

Unaccountable Secret Government: Most Serious Constitutional Crisis in American History

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Global Research, September 15, 2008

15 September 2008

Region: [USA](#)

Theme: [Law and Justice](#)

ANDOVER , MASS. (Sept. 13)— President Bush's conduct in office has precipitated a "most serious constitutional crisis," "one that has already transformed the U.S. from a constitutional republic to an elected monarchy," a noted political scientist told a conference on seeking prosecution of high Bush administration officials for war crimes. "We need to revers[e] a fifty-year trend towards unaccountable secret government, which can commit crimes with impunity," said Professor Christopher Pyle of Mount Holyoke College.

"Sending a clear signal to future Cabinet-level officials that ours is still a government under law, and that they had better obey the criminal law, no matter what their president and his legal lackeys say," is a matter of overwhelming importance, said Pyle.

Pyle spoke to 120 academics, constitutional scholars, public officials and political activists gathered in Andover , MA for the Justice Robert H. Jackson Conference on Planning For the Prosecution of High Level American War Criminals. Attendees were in consensus agreement that overwhelming evidence exists to bring legal actions against President Bush and other top members of his administration.

The consensus of attendees is President Bush's attack on Iraq is a violation of the Charter of the United Nations and that he is culpable for this as well as for torture and abuse of war prisoners held by the U.S. military and the CIA.

Pyle said ideally the Justice Department should bring charges against Bush "if only to restore its integrity" (although many thought the DOJ unlikely to act because of its own culpability and partisanship). But there is nothing to "preclude the appointment of a non-partisan prosecutor with considerable independence, much as Attorney General Elliot Richardson did when he chose Archibald Cox to lead the Watergate team."

A special prosecutor could be chosen by the next Attorney General from among any number of "distinguished Republican attorneys," Pyle said. He added that if Congress and the Justice Department fail to act, state attorney generals might take action and that if no U.S. officials acted "the way is open for foreign trials."

Even if the next president and two-thirds of the Senate "do not ratify the Rome Statute and submit to the jurisdiction of the International Criminal Court," said Pyle, "the next president could revoke the non-extradition agreements that John Bolton negotiated and allow the Justice Department to facilitate extradition proceedings on behalf of any European court with universal jurisdiction over war crimes."

He went on to say that while the legal obstacles to prosecuting “the torture team” are substantial, they are no more daunting than those that Argentina and Chile faced and overcame after their generals initially obtained immunity for their “dirty wars.”

“Whether our nation will take as long to bring its torturers to justice remains to be seen, but failure to prosecute now almost certainly will lead to demands for prosecution later. This is not an issue likely to go away,” Pyle said. (Emphasis added.) That’s because there is “overwhelming” evidence that “the torture, kidnapping, and degradation of suspected terrorists was part of a deliberate policy, hatched and concealed at the highest levels of the Bush administration.”

Pyle pointed out the weight of legal opinion is against the Bush administration, “which is why it keeps its legal opinions secret.” He added, “Today, even Attorney General Mukasey won’t deny that waterboarding is a crime. He simply refuses to say that it is, because, if he admitted the obvious, he would have to prosecute the criminals. The best excuse Mukasey can give is a version of the Eichmann defense: ‘Our lawyers said we could do it.’”

Pyle drew applause when he pointed out that “We would be here addressing the same questions had these crimes been committed by Democrats.” “This is not a campaign event. It is a conference about how to restore governmental accountability in the wake of a criminal administration. It addresses the most serious crisis in our nation’s history—the claim that the president and his secret agents can get away with torture, kidnapping, and even manslaughter.” (Emphasis added.)

Pyle went on to say the issue is not whether the “torture team” deserves to be prosecuted but is about “reversing a fifty-year trend toward unaccountable, secret government, which can commit crimes with impunity.”

“Punishing the torture team is just the beginning. We also need to change the laws and legal doctrines, like the state secret privilege, that have already transformed the United States from a constitutional republic to an elected monarchy,” Pyle said.

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