

The Purloined Constitution

Or How to Look Only Forward and Still Look Like an Ass

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The wonderful thing about big lies is their kettle logic. The term, of course, derives from the story of the man who offered several mutually incompatible excuses for returning his friend's kettle in damaged condition: "It broke too easily." "It was like that when I got it." "I improved it for you." "I never borrowed the thing." Et cetera. A big lie is not just a beautiful creation because the bigger you make it the more firmly people believe in it, but also because you can tell other big lies to make the same point and the lies don't have to make any sense in combination.

One big lie in circulation at the moment is that we don't know whether Bush, Cheney, Rummy, et alia, committed any actual crimes. Some people believe this, but they believe it in the sense in which one "believes in" a big lie, as one "believes in" a religion. If people actually believed it as an ordinary fact, then they would have to either advocate investigating the topic or determine that it simply didn't matter whether the Cheney-Bush gang had committed crimes or not. Here's Barack Obama: "Now, if I found out that there were high officials who knowingly, consciously broke existing laws, engaged in coverups of those crimes with knowledge forefront, then I think a basic principle of our Constitution is nobody above the law — and I think that's roughly how I would look at it." He believes in the idea that there is doubt, but he's not ready to either pursue the matter or to claim it's unimportant.

A second big lie is that the toughest deterrence possible against future crimes is produced by simply learning the facts about past crimes. This lie has been spread by countless sources. Here's Joe Biden's version: "Personally I would like to know exactly what happened because — more of a past is prologue kind of thing. I would like to make sure that it doesn't happen again. Torture is going to be a major issue. Torture is going to be a major issue. ... And so all that's going to be reviewed." If people believed this in the ordinary sense of belief, they would have to support replacing all police, prosecutors, and jailers with videographers and reporters. And they would have to advocate investigating any crimes they didn't already know about but leaving alone any crimes they already knew about — the ones they'd already determined they didn't want to see happen again. Because you can't very well want to deter the repetition of something until you've already learned what it was.

A third big lie is that the appropriate way to handle crises created by criminal activity is to ignore the criminality and focus on solving the crises. This is described by thousands of its advocates as "looking forward." Here's Obama: "I would not want my first term consumed by what was perceived on the part of Republicans as a partisan witch hunt because I think we've got too many problems we've got to solve." And here's Biden: "The questions of whether or not a criminal act has been committed...is something the Justice Department

decides....That's a decision I'd look to the Justice Department to make." While stating he was "not ruling it in and not ruling it out," Biden underscored that he and Obama are "focusing on the future." "I think we should be looking forward, not backwards." If this passed the smell test, people would smash store windows, calmly make off with expensive goods and coolly advise the cops to focus on the future replacement of the window glass.

A fourth big lie is so huge that it's buried invisibly in the preceding paragraph. It is the claim that Democrats need to work with Republicans. The Democrats are an overwhelming majority in terms of public support with significant majorities in both houses of Congress and possession of the White House. If Democrats did not want Republican senators to be able to filibuster any bills, they would take one or more of the following steps: change the number of votes required for a filibuster, appoint one or more Republican senators from states with Democratic governors to cabinet positions or ambassadorships (aside from the Secretary of Labor nominee, it's not as if they could be much worse than the current cabinet selections), or give Washington, D.C., voting representation in both houses of Congress.

Edgar Allen Poe told of a purloined letter effectively hidden by conspicuously placing it in plain sight. Our Constitution and the very idea of the rule of law now find themselves in a similar situation. There are variations, of course, on the idea of the rule of law. Often the judicial and penal systems are viewed as purely backward looking. For example, many people favor the death penalty in full awareness that it lowers, rather than increasing, deterrence of future crimes and eliminates the possibility of restitution or restoration. But an ethical system of criminal punishment, which indeed looks forward, still deals in every single case with crimes that have happened in the past. To ignore crimes that are in the past is to ignore all crimes, and therefore to permit all crimes in the future.

The corporate punditocracy puts on a show of wondering whether crimes have been committed, while Bush and Cheney are on videotape confessing to authorizing torture, Bush is on videotape confessing to violating FISA, Bush is on videotape being warned about Hurricane Katrina and on videotape swearing he was not, the evidence that Bush and Cheney lied the nation into an illegal war is already public and beyond dispute (<http://afterdowningstreet.org/node/38297>), and at the same time that great minds ponder whether the water torture is really torture the common Bush-Cheney technique of beating the shit out of someone and breaking their bones is being employed against a guy who threw his shoes at the president.

The purloinedness of Bush's violations of law (<http://tinyurl.com/8e4nno>) was developed in a manner that would have astounded Poe when Bush ordered the creation of "legal opinions" supporting the violation of laws, such as those against torture, engaged in torturing, signed into law new bills redundantly recriminalizing torture, wrote "signing statements" erasing the new laws as just signed, and went right on torturing without anyone's gaze drifting for an instant from a sharp focus on the latest bread and circuses. If Bush now takes the unprecedented step of pardoning the crimes he authorized, the big lie that this is neither unprecedented nor in conflict with maintaining any system of laws will seize us in its death grip (<http://afterdowningstreet.org/node/37947>).

But the bigger the lies, the harder they fall. The idea that there is some sort of doubt about Bush and Cheney's criminal records is collapsing rapidly. Support for the idea of actually enforcing laws is spreading as swiftly as at any time since Moses came off the mountaintop (<http://democrats.com/pardon-scorecard>). And our next president is going to run hard up

against the fact that failure to prosecute violations of treaties is itself a criminal violation of those same treaties. Protecting a predecessor is going to mean endangering, not protecting, yourself. Paradoxical but true, and only the truth has a chance of setting us free.

David Swanson is the author of the upcoming book "Daybreak: Undoing the Imperial Presidency and Forming a More Perfect Union" by Seven Stories Press and of the introduction to "The 35 Articles of Impeachment and the Case for Prosecuting George W. Bush" published by Feral House and available at Amazon.com. Swanson holds a master's degree in philosophy from the University of Virginia. He has worked as a newspaper reporter and as a communications director, with jobs including press secretary for Dennis Kucinich's 2004 presidential campaign, media coordinator for the International Labor Communications Association, and three years as communications coordinator for ACORN, the Association of Community Organizations for Reform Now. Swanson is Co-Founder of AfterDowningStreet.org, creator of ConvictBushCheney.org and Washington Director of Democrats.com, a board member of Progressive Democrats of America, the Backbone Campaign, and Voters for Peace, and a member of the legislative working group of United for Peace and Justice.

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