

Don't flout Geneva — or the could easily be turned



By Niall Ferguson

The bottom line about mistreating captive foes is simple. It is that what goes around comes around. And you don't need to have a liberal lurking inside you to understand that

“YOU’VE always thought of me as a conservative, haven’t you, Niall?” The man who asked me that question three years ago, on the eve of the Iraq War, was a contemporary of mine at Oxford. And yes, I had always thought of him as a conservative. An escapee from behind the Iron Curtain, he was so formidably Right-wing that he made the rest of us young Thatcherites look like a gaggle of Greenham Common wimmin.

“Well,” he went on, as we sat facing one another in a Washington restaurant, “I have a confession to make.”

“A confession?”

“Yes. I have to confess to you that since coming to the United States I have learned something about myself.”

“And what have you learned?” I asked.

“It is that I am, in fact, a liberal.”

Well, I now know that feeling — the feeling that so many Europeans get as it suddenly dawns on them that American conservatism is different.

Last week, when I found myself once again in Washington, both Houses of Congress approved a bill — the Military Commissions Act — which will permit the indefinite extra-judicial incarceration of terrorist suspects and their interrogation using torture in all but name. Does that sound shocking? What’s really shocking is that this was a compromise measure. The bill the White House originally proposed went even further. Only the opposition of three Republican Senators — among them John McCain — forced President Bush to tone it down. A little.

When the President signs this bill into law, a category will come into existence of “unlawful enemy combatants” who, regardless of their nationality, will be liable to summary arrest and detention. Those so detained will not have the right to challenge their imprisonment by filing an application for a writ of habeas corpus. When — or rather if — they are tried, it

will be by military tribunals. Classified evidence may be withheld from the accused if the tribunal judges see fit.

My old pal Andrew Sullivan — author, blogger and another Oxford Thatcherite whom President Bush has succeeded in outing as a liberal — calls it a bill to “legalise tyranny”. At the very least it has the potential to extend the scope of American martial law far beyond the cell-blocks of Guantanamo Bay.

Leave aside for now the question of habeas corpus; after all, prisoners of war have traditionally been denied this ancient protection. Much more sinister is Section 8 of the Act (“Implementation of Treaty Obligations”), under which “the President has the authority . . . to interpret the meaning and application of the Geneva Conventions and to promulgate . . . administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions”.

To see what this means, you need to know what the “grave breaches” are. According to Geneva Convention III, Article

History, however, provides a powerful counterargument. It is that any dilution of the Geneva Conventions could end up having the very reverse effect of what the administration intends. Far from protecting Americans from terror, it could end up exposing them to it.

The first Geneva Convention governing the humane treatment of prisoners of war was adopted in 1929. It is not too much to say that it saved the lives of millions.

In the Second World War around 96 million people served in the armed forces of all the belligerent states, of whom more than a third spent at least some time in enemy hands. The majority of these were Axis soldiers who became prisoners when Germany and Japan surrendered. Luckily for them, the Allies upheld the Geneva Conventions, despite the fact that the Axis powers had systematically failed to do so.

Unwisely, as it turned out, the Soviet Union had declined to adhere to the 1929 Convention. Only in July 1941 did Stalin propose to Hitler a reciprocal adherence, a proposition the German government point-

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130, they include “wilful killing, torture or inhuman treatment, including biological experiments” and “wilfully causing great suffering or serious injury to body or health”. Insidiously, therefore, the Military Commissions Act empowers the President to authorise all lesser forms of physical and mental intimidation of prisoners. Suffering and injury are fine, in other words, so long as they aren’t too “great” or “serious”.

It is easy enough to understand why most Congressmen assented to this. Five years after 9/11, ordinary Americans remain intensely hostile towards anyone who might even be suspected of involvement in terrorism. Not for the first time, war fever is encouraging Americans to set aside the fundamental principles of individual liberty on which the United States was originally founded. Predictably, Democrats who opposed the bill were accused by the Republicans of “coddling” terrorists — a line of attack that Karl Rove hopes will win November’s mid-term elections.

edly ignored. This was because it was Hitler’s express intention, as part of Operation Barbarossa, to kill all those Soviet prisoners who could be identified as Communist “political commissars”. Within weeks of the German invasion, however, it became clear that not just commissars but all Red Army personnel were to be treated with unspeakable brutality.

In the first weeks of Barbarossa, the Germans may have murdered as many as 600,000 Soviet prisoners. Those who were taken captive found themselves herded into improvised camps where they were given neither shelter nor sustenance. Many starved or died of disease; others were taken out and shot in batches. Some were transported to concentration camps such as Buchenwald, where they were shot in the course of fake medical examinations, or to the death camp at Auschwitz. (Soviet PoWs were in fact the first people to be gassed there.) Altogether in the course of the

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war, more than 3 million Soviet soldiers died in captivity.

The story in Asia was not much better. Official Japanese policy encouraged brutality towards prisoners of war by applying the Geneva Convention only *mutatis mutandis* (literally "with those things having been changed which need to be changed"), which the Japanese translated as "with any necessary amendments". The amendments in question amounted to this: that enemy prisoners had so disgraced themselves by laying down their arms that their lives were forfeit. Indeed, some Allied prisoners were made to wear armbands bearing the inscription: "One who has been captured in battle and is to be beheaded or castrated at the will of the Emperor."

Physical assaults were a daily occurrence in some Japanese POW camps. "Executions" without due process were frequent. Thousands of American prisoners died during the infamous Bataan "Death March" in 1942.

Elsewhere, British POWs were used as slave labour, most famously on the Burma-Thailand railway line. Attempting to escape was treated by the Japanese as a capital offence, though the majority of prisoners who died were in fact victims of malnutrition and disease exacerbated by physical overwork and abuse. In all, 42 percent of Americans taken prisoner by the Japanese did not survive. Such were the consequences of spurning or flouting the Geneva Conventions.

Red State Republicans may still shrug their shoulders. After all, George W Bush is no Tojo (the Japanese wartime prime minister subsequently sentenced to death for war crimes). Well, maybe not. But even if you don't see any resemblance between Bush's "administrative regulations" and Imperial Japan's "necessary amendments" of the Conventions, consider this purely practical argument. As Winston Churchill insisted throughout the war, treating POWs well is wise, if only to increase the chances that your own men will be well treated if they too are captured. Even in the Second World War, there was in fact a high degree of reciprocity: the British treated Germans POWs well and were well treated by the Germans in return; the Germans treated Russian POWs abysmally and got their bloody deserts when the tables were turned.

Few, if any, American soldiers currently find themselves in enemy hands. But in the Long War on which President Bush has embarked, that may not always be the case. The bottom line about mistreating captive foes is simple. It is that what goes around comes around. And you don't need to have a liberal lurking inside you to understand that.

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