

Extraordinary Rendition, Torture, and Other Nightmares from the War on Terror



Men in black arrived ... and he remembers one shouting at him through an interpreter: "You are in a place that is out of the world. No one knows where you are, no one is going to defend you." He was chained by one hand to the wall in a windowless cell and left with a bucket and a bottle in lieu of a latrine. He remained there for nearly a week, he said, and then was blindfolded and bound again and taken to another prison. "There they put me in a room, suspended me by my arms and attached my feet to the floor," he recalled. "They cut off my clothes very fast and took off my blindfold..." He said the interrogators left him chained for five days without clothes or food. "They beat me and threw cold water on me, spat at me and sometimes gave me dirty water to drink," he said. "The American man told me I would die there."

Craig S. Smith & Souad Mekhennet

"Algerian Tells of Dark Odyssey
in U.S. Hands"

New York Times, July 1, 2006

ON SEPTEMBER 6, 2006, President Bush admitted publicly what had been surmised for some time: that the U.S. government was holding unnamed alleged terrorist "enemy combatants" in secret detention centers throughout the world as part of the Global War on Terror (GWOT). Some prisoners are in U.S. custody; others have been rendered to third countries. This "extraordinary rendition" program, as it has euphemistically been dubbed, has been vociferously criticized in the United States and abroad as both unlawful and ill-conceived.... The stories of the individuals "outsourced" as a result of the U.S. rendition program are lurid in their details, involving hooded detainees, who are spirited away in the dead of night and sent in chartered aircrafts to remote countries where they typically suffer torture and maltreatment. In the words of one former CIA agent: "If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear—never to see them again—you send them to Egypt."

The use of torture by Americans and foreign governments acting as surrogates for the United States should not come as a surprise. Given the wealth of information on coercive interrogation tactics that has emerged from reports on conditions at Guantanamo Bay, as well as the sickening photo and video footage emanating from Abu Ghraib prison, it would be naive to assume otherwise.... Given the insistence of the White House on provisions retroactively amending the Federal War Crimes Act of 1997, which effectively amnestied those committing offenses under the prior law, it is hard to ignore the tacit admission in the recently enacted Military Commissions Act (MCA) that the United States has embarked on an official policy inconsistent with current international definitions of torture.

Although it was initially believed that the number of prisoners rendered abroad has been relatively few, it now appears that the number may be scores or even hundreds. The covert nature of the operations and the allegations of prisoner mistreatment raise very troubling questions about the U.S. rendition program, which has been labeled by [an] EU Parliamentary Committee as "criminal" and "illegal."

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MANY EXPERTS have applied themselves to an understanding of the deeper logic of terrorism and its causes, which is not our subject here. Those studies, however, in no way suggest that the kind of human rights abuses that currently taint the conduct of the

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GWOT are necessary for a better outcome. Secret prisons, secret prisoners, indefinite detention, and the use of torture and cruel, inhuman, and degrading treatment, all in violation of international human rights law and international humanitarian law, should be uniformly and categorically rejected, particularly by lawyers who understand the complexities of the law and its central role in holding a society together when tested by adversity...

The Nuremberg principles, with their emphasis on individual criminal responsibility rather than collective punishment of entire nations or ethnic groups, suggest an alternative vision of the GWOT: one that would permit the United States to retain both legal and moral clarity as it combats the very deadly scourge of international terrorist attacks. Indeed, following the September 11 attacks, the United Nations Security Council adopted a series of resolutions building on the Nuremberg precedent by mandating, for all nations, that the crime of international terrorism be treated as other *jus cogens* crimes, such as genocide and war crimes, over which all states may exercise universal jurisdiction. The resolutions emphasized the duty of all states to prevent, as well as punish, acts of international terrorism, and set out a framework for the continued elaboration of international norms and prosecutions of international terrorist crimes.

WHATEVER QUALMS one might have about the Security Council adopting this kind of international “legislation,” undoubtedly the September 11 attacks themselves were so horrifying in scale that they unified states’ desires to finally make progress regarding the definition of terrorism and the prosecution of major international terrorist figures. Many commentators suggested the need for international terrorist courts; not a new idea (an international terrorism convention, complete with a court, was elaborated in 1937 although it never came into force), but one worth seriously considering, particularly given the desire of many states to see the International Criminal Court eventually assume such a task.

The Bush administration’s approach has appeared hypocritical and confused, attempting on the one hand to extricate the “war on terror” from the application of international humanitarian law, while arguing on the other hand, as a matter of domestic law, that because terrorism is a problem of war, not crime, the President may establish military commissions, detain individuals indefinitely without charges, eliminate the possibility of federal court supervision, and substantially aggrandize his own authority.

[This] ... approach appears to have been remarkably short-sighted. Most international terrorists do not live in the United

States or even in countries whose citizens are favorably disposed toward Americans. Intergovernmental cooperation is therefore essential for the[ir] apprehension. The kind of “universal jurisdiction by treaty” regimes found in all the antiterrorism treaties alluded to earlier requires all contracting states to try or extradite suspected terrorists. The Security Council resolutions adopted after September 11 suggest that they may, in addition, be enforceable as a matter of customary international law against nonparty (or uncooperative) states by the Security Council. This is assuming the United States is willing to cooperate in a manner that gives assurances to other states that American efforts will be cabined by law. The use of secret prisons, the holding of “ghost prisoners,” and the endemic use of torture and cruel, inhuman, and degrading treatment against detainees in U.S. custody, however, gives states political cover for refusing to cooperate with the United States when they might otherwise have done so.

AMERICAN LEADERSHIP at Nuremberg showed the formerly warring states of Europe a new way to conceptualize international relations and instill the rule of law. The administration has cited no evidence that Geneva and the other treaties elaborated at that time are obsolete; rather the government has made what is, at best, a tenuous case that they are inconvenient. Shattering the consensus that produced them has serious consequences not only for the conduct of the GWOT, but the stability of all the institutions established under U.S. leadership after the Second World War.

International law, like domestic law, is a system whose component parts are deeply intertwined. Unraveling portions of the legal fabric has unintended consequences for the whole. The war that was launched from the nightmare of September 11 has produced the nightmare of Guantanamo, the horror of Abu Ghraib, the broken lives of the U.S. soldiers killed or wounded in Iraq and Afghanistan, the deaths of tens, maybe hundreds, of thousands of Afghan and Iraqi civilians, and the shattered psyches of America’s torture and rendition victims. The damage done has been considerable, but it is perhaps not yet insurmountable if the United States government changes course. IIII

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