OMNI NEWSLETTER # 5 ON US TORTURE, WAR CRIMES, LAWLESSNESS, February 25, 2012. (#1 October 5, 2007; #2 May 9, 2011; #3 June 26, 2011; #4 Oct. 21, 2011) (For OMNI’s newsletters go to: http://www.omnicenter.org/newsletter-archive/). Knowledge, especially of the worst, strengthens the search for the best. See newsletters on War Crimes, Chemical Warfare. Compiled by Dick Bennett, Building a Culture of Peace

JUNE 26 IS UN INTERNATIONAL DAY IN SUPPORT OF VICTIMS OF TORTURE

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PHILIPPE SANDS


Review: “So much for the rights of man”
Philippe Sands's Torture Team exposes the American conspiracy to tear up the Geneva Convention after the attacks of 9/11, says Rafael Behr

http://www.guardian.co.uk/books/2008/may/04/politics

- Rafael Behr
- The Observer, Saturday 3 May 2008
- Article history

Buy 'Torture Team' at the Guardian bookshop
Torture Team: Deception, Cruelty and the Compromise of Law
by Philippe Sands

Only a psychopath inflicts systematic brutality on another man in cold blood; a psychopath or a soldier obeying orders. Many of the military interrogators based at the US detention camp at Guantánamo Bay, Cuba, in late 2002 were young, barely out of their teens. They were led to believe that what they were doing was not only legal, but patriotic. They tortured and thought it was virtuous.

How did that happen? How did a state, conceived in awe of The Rights of Man, make psychopaths of its children? Who gave the orders? That is the essence of Philippe Sands's inquiry in Torture Team: Deception, Cruelty and the Compromise of Law. Meticulously, soberly, astonishingly, he finds the answer in testimony from some of the most senior figures in the US establishment. Sands is a barrister and a law professor. If he were a journalist, he would never have gained access to, nor elicited such
extraordinary candour from his interviewees. And, as an expert in international law, Sands doesn't use the word 'torture' lightly. He sets out to establish whether or not the treatment of Guantánamo detainees meets international legal criteria to merit indictment as a war crime. Apparently it does.

In the hands of a more polemic writer, that point alone could be sharpened over hundreds of pages and thrust into a rhetorical effigy of George W Bush. But for Sands, proving that the crime was committed is auxiliary to telling another story. Torture Team is about the jurisprudence of moral corruption.

The process started in the months after 9/11. There was widespread expectation of further attacks and a belief that Taliban and al-Qaeda members captured in Afghanistan could furnish the intelligence to prevent them. A recurrent theme, discussed in legal journals and dramatised in popular culture, was the 'ticking bomb scenario': an atrocity is imminent; in custody is a man who knows about it, but he won't talk. Would not torture be justified if thousands of lives were at stake? As time went on, the administration grew frustrated with the poor intelligence yield in the 'war on terror'. Donald Rumsfeld, in particular, seems to have heard bombs ticking in the obdurate silence of the prisoners at Guantánamo Bay.

One such prisoner was Mohammed al-Qahtani. He was alleged to be an accomplice in the 9/11 plot, a hardcore terrorist. He seemed immune to the established army interrogation techniques, which complied with the Geneva Conventions. So al-Qahtani was made the guinea pig for a new set of techniques. They included the use of 'stress positions', sensory deprivation, sleep deprivation, pushing, prodding, forced nudity, exploitation of phobias, simulated drowning.

The first step down the legal path for the state to sanction such behaviour was to declare that the Guantánamo detainees were not covered by the Geneva Conventions. Without Geneva, the only restraint on interrogators was a verbal undertaking by the President that detainees should be treated 'humanely'. That aspiration was formally abandoned, according to Sands, on 2 December 2002, when Donald Rumsfeld signed the 'Haynes memo'. This was a request sent by William Haynes, the general counsel at the Pentagon, for approval of specific coercive techniques, most of which were practised on al-Qahtani. Non-stop. For 54 days.

Washington was by no means unanimous in its acceptance of the new direction. To get their way, lawyers in the defence and justice departments had to short circuit the military chain of command and sideline senior military and intelligence officers. The soldiers and spooks tended to be much more wary of aggressive interrogation than the politicians, not out of compassion for the detainees, but because they knew a mundane truth about torture: it doesn't work. Sleep deprivation alone is sufficient to compromise intelligence gathering. 'If you do it for a week,' one FBI lawyer tells Sands, 'you're gonna come out with a guy on the other end who doesn't know what he's talking about.' Crucially, the initial decision to abandon Geneva was announced by the President. For army lawyers - men and women in uniform - to dispute the legal opinion of the commander-in-chief would be insubordination, practically treason.

The fact that prized American values were being jettisoned in the 'war on terror' did not go unnoticed on the ground at Guantánamo and inside the Pentagon. There was a furious backlash. The Haynes memo was rescinded, on 15 January 2003. In June 2006, the Supreme Court restored Geneva Convention rights to all US detainees. So, while Torture Team can be read as the story of a democratic system in aberrance, it can also be read as an account of the system working. Going wrong, but correcting itself.

That would be the quintessentially American way to look at it. But the power of such unwavering self-belief, the idea of the nation not just as a group of people but as an intrinsically virtuous endeavour, is partly to blame for the ethical meltdown chronicled in Torture Team. Combined with the shock of 9/11, it gave the political elite a sense of moral sureness that came to resemble radical revolutionary
ideology: all means were justified when the end goal was defeating terror; the expedient logic of the 'ticking bomb scenario'.

But the scenario is an illusion, a sado-political fantasy, an intellectual contrivance to coax the anxious mind into legitimising brutality. Like an optical illusion, it presents the possibility of torture as something complex and paradoxical - ethical cruelty. But in reality, it is something quite ordinary. It is a crime.

“Above the law” a review

Martin Jacques salutes *Lawless World*, a clear and readable account of how America turned its back on international law from Philippe Sands

- Martin Jacques
- The Guardian, Friday 25 March 2005
- Article history

Buy *Lawless World* at the Guardian bookshop


International law is a subject that, on the face of it, has little drawing power. Yet over the past couple of years, in the context of the legality of the Iraqi invasion, it has become central to the political debate in Britain. Similarly, the anti-globalisation movement has drawn attention to the ramifications of international law as it impinges upon the developing world. Philippe Sands's book has already commanded the headlines because of its revelations concerning the attorney general's statement in favour of the legality of the Iraqi war. It would be a mistake, though, if *Lawless World* were to be seen primarily in these terms: it is far more important than that. In exploring the evolution of international law since the second world war, and the new American attitude of withdrawal and unilateralism, it goes to the very heart of the nature of the international order and its future.

Although a large body of international law predates 1945, its real growth and influence has come in the period since. Its development was a conscious attempt by the west - notably the Americans and to some extent the British - to design an international order in their own image. Of course, until the end of the cold war, its writ was almost wholly confined to the western world, a fact strangely taken for granted by Sands; indeed it barely gets a mention.

By far the most important body of international law concerns trade and overseas investment. Sands shows how rules governing overseas investment began to take shape in the 1960s as a direct response to the emergence of the newly independent former colonies and a conscious attempt to shackle their political freedom. It is these laws - secretive, hidden from view and, above all, binding - that have underpinned the neoliberal globalisation project. The chapters on trade and investment reveal how biased these rules are in favour of the west, and how they are made and exercised in institutional recesses that are unaccountable, even to cabinets, let alone parliaments, and utterly invisible to the public eye. This is the nexus of corporate, bureaucratic and judicial power.

By and large, though, Sands is more optimistic about the value and prospects for international law. He discusses the Pinochet judgment, which placed human rights abuses by a president above the sanctity
of the sovereign nation-state. In the same context, he gives a positive appraisal of the formation of the
International Criminal Court. Similarly, he shows how legislation to protect the environment,
especially in the sphere of climate change, most notably Kyoto, is fundamental to any serious effort to
constrain or reverse global warming. He argues, moreover, that international law-making, even in the
economic arena, is slowly being prised open and thereby subject to influence by a growing number of
actors, including developing countries and NGOs. He recognises that international law is opaque and
largely undemocratic, but believes, perhaps too optimistically, that the processes and institutions are
being opened up, albeit slowly.

The nub of the book, however, concerns the way in which the United States, since the Bush
presidency, has decided to opt out of international treaties. The story is now well known. The US
has turned its back on the International Criminal Court - and gone to great lengths to try to ensure
that none of its own citizens will ever be brought before that court; it has renounced its obligations
under the Kyoto Protocol; it has flagrantly violated all the established international codes of behaviour
concerning prisoners of war (or, alternatively, criminal acts) at Guantánamo; it reneged on international
law in the invasion of Iraq, along, of course, with the United Kingdom; and in Iraq and elsewhere, it
has bypassed all the laws forbidding the use of torture, most notably at Abu Ghraib. Sands subjects
American behaviour - above all, and perhaps most interestingly, the political and legal reasoning
behind its new stance - to forensic examination.

In so doing he throws new light on the nature of the neo-conservative revolution and its determination
to remake the world in America's interests. The prime author of the huge growth in international law
since 1945 has, in effect, suddenly chosen to opt out and declare that this legislation is no longer
binding on it.

It is a salutary reminder that what appeared in an earlier era (notably the 1990s) to be the remorseless
logic of an increasingly globalised world - namely the emergence of new rules of global governance,
together with a plethora of institutions to exercise them - far from being the product of some neutral
"universal interest", was and is, on the contrary, a function of good old-fashioned political power. In
one leap, the United States now stands outside what it helped to create. It no longer feels that its
interests are served by being party to them. It no longer wants to be constrained by them.

Sands is right that, as some aspects of international law have become increasingly subject to the
influence of other actors, the United States no longer feels comfortable with them and thus believes that
they are no longer in its interests. But Sands also underestimates what might be described as the
political dimension of the legal question. International law remains a function of power - the power of
countries - and none is more powerful than the US.

The withdrawal of its support undermines - in one blow - the legitimacy of those treaties that America
has abscended from. Of course, the United States will pay - nay, is already paying - a political price for
this, namely its global unpopularity. But there is no guarantee that this will change America's mind. The
path that the country is now embarked on may last rather longer than people outside the United States
care to entertain: and, for certain, things will never be the same again. There will be no return to the
days of "the west" as it existed when much of the corpus of international law was established.

Moreover, looking further ahead, would a world dominated by the United States, China and India be
more or less partial to living by global rules and international law? There are plenty of reasons for
doubt. We might think it is a good thing - certainly Europe does - but that does not make it any more
likely to happen.

This is an excellent book. It is also highly readable, which is a fine achievement, given the slightly
forbidding subject matter. At times the book is engagingly personal. Sands describes the scene at the
House of Lords appeal on Pinochet so well that one almost feels as if one is there. And he memorably
recounts the process by which the climate-change conventions arrive at their decisions: far from being neat and legalistic, they are a cacophony of late nights, private deals, stamina and eccentric individuals who enjoy an influence well beyond expectation.

Sands writes not as a dull international lawyer but as an astute observer of human situations. Lawless World is also a model of clarity: one is never left gasping for comprehension. Above all, though, it is authoritative and ruthless in its analysis of the conduct of the United States and withering about the role of Britain. It is a book that deserves to be widely read.

· Martin Jacques is visiting fellow at the LSE Asian Research Centre

“Bush Confronted with Guantanamo Torture Complaint at Canadian Economics Summit” by Carlos Maza, NationofChange, Oct. 21, 2011:

“International human rights lawyers in western Canada greeted George W. Bush’s arrival at an economics summit Thursday by asking a Canadian court to consider a torture complaint by four Guantanamo captives, three of them free and one still held at the U.S. Navy base in southeast Cuba. The move is part of a global Guantanamo protest effort to ground the man who set up the prison camps in 2002. In February, the former president canceled a plan to speak at a United Israel Appeal gala fundraiser in Geneva ahead of a similar torture complaint.” READ | DISCUSS | SHARE
http://www.nationofchange.org/bush-confronted-guantanamo-torture-complaint-canadian-economics-summit-1319211381

MORRIS DAVIS AND CRIMES OF WAR PROJECT
Davis was formerly Chief Prosecutor of the Guantanamo .military commissions and then exec. director of the Crimes of War Project at Howard U. School of Law, which exposes illegalities of CIA behavior approved by Obama. including renditions. See his “Combat Immunity and the Death of Anwar-al-Awlaqi” (U. of Pittsburgh’s “Jurist” link). Morris is praised highly by Nat Hentoff, civil liberties scholar.

NAT HENTOFF: REPORTER OF OBAMA’S TORTURE RECORD

1. __________ Torture under Obama | Nat Hentoff | Cato Institute: Commentary
www.cato.org/pub_display.php?pub_id=11228Cached - Similar
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by N Hentoff
Feb 17, 2010 – Author: Nat Hentoff, Published: 2010-02-17, Type: Commentary. ... has to say about Obama allegedly banning torture — and the accompanying ... notes that " the
United States has a rich **history** of military ethics dating back to ...

2. **Getting Away with Torture: Obama Bans War Criminals, Except Our**...
   www.globalresearch.ca/index.php?context=va&aid=26097Cached
   You +1’d this publicly. Undo
   Aug 20, 2011 – Culture, Society & History ... by Nat Hentoff ...
   For those growing number of Americans who are concerned with what has been and still is ...

3. **George W. Obama - Page 1 - Columns - New York - Village Voice**
   www.villagevoice.com/2010-01-12/columns/george-w-obama/Cached - Similar
   A snippet: Nat Hentoff Tuesday, Jan 12 2010 ...
   Does that make Obama complicit in these acts of torture? You decide. What is clear, beyond a ...

4. **War on Terrorism News**
   www.fff.org/whatsNew/Archive/WarOnTerrorism.aspCached
   by Bruce Ackerman Washington Post; Torture Under Obama by Nat Hentoff Cato Institute;
   Federal Courts Have a Good Terror Trial Record by Clarence Page ...

5. **Nat Hentoff: “Obama is possibly the most dangerous and destructive**
   reason.com/blog/2009/12/17/nat-hentoff-obama-is-possiblyCached - Similar
   Dec 17, 2009 – A snippet: Nat Hentoff: In terms of the Patriot Act, and all the other ...
   Why is Obama doing that if he doesn’t want torture anymore? .... A reading of history informs me
   that it was going on long before I came of age and started watching. ..... We had an
   unemployment rate lower the 5% and a growth rate in ...

**END NEWSLETTER US LAWLESSNESS #5**