

'Executive Privilege'

Again citing its constitutional duty to defend the doctrine of executive privilege against "attrition" of whatever degree from whatever quarter, the administration has declined to make available to the Ervin committee tapes of presidential telephone conversations.

Because, as is now known, all calls to and from President Nixon have been automatically recorded since 1971, the Nixon tapes presumably include conversations between him and John Dean, his former personal counsel and chief accuser at the Watergate hearings. And presumably, the tapes could go far toward proving or disproving the President's statement that he was unaware of the Watergate break-in and subsequent cover-up until late March of this year.

White House spokesmen and others have often cited Thomas Jefferson as establishing the precedent of the doctrine of executive privilege. In 1807, Jefferson refused a subpoena issued by Chief Justice John Marshall to testify at the treason trial of Aaron Burr.

The rest of the story is not usually told. Each having made his point — Marshall, that the president was as subject to the law as any other citizen; Jefferson, that the president had higher duties which he could not abandon at the will or whim of judges — the two men resolved the matter sensibly. Marshall did not press for the president to appear at the trial in person, and Jefferson agreed to turn over certain documents to the court.

President Nixon, however, like no other president before him, has erected the concept of separation of powers into a veritable Berlin Wall

which permits of no breaching. There is to be absolutely no cooperation between the executive and legislative branches in any area which, to the president's thinking, touches upon the province of the presidency.

Carried to its extreme, as it was indeed carried by former Attorney General Herbert Kleindienst, this means that every one of the two million employes of the executive branch are immune from congressional scrutiny.

Many have accused the press of waging a "get-Nixon" campaign, of trying him by innuendo and hearsay. But how can it be otherwise when the President himself will not — or cannot — take even the most elementary measures in his own defense?

One of those measures would be to meet privately with the members of the Watergate committee, or just with Senator Ervin, and give the committee the information and answers they desire and which they must have to reach a conclusion to their investigation. No violation of anybody's constitutional prerogatives would be involved and public confidence in the government would be immeasurably boosted.

Contrarily, a presidential refusal to meet the Watergate committee halfway will only be interpreted by the public as a continuation of the Watergate cover-up.

It would be the irony of ironies if, by doggedly clinging to such a constitutionally and historically dubious doctrine as executive privilege, President Nixon were eventually to find himself unable to exercise the privileges of the executive.