

ON HONOR

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Reflecting upon many years of government service, I am struck by the disappearance of a word that once was the coin of the realm: “honor.” It was once the concept of honor against which men and women measured their governmental behavior. It restrained undesirable actions. But I ask you—when was the last time you heard of any government or ex-government official being described as dishonorable? The reasons, I suspect, are quite complicated. One cause may well be society’s increased efforts to criminalize behavior. It has almost gotten to the point where people think if their behavior is legal, it cannot be blameworthy. And when, after our efforts to drive “honor” from our common lexicon, we find that a public official has betrayed our trust, we are surprised. C. S. Lewis put it starkly in his *The Abolition of Man*: “We laugh at honour and are shocked to find traitors in our midst.”¹

Government is hardly unique; the concept of honor appears to have atrophied throughout our society. But I wish to focus on government service. I think the demands of honor have some special application to such service. I will discuss both behavior while in office and the proper manner to leave government service, as well as the behavior of political opposition—particularly as it relates to the conduct of our nation’s foreign policy.

First, let me turn to the behavior of political appointees in the executive branch (I exclude the independent regulatory agencies). It should be obvious that people honored by presidential appointment, as well as those appointed by a presidential appointee, owe a degree of loyalty to the President. I say “a degree,” because every political appointee should be prepared to oppose any policy he or she believes is immoral or illegal—

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1. C. S. LEWIS, *THE ABOLITION OF MAN* 26 (HarperOne 2001) (1944).

even at the cost of one's career. Such appointees should have, metaphorically speaking, their resignation letters in pocket in case they are ever confronted with a question of conscience. Whether one should publicly describe the circumstances of his or her departure depends entirely on how serious a national issue is involved.

But I put it to you: it is flatly dishonorable for a political appointee anonymously to leak to the press his or her discomfort with administration policies. If those policies offend you, you should resign. The problem is that all the political incentives are to the contrary. If, for instance, you can position yourself through judicious leaks to a more popular side of a particular President—at least more popular with the dominant Washington currents—you will rapidly gain a favorable reputation. And those in the administration whom you oppose—including perhaps the President himself—will suffer accordingly. Presidents have continually been frustrated by this process, but I have always thought that they are not powerless to control leaking, even without using some of the draconian techniques Lyndon Johnson is said to have employed. Presidents can usually deduce where a leak originates by asking who stands to benefit. Then, the perpetrator can be discouraged and the targets rewarded as necessary. Granted, it is difficult—otherwise Presidents would have been more effective—but I don't think it is impossible.

It follows that those who engage in this leaking practice are not condemned by the press. If the cliché can be forgiven, the press doesn't bite the hand that feeds it. And, with the decline of the dictates of honor in our society that might otherwise restrict political appointees from unprincipled leaking, we see more and more of it. There are, of course, some political appointees who are still restrained by traditional notions of honor. They think it manifestly wrong to attack fellow appointees anonymously or to criticize the President on the sly. They are at a distinct disadvantage. They are the ones who, all too often, develop an unfavorable reputation—sometimes quite inconsistent with their real value. But they also know, as Sophocles once wrote, that it is better to fail with honor than to succeed by fraud.²

2. SOPHOCLES, PHILOCTETES 5 (Thomas Francklin, trans., Kessinger Publ'g 2004) ("Rather, much rather would I fall by virtue / Than rise by guilt to certain victory.")

What about career civil servants? To be sure, they do not owe political allegiance to the Presidents they serve. But is it not a fundamental premise of our democracy that the winners of elections, and their appointees, are owed a measure of loyalty so that the business of government can go on? To be sure, in our unique democracy which splits the executive and legislative authority, Congress exerts a gravitational pull on the civil service. Some years ago a delegation of British parliamentarians asked me why our executive branch has so many political appointees, whereas Britain manages with only a couple in each department. I explained that in Britain, the fusion of executive and legislative authority avoids the branch conflicts that our system contemplates.

The Congress's undoubted oversight role implies that career civil servants are justified in reporting, even confidentially, real administration improprieties to Congress, and the Inspectors General aid that role. But I do not think it extends to civil servants making common cause with open Congressional political opponents of an administration. Ultimately, it is the President who has the authority to run the executive branch, and civil servants in the executive branch are bound to afford any President institutional, if not political, loyalty.

By the same token, civil servants who leak confidential information to the press in order to sabotage administration policy for political reasons behave, in my view, in a manner inconsistent with the requisite institutional loyalty, and thereby also act dishonorably. I was rather astonished, for instance, to realize—when I co-chaired the President's Intelligence Commission—how openly some career intelligence and Foreign Service officers opposed the Bush Administration's Iraq policy. It became rather obvious to me who among them was leaking to the press. That is not to say that there was any disagreement about Saddam's possession of weapons of mass destruction. Unfortunately, that incorrect factual proposition was all too uniformly held. But the policy opinions openly expressed by many civil servants were a different matter.

I maintain the old-fashioned view that civil servants who disagree with a policy direction—and who have expressed that view through appropriate channels—have only two options: to resign publicly or to soldier on. And there are some career civil servants who gain temporary positions in the White House, who I think should adopt the added restraint of political ap-

pointees. Otherwise, administrations will be increasingly unwilling to bring such people into such close proximity to the President—and thereby lose valuable expertise.

Of course, federal judges are in a quite different position; they owe no institutional loyalty to either political branch. Indeed, it is an axiom of our system that in order to safeguard judicial independence, judges must eschew policy making or politics.³ That is why I have criticized judges who have expressed views on the qualifications of nominees. Once a nominee is named, the confirmation process is a political one. Nevertheless, it is also my view that it is inappropriate for nominees to answer questions in a confirmation hearing that probe into the future judge's views on legal doctrine. That is so because to do so jeopardizes judicial independence; it can and often does turn into a rather squalid bidding process whereby a nominee trades away some of his or her judicial independence in order to secure confirmation. If judges have an obligation to protect judicial independence—which they do—it is dishonorable to cooperate in this process.

Turning to departures from government, I have been dismayed at the increasing trend of political appointees who write books criticizing their own administration upon leaving government, while such administration remains in office. Particularly offensive are books that betray confidences (or sometimes fabricate them), especially when the author is a lawyer who breaches his or her obligations under the governmental attorney-client privilege. Granted, throughout the history of our Republic, some political appointees have gone public with their dissatisfactions and frustrations with an administration, but profitable book royalties have certainly upped the incentives. I submit that such activity is *blatantly* dishonorable—inconsistent with basic notions of loyalty that ladies and gentlemen should owe to a President who bestows upon them the high privilege of senior government service. I can think of numerous examples that have bedeviled the last five Presidents. But I would first like to mention some contrary examples of senior appointees leaving service honorably following disputes with the President.

3. To be sure, on occasion certain critics have accused me of being "partisan." I offer to buy dinner for anyone who can point to a single public partisan remark I have made since I was appointed to the bench.

A very young Dean Acheson was appointed Under Secretary (then the Number Two job) of the Treasury in the Roosevelt Administration through the offices of Felix Frankfurter. He argued strongly against a proposal to de-link the dollar from gold—to the point of exasperating the President.⁴ One day, as he was walking back to the Treasury from the White House, he was asked by the press why he had resigned. He had not done so, but realized at that moment that he had been fired.⁵ He told the press only that they should go to the President for answers. He returned to law practice without any public complaint.⁶

Some years later, another Roosevelt appointee was sacked and, in anger, bitterly attacked the President—even going so far as to support Alf Landon. Roosevelt was heard to say that the man should have consulted Acheson to learn how a gentleman leaves government. Roosevelt never forgot. With war clouds gathering, he again recruited Acheson to return to government, this time in the State Department, where he was eventually promoted by Roosevelt to Under Secretary. Acheson did write his memoirs, but they were published long after the presidencies he had served had ended.⁷

Another example is not so well-documented. But drawing upon some evidence and tidbits of information I have gathered, I think I know the story. It involved Cyrus Vance's resignation as Secretary of State in protest of President Carter's abortive effort to free the American hostages held in Tehran. You may recall that the White House put out the story that Vance was just opposed to the use of force, plain and simple.⁸ I do not believe that was true. After all, Vance had been a Deputy Secretary of Defense in a previous administration. I do know that President Carter had been presented with the military's rescue plan in the fall of 1979 and had been cautioned that its prospects would diminish with delay. The President did not authorize the rescue attempt until the spring of the next year during the Kennedy

4. See *The Diplomat Who Did Not Want to Be Liked*, TIME, Oct. 25, 1971, at 19.

5. See 2 ARTHUR M. SCHLESINGER, JR., *THE AGE OF ROOSEVELT: THE COMING OF THE NEW DEAL, 1933–1935*, at 242 (2003).

6. See Robert L. Beisner, *DEAN ACHESON: A LIFE IN THE COLD WAR* 11–12 (2006).

7. DEAN ACHESON, *PRESENT AT THE CREATION: MY YEARS IN THE STATE DEPARTMENT* (1987).

8. See Don Oberdorfer, *Vance Quits, Opposed Hostage Rescue Try; Iranians Display Bodies of U.S. Servicemen*, WASH. POST, Apr. 28, 1980, at A1.

nomination challenge, just before the all-important New York primary. I think Vance resigned because of the timing of the rescue attempt, not his opposition to force. Vance, a consummate gentleman, despite a sly effort by Administration spokesmen to impugn his courage, never responded.

Compare the behavior of these two gentlemen with an OMB director under Reagan, a Labor Secretary under Clinton, a Treasury Secretary and a press spokesman under George W. Bush, not to speak of various and sundry sub-cabinet officials—some of them lawyers ignoring attorney-client privilege—who rushed into print to savage their Administration, typically to a roar of media approbation and significant personal profit.

It might be thought that Acheson and Vance—and I would include George Schulz in that category—are representatives of a bygone era when honor was valued and dishonorable behavior widely condemned. But I know of a young lawyer, a political appointee in the recent Bush Administration, who, when pressed by political types in the White House to alter a civil law enforcement position for what he thought were political purposes—after complaining ineffectively to the then-White House counsel—quietly resigned.

It should be an accepted tenet of honorable behavior for government officials to disallow crass political factors to influence any law enforcement process. The specter of that—whether or not supported by facts—underlies the concern generated by the recent firings of U.S. Attorneys. By the same token, as I have suggested in my opinion in the Secret Service case,⁹ whatever the merits of Ken Starr's investigation, it was palpably dishonorable for President Clinton's aides to declare war on Ken Starr as Independent Counsel. After all, Starr, by virtue of *Morrison v. Olson*,¹⁰ so long as he was not discharged, represented the United States, and by extension necessarily the very President whose aides attacked him.

Now to turn to foreign policy, and particularly to the behavior of those who represent the political opposition. The cliché "that politics stops at the water's edge" is another way of saying that honor—loyalty to our country—places some limits on

9. *In re Sealed Case*, 146 F.3d 1031 (D.C. Cir. 1998) (Silberman, J., concurring in denial of rehearing in banc).

10. 487 U.S. 654 (1988).

the manner in which the political opposition may deal with representatives of other nations. It is perfectly within bounds to criticize an incumbent administration on national security policy—just as is true of domestic policy—but to try to undercut an administration's foreign policy by treating with a foreign power is despicable. It has occurred far too often and not solely by representatives of the party out of power. In my view, the behavior of Jimmy Carter abroad has been equally offensive, whether it was aimed at undermining President Clinton or Republican Presidents.

There have been some more troubling examples of senior representatives of a political opposition deliberately seeking to frustrate the conduct of U.S. foreign policy. Although it has not been conclusively proven, I am quite persuaded that Spiro Agnew, during the campaign of 1968, sought to encourage the South Vietnamese government to resist President Johnson's pressure for a peace agreement. Similarly, when the Soviet Union collapsed, and for a time KGB secrets became publicly available, it turned out that a senior Democratic senator had sought to encourage the Soviets to resist President Reagan's arms control proposals. Although there was brief press mention of this episode, it did not receive the attention it deserved.¹¹

It might be thought by some—to use a lawyer's term—that I lack standing to criticize this sort of behavior as dishonorable. I was accused and, to my astonishment, continue to be accused in various radical blogs of the very same kind of behavior. It is claimed that Dick Allen and I met with a representative of the Iranian regime during the hostage crisis of 1980 in order to discourage the release of the hostages prior to the election. If that were true, I would be darn near as duplicitous as Benedict Arnold. But, as the bipartisan House Committee led by Congressman Hamilton concluded, it was, and is, an utterly false charge.¹²

In the early fall of 1980 when I was Co-Chairman of Governor Reagan's foreign policy advisors and then a San Francisco banker, I came back to Washington for a meeting of Governor Reagan's advisors. Dick Allen, who subsequently became

11. See, e.g., Bill Gertz & Joyce Price, *Soviet files reveal Kennedy sought KGB help vs. Reagan*, WASH. TIMES, Feb. 15, 1992, at A3.

12. JOINT REPORT OF THE TASK FORCE TO INVESTIGATE CERTAIN ALLEGATIONS CONCERNING THE HOLDING OF AMERICAN HOSTAGES BY IRAN IN 1980, H.R. REP. NO. 102-1102, at 9, 116–18 (1993).

President Reagan's National Security Advisor, was playing a similar role in the campaign. As our session ended (I recall it dealt with Arab-Israeli issues), Dick asked me if I could accompany him to a meeting at the L'Enfant Hotel. He explained that Bud McFarlane, then working for Senator Tower, wished him to see someone who had information on the hostage crisis—which, of course, was a matter of great political consequence to both campaigns. He asked me to join him, as an ex-Deputy Attorney General, because he was a bit apprehensive. At about noon McFarlane walked into the lobby with a gentleman whom I remembered as a Moroccan. But, as Dick Allen's contemporaneously-written memorandum had it, the man was a Malaysian named Mohammed (at least I got the "M" right). He was a fervent supporter of the Shah and an adversary of the Iranian revolution, but he was definitely not an Iranian, still less a representative of the Iranian regime. He was also hostile to the Carter Administration for having abandoned the Shah. It was his plan to contact someone with influence in Iran to propose that the hostages be released before the election to Governor Reagan, thereby embarrassing President Carter. I was shocked and responded spontaneously that we Americans have only one President at a time, and although Dick asked him for any actual information he might have on the hostages—which he did not have—we left after only a few minutes. I advised Dick to write a memo of the meeting, which he did. Unfortunately the memo, subsequently authenticated by the FBI, was mislaid for years.

Ironically, it was I who unwittingly initiated the so-called "October Surprise" story, which grew into an utterly fantastic tale, even including George H. W. Bush's alleged secret trips to Paris to meet with Iranian emissaries. Bill Safire heard something of the L'Enfant Plaza meeting when he was doing a rather critical story on McFarlane, who had been Reagan's National Security Advisor. He called me (I was by then on the bench), and I told him what occurred. He made brief mention of it in a column raising, perhaps, unfair questions about McFarlane's judgment—it may well be that McFarlane was acting for Senator Tower.¹³

13. See William Safire, *Enough Already*, N.Y. TIMES, Nov. 24, 1986, at A19.

Some weeks later a reporter for the *Miami Herald*, Alfonso Chardy, picked up Safire's reference and, with the encouragement of Gary Sick, a rather minor non-tenured academic at Columbia who had served on Carter's NSC staff, twisted the truth completely. He wrote a long piece that claimed we had met with Iranian government representatives to *discourage* the release of the hostages.¹⁴ He had no credible support for the story, which I denied vigorously; it was a figment of an intensely partisan and fervent imagination, but for some in the Carter Administration and a few sympathizers in the press (particularly the extremely partisan *Los Angeles Times*¹⁵), it was a story too good *not* to be true—it served to de-legitimize President Reagan's election. I was gratified that most of the mainstream press (including the *Washington Post*) largely ignored the tale as not credible. It astounded me that anyone could bring him or herself to believe that senior representatives of one of our two parties would actually seek to endanger American lives for political purposes. It had a particular poignancy for me since, at that very time, my son Bob, Dartmouth '80, was an officer on a frigate patrolling the Persian Gulf. Yet even after the *New Republic* exposed the story as a hoax,¹⁶ Congress insisted on investigating it. Fortunately the House Committee unanimously agreed with the *New Republic*.¹⁷ Unfortunately, the Committee delayed its report until after the 1992 election.

I have never received an apology from those who concocted and disseminated the story and, as I've said, you can still find on the Internet grossly distorted versions of the truth. To be sure, the Democrats on the Hamilton Committee, throwing a bone to those who peddled the slander, pointed out that if we had told the Carter State Department of the approach, the story would not have gotten distorted, but that seems to me like blaming the victims. Of course, if we truly had been approached by a representative of the Iranian regime, whatever

14. Alfonso Chardy, *Reagan aides and the 'secret' government*, MIAMI HERALD, July 5, 1987, at IA.

15. See Doyle McManus, *'80 Reagan Pact With Iran: Rumor or Diabolical Deal?*, L.A. TIMES, Oct. 25, 1988, at LF5.

16. Steven Emerson & Jesse Furman, *The Conspiracy that Wasn't*, NEW REPUBLIC, Nov. 18, 1991, at 16, 16–31.

17. H.R. REP. NO. 102-1102.

the pitch, we would have immediately informed the State Department, but this notion dreamed up by a pro-Shah, anti-Carter Malaysian could hardly have been of any use to the Carter Administration. And as I have explained, we could not very well take it to the State Department without giving it more credibility than it warranted.

There is something quite awful in our democracy for responsible representatives of either party (or their press sympathizers) to imagine the other party capable of such dishonorable behavior. It very much reminds me of the myth propagated by Republicans during and after World War II that President Roosevelt had deliberately hidden from our own Navy and Army forces in Pearl Harbor the imminent Japanese attack or, for that matter, that President Bush had manufactured intelligence concerning Saddam's possession of weapons of mass destruction. Indeed, in my view, such accusations—without adequate support—betray a lack of honor on the part of those who levy the charges. It is, to use a psychiatric term, a form of projection. The accusers can imagine their political opponents capable of such behavior only because they can visualize using such tactics themselves.