

From [Brooklyn Culture Jammers](#)

"We had a lively discussion (code for 'I seriously lost my temper') a few weeks ago on [Sex and Politics](#) .

I thought we'd be discussing the proposed bombing of Syria

, but the topic was

[General David Petraeus](#)

. For those of you not keeping up, he has [been hired to teach at CUNY](#)

, and there are significant numbers of protesters who think this is a problem. Their issue is that as first a field commander in Iraq and then as a supreme commander in Iraq and Afghanistan (and later as Director of CIA), he was involved with a number of command decisions that may be construed as war crimes. There are multiple issues at the heart of this controversy: What are War Crimes; did Petraeus' actions as commander of US forces in Afghanistan and Iraq (and CIA head) constitute war crimes; Is it possible to prosecute him for those crimes, and if not; what is the conduct someone so accused should expect. I also have a suggestion for resolving this.

## War Crimes 101

As I like to say, [I am the simple artist: I sing, I talk, I tell the funny monologue](#) . I'm not an expert on international law. But my work with the

[Plowshares movement](#)

and research on the Iraq war leads me to conclude, as many others have, that the US attack on Iraq was

[illegal under international law](#)

. In the documents and treaties created after WWII to codify the international laws that Hitler had violated, the US helped create several pertinent documents. These include the UN Charter (which we helped write), the Nuremberg Principles (a codification of the trials the US conducted for Nazi war criminals), and a number of other rulings pertinent to international law that are based on these two documents. After Nuremberg, the act of fomenting a war of aggression was considered the ultimate war crime—the war crime from which all other crimes derived. The issue of the war itself being illegal is distinct from the question of whether the W Bush administration violated international law by using waterboarding, a form of torture (something

[I've written about before](#)

). The big issue is whether the United States under Bush attacked a country for reasons that had nothing to do with pre-emption or prevention.

And some some scholars of international law believe (and have written) that Iraq was a [War of Aggression](#)

—an illegal war— because it was not fought for defense (pre-emption) but for [other reasons](#)

. The evidence is that W came to office determined to launch a war against Iraq and declared 9/11

a sufficient cause to do so.

[Richard Clarke](#)

, Bush's counterterrorism adviser,

[has said as much](#)

. [Paul O'Neill, Bush's former Treasury Secretary, told 60 Minutes](#)

that Bush announced his intention to attack Iraq within days of his first cabinet meeting, when the Twin Towers were still standing. Bush's cabinet was loaded with Neocons from the

[Project for the New American Century](#)

, which had originally

[demanded a war against Iraq back during the Clinton administration](#)

. The

[Downing Street Memos](#)

make it clear that the US was intent on attack regardless of the evidence. Also, the United Nations did not vote to support the US invasion of Iraq—W did not have the kind of

[UN cover](#)

for the invasion that his father had for the

Gulf War

a decade earlier.

The fact that the invasion of Iraq was probably an illegal war under the UN charter is something that most Americans don't understand. But that alone doesn't affect Petraeus. The war crimes statute for a war of aggression doesn't automatically hold military commanders culpable, nor does it put the enlisted men on the line as criminals. The Nuremberg tribunal didn't automatically charge the rank and file of the Wehrmacht, the German equivalent of the US Army, with complicity for fighting in a war of aggression. Even the Wehrmacht generals who planned the invasions of Poland and France [were cleared for helping plan the war](#)—they had not been in positions to override Hitler's war plans (though many were charged on other crimes). That was not true of the men of the

[Waffen SS](#)

, the 'fighting arm' of Hitler's SS, who were considered possible war criminals strictly on the basis of their membership in the SS (more about the SS later).

### **Petraeus as War Criminal: the charges that apply**

Petraeus isn't culpable for war crimes just because he was an Army commander in Iraq. What else might he be judged for in terms of war crimes?

\* One of the duties of any military commander in an invasion (regardless of the legality of the invasion) is to safeguard civilians once civil authority collapses. Petraeus was commander of the 101st Airborne division, which was the first US unit in Baghdad. As reporters pointed out in 2003, soldiers from the division were tasked with [guarding the Iraqi Oil Ministry—not any of the 21 other ministries of the Iraq government](#) and not citizens. And little thought was given to occupying the country and preventing a sectarian civil war once the Sunni minority lost control of the government. Others have written about the lack of planning for a post-Saddam Iraq ([Rumsfeld reportedly threatened to fire anyone in the Pentagon](#) who talked about a postwar era), but that doesn't abrogate Petraeus' responsibility to protect the civilian population in the days after Saddam was toppled.

\* The [BBC and The Guardian](#) have both reported on Petraeus' long relationship with [James Steele](#), a retired US Army colonel whose military career included service in Vietnam. Steele specialized in counter-insurgency and was accused of human rights violations when he was put in charge of training paramilitary forces in El Salvador. In Iraq, Steele built the government's security force as a [paramilitary unit](#) that was responsible for upwards of three thousand civilian deaths a month and was involved in the unfolding of the sectarian civil war. Steele's trainees utilized torture, and (thanks to Wikileaks) we know that the US (and Petraeus) had decided to turn a blind eye to its abuses. As stated above, the invaders had a responsibility to protect the civilian population once Saddam was gone; by hiring Steele and others, the US did the opposite. The Guardian makes a case for Steele and his commander, James Coffman, having been involved in spurring the civil war—and both answered directly to Petraeus.

\* As Director of the CIA, Petraeus continued and expanded the drone strike program, a [militarization of the CIA](#) that has made more than a few observers concerned. It is especially concerning because many believe the program is itself a war crime—International Law scholar [Marjorie Cohn makes a compelling argument here](#). And [here](#). And she isn't the

[only one](#)

\* The use of chemical weapons in Iraq: There is compelling evidence that the US used white phosphorous as a weapon against the civilian population of Fallujah. The [BBC and the Italian television network RAI have both found witnesses](#)

willing to come forward and say there were WP artillery shells being fired into civilian areas during the battle of Fallujah in November 2004. There are also allegations that

[a new form of napalm was used on the city](#)

, though there is some controversy on this issue. The use of chemical weapons (i.e., weapons that kill due to effects of chemicals as opposed to shrapnel or explosive) is a war crime.

Petraeus was not commanding the actual siege forces, but he was in command of the

[Iraq Security transition team](#)

at the time. Any allegation of use of such weapons would make the transition to civil government much more difficult, and thus investigations into such allegations should have been in Petraeus' wheelhouse.

Many observers have also condemned the US use of [Depleted Uranium ammunition](#) as a form of chemical warfare. While those who've protested its use have compelling evidence that

[such ammunition is toxic for centuries](#)

after its use, it's not clear that Petraeus alone had control of its use—the US Army has been using it since the Gulf War, and the command decision for its use was above Petraeus' pay grade—the joint chiefs of staff are the ones who approved its continued use.

Remember too that generals have been tried and convicted for war crimes even if they have not been in command (or issued the orders) when the crimes occurred. The US sentenced [SS](#)

[General Joseph 'Sepp' Dietrich](#)

to life imprisonment for the

[Malmedy massacre](#)

. During the Battle of the Bulge, one of Dietrich's advance Panzer units gunned down 80 captured Americans. There was no evidence that Dietrich had ordered this to happen or even that he had been anywhere near the murder sites. But because he did not actively prosecute soldiers who had participated in the massacre, he was found guilty of war crimes (though his sentence was commuted). If the prosecution of Dietrich for crimes against humanity is a precedent, it doesn't matter whether investigators can find direct orders from Petraeus tying him to atrocities or war crimes as long as it's clear that miscreant soldiers felt they would not be prosecuted.

## The 'Innocent until proven Guilty' conundrum

In the Sex and Politics debate, We got into a side-bar discussion about whether someone who had never been convicted of war crimes should be vilified—if Petraeus is innocent until proven guilty. But to me that's a false issue. Many a general or politician lucky enough to be on the 'winning side' of a conflict has been spared any sort of analysis of his actions. According to some historians, if the German bombing of Guernica in Spain was a war crime, then so was the [firebombing of the City of Dresden](#)

. Several years ago there was political push-back to [Christopher Hitchen's book The Trial of Henry Kissinger](#)

, where he laid out the charges and concluded that any court would be hard-pressed to not convict Kissinger on some of his many perfidies. There's a long video based on his crimes [here](#)

. The caveat is that the US would have to allow a war crimes trial against Kissinger to go forward—and Kissinger continued to 'advise' the US government long after

[Nixon's helicopter took off from the White House lawn](#) that last time.

Remember too that the [Reagan administration was found guilty of crimes against humanity](#) for its covert war against Nicaragua in the 1980's. The problem is that it was found guilty by the International Court of Justice, and the US is not a member. The US announced that the ICJ lacked jurisdiction; when Nicaragua tried to move the case to the UN, the US used its Security Council veto to block a vote. By the way, key members of the Bush administration (including W himself) were found guilty of crimes against humanity in a

[show trial conducted by Malaysia](#)

. It is clear that W, Cheney and friends

[do not feel safe traveling overseas](#)

, even with

[the Obama administration protecting them](#)

. but it would take an enormous sea change in American public opinion to bring prosecution against Bush & Company here, even though

[some think such a trial is inevitable](#)

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One other reason there has been no indictment for Petraeus: in the wake of the [Chelsea Manning prosecution](#)

, many soldiers are understandably reluctant to come forward with evidence of war crimes.

There are perhaps hundreds of American soldiers who would want to tell what they know, but are chastened by seeing the way the government jumped on Manning's revelations. And remember—

[Manning couldn't get the NY Times or the Washington Post](#)

, the two most 'authoritative' sources in US Mainstream media, to look into her allegations.

Remember also that Donald Rumsfeld almost got

[Joe Darby, the Abu Ghraib whistle-blower](#)

, killed when

[Rumsfeld revealed Darby's identity on national tv](#)

while Darby was still with his unit in Iraq. Darby has since been in hiding owing to death threats.

It isn't always the alleged war criminals who are vilified in public.

Unfortunately, the video of [Petraeus being pursued by shouting students](#) caused a great deal of sympathy for him, and the protesters that the news interviewed afterwards have not added luster to their cause. Petraeus and his allies at CUNY have been able to spin the protests as a free speech issue. And the demonstrators did not do themselves any favors by not presenting their case against Petraeus to the court of public opinion. IMO, there's a case to be made. But the harassment on the street, besides making the protesters look like bullies, has not rallied others to the cause.

### **How Should a War Criminal be treated if he/she has not been prosecuted?**

One of the arguments we got into during the Sex and Politics debate was whether the act of CUNY hiring Petraeus was in effect an endorsement or vindication for the things he did in Iraq. Some people have tried to conflate paying Palestinian activist

[Omar Barghouti](#)

(who was an invited speaker at Brooklyn College earlier this year) as being the equivalent of the hiring of Petraeus. This simply doesn't pass the smell test—Barghouti was a speaker hired for one occasion. He would not be grading students, and he wouldn't have a staff ID. The professional staff at Brooklyn College was not involved in Barghouti's hiring. It was simply a case of a lecturer (Barghouti) coming in to speak on a topic on one occasion. One more thing—nobody has accused Barghouti of war crimes. He has never been in a military force of any sort. CUNY's leadership knew or should have known that Petraeus' appointment would be controversial—about a decade ago, there were

[massive protests when the New School hired Bob Kerrey](#)

as University president. At the time, students were calling out Kerrey for his role in cheer-leading the Iraq war.

[Kerrey ultimately resigned](#)

, though it was more about a no-confidence vote than any protests.

In fact, the 20th century is littered with such protests. The aforementioned Henry Kissinger has

had protesters at his appearances for decades. In the years after WWII, priests and other officials of the French Catholic Church were constantly vilified for their acquiescence in the Vichy government and their collaboration with the Nazis during the occupation. Ward Churchill, a professor at the University of Colorado, was vilified and ultimately fired for his opinions about 9/11, which he likened to ‘ [chickens coming home to roost](#) ‘ for the US trade sanctions against Iraq that killed some 25% of the children there (a half-million youth).

[He was heavily protested](#)

at events organized or encouraged by right-wing groups and individuals including

[Glenn Beck](#)

. Such protests are quite common—to paraphrase

[H Rap Brown](#)

‘s comment on Violence, they’re as “American as cherry pie”.

And sometimes the Activists are right— [Beate Klarsfeld](#) was notorious for disrupting public events in her days of Nazi hunting. In 1968 she sneaked into a closed press event and slapped the German chancellor, Kurt Georg Kiesinger while screaming “NAZI” (Kiesinger had once been a functionary in Goebbels’s propaganda ministry). She’s the reason that

[Klaus Barbie was brought to justice](#)

, and when she identified a target she would not go away politely, as many asked her to do. As I like to remind people, sometimes the loud and crazy protesters are right. And frequently it is only through such public pressure that evil people are brought to justice.

Back to Petraeus: No, he hasn’t been convicted of war crimes. But neither have the American officials most responsible for them, and chances are very good that they won’t be prosecuted or even indicted. That said, a civil society needs to find a better way to deal with such individuals.

### **A proposal –a tribunal on war crimes**

As I said at the start of this essay, I am the simple artist. I’m a performer/playwright. I’m a sometimes journalist and researcher, and because of my activism, I’ve taught myself about war crimes and the international treaties that concern them (Nuremberg, the UN Charter, the Geneva Convention). That does not make me competent to judge whether David Petraeus is a full-blown war criminal—I’m not an attorney with the requisite education. And neither are the protesters. For the reasons I stated above, it’s likely that the people who perpetrated the Invasion of Iraq will never face trial (although it’s useful to remember that there is no statute of limitations on such crimes). And not to denigrate the protesters, but my guess is that none of them are competent on these issues either. I would like to propose an alternative to chasing Petraeus and creating sympathy for him.

In 1983, the German Green Party conducted a [show trial at Nuremberg for the nuclear powers](#) (the US and the Soviet Union). The trial (derided as [one-sided by many](#), and receiving very little press coverage in the US) looked at the weapons capacities and the potential for harm if such weapons were ever used and concluded that both countries were committing the crime of preparing to fight a nuclear war that would destroy much of the world. The US came in for special condemnation for its desire to pursue a 'first strike' capability that would destroy the USSR before it had the chance to fire back (the [MAD scenario](#)).

It was through this trial that [Petra Kelly](#) and the [German Green Party](#) finally achieved membership in the Bundestag, the German Parliament—by 1983, more than a few German voters felt that Ronald Reagan was playing with fire with his [off-handed comments about going to war with the Soviets](#).

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Maybe it's time for a people's trial over the war in Iraq—one that would not only look at the specific crimes of David Petraeus, but the underlying crime of the war of aggression. There are plenty of American defectors from the Bush era narrative that got us there ( [Colin Powell](#) , [Larry Wilkerson](#) and intelligence analyst [Ray McGovern](#) all come to mind). The experts on war crimes could put forward testimony. The defenders of Petraeus and the others now accused of criminal activity would have their 'day in court'. And once the tribunal/trial reaches a conclusion (which should NOT be a foregone conclusion), those convicted would be given a chance to explain their actions and offer apology for their crimes. This was the model in South Africa's [Truth and Reconciliation commission](#).

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It's better than chasing people around and generating sympathy for war criminals."