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Tyranny of the Weak

I am disappointed in Garry Wills's "Bush's Shameless Finale" [Outlook, Dec. 27], an attack on President Bush's pardoning of six Iran-contra defendants. I would forgive an author of such gifts for this unusual descent to conventional diatribe (excepting a brief argument about the impeachment process, which is itself tendentiously designed to justify the supremacy of Congress among the three branches of government). But in this article, Wills criticizes the outgoing president for what I consider a decent, courageous and principled act.

We have heard by now from the critics of the pardon. They offer elaborations of the high school civics version of statecraft. They represent the people who think that any "law"—any excrescence of this or that organ of government—is definitive, preemptive of all conduct within society. They speak for the party of government—any government—the more government, the better we can sleep at night.

But those who are skeptical—and sometimes justifiably contemptuous—of government will understand the inner meaning of this rare act of a president. My interpretation may seem incongruous in the context of what is, after all a *presidential* pardon that frustrates the putative tribune of the people, the independent counsel, the "special prosecutor." Yet in this instance the president is in fact acting for the anti-government party, while the special prosecutor is clearly the arm of government inquisition.

One could ask: Don't you care that this reprieve of malefactors who spited Congress rends the Constitution as much as anyone else. But to me its essence is the protection of

individuals against agents of government—even, ironically, when these individuals are employees of the government. (And, as Bush properly noted, none of these public servants was trading for his own account, using the resources of the rest of us for his personal purposes. That is something entirely different and properly punishable in the ordinary ways.)

It has been well said—including in the president's own remarks—that

The essence of the Constitution is protecting individuals against persecution by agents of government.

governance in this country is being warped by a penchant for criminalizing policy differences. But there is a larger pathology in our political system, and that is the tendency to use "law" to stifle boldness and individualism. And by "law" people have come to mean the statutory decrees, the agency pronouncements, the Internal Revenue interpretations, the prosecutorial requisitions and the convenience of the police in exercising surveillance and extending the reach of arrest.

That pseudo-legal spirit, and the barrage of litigation that it has spawned, is the product of populist piety, a combination of envy and vengeance. Oh, yes, this "law" is the handmaiden of petty and meticulous

civic (read collective) virtue; but it is the enemy of creativity and enterprise in our society.

The populist inquisition would level initiative and achievement (in and out of government), pull down anyone with plumage, reduce political discourse to the mumbling of right-minded formulas and criminalize ever-expanding areas of human activity and purpose. In short, we are seeing the tyranny of the weak—along with their indispensable tribunes, the "good government" publicists, the impressionable members of Congress and the zealous prosecutors with their ambitious staffs.

It has been said that the president's pardon has unhinged the balance between the executive and the legislature. What balance? By now, even people of ordinary insight are on to the fact that there can be legislative tyranny, too. James Madison warned against this, and he tried to forestall it with various fragmentations of power and a dash of elitism in representation, devising a Constitution that virtually guaranteed unending contention among the branches of government.

We should see "law"—that is, Congress-made or agency-made or prosecutor-made or police-made "law"—as a tool of politics, a part of the battle. This is what we *are* seeing here in the use of the special prosecutor, and as Wills himself complains—in Bush's use of the power of pardon. In this case, the effect of the president's act—perhaps only half-willed—is to restore, in modest measure, the larger balance in our polity.

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