

## The Moral Measure of a Civilization Is in Its Treatment of Enemies

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In the heat of the Civil War, Abraham Lincoln made a speech in which he referred sympathetically to the Southern rebels. A member of the audience lambasted him for wanting to treat his enemies kindly when he ought to be thinking of destroying them. Lincoln's answer:

"Why, madam, do I not destroy my enemies when I make them my friends?"

Harshness and cruelty were to be banished from the moral imagination of the nation he was trying to save.

The late Jack Maple, a famously flamboyant but phenomenally effective former deputy commissioner of the NYPD, wrote that "the more information a detective has, the more creative, authoritative and effective he or she can be." Under attack in 2001, and then at war in Iraq in 2003, American law enforcement, intelligence and military really didn't have much information at first. They rounded up the usual suspects, but didn't know what usual meant. So they smacked people around, and that was always a bad idea, as Maple said:

"Forget that smacking somebody around is illegal and just plain wrong, it's also the quickest way to ruin the chances of getting a statement of any kind."

Professional interrogators talk about building empathy and dependence. Maple would get down on his knees and pray with a suspect if he thought that would work. But the best technique? "If you can get them to laugh, you'll get a statement. That's always true." Internal CIA documents reveal that empathy is also likely what got Abu Zubaydah to reveal how Al Qaeda planned 9/11 and its other operations. His torture brought nothing of real value, only the moral demeaning of him and his tormentors.

The Bush administration had long maintained that the overtly cruel and abusive detainees of prisoners at Abu Ghraib and elsewhere were, as former Defense Secretary Donald Rumsfeld put it, "a few bad apples." But the recent release of CIA documents now shows plainly that the Bush administration's approach to prisoner abuse was rotten to the core. The Obama administration, to its eternal credit, has resolved to expose this moral canker to the light (although 4 former CIA directors would prefer to let it fester in the fog of secrecy). But refusal to allow justice to hold anyone accountable, and excise the abuse from our body politic, makes its return more likely.

When military officers at Guantánamo Bay, Cuba, struggled in the fall of 2002 to find ways to get terrorism suspects to talk, they turned to the CIA, which had had spent several months experimenting with the limits of physical and psychological pressure. They took the top lawyer for the CIA's Counterterrorist Center to Guantánamo, where he explained that the definition of illegal torture was "written vaguely":

"It [torture] is basically subject to perception," said the CIA lawyer, Jonathan Friedman, according to meeting minutes released at a Senate hearing in June 2008: "If the detainee dies, you're doing it wrong."

The CIA used waterboarding on prisoners with the approval of the Justice Department. Secretary of State Condoleezza Rice later confirmed in a statement to congressional investigators in September 2008 that the Bush administration had issued a pair of secret memos that explicitly endorsed the CIA's use of waterboarding and other extreme interrogation techniques against terrorist suspects.

The 2002 meeting at Guantánamo showed how CIA lawyers believed they had found a legal loophole permitting the agency to use "cruel, inhuman or degrading" methods overseas as long as they didn't lead to the detainee's death. Some military personnel objected, to their credit. Others, like military lawyer Lt. Col. Diane Beaver, did not:

COL Cummings: We can't do sleep deprivation.

LTC Beaver: Yes, we can - with approval.

Dave Becker: We have had many reports from Bagram [military prison in Afghanistan] about sleep deprivation being used.

LTC Beaver: True, but officially it's not happening.... The ICRC [International Committee of the Red Cross] is a serious concern. They will be in and out, scrutinizing our operations.... This would draw a lot of negative attention.

Friedman: The CIA is not held to the same rules as the military. In the past when the ICRC had made a big deal about detainees, the DOD (Department of Defense) has "moved" them away from the attention of the ICRC. Upon questioning from the ICRC about their whereabouts, the DOD's response has repeatedly been that the detainee merited no status under the Geneva Convention.

LTC Beaver: We will need documentation to protect us.

Friedman: Yes, if someone dies while aggressive techniques are being used, regardless of the cause of death, the backlash of attention would be severely detrimental. Everything must be approved and documented.

Lt. Beaver wrote a now-infamous Oct. 11, 2002, memo that determined abusive methods could be used against detainees at Guantánamo Bay prison because they were not considered prisoners of war. Her proposed methods included extended isolation, 20-hour interrogations, death threats and waterboarding. She later told the Senate Armed Services Committee that "it was simply not foreseeable" that her memo became the primary justification for then-Secretary of Defense Donald Rumsfeld's approval to use harsher methods, which Vice-President Dick Cheney later admitted (or rather vaunted) personally signing off on:

"I cannot, however, accept responsibility for what happened to my legal opinion after I properly submitted it to my chain of command.... I did not expect that my opinion, as a Lieutenant Colonel in the Army Judge Advocate General's Corps, would become the final word on interrogation policies and practices within the Department of Defense."

Although then U.S. Attorney General John Ashcroft also approved waterboarding and other cruel techniques, complaints by FBI agents about abusive interrogation tactics at Guantanamo and other U.S. military sites reached the White House and National Security Council but prompted no effort to curb practices that the agents considered ineffective and illegal.

The most generous interpretation of the decisions of our political leadership to torture in this way, and of the craven acquiescence to it by elements in our intelligence community and military leadership, was that the U.S. government was in a panic after 9/11: desperate for information that would save American lives from further surprise attack, and also eager for some kind of proof that the administration had been right about justify the "liberation" of Iraq because of the threat from its association with Al-Qaeda or because of its Weapons of Mass Destruction, or whatever. The discussions are chilling, and reminiscent of those revealed at the Nuremberg trials and elsewhere between the German SS and army officials of the Wehrmacht and prison authorities, who were also divided over how to treat detainees and avoid the "negative attention" of the Red Cross at Theresienstadt and other concentration camps.

There is always a concerted effort of those involved in cruelty, and their apologists, to bury ethical concerns underneath legalistic mumbo jumbo and to ignore the overriding question for any civilization: Is this moral? It is moral progress, I believe, that there more people than not who find Abu Ghraib and waterboarding disgusting. Unfortunately, a number of members of the U.S. government have not been loathe to exploit the depths of human misery and degradation.

Reputation, like life itself, is a complex affair that is difficult to sustain but simple to destroy. As General Douglas Stone, who took over charge of detainees for the Multi National Force in Iraq after the Abu Ghraib scandal, told me last year before he retired from his command:

"We have turned around 180 degrees to show respect for any of the detainees in our care: respect for the culture, for the religion and for the history of the place where our compounds are. But what those few did [at Abu Ghraib] will probably be the images best remembered of this war for a hundred years from now."

President Obama, like General Stone, clearly recognizes that cruel and abusive punishment - whether called "harsh interrogation" or "torture" - violate the basic principles upon which the American Republic was founded regarding the physical sanctity of the individual, principles that have served as the template for all subsequent elaborations of human rights around the globe. But the restoration of our reputation and standing in the world requires more than just a restatement of principles. It requires that those who violate those principles be brought to justice.