

Impeaching George W. Bush

Interview with Michael Ratner

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Until recently, talk of ousting President George W. Bush has proved little more than a distant rumbling. For too long, impeachment has been deemed implausible. It's not going to happen with a Republican Congress, so the argument goes. Not with the president finishing his second term, not while we're at war.

But the distant rumbling is growing louder by the day, creating a resonant echo that is rapidly taking root in public discourse. "Impeach Him," reads the cover of this month's Harper's magazine. And in a public forum in New York City last week, journalists, lawyers, and political figures came together to discuss the case against our president.

Since September 11th, 2001, there has been no shortage of news regarding this administration's involvement in torture, lies, secrecy and obstruction of the law. Yet, there has been little discussion in the mainstream media of holding those in power accountable for the actions so diligently catalogued by the press. It is a conspicuous vacuum that helps to explain why calls for impeachment are rapidly gaining currency.

In fact, the case for the impeachment of President Bush is arguably the strongest in American history. The Center for Constitutional Rights (CCR) makes this amply clear in its recent book, a concise indictment of President Bush that lays out four clear legal arguments that point to impeachment as a necessary remedy for the gross violation of our Constitution. The Articles of Impeachment Against George W. Bush covers illegal wiretapping, torture, rendition, detention and the Iraq war. An appendix compares the impeachment proceedings of Andrew Johnson, Nixon and Clinton to the comparatively more powerful case against Bush.

Lawyers at the CCR, indeed lawyers throughout the world, have been embroiled in litigation with the administration for years. But the administration has consistently demonstrated disdain for the law, with the president effectively thumbing his nose at the Supreme Court, Congress, and the American people. It is this reality that led Michael Ratner and his fellow lawyers at the CCR to provide a clear argument for impeachment to the American people and Congress.

The piecemeal battles that journalists, lawyers and activists fight every day are a testament to the respect many Americans still have for the rule of law. But arguments against the president's violation of the Constitution have not resulted in any reform or change in behavior. Public shaming and the threat of legal action often work to keep politicians in line. But President Bush is vocally disinterested in the public's approval of his agenda. Furthermore, he views the law, as evidenced by torture and detainee litigation, as mutable suggestion. For such a president, legal recourse is largely ineffectual — unless Americans

and Congress reclaim the power of the law to remove the offending parties.

As Ratner told AlterNet, “While our battles against illegal wiretaps and Guantanamo are critical for trying to get back legality, until we get rid of what I consider a criminal administration, we will not be able to go back to even a semblance of civil liberties and human rights.”

The Articles of Impeachment make clear that this is no longer just about President Bush. Rather, it is about preventing the executive branch from obtaining carte blanche to disregard the two other branches of government. This is a paradigm shift that has already gained substantial footing through this administration’s steady erosion of legal precedent.

There is no shortage of diligent documentation of this president’s violation of laws and misleading of the public — from the 1,284-page Torture Papers to congressman John Conyers’ 273-page compilation [PDF] of the lies leading to the Iraq war. But behind this incredible ongoing compendium of evidence against President Bush lurks the realization that publicly pointing to criminal behavior is not synonymous with bringing it to an end.

It is the ultimate case of missing the forest for the trees. Behind this massive body of evidence, behind each new report of this president’s transgressions of the law, is the threat of the one and only story that Americans will read for the rest of this presidency, and presidencies to come: The abuse of power, and the destruction of our Constitution.

As Ratner notes, “We need to be as radical as reality, and reality right now is very, very radical.” Indeed, after reading through the Articles of Impeachment, readers will find that the only thing radical about impeaching this president is simply that it has not yet happened.

AlterNet spoke with Michael Ratner to discuss the specifics behind the legal arguments for impeachment, and the need for popular protest to restore the rule of law and force Congress to hold this administration accountable.

Onnesha Roychoudhuri: Can you briefly describe the articles of impeachment?

Michael Ratner: We’ve drafted four articles: Article I concerns the warrantless wiretapping of Americans in the U.S. This constitutes a violation of the Foreign Intelligence Surveillance Act (FISA) which prohibits and makes criminal any wiretapping without a warrant. The president has said that he’s doing this, and it’s a criminal charge that can get you five years in jail for each count. Additionally, it violates the Fourth Amendment of the Constitution, which prohibits unlawful searches and seizures — this includes electronic surveillance. On a deeper level, these wiretaps deny the efficacy and validity of a congressional act.

Article Two of the impeachment of Richard Nixon is very similar. Nixon went outside of Congressional law and engaged in warrantless wiretapping against domestic dissidents and others who opposed the war in Vietnam. So, this article has a historical relation, obviously solid.

Article II is the falsifications that were used to justify the Iraq war. That’s the article that congressman John Conyers has really focused on — he’s written an extensive report that documents this. You reference any particular day and the administration was making statements that Iraq has a relationship to 9/11, al Qaida and Osama bin Laden; that Iraq had

weapons of mass destruction. In the one and a half years leading up to the war, the time during which they were making these statements, they knew that they were false.

Lying to Congress and the American people got us into a war that has two serious impeachable issues within it: First, it's an aggressive war contrary to the U.N. charter and contrary to law that doesn't allow war unless it's in self-defense. Secondly, it undermines the authority of Congress and the American people to decide when war is necessary. Through the lies, he got a number of Congress people to believe that war was necessary, thereby undercutting their constitutional obligation to decide on war.

Elizabeth Holtzman, who was part of the Judiciary Committee that voted to impeach Nixon, has written a long piece about how this constitutes fraud under criminal law. Of course, you don't need a criminal act to impeach someone, you simply need an act that undermines and subverts the basic constitutional structure of our government, as well as a failure to execute the proper laws.

Article III deals with what the president has done in regard to the issues of torture, arbitrary long-term detentions, disappearances and special trial. Our law is very clear on these things. You can't torture people, you can't commit war crimes, you can't send people to countries where they're tortured and you can't set up special courts for trial. The Geneva Conventions are a part of our law, as is the international covenant of civil and political rights. The president, in authorizing that entire range of activities, has not met with his constitutional obligation to faithfully execute laws.

Congress tried to put some brakes on the president through the McCain amendment, which prohibits cruel, inhumane and degrading treatment. But the president, in a signing statement, essentially said he reserved the right to ignore what Congress says. What he did is not just a violation of the law; he is destroying the checks and balances of our Constitution.

Article IV is a general article that puts all of the prior three articles together. If you look at these things together, you see that they are essentially destroying our republic and our democracy. They are destroying the constitutional structure of our government. Therefore, he should be impeached.

OR: Was it your intent for the book to be utilized by members of Congress to begin impeachment proceedings?

MR: Yes, that's definitely one of our intents. We would also like to see some courage given to our members of Congress. John Conyers has begun the process with 26 people now signed onto the inquiry bill, but that's very small compared to the number that should be there. Similarly with the NSA spying, 18 have signed on to a serious inquiry, but we're talking about the same kinds of conduct that were part of Nixon's impeachment proceedings — illegal use of electronic surveillance. Even Democrats like Al Gore are calling this a government of tyranny because of the utter and complete subverting of the Constitution.

Another intent is to popularize the issue that what the president has done has got to be looked. These aren't just individual issues, but a destruction of democracy on its deepest level. We want to popularize that idea and get it out there, particularly right now. If you look at the polls on warrantless wiretapping and the Iraq War, over 50 percent of Americans think that Bush could be impeached for these activities. But the media aren't picking this up. No

one's talking about impeachment from the New York Times, or the Washington Post or anywhere else.

OR: Why do you think that is?

MR: They claim it's because it's not realistic. But that's not at all the case. When they started with the Clinton impeachment, less than 30 percent of the people were willing to impeach him for his actions. Yet, the media carried it widely. It may be that there's a buy-in by some part of this media leader society — thinking that this could shake up our government too much. Some people think it's too dangerous to do so, but we would argue that it's much too dangerous not to.

OR: What do you say to Americans who think it isn't worth bothering with impeachment with the president currently in his final term?

MR: This administration has gone so far beyond what the requirements of the Constitution and the law. The question is whether this country can ever come back and resemble a democracy again. Unless you hold accountable the people who actually carried out an illegal war with Iraq, warrantless wiretapping and torture, there's nothing to stop the next administration — whether it's Republican or Democrat — from continuing with the same. We have to show that what happened in this country in the past four years is an utter subversion of our Constitution and completely unlawful under domestic and international law. Otherwise, I fear that this country may be changed forever in a very negative direction.

OR: What's at stake here?

MR: What's at stake is a presidency that is becoming an imperial presidency — in which he's no longer responsible to the judiciary or the Congress. This is a president that thinks that, on his own, he can wiretap people, torture people, pick them up anywhere in the world. This has to be beaten back, and it has to be done soon. It is becoming embedded in our society in a way that is very hard to get rid of.

For instance, we just had a loss in the case of Maher Arar. Part of the judge's thinking in his decision was that, while it may not be okay to torture in a criminal case, it may be okay if it's to prevent terrorism. When that kind of thinking is afoot, something has to be done. Otherwise, it will become embedded in our legal and political thinking in the next generations. There has to be accountability for this.

OR: There's a lot of people, especially on the left, who think of George W. Bush as very self-serving president. This characterization may be preventing people from seeing that he is actually thinking well beyond his presidency — with the intent to expand executive power for future administrations. Is this a fair characterization?

MR: Yes, this is about a particularly bad president — a president who doesn't care about constitutional rights. But what's really going on here is what Cheney actually came out and stated a month ago when he talked about warrantless wiretapping. He said that they wanted to overcome what happened to the presidency during the '60s and the '70s.

There's an absolute intent here to make the presidency much more powerful, what they call a unitary presidency where they're not just a co-equal branch, but they are the branch — no court or Congress can check them. This is not just about the president any longer, it's about these assertions of inherent power in the executive to override constitutional, international,

congressional limitations, and judicial limitations. That's a big problem because that's essentially a dictatorship.

OR: With all this gratuitous conduct that has been amassed in the media, the question arises, why haven't there been many legal successes stopping this behavior?

MR: At the CCR, in almost every single action discussed in the articles, we have various lawsuits going. The problem is that they take a long time. Also, the courts are not always in our favor. And, even when we win, the administration is able to undercut them. You don't just win by lawsuits; you win by popular protest, people in the streets. That's the way you have to win. The Center really believes that our lawsuits are important and people have to be represented. We have to stop torture to the extent that we can. But there has to be popular protest in this country, or our lawsuits are not going to change anything.

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