

# Torture and National Security

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The revelation of widespread torture of prisoners in Cuba, Iraq, and Afghanistan justifiably shocked the world community, including the American people. The stark photos of the degradation of the prisoners left little need for words to convey the implications for world opinion. The damage to our moral standing in the world - and support for our "war against terrorism" - was profound. Karl Rove was reported to have said that it would take generations to overcome the damage to our moral standing in the world. Polls showed that the American public shared the outrage of this moral breakdown and violation of the values we present to the world in our effort to promote human rights and dignity. A USA TODAY/CNN/Gallup Poll in May 2004 found that 54% of those surveyed were bothered a "great deal" by these acts and 25% bothered a "fair amount." Only 9% were not bothered at all. Many members of Congress expressed "outrage" and promised to get at the bottom of the matter. President Bush and other senior members of the administration, including the chain of command in the military, echoed this outrage and also promised a full accounting. Reflecting the small minority that was "not bothered," a few members of Congress expressed "outrage over the outrage" expressed by the majority.

Subsequent disclosures revealed a great deal of hypocrisy on the part of those senior officials who expressed shock and outrage over the torture practices. In a series of memos written by members of the Office of Legal Counsel in the Department of Justice, culminating with a 42-page memo on 9 January 2002, there was a deliberate effort to justify "techniques of interrogation" that would yield more timely and valid intelligence in our war on the terrorists. The White House and the Defense Department endorsed the substance of the Justice memos. The entire process, from the Department of Justice to the senior officials in the field, circumvented international protocols as well as federal laws on the treatment of prisoners; in essence we waived the Geneva Conventions. According to Justice lawyers, the "war on terrorism" was an exception to the rule and justified new rules. Although the State Department reportedly objected to these decisions, President Bush rejected their rebuttal. Several members of the military legal team reportedly dissented, but were overruled. From what has been made public, no senior member of the military chain of command objected to the policy that was, in effect, suspending the international laws against torture of prisoners.

During the past year, several studies, all under the auspices of the Department of Defense, have purported to get to the bottom of the matter. All have exonerated from accountability most except low-ranking soldiers. Trials have been held for several of these, with some still in progress and more to come. Other than the reduction in rank of a reserve brigadier general, no other senior officer has been held accountable. These actions have no face credibility, as many have pointed out in the media and in Congress. Whether the leaders in Congress will act to establish accountability remains to be seen. According to the latest polls, there will be less public pressure for them to do so. A USA TODAY/CNN/Gallup Poll released in early May 2005 shows a diminution of public condemnation of the torture. According to this latest survey, the number of those bothered a "great deal" by the acts has dropped to 39%. Those bothered "not at all" rose to 19%.

Taken together, the facts cited above should cause concern in several areas. It is well established that military members have a duty to refuse to obey illegal policies and orders and this certainly applies to actions that violate the Geneva rules in regard to the treatment of prisoners. Thus, one can argue that the punishments now being meted out to those junior soldiers are justified. We punished hundreds of soldiers and Marines for atrocities in Vietnam, even though many of these acts were committed in the heat of battle where it was difficult to distinguish between innocent civilians and insurgents bent on killing those who committed the atrocities. But to dismiss the role of the systemic climate established by the policy documents described above, and the apparent acquiescence by the chain of command, defies explanation. When policy documents waive international laws, the people on the ground have the burden to reject that policy. In my view, the behavior of these senior officials represents more serious violations than those at the end of the process. To exonerate them is inexcusable.

A more fundamental and profound consequence of this episode is what it has done, and can do, to the moral fiber of the military. Perhaps the firewall constructed by limiting the blame to low-ranking enlisted personnel, will satisfy the conscience of the rank and file of the military and reinforce a dedication to moral behavior necessary for a professional military. This was the approach used in dealing with the My Lai massacre in Vietnam. The success of that approach, as it applied to My Lai, and the current problem is debatable. Years after that event, LTG Ray Peers, who had conducted the investigation of the My Lai atrocity, wrote to the Army Chief of Staff that the systemic problems in the Army that led to the My Lai incident had not been corrected. The Army Chief of Staff then ordered an extensive educational process to strengthen ethical behavior. What seems certain in the current situation is that if the military officer corps refuses to own what has occurred and learn from it, we will have weakened the moral fiber of the

military. Claiming that it was the behavior of a "few rogue bad apples" will blind the military to what has occurred. One of the lessons learned should be the need to strengthen the willingness to give loyal dissent to policies that violate the moral code of the professional military. Surely there were senior officers, other than the military lawyers in the Pentagon, who objected to the policies. If those in the chain of command agreed with, rather than just acquiesced to, these policies, there are more fundamental problems than lack of moral courage to dissent.

There are also serious concerns at the societal level. The polls cited above show that the justifiable public outrage is waning. It is likely that some of this is a result of the acceptance of the rationalization that this whole affair was the behavior of those few bad apples. This is an understandable reaction; it is comforting to believe that there is nothing fundamentally wrong with our military leadership and our societal values and moral fiber. This kind of rationalization has worked for many societies, including those in Germany who had "no idea" of what was going on in the concentration camps. Fortunately, the German leaders after the war faced up to the realities of what had happened to the German people and took steps to educate the people so that the Holocaust would not reoccur. If we are not careful, the legitimate outrage at torture will disappear and we will avoid addressing the underlying causes of this blot on our moral fiber. Now that the election is over and there is no partisan political rationale to use the matter in a partisan way, we should be able to look at the problem in an honest manner. This will be a delicate task. At a minimum, Congress should be more responsible in its oversight responsibility.

The most critical aspect of this scandal, especially in terms of immediate implications for our national security, has to do with the international community. The conduct of torture itself, and the way we have handled it, has the potential for long-term damage to our war against those who are using terrorism as their primary means of violence. Terrorism is not new; nations as well as non-state actors have used it. When used by non-state groups such as those now confronting us, those groups depend on at least tacit support of societies in which they operate. That support depends in large part on how those groups are perceived in regard to the justness of their cause, and that of the adversaries, rather than the acts of terrorism themselves. In this sense, the war against terrorism is a war of ideas, with emphasis on who holds the moral high ground. From all accounts, we have been losing this war and the torture of prisoners was, and continues to be, a significant factor. How the international community perceives our reaction to it is critical in this war of ideas. For reasons stated above, we do not believe the approaches we have taken to date will persuade that audience that we have owned up to the actions. In short, blaming it on a few is not credible. "Out sourcing" prisoner interrogation to countries who can do the torture is a thinly veiled solution.

The fundamental flaw in this episode, it seems to me, is the clear disdain of this administration for international norms of conduct. Unless our body politic, including the public, develops a greater respect for responsible membership in the international community, we will find it difficult to regain the moral high ground. Without that moral status, the war on terrorism will be unsuccessful. The rules regarding torture, like other international protocols, are a set of generalized principles and norms designed to serve the interests of the entire world community. At times, conforming to these rules may cause inconveniences. To dismiss them in a cavalier manner, as we did in this instance, is a breach of trust. Trust is a precious commodity, hard to earn, easily squandered, and when lost, very difficult to regain. We have an uphill battle on this issue.

Every country reserves the right to protect its national interests, especially its physical security, even if it entails the violation of international norms. Flouting these norms, however, should be rare and only after carefully weighing the costs. The documents cited above justified the waiver of the rules on torture using that rationale. That rationale is debatable, and I believe, invalid. Experts in the art of interrogation differ on the efficacy of torture as a means of gaining valid intelligence. It is logical to assume that in specific cases, it is effective. These specific cases of success must be weighed against the costs of such techniques. In the current instance, the evidence seems to be that torture was rather indiscriminate. The consequences in terms of the worldwide reaction and the damage done to our moral standing are incalculable.

We must take every reasonable measure we can to undo the damage of the torture issue. A necessary step is for Congress to demand a full accounting that is credible not only to the military and the American public, but to the world community as well. The so-called investigations to date show beyond question that the Department of Defense cannot be trusted to give a credible account. There must be a bi-partisan panel on the level of the 9-11 Commission to perform that task. In addition to establishing accountability, it must articulate corrective measures to correct the systemic flaws that permitted this to happen. The purpose of this effort should not be to punish individuals; rather, it should be to identify features of our bureaucratic culture that permitted this to happen. Otherwise, I believe there will be a tendency to rationalize the conduct as an aberration of a "few bad apples," as seems to be occurring. That can have disastrous consequences.