

Torture: An American Success Story

Part of the extraordinary success of the US democracy resides in the fact that its political rituals preclude any real possibility of the emergence of dissent and are designed to reinforce conformity and consensus. The singular fact remains that well over 95 per cent of all presidential nominees to cabinet-level positions in the course of American history have been confirmed by the senate, and Alberto Gonzales's confirmation as attorney general was a foregone conclusion. In many other countries, the disclosures that have taken place about Gonzales' approving the use of torture might not have been at all possible. But is it not more scandalous that, knowing all that the American public does know about Gonzales and his ilk, it should make no difference. Torture now joins the never-ending list of American success stories.

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On February 3, 2005, Alberto Gonzales was confirmed by the United States senate, the most powerful legislative body in the world where gentlemen (and a few ladies) do their best, as the next attorney general. One of his many supporters in the senate, Judd Gregg, rose to declare Gonzales “an American success story”, an inspiring example of “the American way to reward ability”.¹ The white establishment, of which the United States Senate – an obscenely wealthy body that, in its history of over 200 years, has seen only three African-Americans admitted to its membership – remains the supreme example, has found in Gonzales the perfect poster boy to trumpet, as politicians do on every occasion in the US, the allegedly unique qualities of the American dream and the US experiment in multiculturalism. One of eight children of poor Mexican immigrants, Gonzales earned a law degree from Harvard Law School, and eventually gained the attention of George W Bush, who as governor of Texas took him into his confidence and raised him to the office of the General Counsel (1975-77) and then to the position of the secretary of state of the Texas. When the presidency fell into

Bush's lap, the loyal Gonzales was rewarded with the position of White House Counsel. Now, as attorney general of the United States, Gonzales has attained a position never before equalled by any Hispanic. That is certainly no mean achievement, particularly in view of the fact that the various Hispanic communities, among them Mexicans, Guatemalans, and Salvadoreans, have encountered more difficulties in raising their socio-economic status than most other non-Hispanic immigrant groups in the US.

Gonzales's admirers regard him as the latest, and most prominent, instantiation of the obstinately held view that the United States remains distinct in its ability to furnish extraordinary upward mobility to disadvantaged groups and entrepreneurial individuals. The numerous guises under which American exceptionalism operates are so well known as to be scarcely worthy of comment. What is far more noteworthy about Gonzales's political ascendancy is that the position of the attorney general, who is the chief law enforcement officer of the nation and one charged with upholding the country's compliance with those international treaties and conventions to which the US is a signatory, should have been offered to a man who, in the course of the last decade, has repeatedly

shown himself not only to be bereft of elementary notions of justice, but has justly earned opprobrium for turning torture into the law of the land.² The bare facts, however well known, merit repetition. Sometime after the September 11, 2001 attacks, Gonzales received a query from CIA officials who were concerned that some of their operatives acting in Afghanistan might be subject to criminal prosecution for engaging in interrogative methods that clearly were not permitted under either US law or the Geneva Conventions. In a memorandum addressed to Bush on January 25, 2002, Gonzales gave it as his considered opinion that the Geneva Convention III on the Treatment of Prisoners of War did not apply in the conflict with the Taliban and Al-Qaida. The “new war” the United States had entered into had created a “new paradigm” that rendered “obsolete Geneva's strict limitations on questioning of enemy prisoners”. Many of the Convention's other provisions, Gonzales opined, were ‘quaint’, just as some of its language, such as the prohibitions against ‘inhuman treatment’ and ‘outrages upon human dignity’, were ‘undefined’. Gonzales described himself as unpersuaded by arguments that Geneva Convention III ought to apply in the war on terror and noted that some of the enemies of the United States had been undeterred by the Convention's prohibitions.³

In other words, Gonzales signified to Bush that, in his capacity as commander-in-chief, he did not have to accept any limitations on his war powers; he could also legally authorise the application of unusual interrogative techniques. Still, questions remained about how torture was to be construed under these circumstances, and Gonzales solicited an opinion from the Office of Legal Counsel in the Department of justice. He received a memo in August 2002 signed by Jay S Bybee, the assistant attorney general who, not surprisingly for an administration that has distinguished itself by rewarding those who unflinchingly do its bidding, was shortly thereafter elevated to a federal judgeship. The ‘Bybee memorandum’ states that for an act to constitute torture, “it must inflict pain that is difficult to endure. Physical 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.” Thus, as Bybee argued, the “mere infliction of pain or suffering on another”—let us accent the ‘mere’—cannot be construed as torture, whatever the common, not to mention legal, understanding of torture might be among individuals and nations at this juncture of history. Bybee, moreover, clearly thought the Convention Against Torture (1987), an international agreement which the US is sworn to uphold, as not worthy of respect. “No exceptional circumstances whatsoever,” Article 2 of the Convention states in part, “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”. Yet, as Bybee stated in the preamble to his memorandum, any prosecutions under Sections 2340-2340A of title 18 of the United States Code, sections which implement the provisions of the Convention Against Torture, could not be countenanced since they would “represent an unconstitutional infringement of the president’s authority to conduct war.” In the prosecution of the war on terror, nothing could be allowed to fetter

the president, in his capacity as commander-in-chief, from exercising a free hand.

Gonzales not only never repudiated the Bybee memorandum, but sought to make it the law of the land. Neither he, nor any of his subordinates or superiors, ever expressed any misgivings about the cruel and ingenious interrogation tactics which had been pursued in Afghanistan and Guantanamo before they were applied in Iraq, and it is only the public disclosure of the excesses at Abu Ghraib which brought the spotlight on him and what can, without exaggeration, be called the regime of torture that had almost effortlessly been installed in Washington and the various outposts of the gargantuan American military machine. Whatever has been averred on his behalf by his patrons and admirers, his confirmation hearings suggest that Gonzales remains both wholly unrepentant as well as entirely confident that support for his views persists in vast sections of the American leadership and among those in the public who view the actions of the Bush administration with approbation. Adverting to the Bybee memorandum, senator Patrick Leahy asked Gonzales, “Did you agree with that

conclusion?” As the exchange continued, Gonzales sought to provide the ‘context’, and then stated: “I don’t recall today whether or not I was in agreement with all of the analysis, but I don’t have a disagreement with the conclusions then reached by the department”.⁴ That Gonzales should, in the aftermath of Abu Ghraib, have found it altogether unnecessary to disassociate himself from a policy deserving of outright condemnation is testimony to the fact that he rightly anticipated that such a disclosure would have no adverse consequences for him.

What, then, should we make of Gonzales’s story? Those nations that have frequently taken recourse to torture to extract confessions and information from prisoners never required a green light from the United States to persist with their nefarious style of politics. The intelligence and police forces of not only dictatorships and other authoritarian regimes, but even democracies such as India have carried out torture with impunity, but now that torture has been condoned by people in the highest positions in the US, one can be certain that many nations will feel encouraged to ignore whatever little constraints they may

have observed. To argue this is not to concede that one should feel the apparent anguish of those critics of the Bush administrations who feel that the United States has since its inception been a beacon of freedom to the world but has now relinquished the moral advantage that it held for so long. It is a striking feature of American history that the commitment to a certain conception of freedom has always existed alongside the most barbarous forms of conduct towards other racial and ethnic groups and a visceral contempt for the rule of law. The liberal commentator, Mark Danner, remarks that “by using torture, we Americans transform ourselves into the very caricature our enemies have sought to make of us”.⁵ But does one have to hint at America’s descent into lawlessness when it is, to much of the world that has borne the brunt of its military might and its terrifying arsenal of weapons, lawless? Is lawlessness so foreign an experience to a country that treated with utter disdain the judgment of the World Court by which the US was ordered to pay Nicaragua \$2 billion in damages for illegally mining its harbours and acting with malicious intent to destroy Nicaragua and its economy?

In Gonzales’s ascent to the pinnacle of the justice system one can witness the nadir to which the US has sunk. One can dispute to what extent there is honour among scoundrels, but the cozy friendship of Bush and Gonzales is no secret. One is tempted to say that every nation deserves the authoritarian leaders that it gets, but this would do injustice to ordinary people whose protections under the law have been rapidly diminishing, and particularly those who on account of their race, religion, citizenship, or resident status can palpably feel their vulnerability. There have been many other moments in American history where crimes have been perpetrated by the country’s leaders, but what is distinct about the present generation of the Republicans who are at the helm is the fact that they are utterly shorn of any sense of shame. They act with utter impunity, unscathed by one expose and investigative report following another, confident in their knowledge that, once the momentary murmurs and shouts have subsided, they can proceed with the same reckless disregard of human life and circumvention of justice of which they stand charged. They have taken to new heights the twofold tactic of strenuously denying the accusations laid at their feet, and then

reaffirming their commitment to human rights, justice and freedom. They understand and exploit with breathless brazenness, the power of iteration in public discourse.

Meanwhile, much will be made of the fact, even by those who experience some uneasiness with American foreign policy, the prosecution of the war on terror, the scandals of Guantanamo and Abu Ghraib, and the enhanced powers assumed by the department of homeland security and intelligence agencies, that Gonzales would have been subject, as they imagine, to ‘grilling’, rigorous scrutiny, and ‘hostile’ questioning by the millionaire gentlemen who comprise the US senate. With Gonzales, as with other ‘controversial’ nominees to the cabinet proposed by one American president or another, there would even have been talk of filibustering, or using obstructionist strategies to prevent a vote on the nomination from coming to the floor. “The idea that the other side of the aisle is even considering filibustering this manifestation of the American dream that’s represented by judge Gonzales”, remarked majority leader Bill Frist of Tennessee, “is simply beyond me”. But Frist need not have worried, since part of the extraordinary success of American democracy resides in the fact that its political rituals preclude any real possibility of the emergence of dissent and are designed to reinforce conformity and consensus. The singular fact remains that well over 95 per cent of all presidential nominees to cabinet-level positions in the course of American history have been confirmed by the senate, and Gonzales’s confirmation was a foregone conclusion. In many other countries, the disclosures that have taken place might not have been at all possible. But is it not more scandalous that, knowing all that the American public does know about Gonzales and his ilk, that it should make no difference. Torture now joins the never-ending list of American success stories. [4]

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Notes

- 1 ‘Statement on the Nomination of Alberto Gonzales to be US Attorney General’, Press Release by the Office of Judd Gregg (Republican-New Hampshire), February 2, 2005, at: <http://gregg.senate.gov/statements/Nomination%20of%20Alberto%20Gonzales.htm>
On the fundamentals of American myth-making, such as the representation of America as god’s gift to the world, or the United States as a place that welcomes indigent and oppressed people as much as professionals and immigrants with specialised skills, there is virtually no disagreement between the Republicans and Democrats. Thus on the occasion of Gonzales’s confirmation hearings,

minority leader Harry Reid (Democrat-Nevada) concurred with the Republicans that Gonzales ‘has a story that is an American success story’, while adding that Gonzales could not thereby claim exoneration for his part in advising the president that he was not bound by the Geneva Conventions. See http://news.yahoo.com/news?tmpl=story&u=/nm/20050202/ts_nm/congress_gonzales_dc_11

- 2 As legal counsel to governor Bush in Texas, Gonzales was charged with presenting memos to his boss on capital punishment cases where Bush could exercise the prerogative of issuing reprieves and pardons to condemned prisoners. As governor of Texas for six years, Bush presided over more executions, 152 to be precise, than any other governor in modern American history. He never issued so much as a 30-day reprieve, even in cases where there was strong reason to doubt the evidence or the conviction. The memos authored by Gonzales, which have become available under the Public Information Act, suggest that Gonzales never took his task seriously and looked upon the entire exercise as an unfortunate obligation. See Alan Berlow, ‘The Texas Clemency Memos’, *Atlantic Monthly* (July-August 2003), and Sister Helen Prejean, ‘Death in Texas’, *New York Review of Books* (January 14, 2005), pp 4-6.
- 3 The various documents mentioned in this and the following paragraph can be accessed through the website of Human Rights First: http://www.humanrightsfirst.org/us_law/etn/gonzales/index.asp
- 4 A complete transcript of the Senate Judiciary Committee Confirmation hearings is available online at http://www.humanrightsfirst.org/us_law/etn/gonzales/statements/gonz_testimony_010604.htm
- 5 Mark Danner, ‘We Are All Torturers Now’, *New York Times* (January 6, 2005), p A27.