

The Case against George W. Bush under Torture Law

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There was widespread support among scores of human rights groups and many others for recent efforts to have Switzerland open a preliminary investigation for torture against former President George W. Bush during his planned (and now canceled) visit to Geneva.

Our belief is that Bush violated U.S. and international law when he authorized torture, including the water boarding of detainees. Torture is a crime under a federal statute, Torture Statute, as well as under the War Crimes Act, and the Convention Against Torture, of which the U.S. was a major proponent.

The support for the [investigation](#) stems from Bush's open admission that the [authorized water boarding](#), the necessity people feel to hold torturers accountable if we are to end torture, and the utter failure of the United States to investigate Bush and others. The U.S., as the most powerful country in the world, is an example to the world: If the U.S. can openly torture, so can every other country.

There have been some naysayers to the attempts to internationally prosecute Bush and other officials. They have it wrong. They want a world in which if a country does not investigate its own torturers, then no other country should. They argue, as David Frum did in [a recent column](#) on this site, that efforts by the Center for Constitutional Rights and its partner legal organizations to seek criminal accountability of former President Bush in Switzerland amount to "law as a weapon of politics" and "assault upon the basic norms of American constitutional democracy."

Let's correct one major misconception some have about the basis for this action and how it relates to the U.S. legal system at the outset. The Convention Against Torture, which mandates that Switzerland and 146 other countries including the United States investigate and prosecute torturers, is part of U.S. law. Its ratification and its enforcement is part of our constitutional democracy.

The anti-American and anti-Constitutional acts were Bush's decision to authorize torture and the U.S. failure to hold him accountable. Politics are being used as a weapon against the law by claims that these are policy choices. They are not. As the State Department Legal Advisor [Harold Koh stated](#), torture can never be a "policy choice." Likewise, the investigation and prosecution of our homegrown torturers is a legal obligation and should not be driven by politics.

Frum accuses CCR and others of demanding that "Switzerland override an American decision about which Americans should be prosecuted for violating American law." Yes, it is

true that the demand is for Swiss courts to investigate torture where the U.S. has not. But the U.S. decision was one that was not just about American law.

U.S. law includes an obligation for the U.S. to investigate and prosecute torturers, and through its ratification of the Convention Against Torture and its support of a provision for universal jurisdiction in the Convention, it recognizes the obligation for Switzerland to do so as well when a torturer is on their soil. Switzerland was being asked to do no more and no less than what the United States has committed to do itself.

There are to be no safe havens for torturers. None.

Torture is a crime that no circumstance — even national security — can ever justify. It cannot be redefined to make acts that have long been illegal suddenly permissible. The memos Bush relies on as a defense are no defense at all: as was found by the American prosecutor in Nuremberg, providing legal advice that justifies and leads to war crimes or torture is criminal. And it cannot protect from prosecution.

Torture is also one of the few crimes, like piracy, slavery and genocide, where there is a global commitment to prevent and punish its commission.

In 1980, a U.S. Court of Appeals declared that “the torturer has become like the pirate and slave trader before him *hostis humani generis*, an enemy of all mankind.” The federal court judges found that because torture is a wrong that is so egregious and so widely condemned that it is of “mutual concern” amongst the nations of the world, a torturer could be brought to justice wherever found. The “mutual concern” to eradicate torture was expressed in the United Nations Convention Against Torture. President Reagan signed the treaty, and the U.S. became a party to the Convention in 1994.

It is only the failure of the U.S. to act — to abide by its own legal obligations — that would have resulted in Switzerland prosecuting Bush for torture. Or Spain, for that matter, where there are three on-going proceedings for torture involving U.S. officials, including one open investigation related to torture at Guantánamo where evidence is being taken.

The case against Bush in Switzerland is, in some ways, a commentary on law and politics in the United States. But not in the way Frum presents it. Sadly, it is a commentary on the failure of the U.S. legal system to demonstrate its strength and independence from politics.

Bush has openly admitted authorizing acts that constitute torture. The case against him will be investigated and tried — if not in the United States then in a country that has the courage to give meaning to its legal obligation to investigate and prosecute torturers.

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