

Six months of Immunity

The Lies used to Justify the Iraq War. The Infamous Downing Street Minutes

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Seven years to the day after the Downing Street Minutes meeting at which top British officials famously discussed U.S. President George W. Bush's intent to launch a war against Iraq whether or not any means could be found to legalize it, on July 23rd, the United Nations hosted a [discussion](#) of ways in which wars of aggression are given pseudo-legal cover. Included were remarks by [Jean Bricmont](#) and [Noam Chomsky](#). It is not hard to imagine how different such discussions would be were the architects of the Iraq War ever held accountable for it in any way.

The Iraq War set a new low for the blatant openness of the lies used to justify it, and those lies included [a secret memo](#) signed by Jay Bybee, head of the Office of Legal Counsel, that purports to legalize any illegal wars launched by a U.S. president. If that memo and the OLC memos purporting to legalize specific war crimes like torture are left unchallenged, or if an attempt is made to prosecute those who exceeded the crimes "legalized" by the memos, the United States will henceforth be understood to openly treat as legal anything a president instructs a lawyer to "legalize" including the supreme international crime banned by the UN Charter, except when that crime is committed by nations other than the United States or Israel. Vice President Joe Biden recently remarked that Israel had the right to attack Iran if it chose to, a remark that would legitimize the worst crime there is, and yet a remark that Biden clearly made in an attempt to avoid any scandal or controversy by articulating what he and those he spends his time with understood to be universally accepted.

The crime of aggressive war against Iraq could be prosecuted in a foreign court, potentially in the International Criminal Court, theoretically in U.S. federal court, or — using an argument made by Vincent Bugliosi — through a local or state court in the United States where Bush could be tried for the murder of U.S. soldiers. The U.S. Department of Justice could also prosecute Bush for mispending funds on a war that had not yet been authorized in any way — funds appropriated only for other purposes, or for the crime of lying to Congress, or for using false propaganda domestically, for imprisoning children, employing assassination squads, using the U.S. military domestically, spying without warrant, exposing an undercover agent, obstructing justice, or various other crimes. And an attorney general who would do all of that (or even most attorneys general who wouldn't) would also overturn the prosecutions of political prisoners like Don Siegelman, Paul Minor, and so many others, and hold accountable those who used the Justice Department to target state and local elected officials, 85 percent of those prosecuted being Democrats and the other 15 percent consisting largely of moderate Republicans. Many of the crimes above could also be

prosecuted in foreign courts. A foreign or international court could conceivably even prosecute the crime of continuing the occupation into 2009, since the UN fig leaf for the occupation expired in December 2008 and has been replaced only by a treaty drawn up between an occupier and a puppet government of the occupied, a treaty now openly violated by both parties and never properly ratified by either nation. Many of the crimes could be, and several are, the subjects of civil suits as well. Bybee, who is now a federal appeals judge, could [be impeached](#) by Congress. He and other lawyers can also be disbarred.

If the architects of the Iraq War were being held accountable in any way for launching it and, in some cases, profiting from it financially, it is likely that U.S. troops would now be withdrawing from Iraq. As it is, no withdrawal is underway, a war in Afghanistan is being expanded, the possibility of launching a war against Iran is being kept open, and illegal strikes are being launched fairly routinely into Pakistan. We have seen in the past six months not just a period of immunity, but the clear results of that immunity, the clear evidence of why “looking backwards” has an enormous impact on what you see when you look forward. Sadly, much of the peace movement has not only stopped pressing for peace and lost the funding with which to do so, but it has also failed to at long last take up the cause of deterring future war crimes by prosecuting past ones. The positive news is that human rights and civil rights groups have taken up the cause of prosecuting torture. The drawback is that they never mention aggressive war, and it is hard to imagine an aggressive war occurring without torture even if torture has been punished.

For each of the other crimes that Bush and Cheney have been granted immunity for, a similar story can be told. The crimes are not in the past, because they are being continued in the present. In the case of indefinite detention, President Obama has fought in court and made a speech in front of the U.S. Constitution at the National Archives asserting the power to do exactly what candidate Obama said was unconstitutional. Obama is imprisoning people outside of any rule of law in Bagram and Guantanamo, and proposing to keep some of them in prison indefinitely without ever bringing them to trial. He is proposing to formalize such a system and dress it up in “due process” reviews. He asserts the power to render prisoners to other nations, as well. Having promised not to render prisoners for the purpose of having them tortured, Obama now claims the power to render prisoners while promising not to use it for torture, yet failing — in the view of many human rights advocates — to justify the practice. It is a safe assumption that Obama’s behavior would be different, that he would not be proposing to formalize preventive detention, were Bush being criminally prosecuted or impeached or held liable in civil court cases for it.

On August 4th Director of Central Intelligence Leon Panetta published a column essentially advocating immunity for all past criminals who held important positions in the federal government. Panetta excused the CIA as having obeyed Bush, failing to recognize that being asked to disobey laws by one’s employer does not create legal protection. At the same time, Panetta urged immunity for Bush as well. And Panetta claimed that the United States no longer tortures. One problem with this is that, even if it were true, it would also be true that the United States offers no deterrent against torture by its government employees or future top officials. A deeper problem is found in statements Panetta has made claiming the power to, in fact, torture. Back in May, blogger Josh Marshall was mystified, writing:

“One of the weirdest moments in Vice President Cheney’s speech was when he claimed that ‘President Obama has reserved unto himself the right to order the use of enhanced

interrogation should he deem it appropriate.”

But when you take a crime like torture and turn it into a policy question, and you choose the policy of not torturing, you maintain the power to switch to the policy of torturing without any criminal penalty — unless someone else manages to transform torture back into a crime again. Here’s Leon Panetta at his confirmation hearing, as reported by the Guardian:

“Pressed by Democrat Ron Wyden of Oregon about a ‘human ticking time-bomb’ scenario, in which a terrorist knows of an imminent attack on the U.S., Panetta said he believed torture would not be necessary to extract information. ‘I’m of the view that when you look at the FBI and the US military, that they have been able to show that it is possible to get the information that’s needed to protect our nation’s security,’ he said. However, he added: ‘If we had the ticking bomb situation and I felt that whatever we were using wasn’t sufficient, I would not hesitate to go to the president and request any additional authority that we would need.’”

Following Cheney’s statement and Marshall’s bewilderment, MSNBC asked presidential advisor David Axelrod about it. Axelrod repeatedly refused to deny that Obama believed himself to possess the power to legally torture. Predictably enough, there have been [numerous reports](#) of ongoing torture and inhuman and degrading treatment committed by the United States as well as by the government of Iraq. Were torturers being prosecuted, fewer prison guards would still be torturing.

It’s the same story with warrantless spying. It’s not being prosecuted, and it’s also — predictably enough — not ending. And it’s the same story with a wide variety of abuses of power that Bush engaged in to a greater extent than did those who preceded him: the abuses are being cemented in place by Obama. Rather than throwing out signing statements that altered laws, Obama has begun writing his own. Rather than throwing out executive orders that create laws, Obama has begun issuing his own. Rather than opening up records and accepting court challenges that had been blocked by claims of “state secrets,” Obama is repeating and enlarging those claims. Rather than delivering subpoenaed witnesses like Karl Rove to Congress, Obama’s White House Counsel is interfering in the work of the Justice Department to negotiate very partial compliance on behalf of Rove, an old friend of his. Rather than declassifying information unnecessarily made secret, Obama is making materials secret that Bush did not. Rather than rewarding whistleblowers who had been punished for their good deeds, Obama has signing statements away constraints on his power to retaliate against whistleblowers by firing them. Were Congress holding Bush accountable for any of these abuses, Obama would be less likely to engage in them. Once Bush and Obama engage in them without protest, it may become more difficult for Congress to change course and deny the same powers to Obama’s successor.

So, what can we do? There is, at <http://prosecutebushcheney.org> a long list of steps we can take to pressure and encourage those who need it, and to create systemic reforms that make future crimes and abuses somewhat less likely. But ultimately, we are going to need to resist through nonviolent mass action, and the sooner we realize and organize that the better. It will not be easy. It will be a lot harder than what we have done thus far. But I have seen a lot of people make great sacrifices these past few years, and their examples have the potential to inspire others. Members of Veterans for Peace have done more than anyone else. And let me give you an example from this week from a friend of ours named Cynthia

Papermaster. Here's a woman with a fixed income and no health insurance who has taken a large chunk of her retirement savings out of the bank and used it to purchase air time during the most worthwhile television shows there are for [advertisements demanding](#) that Attorney General Eric Holder enforce our laws against torture. I can't advise others to make the same sort of sacrifice, but I can point out that if others did it would radically change our situation, and that by removing money from the largest banks and from health insurance companies (which by and large will not actually cover you if you become seriously ill) it is possible to do more than one sort of good deed at the same time.

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