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Arrogance and Torture: A History of Guantánamo

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August 13, 2009

The mesh-wire cages, suitable only for animals, are empty now and overgrown, but they will stand forever as a symbol of the Bush administration's brutal and destructive "war on terror" policies, implemented in the wake of the terrorist attacks on the U.S. mainland on September 11, 2001.

This is Camp X-Ray, the first of the prison camps at the U.S. Naval base at Guantánamo Bay, Cuba, and it was here that the grimly iconic photos were taken, on January 11, 2002, showing the first prisoners arriving at a prison from Afghanistan. The images of those shackled and dehumanized figures, clad in orange, kneeling on gravel in painful stress positions, and with their eyes and ears blocked, have come to define the war on terror as much as the notorious photos of abuse in Abu Ghraib prison in Iraq.

At the time, the administration claimed that the prisoners were "the worst of the worst." On January 22, Defense Secretary Donald Rumsfeld declared,

These people are committed terrorists. We are keeping them off the street and out of the airlines and out of nuclear power plants and out of ports across this country and across other countries.

On a visit to Guantánamo on January 27, Rumsfeld claimed that the prisoners were "among the most dangerous, best-trained, vicious killers on the face of the earth."

In the weeks that followed, however, this hard-core rhetoric slipped, when Brig. Gen. Mike Lehnert of the Marines, who was the prison's first commander, admitted,

A large number claim to be Taliban, a smaller number we have been able to confirm as al-Qaeda, and a rather large number in the middle we have not been able to determine their status. Many of the detainees are not forthcoming. Many have been interviewed as many as four times, each time providing a different name and different information.

Although no one knew it at the time, this frank admission neatly encapsulated all that was wrong with Guantánamo. Following a presidential order issued in November 2001, the administration had labeled all the prisoners as "illegal enemy combatants," who could be held without charge or trial, and had, moreover, deprived them of the protections of the Geneva Conventions, but in fact little was known about any of them.

In Afghanistan, where most of the prisoners had been held and processed before their long flight to Guantánamo in brutal, makeshift prisons inside the U.S. bases at Kandahar airport and Bagram airbase, the U.S. military had been ordered to dispense with the Geneva Conventions' Article 5 battlefield tribunals. The hearings, which involved calling witnesses close to the time and place of capture, were a traditional manner of separating soldiers from civilians caught up in the fog of war. During the Gulf War, for example, the military held 1,196 battlefield tribunals, and in nearly three-quarters of them the prisoners were found to be innocent and were subsequently released.

Moreover, as Chris Mackey (the pseudonym of a former interrogator at Kandahar and Bagram) explained in his book *The Interrogators*, the 2001 lack of screening was compounded by instructions from the Pentagon that stipulated that all "non-Afghan Taliban/foreign fighters" were to be sent to Guantánamo. As Mackey noted, "Strictly speaking, that meant every Arab we encountered was in for a long-term stay and an eventual trip to Cuba." The same, it transpired, happened to the majority of the 220 or so Afghans who were also bound like beasts and flown to Guantánamo.

Netting the innocent

It took years for the truth to emerge: that there had been no screening process for the "worst of the worst," and that, although perhaps 40 of the 779 prisoners who have been held at Guantánamo were involved with al-Qaeda, the other 95 percent were either completely innocent men — humanitarian aid workers, missionaries, economic migrants, drifters, or others fleeing religious persecution — or foot soldiers for the Taliban, recruited to fight an inter-Muslim civil war that began long before 9/11.

Some of those men may well have held anti-American sentiments — based, it must be said, on America's foreign policy, rather then a hatred of Americans and American values — but few, if any, had any meaningful knowledge of al-Qaeda, the 9/11 attacks, or any other terrorist plots, and no one knew the whereabouts of Osama bin Laden, despite being asked ad nauseam. For terror cells to be successful, secrecy is the key. As few people as possible must know the plans, and in this al-Qaeda had been particularly successful.

For the rest of the prisoners — the Afghans — the truth was equally bleak. Dozens were unwilling Taliban recruits, forced to serve on pain of death or punishment, and numerous others were betrayed by rivals, who took advantage of the gullibility of the U.S. forces. Deprived of useful intelligence in Afghanistan for at least a decade, and unwilling to risk U.S. troops in a full-scale invasion, the administration arranged for Special Forces to topple the Taliban by forging alliances with various warlords, whom they recruited to fight their battles for them, even though they had no knowledge of the complicated tribal nature of Afghan society. They were, moreover blind to the fact that the corruption of many of their new-found allies had prompted the rise of the Taliban in the first place.

Towering over all these failures was the money: Toyota Landcruisers stuffed full of dollar bills, used to secure the warlords' dubious services, and bounty payments of $5,000 a head for "al-Qaeda and Taliban suspects." These offers were printed on leaflets prepared by the military's PsyOps teams and airdropped into villages, where, as the leaflets proudly proclaimed, "You can receive millions of dollars for helping the anti-Taliban force catch al-Qaeda and Taliban murderers. This is enough money to take care of your family, your village, your tribe for the rest of your life — pay for livestock and doctors and school books and housing for all your people." In Pakistan alone, President Pervez Musharraf bragged, in his 2006 autobiography, that in return for handing over 369 terror suspects (including many transferred to Guantánamo), "We have earned bounty payments totaling millions of dollars."

Witch-hunting and torture

Long before any of this came to light, however, the administration compounded its initial failure to screen the prisoners by embarking on a cruel and misconceived attempt to unlock their mostly nonexistent secrets. The end result resembled nothing less than the activities of the witch-hunters of the 17th century.

The administration began with a presumption of guilt, and any protestation of innocence was regarded as the sign of a terrorist trained by al-Qaeda to resist interrogation. Those who confessed — however implausible their confessions — were rewarded. Those who remained silent — either because they were genuine terrorists or, at the other end of the spectrum, because they had no intelligence to provide, and were unable or unwilling to dissemble — were subjected to an array of "enhanced interrogation techniques," which, under any criteria other than those embraced by the administration, would have been regarded as torture.

The authorization for the use of "enhanced interrogation techniques," beyond those approved in the Army Field Manual (in which physical violence was prohibited and the emphasis was on psychological maneuvers with a proven track record), was signaled in August 2002. In an extraordinary document, known as the "Torture Memo" after it was leaked in 2004, a number of government lawyers — including David Addington, Vice President Dick Cheney's legal counsel, and John Yoo, a young Justice Department lawyer — attempted to redefine torture.

Under the terms of the UN Convention Against Torture, to which the United States is a signatory, torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person." As reinterpreted by the government's lawyers, however, for interrogation to count as torture, the pain endured "must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."

The definition of torture was adjusted partly so that the most senior figures in the administration — including President Bush — could keep a straight face when they declared that America "does not torture," but it was also revised so that the use of techniques previously regarded as torture, such as waterboarding (an ancient torture technique that involves controlled drowning), could be used on an as-yet-undisclosed number of "high-value detainees," including dozens (at least) held in secret CIA prisons.

The general population was not subjected to the worst of these techniques, but in the fall of 2002, in response to requests from senior officials at Guantánamo for the approval of harsher

techniques to “break” what were regarded as particularly uncooperative prisoners, Donald Rumsfeld approved a number of previously prohibited techniques, mainly drawn from the U.S. military’s SERE program (Survival, Evasion, Resistance, Escape), which trains the U.S. military to resist interrogation if captured by enemy forces.

The newly approved techniques included the use of prolonged solitary confinement and sleep deprivation, 20-hour interrogations, forced nudity, forced grooming (the shaving of hair and beards), the use of extreme heat and cold, sexual and religious humiliation, and the use of painful stress positions. Regarded individually, the majority of these techniques would fit the UN definition of torture, but when they were applied together, as they frequently were, there was no doubt that the administration had crossed a line that should not have been crossed, and that Guantánamo had become an experimental prison, focused on interrogation (which itself contravenes the Geneva Conventions), in which the use of torture had become commonplace.

Power and the war on terror

It was inevitable, of course, that America’s leaders would react to the attacks of September 11, 2001, with a show of colossal force. The world’s preeminent military power had not been attacked on its own territory since Pearl Harbor in 1941, and was hardly likely to sit back after such a devastating and symbolic terrorist attack. However, those in charge could hardly have been less qualified to react to the attacks in an appropriate manner.

Behind the presidential façade of George W. Bush, most of the key decisions about America’s response to the attacks were made by Vice President Dick Cheney, with support from Defense Secretary Donald Rumsfeld, and crucial advice from key lawyers, including David Addington and John Yoo. All believed that presidential power had been unjustly eroded since the scandal that forced the resignation of Richard Nixon (under whom both Cheney and Rumsfeld had served). Addington and Cheney had become friends in the Reagan administration, as they tried to shield the president from the fallout from the Iran-Contra scandal, and Yoo, a latecomer, had swallowed their rhetoric whole.

For these men, it was, therefore, predictable that the response to the 9/11 attacks would be a wide-ranging “war on terror” — rather than a targeted pursuit of a small number of criminals — which authorized the president to indulge his powers as commander in chief without any outside interference. The 9/11 attacks also played more generally into their long-cherished desire for unfettered executive power.

First they secured congressional approval for the Authorization of Use of Military Force, the founding document of the “war,” which authorized the president “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”

The rest followed more stealthily under the cover of these sweeping wartime powers: the warrantless wiretapping of U.S. citizens; the presidential order authorizing the president to seize and detain “enemy combatants” indefinitely, or to prosecute them in special trials by military commission; a memo of January 2002 dismissing the provisions of the Geneva

Conventions as "quaint" and "obsolete"; the "Torture Memo" of August 2002; and the approval for the reverse engineering of SERE techniques for use on prisoners at Guantánamo.

Significantly, not everyone working behind the scenes in the "war on terror" was happy with these developments. Among the most critical were several of the agencies working on interrogations at Guantánamo, who were appalled. The FBI, the Naval Criminal Investigative Service (NCIS), and even the Defense Department's own Criminal Investigation Task Force (CITF) all refused to take part in coercive interrogations; and Alberto J. Mora, the Navy's general counsel, even took his complaints to the Pentagon. In January 2003, he threatened to reveal publicly the details of the program unless the "enhanced interrogation techniques" were withdrawn.

Rumsfeld agreed, but immediately set up a working group to approve the techniques in a mildly amended form, although Mora was not informed. When the Abu Ghraib scandal broke in April 2004, Mora realized the extent to which he had been sidelined. He told the journalist Jane Mayer, "Everything we had warned against in Guantánamo had happened — but in a different setting."

Legal challenges to Gitmo

While these struggles remained largely hidden from view, however, other challenges were more difficult to dismiss. Legal challenges to the legitimacy of Guantánamo began almost as soon as the prison opened in January 2002, although it took nearly two and half years for the cases to reach the Supreme Court, allowing the administration a shockingly large window of opportunity to indulge in its extra-legal abuses.

In many ways, the Guantánamo project's viability was shattered on June 29, 2004, when the Supreme Court ruled, in *Rasul v. Bush*, that the prisoners had habeas corpus rights; in other words, they had the right — under the 800-year old "Great Writ," a cornerstone of American justice, inherited from the British, which prevents arbitrary detention — to ask the judge why they were being held. Crucially, the *Rasul* verdict allowed lawyers to visit the prison (to begin filing habeas petitions on behalf of the prisoners) and finally pierce the veil of secrecy that had been necessary for systemic abuse to take place.

In other respects, however, the administration refused to be swayed by *Rasul*. Instead of allowing the prisoners access to the U.S. courts, as the Supreme Court intended, the authorities introduced administrative reviews — the Combatant Status Review Tribunals (CSRTs) — to ascertain whether, on capture, the prisoners had been correctly designated as "enemy combatants." These tribunals were a pale mockery of the Article 5 battlefield tribunals, not just because they took place two and a half years too late, and half a world away from the place of capture, but in particular because of reasons identified in June 2008 by Lt. Col. Stephen Abraham, a veteran of U.S. intelligence who had worked on the tribunals.

In an affidavit for one of the Guantánamo cases, Colonel Abraham declared that the entire process relied on intelligence "of a generalized nature — often outdated, often 'generic,' rarely specifically relating to the individual subjects of the CSRTs or to the circumstances related to those individuals' status." Moreover, the process was designed, essentially, to rubber-stamp the prisoners' prior designation as "enemy combatants" without any meaningful review.

Colonel Abraham was undoubtedly correct, as the steady flow of released prisoners' stories has demonstrated in the years since the CSRTs were convened. Appallingly, however, America's politicians have never stood up to the administration's crimes. In response to *Rasul*, Congress obliged the administration by passing the Detainee Treatment Act (DTA), which cast the prisoners' habeas appeals into a legal limbo. And in 2006, after the Supreme Court made another groundbreaking decision, ruling in *Hamdan v. Rumsfeld* that the military commission trial system was illegal, Congress compounded the error by passing the Military Commissions Act (MCA), which revived the commissions, further stripped the prisoners of their habeas rights, and, for good measure, reinforced the president's right to seize and detain anyone he regarded as an "enemy combatant."

These failings were finally addressed only in June 2008, when, in a third significant decision regarding Guantánamo, the Supreme Court ruled that the prisoners had constitutional habeas corpus rights. Six and a half years after Guantánamo opened, this ruling finally opened up the possibility that the prisoners' cases would be heard in a U.S. court. It was a belated triumph for justice, but it was not enough to undo the damage that had already been done.

For most of the prisoners released from Guantánamo, it was politics rather than justice that secured their freedom. The lawyers' struggles, and the interventions of the judiciary, were enormously significant, but when it came down to it, public pressure in the prisoners' home countries and diplomatic pressure exerted by their home governments played a more significant role. The real failure lay with Congress, which capitulated when confronted by an executive branch that regarded its influence with disdain. Fault also rests, it must be said, with the American public, who were prepared to let their president and vice president seize dictatorial powers, undermine the U.S. Constitution, shred the Geneva Conventions, spurn habeas corpus, tear up the Bill of Rights, discard the Army Field Manual, create a system of show trials for terrorists out of thin air, spy on American citizens with impunity, and pour scorn on the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.