Telltale Marks: Looking Beyond Censorship of Guantánamo

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In the United States, the government has attempted to hold a storytelling monopoly about the war on terror. Guantánamo has held a privileged place in this narrative. This paper examines the government’s public statements about Guantánamo in contrast with its covert communications and actions. To provide a counternarrative to the official story, I then analyze iconic American images painted by detainees in classes at Guantánamo. I argue that that the artwork of detainees presents a fundamental principle of democracy: acceptance of a single story is the antithesis of democracy; only when the whole truth is uncovered can the freedom of speech be claimed.

Keywords: Guantánamo Bay, torture, human rights, freedom of speech, art

Introduction

“Who gets to tell the story and have it heard is ultimately a question of power,” asserts A. Naomi Paik in “Storytelling and Truth-Telling” (2017). This claim is evident in the U.S. government’s drive to control the narrative of the war on terror and its treatment of prisoners at the Guantánamo Bay detention center, located on the U.S. naval base in Cuba. The official story of Guantánamo—conveyed in political discourse and legal memos—depends upon censorship of alternative perspectives. This essay examines the U.S. government and detainees’ competing narratives through an analysis of the government’s Torture Memos and detainees’ creative expression. Together these narratives reveal that the official story of Guantánamo presented to the American people has been designed to justify its abuses. Considering multiple perspectives, as well as information that has been censored in official reports, is crucial for citizens to form their own opinions about Guantánamo and maintain democracy. This research will explore these limitations by (1) examining the gap between the government’s public words and their covert
communications and actions, particularly in the Torture Memos, and (2) analyzing the paintings made by detainees in biweekly art classes for a new perspective on Guantánamo, the United States, and freedom.

**Defining the Legality of Guantánamo**

Guantánamo is a land of paradoxes: a lawless zone of legal illegality, stealing freedom from some in order to maintain freedom for all. Under the Bush administration, the manipulation of words birthed a legal grey area that is home to Guantánamo Bay and the war on terror. That grey area has facilitated torture and cruel, inhuman and degrading treatment that is prohibited by both international and federal law. The U.S. Torture Act (18 U.S. Code § 2340A) prohibits torture, which is defined as a public official “acting under the color of the law” to inflict or threaten to inflict severe pain on a person (Torture Act, 1994). This definition specifies that “pain or suffering incidental to lawful sanctions” is legal, meaning the treatment or sentencing of inmates does not constitute torture so long as it is lawful (Torture Act, 1994). The Torture Act is only applicable in instances of torture that have occurred outside of the United States and its territories, when either the perpetrator or the victim is an American national, or if the perpetrator is found in the United States, regardless of their nationality.

This law leaves out instances of torture that occur on U.S. territory because these acts are covered by the Bill of Rights. The Fourth, Fifth, Sixth, and Seventh Amendments grant citizens the right to due process with a speedy, public, and impartial trial, as well as protection from unreasonable search or seizure and cruel or unusual punishment (U.S. Const.). These protections all apply to those who are tortured, making a second law against torture within the United States unnecessary.
However, the United States government has evaded the application of both of these laws to Guantánamo. While the U.S. exercises military control over the base, the land upon which it sits is leased from Cuba through a contract of disputed legality. Ultimate jurisdiction over Guantánamo Bay is contested, making the laws against torture applicable yet inapplicable. In her article, “Where Is Guantánamo?” Amy Kaplan discusses Puerto Rico as a precedent for the United States’ meticulously vague relationship to Guantánamo. When analyzing the Supreme Court decision of *Downes v. Bidwell*, Kaplan decrees that categorizing Puerto Rico as an “unincorporated territory,” a group that had not existed before this decision, “deemed Puerto Rico ‘foreign to the United States in a domestic sense,’ a space ‘belonging to’ but ‘not a part of the United States,’ whose inhabitants were neither aliens nor citizens” (Kaplan, 2005, p. 841). This explicitly ambiguous and paradoxical definition grants the United States unregulated power over Puerto Rico, while evading the obligations that come with governing citizens.

While the United States government has never officially deemed Guantánamo Bay an “unincorporated territory”, Kaplan’s description sets a striking precedent. Guantánamo Bay resides in a legal limbo similar to that of Puerto Rico, but the nature of the territory adds another dimension. Not only is the jurisdiction of the territory a legal grey area, so is every action taken within the detention center. By avoiding the declaration of the U.S. naval base at Guantánamo as foreign or domestic, the government skirts the application of both the U.S. Torture Act and the Bill of Rights. Democracy hinges on transparency. A government that publicly endorses unalienable rights for all while privately picking and choosing the application of the U.S. Constitution and federal laws cuts citizens out of the conversation and takes power away from the people.
The United States carefully evades the application of both domestic laws and international treaties to their actions in Guantánamo—namely 18 U.S. Code § 2340A (The Torture Act), the Convention Against Torture (CAT), and the War Crimes Act (WCA), a 1996 law that punishes “grave breaches” of the Geneva Conventions and can carry the death penalty (War Crimes Act, 1996). In the infamous Torture Memos, various Bush administration officials privately correspond to dissect the diction of these laws and create definitions that permit the widest scope of action, including the use of abusive techniques, and protect personnel from persecution. Although the memos were initially classified, and most were rescinded after they were leaked to the public, they remain an essential guide to the government’s internal debates and, ultimately, its attempt to skirt legal norms.

*The Torture Memos*

In a fifty-page memo to White House Counsel Alberto Gonzalez, Assistant Attorney General Jay Bybee carefully examines and defines the exact parameters of the Torture Act, declaring which actions can be labeled as “cruel, inhuman, or degrading treatment or punishment” instead of torture and can therefore be used without threat of repercussion (Bybee, 2002). Bybee preemptively creates defenses to possible future allegations the government may face, painting torture as an act of “necessity” and “self-defense” (Bybee, 2002). The Torture Act defines torture as “acts specifically intended to inflict severe physical or mental pain or suffering,” (18 U.S. Code § 2340A). Perhaps most notably in the memo, Bybee parses the definition of severe physical pain or suffering as only that equivalent to “serious physical injury, such as organ failure, impairment of bodily function, or even death,” and severe mental pain or suffering as that which “must result in significant psychological harm of significant duration, e.g., lasting months or even years” (Bybee, 2002, p. 1). As a result, the government’s practical definition of torture would only extend
to pain so severe it results in maiming, death, or prolonged mental suffering (each of which would be difficult to document and prosecute), while anything that does not rise to that standard is defined as acceptable for use against detainees.

A common debate seen throughout the Torture Memos questions whether the Third Geneva Convention relative to the Treatment of Prisoners of War (GPW) applies to the conflict with al Qaeda and the Taliban. Under the GPW, detainees would receive Prisoner of War status, which in turn would entitle them to certain rights and protections. In a 2002 memo to Department of Defense General Counsel William J. Haynes II, Deputy Assistant Attorney General John Yoo begins to pick apart the diction of the GPW. He argues that the GPW only applies to “high contracting parties,” a term which describes nation-states that have ratified the treaty (Yoo, 2002). Since neither al Qaeda nor the Taliban are nation-states, but are instead organizations, Yoo contends the GPW does not apply. In addition, Yoo alleges that the WCA does not hold the U.S. responsible for following every mandate of the Geneva Conventions, but instead only punishes “grave breaches” of the treaties (Yoo, 2002). Since the WCA does not provide a single definition of “grave,” it grants the government leeway in creating their own definition, and thus interpretation, to protect some violation of the law.

As the debate over the applicability of the GPW continues, Alberto Gonzales, White House Counsel, outlines the arguments on both sides for President Bush in a memo on January 25, 2002. Gonzales advises Bush that his initial decision that the GPW does not apply is correct, because (1) Afghanistan is a failed state, meaning they cannot fulfill international obligations to the U.S., so the U.S. has no obligation to fulfill its end of these treaties, and (2) the Taliban is not a recognized government, meaning this is not traditional warfare and thus cannot subscribe to the traditional
rules of warfare (Gonzales, 2002). Gonzales condones Bush’s initial decision, highlighting the increased flexibility it would give the administration while minimizing the fear of prosecution.

In his memo, Gonzales summarizes Secretary of State Colin Powell’s counterargument. Powell recalls the precedence set by the previous Bush administration for respecting the conventions even if the opposing side did not meet the criteria. Additionally, Powell asserts that if the United States does not respect the GPW, there will be no grounds to expect treatment in accordance to the GPW for U.S. soldiers. Finally, Powell predicts the decline of the United States’ international reputation if the rules of war are not respected (Gonzales, 2002). Despite his position as the sole voice for the application of the GPW to detained al Qaeda and Taliban suspects, Powell’s arguments largely revolve around the dignity of the U.S. soldier and the reputation of the United States, rather than the rights of the people that are detained.

After nearly a year of private deliberations, on February 7, 2002, President Bush proclaims in a public memo that the GPW does apply to the conflict with the Taliban, but adds that he has a Constitutional authority to suspend this application at any moment (Bush, 2002). Despite this declaration, Bush proceeds to define Taliban detainees as “unlawful combatants,” a category that did not exist before this memo (Bush, 2002). Article 4 of the GPW lists the different groups that, if captured by the enemy, receive prisoner of war status (ICRC, 1949). By creating the category of “unlawful combatants,” Bush creates a group that is outside the realm of this Article. By simply conjuring up a new name for prisoners, Bush circumvents the international laws of war.

Bush continues to declare that the GPW does not apply to the conflict against al Qaeda, because al Qaeda is an organization, not a government, and therefore is not a High Contracting Party to the Convention (Bush, 2002). Since the war on terror is loosely defined as just that—a
war on an action fueled by an ideology—Bush declares that the usual rules of war, stipulated by the Geneva Conventions, do not apply. Bush promises the public that the government will “continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva” (Bush, 2002, p. 2). The qualifying phrase “to the extent appropriate” provides further opportunity for abusive actions.

Citizens, not privy to the hundreds of pages in private memos dissecting laws to fit the needs of the government, are publicly told that the government will abide by the GPW even though they aren’t obligated to do so. What appears to be an act of good will is actually a policy centered on a loophole. Bush reserves for himself the right to violate the GPW at any time if he deems it necessary militarily. Affording the military the ability to break the rules of war is a fundamental violation of Geneva Convention which renders it useless in practicality. At the moment when detainees most need the protection of the GPW—when they have been captured and rendered to U.S. custody outside of any judicial process, it can be taken away. The U.S. government covertly creates a legal grey area to protect their actions while publicly stating that they will abide by the very laws they’ve selectively interpreted.

Sanctioned Counternarratives

While the Torture Memos give us a behind-the-scenes look at Bush’s decision to withhold prisoner of war status, poet Jordan Scott’s multimedia chapbook, “Clearance Process,” gives us an inside look at the process of creating art under scrutiny. Scott combines photographs, audio recordings, and some writing to capture the essence of Guantánamo. Rather than working within the limits set on his art, Scott incorporates this censorship into the art itself. The first two pages of the book are taken from the writings of Mohamedou Ould Slahi, a man imprisoned at the camp
without charge and tortured for fifteen years. His writing is fraught with the heavy black curtain of redaction. Slahi’s last words to escape Guantánamo are, “One of my poems went,” before an entire page of his thoughts fall victim to an isolating world of concealment (Scott, 2016). By including an entire page of redacted writing, Scott sets the standard that what the audience cannot see is as important as what they can. The government can hide the works of artists, but they cannot hide their censorship. Scott shines a bright light on censorship that results in a consciously incomplete narrative that is simultaneously more complete than the view given by the government.

In Scott’s most striking photograph, he captures the layers standing between him and his mission to accurately portray Guantánamo. Rather than photographing the military-approved frame, Scott captures the process of two other photographers invading each other’s space for the same shot (Scott, 2016). He reflects on the glass, the fencing, and the confinement standing between photographers and a full view of Guantánamo. Instead of allowing the military to use his work as a proxy to continue their single story, Scott exposes the parameters of his job.

The United States government is an excellent storyteller. By placing limitations on every narrative of Guantánamo, the government ensures the American people see what the government wants them to see. In 2010, the Department of Defense released a thirteen-page rulebook for media at Guantánamo Bay. The mandatory guidelines explicitly state that media personnel are forbidden from communicating with detainees while at the camp (Department of Defense, 2010). In allowing media to visit Guantánamo, the government allows access to new perspectives on the camp, even as it defines what those perspectives can include. Presumably, the media goes to the detention center, observes the camp, and reports their own perspective on their experience. In reality, by only allowing contact between military officials and the media, the government transforms the media into a proxy to further their own narrative of Guantánamo.
Media personnel are forced to observe caged detainees, like animals in a zoo, while only receiving their captor’s narrative. The government ensures dehumanization continues in any photographs taken through Rule 2A of Section D: “Photographs or videos shall *not* be taken of… frontal facial views, profiles, ¾ views, or any view revealing a detainee’s identity” (Department of Defense, 2010, emphasis in original). In the forward to “Clearance Process,” Scott recalls the words of one Public Affairs representative, “If their mother can’t identify the detainee in the photo, then it’s a good photo” (Scott, 2016).

The erasure of the faces is a consistent technique used by the U.S. government, both to empower and oppress. The government enacted Rule 2A in accordance with the Geneva Convention, which dictates that Prisoners of War must be protected from “insults and public curiosity” (ICRC, 1949). Rather than protecting detainees from the public, this concealment of identity deindividualizes the prisoners while maintaining their vulnerability. Instead of looking into the eyes of the men kidnapped, tortured, and held indefinitely by the government, U.S. citizens see a blank canvas onto which they can project their anger, fear, and thirst for justice. On the other hand, the anonymity of U.S. soldiers photographed at Guantánamo provokes power. In “Penitent Spy” (2016), a companion essay to Jordan Scott’s project, Alison Dean argues that the soldiers’ power of privacy is the inverse of the detainees’ concealment. While the soldier cannot be seen, the detainee cannot see. Soldiers can stand fearlessly in front of the lens, knowing the photograph will capture only what they allow. The perspective of the soldier is unobstructed, the citizen’s view of both their government and the naval base is hindered, and the detainee’s point of view is restricted completely.
When many Americans think of Guantánamo, their mind reflects back to the famous shot taken by Shane McCoy on January 11, 2002, depicting the first detainees to arrive at the base (Rosenberg, 2013). Framed by barbed wire and holes in the chainlink fencing, detainees kneel on the ground as military personnel tower over them. Shrouded in neon orange jumpsuits and matching hats, the detainees are simultaneously exposed and completely obscured. Chunky black gloves cover their hands, ropes tie their wrists and ankles together, and goggles, masks, and earmuffs conceal any semblance of humanity (Rosenberg, 2013). The lack of respect and dignity given to these men is nothing the government is ashamed about–as a matter of fact, it is a point of pride. According to Carol Rosenberg, a senior journalist who has covered Guantánamo since its opening in 2002, “McCoy was assigned to Combat Camera, an elite unit that took secret pictures not for the public but the Pentagon” (Rosenberg, 2013). The Pentagon approved the release of McCoy’s photos in an attempt to provide favorable coverage of the detention center.

The U.S. government has attempted to provide a single, dominant visual and aural narrative of Guantánamo to the American people to maintain public support. In remarks to the press on September 25, 2001, Bush advocated for the war on terror by imploring the American people, “Make no mistake about it: This is good versus evil. These are evildoers” (Bush, 2001). This polarized retelling of history paints detainees as monsters. But inside Guantánamo, detainees are painting their own version of events.

Figure 1: The first detainees arrive at Guantánamo.

**Painting the View from Inside Guantánamo**

President Obama installed art classes at the detention center in 2011. After his election on a platform centered around the closure of the prison, Obama used the classes to mark a new era of Guantánamo. Despite the promise of a mental escape from the conditions of their extralegal confinement, the men at the prison instead found constant reminders of it—in the single pen and sheet of paper that constituted “art supplies,” in the shackles around their feet tethering them to the floor, and in the teacher that was not allowed to smile, let alone teach (Adayfi, personal communication, 2019).

Detainees refused to allow the art classes to solely benefit the guilty conscience of the American people. After determined negotiations with guards and often with donations from their attorneys, the detainees eventually secured actual art supplies for themselves (Adayfi, personal communication, 2019). Still shackled to the floor, the men painted a bridge from their cells to the American people. Finally able to communicate their humanity, detainees painted homes, seas, and most of all, hope. Mansoor Adayfi, a man imprisoned at Guantánamo for fourteen years without charge, dubbed 2011 and 2012 “the golden age of GTMO” (Adayfi, personal communication, 2019). The art provided an escape. Through a rigorous screening process, some detainees were allowed to get their artwork out of Guantánamo through their lawyers. A new art teacher, a Jordanian man known simply as Adam, provided instruction and facilitated the release of their artwork. Detainees even painted gifts for guards who advocated for their classes.

The lawlessness of Guantánamo dictates that anything can change at any time without reason or justification. On March 4, 2013, the government acknowledged that six detainees were on hunger strike, allegedly over the mishandling of the Koran. On June 28, 2013, the military
announced the hunger strike had grown to 106 detainees (Rosenberg, n.d.). At the same time, Adayfi recalls new military personnel invading the prison, locking down the camp, and taking every personal item, particularly art, from the detainees. Three years of work was destroyed in four hours (Adayfi, personal communication, 2019). Gone was the golden age of Guantánamo.

Much of the art that did escape the prison landed in Erin Thompson’s exhibit at John Jay College of Criminal Justice. Thompson, an Associate Professor of Art Crime, began the exhibit “Ode to the Sea” on October 16, 2017. The exhibit, located in a hallway of the college, showcased the works of eight artists from Guantánamo. Although it was the first exhibit of the artwork of detainees, it garnered limited recognition at first. However, it attracted the attention of the U.S. military, which responded with a statement that banned the release of all art from Guantánamo and claimed that all existing art was property of the U.S. government (Rosenberg, 2017). Although all of the artwork had been cleared for release by military censors, the possibility of this alternative, humanizing narrative gaining an audience caused the government to resort to these drastic measures. This plan undoubtedly backfired, as Thompson says the exhibit gained tremendous popularity after the ban (Thompson, 2019).

Thompson’s work gave a platform to eight detainee artists, who were finally able to share their own perspectives with a wider audience (although those perspectives were still shaped by the restrictive conditions of their production and release). Many other detainees, however, did not make it into the exhibit. One of these men is Sabri Mohammed Ebrahim al Qurashi. Hailed by Adayfi as the best artist at Guantánamo, al Qurashi painted long before the introduction of art classes (Adayfi, personal communication, 2019). By soaking a tea bag in a small amount of water, he was able to paint on squares of toilet paper, hidden from the guards (S. Al Qurashi, personal communication, 2019).
In art class, al Qurashi painted highly political masterpieces. The Statue of Liberty, with its back turned on the viewer, stands erect on top of a caged detainee (Al Qurashi, n.d.-a). Shackled and kneeling, dressed in the infamous orange jumpsuit and hidden by a black bag over his head, this detainee represents all detainees. Here, the government’s dehumanization is turned into a tool. Without individualization, this detainee symbolizes all of Guantánamo, something that wouldn’t be possible without the deindividualization of the government. Fencing and barbed wire cover the painting horizontally—positioned to reach just over the detainees head, while allowing the Statue of Liberty to stand unhindered by it.

The message of the painting is clear—Lady Liberty has turned its back on us. In a speech on September 18, 2001, Bush claims that terrorists “hate freedom, and they hate freedom-loving people. And they particularly hate America at this moment” (Bush, 2001). Bush synonymizes the idea of “freedom-loving people” and Americans. This painting shows the paradoxical nature of this ideology that has driven the war on terror and Guantánamo. Freedom for all cannot be achieved by stealing the freedom of others. The freedom of Americans does not depend on the imprisonment of a few—in fact, it is threatened by it.

Many of al Qurashi’s other works involve the Statue of Liberty. In another striking piece, Lady Liberty faces the viewer with black sunglasses, a black facemask, and black earmuffs (Al Qurashi, n.d.-b). There is a clear connection to the garb forced on the first detainees to arrive at

Figure 2: Statue of Liberty turns her back.

Guantánamo, as shown in McCoy’s famous photograph. While the masks took away the detainees’ ability to be seen and individualized by the world, the Statue of Liberty is still easily recognizable. Instead, the masks grant Lady Liberty the gift of maintained ignorance. The image suggests American people are blind to what is going on right in front of them, because they can be. Their freedom is not overtly infringed upon by the existence of Guantánamo.

Al Qurashi’s artwork was not easily released. Often the only student to attend the art classes, he formed a close bond with the teachers (Al Qurashi, personal communication, 2019). One of these teachers encouraged al Qurashi to paint what he wanted, regardless of the censorship. He reasoned that if he painted five political paintings, the guards would let him keep the least damaging one, or if he submitted a combination of innocuous and political images for review for release, perhaps they would all be cleared together (Al Qurashi, personal communication, 2019). Unsatisfied with the number of paintings released, al Qurashi began to circumvent censorship in a new way. When inspiration struck, he would outline and label the basics shapes of the painting, and leave it unfinished (Al Qurashi, personal communication, 2019). Upon his transfer out of Guantánamo, al Qurashi finished these paintings in Kazakhstan. This method highlights al Qurashi’s determination to tell his story and his unwavering faith in his release.
This unwavering faith is particularly astonishing in light of al Qurashi’s capture. In al Qurashi v. Obama, a 2010 case, al Qurashi testifies that Pakistani officials detained him in 2002: “They also told him that he had to admit to one of three things: (1) being a member of al-Qaeda, (2) going to Afghanistan to fight for the Taliban, or (3) going to a military training camp” (Al Qurashi v. Obama, 2010). Pakistani authorities told him if he did not admit to one of these things, U.S. forces would torture him until he did (Al Qurashi v. Obama, 2010). After his misplaced trust landed him in Guantánamo for fourteen years without charge, lawyers told al Qurashi the only way to secure his release from Guantánamo was to again admit to something he did not do. While preparing for Periodic Review Board evaluations, many lawyers encourage detainees to admit to membership in al Qaeda or the Taliban, and to express regret and reformation (Adayfi, personal communication, 2019). If detainees remain adamant about their innocence, they are not likely to be released. After a failed habeas corpus petition and fourteen years’ imprisonment without charge, al Qurashi had to trust the same advice that was given to him at his capture and admit to something he adamantly claims a lie.

Conclusion

The paintings created in Guantánamo’s art classes don’t just give detainees the opportunity to reclaim their voice—they grant this same gift to the American people. It is impossible to claim ownership of our opinions while we are simultaneously inundated with unchallenged narratives by the U.S. government. In order to reclaim our minds, our voices, our opinions, and our democracy, we must find alternate perspectives to challenge every story told to us. We must first identify the limits of the lens thrust upon us, then look beyond them.
The Torture Memos exemplify the disconnect between the American people and politics. By initially classifying memos that are essential to contextualizing public statements, the government ensured citizens remained ignorant to the real workings of their country. Without the hundreds of pages that redefine the diction of the law to regulate only the most egregious violations, Bush’s public promise to act in accordance with the Geneva Conventions outside of obligation appears generous. Context is vital to understanding that this promise is built on the assurance that it can be rescinded at any time with the protection of a prepared defense against any accusations of accountability.

Guantánamo does not only deny the freedom of its detainees, it also threatens the freedom of the American people. Silencing the voices inside Guantánamo and hiding the inner workings of the government create a country in which citizens rely solely on a single government-manufactured story. We are not a democracy if our decisions are based off of propaganda. The art that detainees have created in Guantánamo is a gift of freedom. Let us use this gift to return the favor.
References


