MAY 2015

THE DILEMMAS OF CAPTIVITY
By Paul J. Springer

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This essay is based on a presentation to a history institute for teachers on "Ethical Dilemmas in American Warfare," April 2015, sponsored by the Foreign Policy Research Institute's Butcher History Institute, the First Division Museum at Cantigny, and Carthage College. This weekend-long conference was our 11th history weekend at the First Division Museum on topics in American military history and our 52nd history weekend since 1992. See the E-Book American Military History: A Resource for Teachers and Students, edited by Paul H. Herbert and Michael P. Noonan and jointly published by FPRI and the First Division Museum.

The views presented in this work belong solely to the author, and do not represent the official positions of the U.S. government, Department of Defense, or U.S. Air Force.

For as long as humans have engaged in warfare, some unfortunates have been forced to surrender to the enemy and place their trust in the people who previously they had tried to kill. Surrendering on the battlefield is one of the most dangerous and harrowing experiences that a combatant might have to undertake, regardless of the time period or the form of conflict. However, in the twenty-first century, not only does the act of surrender carry an inherent danger, there is no guarantee that the treatment meted out by the captor will follow the international guidelines that have been established over the previous two centuries. Thus, the mere concept of captivity contains certain dilemmas for the modern combatant, and attempts to surrender may become the exception rather than the norm for international and sub-state conflicts. If so, then it follows that the conduct of warfare is falling further from the ideal established by mid-twentieth century international law, and may be descending into an era of increased lawlessness and, at times, total barbarism.

Defining Prisoners of War

From a legal standpoint, there are four characteristics that must be satisfied if an individual is to be considered a prisoner of war (POW). These requirements are ensconced in the Geneva Convention Relative to Prisoners of War, which was first negotiated in 1929 and subsequently revised in 1949. In each iteration, the treaty reflected the ideals, the best practices, and the lessons learned from one of the World Wars, and its signatories joined the pact in the hope of mitigating some of the worst aspects of warfare. Millions of captives have benefitted from the provisions of these conventions, which essentially operate under the principle that once a combatant has ceased to offer effective resistance and agreed to surrender, he or she should be protected from the effects of war to the maximum extent possible. In exchange for this safety and security, the captive agrees not to continue active resistance in the conflict at hand, at least until duly released or exchanged. To qualify for POW status, a combatant must first be recognized as a lawful combatant. This status is conveyed through four mechanisms, all of which

must be satisfied or the individual cannot claim protection under the convention.

- First, he or she must be part of an identifiable hierarchical organization in which the commander is responsible for the behavior of subordinates. For most cases, this simply requires being a member of a military organization in which officers command the unit.

- Second, the combatant must wear a uniform or some other recognizable form of device that distinguishes the unit from non-combatants. This might be a full military uniform, or it might simply be a unique identifier such as a distinctive bandanna such as that worn by Hamas militants.

- Third, the combatant must carry arms openly. Attempting to hide one's status as a combatant by concealing weaponry under the clothing, or other means of subterfuge, can result in the loss of POW protections.

- Finally, combatants who expect to be protected by the laws of warfare must in turn conduct their own operations in compliance with the same laws. Failure to do so, such as by refusing to accept prisoners, results in the forfeiture of legal protections.[1]

These norms developed over a period of centuries. Prior to the modern era, there was a wide variety of responses to the taking of prisoners, but few of them were particularly kind to the prisoners themselves. In the classical era, prisoners might be killed outright or enslaved by their captors. The particularly noteworthy prisoners might manage to be ransomed, but for the rank-and-file, surrender often meant complete submission.[2] By the seventeenth century, though, a new approach to the relationship between states and combatants began to emerge. Hugo de Grotius, a Dutch jurist who was held prisoner during the Thirty Years War, essentially set out to codify the acceptable practices regarding warfare in his three volume work *De Jure Belli ac Pacis*. In it, he clarified when a nation might legally resort to warfare, and then what rules applied to the conduct of those legal wars.[3] His work was expanded upon by the likes of Charles-Louis de Montesquieu and Emmerich de Vattel in the eighteenth century, and perhaps most importantly, by Francis Lieber in the nineteenth.[4]

Changing Expectations and the Advent of Modern Warfare

Lieber, working on behalf of General-in-Chief of the U.S. Army Henry Halleck, sought to codify the limits of warfare in the industrial age. His work, commonly called the Lieber Code, was issued by the U.S. War Department as General Orders No. 100 (1863), "Instructions for the Government of Armies of the United States in the Field." In this work, Lieber devoted a substantial amount of time and detail to the capture and maintenance of POWs, arguing that they are the property of the capturing state and not the units or individuals who capture them.[5] Lieber expressly required that they be given adequate food, shelter, and medical care to maintain their health, and that they be protected until they could be exchanged. The consideration was not merely an academic question—Lieber was well aware of the terrible conditions that pervaded Civil War prisons, both North and South. In those camps, the death rate exceeded 15 percent, with nearly 40 percent of the unfortunates condemned to Camp Sumter, near Andersonville, Georgia, dying in the 11 months of operation.[6] The Lieber Code, if followed, guaranteed a bare minimum standard of conditions that would at the very least keep prisoners alive. As such, a soldier who surrendered could expect to survive the war and eventually return home, making surrender a truly viable option under certain circumstances. Given the massive size of industrial-era armies, this made the complete annihilation of armies possible—if they could be induced to surrender, they would be removed from the battlefield in their entirety. If, on the other hand, they chose to fight to the bitter end, the casualties incurred on both sides guaranteed a bloody outcome indeed. Lieutenant General

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[1] "Geneva Convention Relative to the Treatment of Prisoners of War," Geneva, July 27, 1929, available at https://www.icrc.org/ihl/INTRO/305?OpenDocument.

[2] Lawrence H. Keeley, *War before Civilization* (New York: Oxford University Press, 1996), 83-88; June Namias, *White Captives* (Chapel Hill: University of North Carolina Press, 1993), 3-5; J. Norman Heard, *White into Red* (Metuchen, NJ: Scarecrow Press, 1973), 1-2; Kathryn Zabelle Derounian-Stodola and James Arthur Levernier, *The Indian Captivity Narrative, 1550-1900* (New York, Twayne Publishers, 1993), 208.

[3] Hugo de Grotius, *De Jure Belle ac Pacis*, trans. Francis W. Kelsey (1625; reprint, 1925), available at http://www.longang.com/exlibris/grotius/.

[4] Emmerich de Vattel, *The Law of Nations or the Principles of Natural Law* (1758), available at http://www.longang.com/exlibris/vattel/.

[5] U.S. War Department, General Orders No. 100, April 24, 1863, *Official Records of the War of the Rebellion,* 127 vols. (Washington, D.C.: Government Printing Office, 1888-1901), series II, 5:671-682; Leon Friedman, ed., *The Law of War: A Documentary History,* 2 vols. (New York: Random House, 1972), 1:158-186.

[6] Lonnie Speer, *Portals to Hell: Military Prisons of the Civil War* (Mechanicsburg, PA: Stackpole Books, 1997), 332.

Ulysses S. Grant grasped this principle far quicker and more completely than his peers, over the course of the war, he managed to capture three Confederate Armies as a whole, while none of his peers managed the feat more than once.[7] For the most part, there was little effort to make use of Civil War prisoners, merely confining them was a difficult enough task, but the lack of utilization changed in the twentieth century.

World War I involved armies numbering in the millions, conducting warfare on a scale never before seen. Three million combatants became prisoners of the enemy, and for the most part, were well-treated. Perhaps the possibility of retaliation kept passions in check, or perhaps, the prisoners were protected because they were perceived to have an intrinsic value. On both sides of the front lines, raids for prisoners were conducted on almost a nightly basis, and a massive infrastructure was created to exploit them for intelligence purposes. Once a prisoner had been interrogated and determined to possess no further information of value to the captor, he was sent well behind the lines and, if an enlisted man, sent to a labor camp where he was employed on virtually anything but work in direct support of the war effort. Thus, rather than being a drain on the resources of the captor, prisoners came to have an intrinsic value.[8]

By World War II, this concept had been expanded even further, and the millions of prisoners taken on all sides were required to labor for the benefit of their captors on a scale never before seen. In the United States, the labor of prisoners had enough effect on the economy to provoke substantial protest from labor unions, which considered the availability of POW labor to be one of the reasons that wages did not rise as quickly as they otherwise might.[9] In Germany, prisoners of the Western powers fared relatively well, although shortages near the end of the war made for fairly short rations. On the Eastern Front, though, the war remained an incredibly brutal and nasty affair, and soldiers captured by either the Germans or the Soviets had little chance of surviving to the end of the conflict. In that theater, the POW survival rate hovered around 10 percent for the war, with the other 90 percent being worked until they died or simply executed out of hand. In the Pacific Theater, Japanese prisoners fared relatively well, when they were captured, although the bushido code made such captures relatively rare prior to 1944. American interrogators were delighted to discover that most Japanese prisoners, when taken, would answer almost any question put to them, in large part because their leaders never offered guidance for how to act as a captive.[10] Unfortunately, on a number of occasions, Japanese troops pretended to offer their surrender and then brandished weapons and attacked their would-be captors. As a result, for a period of nearly two years, many American units stopped asking if the enemy wanted to surrender, and instead fought a war of no-quarter.[11]

With the advent of the Cold War, the nature of military captivity massively changed. If most prisoners through World War II accepted the notion that they were out of the fight once behind barbed wire, the same could not be said for prisoners from communist nations during the Korean and Vietnam Wars. In both cases, ideologues deliberately surrendered with the intended purpose of organizing resistance within the POW camps. In Korea, this resistance initially came in the form of protests, marches, and attempts to distract the guard personnel. When those attempts met with success, the North Korean and Chinese prisoners tried, and on a number of occasions succeeded, to provoke their captors into attacking the compound and creating an incident suitable for propaganda purposes. The communists inevitably portrayed any POW deaths as an atrocity, a deliberate attack upon a helpless population. At one point, when American authorities chose to reassert control over the POW compound at Koje-do, they discovered a massive cache of improvised and stolen weapons within the compound, including a number of rifles, hand weapons, and at least one grenade launcher.[12]

The communists also considered the war to be underway within the compounds under their control, where United Nations troops were interned for the war. They engaged in a massive campaign of indoctrination, later often called "brainwashing," by which they attempted to recruit Western troops to communist service. A large percentage of American and British soldiers signed confessions of illegal behavior, including the use of chemical and biological weapons. Some offered public testimonials,

[7] Grant induced the surrender of Confederate Armies at Fort Donelson (February 16, 1862, approximately 15,000 troops); Vicksburg (July 4, 1863, approximately 32,000 troops); and Appomattox (April 9, 1865, approximately 28,000 troops).

[8] U.S. Army, *United States Army in the World War, 1917-1919,* vol. 15, *Reports of the Commander in Chief, Staff Sections and Services* (Washington, D.C.: Center of Military History, 1991), 330-331.

[9] Paul Springer, *America's Captives: Treatment of POWs from the Revolutionary War to the War on Terror* (Lawrence, KS: University Press of Kansas, 2010), 155-161.

[10] Arnold P. Krammer, "Japanese Prisoners of War in America," *Pacific Historical Review* 52 (February 1983): 70-80.

[11] Allison Gilmore, *You Can't Fight Tanks with Bayonets: Psychological Warfare against the Japanese Army in the Southeast Pacific* (Lincoln: University of Nebraska Press, 1998), 150-156.

[12] Samuel M. Meyers and William C. Bradbury, "The Political Behavior of Korean and Chinese Prisoners of War in the Korean Conflict: A Historical Analysis," in *Mass Behavior in Battle and Captivity: The Communist Soldier in the Korean War,* ed. William C. Bradbury, Samuel C. Meyers, and Albert D. Biderman (Chicago: University of Chicago Press, 1968), 209-211.

either spoken or written, attesting to the humanity of their captors and the righteousness of the communist cause. Twenty-one went so far as to refuse repatriation at the end of the war.[13] The communist attempt to use the POW compounds as another avenue to continue the fight largely backfired, primarily because more than 22,000 Chinese and North Korean POWs refused repatriation at the end of the war, a clear repudiation of the visions of a communist utopia being bandied about by the armistice negotiators. For their part, the U.S. military authorities were horrified by the behavior of their troops held by the enemy, and debated court-martialing anyone who could be found to have offered aid and comfort to the enemy.[14] In the end, the court-martial plan was largely shelved, in large part because it would have required a rather embarrassing and very public trial, and also because authorities convinced themselves that the collaboration activities had been conducted under duress. However, in 1955, the Department of Defense released the Fighting Man's Code, a short list of general provisions that in part required troops to never surrender, and if captured, to offer nothing of use to the captor.[15]

In Vietnam, the communist approach to POW operations continued unabated, although without the large-scale conventional fighting that characterized the Korean War, the Viet Cong and North Vietnamese took relatively few prisoners. Most of those taken were aircrews whose aircraft were shot down and who were captured after bailing out. Hundreds of such aviators were confined at the "Hanoi Hilton," where the North Vietnamese felt emboldened to torture them on a regular basis. The United States chose to turn all but a few of its captures over to the South Vietnamese government. In much the same fashion as during the Korean War, many of the prisoners were soon engaging in active resistance. Further, guerrilla attacks on the POW compounds were not launched to release their comrades, but rather to create casualties among the POW population in the hope of creating an international propaganda victory. Thus, the island prison of Phu Quoc was repeatedly shelled by Viet Cong mortars, killing dozens of prisoners, who were then trumpeted as victims of the captors. Red Cross visitors to the South Vietnamese camps found some evidence of torture and inhumane treatment, and launched public campaigns to improve conditions in the camps.[16] Not surprisingly, they were given no access to the camps in North Vietnam, although certain Western celebrities were invited to tour the camps. The most notorious visit came from Jane Fonda, who later claimed that the prisoners she saw were well-fed and not mistreated in any way. Her statements earned the permanent enmity of the captives she saw, one of whom passed her a list of social security numbers of captives in the camp. She immediately turned the list over to the camp authorities, who punished the prisoners as soon as Fonda left the camp.

POWs in the Post-Cold War Era

In 1990, as an American-led coalition prepared to drive the Iraqi Army out of its occupation of Kuwait, little thought was given to how POWs might be interned during the conflict.[17] The raw number of surrenders surprised and overwhelmed coalition authorities, who literally disarmed the Iraqis and sent them marching, unsupervised, toward the Saudi border. Upon arrival in Saudi Arabia, the first POWs were ordered to complete the construction of their own prison compound, which they did in remarkably good order. Minimal attempts to interrogate prisoners were commenced, but the war ended so quickly that these efforts were soon abandoned. The Red Cross referred to the 1991 Gulf War as the best level of POW care ever achieved in a modern conflict. A handful of coalition personnel were captured by the Iraqi military, most of them aircrew from the handful of aircraft shot down in the war. Several were paraded before media outlets showing a substantial number of injuries, but most later reported that the majority of their injuries came in the crash of their airplanes, not at the hands of their captors. They reported some physical abuse, and poor food and medical supplies, but all survived their captivity.[18]

As the United States entered the twenty-first century, it had every reason to believe that future conflicts would resemble those of the most recent past, and expected that POW operations would be conducted in much the same fashion. Regrettably, this assumption meant that very little effort was put into planning for POWs—after all, improvisation during wartime had always served relatively well, and there was no reason to assume that would not remain the case going forward. When the September 11 attacks occurred, it became clear that the United States faced a new form of conflict, but the parameters of that war were not immediately clear. While it was obvious that a military response against Al Qaeda would soon be forthcoming, the question of whether or not Al Qaeda fighters could claim protection under the Geneva Convention remained unresolved.

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[13] Nineteen of the twenty-one eventually returned to the United States. One died in China, of natural causes, and one remains in China to this day. In comparison, though, more than 22,000 Chinese and North Korean POWs refused repatriation.

[14] William H. Vatcher Jr., *Panmunjom: The Story of the Korean Military Armistice Negotiations* (New York: Praeger, 1958), 118-119.

[15] Dwight D. Eisenhower, "Executive Order 10631: Code of Conduct for Members of the Armed Forces of the United States," August 17, 1955, available at http://www.archives.gov/federal-register/codification/executive-order/10631.html.

[16] Springer, *America's Captives*, 181-184.

[17] U.S. Department of Defense, *Final Report to Congress on the Conduct of the Persian Gulf War* (Washington, D.C.: Government Printing Office, 1992), 86, 473, 577.

[18] John Norton Moore, *Crisis in the Gulf: Enforcing the Rule of Law* (New York: Oceana, 1992), 70.

Given that these combatants did not fulfill all four of the requirements, it is clear that they had no legal right to expect protection under the convention. Their Taliban hosts, on the other hand, might indeed be able to claim that protection, assuming they remained in compliance with the requirements.[19]

The Bush Administration had little choice about getting quickly involved in the war in Afghanistan, but it gave little thought to how to handle captured enemies. It is possible that this important consideration simply fell by the wayside, or that most leaders assumed that Al Qaeda was comprised entirely of fanatics who would not consider surrendering. Nevertheless, within a few months, the United States possessed hundreds of prisoners, and had little idea of where to put them. After a lengthy debate, a compound at Guantanamo Bay, Cuba, was determined to be the "least worst place" for the prisoners.[20] This location offered a secure facility far from the area of operations, and at the same time, completely divorced from any media scrutiny. Because it was outside of the United States, internees could not hope to claim any constitutional protections, and at the same time they did not qualify for Geneva protections. Thus, they were locked in a form of legal limbo, with no inherent rights to protest their conditions or even to argue that they should not be in captivity at all. Conditions at the compound were initially very rough, and the first images to emerge from the prison showed shackled and prostrate prisoners in stress positions, undergoing harsh interrogations, and generally appearing to be mistreated by the government. The president's assurance that the prisoners would be generally treated in accordance with the Geneva requirements did little to silence his critics, who pointed out that there was no mechanism to separate accidental captures from hard-core Al Qaeda fighters. When word of water-boarding began to slip out of the compound, human rights activists immediately protested that the government was engaged in torture. Intelligence agencies remained largely mum on the issue, although a number of officials speaking off the record suggested that the techniques were being used to prevent the next September 11 attack.[21]

Iraq, Abu Ghraib, and the Collapse of the POW System

When the United States led another coalition to attack Iraq in 2003, it had almost no plan for the capture and detention of Iraqi prisoners, despite expectations that more than 100,000 might attempt to surrender.[22] The drive toward Baghdad was expected to take only a matter of a few days, after which the Hussein regime would be removed, the population would embrace the occupiers, and the need for POW facilities would simply evaporate. Of course, this is not remotely what happened in the invasion and subsequent events. The rush to reach Baghdad left no resources for POW care, with the result that large numbers of prisoners were either lightly guarded in the open, or they were stashed in extremely secure facilities not intended for POWs. The worst of these facilities was an infamous prison from the Saddam era, Abu Ghraib. There, at a prison designed for no more than a couple thousand prisoners, more than 8,000 were crammed into a compound under almost constant insurgent attack.[23]

The stresses of keeping an enormous captive population in check while under enemy mortar and sniper fire contributed to an untenable situation at Abu Ghraib. The captors, many of them members of a reserve unit comprised largely of prison guards, had no heavy weapons with which to respond to the enemy attacks. Thus, they began to retaliate against the only target they could reach, the prisoners under their control. Soon, photographs of the abuses being perpetrated by some of the guards began to circulate on the Internet. Among other things, the photos depicted Iraqi prisoners forced to strip naked and assume humiliating positions; a hooded and caped man with electrodes attached to his body while standing in a stress position; Sergeant Charles Graner openly beating prisoners; Private First Class Lynndie England posing with naked POWs; and numerous American personnel posing over a dead prisoner's body.[24]

The photos provoked enormous outrage throughout the Arab world, particularly in Iraq. Countless angry Iraqis flocked to the insurgency, determined to avenge the wrongs being done to their countrymen. Interrogations of captured insurgents revealed that the Abu Ghraib abuses were the largest motivating factor for joining the insurgency, leading to thousands of attacks upon

[19] Steven Strasser, ed., *The Abu Ghraib Investigations: The Official Reports of the Independent Panel and the Pentagon on the Shocking Prisoner Abuse in Iraq* (New York: Public Affairs, 2004) 4-5. Mark Danner, ed., *Torture and Truth: America, Abu Ghraib, and the War on Terror* (New York: New York Review of Books, 2004), 105-106.

[20] Karen Greenberg, *The Least Worst Place: Guantanamo's First 100 Days* (New York: Oxford University Press, 2009), 4-5.

[21] Strasser, *Abu Ghraib Investigations,* xvi-xvii, 32-33; Danner, *Torture and Truth,* 199-204; Karen J. Greenberg and Joshua L. Dratel, eds., *The Torture Papers: The Road to Abu Ghraib* (New York: Cambridge University Press, 2005), 1239.

[22] John Keegan, *The Iraq War* (New York: Alfred A. Knopf, 2004), 81; Sara Beck and Malcolm Downing, eds., *The Battle for Iraq: BBC News Correspondents on the War against Saddam* (Baltimore: Johns Hopkins University Press, 2003), 22; Anthony H. Cordesman, *The Iraq War: Strategy, Tactics, and Military Lessons* (Washington, D.C.: Center for Strategic and International Studies, 2003), 247.

[23] Beck and Downing, *Battle for Iraq*, 156-157; John Lee Anderson, *The Fall of Baghdad* (New York: Penguin Press, 2004), 109, 364, 370-371.

[24] Danner, *Torture and Truth*, 3; Strasser, *Abu Ghraib Investigations,* xvi-xviii.

coalition personnel. The United States had literally handed Al Qaeda's local franchise the greatest recruitment tool in its history. The Abu Ghraib scandal rocked the U.S. military and the civilian population as well, with calls for a series of investigations that led to prosecutions of the individuals involved; the removal of virtually every leader in the chain of command of the prison guard unit; and a massive reduction in the public approval of the war effort. The scandal was entirely preventable, had authorities only determined to follow the requirements of the Geneva Convention. Clearly, the captive Iraqi troops qualified for Geneva protections, one of which is that POWs should never be placed into a criminal prison facility, largely to ensure that they are never treated as criminals. The shocking lack of oversight within the prison, and the incredibly poor judgment of the personnel within the compound, illustrated a larger problem within the military regarding POWs: they are simply not seen as an important aspect of modern warfare, and planning for POWs, if it is conducted at all, tends to be marginal and improvisational. Responsibility for POW upkeep almost inevitably devolves to National Guard and Reserve units, neither of which receives the level of training common to Regular units. The lack of prioritization demonstrates that the lessons of previous wars regarding the utility of POWs have largely been lost, even though the rules and the advantages of taking prisoners have not changed. Inducing the surrender of a large military unit is still the fastest and most cost-effective way to remove it from the battlefield. However, units and individuals will not surrender if they believe they will not be treated with at least a minimum standard of respect and security.

Avoiding the Problem of POWs

Rather than correcting its behavior, the U.S. military instead seems to have largely adopted a policy of avoiding situations in which prisoners might be taken. One of the promises of President Barack Obama during his 2008 campaign was to immediately close the Guantanamo Bay prison. Yet, more than six years into the Obama Administration, the prison remains in operation, and shows no signs of closing in the near future. However, to avoid a swelling number of inmates, the military approach to operations in Afghanistan, Iraq, and elsewhere has largely been a war of distance, particularly one carried out by airstrikes launched from remotely-piloted aircraft (RPAs). These so-called "drone strikes" have occurred in more than a half-dozen nations, only two of which (Afghanistan and Iraq) are explicitly covered by the 2001 and 2002 Authorizations for the Use of Military Force. Given the unlikelihood of surrender to an RPA, this type of warfare essentially bypasses the question of captivity.[25] The number of RPA strikes rose drastically from the Bush to the Obama Administration, reflecting a greater technological capacity, but also showing an increased willingness to rely on the "shoot first, capture later" principle. Truly, the standard of "dead or alive" tilted in favor of the former.

The RPA campaign has proven relatively effective at eliminating many of the most feared and dangerous terror organization leaders. While Osama bin Laden was not killed by an RPA strike, the intelligence collected by such devices played an enormous role in discovering his location. Several other key commanders have been killed, including Baitullah and Hakimullah Mehsud in Pakistan and Anwar al-Awlaki in Yemen. The deaths of all three were significant in the war to destroy Al Qaeda and its affiliates and partners. Not only do such strikes have a high probability of locating and terminating valuable leadership targets, they also place no American personnel directly in harm's way, making the cost of the operations very palatable to political leaders. In fact, only one American has even arguably been described as a prisoner of war in the entire Afghanistan campaign. Sergeant Bowe Bergdahl, recently convicted of desertion, spent five years in captivity with an Al Qaeda affiliate. In 2014, the Obama Administration chose to release five prisoners from Guantanamo in exchange for Bergdahl's release. Although critics of the deal have howled that it set a dangerous precedent by rewarding hostage-taking, and that trading five dangerous terrorists for a deserter merely rewarded the enemy, it has never been the practice of the United States to outsource punishment for desertion. Further, without interrogating Bergdahl, it was impossible to determine if he had intentionally deserted his post or been kidnapped by his eventual captors. Given that American and coalition troops maintain a very high level of vigilance, it is unlikely that significant numbers of their personnel will be captured and used as hostages to force exchanges.[26]

With the conduct of warfare in a manner that effectively prevents captures, the issue of POWs will almost certainly become an even lower priority for the U.S. Department of Defense. The remaining population of Guantanamo has gradually declined, with more than half of the total 779 inmates released during the Bush Administration, and a further 115 released since 2009.

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[25] In both 1991 and 2003, Iraqi troops indicated a desire to surrender to unmanned aircraft operating in the skies above. In both cases, the RPA operator was able to direct ground forces to intercept the Iraqis and accept their surrender.

[26] In comparison, the Israeli government agreed on October 18, 2011, to swap Gilad Shalit, an IDF sergeant, for 1027 Palestinian prisoners demanded by Hamas in exchange for Shalit's release. See Barak Ravid, Avi Issacharoff, and Jack Khoury, "Israel, Hamas reach Gilad Shalit prisoner exchange deal, officials say," *Haaretz*, October 11, 2011; "Captured soldier Gilad Shalit returns to Israel after five years in captivity," News.com.au, October 18, 2011, http://www.news.com.au/world/captured-soldier-gilad-shalit-returns-to-israel-after-five-years-in-captivity/story-e6frfkyi-1226170042110.

There are currently 122 men held captive in Guantamo, from 22 nations. Although 56 have technically been cleared for release by the U.S. government, thus far, no nation has agreed to receive them. A further 34 have been deemed too dangerous to release, but the government does not possess enough evidence to prosecute them for terrorist activities.[27] Because they are essentially in a legal limbo, there is very little that they can do to effect their own release, and there is not much public call for any change in the current policy of semi-permanent detention.[28] If the United States is truly abandoning the effort to capture enemy prisoners, it is sacrificing any chance at intelligence collection from captives, and at the same time, almost guaranteeing that enemy combatants will resist to the death in future conflicts, likely increasing the number of U.S. casualties that will result from any such wars. By abandoning its previous adherence to the laws and customs of armed conflict, the United States military risks losing its status as the world leader in humanitarian efforts to mitigate the worst aspects of war, and at the same time, puts its own personnel at risk. It is a dangerous course, and one that should be reconsidered in light of the potential consequences.

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[27] American Civil Liberties Union, "Guantanamo by the Numbers," January 9, 2015, https://www.aclu.org/infographic/guantanamo-numbers.

[28] A similar policy of essentially permanent detention was actually used to maintain War Department control over Geronimo and his Apache followers, who remained classified as prisoners of war from their surrender in 1886 until after his death in 1909.