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Rosa Brooks: Our Torturer-in-Chief

Until Bush took office, the U.S. had no problem defining what is cruel and inhuman.

Rosa Brooks

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WE DON'T torture detainees, President Bush has repeatedly insisted; we just make use of lawful "alternative procedures" of interrogation.

But if everything we've done is lawful, why is the White House suddenly so desperate to get a deal with Congress that would "clarify" Common Article 3 of the Geneva Convention and amend the War Crimes Act, which criminalizes violations of the article?

According to Bush, the problem is that Common Article 3, which prohibits "cruel," "humiliating" and "degrading treatment" and "outrages upon personal dignity," is vague. He claims it doesn't give "clear" guidance about what is permitted and what is prohibited during interrogations.

That's not what Bush is actually worried about, though. His real problem is precisely the opposite — Common Article 3 and the War Crimes Act aren't nearly vague *enough*. If called on to determine whether several of the administration's "alternative" techniques violate Common Article 3 — and thus the War Crimes Act — virtually any court in the land would agree that they do.

Our Constitution prohibits "cruel and unusual punishment." That's vague too, but our courts have always managed to define it. As the Supreme Court put it in the 2002 case *Hope vs. Pelzer*, the argument that a standard is vague and provides insufficient notice of what's prohibited just doesn't cut it sometimes. Some practices are just plain "antithetical to human dignity" and characterized by "obvious" and "inherent" cruelty.

True, one man's degradation may be another man's idea of a rousing good time. But unless the administration is claiming that U.S. detainees are grateful for the opportunity to wear dog collars and be dragged around on leashes, "degrading treatment" isn't a terribly vague concept in practice. And are there people — other than psychopaths — who honestly can't figure out whether repeatedly suffocating a prisoner while pouring water over his mouth and nose is cruel or inhuman?

If in doubt, take any of the "alternative" methods that Bush wants to use on U.S. detainees and imagine someone using those methods on your son or daughter. If the bad guys captured your son and tossed him, naked, into a cell kept at a temperature just slightly higher than an average refrigerator, then repeatedly doused him with ice water to induce hypothermia, would that be OK? What if they shackled him to a wall for days so he couldn't sit or lie down without hanging his whole body weight on his arms? What if they threatened to rape and kill his wife, or pretended they were burying him alive? What if they did all these things by turns? Would you have any problem deciding that these methods are cruel?

Behind the antiseptic talk of "alternatives," "dietary modification" and "stress positions" lie methods designed to break human bodies and human minds. Legally and morally, many of the alternative interrogation methods championed by our president are torture, plain and simple. And there is no doubt at all that they're cruel, inhuman and degrading.

That's what the president is so worried about. He knows, too well, that the practices he authorized or ordered violate Common Article 3 of the Geneva Convention. The recent Supreme Court decision in *Hamdan vs. Rumsfeld* made that explicit, but the court's holding shouldn't have come as a surprise. It only confirmed what most legal scholars (and military lawyers) have been telling the White House for years.

After all, Common Article 3 is not exactly a recent innovation in international law. It's been around, with the very same language, since 1949, and the U.S. has never seen any problem with it before. We signed and ratified the Geneva Convention in 1949; in fact, American diplomats helped draft the language. And the War Crimes Act was passed overwhelmingly by a Republican-controlled Congress in 1996. There's nothing unexpected or vague about any of this. We know the article prohibits torture and the "torture lite" favored by the White House.

Back in 2002, then-White House counsel Alberto Gonzales warned Bush that some of his policies raised "the threat of domestic criminal prosecution." But the extremists who have captured the White House ignored half a century of American law and the advice of the nation's top military brass. Instead, Bush went ahead and authorized practices that even Gonzales predicted might be seen by "future prosecutors" as violations of the War Crimes Act.

Today, the chickens are coming home to roost. But though the word "accountability" isn't in the White House dictionary, there's a long entry under "CYA — covering your ass."

Bush isn't stupid. He understands that it's far too late for him to leave a legacy that won't be a source of shame to future generations. So he's going for second best: a congressionally delivered "get-out-of-jail-free" card.

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