

# The Highest Law of the Land “Requires” the Government to Prosecute Those Who Authorized Torture ... Including Bush, Cheney Et Al

As Well as Everyone Else Who Ordered It Or Failed to Take Steps to Stop It

By [Washington's Blog](#)

Global Research, August 05, 2014

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Region: [USA](#)

Theme: [Crimes against Humanity](#), [Law and Justice](#)

*Preface: This is not a partisan issue. As shown below, Democrats are complicit in high crimes as well.*

## The Government Is Breaking the Law By Failing to Prosecute Torture

President Ronald Reagan signed a treaty legally **requiring** the U.S. to prosecute everyone who authorizes torture.

Specifically, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([signed](#) by the U.S. under Ronald Reagan) [provides](#):

### Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. **No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.**

3. **An order from a superior officer or a public authority may not be invoked as a justification of torture. . . .**

### Article 4

1. Each State Party shall **ensure that all acts of torture are offences under its criminal law**. The same shall apply to an attempt to commit torture and to an act by **any person which constitutes complicity or participation in torture**.

### Article 7

1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, **shall** in the cases contemplated in article 5, if it does not extradite him, **submit the case to its competent authorities for the purpose of prosecution**.

### Article 15

Each State Party shall ensure that **any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings**, except against a person accused of torture as evidence that the statement was made.

This is not some non-binding, touchy-feeley resolution ... it is the law of the land.

Specifically, Article 6 of the United States Constitution [dictates](#):

This Constitution, and the laws of the United States which shall be made in pursuance thereof; **and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land**; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

On May 20, 1988 - as he was transmitting the Treaty to the Senate - Reagan [said](#):

**The United States participated actively and effectively in the negotiation of the Convention.** It marks a significant step in the development during this century of international measures against torture and other inhuman treatment or punishment. Ratification of the Convention by the United States will clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today.

The core provisions of the Convention establish a regime for international cooperation in the **criminal prosecution of torturers relying on so-called "universal jurisdiction."** Each State Party is **required** either **to prosecute torturers** who are found in its territory or to extradite them to other countries for prosecution.

In a 2005 Report to the UN Committee Against Torture [2005 Report to the UN Committee Against Torture](#), John Bellinger - the Legal Adviser to the George W. Bush State Department - [wrote](#):

Article 6 (Detention and preliminary inquiry in cases of extradition) and Article 7 (Extradite or prosecute)

53. As described in the Initial Report, federal law and bilateral extradition treaties provide the legal basis by which the United States can either extradite or prosecute individuals alleged to have committed offenses involving torture, **as required by Article 7 of the Convention.**

Also in 2005, Condoleezza Rice - Bush's National Security Advisor and then Secretary of State - [said](#):

**Torture, and conspiracy to commit torture, are crimes under U.S. law,** wherever they may occur in the world.

In addition, the United States War Crimes Act of 1996, a federal statute set forth at [18 U.S.C. § 2441](#), makes it a federal crime for any U.S. national, whether military or civilian, to violate

the Geneva Convention by engaging in murder, torture, or inhuman treatment. (Torture is – of course – a violation of the [Geneva Conventions](#), which make it illegal to inflict mental or physical torture or inhuman treatment. )

The statute applies not only to those who carry out the acts, but also to those who [ORDER IT, know about it, or fail to take steps to stop it](#). The statute applies to [everyone, no matter how high and mighty](#). 18 U.S.C. § 2441 has **no statute of limitations**, which means that a war crimes complaint can be filed at any time.

The penalty may be life imprisonment or — if a *single* prisoner dies due to torture — death. Given that there [are numerous, documented cases](#) of \_ prisoners being tortured to death by U.S. soldiers in both Iraq and Afghanistan, that means that the death penalty would be appropriate for anyone found guilty of carrying out, **ordering**, or **sanctioning** such conduct.

The Military Commissions Act of 2006 limited the applicability of the War Crimes Act, but still made the following [unlawful](#): torture, cruel or inhumane treatment, murder, mutilation or maiming, intentionally causing serious bodily harm, rape, sexual assault or abuse.

In 2006, 9/11 Commission Executive Director Philip Zelikow – a key member of Bush’s transition team in 2000, and a top assistant to Ms. Rice – [noted](#) that the Bush administration’s use of “cruel, inhuman or degrading” interrogation techniques like waterboarding were “a **felony war crime**” ... “even if there is a compelling state interest asserted to justify them.”

Zelikow [added](#):

We are unaware of any precedent in World War II, the Korean War, the Vietnam War, or any subsequent conflict for authorized, systematic interrogation practices similar to those in question here ... **even where the prisoners were presumed to be unlawful combatants.**”

Dean of the Massachusetts School of Law and a professor of law [Lawrence Velvel](#) and many other legal experts say that the torture which was carried out after 9/11 is a [war crime](#).

Former U.S. Attorney General Ramsey Clarke [notes](#):

The U.S. is **treaty bound to prosecute all persons, high and low, who have authorized, condoned or committed torture** if our word in the international community is to mean anything.

Darrel Vandeveld – former prosecutor in the Guantanamo military commissions, and current Lieutenant Colonel in the Army Reserve – [wrote](#):

Torture is a crime and the United States engaged in it. Those are two indisputable facts...

The process of self-examination and accountability has been, and remains, **the only way to move forward and regain our moral and legal grounding...**

We have a Department of Justice for a reason, and now it's up to Attorney General Holder, the nation's top law enforcement officer, to do his job and appoint an independent prosecutor to follow the evidence where it may lead...

**It is critical that we hold accountable those who authorized, those who legally sanctioned and those who implemented the torture policies of one of the darkest periods in our nation's history. What is at stake is nothing less than our democracy.**

[Moreover:](#)

General Ricardo Sanchez, the **former top coalition commander in Iraq**, called for a Truth Commission so we might fully understand the failure of the military and civilian command to honor the pledge of our constitution.

Sanchez . . .stressed that the outcome must embrace a variety of solutions, **including prosecution.**

Sanchez stated, "When the president made the declaration that the Geneva Conventions no longer apply, we unleashed the hounds of hell and eliminated all the foundations for the training, ethics and structure we had built into our soldiers and our leaders for how to conduct these kinds of operations."

Sanchez stated many problems could be traced to loyalties to individuals and political parties.

Former President Jimmy Carter is also [calling](#) for a truth commission with the possibility of prosecution:

"[I] like to see is a complete examination of what did happen, the identification of any perpetrators of crimes against our own laws or against international law," said Carter. "And then after all that's done, **decide whether or not there should be any prosecutions.**"

Colin Powell's former chief of staff stated that [Dick Cheney is guilty of war crimes for overseeing torture policies.](#)

Matthew Alexander - a former top Air Force interrogator who led the team that tracked down Abu Musab al-Zarqawi - notes that government officials [knew they are vulnerable for war crime prosecution:](#)

They have, from the beginning, been trying to prevent an investigation into war crimes.

A Malaysian war crimes commission also found Bush, Cheney, Rumsfeld, and five administration attorneys [guilty of war crimes](#) (although but the commission has no power to enforce its judgment).

## **There Is NO DEFENSE**

Former National Security Adviser and Secretary of State argued that : as late as 2009, Rice echoed Richard Nixon (and Nazis during the Nuremberg war crimes trials) by claiming - "if it

was authorized by the president, it did not violate our obligations under the Convention Against Torture”:

Former constitutional lawyer Glenn Greenwald [noted](#) in 2009:

All of the standard excuses being offered by ... apologists and our political class (a virtual redundancy) - namely: our leaders meant well; we were facing a dangerous enemy; government lawyers said this could be done; Congress immunized the torturers; it would be too divisive to prosecute — are explicitly barred by this treaty (i.e., binding law) as a ground for refusing to investigate and prosecute acts of torture.

This is also why the standard argument now being offered by ... apologists (such as [University of Chicago Law Professor Eric Posner](#), echoing his dad, [Court of Appeals Judge Richard Posner in Chicago](#)) as to why prosecutions are unnecessary — namely: there is “prosecutorial discretion” that should take political factors into account in order not to prosecute — are both frivolous and lawless. The Convention explicitly bars any such “discretion”: “The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, **shall . . . submit the case to its competent authorities for the purpose of prosecution.**” The principal purpose of the Convention is to **remove the discretion involved in prosecuting acts of torture** and to bar the very excuses which every torturing society proffers and which our own torturing society is now attempting to invoke (“we were dealing with real threats; there were ‘exceptional circumstances’ that justified it; we enacted laws legalizing the torture; our leaders meant well; we need to move on”).

International treaties which the U.S. signs and ratifies aren’t cute little left-wing platitudes for tying the hands of America. They’re binding law according to the explicit mandates of Article VI of our Constitution. Thus, there simply is no way to (a) argue against investigations and prosecutions for Bush officials and simultaneously (b) claim with a straight face to believe in the rule of law, that no one is above the law, and that the U.S. should adhere to the same rules and values it attempts to impose on the rest of the world. Last week, [Paul Krugman stated](#) about as clearly as possible why this is so:

I’m sorry, but if we don’t have an inquest into what happened during the Bush years — and nearly everyone has taken Mr. Obama’s remarks to mean that we won’t — **this means that those who hold power are indeed above the law because they don’t face any consequences if they abuse their power.**

Bush and Cheney have both admitted *on camera* that they ordered waterboarding and “enhanced interrogation”:

(Obama, Attorney General Holder, and all of the experts say [waterboarding is torture](#).)

And both the Senate Intelligence Committee’s torture report - and many other sources - document that the U.S. undertook a [systematic and widespread program of torture](#) (of a specific type of torture aimed at producing false confessions).

Yet Daily Kos [notes](#) that *none* of those who authorized or condoned torture have been

published in any way, shape or form:

But over five years later, no “patriotic official” has been indicted, no judges have been impeached and no professor has been stripped of his academic tenure—not even [the one who defined torture](#) as “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” In June, [John Yoo](#) was awarded an endowed faculty chair at the UC Berkeley School of Law. Bush appointee [Jay Bybee](#) remains on the federal bench. Cheney’s legal alchemist [David Addington](#) is now creating alternative realities at the Heritage Center. Psychologist [James Mitchell](#), one of the consultants who helped the Bush administration render the Geneva Conventions quaint, didn’t lose his professional credentials, even after claiming, “I’m just a guy who got asked to do something for his country.” [Jose Rodriguez](#), who as head of the CIA’s clandestine service personally ordered the destruction of dozens of interrogation videotapes, is a conservative hero who has smeared the soon-to-be-released [Senate Intelligence Committee report](#) on the CIA torture program despite having never read a word of it. Meanwhile, [Dick Cheney](#) appears regularly on your television screen to accuse President Obama of treason. As for Cheney’s former Oval Office sock puppet, [George W. Bush](#) is free to paint himself in the shower and give speeches to “replenish the ol’ coffers.”

## Democrats Are Complicit

It’s *not* just Republicans ... Democrats are complicit.

For example, Nancy Pelosi, Harman and Rockefeller all [knew about – and covered up – the torture](#) program.

And Obama and Attorney General Holder are also complicit for failing to prosecute those who ordered or covered up torture. As progressive writer Dan Froomkin [reported](#) last year:

The [Constitution Project’s Task Force on Detainee Treatment](#) ... lays the blame fully at the feet of the **current administration**, for covering up what happened and stifling any sort of national conversation on the topic — and the media, for splitting the difference between the facts and the plainly specious argument made by torture regime’s architects that what occurred should be defined as something other than what it so obviously was.

The report points out, as [I have in the past](#), that neither Obama nor Congress have done a thing to make sure that, the next time a perceived emergency comes up, some other president or vice president won’t decide to torture again.

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“The United States cannot be said to have complied,” the report concludes, noting:

No CIA personnel have been convicted or even charged for numerous instances of torture in CIA custody — including cases where interrogators exceeded what was authorized by the Office of Legal Counsel, and cases where detainees were tortured to death. Many acts of unauthorized torture by military forces have also been inadequately investigated or prosecuted.

## **So it's not just Bush and Cheney who violated international law; now it's Obama, too.**

The report is blistering about the cover-up. "The high level of secrecy surrounding the rendition and torture of detainees since September 11 cannot continue to be justified on the basis of national security," it states. "Ongoing classification of these practices serves only to conceal evidence of wrongdoing and make its repetition more likely."

And Obama appears to be [continuing the](#) "extraordinary rendition" type of torture.

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