

Obama's First 100 Days

After ending American torture, will we prosecute those who ordered other war crimes?

By Nat Hentoff

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Pressure is building on the new president from his more urgent supporters to begin validating their audacious hopes within his first 100 days. Special heat is on to abolish torture. After all, during Obama's *60 minutes* interview on November 16, he said: "I'm going to make sure we don't torture." As I noted last week, he could stop it eventually with an executive order, but for many, that's not soon enough.

On November 13, the National Religious Campaign Against Torture assembled more than 50 delegations of religious leaders in Washington—from Rabbi Gerry Serotta, chair of Rabbis for Human Rights, to Dr. Ingrid Mattson, president of the Islamic Society of North America—to tell Obama to sign that executive order as soon as he gets into the Oval Office.

Also pushing Obama is Amnesty International, which is giving him 100 days to show the world that he actually means what he says about being repelled by torture. But Amnesty International also wants the President to do something else that he may be extremely reluctant to consider: "[We call] on the President-elect to support an independent commission of inquiry into all aspects of the United States' detention practices in the war on terror, and to assure full accountability for human rights violations committed in that context."

With regard to serial war crimes, "accountability" would mean putting on trial George W. Bush, Donald Rumsfeld, Dick Cheney and his longtime associate, David Addington, and a coven of lawyers from the Justice and Defense departments.

Last August, the *Philadelphia Daily News* asked then Senator Obama if his administration would prosecute high-level Bush administration officials. Obama replied cautiously: "If crimes have been committed, they should be investigated, [but] I would not want my first term consumed by what was perceived on the part of Republicans as a partisan witch hunt, because I think we've got too many problems we've got to solve." And Harvard law professor Cass Sunstein's acute reluctance on war-crimes accountability extends beyond Obama's first term. Putting Bush administration officials in the dock would result, the Obama adviser said, in "a cycle of partisan recriminations."

Even Democratic Senator Pat Leahy of Vermont—Congress's most persistent and passionate pursuer of the Bush administration's chronic lawlessness—has said of these war-crimes prosecutions: "In the United States, no. These things are not going to happen."

Fortunately, Michael Ratner, president of the Center for Constitutional Rights, which has brought war-crimes charges against Donald Rumsfeld in Europe (thus limiting his travel destinations), intends to keep pursuing these American war criminals. On November 18, he was quoted in *The Huffington Post* as saying, "The only way to prevent this from happening again is to make sure that those who were responsible for the torture program pay the price for it. I don't see how we retain our moral stature by allowing those who were intimately involved . . . to walk off the stage and lead lives where they are not held accountable."

Are you listening, Bush, Cheney, Addington, Rumsfeld, Gonzales, and Professor John Yoo (the endlessly resourceful legal adviser on torture and presidential supremacy)?

Starkly putting the case for accountability in a way we can believe is Joseph Galloway, a military columnist for *McClatchy* newspapers ("Moderation in the Pursuit of Justice Is No Virtue," [CommonDreams.org](http://www.CommonDreams.org),

November 19): "[This is] no way to begin an administration that was elected on promises of change . . . What signal does it send to Mr. Bush's gang of unindicted co-conspirators, who've unwrapped a Pandora's boxful of other offenses—from perverting the administration of justice, to illegally eavesdropping on the phone conversations and e-mails of ordinary Americans . . . to lying under oath to congressional oversight committees? Etcetera. Etcetera . . . Unless the newly empowered Democrats in the White House and on Capitol Hill hang a few coyotes on some fences in Washington, D.C., they're making a huge mistake that will come back to haunt them—and all the rest of us, too."

Obama fails to understand that the only way to clarify for us, and the world, how our laws have been radically perverted—which includes still-hidden executive orders and ruses about which we know nothing—is to first place the perpetrators under oath as part of an independent investigation. This deeply searching inquiry would not be a Democratic or Republican process, but would be conducted in the name and under the sovereign authority of the people of the United States.

If you remember, the Constitution begins: "We the People of the United States, in Order to form a more perfect Union, establish Justice . . . and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

It's our government. And neither Dick Cheney nor George W. Bush was among our Founders.

While Obama emphasizes that we must look forward and not backward, there is a way to clean out the cesspools of the last eight years.

Next week: the first steps on how to structure realistic, open forums of accountability—even if President Barack Obama chooses not to join us.

To begin a glimpse into how a restoration of the Constitution's active separation of powers could take place—while showing, as the Declaration of Independence puts it, "A decent Respect to the Opinions of Mankind"—I strongly suggest you read Scott Horton's story, "Justice After Bush: Prosecuting an Outlaw Administration," in this December's *Harper's Magazine*. His very specific, carefully researched suggestions on how to regain our self-government include achievable strategies for cleansing us of "The Dark Side" of the last eight years and dealing with those responsible for the rending of what this nation used to stand for.

Horton, an international human rights lawyer and an adjunct professor at Columbia University Law School, has been a source for this column since soon after 9/11. As he says: "This administration did more than commit crimes. It waged a war against the law itself."