The last word on the Iran-Contra affair?

The final report of the independent counsel

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Abstract. The article reviews the Final Report of the Independent Counsel on Iran-Contra and analyses the political and legal factors which shaped its character. It discusses the structure, methods and conclusions of the Report, as well as reactions to it. It argues that the failure to prosecute successfully the leading participants served to undermine the Report’s authority and helps to explain why there was no significant political response to the concerns it addresses.

To many people, the Iran-Contra scandal died when President Reagan left office. It had been extensively investigated and the scope for fresh revelations seemed very limited. When the scandal broke, President Reagan quickly established his own executive inquiry into the role and activities of the National Security Council. But the creation of the so-called Tower Commission¹ did not deter congressional committees from holding hearings. At the same time, an Independent Counsel was appointed by the Federal Court of Appeals on the application of the Attorney-General.

Media and public attention was focused less on the Independent Counsel and rather more on the joint congressional committee investigating Iran-Contra which held televised hearings in the summer of 1987. After four months of hearings, the congressional report was published in November 1987.² While the Tower Commission Report was unanimous and brief, the congressional report ran to 709 pages and divided into majority and minority reports. The impact of the congressional report was limited partly because the committee had split largely on partisan lines, and partly because of the public impact made by one of the witnesses, Colonel Oliver North.

The Independent Counsel, Lawrence E. Walsh, never achieved the public prominence accorded to Archibald Cox during the Watergate scandal. His efforts to prosecute senior members of the Reagan Administration received intermittent media attention but when on December 24th, 1992, President Bush pardoned former Secretary of Defense Caspar Weinberger for any crimes associated with Iran-Contra, Walsh seemed to have little option but to pack his bags and return to his private practice in Oklahoma.
Almost seven years after his appointment, Walsh's final report on Iran-Contra was published on January 18th, 1994. Not only had President Reagan left office, but so had his successor, George Bush. The media reaction was muted and mixed. As virtually all the major actors in the Iran-Contra drama have left the public stage, the relevance and importance of Walsh's Final Report are easy to miss. But the failure of Oliver North against the tide of Republican success in the mid-term election in November 1994 suggests that the issues raised by Iran-Contra may have a continuing resonance in the public mind.

If Iran-Contra continues to be important, it is obviously essential to understand what was at stake. While other investigations may be dismissed as self-serving (in the case of the Tower Commission) or as blatantly partisan (in the case of the majority congressional report), serious students of the scandal may be encouraged to turn to the Independent Counsel's Final Report as offering the most authoritative, objective, comprehensive and dispassionate analysis of the Iran-Contra affair. It is important, therefore, to understand the character and standing of Walsh's Report.

The Final Report appeared in three substantial volumes. The first volume runs to 566 pages and contains the Independent Counsel's history of Iran-Contra, a legal analysis of what is termed the operational conspiracy, and a detailed account of the investigations and cases involving National Security staff, CIA officers and State and Defense Department officials, as well as private individuals. There is a specific section which deals with the White House and includes discussion of the roles of the President, the Vice-President, the Attorney-General and the Chief of Staff. It ends with a short discussion of "Political Oversight and the Rule of Law" and with Walsh's hope that presidential subordinates will in future remember that "Their oath and fealty are to the Constitution and the rule of law, not to the man temporarily occupying the Oval Office".

The structure of Volume I does not make for easy reading because the focus is on individuals and their overlapping activities, and it leads to repetitive narratives. It is also possible to detect several hands at work in the different sections and complete integration of the text was clearly hard to achieve. At least part of the difficulty lies in problems inherent in the role of the Independent Counsel. It is not always clear whether Walsh is trying to explain what happened or whether he is trying to "nail" individuals. His brief was to investigate and, if necessary, to prosecute possible crimes arising from the sale of arms to Iran and the diversion of the proceeds to the Contra rebels in Nicaragua. But the prosecutorial style of his Final Report does give rise to questions of the balance of the evidence and the existence of possible mitigating factors which may have been excluded.