

Torture and the Arrogation of Presidential power

This is a sermon that I offered at LaSalle St Church in Chicago in January of 2006 when the revelations of presidentially sanctioned torture were at their height. I had some reluctance in giving this as a *sermon* because I feel quite strongly that most political debate ought to be kept out of the pulpit. This is not to say that the church should not be involved politically--I think it should--but it is to say that there are very few political issues that are actually

confessional

, ie that all Christians need to believe one way or another. Torture, I believe, is one of those issues. Not everyone in the congregation agreed, and two stood during my sermon to say so. It was a lively time.

While I was growing up, my father was a United Church of Christ minister in a small town in Western New York. The town was staunchly conservative and Republican. My father was a liberal Democrat. He felt strongly, however, that it wasn't appropriate to speak partisan politics from the pulpit. He might vote for Adlai Stevenson, John Kennedy, or Lyndon Johnson, but he didn't believe it was his prerogative to speak as a pastor about particular candidates. Indeed, I think he told very few people in town how he voted.

On the other hand, this was the time of the Civil Rights Movement and later the War in Vietnam, and my father cared deeply about civil rights and the oppression of the poor; he was skeptical of the rampant anti-Communism of the day. And he believed he had a responsibility as a pastor to speak out about those issues, to offer his parishioners the word of the LORD as he understood it ... to speak, in other words, prophetically.

Certainly, humility was in order, and he need to remember that he was pastor to everyone, even those in his congregation who would disagree vehemently. He drew the line, I think, at offering solutions, which is always a political, uncertain process, about which people could legitimately disagree, and he felt, I think, that it was inappropriate to commandeer the pulpit to advocate a particular candidate or a particular solution. But ... it was important to name the evil, from the pulpit, as clearly as he could see it.

To claim for oneself the role of the prophet seems, on the face of it, the height of egotism. How does one presume to speak the word of the LORD, especially about issues that might divide a community? In the absence of a voice in a thunderclap, how does one distinguish with any reliability the word of the LORD from one's own limited opinions? How does the

congregation discern the false prophet from the prophet of God?

I'm approaching the topic of prophetic voice here pretty gingerly because I hope to speak out of that voice myself this morning, and I'm aware of the potential for presumptuousness. God's prophets, as I understand it, are raised up by God and not self-declared. So it's a tricky business to know when one is called.

Although our Old Testament text for this morning from Deuteronomy (18:15-20) is sometimes read as a foretelling of the Messiah, several commentaries I consulted suggested that the first line, *The LORD your God will raise up for you a prophet like me from among your own brothers*, should be translated in the "frequentative," that is, the on-going tense: The LORD will over-and-over again be raising up for you a prophet. To speak as a prophet is one of the gifts of the spirit. We should expect the prophetic voice to emerge out of our communities regularly. At the same time, at least according to the Deuteronomy reading, it's ultimately the responsibility of the listeners to discern whether the prophet's words come from the LORD.

The New Testament lectionary text (Mk 1:21-28) shows Jesus teaching with authority when confronted by a man deeply disturbed by an afflicting spirit. In last week's lectionary scripture (Mk 1:14-20), you may remember, Jesus calls Peter & Andrew and James & John, and they drop everything to follow him to become his disciples. So this week's text, following immediately upon the calling of the first disciples, is the first lesson that Jesus gives his new disciples in what it means to follow him. And, not coincidentally, that lesson is in how a follower of Jesus is to respond to evil. "They were surprised at his teaching—so forthright, so confident—not quibbling and quoting like the religion scholars. Suddenly, while still in the meeting place, Jesus was interrupted by a man who was deeply disturbed and yelling out, 'What business do you have here with us, Jesus? Nazarene! I know what you're up to! You're the Holy One of God, and you've come to destroy us!'" [\[1\]](#)

At this point, Jesus has a couple of options. He could avoid the confrontation with this evil. This man wasn't *his* responsibility. "Uh, usher, could you please escort this man out." He could try diplomatically to put off the confrontation until a better time, when he could handle the person individually and perhaps more diplomatically. "Uh, sir, could we speak after the service? Could you, perhaps, come to my office on Thursday at 4?" But for Jesus, who is here teaching his disciples what it means to be disciples, evil is to be responded to directly and immediately. "Jesus shut him up: 'Quiet! Get out of him!' The afflicting spirit threw the man into spasms, protesting loudly—and got out." To be Jesus' disciple, in other words, is to *confront* evil ... directly and with authority.

As part of the war on terrorism, the United States government has established clandestine prisons in several other countries in which the government secretly incarcerates people for detention and interrogation without recourse to legal rights of any kind. Needless to say, this is illegal both by US law and international law. Since it would be entirely possible to bring these detainees to highly secure facilities in the United States for interrogation, one has to ask why the government chooses clandestine places in remote areas of the world. When lawyers have challenged the government's incarcerating men for years without charges at Guantánamo Bay, the government has contended that US courts have no authority over facilities outside of the United States. It seems reasonable to surmise that a significant part of the reason for the clandestine prisons is also to avoid challenge in US courts.

The government has also greatly expanded the practice of "extraordinary rendition," in which it sends detainees (again usually in secret) to other countries (many of whom are known to practice torture). Indeed, it's hard to imagine a legitimate reason for extraordinary rendition to a country not one's own. What possible reason—other than torture—might we have for this practice?

Since Sep 11, 2001, detainees are denied status as "prisoners of war" in an effort to circumvent the Geneva Convention's provisions for the humane treatment of prisoners. Neither are these "detainees" charged with a crime. They have been given the name of "enemy combatants," a novel legal approach to leave them in legal limbo with no recourse to appeal.

Let me take a few minutes to tell you about recent testimony from Craig Murray, until 2004 the English ambassador to Uzbekistan, a country northwest of Afghanistan that was until recently one of our allies in the War on Terrorism. When Ambassador Murray arrived in 2002, the UN had just reported that torture was widespread and systemic in Uzbekistan. But, then Murray learned not only that the US government was funding the Uzbek Security Police with \$80 million a year (and Uzbekistan itself with half a billion dollars a year) but also that the intelligence derived from the torture was being passed on to the CIA and then on to its British counterpart M16. That is, Murray saw the products of unspeakable torture, for example, boiling people alive, because it passed before him on the way from the CIA to M16. At the very least, in other words, severe torture had the implicit support of the US government because we used its results.

When Ambassador Murray understood that the intelligence he was receiving was the result of torture, he felt confident that his government would do everything it could to stop the torture or

at least dissociate itself from it. He was quite wrong. When he continued to make a fuss, he was asked to resign; when he refused, he was charged with a number of trumped up offenses of which he was later cleared. Ambassador Murray has concluded that England and the United States have simply been outsourcing torture to willing vendors.

Ambassador Murray concluded his testimony: “I don’t believe [torture] works, but even if it did work, I would personally rather die than have anyone tortured to save my life.”

Unbelievably, despite its denials, it appears that the Administration has been busy trying to limit the definition of torture to classify as acceptable ... treatment that has long been banned by the Geneva Convention, which prohibits “cruel, inhumane, and degrading treatment.” For instance, a Department of Justice memo advised the President that the only treatment that should count as torture would have to be “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” Because the United States has signed the Geneva Convention, its provisions carry the weight of law, despite advice to the president that they had been rendered “obsolete” and “quaint.” That Department of Justice memo went on to suggest that torturing suspected terrorists (even by the limited definition) “may be justified” if the torture takes place abroad, a legal twist that may or may not have a basis in law but certainly has none in morality. The fact that United States Department of Justice lawyers are even engaging in such semantic gymnastics to try to find ways to interrogate detainees by methods that the rest of the world considers torture is a stunning sign of the trouble that we’re in as a nation.

Several weeks ago the Senate passed by a vote of 90 to 9 Senator McCain’s anti-torture amendment despite the vice-president’s fierce attempt to exempt the CIA from its provisions and the president’s repeated threats to veto the bill. Facing a veto override, the president ultimately signed the bill with the amendment. Almost unnoticed, however, was a provision in the bill that the final *definition* of torture would be in an as yet-unwritten appendix to the Army Field Manual that would remain confidential. Of even more concern, however, the president attached a so-called “signing statement” to the bill. “Signing statements” have no constitutional or legal status, and other presidents have tried them, but they have been used increasingly in the last five years. In this case, the president’s signing statement—couched in arcane, legal language—declared that the president would *interpret* the law as he saw necessary to protect us from terrorism, in other words, reserving presidential authority to ignore the very law to which he’d just put his name.

[\[2\]](#)

Because of the attack on the Twin Towers and the Pentagon four and a half years ago, the

US has entered into a “war on terror.” This is intended to be taken literally, a real war, not metaphorically like the “war on drugs” or the “war on poverty.” While it’s not a “war” in any conventional sense (there’s been no Congressional declaration of war, there’s no defined enemy, no mechanism for the other side’s surrender, no way to tell when the war is over, and so on), nevertheless, the president as commander in chief has taken upon himself extraordinary wartime powers to abrogate established laws that interfere with his job as commander-in-chief. This has now come to a head with the revelation that the president has repeatedly ordered domestic spying on US citizens without a warrant in express contravention of our laws. The administration has insisted that as commander-in-chief the president has the power to annul laws that limit his authority to lead the war on terror.

While the issue of government wiretapping of United States citizens without a warrant is a serious one, there’s something much more important going on. The president is, in fact, challenging the right of Congress to limit presidential power, usurping the right to decide how laws pertaining to his power will be interpreted.

In this case, the law in question is the Foreign Intelligence Surveillance Act (or FISA), which expressly limits Executive Branch authority in intelligence gathering. The government defends the president’s deliberate violation of the law by asserting that the president needs emergency powers to act quickly, ignoring the fact the law already gives the government the authority to wiretap for seventy-two hours while its lawyers go to the secret FISA court for legal authority, which is rarely turned down. So the “emergency” or “flexibility” argument doesn’t make sense.

More importantly, if the administration believed it necessary to change the law, it had plenty of time to go to Congress and have a new law passed. Indeed, the administration *did* go to Congressional leaders to ask about getting the FISA law modified and were told that it was unlikely that Congress would agree to the changes. The administration did it anyway. The government doesn’t deny that the law was broken, only that the president—in his role as commander-in-chief—has the implicit power to break the law when—in his judgment alone—it’s necessary to protect the country. The implications of the president’s claim are frightening. It’s astonishing, actually.

And if we begin to connect the dots between this claim and the issue of torture, the immense danger to our country should become obvious.

Perhaps the most disturbing development over the past years is that many of us in the United

States apparently believe that these measures are necessary. Many of us seem to believe it's been justifiable to break international laws, international treaties, and our own explicit laws. About half of us believe that torture is justifiable under certain circumstances. *Anything*, we seem to be saying, is okay to get us the security we need. I'd ask you to put that belief in a Gospel context.

When national decisions are made out of fear, we, the populace, are easily manipulable. It remains to be seen how many believe the president should be given virtually unlimited power in prosecuting the war on terror. Certainly terrorism makes this a dangerous time, but our fear and what we're allowing to happen because of it are more dangerous than the terrorism.

I realize that it's very uncomfortable to raise these issues within a faith community. Believe me when I say that I didn't look forward to speaking this way this morning, but there is an unclean spirit in our house, and we must call it out. We frequently do our best to keep politics out of our churches because we don't want to divide our communities. And this is a legitimate concern. But at some point we're forced to say that the evil (or at the very least the potential for evil) is great enough that God calls us to approach the issues together as a faith community. We must at the very least look at these issues with clear eyes.

For those of you who believe that I am so far off base that you almost walked out, I'd ask only that you examine the possibility that *if* what I've said is true, the issue belongs here in the church, and that it's the faith community that must examine it and weigh together its truth or falsity.

I'd suggest to you that if you look at this with clear eyes, it's a struggle for the soul of this country, and it's a deeply spiritual struggle. I have three good friends who've been tortured, one of them with American complicity, and I will testify to the deep evil of the practice. As a Christian I must, along with Ambassador Craig Murray, state categorically: "I would personally rather die than have anyone tortured to save my life." As Christians, it's we who must be willing to die so that others may have a little more justice. As Tony Campolo has written, what doth it profit if you gain information from a tortured terrorist and lose your own soul?

The apostle Paul writes in Ephesians (6:12) that

Our struggle is not against enemies of blood and flesh, but against the rulers, against the authorities, against the cosmic powers of this present darkness, against the spiritual forces of evil in the heavenly places.

This struggle against torture and a growing tyranny within the executive branch of our government is not about particular persons in office, which is why I symbolically haven't used their names. Indeed, some of these things have happened—in secret—in previous administrations. This battle is about spiritual forces that are taking control of our country. We will only find the power to confront them within the wellsprings of our faith. These powers are far deeper and more potent than we know, and we will only confront them with the full armor of God. The battle must begin here in the church.

In the 1930s, during the rise of the Nazis to power when the German national church was supportive of National Socialism, Martin Niemöller, Dietrich Bonhoeffer, and others formed the Confessing Church, believing it was their duty as followers of Jesus to call the evil out, despite enormous personal and institutional consequences. There are, of course, significant differences between now and then, but our responsibility as followers of Jesus is the same: to call the evil out.

These very weeks as the nation considers how it is going to respond to the administration's assertion of presidential prerogative are dangerous one for our country. The issues are quite clear: torture, deliberate violations of the law, the arrogation of far too much power to the president, the loss of our democracy. How we respond to them as a nation—and especially as followers of Jesus in community—will determine our future together.

[1] Mark 1:22-24, Peterson translation.

[2] The president's signing statement reads in part: "The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of protecting the American people from further terrorist attacks."

