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# Crimes of Obedience

Jerrold M. Post, and Lara K. Panis

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To say the Abu Ghraib prison abuse scandal damaged the US image in the Middle East is to underestimate its impact. While the commissions and trials thus far have not found fault with senior officials, and the Secretary of Defense identified the fault as lying with “a few bad apple MPs,” this paper suggests that the three conditions identified by Kelman and Hamilton in their study of the My Lai massacre as being requisite for sanctioned massacres—authorization, routinization, and dehumanization—were present. There is persuasive evidence that the actions by low level military personnel (MPs) were authorized and approved by higher authorities to produce positive interrogation results, even though not specifically ordered, that what they did was experienced by them as not out of the ordinary, and that there was a lack of empathy for their charges. Moreover, interrogation practices targeting the humiliation of Muslims demonstrated a cultural sophistication at senior levels. It is critical in conducting the war against terror that we not adapt the techniques of terror ourselves and in so doing weaken our democracy.

That the trial of Specialist Charles Graner Jr. for his alleged ringleader role in the abuse of Iraqi prisoners at Abu Ghraib prison occurs immediately on the heels of the confirmation hearing of Alberto Gonzales to succeed John Ashcroft as Attorney General is a truly remarkable concatenation of events. While the thrust of the prosecution, and of administration statements, is that these events were an aberration, the unauthorized acts of a group of rogue soldiers, a central line of defense by Graner’s attorneys, was that these soldiers were following orders, were responding to directives of higher authorities.

The history is enlightening. After being summoned to Abu Ghraib prison in Iraq to review interrogation procedures, General Geoffrey Miller, the commander of the detention and interrogation center at Guantanamo, Cuba concluded that “detention operations must act as an enabler for interrogation”

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and that “it is essential that the guard force be actively engaged in setting the conditions for successful exploitation of the internees.”<sup>1</sup>

Set the conditions for successful exploitation of the internees. What a charming euphemism! - reminds one of “collateral damage” or “surgical strike.” The report by General Antonio Taguba was only somewhat less anti-septic: “Interrogators actively requested that MP guards set physical and mental conditions for favorable interrogation of witnesses.”<sup>2</sup> In effect, Miller’s concept was “to Gitmoize” the detention system in Iraq, in order to enhance the yield from interrogations of desperately needed actionable intelligence.<sup>3</sup>

One of the defendants indicated that he was directed to “soften them up.”<sup>4</sup> “The agent told him he did not care what the soldiers did, ‘just don’t kill him.’”<sup>5</sup> He was doing a good job and complimented by the interrogators for his preparation of the detainees for interrogation.<sup>6</sup> The attorneys for Pfc. Lynndie England indicated she was only “following orders,” a horrifying reminder of the so-called Nuremberg defense, the “just following orders” defense offered by some of the 22 defendants in the Nuremberg war crimes trials after World War II.<sup>7</sup> In her only interview with a local Denver news reporter, Private England described how her actions were ordered and rewarded by a higher military command. Verbally praised for her efforts within the prison walls, she revealed how “They’d come back and they’d look at the pictures, and they’d state, ‘Oh, that’s a good tactic, keep it up. That’s working. This is working. Keep doing it. It’s getting what we need.’”<sup>8</sup> Moreover, she seemed to accept no personal responsibility for her acts, rationalizing the scandalous prison guard poses with detainees as being “for psy-op reasons ... And the reasons worked. I mean, so to us, we were doing our job, which meant we were doing what we were told, and the outcome was what they [the superiors] wanted.”<sup>9</sup>

The capacity of ordinary people to participate in extraordinary evil has been the subject of intensive study by social scientists since the Holocaust. Many were distressed that Hannah Arendt in her study of the war crimes trials of Adolph Eichmann, commandant of the notorious Auschwitz-Birkenau concentration camp, did not find him to be an evil monster. Rather, in her now famous phrase, she characterized Eichmann as displaying “the banality of evil.”<sup>10</sup> In her study *Eichmann in Jerusalem* she quotes from his diaries: “excellent lunch, tomato soup, half a hen with potatoes and red cabbage, sweets and a marvelous vanilla ice-in the evening at 8.00 hours -outside for Sonderaktion” – (special action – the euphemism for burning of live children).<sup>11</sup> Arendt was struck by the sheer thoughtlessness of his acts – “Except for an extraordinary diligence in looking out for his personal advancement, he had no motives at all. He merely, to put it colloquially, never realized what he was doing.”<sup>12</sup>

In their study of the My Lai massacre and sadistic violence by prison guards at the concentration camps during the Holocaust, Kelman, and Hamilton

identified three conditions—*authorization, routinization, and dehumanization*—that were requisite for sanctioned massacres.<sup>13</sup> The earlier hearings and the trials were attempting to identify whether the torture—for that, after all, is what we are talking about—was authorized. Torture, according to the 1984 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, to which the United States is a signatory, is defined as “*any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession.*” The Convention goes on to declare that “*No exceptional circumstances, whatsoever, whether a state of war or a threat of war, internal political instability, or any other public emergency, may be invoked as a justification of torture.*”

Graner claimed that he was aware of the Geneva Conventions “better than anyone else in my company” and was ordered by the military chain of command to ignore the treaty’s provisions in certain circumstances.<sup>14</sup> In contrast, Private England claimed little knowledge of Geneva Convention rules, citing a lack of orientation training on prisoner treatment. Both prison guard accounts reveal the prevailing attitude throughout the chain of command, an attitude that was conveyed to and acted upon at the MP level. Not only was safeguarding detainee human rights not a top priority, but it scarcely seemed to be a consideration at all. The detainees were there because they were the enemy who were responsible for the fatal attacks on their comrades. They were unlawful combatants to which accordingly the Geneva Convention did not apply. They possessed information that could save the lives of their comrades. It was the job of the MPs to soften them up in order that information could be quickly obtained to prevent further terrorist attacks. Even though MPs were not ordered to break prisoners down physically and emotionally, and were not ordered to deliberately torture prisoners, the prevailing need to obtain information from detainees was the overriding priority in the prison environment at Abu Ghraib. It was implicitly clear, even if not explicitly ordered, that whatever was necessary to obtain this critical information was authorized.

Was the torture ordered in writing as a uniform policy? Probably not. Was it strongly encouraged, sanctioned as furthering their goal of acquiring intelligence? Reportedly the intelligence officers often instructed the military police to force Iraqi detainees to strip naked and shackle them before questioning them. As England defensively stated, “It’s not like we laid in bed one night and thought, ‘Oh, I want to do this tomorrow, let’s do this.’ We didn’t think of it.”<sup>15</sup> In the hearings, Senator Susan Collins, expressed skepticism that a group of military police from West Virginia and Maryland “would have chosen bizarre sexual humiliations that were specifically designed to be offensive to Muslim men...it implies too much knowledge.”<sup>16</sup> Contributing to the line of defense, this same skepticism was echoed by one of the military defense attorneys, Gary Myers, known for his involvement in the 1970s My Lai hearings.<sup>17</sup>

He indicated that the purposeful acts of dehumanization, such as homosexuality and nudity in public, acts that were in violation of Islamic law, would require a sophisticated awareness of Muslim cultural practices. "Do you really think a group of kids from rural Virginia decided to do this on their own? Decided that the best way to embarrass Arabs and make them talk was to have them walk around nude?"<sup>18</sup>

General Ricardo Sanchez, in a Sept 14, 2003 memo released by the American Civil Liberties Union, outlined one particular interrogation practice targeting the humiliation of Arabs. General Sanchez permitted the use of guard dogs, an exploitation technique aimed at "Arab fear of dogs," demonstrating a cultural sophistication at senior levels.<sup>19</sup>

Students of the Holocaust speak of killing the enemy with a clear conscience. There is a differentiation between responsibility and intent. There is no feeling of responsibility if one is doing one's duty, as defined by one's superiors, which is an important obligation to a soldier. Eichmann enthusiastically carried out his duty. When acts are ordered or sanctioned by authority, the willingness to perpetrate immoral acts is enhanced. Studies of torturers reveal that they rationalize that what they were doing was for the system and that they were ordered to torture by their superiors. If people in authority situations characteristically feel obligated to obey the orders or directions of the authorities, the corollary is *they do not feel personally responsible*. The guards at Abu Ghraib have never indicated they felt personally responsible for the psychological and physical abuse at their hands; they have made it clear they were following instructions, doing what they were supposed to do, "to set the conditions" to enhance the interrogation. They were just following orders. Sergeant Javal Davis, another MP defendant displayed no signs of feeling personally accountable for his actions. Davis fobbed off the responsibility on military intelligence (MI), explaining that "... the [prison] wing belongs to MI and it appeared MI personnel approved of the abuse."<sup>20</sup> In his mind he "assumed that if they were doing things out of the ordinary or outside the guidelines, someone would have said something."<sup>21</sup>

The legal guidelines provided to interrogation trainees at Fort Huachuca state that "soldiers are bound by a number of laws when questioning people in the custody of U.S. troops" including the Geneva Convention Relative to the Treatment of Prisoners of War and the Convention Against Torture, quoted above, which specifically prohibit "soldiers from threatening or implying mental or physical torture."<sup>22</sup> If there is any question in the mind of the soldier as to whether "certain applications of approaches and techniques" exceed the line between lawful and unlawful action, "soldiers ask themselves two questions: would a reasonable person being interrogated feel their rights are violated if they refused to cooperate? If the contemplated action were perpetrated against U.S. prisoners of war, would I think such actions violate international or U.S. law?"<sup>23</sup> The Taguba report emphasized "failure in leadership . . .

from the brigade commander on down,” and indicated that at the highest levels the government was bent on getting information from the terrorists.<sup>24</sup> A system was in place that allowed the Geneva Convention rules to be side-stepped and permitted lower level officials and even the guards themselves to “sweat the details of what actually happened to prisoners in these lawless places.”<sup>25</sup>

Whatever the written policy, if the reservists were not trained in the legal guidelines that were to govern their work, and to the contrary were encouraged to use techniques designed to break down the detainees’ defenses, and were complimented for their work, then *that was* the policy in practice. And when Secretary of Defense Rumsfeld declared in January 2002 that the Geneva Convention restraints would not apply to interrogation of prisoners suspected of involvement in terrorist activities, although indicating that of course they would still be treated humanely, was that not already opening the door for authorization of the ensuing “setting the conditions for successful exploitation of the detainees?”<sup>26</sup> As one intelligence source indicated, “So here are fundamentally good soldiers—military-intelligence guys—being told that no rules apply” and how critical it was to obtain the necessary intelligence information.<sup>27</sup>

We have learned that a series of Department of Justice memos in late 2001 and early 2002 sought to find legal justification for avoiding the jurisdiction of the Geneva Conventions in order to protect US officials from being charged with war crimes violations. That the company commander at Abu Ghraib was prepared to testify that Lieutenant General Ricardo Sanchez was present at some of the interrogations in Tier A adds further weight to the conclusion that the prisoner abuse was authorized at the highest level. At the Attorney General confirmation hearings, Alberto Gonzales came under harsh fire for his conduct as White House counsel in requesting the Department of Justice memorandums. In a memo to President Bush Gonzales justified side-stepping the Geneva Conventions in order to “preserve his [President Bush’s] flexibility in the war on terrorism.”<sup>28</sup> In Gonzales’ judgment, this new form of warfare “renders obsolete Geneva’s strict limitations on questioning enemy prisoners and renders quaint some of its provisions.”<sup>29</sup>

Secretary of Defense Rumsfeld defended military interrogation to Senate members, by pointing out that Pentagon lawyers approved of certain interrogation techniques involving sleep deprivation and stress positions. In his testimony before the Senate Armed Services Committee, he pointedly stated “its my obligation . . . to make sure that those who have committed wrong-doing are brought to justice.” It was striking that Rumsfeld, who authorized the creation of the very prison environment to which low level MPs such as Graner and England were exposed, defined the problem as confined to a “few bad apple MPs.”<sup>30</sup> With little intelligence on the Iraqi insurgency, the death toll mounting, and an overwhelming frustration by the lack of actionable human

intelligence, Rumsfeld chose the Guantanamo concept of “detention operations [that] act as an enabler for interrogation” for use at Abu Ghraib.<sup>31</sup> Creating an interrogation system based on the model of Guantanamo, Secretary Rumsfeld made his intention clear to do what was needed to get information, even if that meant “get[ing] tough with those Iraqis ... suspected of being insurgents.”<sup>32</sup>

The purpose of this extended discussion of authorization was not to make a legal case that the low level guards were ordered by their superiors to carry out torture. Rather, it was to convey the social psychology that permeated the system, going right to the top, that ordered or not, conveyed to the guards that they were expected to do whatever was necessary to break down the defenses of the detainees in order to obtain from them the necessary intelligence during interrogation. In effect they were authorized to violate the boundaries established by international conventions that did not apply to these identified “illegal combatants.”<sup>33</sup>

Concerning routinization, Kelman and Hamilton observe people get involved in action without considering its implication, without really making a decision. Routinization both reduces the necessity of making a decision, and minimizes the occasions when a moral question may arise. And it makes it easier to avoid the implications of the action, since the actor focuses on the job rather than its consequences. Lieutenant Calley said of My Lai “It was no great deal.”<sup>34</sup> It was clear from Private England’s matter of fact statement that the abuse was routine, that she never felt what she was doing was out of bounds. “They just told us, ‘Hey, you’re doing great. Keep it up,’” she said.<sup>35</sup>

Bureaucratic inventiveness and code words—the language of war—helps avoid the implication of what is being done. In the Holocaust, it was “evacuation, special treatment”; in Vietnam, it was “the body count” and “gooks.” “Setting the conditions” would seem to fit admirably into this code word lexicon.

The dehumanization is most chilling of all. Sanctioned massacres become possible in the perpetrator’s eyes to the extent the objects are deprived of the qualities essential to being perceived as fully human. In their study of the My Lai massacre, Kelman and Hamilton observed the designation of all Vietnamese as “gooks.”<sup>36</sup> Several letter writers to the *New York Times* were reminded by the *souvenir* quality of the photographs taken at Abu Ghraib of the post-cards during the lynchings of blacks in the 1920s, lynchings which were often occasions for family picnics. Like the spectators at the lynchings, the military police at Abu Ghraib prison treated their charges as if they were sub-human, evincing no empathy for them, being entertained by their shame and humiliation.

Was the dehumanization facilitated by the fact that the detainees were of a different nationality, were seen as “them,” responsible for the daily toll of American lives? Perhaps, but brutality by prison guards with total control over the lives of their prisoners occurs in prisons throughout the world, including the United States. In a classic social psychology experiment designed to

explore the manner in which social roles can influence behavior, the Stanford Prison experiment, Stanford psychologist Phil Zimbardo divided up a group of psychology students at random into prisoners and guards and placed them in a simulated prison. Within hours, some of the guards were responding in an abusive fashion to the prisoners in their charge, and even the “good” guards would not inform on their fellow guards—they were complicit with evil. The experiment was terminated early because of the emotional problems of both the prisoners and the guards, and this was only a simulation.<sup>37</sup> Participants years later reported they still felt the scars. The detainees at Abu Ghraib subjected to this psychological and physical coercion and humiliation will undoubtedly bear the scars for the rest of their lives.

*Authorization, routinization, dehumanization*—all three conditions requisite for sanctioned massacres were present at Abu Ghraib prison. What can we do to avoid contributing to such unspeakable inhumane violence under stress? Perhaps one thing is to begin calling things by their proper names, eliminate the sterile euphemisms. Instead of “collateral damage” say “killing innocent civilian bystanders.” And instead of “set the conditions,” say “torture.” It would be much more difficult for an officer to order/instruct a military policeman “to torture the detainees in order to break down their defenses in contravention of the Geneva convention.” It would be harder for the officer to order this, and for the subordinate to uncritically obey.

Does not the extremity of the times warrant extreme measures? In Israel, where information from a forcible interrogation could spare lives in a thwarted terrorist attack, in 1999 the Supreme Court banned physical coercion, stating that Israel in so acting would lose its moral stature. When we use the brutal tactics of terrorists and totalitarian leaders in our attempt to counter them, we have descended to their ranks, and tarnish the shining model of democracy, which is our most important weapon.

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