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The Once and Future Nixon

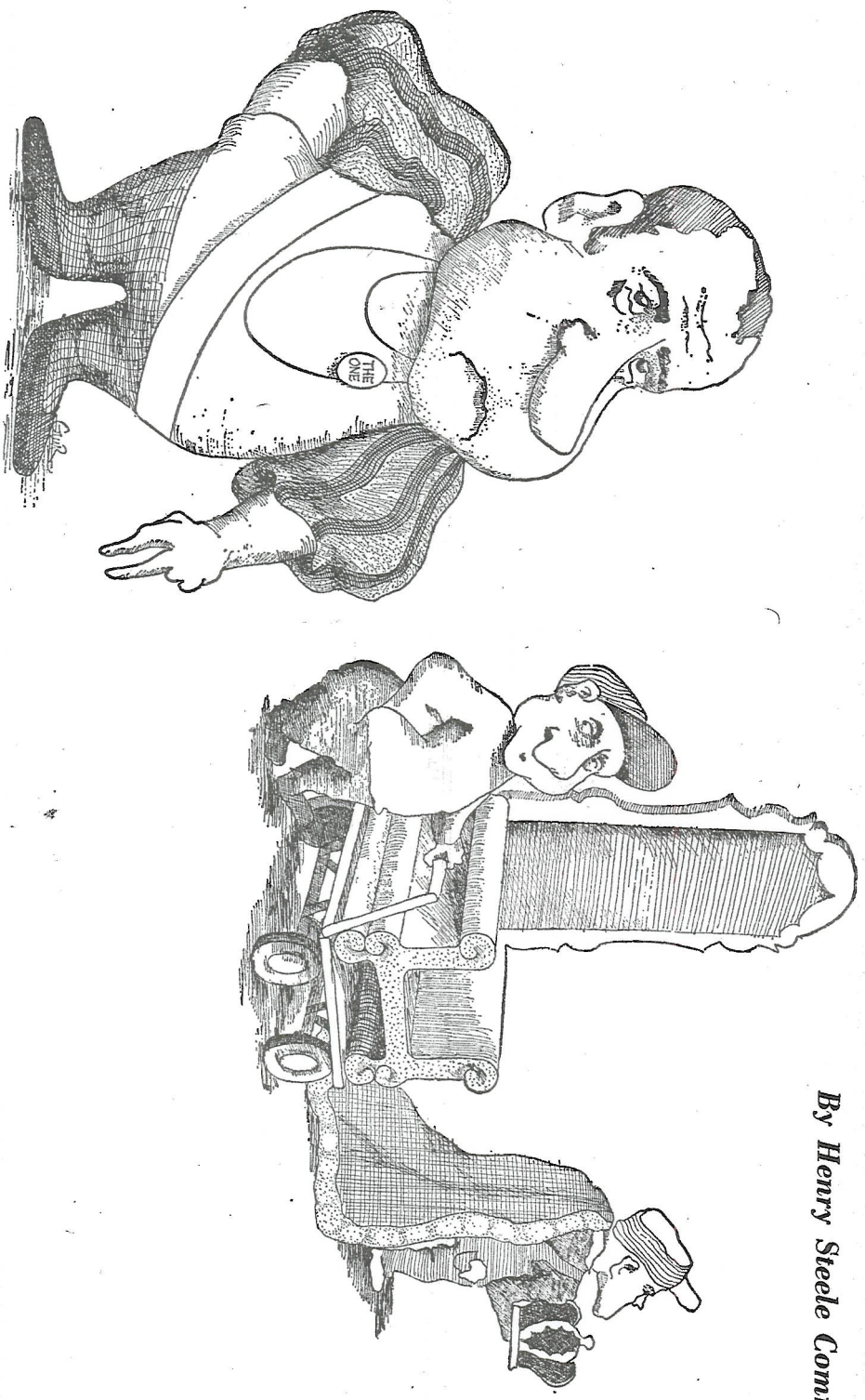
WATERGATE—I use the term generically, embracing all those manifestations of lawlessness, deceit and corruption that seem inseparable from the Nixon administration—has brought the American people to a deep sense of shame and induced, in some, despair for the republic. While the shame is justified, the despair is misguided.

First, Mr. Nixon's greatest evil has not been Watergate but continuation of the war in Vietnam after every justification for it had evaporated. But then we forgive crimes against others more readily than crimes against ourselves. Second, while no good has come out of the Vietnam war—at least nothing that can compensate for the evil—with Watergate it may be different. It may be that, as the chorus of Medea sang more than 2,000 years ago:

*The end men looked for cometh not
And a path is there where no man thought—
So hath it fallen here.*

Watergate, in short, may well prove a great benefit, a turning point in the political and moral history of this generation. It may provide just that catharsis necessary to cleanse our political system of that perilous stuff which weighs upon our hearts.

Watergate, the Ellsberg trial, the misuse of wiretaps, the use of agents provocateurs, the corrupt use of money in elections—these are not isolated abuses. They are a logical product of the politics which the Nixon administration plays—a politics which, for some time now, has been threatening the integrity, the stability and the vitality of the American political system. We have survived earlier abuses of power, but none was as deep or as pervasive as this, and none composed a threat to our constitutional system, as well as to our political system, which



By Henry Steele Commager

Drawing by David Gunderson

was remotely comparable. The danger to that system from the lawless misuse of power in making foreign wars and from the lawless resort to power in domestic affairs has been far graver than most Americans have been prepared to recognize.

Watergate may enable us to surmount this danger. It may prove—indeed, it is already proving—just that catalyst which will transform the tissues of our national life. For what is emerging now is a reassertion of political vitality and a reaffirmation of the primary role of ethics in public life. What all the constitutional arguments, all the politi-

Commager, the eminent historian, is currently a lecturer in American history at Amherst College.

as the great shield of freedom but as the instrument of that freedom, without which the republic cannot flourish.

- Respect for the principle of the separation of powers.

- Respect for the principle that the power to declare war and the power of the purse are and should be lodged in the legislative, not the executive, branch.

- Respect for the intelligence, and sensitiveness for the honor, of the American people.

No other administration in American history has so ostentatiously violated these principles, but then no other administration has been so morally obtuse. President Grant was exploited by greedy and ambitious men, but Grant was himself a man of honor, untouched by the suspicion of personal wrong-

cal maneuvers, all the high-minded editorials and rhetoric so conspicuously failed to do, Watergate may do: rally the Congress to a sense of its power and its responsibility, rally the public to the danger threatening to undermine the nation, and reinvigorate those principles which the Founding Fathers knew to be essential to the republic.

Moral Obtuseness

WHAT ARE THE principles which this administration has imperiled, and which must now be restored?

- Respect for the law, and for the majestic concept of due process.

- Respect for the principle that, in republican governments, it is the people who set the limits of power.

- Respect for the Bill of Rights, not only

doing or of connivance with wrongdoing, without ambition for himself or even for his party, and prepared to give his life to the preservation of the Union and the Constitution. Harding was foolish and vulgar and allowed himself to be betrayed by little men. But he was without ambition or vanity, and to undermine the constitutional system or betray the Bill of Rights was beyond his imagination and foreign to his character. None of these excuses can be made for President Nixon, for he clearly knows what he is about.

A Proposal to Regret?

THE NIXON THREAT can be summed up with perhaps misleading simplicity as that of executive usurpation of power on both the foreign and the domestic stages.

In foreign affairs, Mr. Nixon has waged war without congressional authorization and in clear violation of the Constitution, and even now persists in waging such war in Cambodia and Laos. Defying the Congress to put an end to his lawlessness, he has threatened that if Congress cuts off funds for further military activities in Southeast Asia, he will use other moneys not appropriated for that purpose.

He has evaded the constitutional provisions for Senate participation in treaty-making by substituting executive agreements (private and often secret) for treaties; thus, recent agreements pledging American aid to Spain in the event of a civil uprising there, and making possible, by generous subsidies, Portuguese imperialism in Africa.

He has persisted in secrecy in foreign affairs, denying to the Senate the information it needs to perform its constitutional obligations in that area, and to the House information essential to its effective use of the power of appropriation.

In the domestic area the record is equally discreditable. There Mr. Nixon has challenged the basic principle of the separation of powers as well as the equally basic principle of legislative control of the purse—two principles rooted in English and American history, written into our state and federal constitutions, and long thought essential to our government.

By enlarging the doctrine of executive privilege and extending that of executive immunity (an extension which theoretically covers every employee in the executive branch) — doctrines never specifically acknowledged in our constitutions and never before so audaciously asserted—he has challenged the principle that in our system no one, not even the President, is above the law.

By spreading a pall of secrecy over vast areas of government and seeking to maintain that secrecy by lawless means—illegal wiretaps, the use of *agents provocateurs*, the doctoring and forging of documents, the illegal use of the FBI and the CIA for political purposes—his administration has sought to deny Congress and the American people information essential to the very functioning of democratic government and has corrupted the very fountains of that government.

By flouting decisions of the courts in the areas of wiretapping and busing, by encouraging his attorneys general to seek not justice but political advantage for his administration, by systematically treating court appointments with contempt, he has sought to deny the judicial branch the equality and independence assigned by the Constitution.

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Many in the Senate resisted these and other usurpations and challenges with vigor, but not with success; the House was, for the most part, pusillanimous and silent. Confident of Mr. Nixon's power, his attorney general even indulged in the unparalleled insolence of telling the Senate Judiciary Committee, "If you think you have a case, try impeachment." It may be one of the proposals Mr. Nixon will live to regret.

The Covert Challenges

NO LESS SIGNIFICANT, no less dangerous, than these overt challenges are those challenges which we may call covert, though there is certainly nothing secret about them. They are threats not so much to specific provisions of the Constitution or of laws as to those institutions and practices, built up over a century and a half, designed to make the most complicated governmental mechanism in the world work. They disrupt and reject that delicate fabric of political compromise, trust and grace clearly envisioned by the Founding Fathers as essential to the functioning of our government.

Thus there is the atmosphere of contempt for so many of the traditional institutions of the American system: the Constitution, the Bill of Rights, the Congress, the courts, the press and other media, even the people themselves—a contempt which Mr. Nixon unconsciously confessed in his famous interview on the eve of his second inauguration: "The average American [not Mr. Nixon, obviously, or his cronies] is just like the child in the family . . . If you make him completely dependent and pamper him and cater to him too much, you are going to make him soft, spoiled, and eventually a very weak individual."

In that same interview, Mr. Nixon spoke of fostering a sense of independence among the American people. But rarely in our history has there been a President so unreceptive to critical or dissenting views as Mr. Nixon. From his advisers and subordinates he requires not independent judgment but unquestioning loyalty—not to the Constitution, but to him. For four years he and his associates displayed an unflinching arrogance toward all who were recalcitrant, all who were independent, all who were critical, all who had minds of their own. Henry Kissinger is perhaps the only serious exception to this generalization.

There is, too, the atmosphere of secrecy—even of conspiracy—that permeates the

White House and, indeed, all the executive offices. The President himself is almost inaccessible: For 12 months, Secretary of the Interior Walter Hickel was unable to break through the *cordons sanitaires* that surrounded him. Secrecy became in time an end in itself: The symbol of this was the frenzy for classifying everything "top secret." The kind of cloak-and-dagger, wiretapping, *agents provocateurs* activities that are only now coming to light became, under Mr. Nixon, standard operating procedure. It was inevitable that sooner or later the FBI and the CIA would both be sucked into the maelstrom of party politics.

All this was something new in American history. Lincoln fought the Civil War, Wilson World War I and Roosevelt World War II without a thought for the kind of secrecy that the Nixon administration thinks essential to the normal working of government—a secrecy which is, needless to say, the outer manifestation of that suspicion, mistrust, insecurity and fear with which Mr. Nixon and his closest associates regard all "outsiders."

There is the atmosphere of—shall we say Madison Avenue?—in which those in power view government as a giant public-relations enterprise. This view assumes that policies are to be argued not on principle but on the merits of their packaging, as it were; that everyone and everything can be manipulated, never mind what methods are used, never mind how the products turn out. Just as political campaigns are turned over now to public-relations firms, so great issues of war and peace, of wealth and commonwealth, are to be decided not on their merits but through the manipulation of public opinion polls or the purveying of false information even by the President, who himself appears and sounds more and more like the head of a giant public-relations firm.

A Place in History

WATERGATE MAY CHANGE all this. For each of the scandals that erupts to the surface sends its waves lapping at the very threshold of the White House. They have already made that mansion uncomfortable; soon they may rise higher and make it uninhabitable.

The President, who assumed that his 17 million majority gave him *carte blanche* to do what he pleased, and who came to think—and to act—as if, like Louis XIV, he were the state, now finds that as public confi-

dence in his judgment and even in his integrity evaporates, so does his power.

What changes are already under way as a consequence of Watergate?

First, the President is now on the defensive and Congress is on the offensive. Mr. Nixon will no longer be able to use the kinds of persuasions, pressures, and threats that he—and, of course, other Presidents—employed so successfully in the past. He who refused to cooperate with the Congress cannot now expect that Congress to be eager to cooperate with him. Nor can he count with any confidence on enough votes to sustain such vetoes as he threatens to use, for example, on the proposed termination of funds for the Cambodian war.

Nor can Mr. Nixon count with any confidence on support from his own party: The 24-0 vote of the Senate Appropriations Committee against money for Cambodia made that clear. Even stalwarts like Sens. Goldwater of Arizona, Cotton of New Hampshire and Baker of Tennessee appear to have "had enough."

Doubtless Mr. Nixon has been shaken and perhaps even weakened by the loss of so many of those political cronies with whom he had long associated. Getting rid of Halde-

man and Erlichman, Mitchell and Kleindienst, Dean and Stans and a dozen others is, in the long run, all to the good both for Mr. Nixon and for the country. For their replacements will not, we may hope, try to seal him off from the public, deny him access to public opinion and the press, withhold from him that independent counsel which might have saved him from disaster. Nor is it probable that the remaining men—Kissinger, Richardson, Ruckelshaus, Schlesinger and others—will connive at or acquiesce in that violation of law and of ethics in the Department of Justice, the FBI and the CIA which is perhaps the blackest mark against this administration in the domestic arena.

Certainly Mr. Nixon cannot count on the courts to support his claims in the realm of war-making in Cambodia, of impounding congressional appropriations, or—in all likelihood—to support his interpretations of his right to authorize wiretapping on what he considers grounds of national security or his right to establish prior censorship through classification. Even the Supreme Court, with four Nixon appointees, has shown a gratifying independence of executive preferences and pressures: Thus in its refusal to accept the President's views of busing or wiretap-



Drawing by Maxwell Silverstein

ping, or to seriously impair the guarantees of due process in civil rights and civil liberties cases which Mr. Nixon and his attorney general find so troublesome. Yet the balance here is a delicate one. One or two more appointments like that of Justice Rehnquist and we may see a retreat all along the judicial line.

All in all, this new situation—the product of Watergate and of all that it symbolizes—may leave Mr. Nixon so weakened that he will no longer dare to substitute his will for the law, no longer impose that will upon

the Congress, no longer be able to carry the people with him in waging war or spending recklessly for future wars, no longer expect to intimidate the great newspapers and the networks, no longer cover over his misdeeds with the mantle of secrecy. He may be forced to abandon, in practice anyway, his usurpation of legislative powers. He may be induced to treat the judiciary with respect. He may even be persuaded to abandon those policies of secrecy, concealment and deception which have given his administration a unique place in our history.