CIVIL LIBERTIES IN WARTIME: THE DEBATE CONCERNING TORTURE

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Winter 2007

"Naturally, the common people don't want war, but after all it is the leaders of the country who determine the policy and it is always a simple matter to drag people along. Voice or no voice, the people can always be brought to the bidding of the leaders, this is easy. All you have to do is to tell them they are being attacked and denounce the pacifists for lack of patriotism and for exposing the country to danger. It works the same in every country"

-Reich Marshall Hermann Goering at the Nuremberg Trials

In late April 2004, U.S. television news-magazine *60 Minutes II* broke a story involving the abuse and humiliation of Iraqi prisoners by a group of U.S. soldiers. The story was accompanied by pictures and presented a side to the detainment of the Iraqi prisoners never shown to the public before. The pictures of the prisoners at the Abu Ghraib detainment camp depicted humiliating, degrading, and highly abusive interrogation methods. The prisoners were shown engaged in forced sexual acts and were subjected to severe beatings and mutilation. Even more disturbing though, were the American soldiers grinning, giving the thumbs up, and pointing to these prisoners. Just a couple days previous to the airing of the special, the first of a slew of memos on torture were released. John Yoo, Deputy Assistant Attorney General in the Office of Legal Council, wrote the first memo. It denounced the use of the Geneva Conventions (a United Nations Law enacted in 1949), and defined torture in extremely flexible and ambiguous terms. This marked the beginning of the debates on the use of Torture during the War on Terror. On one side, after 9/11 national security was promised to trump all priorities. On the other, the use of torture is argued to be infective not to mention morally impermissible. This argument also defines torture as an abuse that is not

justified legally under any type of international law. The executive has been given the power to define the enemy, take up action against the enemy regardless of location, detain indefinitely and without any legal protection or process, and moreover, to avert judgment of any of these explicit powers by the higher courts. In this essay, I will consider both sides to the argument regarding the justification, definition, execution of torture, and prove that torture is, in fact not only impermissible, but not justified or in the best interest of the United States.

The problem of defining torture

Throughout American history, it has been shown that when faced with an issue of National Security the rights of the individual may be sacrificed to maintain a peaceful and safe environment. This of course should be done in moderation, and with the best interest of the people as the main dictate of reason. Torture in the detainment camps of Abu Ghraib and Guantánamo have made a clear sacrifice of civil liberties. The individuals held captive in the detainment camps were only partially protected under broad definitions of civil liberties in mostly US laws and statutes. These individuals, whom the military personal determined were a threat and potentially obtained necessary information (“enemy

combatants"), were not specifically protected against any kind of interrogation. Torture methods were implemented in order to obtain intelligence to convict those involved in the past attack against America, as well as convict those associated with any future attacks. The interrogation methods were forms of torture and were used to coerce the prisoners into confession. Such torture methods were manipulative, abusive, and in many of the reported cases, cruel, sadistic and repulsive.

The Definition debate is divided into two main sides: torture is acceptable for the purpose of national security versus torture is morally and legally impermissible. The most basic document that has been sighted repeatedly in this argument is the Geneva Conventions- which is fundamentally based on moral standards. The Geneva Conventions state specifically that torture is *not* permissible. In Common Article three of the *Geneva Conventions Relative to the Treatment of Prisoners of War,* (adopted in 1949 by the United Nations) the following acts are prohibited in anyplace or at any time:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture

(b) Taking hostages

(c) Outrages upon personal dignity, in particular, humiliation and degrading treatment

(d) The wounded and the sick shall be collected and cared for

a. Neutral bodies such as the Red Cross may offer its services to the Parties in conflict

While Article Three gives a strong argument against the use of torture, those who are for torture use Article Four of the same Conventions to their advantage. Article Four describes that those people who would be protected under Article Three would have to be Prisoners of War (or POWs). To be a "Prisoner of War" the prisoner must have been participating in an oppositional force that fulfills the following criteria points:

(a) Commanded by a person responsible for his subordinates

(b) Fixed distinctive sign recognizable at a distance;

(c) Carrying arms openly;

(d) Conducting their operations in accordance with the laws and customs of war.

Although Article Three gives a strong argument against torture and is very clear about its impermissibility, it's challenged by the argument of definition in Article Four. Al Qaeda and the Taliban did not follow the laws or customs of war. They hid amongst civilians and often sacrificed the civilians for their own purpose or the purpose of their religion. Therefore, the argument for torture due to its urgency and unique danger to the

United States is valid and logical. The question lies in whether the Geneva Conventions deserve to be abandoned all together. Assistant Attorney General Jay S. Bybee wrote explicitly of the application of the Geneva Conventions in his memo on torture. On page one of the memo The Geneva Conventions were dismissed on the grounds that the detainees were not of POW status because they did not fall under the laws of war. However, as Joseph Margulies, author of Guantanamo, "eighty six percent of those captured and brought to Guantánamo were not caught by US soldiers and they were not caught in Afghanistan." (Margulies, 84) Therefore, if those captured were part of Al Qaeda why would they wear uniforms in a different country? This statistic also provokes the question of the selection process of the prisoners, and furthermore their treatment from the very beginning. The United States has been attempting to take responsibility for those things that it has done, but if US troops are not the ones who have captured the majority of prisoners, who is going to take credit for the large amount of detainees who were not guilty but were captured?

In January of 2002 two law officials released the first of a series of memos debating, defining, and supporting (or denouncing) torture. As referenced previously, John Yoo of the Office of Legal Council and Jay S. Bybee, Assistant Attorney General produced a memo that gave ambiguous,

broad definitions of torture's justification and protection. In this memo they argued for an overwhelming executive power. This was shown through their dependence on the title "Commander in Chief". This title is from Article II of the United States Constitution:

> "*The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.*"

Because of the over emphasis on this title by such people as John Yoo and Jay Bybee, the president had almost unmonitored power to define, justify, and legalize torture. In the memo, torture was separated into two separate standards; mental torture standards and physical torture standards. They claim that these standards are enforced through Title 18 Section 2340 of the United States Code (a compilation and codification of the general and permanent federal law of the United States created in November, 20th 1994). "…a defendant is guilty only if he acts with the

express purpose of inflicting severe pain or suffering on a person within his custody or physical control." (Bybee, 4) Section 2340 of the US Code defines torture specifically as, "The prolonged mental harm resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering

(B) The administration or application, or threatened administration or application, of mind-altering substances [truth serum] substances or other procedures calculated to disrupt profoundly the senses or the personality.

(C) The threat of imminent death

In order for the standards to be covered under section 2340, there must be, "significant psychological harm of significant duration e.g. lasting months" for the interrogation method to constitute as torture. In terms of the physical standards for torture, Yoo and Bybee describe, "severe physical or mental pain equivalent in intensity to the pain accompanying serious physical injury such as organ failure, impairment of bodily function or even death" to constitute as torture. Thus, the adjective "severe" conveys that the pain or suffering must be of such a high level of intensity that the pain is difficult for the subject to endure.

Another criteria point for defining torture lied in the interrogation method's intention. As Bybee and Yoo claimed, in order for the interrogation method to constitute as torture, the interrogators motivation must be to inflict pain on the prisoner. If the interrogators intention is to obtain necessary information than there should not be any limits to their actions. This concept is what Bybee and Yoo called, "Specific Intent". In order to violate Section 2340A of the US Code, which prohibits the use of torture for information, there is a requirement that "severe pain and suffering must be inflicted with specific intent" (Bybee, 3) Many critics have used this aspect of the argument to justify that the Bybee memo was specifically intended to protect those soldiers that had been convicted in Abu Ghraib scandal.

In sum Bybee and Yoo use the US Code sections 2340 thru 2340A to define when torture would not be permissible legally. Within this argument they note that the acts must be, "specifically intended to inflict, severe pain or suffering, whether mental or physical… [and] those acts must be of an extreme nature" (Bybee, 1).

This memo and the many more to follow sparked, what was soon to become a moral/legal divide amongst American law officials and American people. It provoked the question, is torture permissible legally, morally, or ethically under any circumstances, and if so what ones?

This question was provoked even more in June of 2003 when General Janis Karpinski was put in charge of the United States military prisons in Abu Ghraib. These prisons used to be the housing of prisoners during the rule of Sadam Hussein. Some of the worst torture and abuse to the people of Afghanistan occurred in these quarters. When the United States took over the prison they completely renovated it. From its fixtures, to the very brick it was made of- everything was cleaned and revamped. Upon capture, the prisoners of Abu Ghraib, "fell into three loosely defined categories: common criminals; security detainees suspected of "crimes against the coalition"; and a small number of suspected "high-value" leaders of the insurgency against the coalition forces ". (Fact, 1) While the façade of Abu Ghraib changed completely the treatment of those inside did not. A month after operation, General Karpinski was quietly suspended and a major investigation into the Army's military system began. Lieutenant General Ricardo S. Sanchez, the senior commander in Iraq led the investigation. A fifty-three page report was written from this investigation and as mentioned in the New Yorker article *Torture at Abu Ghraib,* "'Its' conclusions about the institutional failures of the Army prison system were devastating. The report listed a whole slew of illegal, 'sadistic, blatant, and wanton criminal abuses.'" (Torture, 1) Lists of the abuses witnessed were documented.

> Breaking chemical lights and pouring the phosphoric liquid on detainees; pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; sodomizing a detainee with a chemical light and perhaps a broom stick, and using military working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee.

These actions were revealed to the public in the show *60 minutes*. It was at that point that the public stepped back to look at the reality of the interrogation methods. Sixty minutes portrayed some of the abuses that had happened in Abu Ghraib and it opened the eyes of the American public.

One of the most difficult aspects of the debates on torture is that of how much information on the detention centers and the treatment of is a prisoner is available. For without enough information to analyze and understand the issue of torture, the likelihood of making an accurate decision that is sound in fact is close to impossible. How then may we participate in a democracy if necessary information is withheld from us? Opponents would argue, rightfully, that it is necessary to keep some

information hidden from the public because that is the nature of the necessity of an intelligence agency.

The Case for Torture

The case for Torture is somewhat misleading as a title for an opinion. However, it is the simplest and best description of this side of the argument. Generally, people are not *for* torture. Rather, the argument is rooted in the *necessity* for torture. Those who are "for torture" are for torture because of the danger to our national security. With that understood the case for torture is even more dynamic. The case generally argues first and foremost for the national security of our country through whatever means necessary, including the use of torture. These people believe that torture is effective and the prisoners who have been selected do not fall under any laws or treaties that would exclude them from necessary treatment. For people such as John Yoo, torture is about presidential prerogative and exercising the full right of the title "commander in chief". For Yoo, by limiting the power of the presidency there is an encroachment upon the constitutional rights of the executive power.

For those who are in favor of torture, torture is a necessary evil because in order to retain national security extreme measures must be taken. As John Yoo explained, " Legally, we are not required to treat captured terrorists engaged in war against us as if they were suspects held at an American police station. Limiting our intelligence and military officials to polite questioning, and demanding that terrorists receive lawyers, Miranda warnings, and a court trial, would only hurt our ability to stop future attacks." (Yoo, 186) John Yoo describes that the legal rights of the prisoners are void in this case. The Red Cross several months after the opening of the Abu Ghraib detainment camp made an investigation and came to quite startling conclusions about the treatment of the prisoners. In response, Yoo denounced the side of the Red Cross and said that they have not lived up to their neutral intermediary in wartime, but instead according to Yoo, "have pushed a political agenda…a Red Cross report criticized interrogation as a 'system devised to break the will of the prisoners [and] make them wholly dependent on their interrogators'" (Yoo, 119). Because the Red Cross did not identify any specific torture methods that were used, Yoo argues that the Red Cross was referring to the *entire* system of interrogation. Therefore, the argument of the Red Cross if used in that sense, could broadly define torture as any type of interrogation and therefore interrogation used, for example, in US police

stations may be considered torture. Once a view such as Yoo's becomes infinitely broad, it loses its meaning.

In reference to any statute that would limit torture and hence the presidential power, Jay Bybee asserted in his memo, "…the statute would be unconstitutional if it impermissibly encroached on the President's constitutional power to conduct a military campaign. As Commander-in-Chief, the President's constitutional authority to order interrogations of enemy combatants to gain intelligence information concerning the military plans of the enemy." (Bybee, 24) The office of legal council and also the Council of the Department of justice concluded that the detainees are not considered Prisoners of War as protected under the Geneva Conventions. The reasons for this exclusion include:

(a)A determination that Afghanistan was a failed state because the Taliban did not exercise full control over the territory and people, was not recognized by the international community, and was not capable of fulfilling its international obligations (e.g., was in widespread material breach of its international obligations).

(b)A determination that the Taliban and its forces were, in fact, not a government, but a militant, terrorist-like group

On January 25th, 2002 Alberto R. Gonzales, of the White House Council wrote in a memorandum to President Bush that he believed the advice given by Yoo and Bybee was sound and that he should declare the Taliban and Al Qaeda outside the coverage of the Geneva Conventions.(Gonzalez, 1) The Geneva Conventions do not apply because The Taliban was not a government and Afghanistan was not a functioning state. Therefore, because Afghanistan was not a functioning state it should not be protected under the Geneva Conventions. There is no clear distinction between militant non- governmental Taliban and Al Qaeda or at least not clear enough to be distinguished between safely. The Geneva conventions or as Yoo puts it, “Customary International Laws” do not bind the president or restrict military actions because its not a federal law recognized under the supremacy clause. Article VI, Paragraph 2 of the United States Constitution is known as the Supremacy Clause: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Both John Yoo and Jay Bybee refer to the War Crimes Act as being a better rule and measure for the use of torture. The War Crimes Act

which prohibits "...any act committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health." It is speculated that the preference for this act is due to its broad definition and flexibility of interpretation.

Another major voice in the debates is of Charles Krauthammer, a writer for the Washington Post. Krauthammer said that many of the prisoners would be protected under the Geneva Conventions if they were considered to be Prisoners of War. Krauthammer defines enemies into 3 categories; ordinary soldier caught on the field of battle: he is entitled to humane treatment. "Indeed we have no right to disturb a hair on his head." (Krauthammer, 1) The second is a Captured terrorist; he does not wear a uniform, he hides among civilians, and he deliberately targets innocents: he is entitled to no protections whatsoever. "Breaking the laws of war and abusing civilians are what, to understate the matter vastly, terrorists do for a living. They are entitled, therefore, to nothing."(Krauthammer, 1) And the third is terrorists with information: "If you have the slightest belief that hanging this man by his thumbs will get you the information to save a million people, are you permitted to do it?"(Krauthammer, 2) Krauthammer would argue yes. Furthermore, for Krauthammer, "The real

argument should be over what constitutes a legitimate exception." (Krauthammer, 1) Rather than outlawing torture all together.

In sum, those who are for torture believe that the "enemy combatants, or the detainees are not and should not be considered Prisoners of War. The detainees are terrorists, and most likely terrorists with information. Because of this, there should be no regulations or protections for these people. Torture is a necessary evil to obtain the information that could protect our nation.

The Case against Torture

The case against torture is predicated upon morals that disagree with the use of torture against any detainee regardless of circumstance. It is an argument of principal not exception.

Senator John McCain wrote a piece called "*Abusive Interrogation Tactics Produce Bad Intel and Undermine the Values we hold dear. Why we must as a Nation, do better.*" Senator John McCain has a point of view that is very unique. Senator McCain who was captured, imprisoned and tortured during the Vietnam War explains that, "In my experience, abuse of prisoners often produces bad intelligence because under torture a person will say anything he thinks his captors want to hear- whether it is

true or false– if he believes it will relieve his suffering." (McCain, 1) He continues with a personal experience, "I was once physically coerced to provide my enemies with the names of the members of my flight squadron, information that had little if any value to my enemies as actionable intelligence. But I did not refuse, or repeat my insistence that was required under the Geneva Conventions to provide my captors only with my name, rank, and serial number. Instead, I gave them the names of the Green Bay Packers' offensive line, knowing providing them false information was sufficient to suspend the abuse. It seems probable to me that the terrorists we interrogate under less than humane standards of treatment are also likely to resort to deceptive answers that are perhaps less provably false than that which I once offered." (McCain, 1) McCain's words provided a different insight into the effectiveness of torture.

The amount of innocent people being interrogated is baffling and appalling according to this side. As Joseph Margulies uncovers the Red Cross (who are supposed to be neutral) has a strong argument on the issue of torture. Due to the information given and the experiences that many of their workers went through, their opinions were strong about the state of the detainment camps and the permissibility of torture. Margulies continues, "Certain CF military intelligence officers told the ICRC that in their estimate between 70% and 90% of the prisoners deprived of their

liberty in Iraq had been arrested by mistake. They also attributed the brutality of some arrests to the lack of proper supervision of battle group units" (97, Margulies) with these statistics it is easily argued that torture should not be permissible in this case due to the percentage of innocent vs guilty prisoners.

The results of torture on an innocent person are shown blatantly clear in the case of Jose Padilla. The Jose Padilla case was a landmark case that dealt with presidential prerogative in times of war; it questioned the suspension of the writ of habeas corpus to detainees. But more importantly it questioned the results of torture on a person. Jose Padilla was considered a "material witness" and was also thought to have had a dirty bomb, because of this; he fell under the extremely broad definition of an "enemy combatant" (President George W. Bush's way of obtaining prisoners from a fair trial). Padilla's lawyer filed a petition for the Writ and was denied because of his enemy combatant status and the presidential power to determine that. Jose Padilla ended up not having a dirty bomb and upon arrival into the court system recently, his lawyers suggested that he may not be fit for trial. The New York Times explains, "Two mental health experts, a forensic psychiatrist and a forensic psychologist hired by the defense, testified that Mr. Padilla, 36, suffers from post-traumatic stress disorder as a result of his isolation and scores of

interrogation sessions during three years and eight months in a military brig in South Carolina." (Sontag, 1) Also according to the New York Times article this disorder makes him twitch and unable to talk about what happened while he was being detained. When questioned he starts to sweat and becomes flushed. He tries to deny the obvious reactions that his body is having, but everyone present notices it. This is just one of the many cases, many of which the public will never be made knowledgeable of.

The State Department's Legal Advisor William H. Taft IV also wrote a memo. In his memo he stated that, "…a decision that the conventions do not apply to the conflict in Afghanistan in which our armed forces are engaged deprives our troops there of any claim to the protection of the conventions in the event they are captured." (Taft, 1) Shortly after this memo release, President Bush released a new directive that set down rules for the treatment of prisoners in Afghanistan. President Bush broadly sighted that there needed to be a "new thinking in the law of war." He demanded that all detainees should be treated humanely even if they don't specifically fall under the requirements of the Geneva Conventions. This posed awareness about torture but still the definition was too ambiguous and broad to make a difference.

The title, “Commander in Chief” as describes previously, holds a lot power and therefore conflict. Margulies reacts to the overburdening power of the executive as expressed in the Bybee and Yoo memos, “But perhaps the most worrisome part of the torture memo is its attempt to transform the commander in chief power into the ultimate constitutional trump card, no matter what Congress may have said. Or, as Yoo later put the matter to a reporter with the New Yorker, Congress cannot “tie the president’s hands in regard to torture as an interrogation technique… It’s the core of the commander-in-chief function. They can’t prevent the president from ordering torture” (Margulies). One of the roots of the problem for this side of the argument is the over burdening power of the president. He has taken his power to determine who is a detainee, for how long they will be detainees, and essentially what will and will not be allowed treatment wise. This view seems to be almost unchecked and imperialistic by the other branches in government. Jonathan Mahler, a writer for the New York Times wrote on Joseph Margulies, “…assuming the mantle of commander in chief may pick and choose from among the laws of war, applying them selectively to restrain others but not he, is simply breathtaking. It amounts to a frank declaration that in war, the law really is silent.” (Mahler, 1)

Secretary of State Colin Powell, in his memo brought another very relevant point into this side of the argument. He wrote a memorandum on January 26th 2002 in response to Yoo's, Bybee's and Gonzales's memorandum on torture, claiming that they did not "squarely present to the President the options that are available to him. Nor does it identify the significant pros and cons of each option." In his memorandum he explicitly defined the pros and cons of considering the detainees POWs and therefore protected under the Geneva Conventions. Powell first states that by not abiding by the Geneva Conventions, "it will reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the laws of war for our troops, both in this specific conflict and in general." Secondly, "It has a high cost in terms of negative international reaction, with immediate adverse consequences for our conduct of foreign policy". Thirdly, "It will undermine public support among critical allies, making military cooperation more difficult to sustain." Lastly, "Europeans and others will likely have legal problems with extradition or other forms of cooperation in law enforcement, including in bringing terrorists to justice." (Powell, 2) There are few pros resulting from stating that the Geneva Conventions do not apply to any of the detainees in this war and therefore, they are not protected against torture. Powell states as a pro of abandoning the Geneva Conventions,

"This would be an across-the-board approach that on its face provides maximum flexibility, removing any question of case-by-case determination for individuals" (Powell, 2). Powell's remarks seem to dig at a deeper question of convenience. Because such a restrictive rule as the Geneva Conventions would cut down on many of the methods of the interrogators, and hence information would have to be obtained through other means, perhaps less convenient means, the question of disregarding the Geneva Conventions all together seems much more appealing.

The Abu Ghraib case is used consistently by those against torture because it shows what detainment camps look like with only dictate of the "commander in chief". If there are no laws to govern the war, than it must be considered that the passions of the people could very well taint humane treatment of the prisoners. The scandal in Abu Ghraib evoked many people against torture to start searching for the laws and treaties that would convict the soldiers that participated in the crimes. For example, The Universal Declaration of Human Rights was adopted and proclaimed by General Assembly Resolution 217A (III) on December 10, 1948.

Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin,

property, birth or other status. Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be

independent, trust, non-self governing or under any other

limitation of limitation of sovereignty"

Article 9: "No one shall be subjected to arbitrary arrest,

detention or exile"

Article 5: "No one shall be subjected to torture or to cruel,

Inhuman or degrading treatment or punishment"

The Universal Declaration of Human Rights as well as the UN Convention Against Torture was evoked in much of the memos as being blatantly against torture but none the less not enforceable under the conditions.

Congress passed a statute in 1994 as apart of our obligations under the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, usually known as the Convention against Torture, or the CAT. It was specifically evoked by Alberto Gonzales in his response to John Yoo and his colleague Jay Bybee's argument.

My View—Contra torture

Torture is not permissible, justified or in the best interest of the United States. It undermines the values of the United States and puts us in a negative light in the eyes of the rest of the world. As has been shown, the argument for torture is quite impressive and persuasive. Any argument that promises security and eventual peace always takes precedence in a nation that has just been attacked. According to Yoo, Gonzalez and many others, torture is necessary to maintain national security. However, as has been shown, torture only seems reasonable and effective in thought. Once the pictures and the results started to become available to the public, specifically in the Abu Ghraib case, the view of torture and its effects changed.

The very basis of our government, the Constitution bans every aspect of torture. How can we follow such documents as the Constitution when we don't exercise them on others? Such articles as the 4^{th}, 5^{th}, 8^{th} and the 14^{th} ban torture. And although it may be argued that the Constitution is only meant for the protection of the liberty of the United States, a selfish argument indeed, what would the fate of the United States be if other countries decided to instate these tactics on us? As was shown in Senator John McCain's story, torture was used in the Vietnam War. This

was not the first time torture has been used and it will not be the last. And for that reason, it is necessary for the United States to take the moral high ground. Even if the negative effects of committing torture are not apparent yet, they will be. In the case of Jose Padilla, just one of the hundreds of innocent people who were tortured. Jose was tortured and now can not completely function. The United States military failed in this respect. It tortured and individual to the point of mental insanity, and now both he and his family will be affected by this for the rest of their lives. This is not the only case and will continue not to be the only case so long as protection of all civilians is dismantled.

The most awful criminals in the United States are treated with at least the most fundamental rights and are protected under the Constitution. The United States may not be considered a moral country if it refuses to treat those who are only suspected as being affiliated with Al Qaeda and the Taliban in a devastatingly inhuman manner. We lose track of our values and morals by making exceptions such as this one. Every individual in this world should be granted the moral rights of the Geneva Conventions. The intentions of the Geneva Conventions were to protect those who would fall into line of fire in the case of an attack.

Besides losing our own values by seeing torture as a necessary evil and supporting it, the United States ends up losing respect amongst other

nations. I most closely agree with Colin Powell when he describes in his memo on torture, by abandoning the Geneva Conventions alone we will face a whole slew of problems:

"It will reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war of our troops, both in this specific conflict and in general; it has a high cost in terms of negative international reaction, with immediate adverse consequences for our conduct of foreign policy; it will undermine public support among critical allies, making military cooperation more difficult to sustain; Europeans and others will likely have legal problems with extradition or other forms of cooperation in law enforcement, including in bringing terrorists to justice; It may provoke some individual foreign prosecutors to investigate and prosecute our officials and troops; It will make us more vulnerable to domestic an international legal challenge and deprive us of important legal options." (Powell, 2)

The best piece of Powell's argument lies in his statement about what things could look like if we applied the Geneva Conventions to the detainment camps: "It presents a positive international posture, preserves U.S. credibility and moral authority by taking the high ground, and puts us in a better position to demand and receive international support". (Powell, 2) By following the Geneva Conventions the benefits would be

extraordinary and further from any calculative estimation. Therefore, even though the results of not using torture may not be immediately apparent, they will eventually prove to be superior.

As mentioned earlier, Alberto Gonzales in his memo to the President, Afghanistan could not be considered protected under the Geneva Conventions because it was a "failed state". I am in strong objection to the concept that the very fundamental rights of humanity may be completely disregarded just because the United States labels a country as not "successful". This way of thinking is similar to that of a dictatorship in that it justifies torture and inhumane treatment of citizens of Afghanistan just because they may or may not be manipulated or dictated by terrorist organizations. Gonzalez continues to describe the benefits of not including the detainees under the rights of the Geneva Conventions, "…by concluding that GPW does not apply to al Qaeda and the Taliban, we avoid foreclosing options for the future, particularly against non state actors."(Gonzalez, 2) This concept is preposterous because it essentially gives the power to keep the rule open so as to not limit the kinds of acts that may be taken against any individual that is determined to be not covered. *Interma arma silent leges*, a Latin phrase meaning "the laws may be silent during times of war", focuses on a dangerous point of the issue. When restrictions on power are broken or broadened, a risk of a step

away from rationality and reason appears. In a time of war the destructive passion of the individual are too dangerous to give power. Hence, the balance of power and checks and balances within the United States government is particularly important. It is imperative to keep this balance in times of war. And although it's understood that not all information may be made public for the safety and the preservation of secrecy within the intelligence agency, the rights of an individual should not be abused by a broadening of a law.

The Geneva Convention expresses some of the most fundamental rights to human beings. For the Geneva Conventions to be limited in any capacity is suspicious and unjustified. I understand that the laws that were set forth by the founders to be obeyed in times of war and that the president has a prerogative that may be offset what would be acceptable when not in times of war. However, at no times in the state of the nation should laws be more applicable. Such presidents as Abraham Lincoln needed to break laws and rules, and in Lincoln's case the Writ to Habeas Corpus in order to preserve the union. He needed to do this for the preservation of the Unites States, and to have followed the laws would have only resulted in a catastrophic separation of the United States.

Referencing back to the "ticking time bomb" scenario that Krauthammer alludes to, is it reasonable to limit torture when an individual

has given reason to be suspicious and know about a bomb that will detonate and potentially kill thousands? It's the question of killing one to save many. However, this example is not reasonable or justified in this case. The vicious torture of the detainees in Abu Ghraib and Guantanamo was not simply done to one or two individuals, but rather hundreds. A revised argument would then follow, can we justify saving thousands at the expense of hundreds of generally innocent individuals? This is where my moral divide begins. Morally, torture is not permissible, especially in the modes by which it has been executed throughout the war. It exploits the individual and justifies inflicting severe pain on people to get them to confess (truthfully or perhaps untruthfully just to stop the pain). Legally, we shoot ourselves in the foot every time we dismiss an international treaty or law. To dismiss the Geneva Conventions, as Colin Powell explained, is to put not only our soldiers in danger of not being protected, but it also makes us lose reputation and credit amongst the rest of the world. And when it comes to national security, I believe it is of human nature to want peace immediately. However, this mentality is what gets especially Americans into danger. We want peace so much that we forget that the road to peace begins in a struggle. We can't force peace through violence. We must gain peace through reason strength patience and discipline.

Furthermore, torture is not effective. It has been shown to induce false confessions. As senator John McCain reflected in his own experience with being tortured during the war: he was forced to give some sort of answer, and so he told a lie just to get out of it. What then would be the purpose of torturing an individual and abusing their rights to such an immoral extreme if the result is generally unreliable?

One of the main dilemmas with making an argument that essentially rids the United States military of one of their fundamental intelligence gaining tactics is that to come up with an alternative would not show the same results. However, my argument has been that those results come at a price. The price being, not obtaining accurate information (false confessions that would muck the system in an adverse way), The U.S.'s reputation of obeying laws and treaties by other nations, safety of the United States military in the case any of the soldiers were captured and most of all: a pride and a reputation for taking the moral high ground supersedes any abuse of power to gain information.

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