Reinterpreting the Geneva Conventions:

The Bush Administration and the Legal Framework on Torture

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The rules and regulations established in the Geneva Conventions serve, in theory, to protect basic human rights during times of war, and are used to punish those found in violation. The Conventions regulate "the conduct of armed conflict and seek to limit its effects" while "specifically protect[ing] people who are not taking part in the hostilities…and those who are no longer participating such as wounded…and prisoners of war." However, in the wake of the September 11, 2001 terrorist attacks on the United States, the Bush administration sought to reinterpret the Conventions and initiated huge shifts in the way international humanitarian law was–or was not–applied to specific circumstances. These shifts radically undermined the protections enshrined in international law and allowed the U.S. government to bypass due process when dealing with the people who were caught in the military apparatus of the post-9/11 wars. This reshaping of American legal norms was not merely a response to the changing nature of warfare; instead, it constituted a calculated and deliberate project to extend executive authority and allow for the legal protection of those in the U.S. government who committed breaches of international humanitarian law. In this paper, I will argue that the Bush administration's reinterpretation of the Geneva Conventions reflected a strategic departure from traditional international norms and laws, as it sought to redefine the legal status of detainees in the War on Terror in order to expand executive power and justify enhanced interrogation tactics. This resulted in the establishment of legal gray zones in which prisoners were deprived of their fundamental human rights, and the framework surrounding lawful conduct in armed conflict was severely eroded, thereby setting deeply troubling precedents for future wars.

I. Introduction and Structure of Paper

The question of how to handle prisoners of war (POWs) during times of conflict has been asked since time immemorial. The United States, in particular, "has never approached POW policy in the same way for two consecutive wars, and practice has maintained even less continuity between conflicts separated by decades or centuries."[1] In an effort to universalize POW treatment, the international community came together after World War II to create treaties and conventions aimed at ensuring humanitarian treatment for individuals during times of war. One of these treaties is the 1949 Geneva Conventions. Since their adoption, the Conventions have served as the cornerstone for international humanitarian law. In the years since their signing, three additional protocols have been added to the Conventions, respectively in 1977 (Protocols I and II) and 2005 (Protocol III). The rules and regulations established in the Geneva Conventions serve, in theory, to protect basic human rights during times of war and are used to punish those found in violation. The Conventions regulate "the conduct of armed conflict and seek to limit its effects" while "specifically protect[ing] people who are not taking part in the hostilities…and those who are no longer participating such as wounded…and prisoners of war."[2]

However, following the September 11, 2001 terrorist attacks on the United States, the Bush administration sought to completely reinterpret the Conventions and initiated huge shifts in the way international humanitarian law was applied or withheld in specific circumstances. These shifts radically undermined the protections enshrined in international law and allowed the U.S. government to bypass due process when dealing with the people who were caught in the military apparatus of the post-9/11 wars. This reshaping of American legal norms was not merely a

[1]Paul J. Springer, *America's Captives: Treatment of POWs from the Revolutionary War to the War on Terror*, Modern War Studies (Lawrence: University Press of Kansas, 2010), 204.
[2] "Geneva Conventions and the Law | ICRC." Accessed December 17, 2023. https://www.icrc.org/en/geneva-conventions-and-law.

response to the changing nature of warfare but rather a a calculated undertaking to extend executive authority and allow for the legal protection of those in the U.S. government who committed breaches of international humanitarian law. In this paper, I will argue that the Bush administration's reinterpretation of the Geneva Conventions reflected a strategic departure from traditional international norms and laws, as it sought to redefine the legal status of detainees in the War on Terror to expand executive power and justify enhanced interrogation tactics. This resulted in the establishment of legal gray zones in which prisoners were deprived of their fundamental human rights, and the framework surrounding lawful conduct in armed conflict was severely eroded, thereby setting deeply troubling precedents for future wars.

In this paper, I use legal documents, government reports, and academic articles to explain and analyze my argument. I begin with a brief explanation of the Geneva Conventions and their enforcement, with particular emphasis on how the U.S. interacted with them in the pre-9/11 era. Then, I discuss the reinterpretation of the Conventions under the Bush administration post-9/11, focusing particularly on the redefinition of detainee status and the creation of the term “unlawful enemy combatants.” I further highlight my central argument with an analysis of how these reinterpretations of international humanitarian law led to the creation and greenlighting of enhanced interrogation techniques, using the Abu Ghraib scandal as a specific case study. I also examine congressional documents, which highlight specific resolutions concerning the Geneva Conventions that show the extent of the executive overreach exercised by the Bush administration. I will also discuss some of the efforts to push back against the Bush administration's reinterpretation of the Geneva Conventions and efforts to truthfully investigate subsequent military abuses. Lastly, I conclude with a discussion of the long-term implications of

America's reinterpretation and redefinition of the Geneva Conventions and give brief recommendations for future research.

I. The Geneva Conventions: Overview and Enforcement

The Geneva Conventions comprise four separate documents which each have a distinct purpose and contain multiple articles delineating specific legalities. The first two Conventions do not specifically relate to the subject matter of this paper because they focus on the improvement of the conditions for wounded, sick, and shipwrecked members of armed forces. The third Convention explicitly outlines the treatment of prisoners of war and the conditions under which they are to be kept "with regard to the labour of prisoners of war, their financial resources, the relief they receive and the judicial proceedings instituted against them" and "establishes the principle that prisoners of war must be released and repatriated without delay after the cessation of active hostilities."[3] The fourth Convention delineates the protections that are to be afforded to civilians during wartime. It specifically "puts forth the regulations governing the status and treatment of protected persons; these provisions distinguish between the situation of foreigners on the territory of one of the parties to the conflict and that of civilians in occupied territory."[4]

According to Article 4 of Convention III, prisoners of war include several categories of individuals, such as:

a. Members of the armed forces of a party to the conflict
b. Members of other militias or members of other volunteer corps
c. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the detaining power
d. Persons who accompany the armed forces without actually being members thereof

[3] "Geneva Conventions and the Law | ICRC."
[4] "Geneva Conventions and the Law | ICRC."

e. Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict

f. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units

There are also conditions under which one is not entitled to prisoner of war status, which is of particular importance in the later discussion of the Bush administration's interpretation of the Conventions. These exempt categories include certain guerrillas, spies, and mercenaries. The latter two are categorically banned from receiving POW status, but certain guerrillas can receive POW status when they meet a list of criteria. The Bush administration applied this criterion very liberally, as will be demonstrated later in this essay. To be classified as a POW, guerrillas must display some kind of distinguishable insignia or uniform that is recognizable at a distance, be under the command of individuals who take responsibility for those under their orders, carry arms openly, and behave in accordance with the laws of war.[5] If a guerrilla does not meet any one of these conditions, they will not be afforded proper POW status, which lands them in a completely separate realm of international humanitarian law, which does not have nearly the same amount of jurisprudence dedicated to it.

The preceding explanation gives a very brief overview of some of the specific legal definitions concerning POWs. It is also important to explain that these legal classifications are difficult to follow and have frequently been left up for debate or interpretation. For example, a 2004 Congressional Research Service Report stated that "governments who may have a need to seek information from prisoners appear to rely on more flexible interpretations that take into

[5] Jahid Hossain Bhuiyan and Borhan Uddin Khan, eds., *Revisiting the Geneva Conventions: 1949- 2019* (Leiden; Boston: Brill, 2019), 46-47.

account military operational requirements."[6] Another important element of the Geneva Conventions is that, although torture is explicitly forbidden, it is not clearly defined. Article 3 of the third Convention outlaws "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment" but does not go into much detail about what exactly that means.[7] Other significant international humanitarian law documents, such as the United Nations Convention Against Torture, give more exact definitions of torture, but some argue that they are not enough. In fact, some scholars have gone so far as to argue that these international conventions are irrelevant. John Dwight Ingram stated in the *Penn State International Law Review* that the Geneva Conventions were "woefully outdated" and that "attempts to codify and enforce [rules of war] have had little real effect on the conduct of warfare," since the primary objective of modern wars is to destroy the enemy, regardless of the damage that it inflicts.[8]

When it comes to the enforcement of the Geneva Conventions, there are various bodies that exist to punish violators. Protocol I of the GC, enacted in 1977, states that "in situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter." Thus, signatories agree to work with the UN to prosecute violations at the moment they sign, before any violations have occurred. Interestingly, before 9/11, the United States was seen, at least nominally, as being a model of adherence to the Geneva Conventions. In Vietnam, Panama, Somalia, Haiti, and Bosnia, some combatants did not meet all of the requirements to be a POW, but the American Military required strict adherence to the

[6] Jennifer Elsea, *Lawfulness of Interrogation Techniques under the Geneva Conventions* (Washington, D.C: Congressional Research Service, 2019), 7.
[7] "Geneva Conventions and the Law | ICRC."
[8] John Dwight Ingram, "The Geneva Convention Is Woefully Outdated," *Penn State International Law Review* 23, no. 1 (2004): 79.

Conventions anyway.[9] The US Army is the branch of the military that is most frequently placed in charge of large-scale detention of POWs, and as such, its code of conduct for how to treat prisoners is used by other branches of the military as well. Pre-9/11, Army doctrine "provide[d] that all combatants, lawful or unlawful, are to be treated as POWs," but contained "no guidance if another status is determined."[10] Essentially, this doctrine assumed that all treatment of detainees would be done in full accordance with the Geneva Conventions, regardless of the legal status of each prisoner. This loyalty to doctrine and to international humanitarian law, unfortunately, was wildly distorted and circumvented by the Bush administration following the events of September 11, 2001, with devastating consequences.

III. Post-9/11 Reinterpretation

The Bush administration, following the events of 9/11, made fast and extreme changes to the way the American government and military handled the treatment of enemy detainees. In the very first few days and weeks after 9/11, John Yoo, the Deputy Assistant Attorney General, issued a series of memoranda regarding how much executive authority the president could exercise in operations against perceived terrorists. These memos flagrantly reinterpreted the Geneva Conventions and popularized the term "unlawful enemy combatant." Furthermore, these memos suggested in no uncertain terms that the President of the United States had the authority, given to him by the Constitution, to assume certain wartime powers which superseded the rule of law that had been established by the Geneva Conventions and other international treaties. This was, of course, not entirely true. As time went on, the legal analysts and military high command created a "wholly result-oriented system in which policy makers start with an objective and work

[9] Thomas E. Ayres, "'Six Floors' of Detainee Operations in the Post-9/11 World," *The US Army War College Quarterly: Parameters* 35, no. 3 (2005): 37.
[10] Ayres, "'Six Floors' of Detainee Operations," 37.

backward."[11] Essentially, these memos argued that al-Qaeda and the Taliban did not qualify for POW status and were not entitled to any Article 3 protections that strictly prohibit torture and cruel or humiliating treatment. Greenberg and Dratel (2005) convincingly show that these arguments formed the legal scaffolding which the War on Terror would be built on and allowed the creation of a system that stripped detainees of their legal status, thereby ensuring that they could be afforded no protections from human rights abuses.

On February 7, 2002, President Bush issued a memorandum which stated that the Geneva Conventions did not apply to al-Qaeda or to the Taliban, signalling that the administration was moving from theoretically reinterpreting international humanitarian law to physically carrying it out in real-world scenarios. The Commander in Chief had accepted the memos written by his staff and members of his administration in an official capacity. Bush wrote that "'I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to al-Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 only applies to 'armed conflict not of an international character.'" [12] This memorandum emphasized previous statements made by the DOD and DOJ that al-Qaeda and Taliban detainees were not to be afforded POW treatment, while also stating that, because al-Qaeda was not a High Contracting Party of the Conventions, its members would not be protected by the GC. This executive decision is seen by many scholars as a major departure from previous standard US military practice and international legal obligations.

[11] Karen J. Greenberg and Joshua L Dratel, eds., *The Torture Papers: The Road to Abu Ghraib* (New York: Cambridge University Press, 2005), xxii.
[12] George W. Bush, "Humane Treatment of Taliban and al-Qaeda Detainees," The White House, Washington, D.C., February 7, 2002, 2.

Once fully in effect, the Bush administration's legal reinterpretation restructured the post-9/11 wars not just in terms of military strategy, but in legal doctrine. In a January 2002 memo, the President's counsel Alberto Gonzalez wrote that "the war against terrorism is a new kind of war…the nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists…in my judgement, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions."[13] In referring to the protections afforded by the Conventions as "quaint," the Bush administration unilaterally dismissed decades of international humanitarian precedent and created a system that allowed for the suspension of basic legal and ethical norms in the name of national security. In bypassing and minimizing binding treaties that had existed for decades, Bush and his team of legal advisers were able to justify torture and allow for the establishment of legal grey zones.

IV. Legal Grey Zones: Constructing Abu Ghraib

The Bush administration, in deciding that the detainees picked up during the War on Terror were not entitled to legal status and protection, created a system of legal grey zones which permitted indefinite detainment without habeas corpus or legal representation and greenlit extremely harsh interrogation methods. Once it had been established that the president was entitled to heightened executive power, details began to emerge about the means that would be used in the execution of the War on Terror. The administration used the phrase "enhanced interrogation techniques" to describe the methods that were used to get information out of detainees. In August of 2002, a memo was sent to Alberto Gonzales which stated that "physical

[13] Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror* (New York: New York Review Books, 2004), 84.

pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death" in discussing the limitations placed on torture under U.S. Code.[14] It furthermore concluded that "the statute, taken as a whole, makes plain that it prohibits only extreme acts." This complete departure from previous definitions of torture allowed military interrogators and detention center facilitators to subject detainees to high levels of physical and psychological distress without fear of legal reprisals because they were technically not breaking U.S. or international law. Using this definition of torture, methods such as stress positions, sleep deprivation, forced nudity, and threats of sexual assault–practices that in some cases were actually carried out–became not only permissible but routinely employed.

The most widely recognized example of the devastating results that ensued from the Bush administration's redefinition of torture was the prisoner abuse scandal that happened at the Abu Ghraib prison in Iraq. When pictures emerged in 2004 that showed the world the brutalities that had taken place at Abu Ghraib, the American general public was, for the first time, able to see the unimaginably cruel extent of the legal grey zones that had been created by their government. These photographs, which are compiled by Mark Danner in his book *Torture and Truth*, are shocking. They show prison guards, American Army soldiers, smiling and holding a thumbs-up sign in front of dead bodies. They show prisoners in the nude, forced into humiliating and degrading positions for extended periods of time. They show the horrifying juxtaposition of the smiling faces of the guards and the abject despair felt by detainees. The book also contains many testimonies given by prisoners at Abu Ghraib, which were collected by the *Washington Post*. The testimonies explain in detail the fear and humiliation felt by each detainee and describe the kinds of torture methods that were used by American soldiers, many of whom are listed by name. One

[14] Greenberg and Dratel, *The Torture Papers*, 172.

detainee, Hussein Mohssein Mata Al-Zayiadi, stated that during his imprisonment, “I was trying to kill myself but I didn’t have any way of doing it.”[15] These images and testimonies, Danner argues, were not evidence of a single example of isolated misconduct but instead “had their genesis not in Iraq but in interrogation rooms in Afghanistan and Guantánamo Bay, Cuba - and ultimately in decisions made by high officials in Washington.”[16]

The physical sites in which these atrocities took place further highlight the extent of the legal gray zones created by the legal reinterpretation of international humanitarian law. Guantánamo Bay, for example, was chosen specifically because of its perceived status as being outside the jurisdiction of U.S. courts. The Center for Victims of Torture argues that “many in the Bush administration hoped that Guantánamo would maximize secrecy and impunity for torture, by evading both the law and public scrutiny.”[17] The goal was to detain individuals in a space that was simultaneously under U.S. control but beyond the reach of legal protection and accountability. Abu Ghraib was a prison before it fell into American hands. It was used by Saddam Hussein to detain and torture political prisoners during his presidency. The physical locations of these detention centers, constructed far away from any oversight, prove to be important factors in understanding the manner in which they operated.

Although the Bush administration attempted to obfuscate responsibility for the atrocities at Abu Ghraib, many claimed that they were direct results of the pattern of human rights abuses and inhumane treatments that had already taken place in American detention facilities, rather than being primarily the fault of the administration. Sherene Razack writes in *Abu Ghraib Revisited*, “we are coached to understand that - untrained, alienated, stressed, frustrated, and

[15] Danner, *Torture and Truth*, 240.
[16] Danner, *Torture and Truth*, 27.
[17] Center for Victims of Torture. “Guantánamo Bay Detention Facility: An Overview.” Accessed May 10, 2025. https://www.cvt.org/what-we-do/advocating-for-change/legacy-of-us-torture/guantanamo-bay-detention-facility-an-overview/.

overcome by the climate - normal, wholesome American soldiers, each with his or her own dreams, soon fall apart in the hell that was Abu Ghraib."[18] Razack explains that this is a common phenomenon used by Western countries to justify atrocities elsewhere: civilized people don't torture, of course, but the horrible circumstances they find themselves in, which is objectively the fault of the "unlawful enemy combatant," make it the only option. Here we can see the extent of this legal reimagining of the international humanitarian law framework: by removing even the possibility of being legally recognized as a person worth protection, the Bush administration ensured that the victims of Abu Ghraib and other detention facilities were not seen as human by their captors.

The response to the Abu Ghraib scandal from the American government was also very telling. Prosecutions were focused only on the low-ranking soldiers who performed torture, while not implicating higher-ranking members of the military or members of the U.S. government. Names like Sabrina Harmon, Lynndie England, Charles Graner, and Ivan Frederick are commonly seen in articles and documentaries concerning the aftermath of the scandal, but the highest-ranking officers involved in the events at Abu Ghraib have not been charged. Janis Karpinski, the commanding officer at the prison, was simply demoted from brigadier general to colonel. Even among those lower-ranking soldiers who were convicted as a result of their involvement, their charges were related to dereliction of duty, and their sentences lasted only a few months. Two notable exceptions are Charles Graner and Ivan Frederick, who were sentenced to long prison terms. Graner was sentenced to 10 years and Frederick to 8, both additionally receiving dishonorable discharges. They have both been released after serving their time.

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[18] Sherence H. Razack, "'We Didn't Kill 'Em, We Didn't Cut Their Head Off': Abu Ghraib Revisited," in *Racial Formation in the Twenty-First Century*, eds. Daniel Martinez HoSang, Oneka LaBennett, and Laura Pulido (Berkeley: University of California Press, 2012), 217-245.

Even still, many reports and media outlets accepted the administration's explanation that the events at Abu Ghraib were the actions of "a few bad apples" and not indicative of the methods used by the United States as a whole. Gronke et al. showed in 2010 that while many Americans believed that torture was wrong, they thought that other Americans as a whole generally do approve of torture. In other words, most Americans believe on a personal level that torture is not justified, but they do think that most Americans think it is justified, even though that is decidedly not the case.[19] Given this information, we can see that the scandal at Abu Ghraib revealed the brutality of the techniques employed but also demonstrated that once a state begins to carve out exceptions to foundational laws like the Geneva Conventions, the descent into systemic abuse is not just a risk but almost inevitable. This pattern and tendency for executive overreach and complete disregard for international law can be seen on full display in various Congressional documents concerning the violations of the Geneva Conventions and the Iraq War.

V. Congressional Oversight

In June of 2004, the U.S. House of Representatives submitted H. Res. 640, which requested that the Secretary of Defense submit any and all related pictures, videos, and reports that were taken at Abu Ghraib within 14 days. The document, which was created with the purpose of amalgamating all of the existing information about Abu Ghraib to see if violations of the Geneva Conventions had occurred, also expressed the intention to make it clear that the prisoner abuse scandal was an anomaly. The report states that, "unfortunately, the image of the United States has been tarnished by the reprehensible pictures of prisoner abuse we have all seen. America needs to reestablish its credibility…that the events at Abu Ghraib and elsewhere were

[19] This information is displayed in a table in Appendix 1

an aberration. We must prove that cruelty and maltreatment are not the standard operating procedure for either our military or our country…that we have higher standards - that we are a nation of laws, not of men, and that we are dedicated to freedom, truth and justice."[20] Thus, even before a full Congressional investigation had been carried out, the House of Representatives was operating under the assumption that the abuses at Abu Ghraib were not the result of a systemic problem, but rather a mere fluke.

However, an analysis of other Congressional documents shows that this is not the case and was instead a result of a system that purposely and deliberately reinterpreted the Geneva Conventions to exercise executive power. For example, H. Res. 624, which, similar to H. Res. 640, requested that the President and Secretary of State provide certain documents that were related to U.S. policies about torture and the UN Convention Against Torture, did not end up leaving the House. It was proposed as a resolution and subsequently voted down by a large majority. The dissenting views of this resolution expressed high amounts of disappointment in the government for not investigating the events of Abu Ghraib and others with more veracity. In the document that accompanied H. Res. 624, the dissenting viewpoint, championed by House Democrats, argued that "it is these graphic images that are used by our enemies in Al-Qaeda and its affiliates to generate greater hostility against this country and recruit more terrorists to be used to attack us."[21] Furthermore, it argued that "the shifting interpretation of U.S. legal obligations under these various conventions as applied by the U.S. government led to confusion, with some military officers expressing their severe discomfort with the lack of standards as to what is

[20] U.S. House of Representatives, Committee on International Relations, *Requesting the President of the United States and Directing the Secretary of State to Provide to the House of Representatives Certain Documents in Their Possession Relating to United States Policies under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Geneva Conventions: Adverse Report Together with Dissenting Views (to Accompany H. Res. 624)* (Washington, D.C.: U.S. Government Printing Office, 2006), 7.
[21] U.S. House of Representatives, Committee on International Relations, *Adverse Report Together with Dissenting Views*, 5-6.

considered "'humane.'"[22] These concerns about the shifting interpretation of the U.S.'s obligation to international humanitarian law directly mentioned Attorney General Gonzalez's declaration that the Convention Against Torture only applied within the United States, claiming that this went shamefully undisputed. These dissenting viewpoints represented an effort by Congress to reassert its constitutional oversight function and to confront the perceived erosion of international law under the executive branch's expansive interpretation of wartime powers.

Efforts to investigate the Abu Ghraib scandal were bicameral: the Senate also generated reports about the aftermath of the Iraq War and the results of the incorrect assumption that weapons of mass destruction (WMDs) development was happening. One such report, titled *Postwar Findings about Iraq's WMD Programs and Links to Terrorism and How They Compare With Prewar Assessments*, concludes that, "a series of failures, particularly in analytic tradecraft, led to the mischaracterization of the intelligence" and led the U.S. to believe that there was WMD development happening under Saddam Hussein, which ended up not being the case.[23] These reports, at least the versions of them that are available to the public, are stringently redacted, but it is still evident that the evidence used to justify the post-9/11 wars had been massively overstated, which questions the necessity and proportionality of the detainee policies that followed.

One of the most telling pieces of information included in these Senate documents is the discussion of the treatment of a prisoner named Ibn al-Shaykh al-Libi. This detainee was one of America's biggest sources of reports who claimed that al-Qaeda was receiving chemical and biological warfare (CBW) training in Iraq. During the postwar assessment, al-Libi stated to CIA

[22] U.S. House of Representatives, Committee on International Relations, *Adverse Report Together with Dissenting Views*, 7.
[23] U.S. Senate Select Committee on Intelligence, *Report on Postwar Findings about Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments: Together with Additional and Minority Views* (Washington, D.C.: U.S. Government Printing Office, 2006), 6.

debriefers that when he was initially detained by the U.S. he was told that if he didn't talk, he would be sent to a foreign country for interrogation. Al-Libi stated that he "decided he would fabricate any information the interrogators wanted in order to gain better treatment and avoid being handed over to [a foreign government]."[24] He also claimed that after he was beaten by his captors, he used real names of al-Qaeda members he knew and implied that they were leading CBW training in Iraq, which was entirely fabricated, but was taken as truth by al-Libi's interrogators because he had used real names. In addition to this specific example demonstrating why torture is never an effective strategy to gain actionable intelligence, it also highlights how flawed a huge amount of the information was, which the U.S. government used to justify spreading the War on Terror to Iraq.

These Senate and House documents show in no uncertain terms how certain institutional failures extended beyond the halls of Congress to the broader governmental and military bureaucracy. While individual members of Congress, military officers, and legal advisers raised concerns internally, these concerns did not translate into meaningful action. The result was a bureaucratic system that, for the most part, enabled or ignored executive overreach and the horrific abuse of those unfortunate enough to be caught up in the American torture framework. These institutional failings, when linked with carefully crafted legal redefinitions of torture and what it means to be a POW, allowed the War on Terror to legitimize torture as an unfortunate wartime necessity rather than a massive breach of international humanitarian law and basic respect for human dignity.

[24] U.S. Senate Select Committee on Intelligence, *Report on Postwar Findings*, 80.

VI. The Long Term & Conclusion

In the decade after the end of the Second World War, the world's biggest and most influential powers came together to create a new global order. In the aftermath of the atrocities committed by the Third Reich and the brutal treatment of Allied POWs in Japanese internment camps, the international community established critical legal frameworks, most notably the Geneva Conventions, to ensure that such violations of human dignity and security would never occur again. Lamentably, the American reaction to the 9/11 attacks resulted in the complete redefinition—and, in some instances, complete disregard— of the Geneva Conventions and related treaties. In 2006, the Supreme Court's decision in *Hamdan v. Rumsfeld* held that "the United States is bound by common Article 3 of the Geneva Convention regarding the treatment of detainees, especially those captured in the global war on terror."[25] Despite this ruling, unlawful detention practices have continued, most notably at Guantánamo Bay, where—as of January 2025—fifteen individuals remain imprisoned, some on an indefinite basis.[26]

This redefinition of the Geneva Conventions represented a deliberate and unprecedented shift in the U.S. government's approach to international law and wartime conduct. Framing detainees who should have received POW treatment as "unlawful enemy combatants" and redefining legal categorizations enabled the executive branch to operate legal gray zones, which permitted the use of flagrantly inhumane and brutal interrogation techniques. The implications of the legal gray zones created during the War on Terror have extended and will continue to extend far beyond individual detainees, despite efforts to dismiss them as the work of a "few bad apples." They represent a rupture in the foundational nature of the international legal order,

[25] https://supreme.justia.com/cases/federal/us/548/557/
[26] Robert Colin Doyle and Arnold Krammer, *The Enemy in Our Hands: America's Treatment of Enemy Prisoners of War, from the Revolution to the War on Terror* (Lexington, KY: University Press of Kentucky, 2010), 331.

showing the world that the United States, historically one of the biggest champions of the Geneva system, was willing to abandon those principles in the name of national security and in the defense of the "free world."

Scholars have argued that the U.S. approach not only weakened the legitimacy and universality of the Geneva Conventions but also gave implicit permission for other states to reinterpret or ignore them under similar circumstances. They argue that "there is a real danger that…violations of international law and the rule of law more generally, and intrusions into the lives of citizens by unconstrained executives become routine and everyday events."[27] Others argue that "regardless of the amount of legal rules, there will always be a gap between a rule and its application," prophesying a concerning and sobering vision of the inevitability of prisoner abuse in future conflicts.[28]

Ultimately, the Bush administration's departure from traditional interpretations of the Geneva Conventions set a deeply troubling and dangerous precedent. To prevent history from repeating itself, it is imperative to examine the principles that the Geneva Conventions were designed to protect: the dignity and safety of all human beings, even in war, and the accountability of those who are given state and executive power. Further research into possible ways to reify wartime protections of all people has never been more pressing. With current wars, such as the ones in Ukraine and Gaza, the world is again seeing how dangerous it is to leave states to their own devices. Wars have been waged throughout human history, but modern technology is allowing for their devastating effects to spread beyond the battlefield at an exponential pace. Therefore, we must continue to update and edit those international treaties, especially the Geneva Conventions, to safeguard our collective future.

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[27] Sarah Perrigo and Jim Whitman, *The Geneva Conventions under Assault*, 1st ed. (London: Pluto Press, 2010), 245.
[28] Sibylle Scheipers, ed., *Prisoners in War* (Oxford; New York: Oxford University Press, 2010), 315.

Appendix 1:

Gronke et al.'s table on "False Consensus on Torture"