

Whose Ox Is Being Gored?

By Tom Wicker

Beware of poetic justice, which often means one wrong on top of another.

The Nixon Administration, for example, has insisted that liberal court decisions and "soft-headed judges" have elevated the rights of accused persons above the rights of society. No Administration has done more to try to make it easier to put people in jail, from its preventive detention law for the District of Columbia to its widespread use of informers, surveillance, entrapment tactics and grab-bag conspiracy charges.

It may be poetic justice, therefore, but it is still wrong, that the rights of the No. 2 man in this grubby "law-and-order" Administration obviously have been imperiled by the damaging news leaks about his case. It may be tempting to ask where Mr. Agnew was when J. Edgar Hoover openly accused the Berrigan group of planning to kidnap Henry Kissinger; but that past offense does not justify the present transgressions of those who are making available damaging information on Mr. Agnew.

The Agnew charges are one more example of a curious inversion of so-called "conservative" and "liberal" attitudes that has been a striking result of Watergate and the Agnew investigation. Few of those who leaped to the defense of Philip Berrigan or the Gainesville Eight have spoken out for the rights of Mr. Agnew—any more than he demanded a housecleaning in the Justice Department or the F.B.I. to put an end to such trumped-up cases.

The crux of the Watergate matter, for example, is the misuse of state power to override due process of law and individual rights. The establishment of the "plumbers" was admittedly an effort to get done by clandestine and unauthorized executive power what could not be done

IN THE NATION

through ordinary and legitimate police operations; since Government cannot legally and openly subpoena an accused person's psychiatric records, it set out to steal them.

That is the kind of illicit use of state power to which conservatism, at least in its classic sense, ought to be most strongly opposed. So is the unauthorized tapping of telephones, or the excessive claim to executive secrecy, or the fabrication of documents, whether to distort the historical record of a dead President or to conceal the secret bombing of another country. When such tactics are followed by a "conservative" Administration, true conservatives should be more outraged—because betrayed in principle—than anyone.

Yet, few prominent conservative voices, with honorable exceptions, have been raised against anything but "excesses" or "bad judgment" or "the acts of a few." The most conservative Senators remain silent or find excuses or even defend the White House; and a counterattack has been mounted to show that this strong-arm Administration with its contempt for the Bill of Rights is, in fact, the victim of liberals and the press.

On the other hand, liberals seem all too complacent, even happy, about the difficulties in which Mr. Nixon and Mr. Agnew find themselves. Few liberals, in the case of Mr. Nixon, have come forward to say that, however his Administration may have abused its powers, it was "strong" Democratic Presidents who did the most to expand the Presidency to its present imperial status. Nor have liberal Democrats—again with honorable exceptions—been willing to conclude that, although Mr. Nixon in his security mania may have carried the doctrine of implied powers out the window, that doctrine is primarily the product of liberal Democratic thought and policy and ultimately was bound to lead to abuse.

This is not a justification for Watergate or any other excessive use of state power; it ought to be a warning, however, that liberal Democrats will not automatically end the threat to liberty inherent in the imperial Presidency merely by coming back to power in 1976. Their own doctrines need as much re-examination as the perversions of them sponsored by the Nixon Administration.

Sadly enough, the truth may be that "conservatives" have become too willing to skimp their traditional insistence on individual rights in their overriding concern for law and order at home and anti-Communism abroad; while "liberals" have been too willing to sacrifice individual rights to their desire for the kind of social reform that could only be achieved—at least in the short run—by state power centered in the Presidency.

But at least Watergate and the Agnew case have exposed ideology in America, on both ends of the political spectrum, as being mostly a matter of whose ox is gored; and they have suggested that, when it comes to individual rights against the power of the state, neither right nor left has much reason to set itself up above the other. These are small but not unimportant victories in the war against hypocrisy.