

The Bush Pardons

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Region: [USA](#)

Global Research, November 24, 2008

[Harper's Magazine](#) 22 November 2008

How does the George W. Bush presidency most resemble that of his father, George H.W. Bush? It may be best to wait to the last, agonizing days of reign of Bush the Lesser before making any call. Recall that Bush 41 left office with a flurry of highly controversial pardons, affecting a large number of individuals who were caught up in the Iran-Contra scandal. In December 1992, while Americans focused on the incoming Clinton Administration, Bush 41 wielded the pardon power to free former defense secretary Caspar Weinberger and five others who had been convicted for crimes committed in connection with the Iran-Contra affair. Lawrence Walsh, the independent counsel handling the matter, had been gradually closing the circle on the affair, and increasingly the evidence was suggesting that Bush 41 himself had been at the center of it. He had, Walsh learned, withheld his personal diaries from investigators and made statements which were at least seriously misleading. By issuing the Iran-Contra pardons, Bush threw up a roadblock...on a road that headed straight to himself.

True to form, the Democrats hardly raised a serious objection to the pardons. They were focused on the incoming administration and eager to avoid anything that would distract from the coup with which Clinton hoped to launch his presidency: a major healthcare initiative.

Sixteen years later, history appears poised to repeat itself. A new Democratic administration is preparing to descend on Washington, and healthcare reform is already being signaled as its first major campaign. President Bush, who has up to this point been remarkably stingy in using his pardon powers (other than for adviser Scooter Libby, who outed a CIA agent and lied to a grand jury about it) is widely thought to be preparing to take some extraordinary actions. Of prime concern are the Administration footsoldiers and policy-makers who participated in two extralegal gambits: his signature interrogation program that introduced a host of torture techniques which were up to that point the preserve of brutal Latin American dictators and formerly Communist adversaries; and a vast spying program that included snooping on the communications of tens of millions of Americans. Both programs had the misfortune of being contrary to federal statutes and punishable as felonies. The Bush Justice Department itself participated in these criminal schemes, and therefore should be counted upon not to prosecute them. But with time wearing short and the prospect of a new administration descending upon Washington, Bush may shortly act to issue a pre-emptive class-based pardon to insure that his helpers not be prosecuted. And if the pardon is class-based, one prominent beneficiary will be George W. Bush himself. So 2008 promises to be a near perfect replay of pardons farce of 1992.

New York Congressman Jerrold Nadler, who chairs the House Judiciary Committee's subcommittee on the Constitution, Civil Rights and Civil Liberties, has different ideas. On

Friday, Nadler introduced House Resolution 1531, anticipating and condemning such a pardon. Here are the findings:

(1) it is the sense of the House of Representatives that the granting of preemptive pardons by the President to senior officials of his administration for acts they may have taken in the course of their official duties is a dangerous abuse of the pardon power;

(2) it is the sense of the House of Representatives that the President should not grant preemptive pardons to senior officials in his administration for acts they may have taken in the course of their official duties;

(3) it is the sense of the House of Representatives that James Madison was correct in his observation that "[i]f the President be connected, in any suspicious manner, with any person, and there be grounds [to] believe he will shelter him, the House of Representatives can impeach him; they can remove him if found guilty";

(4) it is the sense of the House of Representatives that a special investigative commission, or a Select Committee be tasked with investigating possible illegal activities by senior officials of the administration of President George W. Bush, including, if necessary, any abuse of the President's pardon power; and

(5) the next Attorney General of the United States appoint an independent counsel to investigate, and, where appropriate, prosecute illegal acts by senior officials of the administration of President George W. Bush.

Read [the whole resolution here](#). Democrats.com has a form that makes it simple to [contact your representatives to register your support for the Nadler resolution](#). And Representative Nadler and others (including myself) will be speaking on this issue on the evening of December 4 at NYU Law School, at [a free forum co-sponsored by Harper's magazine](#). The event is open to the public

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