in English law.”²⁶⁴ Nor was any new or special danger to be apprehended from this view of the pardoning power. “If,” the Chief

²⁶² F. MAITLAND, CONSTITUTIONAL HISTORY OF ENGLAND 302–306 (W.S. Hein 2006) (1908); 1 Ops. Atty. Gen. 342 (1820). That is, the pardon may not be in anticipation of the commission of the offense. “A pardon may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment.” *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 380 (1867), as indeed President Ford's pardon of former President Nixon preceded institution of any action. On the Nixon pardon controversy, see *Pardon of Richard M. Nixon and Related Matters: Hearings Before the House Judiciary Subcommittee on Criminal Justice*, 93d Congress, 2d Sess. (1974).

²⁶³ *Ex parte Grossman*, 267 U.S. 87, 113 (1925).

²⁶⁴ 267 U.S. at 110–11.