

# Yes We Can Unpardon War Criminals

Open Letter to President Elect Barack Obama

By [David Swanson](#)

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Region: [USA](#)

Theme: [Crimes against Humanity](#)

Dear President Elect Obama,

On his third day in office President Grant revoked two pardons that had been granted by President Andrew Johnson. President Nixon also undid a pardon that had been granted by President Lyndon Johnson. There may be other examples of this, as these two have somewhat accidentally come up in a discussion focused on numerous examples of presidents undoing pardons that they had themselves granted, something the current president did last week. (See <http://pardonpower.com> ). In 2001, President George W. Bush's lawyers advised him that he could undo a pardon that President Clinton had granted.

Much of the discussion of this history of revoking pardons deals with the question of whether a pardon can still be revoked after actually reaching the hands of the pardonee, or after various other obscure lines are crossed in the process of issuing and enforcing of the pardon. If President Bush issues blanket pardons to dozens of criminals in his administration for crimes that he himself authorized, he will probably — with the exception of Libby — not even name them, much less initiate any processes through which they are each formally notified of the pardons. He will be pardoning people of crimes they have not yet been charged with, so the question of timing is something you are unlikely to have to worry about (except perhaps with Libby).

Virtually none of the discussion of these matters ever addresses the appropriateness or legitimacy of the pardons involved or of the revoking of them. The history would appear to establish that you will have the power to revoke Bush's pardons. I want to stress that you will also have a moral responsibility to do so and a legal requirement to do so. Morally and legally, you have no choice in this matter. When you take the oath of office, you will be promising to faithfully execute the laws of the land. Through Article VI of our Constitution, the Geneva Conventions and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are the supreme laws of this land. Those laws bind you to prosecute violations, including torture and other war crimes of which Bush, Cheney, and their subordinates are guilty and which Bush is likely to try to pardon.

Bush's pardons will not be like other past pardons. Even when his father pardoned the Iran-Contra criminals, he was pardoning crimes for which President Reagan, not he himself, held ultimate responsibility. Here we are facing the unprecedented outrage of a president pardoning crimes that he openly admits having authorized. The closest thing to this in U.S. history thus far has been Bush's commutation of Scooter Libby's sentence, to which he is expected to add a pardon. Libby was convicted of obstruction of justice in an investigation that was headed to the president. Evidence introduced in the trial, including a hand-written

note by the vice president, implicated Bush, and former Press Secretary Scott McClellan has since testified that Bush authorized the exposure of an undercover agent, that being the crime that was under investigation.

The idea that the pardon power constitutionally includes such pardons ignores a thousand year tradition in which no man can sit in judgment of himself, and the fact that James Madison and George Mason argued that the reason we needed the impeachment power was that a president might some day try to pardon someone for a crime that he himself was involved in. If impeachment was created to handle the abuse of pardoning a crime the president was himself involved with, how can we imagine that the pardon power legitimizes such abuse, much less the pardoning of crimes authorized by the president, much less the pardoning of obstruction of an investigation into a crime committed by the president? In fact, all such pardons are themselves obstruction of justice, as well as violations of treaties requiring the president to prosecute the types of crimes involved.

The problem is not preemptive pardons of people not yet tried and convicted. The problem is not blanket pardons of unnamed masses of people. Both of those types of pardons have been issued in the past and have their appropriate place. The problem is the complete elimination of any semblance of the rule of law if Bush pardons his subordinates for crimes he instructed or authorized them to commit. We elected you to restore the rule of law, and you will soon have the opportunity to either do so or to place a final nail in its coffin. Bush is likely to attempt to pardon torture, warrantless spying, all sorts of war crimes, fraud and aggressive war, and the various abuses of the politicized Justice Department.

We will call on the courts to challenge these pardons and on Congress to reject them. We will demand that Congress reject any nominee for attorney general who accepts such pardons as legitimate. But we are also asking you for leadership. We've elected you for it. We strongly encourage you to uphold your oath of office and faithfully execute the laws, not the illegal decrees of your criminal predecessor. If you do this for us, if you help ensure that government of, by, and for the people does not indeed perish from the earth, we will commit to working with you in the years ahead as you advance the eternal project of improving our democracy.

In Solidarity,

David Swanson

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, a member of the legislative working group of United for Peace and Justice, and convener of the accountability and prosecution working group of

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