

Torture in a Time of Terrorism

By Veronica Herrera

American human rights abuses committed post-9/11 have sparked a contentious debate about the use of torture in the fight against terrorism. While torture has historically been illegal in the United States, the threat of terrorism coupled with the escalation of violence in Iraq has led to executive and judicial justification for the use of cruel and inhumane treatment. Exposés about the handling of prisoners at Guantánamo and Abu Ghraib have caused both Americans and observers overseas to ask how a country that once promoted human rights could have allowed such abuses to occur and, having done so, whether the U.S. retains any moral authority in the international community.

Why does torture happen, and why do we condone it? In examining the effects of torture, what role does art have in upholding the value of human rights? In “Torture, Human Rights and Terrorism,” a panel inspired by Fernando Botero’s paintings of Abu Ghraib, Aryeh Neier, José Zalaquett, Jenny Martinez and Philip Zimbardo addressed these questions, examining the history and determinants of torture through the fields of human rights, psychology, jurisprudence and art.

As the former executive director of both Human Rights Watch and the American Civil Liberties Union and the current president of the Open Society Institute, Aryeh Neier draws on a vast amount of experience in the field of human rights. Neier began the discussion with an idea borrowed from Elaine Scarry’s *The Body in Pain*, noting that, “the ability to inflict torture is the ability to exercise absolute authority over others.” In other words, the torturer is determined not only to elicit information but to force the victim into complete and total submission.

The link between the events at Abu Ghraib and what has taken place more generally since 9/11 is the need to exercise power, Neier argued. “Sept. 11 was an extraordinary demonstration of American vulnerability. Here were these enormous buildings that were destroyed by 19 people armed with box cutters... It seems to me that the need to engage in a demonstration of American power was the most significant reaction that took place to Sept. 11.”

For Neier, attempts to wield absolute power start at the top and trickle down. At the top, the Bush administration pushed hard to expand executive power and give the

president the ability to override both Congress and international commitments like the Geneva Conventions. This loosening of established norms set the stage for the abuse of power at lower levels as was made painfully clear in the dozens of photographs taken by foot soldiers at Abu Ghraib featuring prisoners dragged around by dog collars and soldiers smiling next to pyramids of naked men.

“If we are to deal with the torture and many of the other things that have taken place since 9/11, we have to above all question this idea, reject this idea, of absolute power,” Neier maintained. The goal of torture is “to secure absolute submission,” he added. “We have tried to secure that kind of submission in Iraq. It has not worked.”

Later in the panel, renowned psychologist Philip Zimbardo returned to the question of why the attempt to make others submit leads to acts of torture. The author of *The Lucifer Effect: Why Good People Turn Evil* and the principal architect of the famous 1971 Stanford Prison Experiment, Zimbardo described how certain environments can turn rational, law abiding citizens into dangerous aggressors. “Situations corrupt people,” he asserted. “Good people can be led to do evil things... in a very short time, I could make most of you do things that you would now say were unimaginable.”

In Zimbardo’s groundbreaking Stanford study, a group of college students who had been specifically chosen for their emotional stability after undergoing a barrage of personality tests were randomly divided into two groups: guards and prisoners. The guards were given uniforms and sunglasses to hide their eyes, and the prisoners were subjected to a process of “deindividuation”: they exchanged their names for numbers and were forced to wear women’s smocks and nylon stocking caps over their hair. On day one, nothing much happened; both guards and prisoners were awkward and self-conscious in their roles. The second day, the prisoners rebelled, and the guards began to see them as dangerous. Gradually, attempts by the guards to control the prisoners escalated into full-scale abuse, and the prisoners started to break down under extreme stress. The experiment, intended to last for two weeks, had to be stopped after six days.

“Why was I not surprised by photos of Abu Ghraib?” Zimbardo asked. Startlingly, the participants in his study

Photo: Associated Press.



Methods used by U.S. soldiers on Iraqi detainees (above) mirror those observed during the Stanford Prison Experiment (right).

had employed near identical methods of humiliation, including the use of nudity and sexual degradation and the placement of bags over prisoners' heads. Zimbardo described Abu Ghraib guard Sergeant Ivan "Chip" Frederick — for whom he served as an expert witness for the defense — as exactly like the "good" guards in the Stanford study on day one. Over a three-month period working 12 hour shifts seven days a week in the grim prison where inmate riots and enemy bombardment were a constant threat and military interrogators pressured guards to "soften up" the prisoners, Frederick became the monster in the photographs. He devised many of the more ingenious methods of torture including the one made famous in the photo of a hooded detainee standing on a cardboard box with fake electrodes attached to his hands.

The lesson, Zimbardo argued, is that the prison guards in Abu Ghraib weren't simply "bad apples." Instead, they were normal people placed in an environment that encouraged the abuse of those under their control. He called this environment a "bad barrel" and suggested that the designers and builders of that barrel should be held accountable. For Zimbardo, the tragedy of Abu Ghraib was

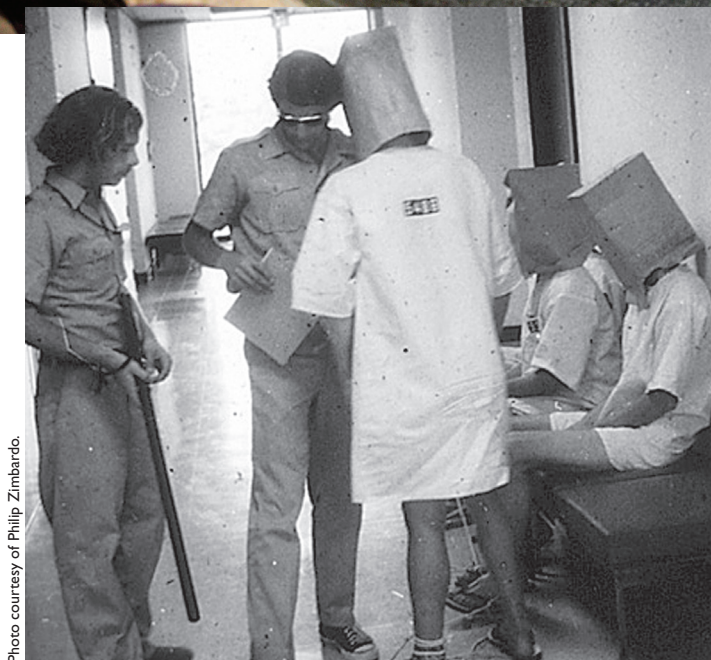


Photo courtesy of Philip Zimbardo.

not simply that inmates there were tortured but that the architects of the war created inhumane conditions for both its military personnel and their Iraqi prisoners.

Stanford law professor Jenny Martinez similarly emphasized that torture degrades the society that adopts it. An experienced litigator, Martinez famously argued the 2004 *Rumsfeld v. Padilla* case before the U.S. Supreme

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Attorney Jenny Martinez stands outside the Supreme Court.

Court, defending constitutional protections for U.S. citizens deemed “enemy combatants.” Central to her argument was the idea that it “is more dangerous and degrading to a country and a legal system to attempt to justify in the law the practice of torture than for the unfortunate thing to simply happen.”

Martinez began by analyzing the legal precedents concerning torture. The limitation on the exercise of torture dates back to 15th century England where it was prohibited because, in contrast to the Continental system, the jury system did not require a confession. However, until the 17th century, the king was able to override common law and order a person to be tortured. This loophole was closed in 1640 when a blanket ban on torture was enacted. The United States inherited the English system of common law and thus, coerced testimony has been inadmissible in court since the country’s founding. Over time, international law also moved to limit the use of torture. Today, the ban on torture is one of the strongest norms in international law; no emergency or state of warfare can legally justify its use.

However, since Sept. 11, the Bush administration has attempted to define torture so narrowly that almost any treatment is legitimate. Martinez argued that American sanctioning of torture in documents such as the 2002 Bybee

Torture Memo, principally written by Boalt Law Professor John Yoo, sets a dangerous legal precedent. The memo not only justified the president’s unfettered authority to wage war but also advanced an extremely narrow definition of torture whereby physical pain inflicted must be “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” The memo summarized the Bush Administration’s war strategy, a strategy that gave rise to the humiliations of Abu Ghraib precisely because they were not deemed to rise to the level of “torture.”

Martinez cited Justice Jackson’s famous dissent in *Korematsu v. United States* that upheld the decision to intern Japanese Americans during World War II. Jackson argued that the case set a dangerous precedent that would act as a “loaded gun” there for governments to use in the future. In the same way, the post-9/11 legal justifications for torture may be used to condone future abuses by the U.S. government as well as by other governments who may use the American example to justify their own abuses.

Has the erosion of Constitutional protections and the Geneva Conventions made a silent civil society little better than a guilty accomplice? The panelists each suggested that there is a danger in remaining passive. Prof. José Zalaquett,

former president of the Inter-American Commission on Human Rights, presented art as one way to take a stand against the abuse of power.

Zalaquett began with the assumption that art both echoes and shapes the spirit of its time. He reflected on historical depictions of violence and war in Western art, focusing on three major periods: the Renaissance to the end of the 18th century; the 19th century through World War II; and post-WWII to the present.

During the first period, artists didn't take a moral stance on war and torture. Suffering, both that of Christ and of the damned, were central to the era's understanding of Christianity. While the suffering of Christ was often so sublimated in art that He looked almost comfortable on the cross, artists "went to great lengths to awe and frighten the faithful with depictions of hell." Alternately, the violence of slavery, conquest and the Inquisition was portrayed very matter-of-factly, more a "documentation than a commentary or moral outcry."

The second period emerges from the American and French Revolutions and begins with Goya and his "Disasters of War." The idea that people were, or should be, equal before the law regardless of class or caste led to an increased awareness of injustice. Artists frequently depicted the violence of anonymous, machine-like soldiers, as in Goya's "Third of May" or Manet's "Execution of Emperor Maximilian." For Zalaquett, this was, "a period where art bears witness, denounces atrocities and vindicates victims."

In the third, post-WWII phase, artists tried to come to grips with the ruins of the past. They chose abstraction as their medium because, "depicting the holocaust realistically doesn't capture the enormity of the crimes." Abstract monuments such as the Berlin Holocaust Memorial, the Vietnam Veterans Memorial and Chile's Peace Park were erected in this period and abstract works such as Alfredo Jaar's "The Eyes of Guete Emerita" attempted convey the extent of the suffering in places like Rwanda. Botero's "Abu Ghraib" series almost seems an anomaly for this era. In it, the artist rejects the use of abstraction and returns to the figurative depiction of violence more common in the second period. However, this shift can be explained by the unfortunate fact that once again artists must confront contemporary human rights abuses rather than attempt to remember past crimes and their victims.

In many ways, Zalaquett's survey of Western art echoed Martinez' history of the legal precedent regarding torture: both capture a societal transformation from a compliant and detached acceptance of torture to a moral condemnation of it.

Human societies may never eradicate the use of torture, but we are armed with valuable weapons with which to



An early version of waterboarding.

abate its occurrence. The history of Western art reflects humanity's infinite capacity to engender torture; a history of jurisprudence reminds us why the modern democratic state created proscriptions against it. With these tools, we can collectively condemn human rights abuses and pass along our moral outrage to future generations. The price of remaining silent and compliant is simply too high.

Aryeh Neier is President of the Open Society Institute; José Zalaquett is Co-director of the Human Rights Center at the University of Chile; Jenny S. Martinez is Associate Professor of Law at Stanford; and Philip Zimbardo is Professor Emeritus of Psychology at Stanford. The panel spoke at the Center for Latin American Studies' forum on "Torture, Human Rights, and Terrorism," held at UC Berkeley on March 7, 2007.

Veronica Herrera is a doctoral student in the Department of Political Science.