Discourses That Make Torture Possible: The Abu Ghraib Case

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ABSTRACT

Based on the evidences provided by the Abu Ghraib prison scandal in 2004, I will show in this paper how some U.S. governmental discourses created what has been called a “torture-sustaining reality” that produces a favorable environment to commit acts corresponding to torture. In order to do that, I will first explain how the governmental discourses can be connected to the actions perpetrated in Abu Ghraib. Second, I will show how this torture-sustaining reality results from two discursive processes found in some U.S. governmental memos: dehumanization and authorization.

The Abu Ghraib prison had once served as a jail in Saddam Hussein’s regime. After its fall in 2003, Abu Ghraib has been used by the American Forces. The Abu Ghraib scandal broke out in April 2004 with the presentation of dozens of pictures showing abuses committed by US military on Iraqi prisoners at the CBS television show 60 Minutes II. The scandal was instantaneous and tremendous. This event has been the starting point of my Master’s thesis and I propose to examine here some of my findings.

The U.S. administration rapidly explained that the acts had been committed by a few “bad apples”, i.e. sadistic members of the military who had tarnished the image of the United States around the world. However, international events contemporaneous to the scandal provided plenty of examples of situations similar to Abu Ghraib. Among other things, Human Rights Watch released a report in July 2006 in which it was explained that “[t]orture and other abuses against detainees in U.S. custody in Iraq were authorized and routine, even after the 2004 Abu Ghraib scandal” (HRW 2006). How did this situation come about? Based on the Master’s research I conducted, I will argue here that some U.S. governmental discourses created what has been called a “torture-sustaining reality” that produces a favorable environment to commit torture acts. In order to do that, I will first seek to explain how the government discourses are connected to the actions perpetrated in Abu Ghraib. Second,
I will show how this torture-sustaining reality results from two discursive processes: dehumanization and authorization. My data is composed of twenty-eight US administrative and military memos\(^1\) as well as three military reports, the Miller and Ryder reports\(^2\). All these documents have been compiled in *Torture Papers : The Road to Abu Ghraib* by two jurists, Karen J. Greenberg and Joshua L. Dratel (2005)\(^3\).

One of the most interesting findings I could detect in the data was the similarity observed between, on one hand, some more aggressive and invasive interrogation techniques proposed in Memo 26 by a Department of Defense’s working group and, on the other hand, abuses committed in Abu Ghraib. It is important to mention here, however, that all these techniques were subsequently *prohibited* by the Secretary of Defense in a following memo (Memo 27:360). As the figures 1 and 3 illustrate, such aggressive techniques, like “hooding”, have been employed anyway and sometimes more intensively than what had been discussed in memo 26, which stated that the blindfold was supposed to be used only during interrogation (Memo 26:341). The Removal of Clothing technique, meant to create “a feeling of helplessness and dependence” (Memo 26:343), was frequently employed as numerous pictures demonstrate (see for example Figure 2).

Also, the prohibited Prolonged Standing technique has been noticed in some pictures where we can discern the detainees’ fatigue and weakness (Figure 3), even though the technique’s description in the memos clearly stated that the “lengthy standing in a “normal” posi-
tion [...] should never make the detainee exhausted to the point of weakness or collapse” (Memo 26:342). Another technique, the Increasing Anxiety by Use of Aversions, is thought to create detainees’ anxiety. Memo 26 illustrates this technique by the following example: “simple presence of dog without directly threatening action” (Memo 26:343). Again, a picture (Figure 4) shows that this technique has been used, and that it has been used in a more aggressive way than what has been discussed in the memo.

The Taguba Report has been written by the Major General Taguba in 2004, before the scandal broke out. MG Taguba was in charge of an inquiry regarding Abu Ghraib prison. The report exposes many abuse cases committed by the US military. We can once more observe that some prohibited interrogation techniques had been used in that prison. Some testimonies document the use of the Sleep Deprivation technique, that involves forcing detainees to spend nights on a flooded floor (Taguba Report 2004:501), taking away mattress and sheets (Taguba Report 2004:495), or keeping detainees awake (Taguba Report 2004:518). Finally, the Physical Training technique, meant to create compliance and fatigue, has been used, as we can discern from one military testimony: “I would have them [the detainees] do physical training to tire them out” (Taguba Report 2004:518).

Having taken stock of the high degree of similarity between more aggressive and invasive interrogation techniques proposed in a governmental memo and abuses committed in Abu Ghraib I will now proceed to show how some governmental discourses have created a situation that tolerates and/or fosters torture practices. This causal link has to be situated in a socio-politic climate in which fear of terrorist attacks is constantly fed by the media, by some US governmental discourses referring to imminent terrorist attacks, as well as by what is called in the memos the “War on Terrorism” geared toward preventing these attacks but also legitimated by them.

A conceptual tool is helpful to understand how torture is made possible even in contexts where it is not explicitly permitted or ordered, as seemed to be the case in Abu Ghraib. Ronald Crelinsten, a Canadian criminologist, argues that torture becomes acceptable with the construction of a separate reality, a ‘torture-sustaining reality’, which is extracted from common sense and morality (2003). Following this path, I have identified in the literature two processes likely to create a torture-sustaining reality (Corrado and Cohen 1999; Crelinsten 1995, 2003; Kelman 1995; LeBreton 1999). Firstly, the purpose of dehumanization is to deny the victims’ humanity in order to legitimate the inflicted treatment. Dehumanization enables the torturer to exclude the tortured from its moral community. Secondly, the authorization process makes torturers believe that they serve a transcendental cause where common moral principles are no longer in place. Consequently, they perceive their actions as crucial for the protection of the State.

Throughout the course of the analysis, four statements have emerged as the foundations for the construction of a torture-sustaining reality: 1) Al Qaida organization is responsible for the 9/11 attacks, as well as are the Taliban since they have sheltered them. 2) Only a militaristic reply to the attacks is appropriate. 3) Other terrorist attacks against United States are imminent. 4) “War on Terrorism” is a new war paradigm for which the Geneva
Conventions are not relevant and wherein the possession of information about these impending attacks is crucial.

Authors who have documented torture argue that the main source of dehumanization pass through the designation of certain groups of people as enemies, defined by terms like insurgents, terrorists or dissidents. Those persons threaten the social order and, consequently, do not deserve the same treatment than the one reserved to other individuals (Corrado and Cohen 1999:529; Kelman 1995:31). In effect, the first memos I analyzed have created a new detainees category, “enemy combatants”, who are discursively constructed as not being protected by any convention or law; an idea that the new “War on Terrorism” paradigm serves to justify. Moreover, many affirmations in the data considered have been interpreted as strengthening this process of dehumanization. For example, a memo written by the US Department of Justice states that “there is no indication that the Taliban militia understood, considered themselves bound by, or indeed were even aware of, the Geneva Conventions or any other body of law” (Memo 12:138). This affirmation, arguing that some group of persons have neither rules or law, is a strong statement that invites the readers to think of the Taliban as quasi-animals. Another example is provided by the President himself, who has signed in a memo saying: “of course, our values as a Nation, […] call us to treat detainees humanely, including those who are not entitled to such treatment” (Memo 11:135, emphasis added). This sentence brings to believe that some human beings do not deserve to be humanely treated. This is clearly constitutive of the dehumanization process.

![Figure 5](image_url)

Furthermore, it is important to mention the vicious circle of dehumanization that occurs in cases of torture. The mechanism works in a way that once the discursive dehumanization have been effective, the process is made easier because torture itself dehumanizes. Indeed, Crelinsten illustrates this idea using the example of what he qualifies as the irony of the torture victims’ own screams, those noises sounding very much like animals screams (Crelinsten 1995:41). The Iraqis detained in Abu Ghraib had suffered this vicious circle as the figure 5 can illustrate.

Once the “enemy combatants” category had been created, a fifth statement appeared in the memos: those designated as “enemy combatants” necessarily possess the presumed
crucial information in order to prevent imminent attacks. This discursively constructed certainty justified requests to use interrogation techniques considered more aggressive and invasive than those usually used, such as those proposed in the Memo 26. The interpretations of torture from three legal documents (Convention against Torture (CAT), U.S. Code and Uniform Code of Military Justice (UCMJ)) revealed in the memos 14 and 26 seem to conclude of an impossibility to commit torture. In other words, those memos have created a process of authorization in the sense that no matter what treatment is applied to obtain information, it is conceptually impossible to commit torture. This is part of a torture-sustaining reality. First, we can suppose by reading the memos that members of the military cannot be prosecuted for torture because they fall under the Uniform Code of Military Justice (UCMJ). “The Uniform Code of Military Justice (UCMJ) applies to United States Forces on active duty, at all time and in all places throughout the world” (Memo 26:325). Of course, some articles in the UCMJ prohibit acts like cruelty, mistreatment, or assaults that could be comparable to torture. However, the word “torture” never appears in the UCMJ. Second, the Memo 14’s writers had specified that the amount of pain inflicted “must rise to the level of death, organ failure, or permanent impairment of a significant body function [...] in order to constitute torture” (Memo 14:176). This definition suggests that torture is an act characterized by the amount of pain inflicted, an idea rebutted by many social scientists who had identified some techniques of torture that cannot be qualified as such, like transgression of cultural and sexual taboos or movement deprivation (Sironi 1999). Three, memos read that one must have a “specific intention” to torture in order to be prosecuted for torture. This means that if the main intention is, for example, to obtain information but in doing so one commits torture, one has only a “general intention” and cannot be charged in this regard. “Thus, even if the defendant knows that severe pain will result from his actions, if causing such harm is not his objective, he lacks the requisite specific intent even though the defendant did not act in good faith. Instead, the defendant is guilty of torture only if he acts with the express purpose of inflicting severe pain [...]” (Memo 14:175, emphasis added). These three examples illustrate how the idea that perpetrating torture is impossible was sustained and how it constituted an authorization process.

Moreover, I identified other elements in the memos that could have led militaries to conceive their actions as a transcendent mission, element identified above as fundamental to the authorization process. Firstly, the memos’ writers claim that the U.S. Code’s Section 2340A4 - the “torture article” - is unconstitutional in the War on Terrorism context.⁴ The argument here is that since the President has the constitutional authority to conduct military operations and to order interrogations to gain intelligence information, “any effort to apply Section 2340A in a manner that interferes with the President’s direction of such core war matters as the detention and interrogation of enemies combatants thus would be unconstitutional” (Memo 14:200). Secondly, memos read that the “necessity”, the “choice of evils” arguments could be raised in defense to an allegation of a Section 2340A violation. The necessity argument seeks to legitimize an actor’s behavior that breaches the law but that is
thought necessary in order to avoid harm, particularly when the harm foreseen is greater than the one committed.

On September 11, 2001, al Qaida launched a surprise covert attack on civilian targets in the United States that led to the deaths of thousands and financial losses in the billions of dollars. According to the public and governmental reports, al Qaida has other sleeper cells within the United States that may be planning similar attacks. Indeed, al Qaida’s plans apparently include efforts to develop and deploy chemical, biological, and nuclear weapons of mass destruction. Under these circumstances, a detainee may possess information that could enable the United States to prevent attacks that potentially could equal or surpass the September 11 attacks in their magnitude. *Clearly, any harm that might occur during an interrogation would pale to insignificance compared to the harm avoided by preventing such an attack, which could take hundreds or thousands of lives.* Memo 26:308 (emphasis added).

Thirdly, the memos’ authors talked about self-defense to justify more aggressive interrogation techniques. In the War on Terrorism context, self-defense is united with the U.S. executive branch’s constitutional authority to protect the country. “If a government defendant were to harm an enemy combatant during an interrogation in a manner that might arguably violate Section 2340A, he would be doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network” (Memo 14:213). Thereby, some torture acts could be warranted to protect the U.S. nation. I showed above how the authorization process has been created. The strength of this discursive process is explained by the context of impunity that seems to exist in regard of torture.

I have shown how a parallel reality, a torture-sustaining reality, has been constituted by governmental and military writings, which have contributed to put in place dehumanization and authorization processes. Obviously, this thesis refutes the one assuming that acts of torture perpetrated in Abu Ghraib in particular, and in other prisons built in the War on Terrorism context in general, have been isolated incidents committed by “bad apples”. Of course, I am not trying to excuse the individual perpetrators. But individual responsibility should not be accepted as the sole explanation of these acts. We also should pursue, as I have tried to do here, a systemic explanation for the recurrence of bad treatments perpetrated in U.S. custody in the context of the War on Terrorism.
Notes

1. There is the complete list of the memos and the reports at the end of this paper.
2. I considered a third military report, Taguba Report, since it contains numerous testimonies, both from detainees and military involved in the facts.
3. Each time I will quote one of these memos or reports, I refer to this volume.
4. We shall name this article the “torture article” as it addresses the penalty for torture in the U.S. Code.

References

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Greenberg Karen J., and Joshua L. Dratel, eds.

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LeBreton David

Sironi Françoise
Memos List

Memo 1: 2001-09-25
The President’s Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them
From: John Yoo, Deputy Assistant Attorney General, DoJ, Office of Legal Counsel
To: Timothy Flanigan, Deputy Counsel to the President

Memo 2: 2001-11-13
Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism
From: President Bush
Military Order

Memo 3: 2001-12-28
Re: Possible Habeas Jurisdiction Over Aliens Held in Guantanamo Bay, Cuba
From: Patrick F. Philbin, Deputy Assistant Attorney General and John Yoo, Deputy Assistant Attorney General, DoJ, Office of Legal Counsel
To: William J. Haynes II, General Counsel, DoD

Memo 4: 2002-01-09
Re: Application of Treaties and Laws to al Qaeda and Taliban Detainees
From: John Yoo, Deputy Assistant Attorney General, DoJ, Office of Legal Counsel and Robert J. Delahunt, Special Counsel, DoJ.
To: William J. Haynes II, General Counsel, DoD

Memo 5: 2002-01-19
Status of Taliban and Al Qaeda
From: Donald Rumsfeld, Secretary of Defense
To: Chairman of the Joint Chiefs of Staff

Memo 6: 2002-01-22
Re: Application of Treaties and Laws to al Qaeda and Taliban Detainees
From: Jay S. Bybee, Assistant Attorney General, DoJ
To: Alberto R. Gonzales, Counsel to the President, and William J. Haynes II, General Counsel, DoD

Memo 7: 2002-01-25
Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban
From: Alberto R. Gonzales, Counsel to the President
To: President Bush

Memo 8: 2002-01-26
Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan
From: Colin L. Powell, DoS
To: Counsel to the President, Assistant to the President for National Security Affairs

Memo 9: 2002-02-01
Re: Justice department’s position on why the Geneva Convention did not apply to al Qaeda and Taliban detainees.
From: John Ashcroft, Attorney General
To: President Bush

Memo 10: 2002-02-02
Comments on your Paper on the Geneva Convention
From: William H. Taft IV Legal Advisor, DoS
To: Alberto R. Gonzales, Counsel to the President

Memo 11: 2002-02-07
Humane Treatment of al Qaeda and Taliban Detainees
From: President Bush
To: The Vice President, The Secretary of State, The Secretary of Defense, The Attorney General, Chief of Staff to the President, Director of CIA, Assistant to the President for National Security Affairs, Chairman of the Joint Chiefs of Staff.

Memo 12: 2002-02-07
Status of Taliban Forces Under Article 4 of the Third Geneva Convention of 1949
From: Jay S. Bybee, Assistant Attorney General, DoJ
To: Alberto R. Gonzales, Counsel to the President

Memo 13: 2002-02-26
Re: Potential Legal Constraints Applicable to Interrogations of Persons Captured by U.S. Armed Forces in Afghanistan
From: Jay S. Bybee, Assistant Attorney General, DoJ
To: William J. Haynes II, General Counsel, DoD

Memo 14: 2002-08-01
Re: Standard of Conduct for Interrogation Under 18 U.S.C. §§ 2340-2340A
From: Jay S. Bybee, Assistant Attorney General, DoJ
To: Alberto R. Gonzales, Counsel to the President

Memo 15: 2002-08-01
Re: Letter regarding “the view of our Office concerning the legality, under international law, of interrogation methods to be used on captured al Qaeda operatives”
From: John Yoo, Deputy Assistant Attorney General, DoJ, Office of Legal Counsel
To: Alberto R. Gonzales, Counsel to the President

Memo 16: 2002-10-25
Counter-Resistance Techniques
From: General James T. Hill, DoD, U.S. Southern Command
To: Chairman of the Joint Chiefs of Staff

Memo 17: 2002-10-11
Counter-Resistance Strategies
From: Major General Michael Dunlavey, DoD, JTF 170, GTMO
To: General James T. Hill, DoD, U.S. Southern Command
Memo 18: 2002-10-11
“Discourses That Make Torture Possible” • vis-à-vis: Explorations in Anthropology

Legal Review of Aggressive Interrogation Techniques
From: Diane Beaver, Staff Judge Advocate, DoD, JTF 170, GTMO
To: General James T. Hill, DoD, U.S. Southern Command
Memo 19 : 2002-10-11
Request for approval of Counter-Resistance Strategies
From: Jerald Phifer, Director, J2, DoD, JTF 170 GTMO
To: General James T. Hill, DoD, U.S. Southern Command
Memo 20 : 2002-10-11
Legal Brief on Proposed Counter-Resistance Strategies
From: Diane Beaver, Staff Judge Advocate, DoD, JTF 170 GTMO
To: General James T. Hill, DoD, U.S. Southern Command
Memo 21 : 2002-11-27
Counter-Resistance Techniques
From: William J. Haynes II, General Counsel, DoD
To: Donald Rumsfeld, Secretary of Defense
Memo 22 : 2003-01-15
Detainee Interrogations
From: Donald Rumsfeld, Secretary of Defense
To: General Counsel of the DoD
Memo 23 : 2003-01-15
Counter-Resistance Techniques
From: Donald Rumsfeld, Secretary of Defense
To: Commander U.S. Southern Command
Memo 24 : 2003-01-17
Working Group to Assess Legal, Policy, and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism
From: William J. Haynes II, General Counsel, DoD
To: General Counsel of the Department of the Air Force
Memo 25 : 2003-03-06
Working Group Report on Detainees Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations
Classified by: Donald Rumsfeld, Secretary of Defense
Memo 26 : 2003-04-04
Working Group Report on Detainees Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations
Classified by: Donald Rumsfeld, Secretary of Defense
Memo 27 : 2003-04-16
Counter-Resistance Techniques in the War on Terrorism
From: Donald Rumsfeld, Secretary of Defense
To: General James T. Hill, Commander, U.S. Southern Command
Memo 28 : 2004-03-19
Re: Draft of an opinion concerning the meaning of Article 49 of the Fourth Geneva Convention as it applies in occupied Iraq
From: Jack Goldsmith III, Assistant Attorney General, Office of the Legal Counsel
To: William H. Taft IV General Counsel, DoS; William J. Haynes II, General Counsel, DoD; John Bellinger, Legal Adviser for National Security; Scott Muller, General Counsel, CIA

Military Reports List


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