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Torture: The Bleeding of Universal Human Rights

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Torture: The Bleeding of Universal Human Rights

Human events subsequent to the creation of the *U.N Declaration of Human Rights* and the *1949 Geneva Conventions* have hardly been what we may have hoped for. Genocide, child slavery, terrorism, disease and war still plague humanity. Injustice is bestowed with swift might and in greater instances than is justice. Yet in spite of this, I hold to the belief that the realization of Universal human rights, as written in light of the most egregious outrages against humanity, holds the power that can end our suffering. What is still only a hope made manifest by words can through accompanying action secure place and meaning for Universal human rights.

The story of the Shoah is one that has been with me, by way of accounts and readings from early childhood on. What I learned of Nazi death camps and their millions of victims formed within me recognition of the ultimate connectedness of *all* human beings across time and borders. From this I developed a deeply rooted concern for the fate of all victims of systematic violence and oppression.

It is with some hesitation that I approach writing on the subject of the treatment of prisoners from 'The War on Terror' in U.S custody. After all, the treatment of suspected terrorists does not have as clear a prescription as ending genocide in Sudan or curing and preventing the spread of AIDS in Africa, both issues of great and pressing importance. Rather, the tactic of terrorism is a pain that has been experienced on a Universal scale and has forced the human race to confront how we ought to deal with those that commit unpredictable and erratic acts of violence targeting innocent civilian populations. This question is not an easy one to answer however, answer it we must.

As it stands, post World War II, International law has categorically outlawed the

practice of torture. Yet in the aftermath of the 9/11 terrorist attacks in the United States, policies and debates promoting the legality and use of torture against captured terrorists and terrorist suspects have been extensive. Given the complexities of fighting terrorism and the emotional preponderance associated with terror events the continued and sustained violation of Universal human rights by the United States has been widely ignored and even supported internally and internationally.

The Preamble to the Universal Declaration of Human Rights reads, "Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.¹" Given, the evil of oppression and violence which our story, past and present, is riddled with, it is imperative that Universal human rights become fully realized and that we openly challenge and reject all acts which would allow for the "disregard and contempt for human rights." Every instance which violates human rights, despite the many differences of circumstance and outcome, bleeds the sanctity and security of those rights.

It is in light of these principles that I have determined to end my own tacit approval by way of the "great gift of silence²" and speak out against this outrage against humanity.

Foundations of Universal Human Rights

"Please never raise your voice at any human being; a human being is precious, so precious."

-Pinhas of Koretz³

Effectively defending Universal human rights requires recognition of the foundations on which our widely accepted concepts of rights rest and thus derive their legitimacy, through understanding the context in which they originated.

The effort to conceptualize a set of ethics in relation to States as they interact with the People is a struggle which has been ongoing as long as people and governing elements have existed. Though conventions and treaties relating to the conduct of warring parties existed prior to World War II it was the aftermath of Nazi death camps, which had unleashed on humanity unprecedented ubiquitous incidence of torture and murder of civilian populations and prisoners of war, which compelled the creation of Universal governing bodies, conventions and treaties to secure a place for Universal human rights.

In response, the United Nations created the *Universal Declaration of Human Rights* in 1948. Though not legally binding this was the first declaration by an International body to recognize the inherent value of the individual, as derived from membership in the human family, dictates the protection of human rights and dignity for all, independent of all other distinction.

A year after the *U.N Declaration of Human Rights* was established, the Geneva Conventions of 1949 were carefully constructed to clearly define protections for civilians and soldiers during times of war. Notably, Common Article 3 of the Conventions prohibits “Outrages upon personal dignity.”⁴ One- hundred and ninety countries are signatory to and bound to the Geneva Conventions; including the United States.

The movement for Universal human rights continued to grow in the aftermath of World War II and even as late as 1994 the United States continued to commit itself to the

promotion of Universal human rights by adopting the *U.N Convention against Torture*. The ultimate goal of the Convention against Torture was to sustain and promote observance to those principles which recognize the inherent “*equal and inalienable rights of all members of the human family*.”⁵ Torture being an egregious affront to the principles of human rights and dignity is banned by the Convention under all circumstances and precludes all justifications including a state of emergency, other external threats or orders from a superior officer or authority⁶.

The encompassing foundation of these declarations for Universal human rights is embodied in what 18th Century German philosopher Immanuel Kant called the categorical imperative. Believing that ethics regarding all human conduct could be founded upon one ultimate maxim, Kant articulated the dictum that every member of the human race is an end in and of themselves. That from our membership in the human race protection of each individual’s dignity is derived and the necessity that we are never used as a means to another end is required to preserve the integrity of our natural state⁷.

The tone and motivations governing human rights are derivative of placing the importance of the individual above those of the state and this ultimate principle must be adhered to lest the very foundation of Universal human rights fall.

Defining ‘The Other’
U.S Perceptions of Prisoners from ‘The War on Terror’

“Bolshevism is the deadly enemy of Nazi Germany... The bolshevist soldier has therefore lost all claim to treatment as an honourable opponent in accordance with the Geneva Convention.”
*Chief of the Supreme Command of the Armed Forces By order of Reinecke, September 8, 1941*⁸

“I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war.”
*President George Bush February 7, 2002*⁹

From the inception of ‘The War on Terror’ the United States government has employed a certain semantic strategy in an effort to circumvent the Geneva Conventions and possible prosecution and punishment for “War Crimes.¹⁰” This semantic strategy is to avoid identifying captives from war in U.S custody as prisoners of war by rather referring to them as “unlawful combatants” or “detainees” who as such are not protected under the Geneva Conventions. On January 25, 2002 a memo from White House counsel Alberto Gonzalez to President Bush, argued that exempting prisoners from Geneva Conventions protection "Substantially reduces the threat of domestic criminal prosecution under the War Crimes Act¹¹."

This attempt to define prisoners of war as those which are not entitled to human rights is not altogether new. As the introductory quoted texts demonstrate the interpretation of a strict definition of the Geneva Conventions¹² as excluding protection to certain combatants was used under the Nazi regime and has carried over into United States public policy even 65 years later.

The consequence of this semantic strategy has been the marginalization of prisoners by being conceived as differentiated and treated as a sub-category to human beings. In effect, prisoners from ‘The War on Terror’ are now conceptualized as ‘*The Other*¹³’, or other than (human) therefore not fully deserving of *human* rights. This distinction promotes tension between the powerful and the oppressed and cultivates an

existence of Hobbesian¹⁴ violence wherein we view *'The Other'* with hostility vying for advantage and power without regard to or respect for their rights.

Moreover and of paramount significance, claiming that certain humans based on group membership or suspicions of guilt are not entitled to Universal human rights protections pushes the individual into the position of mean. Thus her/his rights extend only so far as it serves the ends of another interest. Such interest in this case is the will of a foreign occupying State and in direct conflict to the guiding principles of Universal human rights.

In addition to violating the founding principles of Universal human rights, the interpretation of persons as means rather than ends allows for the imposing interest to interpret what acts best serve the interests of the State. Thus humanity is vulnerable to acts of genocide, slavery and systemic torture in the name of the interest of the State. As a matter of public policy the use of people as a means to the states end is damaging to both the immediate and long term interests of civilians and combatants.

We should not ignore the immediate and irreparable damage done to individuals when stripping them of their human rights and we cannot afford to ignore the long term effects of our actions. How we behave now will set the tone for future action. Conflicts involving human rights based on political, religious, class, gender, race or other distinctions will forever be cast in the light of precedent events and moral standards will rest on the foundations which we now lay. Succinctly put, John Rawls wrote:

“The way a war is fought and the deeds done in ending it live on in the historical memory of societies and may or may not set the stage for future war.¹⁵”

The U.S government's denial of prisoner of war status to Taliban and al Qaeda or suspected Taliban and al Qaeda prisoners considerably increased its ability to hold indefinitely and interrogate prisoners in any manner which they define as to best serve the interests of the State.

Dehumanizing prisoners of war has provided a context for the justification and sense of moral authority for the aggressors in which they perceive that they cannot be held accountable for the violation of human rights. They believe such because they are dealing with that which has been classified as less than or non-human.

Operating off of such belief, aggressors act with impunity free from moral and legal considerations. Such acts include the demonstrated lack of restraint by U.S forces when interrogating prisoners of war. Techniques used in interrogations have amounted to "the systemic and illegal abuse of detainees."¹⁶ Abuses against prisoners include the routine infliction of pain, sexual degradation, sodomy, near drowning and asphyxiation, hooding, stripping detainees naked, and exposing detainees to extremes of heat, cold, noise and light, depriving them of sleep and the incursion of suspicious death¹⁷. On the CIA's list of "enhanced interrogation tactics"¹⁸ are water boarding and the cold cell treatment (in which prisoners are striped naked, nearly freezing, and continuously doused with water.) These methods of torture have been evidenced in Afghanistan, Guantanamo and Iraq, establishing that torture of prisoners of war is in fact common U.S procedure.

Torture at Abu Ghraib, Guantanamo and Camp Nama¹⁹, the existence of unregulated and undisclosed U.S controlled locations holding prisoners of war and the practice of extraordinary rendition are the deliberate and calculated consequences of an administrative policy to classify prisoners of war as 'unlawful combatants' or 'detainees.'

Beyond Denial: A Policy of Torture

"I'm not a lawyer. My impression is that what has been charged thus far is abuse, which I believe technically is different from torture. ... I don't know if it is correct to say what you just said, that torture has taken place, or that there's been a conviction for torture. And therefore I'm not going to address the torture word."

Secretary Donald Rumsfeld, Defense Department Operational Update Briefing, May 4, 2004

Denial is a potent psychological defense mechanism by which human beings, on a collective and individual level, avoid the threat of unpleasant realities by refusing to admit their truth. When we are sufficiently deluded into believing that everything is fine then we live without having to attend to the complex grievances of victims and without threat of change to our existing means of thought and action. Thus, as a matter of convenience the public generally demonstrates a preference of not wanting to know which denial effectively facilitates. Denying the authenticity of the conditions and treatment of prisoners held in U.S captivity we cannot feel or see the consequences of our actions.

Article I of the *United Nations Convention against Torture* defines and prohibits torture as follows:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him... information or a confession, punishing him for an act he... has committed or is suspected of having committed, or intimidating or coercing him.”

When exposure of torture at U.S controlled prison camps became evident through the media release of graphic photos in April of 2004, the United States government effectively employed denial as its defense. That *abuse* (avoiding reference to the word *torture*) was merely the work of “a few bad apples” became the administrations official

line. Even the public release of White House memorandums and directives to preclude captives from the War on Terror as protected under Geneva²⁰ did not deter the Bush Administration from denying torture as a matter of policy. An excerpt from one such memo reads,

"In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions."

- *Alberto Gonzalez, White House Counsel*²¹

A short time after the, what are now referred to as, 'torture memos'²², were released then Attorney General John Ashcroft was called to testify at congressional hearings. During his testimony Ashcroft refused to discuss, make public or confirm the memos existence and denied that the administration had approved torture.

In 2006 the Bush Administration departed from avid denial of having created a policy of torture and implicitly acknowledged its culpability in prisoner torture and human rights violations when on October 17, George Bush signed into law the Military Commission Act. (Openly lobbying for and enacting this law was viable due to public indifference and/or the direct support for the administration and its policies against prisoners of war.)

This law²³ sanctions the practice of aggressive interrogations and the operation of secret prisons and authorizes the use of evidence obtained by coercion and hearsay at trial. Furthermore, the Military Commission Act effectively shields interrogators and officials who torture prisoners from prosecution under the War Crimes Act and expressly denies the Geneva Conventions as a source of rights for 'unlawful enemy combatants.' The law further denies detainees classified as 'enemy combatants' the right to challenge their detentions or seek redress for their grievances in civilian courts and any person can

by the sole will of the U.S executive branch be arbitrarily detained and held indefinitely without trial and without any access to the courts. Finally the Military Commissions Act gives the U.S President the power to determine the distinction between interrogation techniques and torture²⁴.

A few days after signing the bill into law, in a radio interview on October 25, 2006 Vice President Dick Cheney agreed that subjecting prisoners to “a dunk in water” is a “no-brainer” citing that such techniques in interrogations have been a “very important tool.”²⁵

This leap from denial to the open and public promotion of refusing human rights and human status to prisoners from the ‘War on Terror’ is indeed treacherous against every member of the human family. We now find ourselves in the stage akin to, albeit vastly different from, Jim Crow Laws or the Nuremberg Laws where we have openly accepted the declassification of a group of human beings from the status of human and stripped them of their human rights. We have acknowledged and accepted the systemic sadistic torture of a class of people regardless of their guilt or innocence (and we must acknowledge that in the absence of fair or open trials this is a law not against the guilty or ‘terrorists’ but rather against all people, especially of the States which the U.S occupies and imprisons.)

Prisoners from the ‘War on Terror’ in U.S custody have in effect been demonized to the point of refusing them human rights. As history has taught us, such outrages against humanity will lead to sustained and escalated torture of human beings without restraint.

Recognition and Rejection of Torture
Towards the Realization of Universal Human Rights

“There is no point in minimizing guilt in order to make it easier for sons and daughters to bear the failure of their fathers and grandfathers, their mothers and grandmothers.”

-Simon Wiesenthal²⁶

The lack of moral responsibility and the failure of the United States to live up to international human rights treaty obligations, unchecked and unchallenged may well lead to total collapse of applied Universal human rights. To avert such crises, it is incumbent upon us, as members of the human race, to summon all means within our power and raise our voices in opposition to the evil of oppression and violence. Silence in the face of evil is tantamount to consent and where there is consent to the violation of the rights of a class of people there stands the framework for the abuse of the rights of each of us.

In the struggle for Universal Human Rights there exists a fundamental need for recognition that before we are women, men, Jews, Muslims, Christians, or Americans we are first and foremost *human*. Without this recognition violent struggles will continue as the duty of protecting human rights is viewed to extend exclusively to those that belong to identifying geographical, racial, gender, political and religious distinctions.

Our humanity must transcend all distinction. Through this transcendence human rights derive from the inherent worth and dignity of the human being. Our humanness is the chief subject of fundamental human rights and this is the ultimate affirmation of moving towards the realization of Universal human rights.

The recognition that U.S torture of prisoners of war *is* a war crime by accord of the Geneva Conventions and in direct contradiction to Universal human rights standards must occur to end the impunity of those that sanction, command and execute its use.

Nationally and internationally our people, our media and our governments must publicly decry the tactic of torture in *all* instances to ensure that one day there will be *no* instances.

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- ¹ Universal Declaration of Human Rights 10 December 1948 Adopted and proclaimed by General Assembly resolution 217 A
- ² Chomsky, Noam The Secular Priesthood and the Perils of Democracy (Cambridge University Press 2002) “The great gift of silence” refers to the acquiescence of intellectuals to remain silent to actions carried out by governments that violate human rights though no official ban to remain silent exists
- ³ Wiesel, Elie Somewhere a Master, (Summit Books 1982) 14
- ⁴ Geneva Conventions Relative to the Treatment of Prisoners of War 12 August 1949 By Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949
- ⁵ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article II
- ⁶ See 5
- ⁷ Kant, Immanuel Fundamental Principles of the Metaphysics of Ethics (1785)
- ⁸ Nazi Conspiracy and Aggression Volume IV Office of the United States Chief Counsel for Prosecution of Axis Criminality Washington, DC: United States Government Printing Office, 1946
- ⁹ White House Memorandum Subject: Humane Treatment of Taliban and al Qaeda Detainees AP & CNN 2004.06.22
- ¹⁰ See Alberto R. Gonzales Memorandum for the President Subject: Decision RE Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban January 25, 2002
- ¹¹ See 10
- ¹² It is worth noting that the Nazi’s challenged the applicability of the **1929 Geneva Convention** while the U.S is challenging the applicability of the **1949 Geneva Conventions**
- ¹³ ‘The Other’ is used here in reference to Simone de Beauvoir’s *The Second Sex* (1949) and entails that ‘the other’(marginalized or subjugated based on gender, race, class or other distinctions) is an inessential object to The One’s (controlling interest) power
- ¹⁴ Hobbes, Thomas Leviathan (1651) claimed that man is naturally a selfish hedonist guided by unenlightened self-interest and if left unchecked the consequences are highly destructive
- ¹⁵ Rawls, John The Law of Peoples Harvard University Press 2003
- ¹⁶ Executive Summary of Taguba report, finalized February 29, 2004
- ¹⁷ See 16
- ¹⁸ Ross, Brian & Esposito, Richard CIA’s Harsh Interrogation Techniques Described ABC News Report 18 November 2005
- ¹⁹ Sifton, John “No Blood, No Foul” Soldiers’ Accounts of Detainee Abuse in Iraq HRW, July, 2006
- ²⁰ Primarily in reference to Common Article 3
- ²¹ See 10
- ²² See 9 and 10
- ²³ *S.3930 Military Commissions Act of 2006 (Enrolled as Agreed to or Passed by Both House and Senate)*
- ²⁴ Umansky, Eric Failures of Imagination Columbia Journalism Review 2006
- ²⁵ U.S: Vice President Endorses Torture HRW Report October 26, 2006
- ²⁶ Wiesenthal, Simon Justice Not Vengeance London: Weidenfeld and Nicolson (1989)