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Bush's Pardons

First, I come into this court with dirty hands: I favored the pardon of Richard Nixon. This, even though I was a charter member of the club that believed the man, from early in his career, a menace to public life and a permanent walking political disgrace. I still do. What he did over all those years mattered—it was not something that in retrospect looks trivial to me, as it seems to look to many who once shared these views. But after his resignation at the end of two scandalous-revelation-filled years, I did not believe a criminal trial would add anything to either the national judgment on the man or the public's awareness of the kind of crummy things that had been going on.

This is the impunity issue: did Nixon get away with it? For lack of criminal court proceedings was he allowed to think that public officials were above the law and could do anything they wished? I didn't see how anyone could think so (though clearly plenty did) after the complex of Watergate issues had been played out and he had been forced from office. Likewise the Iran-contra pardonees. I feel rather differently about their case and this outcome, but on the matter of impunity and being above the law and so forth, I would argue that none of these fellows, whatever public gloating and chortling a few may be indulging in now, can conceivably look back on the past few years and say to himself: Gosh, turns out you can get away with anything—is this a wonderful country or what?

Why does the president find it so hard to acknowledge the wrongdoing in Iran-contra?

The real issue, to my mind, is not whether any of these men has been sufficiently penalized for what went on in Iran-contra, but whether the principal offenses and derelictions involved have been properly acknowledged for what they were and accepted as wrong. This is where the Bush pardon message gets into big trouble with me. At best it kind of stiffens the issue; it doesn't so much pardon those charged with or convicted of wrongdoing as it blames the cop who hauled them in. But more on this in a moment.

First, you have to look at the unsatisfactory way we have of pursuing wrongdoing of the Iran-contra kind in the first place. The big problem is our failure to resolve the jurisdictional conflict between congressional inquiry and exposure on the one hand and criminal proceedings on the other. Often both go forward at the same time, to the impediment of both. Immunity granted people testifying before Congress can lead to the spoiling of prospective court proceedings. The threat of court proceedings, in turn, enables some to decline to answer questions in congressional hear-

ings. (This is not to be confused with lying in such hearings, which should be a punishable offense no matter what.) The two operations get into competition. The thing drags on. The lawyers' fees mount. The public forgets.

As much as this double-edged method of dealing with governmental wrongdoing may permit the wrongdoers to eventually get off in court on technicalities or to otherwise elude a reckoning, it also subjects some to a prolonged and seemingly inconclusive, if not unresolvable, personal ordeal. That ends up generating sympathy and a desire to get the thing over with and confusion as to what it was all about in the first place. And as a practical matter it also always seems that the big enchiladas get finally to retire in peace and write their memoirs, while the lesser ones take the worst heat. All this creates the circumstances in which pardons are urged and in which, in some cases, an argument for them can be made.

But it seems to me that the granting of these pardons absolutely required what George Bush refused to do: acknowledging that the crimes of which

some had been convicted and with which others had been charged were serious and real. He needed to acknowledge that government officials are *not* above the law, that the executive branch of government is not free to lie to Congress about the ways in which it is spending public money and conducting public policy and that lying after the fact to cover up original lies is worse than what you did the first time around. Instead, the president dismissed as mere politics the effort to get at the truth and hold those who refused to speak it accountable.

In this he was not only wrong but foolish. Part of the tension between the legislative and judicial efforts to get at the truth of Iran-contra, as has been true of similar tension in other government wrongdoing cases, has been between the legislative imperative in hearings to get information out and on the record and the inhibitions a prospective court proceeding can have on that. Now I believe more information will flow. The matter is far from closed. The effort will be redoubled on the part of those who feel the very legitimacy of calling these men to account in the first place has been treated with contempt by the president. And his own role in the events and the truthfulness of his own account of it will be back on the front burner.

For several weeks before the pardons the word was out in Washington that Bush was being urged to pardon Weinberger but was afraid to because of what

might be said about him. He needed assurances, it was confided, that he himself wouldn't take a big hit. The Weinberger case *was* different from the others in several respects and this seemed to be what the campaign to get Bush to act was about. But in the end he added a message that rightly provokes anger because it seems not only to justify the lying of all who lied but to complain about those who tried to do something about it.

In Watergate as in this subsequent scandal the same outlaw tendency was at issue. And in Iran-contra, as in that earlier set of events, there was the same attitude evident in those who carried on the policy in secret and lied about it later: namely, that they knew more and knew best and that they were entitled to run a kind of secret, unaccountable policy because the dodos and dummies in Congress, not to mention among the public, just weren't qualified to pass judgment on what they were doing—and would never find out anyway. You don't have to believe Congress or the independent counsel's office either has behaved perfectly in the continuing, years-long drama to believe as I do that putting an end to this terrible and costly attitude in the executive branch was the point of pursuing the Iran-contra cover-up and that George Bush in his message expressed contempt for that purpose.