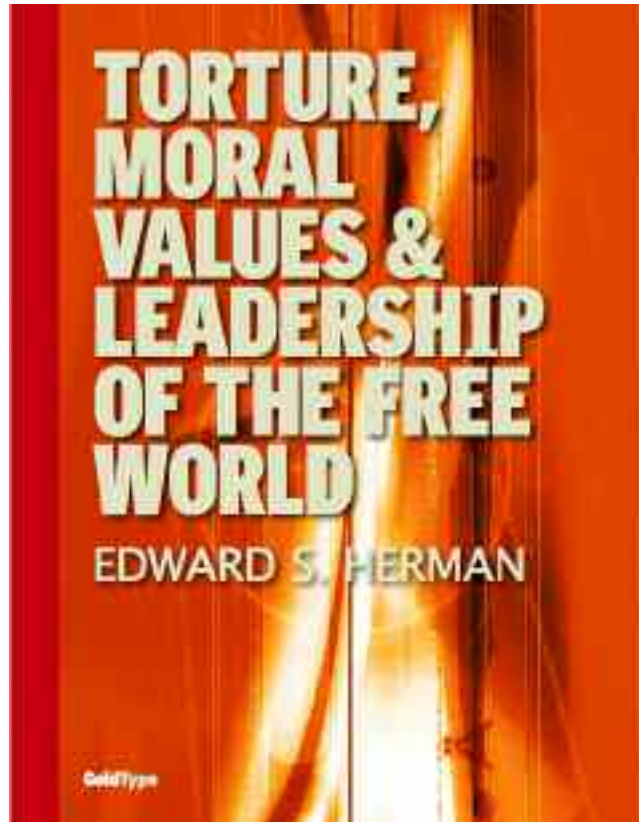


**TORTURE,
MORAL
VALUES &
LEADERSHIP
OF THE
FREE WORLD**

EDWARD S. HERMAN

ColdType



Edward S. Herman is Professor Emeritus of Finance at the Wharton School, University of Pennsylvania, and has written extensively on economics, political economy and the media. Among his books are *Corporate Control*, *Corporate Power*, *The Real Terror Network*, *Triumph of the Market*, and *Manufacturing Consent* (with Noam Chomsky).

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HERMAN: TORTURE, MORAL VALUES & LEADERSHIP

It is striking and chilling to see the leader of the Free World, George W. Bush, the Decider, seeking and gaining legislative approval for his government's now widespread use of torture, and exemption of himself and his top level associates for any earlier applications of torture. It has been pointed out that such ex-post exemptions have been sought by the most notorious state terrorists such as Augusto Pinochet and the Argentinean generals, whose ranks the Decider aims to join. This quest contradicts the earlier claims that the torture in Abu Ghraib and elsewhere was being carried out at their own initiative by "rotten apples" at the bottom of the military barrel; it makes it clear that if there were real prosecutions for those criminal acts they would focus on the rotten apples at the top, who created the moral environment within which the lower level cadres worked and which the leadership is now institutionalizing as lawful.

Perhaps the most remarkable feature of this struggle to legalize torture is that the Bush regime has been able to engage in torture on a wide scale, make "extraordinary renditions" in secrecy to foreign torture venues, engage in the grossest violations of human rights and international law in handling prisoners, successfully elevate to the rank of chief legal officer of the United States the man most identified with apologetics for torture (Alberto Gonzales), and now openly plead for legalization of the right to torture, without being considered beyond the pale and no longer worthy of respect and deference as leader, at least in the mainstream media. This latest Bush outrage is of course in addition to his guilt as war-maker and violator of the UN charter prohibition of aggression, and his management of a system of government corruption unmatched since the 19th century. The contrast with the treatment of Clinton for a sexual escapade of no public policy significance is dramatic and revealing of the basic values of the dominant U.S. elite.

Crucial to Bush's success has been the further collapse of the Democratic Party leadership and its failure to afford the public a serious alternative to the Bush-Cheney Republicans and torture regime. The Democratic leadership supported the Iraq invasion and occupation and continues to squirm to avoid a support of withdrawal even though that is the position now held by a solid majority of the public. These leaders have competed vigorously with the Bush team in genuflec-

HERMAN: TORTURE, MORAL VALUES & LEADERSHIP

tion to Israeli demands and support of Israel's attack on Lebanon, its renewed assault on and further immiseration of Gaza, and its continued ethnic cleansing on the West Bank. They are outdoing Bush in inflating the Iran threat and calling for forcible action to meet it.

Given these mini-collapses it was to be expected that the Democrats would be exceedingly quiet in the modest and mainly intra-Republican controversy over the Bush attempt to gain legal sanction for his right to torture. For the Democrats, this campaign, and the torture program, and the serial aggressions and efforts at regime change, don't make Bush a moral outcast or "thug," let alone a "devil" as Hugo Chavez recently called him. The Democrats take umbrage at such a designation, and it is Chavez himself, whose government does not torture, aggress, or pursue regime change elsewhere, who House Minority leader Nancy Pelosi calls a "thug."^[1] She and Bush may be power rivals, but she and her Democratic colleagues regard and treat Bush as their leader and agree with him on basic foreign policy issues. They are not going to make torture and the torture gulag a big issue.

Because the Democrats are on the Bush team and cannot or will not challenge him forcefully on torture, mainstream media challenges are muted as well. The increasingly powerful rightwing echo chamber positively supports Bush on torture, and the centrist ("liberal") media treat the subject in low key and with balance between supporters and opponents of torture, with a sharply critical editorial or two, but without great passion and not hammering away at the topic as of great moral urgency (and of course without the intensity of coverage or moral fervor displayed in the Clinton-Lewinsky case).

The fact that torture is deeply immoral and an important form of terror, in violation of long-standing rules of international law, and notoriously an instrument of regimes of acknowledged savagery, is not compelling in the mainstream media and does not lead to repudiation of the rotten apple at the top and his incriminated associates. The matter is subject to debate, with the lead terrorist given the floor on a daily basis, with his picture at a podium with his faux-serious demeanor, and treated with respect. He and his associates claim that the right to torture is essential to national security and a key part of the "war on terror," claims that have been confuted and turned on their head repeatedly-their informational value is extremely meager,^[2] whereas their role in discrediting U.S. pol-

HERMAN: TORTURE, MORAL VALUES & LEADERSHIP

icy and producing more cadres to oppose the regime of torture is clear and is now even confirmed in a National Intelligence Estimates study that Bush tried to keep out of the public domain.^[3]

The other main argument within the establishment against his demand for the right to torture, has been the potential negative effect on the treatment of U.S. prisoners. Far down the list is the matter of gross immorality and illegality. Although Donald Rumsfeld famously said that those brought to Guantanamo were “the worst of the worst,” it quickly turned out that a great many of them had been picked up and transferred to U.S. personnel by U.S.-allied warlords, had no connection with Al Qaeda, and were even sometimes not even involved in the conflict at all. A recent report by Amnesty International charges that, fueled by U.S. offers of up to \$5,000 for suspects, Pakistani “bounty hunters, including police officers and local people,” have captured hundreds of Pakistanis and foreigners and “sold them into U.S. custody.”^[4] Recall also the Red Cross estimate that possibly as many as 90 percent of the Iraqis seized and transported to Abu Ghraib were picked up on no basis except presence in a place being “swept.” All of these were potentially subject to torture, and a stream of those released have told a tale of mistreatment that can match the stories out of Nazi concentration camps and the Soviet gulag.^[5] But neither these horror stories nor the quintessentially evil quality of a regime of torture have caused the Democrats or mainstream media to rise up in outrage and give a resounding NO!

In the discussions of the new torture-permissive legislation the media do not bring up Bush’s statement of June 26, 2003, that “Freedom from torture is an inalienable human right. Yet torture continues to be practiced around the world by rogue regimes,” and that in this struggle “we are leading this fight by example.”^[6] This display of hypocrisy without limit, and its unintended and unrecognized designation of the United States as a “rogue regime,” would be relevant context for those seriously opposed to torture, but it is not proper context for the Democrats and mainstream media. In the media the debate over the Bush push for torture legitimation was framed around three brave Republican Senators, John McCain, Lindsey Graham, and John Warner, struggling valiantly in the interest of fundamental principle and against torture, versus the “security”-focused administration. In the end, however, these valiant fighters all caved in and compromised

HERMAN: TORTURE, MORAL VALUES & LEADERSHIP

away all principle, as is clear from an examination of the final Senate and McCain et al.-approved Military Commissions Act of 2006 (S. 3930), which does the following:

1. Significantly Broadens the Definition of “Enemy Combatant” and Makes It a Matter of Presidential Discretion: The MCA defines “unlawful enemy combatant” as “a person who has engaged in hostilities against the United States” or who “has been determined to be an unlawful enemy combatant” by a Combatant Status Review Tribunal or any “competent tribunal established under the authority of the President or Secretary of Defense.” In accord with the spirit of this legislation, an enemy combatant is whoever is so designated by the Commander-in-Chief. The category could include anyone, including a U.S. citizen, who organizes a protest march against a U.S. war, any attorney for war prisoners, or anybody who has given money to a charity linked in some way to a designated “terrorist” organization. This definition makes the MCA a serious threat to First Amendment rights, among other problems.

2. Removes Habeas Corpus Rights of Non-Citizens: Habeas corpus, a human right considered a basic underpinning of western justice since the Magna Carta (1215), is declared inapplicable, and “no court shall have jurisdiction” to hear an appeal for habeas corpus by a non-citizen who has been “determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.” This rules out any appeal possibility for the hundreds of prisoners held in Guantanamo. As the Center for Constitutional Rights has pointed out, “a foreign tourist wearing an anti-Bush t-shirt at the Statue of Liberty” could be so determined “by the United States” and held incommunicado, and indefinitely. This is a major step on the road to authoritarian government.

3. Complex Definitions and Rules on Torture Protect Bush’s Authority To Continue His Torture Regime. The convoluted and intentionally vague language of the MCA sometimes suggests that “bodily injury” or “extreme physical pain” or “non-transitory” harms are required for violation, but in the torture statute itself is added the requirement that the interrogator “specifically” intends to cause the excessive pain (as opposed to just getting information). There is no list of acceptable and unacceptable “methods of

HERMAN: TORTURE, MORAL VALUES & LEADERSHIP

interrogation”— none of the horrible abuses used in Guantanamo and Abu Ghraib are explicitly prohibited. The legislation keeps methods of interrogation open-ended and subject to final decision by the Decider, not even explicitly repudiating water-boarding, and it makes these looser (and torture-protective) rules the ones applicable in interpreting Chapter 3 of the Geneva Conventions.” The President has the authority for the United States to interpret the meaning and application of the Geneva Conventions” (Paragraph 8(a)(3)). There is no appeal to independent courts possible for relief from torture for non-citizens held as “unlawful enemy combatants.”

4. Suspension of Normal Rules of Evidence and Due Process. The MCA permits the use of hearsay and coerced evidence and evidence obtained in warrantless searches, and it fails to allow prisoners on trial assured access to the evidence against them. The ACLU notes that “it appears that most, if not all, of the detainees [at Guantanamo] are being held based almost entirely on evidence that they may never have seen,” and in proceedings before military commissions that have dealt with them “the government can make its decision based on coerced and hearsay evidence.”^[7] This will be codified under the new law.

5. Retroactive Immunity or “Get Out of Jail Free Card” is Given the U.S. Torture Managers. Section 8 of the MCA makes the Americanized, torture-protective modification of the Geneva Conventions retroactive to 1997, and asserts its exclusive application in U.S. courts, thereby exempting Bush and associates from potential prosecution for war crimes. This solves a problem that bothered Alberto Gonzales and other torture regime spokespersons who recognized from 2002 that actual Bush policies were in violation of the U.S. War Crimes Act and could threaten future criminal prosecution. Section 8 partially meets that threat of any potential application of the law to the responsible rotten apples. However, the Geneva Conventions are international agreements to which the United States is a party, and they are therefore a part of U.S. law. Bush/Cheney and company could also theoretically be brought to trial in, say, Spain, although in a power-directed world this will not happen, despite its consistency with real justice and a real rule of law.

A remarkable feature of this legislation is the great scope it gives the Bush

HERMAN: TORTURE, MORAL VALUES & LEADERSHIP

administration for interpreting the meaning of words, including those specifying the intensity and scope of permissible violence against prisoners. Andrew Cohen, noting the “horrible record” of the administration “when it comes to identifying ‘enemy combatants’ and then detaining them here in the states” (he refers to the Yaser Hamdi and Jose Padilla cases), asks “Do you believe the Administration has over the past five years earned the colossal expanse of trust the congress [has given it] in the name of fighting terrorism?” He states that the public’s answer may well be negative, “But your answer doesn’t matter. And neither does mine. To Congress, the answer is ‘yes, sir.’”^[8]

The other remarkable feature of this search for torture legitimacy is how the facts of institutionalized torture, and now the brazen and successful effort to get it legally approved, has hardly dented the position of the Decider and his government as the leader of the Free World. Here is a leadership that has committed the “supreme crime” in its invasion-occupation of Iraq, an aggression built on lies and in violation of the UN Charter, is deeply implicated in Israel’s invasion and destruction of southern Lebanon and reoccupation and crushing of Gaza, has built a torture gulag and has now gotten its supine legislature to legalize torture and further shunt aside international law. In this context, the United States still manages to make Iran, which the United States and its Israeli client have been threatening with violence and regime change and are already attacking and subverting, a world-class villain that the UN and “international community” must restrain as it poses a “threat”-of self-defense.^[9]

If Hitler had been more powerful and had been able to completely cow France and Britain back in the later 1930s and early forties, he might have been able to organize a “coalition of the willing” to deal with the Polish and Soviet “threats,” to get the League of Nations to at least approve ex post his aggressions and give him the right to bring “stability” to occupied Eastern Europe and the Soviet Union. And for these noble efforts his Foreign Secretary Joachim Von Ribbentrop might have received the Nobel prize for peace. Power has its advantages-for the powerful. But the divergence between the acts of the powerful and responses of the international community, on the one hand, and the demands of justice, on the other, continue to widen in this age of Kafka.

HERMAN: TORTURE, MORAL VALUES & LEADERSHIP

NOTES

1. According to Pelosi, "Hugo Chavez abused the privilege that he had speaking at the U.N. In doing so, in the manner which he characterized the president, he demeaned himself and he demeaned Venezuela. Hugo Chavez fancies himself as a modern day Simon Bolivar, but all he is is an everyday thug." Democratic Rep. Charles Rangel said: "[Chavez] has to understand that while we have problems politically sometimes with President Bush, that he is still our president and that we resent foreigners coming and condemning our president, whether it is at the United Nations or whether it is in my congressional district." ("Democratic Lawmakers Blast Venezuelan Leader for Bush Insults," Voice of America News, September 21, 2006.)

2. This is one of the themes in Ron Suskind's *One-Percent Solution*. In an interview with Suskind by Alex Koppleman on Salon.com (September 7, 2006), Suskind says that "In the case of Zubaydah, when it comes to some of the harsh interrogation tactics he was put through, what occurred then was that he started to talk. He said, as people will, anything to make the pain stop. And we essentially followed every word and various uniformed public servants of the United States went running all over the country to various places that Zubaydah said were targets, and were not. "Ultimately, we tortured an insane man and ran screaming at every word he uttered."

3. The April 2006 National Intelligence Estimate "Trends in Global Terrorism: Implications for the United States," only partially released on Tuesday, September 26, 2006, reiterated material that the CIA and others had put into the public domain earlier.

4. Amnesty report: Pakistan: Human Rights Ignored in War on Terror: . Tom Malinowski, Who's really locked up in Guantanamo?.

5. Amnesty International, *Beyond Abu Ghraib: detention and torture in Iraq*, March 6, 2006: "UK suspects in new claims of torture at Guantanamo," Independent, Oct. 6, 2006. David Rose, *Guantanamo: The War on Human Rights* (New York; The New Press, 2004). Scott Shane, "Torture Victim Had No Terror Link, Canada Told U.S.," *New York Times*, Sept. 25, 2006. On the ferocity of torture of Jose Padilla see here.

6. "President's Statement on the U.N. International Day in Support of Victims of Torture," White House Office of the Press Secretary, June 26, 2004.

HERMAN: TORTURE, MORAL VALUES & LEADERSHIP

7. See "ACLU Letter to the Senate Strongly Urging Opposition to S. 3930".

8. Andrew Cohen, This Time, Congress Has No Excuses, Washington Post, Sept. 28, 2006

9. See "The Fourth U.S. 'Supreme International Crime' in Seven Years Is Already Underway, With the Support of the Free Press and 'International Community'," Edward S. Herman and David Peterson, ElectricPolitics.com, May 16, 2006; "Iran's Dire Threat (It might be able to defend itself)," Edward S. Herman, Z Magazine, October, 2004



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