

By Anthony Lewis

WASHINGTON—Whatever our difficulties, and they are many, Americans have one overwhelming reason to be thankful this year: Richard Nixon is out of the White House. The new tapes played at the Watergate cover-up trial have added chilling depths to the knowledge of what we escaped. It was not just deception and abuse of power but conscious criminality. It was that rarity in high office, genuine evil.

The process that led to Mr. Nixon's departure will always be a reason for pride in this country. The skeptics were confounded. Congress did rise to its responsibilities; the public did keep on caring.

But there is less reason for pride or confidence in another legacy of Watergate. That is what the experience showed about official attitudes toward law, in particular toward the system of criminal justice.

An example is at hand. The other day a Federal court in Baltimore imposed sentences of a year and 18 months on two businessmen whose confession of corrupt payments led to Spiro Agnew's resignation from the Vice-Presidency. So they go to prison while the sleazy felon who soiled our politics reportedly earns \$100,000 in his new career as a "business broker."

The judges who imposed the sentences rejected a prosecution recommendation against any jail terms. They did so correctly, for the old reason that compounding a wrong does not make a right. The wrong here lay in the original decision to make a deal with Mr. Agnew for his resignation in return for a non-prison sentence on his plea to a felony.

The Attorney General who made that deal, Elliot Richardson, suggested that "leniency was justified" because the disgrace itself was a severe penalty. He said he was satisfied that "justice" had been done. I thought then that he was right on political grounds: the need to investigate the President's wrongdoing without having as his potential successor someone who was himself under indictment.

But time has shown the very great danger of setting even a weighty political need above the interest of the law. The meaning of the Agnew affair has been accurately described:

"We are to be satisfied if a politician pays for his crime by removal from office and payment of a fine. . . . If the fox will wipe the feathers from his mouth, the fox may leave the chicken house with impunity."

The quotation is from a superb analysis in Harvard Magazine by John R. Silber, a philosopher who is president

of Boston University. He makes the shrewd point that in giving such special treatment to politicians we show how demeaningly low are our expectations of them: We expect less of a President, in terms of obedience to law, than we do of "a Boston housewife concerned for the safety of her children."

The trouble with the Agnew deal, on reflection, is that in making it, Elliot Richardson played God. He balanced all the interests as he saw them and made the final judgment himself, instead of trusting the institutions of law and politics to work. One may sympathize; the pressures on him were

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heavy, and his motives were good. But what was needed was a firm commitment to institutions, not personal policy disguised as justice.

That unhappy precedent was carried farther in the pardon of Richard Nixon. President Ford explicitly invoked "the laws of God," which he said govern our conscience and are superior to the Constitution. This time the criminal was given not only leniency but forgiveness, and without showing any contrition.

To indicate the fallacy of reliance on God's laws instead of man's, Mr. Silber draws on Robert Bolt's play about Sir Thomas More, "A Man for All Seasons." More, facing destruction by the King, is visited by a royal spy. His family urges him, as Lord Chancellor, to seize the spy. More asks: on what ground? The man is "bad," says More's daughter. "There is no law against that." But there is, says the family, God's law. "Then God can arrest him," says More.

"I know what's legal, not what's right," More says. "And I'll stick to what's legal. . . . I'm not God. The currents and eddies of right and wrong, which you find such plain sailing, I can't navigate. . . . but in the thickets of the law, oh there I'm a forester."

Mr. Silber puts it that Americans "want and intend to be governed by the thicket of law rather than the marsh of conscience." Individuals may defy the law as an act of conscience, and pay the penalty. But officials have no choice but to apply the law—man's law—to all, equally.

Of course Watergate is not alone in examples of the law applied unequally. It is commonplace, and terribly damaging to our system of criminal justice, for the powerful to go free while the little wrongdoers go to prison. But we should learn from the spectacular experience of Watergate that our system requires of those who govern a commitment to law.