

The Torture Papers: The Road to Abu Ghraib

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(Editors)**

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Ever since 9/11, the greatest challenge for us all has been how to keep a sense of proportion and maintain a capacity for dispassionate judgement. *The Torture Papers: The Road to Abu Ghraib* epitomises this challenge. Michael Ratner, President of the US Centre for Constitutional Rights, is quoted on the dust jacket as stating that the book, “may well be the most important and damning set of documents exposing US government lawlessness ever published.”

The Torture Papers actually consists of three kinds of documents: memorandums drafted and circulated within the American government after 9/11; reports on the abuses in Iraq and supplementary material. The memorandums make fascinating reading. The editors of the book see them as the conscious preparation, by policy makers who “do not like our system of justice”, of a warrant for “pernicious purposes”, especially ‘the desire to abrogate the Geneva Convention with respect to the treatment of persons seized in the context of armed hostilities’.

These claims are seriously overwrought. The Bush administration was not seeking to abrogate the Geneva conventions, but simply to clarify the fact that they do not apply to terrorists. The third convention, on the treatment of prisoners of war (PW), stipulates, in fact, consistent with the fourth Hague Convention of 1907, that combatants, if they are to expect protection as PWs, must fulfil four conditions: be commanded by responsible individuals, wear identifiable insignia, carry arms openly and themselves obey the laws of war. Unarguably, Al Qa’eda did not and does not fulfil any of these conditions. There cannot, therefore, be any serious claim that its jihadists, when captured, are entitled to the protections of the third Geneva Convention. There is nothing pernicious in this legal argument. It is clear and straightforward.

The charge that Bush Administration personnel were working with pernicious purposes could only be sustained if it had declared that America would, without qualification, disregard the customary and legal standards of treatment for prisoners in its war against terrorism. It did no such thing. The President wrote, “Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.”

The February 2004 Red Cross (ICRC) Report on the treatment of prisoners in Iraq, which brought the Abu Ghraib abuses to international attention, specifically found that: “In most cases, the allegations of ill treatment referred to acts that

occurred prior to the internment of persons deprived of their liberty in regular internment facilities... When persons deprived of their liberty were transferred to regular internment facilities, such as those administered by the military police, where the behaviour of guards was strictly supervised, ill-treatment of the type described in this report usually ceased.” Nota bene: the abuses were irregularities, not official policy.

The March 2004 Taguba Report on the 800th Military Police Brigade, which guarded prisoners in Iraq, the July 2004 Mikolashek Report, by the Inspector General of the Department of the Army, into detainee operations; the August 2004 Schlesinger Report, by the Independent Panel to Review Detention Operations, and the August 2004 Fay-Jones Report, by Lieutenant General Anthony Jones and Major General George Fay, into the performance of the 205th Military Intelligence Brigade at Abu Ghraib, bear this out. They specify abuses, identify culprits, describe in detail the circumstances in which the abuses occurred, clearly delineate between what was done and what was authorised, and call for detailed corrective measures to prevent a recurrence of such abuses. They nowhere and in no way take cover behind some presumed warrant for the use of torture by American military or intelligence officers or by civilian contractors.

What, then, are we to conclude in this matter, at least on the basis of the documents contained in *The Torture Papers*? That the war on terrorism is being waged by evil people with criminal intent? No. The papers included in this book do not support any such allegation. That those people have used some coercive methods in an effort to break the resistance of terrorists, and other lawless opponents, in this grim struggle? Yes. That those methods constitute torture as most of us would normally understand that term? No. That the specific abuses at Abu Ghraib and the small number of killings that have occurred in the detention centres operated by the American military were authorised or intended by the architects of this coercive interrogation policy? No. There is no evidence in these papers that that was so and clear evidence that those things have been reprehended, investigated and punished. ♦

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The extensively footnoted review essay on which this shorter review is based may be found at ><http://www.austhink.org/monk/torture.htm><.

