

A Trust That Was Broken

I keep returning to that part of the President's April 30 address that dealt with means and ends. It seems to me to hold the key to our present confusion. We should not fall into the "trap," Mr. Nixon said, "of letting the end, however great that end is, justify the means." Now, this is a sentiment which practically everybody applauds and practically nobody believes. And the fact is that stated in this familiar, absolute way, it is not worth believing because it bears no relationship whatever to the way we must organize our affairs as individuals and as a democratic society. How many times has Mr. Nixon himself told us that the desirable end (peace with honor) justified the undesirable means (carpet-bombing) in Vietnam? How many times has he insisted that the goal of maintaining civil order through the deterrence of crime justifies capital punishment—the taking of human life by the state?

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The point is not that the President somehow stands guilty of violating a precept by which other people live. (It was, after all, Mr. Nixon's most passionate anti-war critics who justified all manner of violence and destruction in the name of protesting and—they believed—ending the Vietnam war.) The point is that the political and social organization of a country of 200 million people—the definition and achievement of those objectives considered to represent the common good—necessarily involves a continuous weighing of ends versus means, a kind of perpetual cost-benefit analysis that is the essence of our political discourse. We curtail some freedoms to achieve order. We take some risks with order when we agree that such risks are justified by the need to maintain certain personal freedoms. We authorize our officials to engage in a certain amount of coercion to protect the society at large, and we also authorize them to conduct much of our business in secret (from us) because we believe the maintenance of our national security requires it and thus justifies our doing so. Our principles are rarely in conflict—but the means of fulfilling them almost always are.

Very few people needed to be reminded by Mr. Nixon in his April Watergate address that the ends do

not justify the means when we are talking about men in positions of great power behaving like common criminals to achieve their political ends: a school-child knows as much. But many people—Mr. Nixon evidently among them—seem to need some reminding of the more complicated relationship between means and ends that lies at the heart of the democratic condition. For our statute books and our administrative regulations and our judicial opinions faithfully reflect all the compromises and accommodations we have felt obliged to make. In consequence, they bestow grants of authority on our officials that in an ideal abstract world, free of competing needs, we would not make. And because of this, those laws presuppose good faith on the part of those who exercise the authority.

To take a case: if we did not believe that the end justifies the means in certain circumstances, we would not have a Central Intelligence Agency at all. But for national security reasons we clearly consider overriding, we do have such an agency and we have empowered the people who direct it to spend our money in amounts we don't even know for activities of which we are kept ignorant—activities which we do know, however, include a certain amount of violence and a certain amount of subterfuge. Surely, the supposition of a democratic nation conferring such powers on its elected leaders and the men those leaders appoint, is that this trust will be taken seriously and responsibly—that it will not be misused. The same set of assumptions prevails in the case of the FBI, which we have given enormous license to act in coercive and secret ways for the

protection of the society as a whole. And it also underlies our grant of authority to the government to conduct its cable traffic—which is to say our foreign affairs—by classified communication. The list doesn't end there. It only begins.

It seems to me that it is in this particularly vulnerable area of the law, in this area where the public is necessarily most helpless and most trusting, that the great betrayals have occurred. We all have talked till hell wouldn't have it about the inroads the Watergate scandals have made on public confidence in the system or public faith in the political process. I think the terms need a little refinement. Anyone who has moved around the country at all knows that most of the people you meet share the views of Will Rogers and/or Mr. Dooley when it comes to reverence for politicians and the political system. But people do not expect that the most delicate, dangerous and precious powers they have yielded up to their officials will be abused. A White House employee being given access to

classified State Department cables so that he could try to forge a few implicating President Kennedy in an act of murder? A White House effort to cover up acts of political corruption by involving the CIA in the corruption and getting its officials falsely to claim that national security was at stake in order to quash the investigation? Public lies from those who preside over our system of criminal justice and are privy to its well-guarded secrets? A director of the FBI burning evidence in a criminal case?

L. Patrick Gray III, a victim/perpetrator of the Watergate scandals himself and the man who burned the evidence (which he had first hidden in his closet), spoke wistfully and unpersuasively at one point during his confirmation hearings of a "presumption of regularity" he, of necessity, made in his dealings with the White House. That is in fact a presumption everybody made—and everybody was wrong. For what we now know about these men is that they willfully and cynically violated the few things that really matter, that

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there was no public trust too important or too fragile to be mindlessly abused by them.

If you read the meaning of the Watergate disgrace this way, it suggests certain limitations on what can be done to prevent a repetition of these affairs. The point is best illustrated by Mr. Nixon's own insistence, for example, on a whole new system of reformed campaign finance and expenditure laws. We surely need them. But to concentrate on this need should not be to ignore a central fact of what has already happened: we had a collection of laws on the books for 1972 and the President's agents and colleagues are charged with having broken them repeatedly. Should we have a law against red wigs? A law compelling search of all suitcases for \$100 bills? A law obliging audited reports of all conversations between campaign officials and prospective campaign contributors? The point is not frivolous. It is that there are certain limits to what we can expect the written laws to do for us and certain dangers in trying to write laws that will cover and control every possible aspect of human malfeasance. Such laws can fail of their purpose and suppress much of the nation's political freedom and vitality in the process.

Which brings us back to ends and means. For what people must now decide is how much they wish to pay in for measures that will reduce the chance of these things happening again. They should do so in full knowledge of the particular nature of the betrayal that occurred, however, and of the limits of the law as a remedy. That seems to me the lesson of Watergate: There are plenty of things you can legislate. But there is no substitute for decency.