

The Power of Self-Pardon: Trump's Novel View

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"If a president was dumb enough to pardon himself that would be such an arrogant statement of power that the House would probably impeach him in a week and the Senate would convict him." – Newt Gingrich, Jun 5, 2018

It is a view that Charles I would have been proud of: The means by which one can forgive and exculpate oneself for purported wrongs. Admittedly, that out of sorts Stuart king only believed that one source was worthy of pardoning him: God and God alone. It was the divine who had vested him with legitimacy; accordingly, it was only the divine that might judge him or remove his crown. Oliver Cromwell proved otherwise and sneaked off his head.

Trump does not believe in Sky Creatures, and remains very terrestrial in his lusts and ambitions. He seems to be constantly jockeying for the next position, embracing less issues of policy as matters of expedient stance. Those stances, written in water, alter with whirling consistency, leaving the pundit to lurch after the next novel interpretation.

Axiomatic to the Trumpland playbook are questionable interpretations of the US constitution. The president finds the whole notion of checks and balances more than inconvenient: he finds them risible.

To that end, he is testing the water, largely as a means to banish Special Prosecutor Robert Mueller to the outer reaches of the political system. This forms a strategy of neutralisation that lies at the core of Trump's legal approach, one that seeks to cut Mueller's wings and limit his own exposure.

"As has been stated by numerous legal scholars," [tweeted Trump](#), "I have the absolute right to PARDON myself, but why would I do that when I have done nothing wrong?"

Such an expansive reading was bound to poke the Twittersphere, with one response to his observation being curt and tangy in rebuke.

"No person is above the law, not even the president," came an [irate respondent](#). "The president – the executive branch of our government is co-equal to the other two branches of government."

Former federal prosecutor and White House counsel Nelson Cunningham relevantly noted that no one was "going to indict the president while he is sitting. So whether he can pardon himself for a crime for which he won't be charged – is a moot point." The art of the television president is mastering the moot point and delivering it as a matter of pre-

emption.

Former White House counsel to President Barack Obama [Bob Bauer](#) also draws upon those who suggest that a prosecution for obstruction would not take place while Trump was in office.

“The case for immunity has its adherents, but they based their position largely on the consideration that a president subject to prosecution would be unable to perform the duties of the office, a result that they see as constitutionally intolerable.”

Reference should, instead, be made to the Pardons clause within the US constitution:

“The President... shall have Power to grant Reprieves and Pardons for Offences against the United States, except in cases of Impeachment” (Article II, section 2).

A thorny issue for the president to negotiate, given the glaring parallel offered by Richard Nixon. The president who desperately dragged the US national security state into its imperial form was confronted with the damning words of the Articles of Impeachment that he “obstructed, and impeded the administration of justice”.

While there is a certain tyrannophobic tendency in assessing elements of the current president’s misrule, such signature moves as enunciating the power of self-pardon by their very definition suggests authoritarian sensibilities. New York University professor [Ruth Ben-Ghiat](#) smells something going off in the US. “It’s in the tradition of the trial balloons he’s been launching since his campaign, which warn the public and his GOP allies that he feels he’s above the law.”

Charlie Sykes sees a president in a state of permanent, and dangerous experimentation.

“This is the president who has taken the unthinkable and made it thinkable,” he claimed with some exasperation. “Why go there? Unless you are floating it to see what would be considered acceptable in Congress and to the public.”

Trump’s own advisers have done their best to tell their employer what he wants to hear, notably over whether he could ever be guilty of obstructing justice. Attorney [John Dowd](#), by way of example, did come up with the potentially dangerous hypothesis that the “president cannot obstruct justice because he is the chief law enforcement officer under [the Constitution’s Article II] and has every right to express his view of any case”.

And here we again return to the notion of the immune sovereign who can technically commit no wrong. Rudy Giuliani, who now spends time advising Trump, has been even more unequivocal on the power of self-pardon.

“The constitution gave the president the right to pardon himself”.

There would be no need to avail himself of that, as he had not done “anything wrong”.

US constitutional history flies in the face of such a rosy reading, though it is undeniable that the executive branch, as one presiding over the Justice Department, does have latitude on prosecutions and terminations. Issues of impeachment, linked as they are to obstruction, remain key. Can the nation's chief law enforcement officer obstruct an investigation he has the power to terminate? White house counsel past and present cannot agree, but none can ignore the context of politics.

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