

# Obama Ruling Shields Torturers and War Criminals

By [Ray McGovern](#)

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*When Nobel Laureate Desmond Tutu said last week that the ex-leaders of the U.S. and U.K. should be made to “answer for their actions” in attacking Iraq on the basis of lies, Western savants and pundits greeted the remarks from the retired archbishop of South Africa with an all-too-familiar knowing, dismissive shrug. It was the same condescending shrug with which U.S. media dismissed the undisputed documentary evidence in the [Downing Street Minutes](#) of July 23, 2002, clearly showing that the “intelligence and facts were being fixed around the policy” plan to attack Iraq.*

But in his op-ed of Sept. 2 in London’s Observer, Tutu pulled no punches: “Those responsible for this suffering and loss of life [in Iraq] should be treading the same path as some of their African and Asian peers who have been made to answer for their actions in the Hague.”

Tutu noted that shortly before George W. Bush and Tony Blair ordered the invasion of Iraq, he called the White House urging that the U.N. inspectors be given more time to search for weapons of mass destruction in Iraq. Then-national security adviser Condoleezza Rice “demurred, saying there was too much risk and the President would not postpone [the attack] any longer.”

Mincing few words about the fraudulent “justification” for the attack, Tutu wrote, “The then-leaders of the US and UK fabricated the grounds to behave like playground bullies. ... They have driven us to the edge of a precipice where we now stand – with the spectre of [new conflicts in] Syria and Iran before us. ...

Tutu continued, “If it is acceptable for leaders to take drastic action on the basis of a lie, without an acknowledgement or an apology when they are found out, what should we teach our children?”

Tutu and Brandeis

What leaped to mind is the famous (but largely unobserved) warning of Supreme Court Justice Louis Brandeis in 1928 – a strong admonition with such sad relevance today:

“The government is the potent omnipresent teacher. For good or ill it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that the end justifies the means — to declare that the government may commit crimes — would bring terrible retribution.”

Before this century, it was not unknown for the U.S. government to break the law. What distinguishes the first dozen years of the 21<sup>st</sup> Century is Washington’s utter disregard for law

– both national and international – and its backsliding into the law of the jungle, where might makes right.

Nowhere is this clearer than in reluctance of the Obama administration to hold practitioners of the most flagrant abuses – torture, for example – to account. As Marjorie Cohn [has pointed out](#), Attorney General Eric Holder, in announcing on Aug. 31 the closure of the last two criminal investigations of deaths apparently from CIA torture, Holder conferred amnesty on countless officials, lawyers and interrogators who set and carried out the policy of cruel treatment.

Holder’s announcement that the Justice Department will not prosecute CIA officials responsible for the deaths of detainee Gul Rahman in a secret CIA prison in Afghanistan in 2002 and Manadel al-Jamadi in Iraq in 2003 is tantamount to giving CIA operatives license to torture and kill with impunity.

Rahman froze to death after being beaten, stripped and shackled to a concrete wall at the CIA’s infamous “Salt Pit.” A U.S. military autopsy ruled al-Jamadi’s death a homicide. This came as no surprise to the millions who saw the photo of his beaten, lifeless body packed in ice and wrapped in plastic, lying on the ground at Abu Ghraib.

These two cases had been the only ones still open, after President Barack Obama decided not to prosecute other CIA officials involved in abusing detainees. Applying a novel approach to this heinous chapter, the President insisted on not “laying blame for the past” but “instead come together on behalf of our common future.”

### The Seven Moral Dwarfs

One of the most powerful pressures intimidating Obama was the vocal opposition of seven previous CIA directors, supported by a sympathetic “mainstream” media, to the very thought of holding CIA officials accountable for torture and other abuses. Although it has been long since forgotten, Obama and Holder initially gave some lip service to the concept of no one being above the law.

Unable to prevent Holder from starting an investigation of torture and other war crimes implicating CIA officials past and present, some of those same CIA officials, together with what in intelligence circles are called “agents of influence” in the media, pulled out all the stops to quash the Department of Justice’s preliminary investigation.

In a bizarre twist, seven CIA directors — including three who were themselves implicated in planning and conducting torture and other abuses — [wrote to the President](#) in September 2009, asking him to call off Holder. The letter and the motivation behind it could not have been more transparent or inappropriate, in my judgment.

### Afraid of the CIA?

In these circumstances, Obama refused to honor his Constitutional duty to “take care that the laws be faithfully executed.” For the same reason – fear – he kept on duty the CIA managers, lawyers and operatives implementing the kidnapping, torture, secret prisons and other abuses of the Bush/Cheney years.

The CIA director in place before Obama took office, Michael Hayden, made the mistake of

threatening Obama, none to subtly, that there would be insubordination in the ranks, were he to allow CIA officials to be held accountable for war crimes and other abuses. So Obama dispatched Hayden unceremoniously, replacing him with a much more politically astute, malleable, well-connected politician/lawyer named Leon Panetta as CIA director.

Panetta at once took on the function of defense lawyer for the CIA. Virtually all those responsible for the abuses of the Bush/Cheney-era continued in place. And to this day, those operations officers loudly sing Panetta's praise for protecting them.

The only CIA manager who paid something of a price for his open advocacy of "extraordinary rendition" (aka kidnapping and sending captives abroad for torture) and other abuses was John Brennan, one of former CIA director George Tenet's closest lieutenants.

### Brennan Too Tainted

Obama had appointed Brennan to lead his advance team at the CIA and it became quickly clear that, initially, Brennan was in line to become CIA Director. But the Senate Intelligence Committee had the book on Brennan, and warned Obama's staffers of the likelihood of a Donnybrook at any confirmation hearings, were Obama to nominate Brennan to become CIA director.

The Senate Intelligence Committee has spent the last three years researching the CIA's detention and interrogation program, in which Brennan played a key role, and reportedly has completed its report. According to a reliable source with good access, Brennan is shown to be one of the senior officials complicit in the worst abuses and that, partly for this reason, the Senate committee will not make the report public until after the November election.

That Brennan had a very soft landing within the Obama administration speaks volumes. Apparently, Obama felt it not quite possible to just let him go, since Brennan knew where a lot of the bodies were buried, so to speak, and would be less dangerous (and maybe even an asset) if kept on the inside.

In any case, whether out of fear of a jilted Brennan or regard for his experience on what Cheney called the "dark side," Obama decided to give Brennan a White House job in which he could still wield considerable influence on intelligence operations without having to go through a contentious confirmation proceeding.

Brennan became deputy national security adviser for counterterrorism, with White House writ over several key functions related to "covert action" – like compiling lists of terrorism "suspects," including American citizens, to be summarily assassinated – and CIA-led drone operations.

### A Congenital Structural Fault in CIA

It was an unfortunate accident of history that, after World War II, covert action operatives were given a home in a CIA created by President Harry Truman for a completely different purpose – to give him prompt, no-holds-barred intelligence analysis and prevent another surprise attack like Pearl Harbor. The State Department's George Kennan, on the other hand, wanted to create a strong capability to checkmate the U.S.S.R. by covert action, including overthrowing governments (known today as "regime change").

Kennan and his supporters cleverly shoehorned the covert operations function and its practitioners into the CIA by inserting one sentence into the National Security Act of 1947. That sentence charged the CIA director with performing “such other functions and duties related to intelligence” as the President might assign.

Presidents like George W. Bush have interpreted that sentence as carte blanche to use the CIA as their own personal Gestapo. Do not blanche before the word Gestapo, the name for Adolf Hitler’s secret police. Once out of office, Truman himself was quoted as using it while bemoaning what had become of the CIA he created to provide him with objective intelligence upon which to base well informed policy decisions.

In a Washington Post op-ed on Dec. 22, 1963, titled “Limit CIA Role to Intelligence,” Truman complained that the CIA had been “diverted from its original assignment ... from its intended role.” He argued that the CIA’s “operational duties be terminated or properly used elsewhere.”

Correspondence between Truman and a former intelligence aide, Admiral Sidney Souers, suggests that the timing of the op-ed, one month after President John Kennedy’s assassination, was no accident. Documents in the Truman Library show that nine days after the assassination, Truman sketched out what he wanted to say in the op-ed.

The mainstream media moved quickly to prevent further distribution of Truman’s op-ed. Moreover, it was reportedly pulled from subsequent editions of that day’s Washington Post itself. Apparently, covert action, including the use of “agents of influence” within the U.S. media, was alive and well in 1963.

#### Accumulated Evil

Fast forward four decades to George W. Bush’s decision to mount a “global war on terror” and to attack Iraq under conditions identical to what the post-WWII Nuremberg Tribunal defined as a “war of aggression.” Nuremberg depicted such a war as the “supreme international crime, differing from other war crimes only in that it contains within itself the accumulated evil of the whole.”

It fell to then-CIA Director George Tenet to structure and staff the accumulated evils of kidnapping, torture, secret prisons – and God knows what else. Tenet performed “such other functions and duties” with aplomb – with only a tiny trace of soul searching.

In his memoir, *At the Center of the Storm*, Tenet notes that the CIA needed “the right authorities” to do the President’s bidding: “We would be given as many authorities as CIA had ever had. Things could blow up. People, me among them, could end up spending some of the worst days of our lives justifying before congressional overseers our new freedom to act.” (p. 178)

But Tenet and his White House masters concluded, correctly, that given the mood of the times and the lack of spine among lawmakers, congressional “overseers” would bend into their post-9/11 role of serving as congressional “overlookers.”

That left only the federal prosecutors to worry about. With Holder’s announcement last week, any lingering fear that Obama or Holder might summon the courage to prosecute CIA officials, operating within those “authorities” or beyond them, has now evaporated.

Back at CIA

What effect, I wonder, will the exoneration of all those “dark-side” CIA officials have on the agency’s efforts to recruit new employees? What kinds of recruits are likely to be attracted at the prospect of engaging in this kind of work with “no worries?” And what will it be like eating in the CIA cafeteria, wondering whether the folks at the next table have had blood on their hands.

What kind of chilling effect will Holder’s announcement have on CIA and military employees with a conscience, who might consider blowing the whistle, in the hope that the crimes be stopped and the perpetrators held to account?

Now, not only will they be acutely aware that by sticking their necks out they will risk their own livelihoods and more, but they would also have to reckon with the likelihood that the crimes they might try to expose would be covered up and their perpetrators protected.

Bottom line? Nothing will be done about it anyway, so why take any risk at all? That is the message intelligence officials are likely to take from the announcement of our chief law enforcement official, Attorney General Eric Holder, that no one is to be prosecuted for grievous crimes of state.

*Ray McGovern works with Tell the Word, the publishing arm of the ecumenical Church of the Saviour in Washington, DC. During his career as a CIA analyst, he prepared and briefed the President’s Daily Brief and chaired National Intelligence Estimates. He is a member of the Steering Group of Veteran Intelligence Professionals for Sanity (VIPS).*

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