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THE WATERGATE MORALITY*

ELLIOT L. RICHARDSON**

It was, as President Ford so aptly said, a long nightmare. We have awakened with a sense not only of vast relief but also of considerable pride both in our institutions and in ourselves. The pride is justifiable. As a people, we have been patient and fair-minded. Our constitutional processes—our courts, our Congress, our system of checks and balances, and the impeachment process itself—have been tested as never before. And they have been found not wanting. In accordance with constitutional procedures, an orderly transfer of power has been accomplished under extraordinary conditions of strain. We do indeed have: “A Constitution for All Seasons.”

We are entitled to a brief binge of euphoria—but only brief. These are not times to lapse into smugness. To close the Watergate chapter on a note of self-congratulation would be a serious mistake.

The reason to be wary of smugness is simply this: smugness would feed the impulse to wall off Watergate—as if one could encapsulate the whole tragic mess and put it aside as an unfortunate aberration having no antecedents in the American past and no continuing relationship to American society as a whole. This might be a harmless delusion but for one very real concern: if we do not treat the underlying disease which erupted in Watergate, we condemn ourselves not only to some recurrence of its symptoms but also to a continued decline in the general health of our society.

A fallacy that must be purged at the outset is the notion that the chief actors in Watergate were uniquely evil men. Among their personal characteristics, in fact, are some that are highly esteemed by our society: for instance, the determination to succeed, to prevail, to win. That great sage, Leo Durocher, is venerated for the maxim: “Nice guys finish last.” Another, George Allen, is famous for telling us that it’s not how you play the game, but whether you win or lose—an opinion presumably to be read in conjunction with the dictum of Vince Lombardi: “Winning isn’t everything: it’s the *only* thing.” In

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an organization dedicated to winning, the willingness to subordinate one's concern for self to the collective good is much admired. To say of a colleague that he is a "good team player" is ordinarily high praise.

When an obsession with winning is joined with an uncritical belief in the complete rightness of one's own patriotic motives—the advancement and protection of national security, the promotion of fiscal responsibility and the reduction of excessive reliance on the central government—it is hardly surprising that a by-product is the gut feeling that anyone who questions or obstructs the chosen path toward these enlightened aims is "the enemy." One has, then, all the ingredients needed to rationalize the conviction that the end is all-important.

But even this supercharged combination of organizational zeal and patriotic fervor would probably not have been enough to bring about Watergate but for the history of two generations in which the notion of a "strong" Presidency had been highly touted, in which an obsession with "national security" was the legacy of three hot wars and one cold one, and in which the Congress had persisted in making the power of the central government more pervasive and ubiquitous.

To a staff associate, even a highly placed one, the prestige of the Presidential office can be awe-inspiring. In this context, it takes heroic effort for the subordinate to recognize that a President's whims are not necessarily made of cast iron. And when, finally, you mix in a limited sense of humor and adjust for a lack of imagination, the sum total goes a long way toward explaining, though it can not excuse, the wrongs that were done.

The explanation does not—and should not—dispel our sense of shock and outrage. But it does force to the surface the painful awareness that where our reaction does not smack of self-righteousness it is tinged with self-doubt: how many of us can be sure we would have been able to resist this kind of pressure? We want to believe, of course, that our moral sensitivity is too acute, and that the inner voice which tells us where to draw the line between right and wrong is too strong and compelling to have permitted us to be guilty of such unconscionable acts. In my own case, though I have been given much credit for what seemed to me a relatively simple, clear-cut decision, I can only hope that it would have been so.

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 as-

WATERGATE MORALITY

sociates¹ 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, although not sufficiently appreciated as such, 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 nonreporting of taxable income, or the overstatement of deductible expenses has so diffuse an impact on so large a group—a faceless mass of policyholders, shareholders, or taxpayers—that it's tempting to overlook or ignore the harm that is done to them. The facile assertion that "everybody does it" slips imperceptibly from rationalization to reality. The eventual outcome is demoralization in the most literal sense of the word.

America is still, fortunately, at the early stages of this process. We are still, basically, a decent and moral people—but the more so when we see and know those who would be hurt by our selfishness. 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.

As to a sense of community, this is not the time or place for a detailed exposition. The desirable directions of public policy, however, can be quickly sketched: maximum feasible decentralization of government functions and the creation of effective means of citizen participation; a national growth policy which encourages the building of new towns and the dispersion of industrial centers; urban planning which builds around the natural neighborhood centers like schools; and the development of technological means of enabling localities to take advantage of area-wide administrative services while keeping policy control in their own hands. These are all measures that would help to offset, if not turn around, the trends tending to destroy communities; to submerge the sense of individual significance; and to weaken, thereby, the sense of responsibility.

The matter of obligations has more direct relevance for an audience of lawyers. It is generally taken for granted, though it is not quite true, that obligations are the reciprocal of rights. So insistent, however, has been the drumbeat accompanying the steady forward march of rights during the past decade, that the voice of obligations has scarcely been heard. Certainly not since adoption of the Bill of Rights has this nation seen anything like it. In education, voting, housing, health, privacy, and other areas, the courts will now grant affirmative remedies in countless situations where, only ten years ago, no recourse was open. And the evolutionary process still goes forward. An example is the "right to treatment." First recognized by Judge Johnson of the Federal District Court for the Northern District of Alabama in 1971, the right of the mentally ill and the mentally retarded to a court order requiring a state to increase its expenditures for professional staffing is bound to have enormous ramifications.

The recognition of obligations, meanwhile, has suffered. How, one might ask, can that possibly be? If obligations were the necessary reciprocal of rights, the recognition of a right would automatically carry with it the enforcement of an obligation, either affirmative or negative. If I have a right to speak my mind, you have an obligation to refrain from any attempt to keep me quiet. And if I have a right to adequate medical care, someone must have an obligation to provide it. But as I said a moment ago, the general assumption that obliga-

WATERGATE MORALITY

tions are the automatic reciprocal of rights is not wholly true. Rights may be declared, but not observed; they are not self-fulfilling.

Obligations, in any case, transcend rights: the full extent of my obligation to respect my neighbor's right to worship as he pleases cannot be spelled out in any court decree. Obligations embody a moral, and not merely a legal, command. And yet, it seems to me, we increasingly tend to behave as if the minimum required by the law were the maximum required of us.

Take, for instance, the sanctions against misconduct enforced by the criminal law. They punish stealing but not a lack of generosity. They punish the man who uses his hand as a weapon, not the man who fails to extend it in help. In the case of civil rights, the law can enforce their observance but not their respect. Indeed, where there is true respect for other people—the awareness that each is a unique, sacrosanct individual equal in dignity to every other human being—there is an awareness of obligation which is higher and more sensitive than any requirement of the law.

But to say that a stronger dose of obligations is a key remedy for for the Watergate mentality, but one which the law cannot administer, is not to say that lawyers have no role. On the contrary, where the implications of individual or corporate actions are concerned, lawyers have a critical role and a unique opportunity. On the negative side, that has all too amply been demonstrated by recent events. But on the affirmative side the role and the opportunity are no less real. We are not the keepers of our clients' consciences, but neither are we mere technicians whose sole function is to assure that legal limitations are narrowly observed. The attribute of our calling which most entitles it to be regarded as a profession springs from the fact that our highest allegiance is to the law and to our own consciences—and of the two our consciences are the more inclusive, though not necessarily the higher, authority. We fulfill the finest standards of our profession when our informed legal opinion is supplemented by judicious counsel. Without undertaking to preach to our clients, we can encourage them to ask us not just "is it legal?" but "is it right?"

The claim of what is right over what is merely legal, of unenforceable obligations over enforceable rights, is not exclusively addressed, of course, to our profession. But it is an appeal, essentially, for moral leadership, and we cannot, though some would disagree, plead a lack either of competence or of jurisdiction.

What, then, can we do about the problem? Its very definition precludes its solution by the enactment of laws or the adoption of rules and regulations. Nor is exhortation ever enough: if it were, we would long since have attained an earthly paradise. Nor will it suffice to do any of the things that bar associations commonly do: pass a resolution, set up a committee, sponsor a study, and/or give awards.

There remains only one means of imparting leadership, and that is by example. For George Washington, our first and greatest leader, it was means enough. Gerald Ford, our newest President, is already beginning to exercise it admirably—though with acknowledged recognition that moral regeneration does not fundamentally derive from Washington's city. The opportunity and obligation for leadership is ours, too, as individual lawyers. Our impact cannot, of course, be as wide as a President's. It can, however, be even more direct, for we are known and involved personally in our communities. And it is in our communities that our most fundamental values are exhibited and nurtured. Many lawyers are, of course, already setting fine examples. And all of us can set our own better examples by following them. In so doing, we shall not only strengthen the esteem in which our profession is held: we shall also help to rebuild the fundamental character—and the justifiable sense of self-esteem—that is at the heart of our country's greatness.