

Truth, Crimes, Commissions, and Hope

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Good news is being taken as bad. Vermont constituents of Senator Patrick Leahy report that he's finding very little support for his proposed truth and reconciliation commission from Republicans or Democrats in the Senate. Numerous people have taken this as bad news and cause to despair. I disagree. Here are ten reasons why.

1. The idea was never reconciliation with Iraqis, Afghanis, Pakistanis, Palestinians, torture victims, spying victims, victims of political prosecutions, or anyone other than the commission members themselves. Real reconciliation is years away from even being comprehensible to, much less supported by, the U.S. Senate.

2. There are very useful things that Congress or an outside commission could do, but most of them have nothing to do with punishing or deterring crimes, or reconciling victims and abusers. The only thing that can deter future crimes of the sort that have been committed is criminal prosecution. Any commission begun before a special prosecutor is appointed would risk serving as a substitute for what is most needed, and risk having its requests and subpoenas ignored as Congress's have been for the past two years. But once a prosecutorial investigation is begun, Congress will be able to take up related issues without creating a substitute for prosecution and with better public understanding that there are advantages to complying with subpoenas and other legal obligations.

3. A commission dedicated to truth would have a hard time ignoring ongoing criminal investigations in Spain and Britain, and likely indictments there and elsewhere. The reconciliation would almost inevitably develop into opposition to international law, which is of course exactly the offense we most need to correct and deter, not encourage.

4. A nonpartisan commission would be a bipartisan commission, with half of the members named by each of the two parties into which our government is now more fundamentally divided than it is into three institutional branches. Both parties would favor a commission designed to coverup congressional complicity in crimes. And if there is some hope that a congressional committee might be motivated to restore Constitutional powers to Congress, an outside commission would not be as likely to have that interest.

5. A commission unable to compel witnesses could be designed to bribe them with immunity for their crimes. But unless there are prosecutions and the serious threat of prosecutions, that immunity is not a valuable bribe. And the granting of immunity is not justified by the circumstances. Our justice system is not overrun by too many defendants to be processed. It is simply refusing to prosecute a small number of individuals against whom there is extremely powerful evidence and for whom trials could potentially be very, very swift.

6. While we will never have the complete "truth" about anything and should not encourage

the false belief that we lack probable cause to prosecute, obtaining more information about crimes and abuses is certainly desirable. But more information is likely to be obtained by a criminal prosecution than anything else. And more information is likely to quickly be made public by demanding the release of memos, Emails, minutes, reports from the DOJ's Office of Professional Responsibility, from the CIA, from the Senate Armed Services Committee, etc., than from any hearing or panel or commission. If Congress wants the truth about the treatment of prisoners, it should demand their release and listen to them. If it wants whistleblowers to speak, it should legislate protections for them. If it wants new stories to break, it should bust the media monopolies.

7. The sort of discussion most needed from Congress is not a weak substitute for a criminal investigation, but rather a study of how to restore Constitutional powers to Congress that have been usurped by presidents. A committee or panel or commission could most profitably examine the treaty power, appointment power, pardon power, power of the purse, power of war, and power to legislate, signing statements, secret laws, secret agencies, secret budgets, state secrets claims, executive privilege claims, vice presidential powers, the power of impeachment, the power of subpoena, and the practice of inherent contempt. The most effective way to do this, and probably the only possible way to do it, would be with a House-only select committee. Not only is the Senate hopeless, but a proper list of democratizing reforms would include proposing the elimination of the Senate.

8. A public airing of the crimes and abuses, if it did not interfere with criminal proceedings, if it enforced (or persuaded the Justice Department to enforce) its demands, and if it was covered by the media would certainly be useful. It would be less useful, however, if it repeated the endless public airings of the past 2 years in hearings that have been largely ignored by the media, or if it refused to call the crimes crimes, or if it reinforced the loss by Congress of the power of subpoena. Again the best and probably the only possible way to make this happen would be with a House select committee, subsequent to the beginning of a criminal investigation.

9. Existing committees and subcommittees can also hold closed and open hearings without delay, and with the possible advantage of Democrats holding majorities over the Republicans on every committee, and some are planning to do so. Committees can, if they choose, reissue all of their subpoenas that were refused over the past two years. Enforcing those subpoenas, into which much thought and work was poured, would reveal more than any bipartisan commission would be likely to.

10. A movement is rapidly and impressively building to demand a special prosecutor, to prosecute locally and abroad as well, and to legislate reforms through Congress. The State Secrets Protection Act, a resolution challenging an unconstitutional treaty with Iraq, a bill to restrict the abuse of National Security letters, and other good bills expected just after the April recess mark a trend in the necessary direction. The possibility of impeaching torture memo author and now federal judge Jay Bybee is even under discussion, and the California Democratic Party will take the matter up in a resolution later this month. By impeaching Bybee, Congress could restore its primary power, the one that gives teeth to the others, and then nobody would be able to type fast enough to record all the truth and reconciliation that would start spilling forth.

David Swanson is the author of the upcoming book *"Daybreak: Undoing the Imperial Presidency and Forming a More Perfect Union"* by Seven Stories Press and of the introduction to *"The 35 Articles of Impeachment and the Case for Prosecuting George W.*

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