

# افغانستان آزاد – آزاد افغانستان

AA-AA

چو کشور نياشد تن من مباد      بدین بوم ویر زنده یک تن مباد  
همه سر به سر تن به کشتن دهیم      از آن به که کشور به دشمن دهیم

[www.afgazad.com](http://www.afgazad.com)

[afgazad@gmail.com](mailto:afgazad@gmail.com)

European Languages

زبان های اروپایی

<http://www.counterpunch.org/2015/02/13/why-us-war-criminals-walk-free/>

## Why US War Criminals Walk Free

### How the System Looks After Its Own

by CHARLES PIERSON

February 13-15, 2015

“Why Is Henry Kissinger Walking Around Free?” Andy Piascik asks (*CounterPunch*, Feb. 6-8, 2015). On January 29, Kissinger appeared before the Senate Armed Services Committee to testify on the Iranian nuclear threat. Because, you know, some countries just can’t be trusted.

Also present were Medea Benjamin and CODEPINK who were there to confront the celebrated diplomat, author, and war criminal with pink plastic toy handcuffs.

Not only is Kissinger still walking around free, he is fawned over. The February 10 New York *Daily News* reports that Kissinger’s endorsement is a “sought-after prize” for 2016 Republican Presidential hopefuls “looking to boost their foreign policy credentials.” (The *Daily News* predicts that Kissinger’s rose will go to suitor Jeb Bush.)

The short answer to the mystery of why Kissinger remains at large is that US leaders look after their own. Democrats and Republicans even share this courtesy with each other. When in December, the Senate released its report on torture under the Bush Administration there was briefly talk of prosecutions, but such talk was quickly eclipsed by the announcement of President Obama’s new Cuba policy. Anyone who had been paying attention knew not to expect prosecutions. Obama had announced at the beginning of his administration that there would be

no prosecutions of Bush era officials. That turned out to be a wise decision given Obama's subsequent penchant for using drones to blow foreign civilians into tiny, charred bits. He who lives in a glass White House shouldn't throw stones.

Other countries, at least some of them, some of the time, are less blasé towards war criminals and human rights violators in their midst. Let's begin, as Andy does, with Nixon and Kissinger's complicity in the coup that ousted and murdered Chile's democratically elected socialist leader, Salvador Allende. The coup took place on September 11, 1973, a date Chileans have ever since remembered as "*El once*."

The coup brought to power General Augusto Pinochet who remained dictator of Chile until accepting an offer of immunity in 1990. Although he stepped down as President, Pinochet—a bastard, but not a fool—held on to his position as Commander-in-Chief of the Army until 1998. This ensured that any attempt to prosecute Pinochet or his henchman would be crushed under jackboots, along with Chile's fragile restored democracy. As Pinochet warned in 1991: "The day they touch one of my men, the rule of law ends."

Immunity, however, did not mean forgiveness. Or forgetting. In 1990, Chile's new civilian government convened the Rettig Commission on Truth and Reconciliation. The Commission was created in order to document the human rights abuses of the Pinochet regime. Wrongdoers from the Pinochet regime would be spared prosecution, but the price would be their public acknowledgement of the crimes they had committed.

Truth and Reconciliation Commissions spread to other countries in Latin America, the former Eastern bloc, and Africa. South Africa created a Truth and Reconciliation Commission in 1995 after the country's apartheid regime finally was coaxed from power by Nelson Mandela's African National Congress.

The US has never undergone a Truth and Reconciliation process. Not after Nixon and Vietnam. Not after George W. Bush and Iraq. Chile's Truth and Reconciliation process fully discredited Pinochet's regime in the eyes of most Chileans. US officials, however serious their crimes, retain their cred. And so we are regularly treated to Dick Cheney's denials on FOX News that the Bush Administration had anything to do with torture or that the invasion of Iraq was anything other than righteous. Our war criminals don't go to jail; they go on book tours.

Kissinger was lucky in that Nixon's fall left Kissinger relatively untarnished. Watergate destroyed Nixon, not Nixon's and Kissinger's bloody foreign policy. The three articles of impeachment adopted by the House Judiciary Committee say nothing about Nixon's foreign policy. A fourth article addressing Nixon Administration actions in Cambodia was voted down.

Kissinger ought to have become a pariah for his role in killing a million or more Vietnamese, toppling Allende, green-lighting Indonesia's genocide in East Timor, and not lifting a finger to stop Pakistan's rape of the future Bangladesh. Instead, Kissinger continued to enjoy his office as Secretary of State under Nixon's successor Gerald R. Ford, the same president who pardoned Nixon.

The Bertrand Russell War Crimes Tribunal (1966-67) investigated and heard eyewitness and expert testimony regarding US war crimes in Vietnam. Sadly, this was a people's tribunal, not a government body with the power to clap Nixon and Kissinger in irons.

## II.

A Truth and Reconciliation process is one thing. How 'bout them shackles? Is there any chance that US war criminals will be prosecuted?

We have the machinery to do so, but the machinery has grown rusty with disuse. There have been no prosecutions under the federal War Crimes Act which criminalizes "grave breaches" of the Geneva Conventions. Instead, the Bush Administration engineered amendments to the War Crimes Act which narrowed the list of crimes which could be prosecuted. Bush lawyers like Alberto Gonzales, John Yoo, and Jay Bybee argued in a series of now infamous legal memos that what the unsophisticated might naively mistake for torture (waterboarding, prolonged exposure of detainees to stress positions, sleep deprivation, etc.) was not torture. The Bush Gang were covering their asses as reflected in a *Washington Post* headline: "War Crimes Act Changes Would Reduce Threat of Prosecution."

Psychological barriers add to the difficulty of trying US war criminals. For many Americans, seeing their leaders in the dock would be an insufferable blow to national pride. Only one thing could make such an affront more intolerable, and that's if those sitting in judgment are "ferreigners." How else explain the American Servicemembers' Protection Act which was dubbed the "Hague Invasion Act." The Act empowers the president to use "all means necessary and appropriate" to liberate Americans (civilian leaders as well as military personnel despite the Act's misleading name) who may in the future be held for prosecution by the International Criminal Court in The Hague. The US Marines can take some nice selfies in front of windmills and canals as they storm into Holland.

US hostility to the ICC was apparent even before the Act's passage. President Bill Clinton signed the Rome Statute, the treaty which created the International Criminal Court, but did not submit it to the Senate for ratification. One of George W. Bush's first acts as president was to "unsign" the Rome Statute, leading baffled law professors to splutter: "*Can he do that?*" Not that it mattered. The Rome Statute would never have passed in the Senate.

Happily, Kissinger's and Nixon's victims—and Bush's and Obama's—were foreigners. Otherwise, killing them might have been serious. As every American knows, the United States acts only for good. We do not commit war crimes. This mindset has to change. The Nixons, the Kissingers, the Cheneys, the Bushes and Clintons and Obamas rely on it to keep themselves out of the slammer. To hear them tell it, their only concern is protecting Americans' lives. Antiwar activists can and must convince Americans that these butchers protect no one but the powerful.

How long will the "ferreigners" stand this? In theory, US officials could face third country prosecutions. International law provides that individuals accused of torture, genocide, and other serious human rights offenses may be tried wherever they are found. Spain tried to do so in 1998, serving an arrest warrant on Pinochet while the General was in the UK for back surgery.

Britain's Law Lords agreed that Spain could try Pinochet. For nearly a year, Pinochet fought extradition. Finally, the UK released Pinochet on the grounds of the General's supposed ill-health.

Spain's effort emboldened Chilean authorities. Pinochet no longer appeared untouchable. On August 9, 2000, the Chilean Supreme Court lifted Pinochet's immunity. By 2004, Pinochet was under house arrest on corruption charges. He died in 2006 to stand trial before a higher authority.

Andy Piascik writes that "in 2010, Dick Cheney had to cancel a planned trip to Canada because the clamor for his arrest had grown quite loud." Someday, Kissinger, Bush, Cheney, Rumsfeld, Clinton (either of them), or Obama may make the mistake of traveling to a country with the courage to slap the cuffs on them. Real cuffs, not toys.