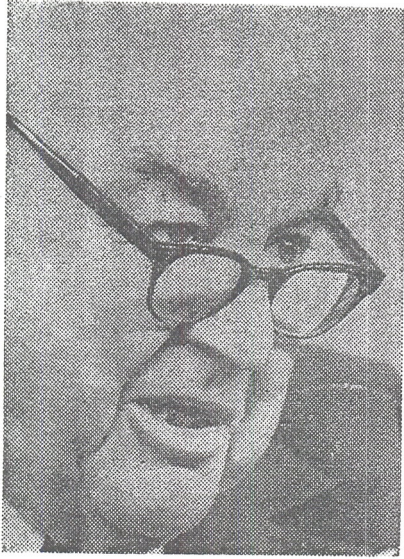


Essays on Ethics

Four responses to the Watergate scandals, excerpted from speeches at the American Bar Association convention.



Archibald Cox:

... For almost two years the people have been scrutinizing lawyers and legal proceedings in the bright glare of newspaper and television coverage as the drama of Watergate and related scandals and investigations unfolded.

... Legal institutions earned high ratings under this scrutiny: the Supreme Court, the federal district court and the congressional committees. The rule of law prevailed. The drama made plain the predominance of lawyers in the places of power in American life. There were lawyer heroes as well as lawyer villains

... For me the worrisome figures in the Watergate story were not the major actors whose fault was great and whose weakness was apparent, but the relatively minor figures who made it possible for the major wrongs to continue by going along in silence, by cutting sharp verbal corners, or by otherwise emulating the Three Monkeys: "Hear No Evil, See No Evil, Speak No Evil." Often these men shaped their course out of a misguided sense of loyalty to an individual or an institution.

... The revelations flowing from Watergate illustrate still another problem of inconsistent loyalties in public office: the conflict between party loyalty and public responsibility in laying out a course of action. . . .

... The lines between law and policy and between policy and politics are often hazy, but surely conscious study might do much to separate the clear cases from the judgmental, to prepare the novitiate for the decisions he must face, and to clarify the implications for the long-run strength of the legal system and the processes of government.

... I have a point to establish. It is that unsolved and difficult moral and professional problems await attention as the opportunity is given by Watergate. And so I come back to Justice Stone's call for the law schools and organized bar in the worthy task of building up a new morale in the profession fitted to the dramatic changes

Sen. Sam Ervin:

Unlike the men who were responsible for Teapot Dome, the presidential aides who perpetrated Watergate were not seduced by the love of money On the contrary, they were instigated by a lust for political power, which is at least as corrupting as political power itself.

They gave their allegiance to the President and his policies. They had stood for a time near to him, and had been entrusted by him with great governmental and political power. They enjoyed exercising such power, and longed for its continuance.

They knew that the power then enjoyed would be lost and the policies to which they adhered would be frustrated if the President should be defeated.



which the past half century have brought in law and government.

... We should not mistake the character of the need. . . . The summons is to the long, arduous and detailed work of developing the moral order and sense of long-range purposes that prevent abuse of power and build confidence in the legal and political system. Perhaps parts can be articulated in additional professional standards. Other parts, I am sure, must be left to the individual's conscience, but at least the nature of the problem be identified and its implications. On still other problems men of the nicest conscience will disagree. But surely, looking back over the descending spiral that led to Watergate, we should have learned that in our enormously complex society in which managerial and technocratic skills, including skills in legal technique, are at a premium, the moral precepts and sense of ultimate purposes necessary to preserve and renew "those establishments, those processes, those criteria, those appeals to reason which have a dominant share in begetting a civilized society" require more steadfast attention.

Mr. Cox is the former Special Watergate Prosecutor.

As a consequence of these things, they believed the President's reelection to be a most worthy objective, and succumbed to an age-old temptation. They resorted to evil means to promote what they conceived to be a good end. . . .

They had forgotten, if they ever knew, that the Constitution is designed to be a law for rulers and people alike at all times and under all circumstances; and that no doctrine involving more pernicious consequences to the commonwealth has ever been invented by the wit of man than the notion that any of its provisions can be suspended by the President for any reason whatsoever.

On the contrary, they apparently believed that the President is above the Constitution, and has the autocratic power to suspend its provisions if he decides in his own unreviewable judgment that his action in so doing promotes his own political interests or the welfare of the nation

I digress to reject this doctrine of the constitutional omnipotence of the President. As long as I have a mind to think, a tongue to speak and a heart to love my country, I shall deny that the Constitution confers any autocratic power on the President. . . .

... Law alone will not suffice to prevent future Watergates. In saying this, I do not disparage the essential role which law plays in the life of our nation. As one who has labored as a practicing lawyer, a judge, and a legislator all of my adult years, I venerate the law as an instrument of service to society. At the same time, however, I know the weakness of the law as well as its strength.

Law is not self-executing. Unfortunately, at times its execution rests in the hands of those who are faithless to it. And even when its enforcement is committed to those who revere it, law merely deters some human beings from offending, and punishes other human beings for offending. It does not make men good. This task can be performed only by ethics or religion or morality.

Since politics is the art of science of government, no man is fit to participate in politics or to seek or hold public office unless he has two characteristics.

The first is that he must understand and be dedicated to the true purpose of government, which is to promote the good of the people, and entertain the abiding conviction that a public office is a public trust, which must never be abused to secure private advantage.

The second is that he must possess that intellectual and moral integrity, which is the priceless ingredient in good character. . . .

Sen. Ervin is a Democrat from North Carolina.

George Beall:

... We must ask ourselves ... two moral questions which have been raised by the year of scandal in Washington. One is how much does the prevalence of behavior excuse behavior; the other is to what extent does the worthiness of an objective justify the means to achieve it.

... I find it more than an odd coincidence that the Watergate scandal and the Agnew scandal should come upon us at the same time. I have the fearful thought that the morality of these men reflects as in a magnified mirror, blemishes on the public morality and on professional responsibility.

... The first puzzle is why it all happened. Agnew's transgressions are at least understandable. But how could men who were not motivated by personal gain come to do such things?

... When we look for the fault that led them to such dreadful deeds, it must be a confusion between means and ends. These men began, I am sure, with what they thought were worthy ends and then, thinking so, came to think these worthy ends justified the means they used.

... When we turn to that other rationalization for the current excesses—the justification of means by the ends sought, we plunge deeper into a metaphysical thicket. For we must recognize that ends do justify means. In fact, if the ends sought do not justify the means, what does? We even have to recognize that a worthy end may at least excuse unworthy acts, as when, to protect his family, a man kills an intruder. The question needs to be restated: Does a worthy end justify any means.

In that respect there is an unhappy resemblance between the attitude of the Watergate conspirators and the at-



titude of many of us toward the relationship of means to ends. We see it on one level when disgruntled truck drivers block the public thoroughfares ... to gain what is to them a worthy objective, a change in the fuel-rationing rules.

We see it on another level when those presumably more sophisticated find their own worthy causes and then turn to the most extraordinary means for winning them. Ending the Vietnam war was certainly such a worthy aim. Being considered worthy, this aim justified in the minds of many such means as breaking and entering draft offices to burn draft cards, riots and disorder in the streets and at times real physical violence to gain their ends.

The sum of it is that in the current morality one man's crime is another man's worthy cause.

Somewhere along the line there has been an erosion of our sense of right and wrong; that is, we have lost our

Herblock is on vacation.

belief that certain actions are wrong simply because they are wrong, whether or not they violate the statutes. Morality is not relative; ethics do not depend upon the situation.

The same must be said, in summary, as respects the relationship of an attorney to the obligations he assumes. We lawyers may be afflicted with the same moral relativism as the general public. We may try to excuse our behavior by arguing that everybody does it. We all have worthy objectives which we think justify the means we use to achieve them. But we have been made a privileged class in America in order to serve the public interest.

... If the bar is to preserve its tradition of self-regulation, if we are to restore public confidence in us and, indeed, confidence for ourselves, all lawyers and all bar associations must eradicate the double standard that has permitted some lawyers to bring the nation to this sorry state.

Mr. Beall is the U.S. Attorney for Maryland.

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Elliot Richardson:

These are not the times to lapse into smugness. To close the Watergate chapter on a note of self-congratulation would be a serious mistake.

The danger is that we convince ourselves that the attitudes and attributes of the "Watergate morality" are rare—that it was sheer bad luck which brought together a President and a group of close associates of peculiar and similar stripe. Not that the particular combination of abuses that occurred in Watergate is likely to be repeated: that is not the problem. The problem is that the forces underlying Watergate morality persist. And very importantly among these forces ... is the decline of a sense of community. A community is a transmitter and sustainer of values. The weakening of a sense of community must inevitably lead to a weakening of values. Those who lack a sense of community become prone to a rootless kind of amorality that makes them easily influenced by the institutional value systems to which they happen for the time being to belong. Watergate was a tragedy not so much of immoral men

as of amoral men—not so much of ruthless men as of rootless men.

When a person's primary allegiance is only to his temporary employer, and not to any larger community, it takes strength of character to buck the system. For those who do not have any such fortitude, the only common denominator among successive assignments is the sustained pursuit of self interest.

Excessive absorption in self-interest leads, in turn, to individualism unconstrained by respect for other individuals. In the absence of a sense of community—the essence of which requires an appreciation of one's fundamental dependence upon others—there emerges a tendency to regard the just claims of others as unreal and unimportant. The impulse to cheat is easily indulged: the falsification of insurance claims, the padding of expense accounts, the non-reporting of taxable income, or the overstatement of deductible expenses has so diffuse an impact on so large a group ... that it's tempting to overlook or ignore the harm that is done to them. The facile assertion that "everybody does it" slips im-



perceptibly from rationalization to reality. The eventual outcome is demoralization in the most literal sense of the word.

To check the mindless slide toward amorality and self-indulgence, only two possible remedies seem realistic. One is properly a subject of public policy. The other can only be a matter of personal practice. The first is to rebuild a sense of community. The second is to give a higher place to obligations in their inseparable relationship to the recognition of rights.

Mr. Richardson is the former Attorney General.