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## **Goodbye to Willie Horton**

**Mike Huckabee effectively defended his Maurice Clemmons commutation — a good sign for overdue criminal justice reforms.**

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The American public is tired of hearing about Willie Horton. The case of Maurice Clemmons has given our elected leaders an opportunity to move on.

When an apparently deranged Clemmons shot to death four police officers sitting in a suburban Seattle coffee shop early one morning last November, the media zeroed in on Mike Huckabee's decision almost 10 years earlier, as governor of Arkansas, to commute the 108-year prison sentence that Clemmons was then serving for crimes committed when he was a juvenile. The commutation made Clemmons eligible for parole after 11 years in prison, and the parole board later released him.

Once again a sensational crime was attributed to the personal act of a politician with presidential aspirations. Commentators from Huckabee's own party were quick to pronounce the death of his hopes for high office. His rivals boasted of their own refusal on principle to show mercy to criminals. Not even prisoner advocates spoke up in Huckabee's defense.

A bipartisan chorus declared that Clemmons was "Mike Huckabee's Willie Horton."

No politician needs to be reminded of the iconic 1988 rampage by a furloughed prisoner that dashed Michael Dukakis' presidential hopes and ushered in two decades of harsh justice. For anyone aspiring to elective office, Horton has come to symbolize the hazards of any association with a high-profile crime. Since then, despite declining crime rates and escalating prison budgets, politicians have been cautious to the point of paralysis when it comes to criminal justice issues.

Nowhere has the spell cast by Horton been more powerful than where pardoning is concerned. Although attacks on chief executives related to particular pardons are nothing new in our history, never before has mere anticipation of attack succeeded in shutting down the pardon power altogether. With a few notable exceptions, recently governors and presidents alike have let their constitutional power atrophy, fearful of being labeled soft on crime or of being held personally responsible for a heinous act that might even tenuously be linked to them. Pardons and commutations have become essentially unavailable in many states and in the federal system, whether to release a dying prisoner, to rectify a sentencing error or to remove a barrier to employment. This creates special problems in jurisdictions where parole has been abolished, and where records cannot be expunged no matter how dated the conviction.

This is regrettable. The framers of our Constitution understood the unique and indispensable role of pardon when they entrusted the president with an unreviewable power to override the law. For most of our history, and until fairly recently, pardon played an integral operational part in the justice system. The Supreme Court has repeatedly relied upon the pardon power to save excessive or unjust punishments from constitutional infirmity. If pardoning is among a chief executive's toughest jobs, there is no time in memory when it has been more necessary to a just system. As Justice Anthony Kennedy has said, "A people confident in its laws and institutions should not be ashamed of mercy."

Time will tell if the prophets of doom are right about Huckabee's future in politics. A more able politician than Dukakis, he has vigorously defended his decision to commute Clemmons' sentence. Available facts suggest that he acted reasonably, as some commentators have commendably, if somewhat belatedly, pointed out. Polls and blog posts suggest that many are persuaded by his handling of the matter.

Of greater concern than Huckabee's political career are the implications of the Clemmons case for long-overdue criminal justice reforms and for the nascent revival of pardoning by a few courageous governors. The Seattle tragedy would be compounded if it were allowed to derail pragmatic proposals to reduce prison terms for nonviolent offenders, to increase the availability of drug and mental health treatment in and out of prison and to facilitate prisoner re-entry. It would be equally unfortunate if fear of forgiving sidelined pardon as a tool of law reform for another generation.

If the pardon power has not always been used responsibly, nothing good can come from refusing to use it at all. Lest predictions of a new freeze on pardoning become a self-fulfilling prophesy, we should be thinking about how to encourage our elected officials to approach their constitutional duties with a renewed sense of purpose. The governors of Illinois, Michigan and Ohio (all Democrats) are setting an example in their responsible pardoning that other chief executives would do well to emulate.

There are hopeful early signs that Maurice Clemmons will not become another Willie Horton, either for Mike Huckabee or for the rest of us. It will indeed be cause for celebration if that spell is at last broken.

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