

The Persistence of Torture: Explaining Coercive Interrogation in America's Small Wars

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Abstract

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Why has the United States used torture in small wars over the last hundred-plus years? After all, torture is morally bankrupt, risky, and frequently ineffective as an interrogation method. I argue that the anti-torture norm has two features that can lead to torture. First, because it is difficult to separate torture from milder acts, the norm lacks specificity. This allows practitioners to portray their behavior as something short of torture and redefine torture to exclude their behavior. Second, the anti-torture norm can, paradoxically, encourage torture by attracting those who believe unscrupulous methods confer advantages on those who use them. The two explanations interact as well: torture occurs because actors believe that torture is harsh enough to work, and the definition of torture is blurry enough that actors believe they can sell their methods as legitimate. Through archival and bibliographic research, I confirm these patterns in three different settings: the Philippine-American War (1899-1902), the CIA from its founding to the Vietnam War, and the post-2001 war on terror.

Chapter 1: Torture and the Norm against It: Undying Rivals

“It is hard to believe that we are sitting here talking about torture.” Washington Post reporter Dana Priest opened with this thought while serving as a panelist at a forum on the United States’ use of torture during the war on terror. CBS News had published pictures of American torture at Abu Ghraib – hooding, use of dogs, death threats, sexual humiliation, and more – earlier that year. Some of the torture memos describing legal justifications for “enhanced interrogation techniques” were now in public hands. Priest and her fellow panelists were calmly and politely discussing, among other gory particulars, the details of different forms of water torture that their country had recently used on terrorist detainees. Other panelists echoed Priest’s sentiment: How odd.¹

For torture to make it all the way to the twenty-first century in the United States, it had to be remarkably resilient. Torture survived the intellectual assault from European Enlightenment authors like Baccaria. It had to find a way around the United States’ founding documents, which, with strong influence from European thinkers and experience, expressly prohibited cruel and unusual punishment in the Bill of Rights. Torture persisted despite an absolute prohibition in the American Civil War’s Lieber Code, a forerunner to modern laws of war. It managed to continue beyond the Geneva Conventions from the first half of the twentieth century and the Convention against Torture of 1984. Torture has also endured less legalistic admonishment. The U.S. Government’s own State Department has been a leading whistleblower for torture and other cruel treatment, with such comprehensive reports that scholars have used them to construct torture variables for quantitative analysis.² “[T]he norm against torture has been thought to be

¹ Greenberg 2006, 13-32.

² For one example among many, see Hathaway 2002.

the pre-eminent manifestation of a global commitment to civilized norms.”³ This book examines why torture and the norm against it have persisted in tandem like undying rivals for over a century.

Torture and liberalism make especially strange bedfellows. David Luban (2007) argues that most forms of torture, for punishment or humiliation, make no sense in combination with the liberal value of political sovereignty, because the people would be trying to impress themselves with a show of absolute control. Luban believes that the incompatibility between torture for intelligence and liberalism is less fundamental, and he discusses at length why even the promise of limited, rare torture exclusively for intelligence in high-stakes cases would unravel. Luban’s argument understates the case. Even torture for intelligence is essentially illiberal because it treats individuals as means rather than ends. Michael Ignatieff writes that “torture should remain anathema to a liberal democracy and should never be regulated, countenanced, or covertly accepted in a war on terror. For torture, when committed by a state, expresses the state’s ultimate view that human beings are expendable.”⁴

While liberal states have not tortured as much as their illiberal counterparts, they have done their share. In fact, they have invented their own “liberal” methods. Darius Rejali (2007) explains how international and domestic monitoring of detainee treatment has forced liberal states to develop and perpetuate “stealth torture” methods that leave no trace and help the perpetrator escape detection. Any given “enhanced interrogation” technique from the war on terror is more likely to be a descendent of American slavery or British military punishment than fascist or Communist coercion. These techniques lived on through the twentieth century, in

³ Linklater 2007. See also Foot 2006; Mckeown 2009.

⁴ Quoted in Lukes 2005.

British and French colonies, as well as in American counterinsurgencies and interrogation manuals. The U.S. war on terror brought torture to this century.

The war on terror case is particularly crucial for arguing that torture has been persistent, because many of the background conditions that carried torture through the twentieth century are no longer in effect. Old-fashioned colonialism is mostly done, and liberal democracies' rejections of the horrors of torture may have even had a hand in colonialism's demise.⁵ The Cold War is over, and with it the counter-revolutionary torture that clandestine U.S. bureaucracies helped to develop and spread. The three main empirical cases of this book – the Philippine-American War (1899-1902), the CIA from its founding to the Vietnam War, and the post-2001 war on terror – correspond with imperialism, the Cold War, and post-Cold War conflict, respectively. My strategy is to extract from these cases the common factors that have allowed torture to persist across the varied contexts.

The hypocrisy of liberal torture would not surprise most international relations scholars, especially realists and rational choice theorists that expect states to say and do things in pursuit of self-gain, even if their words and deeds are mutually inconsistent.⁶ However, there are (at least) five instrumental reasons for avoiding interrogational torture. First, torture is a method for gathering intelligence. Perhaps the most persistent critique of interrogational torture is its flimsy connection to truth: Victims are likely to say anything, including false statements, to stop the suffering.⁷ I defend the claim that torture is usually an ineffective means of gathering intelligence – a topic that has engendered considerable debate in the popular press since 2001 – in more detail in the Appendix. Second, torture can fuel the enemy's recruitment efforts, giving

⁵ Merom 2003.

⁶ See, for instance, Krasner 1999.

⁷ This argument is as old as Aristotle, runs through Cicero, St. Augustine, and Beccaria, and continues to be made today. For historical recounts, see Holmes 2007; Langbein 2004. For a recent example, see Soufan 2009.

life to terrorist and insurgent groups.⁸ Third, torture may deter the enemy from surrendering, prolonging wars and causing more casualties on both sides.⁹ Fourth, torture can produce extreme stress in the interrogator.¹⁰ Fifth, torture runs counter to the “hearts and minds” campaigns that many modern counterinsurgency strategists advocate.¹¹ Torture does not easily lend itself to straightforward, utility-maximizing explanations. Why have states persisted in practicing it? More broadly, why would states do something that is both odious and of dubious instrumental value?

If the reader buys the foregoing argument that torture for intelligence carries great risks and little promise, then the significance of the puzzle is clear. Torture that doesn’t work has no redeeming ethical qualities, and is therefore a horrendous mistake. Knowing why and how it occurs can hold implications for its eradication. And although the puzzle specifies torture for intelligence, people turn to torture for many reasons – punishment, forced confession, revenge, social control, sadistic glee – but it often begins with superiors’ approval of interrogational torture. Once states approve torture, it is notoriously difficult to regulate.¹² Understanding why states approve torture for intelligence can have implications for preventing other types of torture as well.

Even a reader that is skeptical of torture’s supposed inefficacy has reason to seek explanations. Liberal states’ use of torture is still puzzling on ideological grounds. Moreover, even if torture reliably yields valuable information, this does not imply that it was chosen for rational reasons. The choice still needs explanation.

⁸ For one example of this argument, see Alexander 2008. It is possible that torture, if sufficiently widespread, could deter potential recruits from joining the enemy’s cause. Torture may well be a successful tool of intimidation – see Rejali 2007 – but this is not a stand-alone reason for adopting *interrogational* torture.

⁹ U.S. Marine Corps publications (e.g., 2005) make this argument.

¹⁰ Price 2014.

¹¹ U.S. Army 2006.

¹² Rejali 2007, 454-458.

The puzzle is also significant because it provides a more complete picture of self-proclaimed liberal democracies. Torture by liberal democracies has evoked deep questions and debates about who these liberal states are and what values they should uphold; it can lead to heated confrontations over identity. (Even apologists for torture use the language of definition: After the press showed pictures of torture at Abu Ghraib prison in Iraq, Bush, whose approval of coercive interrogation techniques led to at least some of the abuse, stated, “This is not the America I know.”¹³) A clearer picture of why liberal democracies torture could have implications for who liberal democracies are.

Summary of the Argument

I argue that the norm against torture has two features that can help explain why violation of the norm occurs. First, despite universal condemnation, the anti-torture norm is – and has been – insufficiently robust. In particular, the norm lacks what Jeffrey Legro (1997) calls “specificity,” or the ability to separate torture from less brutal acts. The problem is inherent to torture itself. For example, it is impossible to specify exactly how many hours must pass before forced standing becomes torture. As a result of torture’s blurry definition, torturers can justify their actions by favorable comparison (“the other side does worse”), modifiers (“torture lite”), euphemisms (“enhanced interrogation”), and flat-out denial (“this isn’t torture”). They can also redefine torture to exclude their own acts. In short, lack of specificity leads to justifications and redefinitions, which in turn enable transgressions.

Second, the norm against torture may contribute to the belief that torture works. By categorizing certain behavior as appropriate, norms also define what is inappropriate. Some

¹³ Klein 2009.

policymakers and soldiers believe (not always unreasonably) that in the nasty world of international politics, cheaters – those who are willing to break the rules – have an advantage, especially in security matters. “Bad” becomes “good” because it appears effective. Rule-following becomes naïve and dangerous. Torture, a practice condemned in international laws and norms at least by name, appears sufficiently harsh to take on the worst of the worst in international politics.

At first blush, these two explanations appear to be in conflict: If the torture norm lacks specificity, then maybe it isn't lending torture an aura of effectiveness, because it isn't defining torture as clearly inappropriate. However, an actor sufficiently motivated to be both moral and effective may be able to make the explanations complementary in practice: He or she could understand “torture lite” or “enhanced interrogation techniques” as sufficiently harsh to be effective, but far enough down the sliding scale from the most overtly brutal abuses to be morally and legally permissible.

Both of these explanations fall squarely in the constructivist school of international relations. One unifying aspect of constructivists is that they take norms seriously. My first explanation echoes a fairly conventional hypothesis: more robust norms entail more compliance. I am arguing that, along the specificity dimension, the torture norm is not as robust as some observers have believed, and compliance has suffered as a result. The second explanation pushes constructivism a bit further. Constructivists believe that norms can have “constitutive” effects; that is, they can define interests, roles, and identities. For proscriptive norms, this usually means that the norms help states define themselves as moral and civilized by avoiding the behavior that the norm condemns. I am turning this typical scenario on its head by suggesting that for some

actors, proscriptive norms define what is off-limits – and therefore effective – in international politics.

Plan for the Book

The next chapter will open with a more detailed discussion of the dependent variable and the scope of this study, summarized as liberal democracies' use of torture for intelligence. I then elaborate on the norms-based explanations given above. I also consider alternatives. First, perhaps torture occurs when actors perceive that they have permission, even a mandate, from significant segments of the population to do so. Second, torture may be a rational response to desperate situations. Third, revenge and racism can lead to torture. Fourth, torture can pervade organizational cultures. Most of these alternatives are distinct from, but still compatible with, my central claims, and I do find some evidence for them in the empirical chapters. The next part of Chapter Two details the methodology. I use in-depth case studies, focusing on important moments in each case when key actors made torture more likely. The chapter concludes with a discussion of case selection.

In Chapter Three, I explain the United States' use of torture in the Philippine-American War. The war was an offshoot of the Spanish-American War in 1898. The Philippines was a Spanish colony that Spain essentially forfeited to the United States after it lost the war. Filipino leaders had been led to believe that their independence was imminent, and when the United States did not grant it, war broke out. The US Army won the war, in part through the use of brutal tactics, including free fire zones and village burning. American officers also condoned, encouraged, and instructed American soldiers and Filipino scouts under their command to use torture, most famously the "water cure".

To my knowledge, civilian politicians never explicitly advocated torture of Filipinos. Instead, I argue that policymakers and high-level officers pushed for more unrestrained policies in general, and this attitude was important in creating the context under which the occurrence of torture was unsurprising. Most of the early war leaders, including President William McKinley, sought a policy of “benevolent assimilation,” but this policy faded as the war wore on. Together with his coterie of bureaucrats and officers, Theodore Roosevelt (as civilian, vice president, and president) led the push for harsher war tactics. While the link between policymakers’ beliefs in the efficacy of harsh tactics and the actual occurrence of torture has some meaningful gaps, the contention that these beliefs were influential is at least plausible. As for the lack of specificity argument, the hearings, trials, and letters exchanged about torture at the end of the war were filled with justifications based on how much more terrible the enemy was and how “mild” the American tactics were by contrast. These favorable comparisons would have been impossible if torture were clearly separate from less brutal acts. Some soldiers also hinted that these justifications were made in “real time” while the torture was occurring, though the evidence for this is more limited.

I also examine alternative explanations for torture during the Philippine-American War. I find some evidence that torture and other severe tactics were timed with an eye on U.S. domestic politics. With President William McKinley running for reelection, the Republicans and some of their allies in uniform had been pretending that the war was well in hand in the lead-up to the 1900 elections. For this reason, civilians and officers waited to enact harsh measures until after the elections, lest it complicate the story they were selling. Some soldiers may have heard about the anticipated changes and gotten a head start, but the evidence for this is not ironclad. The degree of desperation does not appear to affect the timing of torture and other cruel tactics in the

war, at least at the strategic level. Some of the most brutal conduct by the U.S. military occurred when the war actually was all but over, from mid-1901 to 1902.

Chapter Four traces the Central Intelligence Agency's development and use of torture from the origins of the agency to the Vietnam War, as well as the US military's use of torture during the war. This "case" is not as neatly defined as the others, though some scholars do detect a through-line over this time period.¹⁴ I focus on four areas of development and implementation. First, I examine the formation and growth of a U.S. intelligence service. The CIA followed several other iterations (and accompanying acronyms) of peacetime intelligence services, and all were the children of the Office of Strategic Services, or OSS, the United States' World War II intelligence agency. I argue that part of the OSS's philosophy was that war gave those willing to push limits an advantage. Thus, the OSS specialized in spying, a taboo activity thought at the time to be an underhanded and less-than-honorable practice of war. It also set about developing other "tricks" to get the upper hand over the enemy. The CIA was founded in part on this approach. Both the CIA's skeptics (e.g., Harry Truman) and its defenders (e.g., General John Magruder) expected that the CIA would spend much of its time, money, and energy tip-toeing along the limits of normative and legal acceptability. They were not wrong. The CIA had shadiness baked into its foundations, suggesting an organizational culture partially defined by a willingness to do things other liberal-democratic organizations would not.

Second, I examine the origins and growth of the CIA's MKULTRA program and its nonsensically-named brethren (e.g., Project ARTICHOKE). These programs attempted to copy and improve upon what the CIA believed to be communist methods of mind and behavioral

¹⁴ See, for instance, McCoy 2006.

control through the use of drugs, hypnosis, and other techniques amounting to abuse.¹⁵ One of the reasons for the growth of the programs stems from President Dwight Eisenhower's approach to the CIA. Eisenhower encouraged the "shadowy", pro-active, secretly-funded side of the CIA (versus Truman's preference for an above-board operation), and he chose the shady and deceptive Allen Dulles to run it. Eisenhower's reasons stemmed from his belief that to fight the unscrupulous communists, while at the same time not throwing out the American moral compass, the United States was going to have to bend some rules on the sly. As with the Philippine-American War case, the connection between the political leadership and detainee abuse here is loose but meaningful: A brainwashing program was one symptom of Eisenhower's belief that the United States needed to fight a surreptitious, limits-pushing war against the communists.

Third, Chapter Four investigates the CIA's KUBARK interrogation manual of 1963 and its implementation in the Vietnam War. Techniques included sensory deprivation, use of drugs and hypnosis, and pain such as forced standing that makes the detainee believe that their suffering is self-inflicted. The KUBARK manual, partly a product of the mind control research, contains evidence for the lack of specificity argument, specifically in the favorable comparisons between the CIA's preferred psychological methods and more blatantly physical tactics that it shuns. CIA interrogators in Vietnam drew similar contrasts to justify their methods.

The fourth area of abuse in Chapter Four centers on the US military. While some soldiers' behavior falls in line with my thesis' expectations, other testimony regarding torture challenges my argument. Torture in Vietnam was as much about anger, revenge, and racism as

¹⁵ The programs sound like science fiction or the product of conspiracy theorizing, but they were quite real, and they became the subject of a Congressional investigation in the 1970s. In hindsight, MKULTRA and other brainwashing attempts resemble the cruel folly of amateurs rather than the clever designs of evil geniuses.

intelligence gathering. Moreover, soldiers returned from the war in a confessional mood, and they did not pretend that their actions were anything less than torture. A complete account must include these arguments.

Chapter Five covers torture during the post-2001 U.S. war on terror. This case is different from the others in that the Bush administration's embrace of abusive methods was explicit (though initially secret). While the openness with which the administration defended torture has negative implications for the endurance of the anti-torture norm, it does benefit the researcher, because administration officials have talked at length about their stances, and some of the memos and other materials documenting the early internal debate over interrogation tactics have come to light. I focus on the key decisions along three semi-overlapping paths to abuse: the mix of vague instructions and detailed allowances that led to torture by the U.S. military, the selection of certain countries to which detainees were sent for abusive interrogation, and the development and approval of "enhanced interrogations" used by the CIA.

I find strong evidence for my central claims in the war on terror case. Within a few days after the September 11 attacks, key Bush administration officials, including the president and vice-president, were adamant about removing restrictions from those charged with carrying out the United States' response. In the lead-up to the crucial 2002 decision to forgo the Geneva Conventions, backers of the torture program within the administration argued that Geneva would put too many constraints on interrogators. The CIA's internal program as well as its use of extraordinary rendition (in which it sent detainees to countries like Syria and Egypt to be tortured) exposes the same convictions about the efficacy of interrogations unbound by norms and laws. Indeed, concerns about circumventing standards – rather than, say, interrogation experience or a proven track record – drove the administration's decision to use the CIA.

Throughout, the Bush administration equated effective intelligence-gathering with tactics that bent and broke the laws and norms prohibiting torture.

The Bush torture programs might have proven impossible if the administration hadn't been able to exploit the lack of specificity inherent in the torture norm. The torture memos, the series of legal documents sanctioning abusive interrogation, (re)defined torture in the narrowest terms, freeing interrogators in the CIA and the military to use a wide range of methods, alone and in combination. The administration consistently denied that the euphemistically-named enhanced interrogation techniques amounted to torture. If torture were more well-defined, the redefinitions, denials, and euphemisms might not have been possible. Comparison with the European Union's human rights record underscores the point. EU members have turned to torture less frequently in recent times because policymakers went after the grey zones at torture's edge with aggressive regulations.

Americans were desperate to prevent another major terrorist attack on the homeland in the early part of the war on terror, and this desperation played a part in their search for extraordinary means. The architects of the torture policy did not resemble fully rational actors, however, at least with reference to the goal of getting the most accurate intelligence. They did not sift carefully through interrogation techniques looking for the most effective ones according to the best evidence, nor did they seek out the most experienced interrogators. Early advocates of torture were more concerned with legality than effectiveness; they assumed the latter. And while the Bush administration did sell sketches of its muscular foreign policy approach to the public, the torture program was not in place simply to satisfy public demand. Much of the program was kept secret, and the administration revealed details only reluctantly.

Chapter Six concludes with a discussion of the scope and limits of the book's argument. I also outline the primary takeaways of the book, summarized as follows: (a) the anti-torture norm's robustness problem is long-standing; (b) to lessen the chances of abuse, legislation must attack the "gray zones" of torture, especially in the United States; (c) implicit links between norm-breaking harshness and effectiveness are influential and need reexamination; and (d) norms can even define the preferences of violators, suggesting broad influence. The book ends with a look at the future of the anti-torture norm in the United States.

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Chapter 2: Explaining Torture's Recurrence

The end of Cold War was supposed to be the “end of history,” marked by the conclusive victory of liberalism over competing political ideologies.¹ Democratic peace theorists seemed to grow in numbers just as fast as the democracies they studied in the 1990s, and these scholars gave readers reason to believe that peace and improved human rights would follow political freedom.² Constructivism became a major player in international political theory at this time, too, and it was founded on the idea that the anarchic world of international relations is not inherently or inevitably conflictual. Greater levels of cooperation could define new “cultures” of anarchy, and these arrangements could endure even if the benefits of defection from peaceful cohabitation temporarily outweighed the costs.³ The past twenty-five years have borne out many of these optimistic expectations. War is still unthinkable in Western Europe, despite warnings from realists.⁴ The recent spate of scholarship on the decline of war also shows that war and other forms of violence have been on the wane in post-Cold War years.⁵

Yet torture persists, even in liberal democracies. Europeans turned to torture less than Americans after 2001, producing real variation worth exploring and exploiting, but the recent European record has its blemishes, too. And while current President Obama has engaged in far less abuse than his predecessor, and has regarded torture with disdain rather than enthusiastic advocacy, nothing fundamental has shifted in the torture debate or the legal landscape in the

¹ Fukuyama 1989.

² Ibid. See also Fukuyama 1992; Rummel 1994; Poe and Tate 1994.

³ In one of the foundational constructivist texts in international relations, Wendt (1992) draws on shifting relations between the United States and the Soviet Union at end of the Cold War to demonstrate how different worlds with greater levels of cooperation are possible.

⁴ See, for instance, Mearsheimer 1990.

⁵ See especially Steven Pinker 2011.

United States. Future reversion to abuse is certainly conceivable, if not probable, especially in the aftermath of another 9/11-sized attack.

Theoretically, explanations for this persistence fall partly in the “blind spots” of the two most prominent theoretical frameworks in international relations scholarship, rationalism and constructivism.⁶ Rationalists insist that states make choices based on self-interested, cost-benefit analysis; sometimes these choices fall in line with international norms (which can impose costs for non-compliance), and sometimes they do not. Subsequently, rationalism can account for the norm-breaking side of the puzzle but cannot easily explain why states often do not act in their self-interest and sometimes do not update when the returns from torture are poor. Social constructivists argue that shared understandings, norms, and rules constitute states' interests and identities, and so their choices are influenced, if not determined, by a sense of propriety, however thin. Hence constructivists are well positioned to account for why states might not maximize their utility, but they would have more trouble explaining why states operate outside of a norm that is widely held. This puzzle takes rationalist and constructivist orientations out of their comfort zones.

Still, the international relations approaches are useful lenses for understanding the persistence of torture. While I draw primarily on constructivism, rationalism plays a part as well in both complementary and competing explanations. In some instances (e.g., the war on terror), torture was a foreign policy choice; in others (e.g., the Philippine-American War), torture resulted in part from closely related foreign policy choices. Theoretical approaches to international relations can tell us whether these choices were the result of careful calculations

⁶ For an article that both highlighted and furthered the dominance of constructivism and rationalism, see Katzenstein, Keohane, and Krasner (1998).

(rationalism), a (perverse) sense of what is appropriate for a given context (constructivism), or some combination.

Defining Torture, Including the “Lite” Stuff

One of my principle arguments is that torture occurs because people can redefine torture to exclude things that they want to do. So it may seem strange that I will now state a definition of something that I am claiming is inherently vague, with arbitrary boundaries. Yet norms typically have some agreed-upon terminology to which collective expectations can adhere, even if actors debate the terms’ meanings. I borrow from the Convention Against Torture (CAT) (1984), which defines torture as

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The CAT, with 158 state parties, is the most salient example of anti-torture norm codification.

Many of the psychologically abusive techniques favored by the CIA count as torture under the CAT definition. This includes the “regression” methods from the early Cold War and “learned helplessness” from the war on terror. Techniques sufficiently coercive to bring about a breakdown in personality and dignity probably qualify as acts causing “severe mental suffering.”

The definition is also compatible with many of the “stealth techniques” – torture that leaves no trace – which democratic actors prefer to avoid detection.⁷ The CAT’s definition does not stipulate the pain and suffering must be long-lasting, as other definitions do. It does not require “organ failure or even death,” as Bush administration lawyers stated.⁸ (If interrogators are really torturing for intelligence, death of the subject would presumably be a failed outcome.)

Yet do stealth techniques, “torture lite,” “enhanced interrogation techniques,” or other methods with euphemistic monikers deserve the name “torture”? They usually do, for at least three reasons. First, many of the stealth techniques are worse than they sound, perhaps by design as a back-up plan in case stealth fails. A volunteer in the French Foreign Legion described a technique in which detainees were forced to stand with one foot fixed to the ground: “Now, that doesn’t sound very terrible, does it? Yet, after half-an-hour of it, I have heard men screaming and raving.”⁹ The water board was rhetorically reduced to a “dunk in the water” to “save lives,” which then-Vice President Dick Cheney agreed was so obviously the morally correct choice as to be a “no brainer.”¹⁰ Yet after Erich “Mancow” Muller, a conservative radio host, submitted himself to the water board to prove that it was not a big deal, he admitted, “It was instantaneous...and I don't want to say this: absolutely torture.”¹¹

Second, the psychological damage can be long-lasting or permanent even if the visible, physical injuries are not. Christopher Hitchens, a journalist who submitted himself to the water board to give a first-hand account, reported nightmares of being smothered in the weeks that followed.¹² Hitchens’ experience is in some respects a best-case scenario, given that he was in

⁷ Rejali 2007.

⁸ Bybee 2002.

⁹ Quoted in Rejali 2007, 316.

¹⁰ Quoted in Eggen 2006.

¹¹ Pollyea 2009.

¹² Nizza 2008.

full control of his fate, he had plenty of professional and personal support, and he was “released into happy daylight rather than returned to a darkened cell.”¹³

Third, psychological damage can be greater with stealth techniques than physical ones in certain instances. James Ron’s (1997, 294-295) interview with a UN mental health officer dealing with cases of stealth torture shows why:

When prisoners had clear markings indicating they had been tortured, she explained, “the community understood why they broke down and implicated friends in real or imagined crimes.” When released prisoners had no signs proving what they had experienced, however, they could not explain why they broke down and supplied interrogators with names. “The associated feelings of shame, remorse, and guilt can cause severe mental trauma that would not have been experienced had the subjects been physically scarred,” she said.

The “severe mental trauma” mentioned by the UN worker hews close to the CAT torture definition.

Mock executions, part of the stealth torturer’s repertoire, can be scarier than beatings because of their long-lasting psychological effects. John McCain (2005), a U.S. Senator who was tortured as a POW in the Vietnam War, explains:

[I]f you gave people who have suffered abuse as prisoners a choice between a beating and a mock execution, many, including me, would choose a beating. The effects of most beatings heal. The memory of an execution will haunt someone for a very long time and damage his or her psyche in ways that may never heal. In my view, to make someone believe that you are killing him by drowning is no different than holding a pistol to his head and firing a blank. I believe that it is torture, very exquisite torture.

In sum, most of the coercive interrogation techniques favored by liberal democracies deserve the name torture for the simple reason that they satisfy the basic condition of the widely-accepted CAT definition: They cause severe mental and/or physical suffering.

¹³ Hitchens 2008.

By this definition, the French engaged in widespread torture in South Asia (in both policing and wartime contexts) and in the French-Algerian War. Israelis tortured Palestinian prisoners systematically during the First Intifada, and some detainee abuse continues today. The British used torture for intelligence and punishment in the war against the Mau Mau in Kenya, as well as against rebellious factions in Northern Ireland. The United States tortured detainees in the Philippines, Vietnam, and during the post-2001 war on terror. Although not without blemishes, the European record of abuses has improved in post-colonial times. What follows are some possible theoretical explanations for these occurrences, with a particular focus on the American cases.

My Explanations

Robert Jervis warns his readers in the first sentence of one article that it is impossible to give a comprehensive account of the connections between misperception and war, his key independent and dependent variables, respectively. One major problem is that “[w]ar has so many causes.”¹⁴ Surely the same can be said of torture, a practice permitted or prohibited at societal, elite, bureaucratic, and rogue actor levels, in different kinds of wars, with varying degrees of severity, often for multiple reasons. Rejali (2007, 60) cautions that a full explanation of torture is impossible, both because of the complexity of the subject and data limitations, and I will not attempt one here. We might still profit from partial answers, however. Jervis (1988, 675) reduces his goals to “not[ing] several patterns,” with the important payoff of learning how “misperception might lead to World War III.” And Rejali (2007, 61) focuses primarily on why a

¹⁴ Jervis 1988, 675.

particular method of torture is chosen, noting that “[h]ow torture happens is an important check on misleading and overly general accounts of *why* torture happens.”¹⁵

Likewise, I will be focusing on certain aspects of the “why torture” puzzle, specifically on its recurrence and the persistent coexistence of torture and the norm against it in liberal democracies. The narrowness of the inquiry prompts certain (narrower) follow-up questions. For instance, are there cracks in the normative prohibition that allow some torture to sneak through? I find that there are: The first explanation shows that the norm against torture lacks specificity, allowing for justifications of torture. My focus on torture during interrogations seems to have a built-in, immediate answer to the “why torture” question: States torture for intelligence, of course. But this only motivates a further question (perhaps especially in light of torture’s questionable efficacy): Why do actors believe that interrogational torture works? The second explanation provides an answer: Actors believe that cheaters win in international politics, and the norm against torture defines what cheating is. These explanations do not provide a comprehensive answer to the “why torture” question, but they chip away at parts of it. Since both explanations feature norms in causal and constitutive roles, a short, generalized discussion about normative effects will help frame the discussion.

Normative Effects

Norms are standards of appropriate behavior for a given identity (Katzenstein 1996). Nina Tannenwald (1999, 2007) identifies three effects of norms in her work on the normative prohibition against the use of nuclear weapons. First, norms impose regulations on state actors, forcing them to consider the costs and benefits of compliance; second, norms have constitutive

¹⁵ Emphasis in the original.

effects, creating or defining forms of behavior, roles, and identities; and third, norms can have “shadow” or permissive effects, in which a norm claims our attention, allowing other acts which are similar and equally deplorable, but categorically different, to escape condemnation. The fuel-air explosives that the United States used in the first Gulf War exemplify this latter effect. These weapons were as powerful as small nuclear devices, but because they were not actually in the nuclear category, they eluded harsh criticism.

Tannenwald (2007, 44) understands permissive effects to be a subcategory of constitutive effects. Permissive effects “are defined in relation to the categories constituted by the norm or taboo and the larger normative context in which the taboo is nested.” For instance, the anti-WMD norm defines the categorization of WMD; in doing so, it defines non-WMD weapons (like those fuel-air explosives). That said, permissive effects can arise in the shadow of regulative or constitutive effects. Regulative constraints on the use of WMD can make the use of non-WMD “cheaper” than might otherwise be the case. Likewise, the norm against WMD defines this categorization of weapons as unusable; by extension, it categorizes non-WMD as usable (Tannenwald 2007, 47).

My first explanation bears some similarities to Tannenwald’s shadow effect, but without categories on which everyone can agree. Because the torture norm is hard to specify, what constitutes torture is debated when the acts are not hidden. The boundaries of the shadow are contested. My second explanation is also an unintended consequence of a norm. The norm against torture constitutes torture as off-limits, attracting those who believe that international politics requires actors to either walk the line or venture beyond normative constraints. The norm, therefore, leads to precisely the opposite of the intended effect.

The Torture Norm’s Robustness Problem

The more robust a norm is, the more compliance it engenders. There are both normative and rational reasons for this. A norm can inspire compliance because actors genuinely want to do what is appropriate, but even absent this, norms can impose costs on violators. Consistent lack of compliance might indicate that a certain norm is insufficiently robust (though it is important to measure robustness apart from behavior in order to avoid circular reasoning).

At a glance, the international anti-torture norm may seem at least as robust as any other. Henry Shue (1978, 124) writes, “No other practice except slavery is so universally and unanimously condemned in law and human convention.” Yet while most everyone condemns torture by name, not everyone can agree on what torture is. Some actors believe they can justify harsh interrogations because they see vagueness and malleability in torture’s definition.

Jeffrey Legro (1997, 34-35) presents three dimensions for measuring a norm’s robustness: specificity, referring to how clear the rules are; durability, which means how longstanding the norm is and to what degree it can survive violations; and concordance, or how widely accepted the norm is. The torture norm has fairly strong durability and concordance, at least in liberal democracies. In addition to the quote from Shue above and some of the content from the last chapter, I’ll add this: Almost no U.S. politicians from the Philippine-American War to present defend torture by name. Dick Cheney, one of the enhanced interrogation program’s staunchest defenders, said that America didn’t torture: “[I]t’s against our laws and against our values.”¹⁶ Time and again, actors deny that they are torturing, even when watchdogs reveal the details of the techniques and the suffering caused, and otherwise try to convince others that their actions are not as severe as the critics insist.

¹⁶ Stout and Shane 2007.

The fact that actors believe these acts *could* be played down and argued as something less than torture suggests that the norm against torture lacks specificity. Much of the lack of specificity is inherent to torture itself: It is not neatly and clearly separated from its milder cousins. The U.N. Convention against Torture authors understood this when they included “cruel, inhuman, or degrading treatment” in their ban. Yet it is not clear how long a prisoner may be kept awake until the deprivation of sleep becomes cruel treatment and then torture. Because some users of stealth torture want their techniques to sound more benign than they are, the techniques are often based on extreme versions of normal acts. Asking a detainee to stand at attention for one minute would not be alarming; asking him to keep going for two days would be torture. It’s unclear where the crossover points are. Since issues of definitional agreement are inherent to torture, the robustness of the torture norm has occupied a middle ground for some time – the norm has had durability and concordance, but not specificity.

It is this “semi-robustness” due to lack of specificity that has opened up routes to violation. Potential violators can more easily justify (to themselves and others) acts that draw close to torture, because they can compare them favorably with even harsher (or harsher-sounding) methods, some of which may be used by the enemy.¹⁷ They may also compare their actions favorably to other revered historical figures who “rose to the challenge” by way of harsh methods in their time. They can use euphemisms and modifiers to soften the image of their techniques. They can also simply deny that a committed act is torture.

The use of favorable comparisons bears some resemblance to Tannenwald’s “shadow effects,” but with a little more agency. Nuclear weapons, Tannenwald’s primary subject matter, are separated from conventional ones by what Schelling (2006) calls a “clear, bright line” or a

¹⁷ The idea of favorable comparisons corresponds with psychologists’ observations that people are more willing to excuse actions of a member of their own group. See Mercer 1995.

“firebreak.” The “shadow” falls on non-nuclear weapons, and disapproval of their use rarely, if ever, comes up. By contrast, torture and less coercive interrogation methods are not separated by a “firebreak.” Through favorable comparison, torturers try to push their own behavior into the shadow of their opponents’ supposedly worse deeds.

Torturers may or may not believe their own justifications, which implies that the theory covers a range of actor-types. At one end of the spectrum, the actor is self-delusional (assuming the act really qualifies as torture). He believes his own justifications, thus preserving a moral image for himself, and perhaps even a sense of moral superiority if the justifications were comparative. The Machiavellian character at the other end of the spectrum knows that the behavior amounts to torture, and still thinks that either others will buy the justifications, or at least the violations are unpunishable. Actors might fall somewhere in between these extremes, too. Telling one actor type from another is challenging, because the justifications might all sound the same. It is worthwhile to give an estimate of the actor-type in question, but the norm specificity argument performs essentially the same causal function, and does not require that we peer into the torturer’s soul to find evidence for it.

Are justifications just cheap talk, *post-hoc* add-ons that screen the real reasons for torture? Perhaps sometimes, but the fact that torture might be *amenable* to such justifications suggests a causal role. Imagine two friends, Joe and Bob, are out late having drinks. Joe announces that he has to go home. Bob says, “Come on, stay for one more.” Joe responds, “What would I tell my wife?” Bob says, “Just tell her that ____.” There are immediate causes for Joe’s possible interest in staying that are worth noting: the promise of more camaraderie, a tasty beer, etc. But whether Joe stays or leaves may also depend on the justification that Bob offers (or one that Joe himself thinks up). Crucial here is how salable the justification is, and

whether the behavior is amenable to salable justifications. The lack of specificity of the torture norm plays a causal role by making torture especially amenable to justifications that actors believe they can sell.

One example of the lack of specificity argument comes from Rachel Wahl's work on the use of torture among law enforcers in India, where the torture norm is weaker than in the United States, but human rights norms generally have some traction. Officers consistently downplay their own culpability in undermining detainees' human rights by speaking of degrees of torture. One officer said that he only used "humane" torture. "A lot will depend on [an officer's] mind, his training, his upbringing. Maybe I will only use 50 percent of force but a younger person will use more. I have compassion. I have a different mindset. The degree of torture will depend on the mindset."¹⁸ Another officer maintained that torturers should try to uphold the dignity of the detainee as much as possible. Torture "should not go beyond a certain point..." and should not "cause lasting damage."¹⁹ It is hard to imagine such justifications for acts that have a higher degree of specificity. For example, no one engages in "a little bit of cannibalism" or only "50 percent incest."

When allegations of French torture surfaced in Paris in 1955, the French government asked colonial official Roger Wullaume to compile a report on the subject.

In March 1955, Wullaume delivered his report for limited government consumption. The report not only acknowledged the use of torture in Algeria, but actually recommended sanctioning it because, on the one hand, Wullaume decided it was effective and indispensable, and on the other, concluded that it could not be concealed. In fact, Wullaume's only reservation was that torture must be exercised under "controlled conditions" - that is, its practice should be left only in the hands of professionals so as to prevent "abuse."²⁰

¹⁸ Wahl 2013, 231.

¹⁹ Ibid, 232.

²⁰ Marom 2003, 112.

Wuillaume's belief in the sliding scale of severity is clear and consequential. Because his recommendations for the French government left room at the end of the severity spectrum, he could satisfy himself that he was not throwing out ethical concerns altogether.

Ideally, we would find evidence for this explanation by eavesdropping on a conversation similar to the one between Bob and Joe above. The actor conceives of the justification before the action, and the realization of this justification clearly tips the balance in favor one policy over another. The world is not usually so compliant, unfortunately. Coping often requires reporting after-the-fact justifications – looking for the favorable comparisons, euphemisms, softening modifiers, and denials – and estimating how likely these justifications had a prior, enabling effect. The presence of after-the-fact justifications increases the likelihood that the possibility of making them occurred to actors ahead of time and had an enabling effect, but it's not conclusive. Where possible, evidence that actors used justifications “in the moment” or just prior is preferable. If the (scarcer) prior justifications match the (more prevalent) later ones in tenor, the later ones are more likely to have been conceived ahead of time.

The “Cheaters Win” Argument

Norms can have unintended consequences. Charli Carpenter (2003) argues that civilian rescue norms privileging women and children for evacuation had the perverse effect of leaving the most frequently targeted group – military-aged men – susceptible to mass killing. Ahead of the Srebrenica massacre in 1995, the norm-based definition of who was vulnerable in war mixed with self-interest to explain demographically-informed evacuation choices: “[W]hen evacuations were negotiated, adult civilian men were excluded. This satisfied the Bosnian Serb fighters, who retained their ‘legitimate targets’; the Bosnian Muslim authorities, who retained their pool of

potential fighters; and the international community, who could satisfy itself at having ‘at least’ assisted the ‘most vulnerable.’”²¹

Scholars such as James Ron have also shown that the norm against torture in particular has exhibited perverse effects. Ron (1997) provides an illustration of Foucault’s work chronicling the state-level shift from punishment to discipline. Ron explains how the horror over overt torture has forced governments to choose other forms of social control that are subtler but potentially more comprehensive. Instead of doing away with torture entirely, some states try to regulate and, by extension, legitimize torture. As a result, Ron observes a rise in the use of stealth interrogation techniques, including forced standing and restriction of air, by Israel in the early 1990s.²² The Israeli government’s shift in policy had multiple consequences. On the one hand, detainees suffered fewer broken bones and other lasting physical impairments from the “stealth” techniques that were used. On the other hand, as noted above, the lack of physical scars added to the mental trauma by removing an obvious excuse for any confessions (real or fabricated) made under duress.

Ron’s example shows how norms can have indirect effects. Domestic and international monitoring constrained the Israeli government (which is a regulative effect), but the government’s response had the unforeseen consequence of increasing psychological damage among detainees in some cases. The norm against overt physical torture may have also paved the way for government efforts to legitimize alternative forms of “discipline.”

My explanation suggests that norms can have precisely the opposite of the intended effect. The causal story proceeds as follows: An actor (policymaker, bureaucrat, or soldier) faces a security challenge, such as terrorism or an insurgency, which puts a premium on

²¹ Carpenter 2003

²² See also Rejali 2007.

intelligence. This actor feels pressure from the domestic population, their peers, or even from themselves, to produce results, but not necessarily explicit pressure to torture. He is looking for any advantage he can find, and he feels the need to get tough with the hardened opposition by thinking outside the box. Norms and laws define that box. The actor decides that he cannot afford to be "hamstrung" by the rules and that he needs either to push against them as far as he can without getting itself in trouble or to break the rules outright to obtain intelligence.

Two parts work together here. The first is a belief – or maybe just a suspicion – that in the nasty world of international politics, cheaters win. Such a belief would hardly be surprising. Observers of international politics have appreciated cheaters' successes since Odysseus packed a wooden "gift" horse with soldiers. Some of history's most famous backstabbers such as Bismarck and Hitler saw considerable success as a direct result of their backstabbing. The Prisoner's Dilemma rewards the defector in a world of defectors. The belief that cheaters win in international politics is a reasonable cognitive shortcut even if it is not always true.²³

The second part of this explanation is the flipside of the usual constitutive effect of the norm. Proscriptive norms define what rule-following is. By extension, they also define what cheating is. By themselves, constitutive arguments are distinct from causal arguments, because they answer what and how-possible questions instead of why questions. Constitutive claims can play key roles in causal arguments, however,²⁴ and that is what I am claiming here. Putting the two parts together, the off-limits nature of certain behaviors attracts the gaze of those who believe that cheaters win in international politics.

²³ The belief may be the result of socialization in a Hobbesian international environment. See Wendt (1999, chapter 6).

²⁴ Wendt 1999, 83.

The result is a kind of “upside-down world,” where good is bad and bad is good. For instance, in the early 1930's, Japanese political leaders began to develop biological weapons, “in part because Japanese officials were impressed that germ warfare had been banned by the Geneva Convention of 1925. If it was so awful that it had to be banned under international law, the officers reasoned, it must make a great weapon.”²⁵ For these officials looking for an advantage in future wars, “awful” was “great.”

The French-Algerian War in the late 1950s provides another example. The French, who suffered through World War II at the hands of the Germans, had been instrumental in developing and codifying norms pertaining the treatment of prisoners during war, but the French Army was soon chafing under those restrictions in Algeria. Under pressure to produce intelligence, the Resident Minister urged the military to (continue to) use extreme measures: “The rebels’ terrible threats and appalling crimes are forcing us to adopt certain behavior ... [I]n some cases strict compliance with the law may become a crime.”²⁶ French use of torture for intelligence in that war was systematic, widespread, and habitual.

This explanation becomes more convincing when the lead-up to torture includes evidence of the following: a) communication suggesting those without limitations have an advantage; b) praise or promotion of unscrupulous agents for their unscrupulousness; c) language suggesting a “moral inversion” in which “bad” becomes “good”; d) suggestions that only a new or separate set of rules will do; and e) an approval of a package of norm-challenging items that may include torture. The last indicator confirms that it is not just torture that interests the approver, but generally pushing and exceeding limits; it suggests a mindset or a philosophy, not just the intention to do a particular act.

²⁵ Kristof 1995; Kier and Mercer 1996.

²⁶ Quoted in Branche 2007, 550.

Combining the Explanations: Finding the “Middle Ground”

Darius Rejali (2007) explains democracies’ use of “stealth methods” as a reaction to “monitors” – disapproving superiors, courts, and human rights advocates and organizations that report regularly on prisoner abuse. Torture without marks, Rejali contends, allows torturers to avoid condemnation and prosecution. Providing an alternative account of stealth torture is not my primary goal. My specificity argument agrees with Rejali’s explanation on the point that normative and societal constraints have real effects on interrogators even if they do not stop torture completely. Stealth torture fits into my argument about the causes of torture as an observable implication. I argue that actors search for interrogation techniques that are nasty enough to work, but sufficiently mild-sounding to allow for exoneration. Stealth torture often fits the bill.

If the torture norm lacks precise definition, how can it *clearly* define what cheating is, and therefore, what “works”? The answer is that it doesn’t. Instead, actors perceive severity of interrogations as a sliding scale. According to such perceptions, the most severe interrogation techniques may be effective, but are so condemned as to be off-limits even in the most desperate times. Conversely, interrogation methods that minimize severity would be widely accepted, but not harsh enough to extract information from “hardened” detainees. The trick is to find a magical “middle ground” in which interrogations are severe enough to be effective, but not so heinous that they invite condemnation and prosecution. Figure 1 shows a basic graph of this idea.

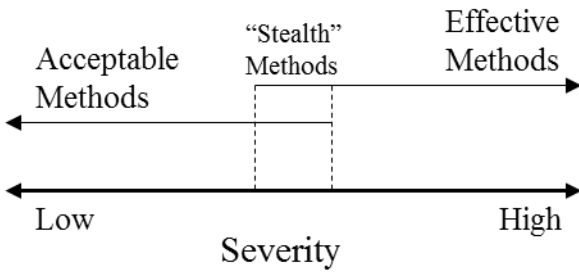


Figure 1: Perceptions of Interrogation Methods – The “Middle Ground” Model

As in the specificity argument, perception plays a major role. The actor perceives the severity, effectiveness, and acceptability of the interrogation methods in question. For acceptability in particular, torturers are interested in how others will

interpret their behavior. Because of this, the “middle ground” is often occupied by the “stealth” methods discussed above. Torturers intentionally fence in the techniques – any suffering is brief, the methods leave no marks, there is no permanent damage – to differentiate them from the worst abuses, but they stop short of saying (at least to themselves, and often to others) that the methods pose no difficulties for the detainees.

I treat perceived effectiveness as a binary variable in Figure 1. If we allow for continuous variation, (at least) two more models emerge. First, the actor may believe that stealth methods are the best a civilized country can do, but a less scrupulous state would have even more

effective methods at its disposal. The actor thus forfeits more effective but more brutal methods for the sake of propriety. The left panel of Figure 2 captures this.

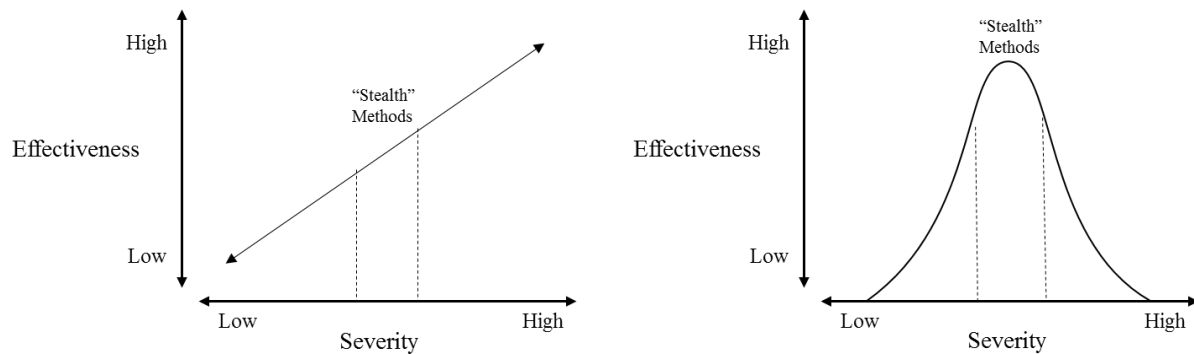


Figure 2: Two models capturing perception of effectiveness based on perception of severity.

The second model with continuous perceived effectiveness adds separate theoretical elements, but it compares so closely to the other models in this section that I will present it here. Actors may come to believe that their “middle ground” methods are more effective than those that are less or more severe. The preference for one’s own methods reveals in-group bias: One’s own supposedly clever or scientific means of extracting information are in all ways preferable to the simple, barbaric ways of one’s enemies. The right panel of Figure 2 gives a graphical illustration.

In each of the graphed models, torturers are looking for a middle ground, methods that are tough but limited, and sometime actors will state plainly that this is their goal. Evidence for this interaction between explanations may also include evidence of each from the same actor.

Alternative Explanations

How Democracy Matters

Since I am interested in how liberal democracies arrive at the decision to use torture, studies that show that democracies torture less than autocracies do not directly pertain. However, research describing those elements that stand between democracies and torture may be relevant if torture occurs when the standard checks on abuse falter. R.J. Rummel, who has made a career of demonstrating that government without limits is abusive and deadly, argues that during war time, democracies often kill civilians. The problem, he argues, is that the democratic leaders delegate too much authority to hierarchical, secretive agencies such as the military in the face of security threats, reducing democratic oversight and restraint mechanisms.²⁷ His insights may apply to torture as well. In Rejali's National Security model explaining torture,

[B]ureaucracies are hierarchical, closed institutions of credentialed experts. When the experts decide that legislatures do not have the sufficient will or expertise to do the right thing during a political emergency, they may turn to torture. Democrats, as amateurs, are often not in a position to challenge what bureaucrats say is necessary or even what is happening. So bureaucrats overwhelm democrats.

Rejali points to the French army in Algeria as the most famous instance of the National Security model in action. After General Massu authorized the use of "water and electricity," democratic institutions – including the judicial system and legislature – were "unwilling or unable to stop the turn to torture."²⁸

The importance of democratic constraints receives support from Geoffrey P. R. Wallace's work on prisoner abuse, interpreted broadly to include torture, neglect, or killing, during wartime. Drawing on other wartime violence literature that privileges rational, strategic factors,²⁹ Wallace argues that democracies often have institutional incentives to avoid prisoner

²⁷ Rummel 1994.

²⁸ Rejali 2007, 46-47. Rejali claims that sweeping explanations like the National Security Model are usually too broad to account for torture. Instead, "Hell is in the details."

²⁹ Downes 2008; Valentino, Huth, and Croco 2006.

abuse. Democratic elites are more accountable to those who bear the costs of war, leading them to be “more sensitive to the dangers of reprisal and escalation that would likely follow prisoner abuse. The proper treatment of enemy combatants thereby acts as a sort of insurance policy, albeit an imperfect one, to limit abuses against their own troops in enemy captivity.”³⁰ For similar reasons of accountability, democracies are also concerned about keeping the human costs of war low. “Promises of proper care, which are likely more credible coming from democracies since they usually treat their own citizens more humanely than do autocrats,” can convince enemies that surrendering beats fighting on.³¹

Wallace argues that where these institutional constraints are lacking, democracies are more likely to engage in abusive practices. In particular, “if concerns over retaliation weaken or disappear either because abuses by the adversary spiral out of control or because the adversary no longer possesses adequate numbers of prisoners to serve as a deterrent, then institutional incentives...may be insufficient to prevent democratic belligerents from resorting to prisoner abuse.”³² Although Wallace is mostly interested in regular interstate wars, he suggests that his findings may hold for colonial wars and counterterrorism as well. He argues that weaker adversaries that democratic states face in asymmetric wars will often lack the resources to capture large numbers of enemy prisoners, and expectations that terrorist or insurgent groups will follow human rights norms are low. This minimizes the costs of prisoner abuse for democracies, making the occurrence of such abuse more likely.³³

While Wallace pays a lot of attention to the conditions under which democracies fight wars, other scholars focus on liberal democratic institutions themselves. Conrad and Moore

³⁰ Wallace 2015, 9.

³¹ Ibid.

³² Ibid, 65.

³³ Ibid, 181-188.

break down liberal institutions into three groups: Voice (usually measured as competitive elections), Freedom of Expression (usually measured as free of the press), and Veto (diffusion of power or separation of powers).³⁴ The first two match well with an extension of Rejali's monitoring theory. If some monitoring causes torturers to use stealth methods, more invasive, educated monitoring might stop torture altogether. If lack of monitoring is the problem, a vigilant, unencumbered press and ballot box accountability might be the solution.

Election timing may also be consequential for the occurrence of torture. If soldiers or their political superiors are worried about electoral accountability for human rights violations, they might wait until after an election to use repressive means, especially if waiting will not prove fatal to the mission. If they believe that the public wants to see that those in charge of waging war are "doing all they can," the lead-up to an election might be a more brutal time for detainees. In sum, if electoral accountability matters, perception of what the electorate (including key constituencies) wants will matter, too.

The Veto measure is also ambiguous in theory. Some scholars argue that the diffusion of executive power, especially in the form of an independent judiciary, lowers the chances of human rights violations.³⁵ Others disagree. Vetoes of executive authority slow down or halt changes in policy. Because they approach torture policy as the status quo and ask why torture policies sometimes end, Conrad and Moore (2010) argue that more veto points increase the likelihood that torture policies will continue.³⁶ The first argument is more applicable to my cases. I argue that torture policy has been persistent, but it has not been constant. Rather, in my cases, it keeps returning. Therefore, Conrad and Moore's hypothesis is less likely to hold, and

³⁴ Conrad and Moore 2010. See also Davenport, Moore, and Armstrong 2007; Davenport 2007; Ward and Gleditsch 1997.

³⁵ Keith 2002; Powell and Staton 2009.

³⁶ See also Tsebelis 2002.

more veto points will potentially lessen the executive's ability to re-introduce torture as a viable alternative.

These dimensions of democracy may not be static during wars. Executives often have incentives to centralize power during war, and the rally-around-the-flag effect can grease the way for the suppression of criticism.³⁷ While well-established liberal institutions can weather the war and rebound admirably when the dust settles, they can suffer setbacks in the midst of war.³⁸ Lincoln's suspension of *habeas corpus* during the American Civil War and the internment of Japanese-Americans during World War II come to mind. And while, in a strict sense, Americans still enjoyed a free press during the war on terror, the Bush administration successfully bullied much of the media into compliant coverage after September 2001.³⁹

Because I am interested in the recurrence of torture, I will be paying particular attention to the change that wars and other security emergencies bring in my cases. Do executives take advantage of the security concerns to consolidate power? Or do the legislature and the courts give over power freely? If it's the latter, then a counterfactual whereby the other branches do not relinquish control may not yield a different result. Likewise, if the press is stocked with cheerleaders for harsh treatment of the enemy, limiting or intimidating certain elements of the press might not change much. Finally, does the civilian leadership have a choice in the bureaucracy that will head up interrogations? If not, then they might have to rely on the "experts," as Rejali's argument suggests, and these bureaucrats may not have internalized liberal democratic norms (see also the organizational culture argument below). Delegation within

³⁷ Mueller 1970.

³⁸ Starr 2010.

³⁹ See, for instance, Lichtblau 2009. Conrad and Moore (2010) also argue that violent domestic dissent can lead to the suspension of liberal democratic institutions, which can then lead to human rights abuses, including torture.

organizations might bring interrogation choices even further from corrective liberal monitors, and provide evidence that democratic bureaucracies are functionally autocratic.

Desperation and Intuition

The above discussion of democratic institutions focuses on the costs of a torture policy; when the costs are low, torture is more likely. But what about the benefits? What promise does torture hold?

Perhaps for the sake of simplicity, many scholars assume that torture is a rational, strategic response to certain conditions. Davenport, Armstrong, and Moore (2007), following Wantchekon and Healy (1999), assume that when faced with violence, executives have strong incentives to torture detainees. Merom (2003, 46) agrees: “The hasty acquisition of intelligence, often from sources unwilling to supply it, necessarily involves a great deal of personal violence.” Merom sees torture as a way to generate intelligence at a reasonable military cost: “[S]tates resort to greater and less selective methods of brutality in pacification wars not only because these prove to be effective, but also because they prove to be efficient.”⁴⁰

Actors might turn to torture as a rational response to their environment based on their beliefs even if they are wrong. As Wallace (2015, 43) explains, “Irrespective of the actual effectiveness of torture as an interrogation technique, what ultimately matters is the perceived utility of the practice among military and civilian leaders. Appraisals by many high-level decision makers remain stubbornly optimistic, helping to account for the continued popularity of torture both inside and outside of war.”

⁴⁰ Merom 2003, 42-43.

Leaders and soldiers need not be convinced that torture is always effective in order to use it, especially if they are desperate for intelligence. The word “desperate” is derived from the Latin *desparatus*, or literally, “deprived of hope.”⁴¹ Desperate actors do not necessarily have high confidence that their choices will yield success, but their situation may force them to try methods that they believe have slim prospects of being productive. Alexander Downes argues that leaders target civilians in war when they are desperate to win or save lives. He stresses “that civilian victimization is often driven by perceived strategic necessity: leaders may see themselves as having little choice but to target noncombatants if they wish to prevail at a price they can afford, avoid defeat, or annex desired territory. Leaders, therefore, need not be certain that civilian victimization will succeed; they merely need to believe that it might lower their costs of fighting, contribute to victory (or stave off defeat), or consolidate their hold over territory...Civilian victimization is thus a calculated risk, not an irrational gamble.”⁴² Similarly, uncertainty about torture’s effectiveness may not be enough to prevent desperate actors from using torture. The more desperate the actor, the less confident he needs to be in torture’s effectiveness.

Rejali suggests that there are even times when it may not matter what actors believe. In fact, in some (rare) cases, the actors can believe that torture is ineffective and still end up condoning torture, as the following example illustrates:

In the late 1950's, Paul Teitgen, the prefect of Algiers, caught Fernand Yveton, a Communist placing a bomb in the gasworks. Teitgen knew Yveton had a second bomb, and if Yveton had planted and exploded it, it would set off gasometers, killing thousands. Teitgen could not persuade Yveton to tell him where the other bomb was. Nevertheless, said Teitgen, “I refused to have him tortured. I trembled the whole afternoon. Finally the bomb did not go off. Thank God I was right”...One can imagine what

⁴¹ OED 2015.

⁴² Downes 2008, 39.

would have happened to Teitgin's career if the bomb had gone off...It would have done Teitgin no good to explain that torture produces false leads and wasted resources, that it damages police professionalism and integrity, or that Yveton might say nothing despite the torture...In such a circumstance, Teitgin could have been much more reassuring if he had tortured Yveton even if he knew torture did not work.

Such unusual situations suggest that torture becomes more likely when actors become desperate.

Torture may give comfort to those who can then say, "We are doing everything we can."

Desperate for *what*, exactly? Downes argues that leaders approve civilian victimization when they are desperate to win or desperate to save lives. Accordingly, he expects leaders to turn to civilian victimization as an "act of later resort," after other attempts have failed. Mapping these expectations to torture for intelligence during small wars is an imperfect exercise. Wallace brings us most of the way by examining the nature of conflict as a cause of prisoner abuse. He claims that severe fighting, especially in long and costly wars of attrition, causes "embattled captors" facing "dire circumstances" to "make war more costly and painful for their adversary."⁴³ Part of Wallace's argument reflects the fact that he includes both torture and killing of prisoners in his response variable. Killing prisoners may coerce opponents into ending the war sooner or remove a possible source of future resistance. But Wallace also maintains that desperate actors will be more tempted to torture for interrogation: "Stuck in a full-scale conflict that calls for the mobilization of all available resources, captors are also highly attracted to extracting as much as possible from their prisoner population irrespective of the hardships that will ensue."⁴⁴ In his conclusion, Wallace extends his claims to counterinsurgency as well: "Given the greater challenges to gathering intelligence on insurgent adversaries, captors may be

⁴³ Wallace 2015, 9.

⁴⁴ Ibid, 10.

much more willing to turn to harsh interrogation techniques against detainees in an attempt to gain important information.”⁴⁵

The Teitgin example also suggests a feeling of desperation from events not unlike ticking time-bomb scenarios mostly specific to counterterrorism operations. Although the actual occurrence of these highly dramatic instances falls somewhere between rare and nonexistent,⁴⁶ torturers might believe they have to act quickly to save lives even if their side is not concurrently losing lives in a drawn-out war of attrition. For instance, both coercive and non-coercive interrogators of Abu Zubaydah, a detainee in the war on terror, were urgently looking for threat information.⁴⁷

Finding evidence for the desperation hypothesis is a balancing act. Desperate actors should be in a hurry, especially if they think that timely intelligence will save lives, but rational actors should choose carefully among their options. When actors have more time under the desperation model, they will probably try non-coercive methods first, because the only risk of non-coercive methods is that they might not work. Torture carries greater risks, especially in states where it is illegal, and a rational actor should be at least interested in non-coercive methods so as to avoid those risks. Then the actor would evaluate results, find the intelligence to be lacking, become desperate, and then try coercive methods.

If actors do not have time to evaluate torture’s effectiveness, they may rely on intuition to inform their belief that torture might work. Wallace (2015) and Merom (2003), among others, seem to assume that torture has intuitive appeal for nervous actors in a rush for intelligence. Rejali (2007, 449) calls this “folklore about pain”: the belief that “all people avoid pain and seek

⁴⁵ Ibid, 173-174.

⁴⁶ Mayerfeld 2008.

⁴⁷ Soufan 2011.

pleasure, more injury produces more pain, and so it is simply a matter of calibrating the quantity of pain for each individual” in order to extract information. If the intuition argument is correct, we might expect to see torturers explaining their behavior as if it “just made sense” and anyone else in their situation would likewise.

The desperation hypothesis is compatible with realist theories of international politics. Torture follows need. The anti-torture norm might have some regulative effects, but when the going gets tough, normative concerns are put aside. Like war, torture occurs under anarchy because there is nothing to stop it.⁴⁸ Since realists believe that norms are only as meaningful and powerful as the states that enforce them, great powers are at an advantage in their ability to flout constraints when such a path is deemed necessary. Reflecting on torture during the war on terror, Stephen Walt (2009) summarizes:

[F]or those of you who think that power is of declining relevance in world politics and that normative and legal standards are becoming increasingly important, I’d just point out that the various officials who sanctioned these abuses would be in a lot more trouble if they came from a weak and vulnerable state, as opposed to a global power like the United States. Not only does power corrupt, but it allows people who sanction torture to get away with it, albeit at some considerable cost to America’s image and reputation.

Realists argue that when leaders in powerful states are sufficiently desperate, they can enjoy the privilege of ignoring international law in a way that leaders of weaker states cannot. Since realists believe that force is the final arbiter in international politics, they would be likely to agree with rationalists like Wallace that the ability to retaliate in kind is an important check on torture.

⁴⁸ Waltz 1959.

Organizational Culture

States also may use torture if coercive interrogation is engrained in an organization's culture. Closed organizations such as intelligence agencies and military organizations develop their own set of ideas, beliefs, and norms which frame their approach to certain tasks (Kier 1997). Their singularity of focus gives them the image of possessing expertise in their fields, but it also limits their ability to see their actions in a larger context (Sagan 1994). Over time, the norms of closed institutions may contradict those on the outside. The secretive nature of these organizations hampers international norm penetration, insulates the organizations from the benefits of the marketplace of ideas, and makes state coordination difficult. The result is “decisions” (or rather, “output”) that may not reflect international sensibilities or work in the state's overall best interest. Torture may be a part of that output. Despite damning evidence, agencies may press on with torture as a matter of tradition and a lack of organizational learning.

The persistence of torture in agencies may be a matter of lack of knowledge. In his chapter entitled, “Why Governments Don’t Learn,” Rejali (2007) argues that militaries in particular do not learn from failures in torture as much as they learn from failure in war, because war takes place in the open, but torture is secretive. Knowledge of success and failure, and the roots of success and failure, cannot accumulate. Counterinsurgencies, often operating with more fragmented groups of soldiers, lead to less pooling of knowledge and centralized assessment. The result is a dearth of data and analysis. This, Rejali argues, is one reason that some torture sympathizers like Alan Dershowitz support “torture warrants” – so observers can gauge torture’s effectiveness in the light of day. Rejali then dismisses this idea as fanciful, because torture is so difficult to regulate and often harms the perpetrator as much as the victim.

Perhaps it's more than just knowledge that certain organizations lack. Officials both inside and outside of an organization might understand the mission of the organization⁴⁹ to include the government's "dirty work." The organization's job, then, is be prepared to look past societal norms when duty calls. The "dirty work" mission affects recruitment, training, promotions, and informal socialization. Such a culture might lead to a race-to-the-bottom in which organization members compete for the title of cruelest.

I use a series of questions to assess the impact of organizational culture on the occurrence of torture. First, did civilians overseeing state strategy have multiple bureaucratic options for interrogations, or was one organization the only game in town? If leaders have outside options, and they know they are choosing one that makes torture more likely, then the beliefs and choices leading to torture are most consequential at the leadership level. If leaders don't have multiple options, then organizational culture may have more of a role to play in explaining torture. The explanation gains credibility if an organization's members tell each other stories of torture's effectiveness and create a cultural space in which torture is deemed acceptable.

Racism

Perhaps torture recurs because wars across racial lines recur. Racism is a form of dehumanization, a process by which the denigration of victims "weakens the victimizer's normal restraints on violent behavior."⁵⁰ The "other" is robbed of identity and community, both of which are instrumental in evoking empathy. Though Kelman is principally concerned with massacres in the following passage, we can extend the same argument to torture as well:

To accord a person identity is to perceive him as an individual, independent and distinguishable from others, capable of making

⁴⁹ Wilson 1989, 95.

⁵⁰ Haslam and Loughnan 2014.

choices, and entitled to live his own life on the basis of his own goals and values. To accord a person community is to perceive him – along with one’s self – as a part of an interconnected network of individuals who care for each other, who recognize each other’s individuality, and who respect each other’s rights...Sanctioned massacres become possible to the extent that we deprive fellow human beings of identity and community.⁵¹

John Paul Sartre (1963, 15), writing on France’s colonial wars, describes how French soldiers need to adjust their definition of who is human in order to carry out their violent deeds while preserving their values: “Our soldiers overseas, rejecting the universalism of the mother country, apply the ‘*numerus clausus*’ to the human race: since none may enslave, rob, or kill his fellow man without committing a crime, they lay down the principle that the native is not one of our fellow men.”

Later social-psychological research on dehumanization defines humanness in terms of uniqueness and nature. Human uniqueness refers to attributes that separate us from other animals. Human nature covers attributes that distinguish us from inanimate objects. Each provides a path for dehumanization. Individuals denied human uniqueness will be viewed as lacking intelligence or self-control. Those believed to be without human nature are seen to lack emotion (especially secondary emotion) and individuality.⁵² This rendering allows for more subtle forms of dehumanization (sometimes called “*infrahumanization*”) that does not require instances of blatant racial bigotry (though cases of torture have those, too) in order to conclude that racism is at work.

The causal arrow may go the other way as well: individuals may be motivated to devalue the enemy because doing so reduces the cognitive dissonance created by one’s self-image and one’s violent behavior. The more moral one thinks of oneself, the more likely one is to slander

⁵¹ Kelman 1973, 48-49.

⁵² Haslam 2006; Haslam and Loughnon 2014.

the other: “Consider the irony: It is precisely because I think I am such a nice person that, if I do something that causes you pain, I must convince myself that you are a rat. In other words, because nice guys like me don't go around hurting innocent people, you must have deserved every nasty thing that I did to you.”⁵³ Racism and violence may well beget one another.

It would be hard to deny that racism plays a part in the choice to torture, especially in colonial wars. Whether racism is the *primary* motivator is a separate question. If it is, then we should see torture both inside and outside of interrogation settings. If torture is used only during interrogation, then there must be another factor that is absent when torturers and would-be torturers are showing forbearance in non-interrogation settings.

Comparisons and Interactions

The examples that follow represent a non-exhaustive look at the ways in which some of the explanations complement or compete with each other.

Lack of Specificity and the Democratic Constraints. Stealth torture techniques do not merely help actors hide from monitors; they also help torturers argue back at monitors once the deeds are exposed. The Wuillaume report responded to domestic French monitoring by claiming that French techniques could stop short of abuse. Likewise, 2016 Republican nomination candidate Jeb Bush fought back against media monitoring in his defense of his brother's war on terror torture by insisting on a “difference between enhanced interrogation and torture. America does not torture.”⁵⁴

Democratic Constraints and Desperation. The argument that torture occurs when democratic constraints subside is incomplete, because it does not give “positive” reasons to choose torture.

⁵³ Aronson 2004, 240.

⁵⁴ Gabriel 2015.

The desperation argument is one attempt to cover this gap. Actors are trying to gain intelligence, save lives, and win wars. If they get sufficiently desperate, they may be willing to risk normative and legal repercussions by trying torture, even if they aren't sure that it will work.

Desperation, Rational Choice, Intuition, and the “Cheater Win” Argument. By itself, desperation is indeterminate; it is unclear what desperation will actually produce. For instance, we can imagine a desperate leader in an intelligence crisis calling around to different agencies looking for the government's most experienced interrogators. In order to find out why they might look for the harshest intelligence officers and soldiers, we need to theorize further. Likewise, when scholars merely connect a preference for torture with the realization of those preferences, they often miss the most interesting and puzzling part of the story: Why do actors believe that torture might work?

The intuitive argument provides a partial answer. By itself, however, intuition is a blank space to be filled, and any number of conclusions, including contradictory ones, can be intuitive. It may seem intuitive that detainees will break down and reveal information under torture. The claim that people will say anything, including falsehoods, in order to make the torture stop also has intuitive appeal. The intuitive explanation benefits from collaboration with the “cheaters win” hypothesis, because even though torturers might be drawing on intuition, their belief that cheaters win informs the content of the intuition, and governs which intuitive path they are to take. Ruth Blakeley (2007, 376) bridges the two explanations when she explains that people believe torture is effective because of its “horribleness.”

Cheaters Win and Organizational Culture. The cheaters win thesis can complement organizational culture theories in at least four ways. First, members of an organization may be attracted to the wrongness of torture just like other political actors, potentially shaping the

organization's culture over time. Second, administrations that value coercive techniques may foster competition between agencies and award the most aggressive among them. Third, executives lacking an organization that sufficiently values lawlessness may create a new agency whose principle purpose is to be aggressive in the face of proscriptive norms and laws. Fourth, an administration looking to shape an organization's culture toward more coercion can promote (or demote) individual agents that comply (or do not comply) with their overseers' wishes. In Chapter 5, I detail how the Bush administration chose the CIA in part because of its "cheaters win" culture, promoted torturers within the military, and created new military subgroups specifically to push boundaries, including those relating to interrogation.

Empirical Strategy

I test these explanations with three in-depth case studies from American history: the Philippine-American War (1899-1902), the early Cold War years up to the Vietnam War, and the post-9/11 war on terror. These cases capture the persistence of a revivable torture policy for over a century. Studying the persistence of something presents methodological challenges, particularly the inherent lack of variation in something that continues. I mitigate this problem by exploiting what variation does exist, examining when torture policy starts and stops, making comparisons with Europe where the use of torture has leveled off or declined somewhat in recent times,⁵⁵ and discussing other proscriptive standards that have enjoyed increasingly better adherence such as the norm against civilian victimization.⁵⁶

Where possible, I focus most acutely on key moments leading up to the decisions to use interrogational torture. The multiple points along the decision-making process, together with the

⁵⁵ Mayerfeld 2016.

⁵⁶ Kahl 2007.

numerous actors involved, can serve to increase observations for each case and limit degrees-of-freedom problems. The war on terror case offers the clearest view of the choices actors made just prior to torture. Bush administration officials set out their beliefs about how to fight the war on terror right after the 9/11 attacks, debated whether to forgo the Geneva Conventions, and justified their choices extensively, concurrently with torture in legal documents and later to the press. Most of the evidence from the Philippine-American War comes from after-the-fact court-martial transcripts. In those instances, consistencies among testimonies as well as matches between court-martial documents and earlier evidence strengthen the court-martial results. The early CIA case is the most secretive; I focus mainly on the conditions that made a torture policy likely. In each case, I respond to a series of questions to determine the persuasiveness of each explanation, summarized in Table 1.

Table 1: Questions to guide the search for evidence. Affirmative answers make the explanations more persuasive, contingent on the quality of the evidence they prompt.

Questions for Lack of Specificity Argument

Did torturers justify their actions?

If so, did their justifications take advantage of torture's blurry definition?

Did they try to (re)define torture to exclude their behavior?

Did their justifications occur before or concurrently with torture?

If mostly after, did later justifications match earlier ones?

Did torturers claim that they had tried the techniques on themselves and found them to be mild?

Questions for the "Cheaters Win" Argument

Did torturers believe that norm-breaking deeds yield advantages?

If so, did they cite this belief in the lead-up to torture?

Did they complain about being fenced in by laws and norms?

Did they violate a slate of norms, or just the torture norm?

Questions for the Democratic Restraints Argument

Were torturers conscious of election timing?

If so, did torture of detainees increase after elections?

Did they cite privately the election as a reason for a change in strategy?

Did torture increase the farther an interrogator was removed from central authorities?

Were higher-level commanders more likely to discourage and punish torture?
Did torturers try to hide from monitors?

Questions for the Desperation Argument

Did torturers seem greatly concerned about attacks and potential casualties?
Did they emphasize the need for timely intelligence to stop attacks before they occur?

Questions for the Intuition Argument

Did torturers believe they had very little time to get intelligence?
Did they describe torture as something that just made sense?
Did they sell torture's efficacy as self-evident?

Questions for the Racism Argument

Did torturers dehumanize their victims on the basis of race?
Did torture occur both inside and outside of interrogation settings?

Questions for the Organizational Culture Argument

Did authorities have only one option for interrogations?
Did norms within the organization come to contradict those outside over time?
Did members understand their own organization to be one that specializes in unsavory tasks?
Was this understanding present at the founding of the organization?

I initially chose the cases under the assumption that the norm against torture must have been weaker during the Philippine-American War, providing variation on the robustness of the norm. Further investigation revealed that the norm against torture was somewhat robust at the societal level, if not within the military. Following Legro's (1997) measure of robustness, the anti-torture norm had durability, dating from at least the Constitution's prohibition of cruel and unusual punishment. It also had concordance: Almost no one defended torture by name. Using Nina Tannenwald's (2007) alternate measurement of robustness, the "burden of proof" lay with torture's advocates. During the Philippine-American War, pro-imperialists in Congress took pains to show that torture was unusual and the work of "bad apples" in the US Army. Though they often suggested that such occurrences were unsurprising under the circumstances, they

never played up torture as a necessary method in a nasty war. Thus, the norm against torture is semi-robust (because it lacks the specificity dimension in Legro's conceptualization) in all three of my cases.

The cases do not quite qualify as “most different” cases in which three cases with almost nothing in common still contain similar causal mechanisms leading to similar outcomes. A set from a single country could hardly do so. Still, the cases capture fundamentally different historical times. The United States was an emerging power during the Philippine-American War, not yet a hegemon with global reach. The war was typical of colonial times, with commensurate levels of racism. Race plays a part in all the cases, but racism is most blatant, pervasive, and widely accepted in the Philippine-American War. The Vietnam War shares some similarities with the Philippine-American War, but the interrogation techniques that the CIA used in Vietnam have their roots in the early Cold War, when the United States' main concern was with the Soviets. Given that the Soviet Union presented the United States with an existential threat, the stakes were higher here than in the other two cases. The post-2001 war on terror was another thing entirely, as the Bush administration claimed – except for the pattern of abusive interrogation that the administration (perhaps unknowingly⁵⁷) resurrected. A theory that can explain a colonial soldier's turn to torture in the early 20th Century, the development of a secret behavioral control program at mid-Century, and the Bush administration's approval of torture in the early 21st Century would be showing good range.

Since I am interested in recurrence of torture, the war on terror case is especially crucial. The war on terror represents the latest iteration of liberal democratic torture, and makes for an

⁵⁷ For some evidence of the claim that the Bush administration did not know the extent to which it was repeating previous patterns, see Shane and Mazzetti 2009.

important update that might have lasting consequences for the norm itself.⁵⁸ It is also notable because hegemonies are supposed to be somewhat immune from normative effects.⁵⁹ If norms even influence actors (one way or another) in a noncompliant hegemon, then we can conclude that their importance is considerable.

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⁵⁸ McKeown 2009.](http://www.nytimes.com/politics/first-</p></div><div data-bbox=)

⁵⁹ Sikkink 2013.

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Chapter 3: Justifying Torture in the Philippine-American War, 1899-1902

Introduction

“The U.S. conquest of the Philippines had been as cruel as any conflict in the annals of imperialism...”¹ In terms of the extent of the damage that the United States perpetuated in the Philippines – the amounts of torture, mass killing, and other atrocities – John M. Gates was surely right when he called this assessment by Stanley Karnow a gross exaggeration.² Yet Karnow is right insofar as all the elements of a typical colonial adventure were present in America’s expansion in East Asia. While civilians were not victimized on the scale of, say, Leopold II’s Congo Free State, Americans did use concentration camps to create free fire zones in order to counter the Philippine insurgency. And while the frequency of torture never reached the level of the French in Algeria, American soldiers turned to coercion for intelligence with some regularity later in war in the Philippines.

Some historians suggest that the United States tortured prisoners in the Philippines due to racist motivations. Others favor a rational choice –like account, pointing out that torture occurred only as a response to real intelligence needs. I argue that both of these explanations are helpful but incomplete, because they do not delve into the justifications and beliefs that enabled torture. As the court-martial records, letters, and testimonies show, torturers took advantage of the anti-torture norm’s lack of specificity by claiming that coercive interrogation methods like the “water cure” did not cause enough suffering to deserve the label torture. Interrogators in the Philippines described different ways in which they subtly restrained themselves – only short submersion times, mere slaps instead of punches, hangings by the jaw instead of the neck – to

¹ Karnow 1989, 196.

² Gates 2002, Chapter 3.

keep their acts from being (seen as) abusive. It is difficult to imagine these acts occurring unless the accused could at least try to justify their behavior using the torture's blurry lines.

The belief in torture's promise as an interrogation method stems from politicians' and soldiers' confidence in coercive methods generally. The White House, first influenced by and then led by Theodore Roosevelt, turned away from an initial policy of attraction (called "benevolent assimilation") once the Philippine resistance turned to guerrilla tactics. While the civilians in leadership never ordered or recommended torture, they approved harsh tactics including martial law and concentration camps, and their encouragement to use "all available methods" may have contributed to an atmosphere in which torture was likely. Soldiers turned to torture because they believed that only "pressure" would coax information from enemy prisoners. There is also some evidence that soldiers understood war, especially guerrilla war, as a situation in which the usual rules did not apply. Norms defined harshness, and soldiers believed that harshness worked.

The next section gives some background on the Philippine War generally and torture during the war. Then I evaluate the evidence for the main explanations, followed by an examination of the alternatives.

Background

Overview of the War

For both sides, the Philippine-American War (also known as the War of Philippine Independence and the Philippine Insurrection, among other appellations) continued earlier fights with a mutual foe. Filipinos had been fighting the Spanish for independence since at least 1896. The Americans had just concluded the Spanish-American War. When the United States emerged

victorious from the latter in 1898, a debate emerged among American foreign policy thinkers regarding whether the Philippines should be granted independence. Imperialists won the debate over anti-imperialists, and so with the signing and ratification of the Treaty of Paris in 1898-1899, the United States bought the Philippines, Guam, Puerto Rico, and a few other territories from the Spanish for the light sum of \$20 million.

Filipinos agitating for independence had thought at first that an American victory over the Spanish would mean independence for the Philippines. Emilio Aguinaldo y Fami, the Filipino leader, certainly thought this, which is why he led his troops to fight alongside the Americans against the Spanish. The Treaty of Paris disillusioned him. Aguinaldo and his fellow Filipinos then turned their sites on the Americans, first in conventional battles, and then using guerrilla tactics, the latter of which proved more effective (if not ultimately successful) against the better-armed Americans.

Though President William McKinley was an imperialist, he was a less enthusiastic one than some of his peers, especially his second vice president who would soon succeed him, Theodore Roosevelt. In language typical of the times, McKinley came around to the idea that it was the duty of the United States “to educate the Filipinos, and uplift and Christianize them.”³ McKinley’s desire for “benevolent assimilation” of Filipinos through a “policy of attraction” set the tone early on, and contrasted sharply with Roosevelt’s desire to “smash” the enemy.

From the beginning of the war until the end of 1899, the Philippine Army of Liberation held together and put up a conventional fight. The Americans mostly confined their interest to the Island of Luzon during this time. Manila, on the west side of Luzon, was the political and economic center of the islands, and also the US Army’s headquarters in the Philippines. Soldiers

³ Quoted in Miller 1982, 24.

would depart Manila, a few hundred at a time, and pursue the Philippine Army. Because the American soldiers were almost always better armed and usually better trained, they invited pitched battles and typically prevailed. By November of 1899, the Army of Liberation was no longer a coherent organization. Aguinaldo called for guerrilla tactics as a way to continue the resistance.

McKinley's highest military commander in the Philippines for most of the early war period (1899-1900) was General Elwell Otis. Otis, eager to please those back home who wanted a quick and decisive victory, consistently downplayed any and all "bad news" on the war front. He carefully censored correspondence from those in the Philippines who suggested the war was going anything but swimmingly, and when word of difficulties did slip past his heavy editing, he consistently accused the naysayers of exaggerating and overreacting.⁴ Finally, Otis resigned, and came home to a hero's welcome,⁵ a production that had a lot to do with Republican interest in putting the best possible face on the war in the run-up to the November 1900 elections.⁶

Roosevelt, riding a wave of popularity from his own participation in the Spanish American War, steadily gained more influence until he joined the McKinley ticket for the 1900 election. A staunch imperialist, Roosevelt was enthusiastic about the United States' acquisition of the Philippines, and, together with some of his military friends and contacts, he petitioned McKinley early in the war for tougher measures implemented by tougher commanders. Roosevelt would have to wait until six months after the election of 1900 to see one of his ilk appointed, but the United States' shift toward tougher measures came earlier.

⁴ Jones 2012, 140-145; Miller 1982, chapter 5.

⁵ Shilling 2003.

⁶ Miller 1982.

In May 1900, McKinley picked General Arthur MacArthur to succeed Otis as supreme commander. Initially, McKinley was intent on continuing the policy of attraction under MacArthur, but such a policy was becoming more challenging. The guerrilla war, which began in earnest in early 1900 and intensified as the election neared, convinced both soldiers and civilians that a change of tactics was necessary. MacArthur and his fellow officers drew up sterner plans, but most of these measures were postponed until after the elections of 1900. The decision to wait until after the elections to enact sterner war methods was two-fold: First, “MacArthur and other senior officers had expected the resistance to collapse in the wake of the Republican victory, but that had not happened.”⁷ Second, and perhaps more important, the Republicans, including the McKinley administration, had been selling the line that the war was over, or all but over.⁸ While some tough measures certainly predated the elections,⁹ the change was noticeable.

General MacArthur made impressive strides until July 1901 when he relinquished his post. With aggressive sweeps, crop and property destruction, and the segregation of civilians from guerrillas through the establishment of “protected zones,” the army “ended armed resistance in twenty-one of the thirty-eight unpacified provinces.”¹⁰ Aguinaldo was captured in March 2001, a significant victory that would have been even more important had resistance not already been on the wane since the beginning of that year. Due in part to his strained relations with his civilian counterparts and superiors, MacArthur ceded civilian control of the Philippines to William H. Taft, and military control to one of Roosevelt’s favored men, Adna Chaffee.

⁷ Jones 2012, 205.

⁸ Miller 1982, chapter 6.

⁹ See Jones 2012, 207-210.

¹⁰ Linn 2000, 214.

Though the war was very much in hand for most of his tenure as military commander in the Philippines, Chaffee presided over the most well-known campaign of the war, the pacification of the island of Samar. Summary executions and orders to turn the island into a “howling wilderness” led to charges against Major General Littleton Waller and Brigadier General Jacob Smith. Historians often write about these two trials alongside a third: that of Major Edwin F. Glenn, the most notorious American employer of the water cure, who used this interrogation technique in Samar and Panay. Glenn was found guilty of the practice and given a light sentence.

With the conclusion of the Samar campaign in 1902, Roosevelt declared the war over and offered a general amnesty to participants in the Philippines insurrection. Limited uprisings would continue for the next several years, finally abating in 1913. The Philippines remained an American colony until 1946.

Torture in the Philippine-American War

Atrocities in general were rare during the conventional part of the war (1899), but there were a few exceptions. The most well-known was General Wheaton’s use of the torch. Wheaton, who served under William Sherman during the American Civil War, was partial to Sherman’s scorched earth approach. After one battle in March of 1899, a brigade under Wheaton burned house after house near Laguna de Bay southeast of Manila.¹¹ But the Army generally followed the laws of war for most of 1899 with regard to detainee treatment. The first reports of torture by the United States came in December 1899, immediately after Aguinaldo’s turn to guerrilla tactics, but torture would not be widely used for a while still.¹²

¹¹ Linn 2000, 94.

¹² Einolf 2014, 42.

Generally, harsh measures included free fire zones, burning of homes and crops, summary executions, and torture. Of the latter, the most famous technique was the “water cure.” The water cure is sometimes confused with the water board, but as “ideal types” (to use a strained version of the phrase), they are distinct. The water cure involves “forcibly filling the stomach with water,” inflicting “some of the most intense pain that visceral tissues can experience.”¹³ By contrast, the water board is a slow drowning induced by pouring water over a cloth covering a person’s face. In practice, the two blend, especially given the informal and improvisatory way in which torture is so often applied.¹⁴ For instance, according to one soldier, “Now, this is the way we give them the water cure. Lay them on their backs, a man standing on each hand and each foot, then put a round stick in the mouth and pour a pail of water in the mouth and nose, and if they don’t give up pour in another pail. They swell up like toads. I’ll tell you it is a terrible torture.”¹⁵ Water in the nose would choke the victim, but the swelling could only come from swallowing water. A Filipino mayor given the water cure testified to both swallowing water and breathing some in through his nose.¹⁶ Other variants involved several soldiers lifting a detainee, inverting him, and submerging his head in water for several seconds.¹⁷ The water cure was “one of the most fearful tortures of the Inquisition,”¹⁸ and almost certainly came to the Philippines first by way of Spanish colonization.

As is so often the case with torture, it is impossible to estimate with precision the extent of the abuse in the Philippine-American War. For politicians of the time as well as historians of today, estimates of atrocity levels at the hands of American soldiers seems to vary with sympathy

¹³ Peters 1985, 167.

¹⁴ Rejali 2007.

¹⁵ Quoted in Kramer 2008.

¹⁶ See the testimony of Joveniano [Tobeniano] Ealdama in Glenn GCM [General Court-Martial] 30755.

¹⁷ Ryan GCM 31443.

¹⁸ Rejali 2007, 280.

for the overall endeavor. Sharp critics like Gregg Jones (2012) and Paul Kramer (2006) describe a “war without limits.” Brian McAllister Linn, whose collected works on the war are probably the most thorough, takes a more cautious tone. In the preface to one of his books, Linn complains, “Nowadays textbooks and popular histories summarize the Philippine war in a few clichés – the water cure, civilize ’em with a Krag, kill everyone over ten, reconcentration camps – all of which convey an overall impression of a conflict characterized by brutality and atrocities. Any reader who questions the proposition that in barely three years an expeditionary force of 25,000 combat troops terrorized over 7 million people into submission – an argument grossly insulting to Americans and Filipinos alike – is currently at a loss.” Linn promises to “apply some much needed correction to the popular view.”¹⁹ Yet even Linn acknowledges that use of torture like the water cure was “distressingly common manner of interrogation among officers assigned to intelligence work.”²⁰ Stuart Creighton Miller (1982, 213) calls the use of the water cure “widespread,” and Christopher Einolf (2014, 4) argues that “soldiers used torture extensively during the final campaigns of 1901 and 1902.” John Gates describes the reports of atrocities as “exaggerated,”²¹ though he also acknowledges that both American soldiers and the Filipinos under their command “resorted to the water cure and other forms of terror” by the middle of 1900.²² On the whole, most historians characterize torture as an increasingly common form of interrogation, especially in the last half of the war.

To what extent did high-level officials direct, encourage, condone, or tolerate torture? Linn argues that detainee abuse received no official blessing: “Physical mistreatment and torture were never sanctioned by either Division headquarters in Manila or district headquarters, and

¹⁹ Linn 2000, ix.

²⁰ Linn 1989, 145.

²¹ Gates 1973, viii.

²² Ibid, 175.

there were constant warnings against it; but it clearly occurred.”²³ Torture never became official policy. General MacArthur, despite his orders for an increasingly aggressive counterinsurgency, called for more guilty verdicts than the court-martial proceedings yielded in torture cases, and, in the cases of guilty verdicts, stiffer penalties than judges typically assigned. The White House often concurred with MacArthur.

Another history of the war claims that there was tacit approval among officers, including high-level ones presiding over court-martials:

Officially, the Army condemned the water cure, which fell under [General Orders] 100’s proscription of torture. Unofficially, many officers winked at the practice, and military courts proved exceedingly reluctant to punish officers charged with applying coercive methods. As the war progressed the number of incidences of abuse grew as officers, disenchanted by the failure of benevolent policies, came to believe that the “cure” was the only effective way to uproot the guerrilla infrastructure.²⁴

What might “winking” mean in practice? Linn offers a telling example. Brig. General J. Franklin Bell, one of the most respected officers in the Philippines, relates the following story in a letter to a fellow officer:

[A] young officer of the 13th Infantry told him that he once went to a man’s house to get some rifles which he was absolutely certain he had hid there. That he demanded the rifles and indicated clearly to the mans [sic] mind that he knew he had them, but notwithstanding this the native persisted in lying and denied having any arms. That he then strung him up by the neck, whereupon the rope broke. That he then threatened to shoot him and did actually fire his pistol very near to him as if he were trying to hit him, but still the native persisted that he had no guns. That he then raked up some leaves against him home and lit a match preparatory to setting the leaves of fire whereupon the native weakened and disclosed the hiding place of 13 guns.

²³ Linn 1989. Quoted in Wallach 2007, 496.

²⁴ Birtle 1998, 132. General Orders 100 was a set of laws dating to the American Civil War to guide soldier’s conduct in war; it prohibited torture, among other practices.

Bell continues, “In my opinion, the end justified the means, but I fear my superiors would not agree with me.” Earlier in the same letter, Bell guessed that his superiors (Otis and MacArthur) “both have no personal objection to using a little judicious force” to extract information; rather, they feared backlash, and Bell could not overrule them: “[A]lthough I fully believe that such methods are *necessary* and justifiable under the circumstances, I have no authority in the matter and therefore would not be able to protect any officer whose employment of such methods became a matter of complaint or scandal.”²⁵ Linn argues that this amounts to a “don’t ask, don’t tell” policy,²⁶ but he could go further. By calling the use of such interrogation methods “necessary,” Bell implies that interrogators *should* be using coercive methods if the army is to prevail. This, I am arguing, is the content of the officers’ “wink.”

Explaining Torture in the Philippine-American War

Evidence for the Lack of Specificity Argument

McKinley did not need to deal with revelations of abuse as much as Roosevelt did, so he did not need to justify them as frequently as the latter. When Roosevelt became president, he showed that specificity problems led to torture justifications at the highest levels of authority, even if those justifications were not of the “enabling” variety associated with causal explanations. Despite his characteristically muscular language, Roosevelt never openly or privately endorsed torture explicitly. He played it down, depicted American techniques of torture in a favorable light compared to the enemy, and partially excused it with sympathetic explanations of the soldiers’ circumstances. This is all on display in his letter to a German diplomat, written after he became president:

²⁵ Bell 1900. Much of this is quoted in Linn 2000, 224. Emphasis added.

²⁶ Linn 2000, 224.

In the Philippines our men have done well, and on the whole have been exceedingly merciful, but there have been some blots ... The conditions were most exasperating. The enemy was very treacherous, and it was well-nigh impossible to find out who among all the pretended friends really had committed outrages; and in order to find out, not a few of the officers, especially those of the native scouts, and not a few of the enlisted men, began to use the old Filipino method of mild torture, the water cure. Nobody was seriously damaged, whereas the Filipinos had inflicted incredible tortures on our own people. Nevertheless, torture is not a thing that we can tolerate ... [I]t was necessary to call some of those who were guilty of shortcomings to sharp account.²⁷

Lack of norm specificity allowed Roosevelt to argue that the water cure was a “mild torture” and downplay its importance by comparing it favorably to what the enemy was doing.²⁸ By contrast, it’s hard to imagine anyone avoiding condemnation because he or she only engaged in “mild cannibalism.”

McKinley’s and Roosevelt’s Secretary of War Elihu Root was also quick to compare the actions of American soldiers with those of their enemies. After one soldier wrote to a newspaper about the widespread use of the water cure under the direction of Americans, a Senate investigation ensued. Root sent a letter to the Senate committee that was stuffed with accusations about the enemy’s cruel tactics:

The war on the part of the Filipinos has been conducted with the barbarous cruelty common among uncivilized races, and with general disregard of the rules of civilized warfare. They deliberately adopted the policy of killing all natives, however peaceful, who were friendly to our Government... The Filipino troops have frequently fired upon our men from under Protection of flags of truce, tortured to death American prisoners who have fallen into their hands, buried alive both Americans and friendly natives, and horribly mutilated the bodies of the American dead. That the soldiers fighting against such an enemy, and with their

²⁷ Roosevelt 1902.

²⁸ Roosevelt’s immediate turn to the “conditions” under which military members used torture also suggests the double standard expected by attribution theory: one’s own side does bad things because of the conditions, but the opposing side does bad things because of for dispositional reasons.

own eyes witnessing such deeds, should occasionally be regardless of their orders and retaliate by unjustifiable severities is not incredible.²⁹

The torture norm's lack of specificity allowed for such comparisons. The evidence is not *causal*, however, because, according to available documents, Root's and Roosevelt's justifications did not *enable* torture. They merely played down the offenses after the fact.³⁰ It is possible that torturers anticipated that Roosevelt and Root would be able rhetorically to minimize the offenses. But Roosevelt's and Root's justifications are at best echoes, not instigations.

Soldiers' justifications provide better causal evidence. Even though many of them came after torture had occurred, such justifications make the existence of prior ones more likely, because they are coming from the practitioners and witnesses themselves. For example, Root also included with the above memo to the Senate a letter from General Fred Funston, who commanded soldiers who used and witnessed the water cure. Funston shows that the military also used the tactic of favorable comparison: Filipinos working with the Americans (he claimed that the Americans themselves never used the water cure) who used the water cure "were merely repaying the insurgents for worse treatment received by them in the past."³¹

Funston also played down the importance of the use of the water cure by suggesting that the method was not as bad as his subordinate officer had implied:

The so-called "water cure," as it has been described to me by Macabebe soldiers [Filipino soldiers from a company friendly to American soldiers], was by no means so severe an ordeal as would be indicated in the extract mentioned. The method was merely to throw a native on his back, hold his nose with one hand, and pour water down his throat from a canteen or other vessel. It occasioned

²⁹ Root, "Charges of Cruelty, Etc., to the Natives of the Philippines," *War Department*, 17 February 1902. In Root 1916.

³⁰ Roosevelt's encouragement on the subject of aggressive war tactics may have set the stage for torture, as I claim in the next section.

³¹ Funston, "Exhibit A" in *ibid*, 2 February 1902.

nothing more than a few moments of strangling, and never resulted fatally.³²

How long are “moments” to General Funston? How much is “a few?” Torture’s lack of specificity allows for these vague descriptions and the justifications which they support.

The court-martial transcripts are full of quibbling on various dimensions over what constitutes torture. Edwin Glenn never denied using the water cure. His primary defense was that the technique was not really torture. The plaintiff Joveniano Ealdama claimed that the water cure sessions lasted about fifteen minutes; Glenn said they were not longer than five minutes. Ealdama accused Glenn and his subordinates of putting salt in the water; Glenn did not recall using salt. Ealdama said he was first put under a faucet eighteen inches high; Glenn estimated it to be lower than a foot, implying less force from the water on the detainee’s face.³³ The slippery nature of torture allowed Glenn to even think that such a defense was possible.

Other defendants tried the same approach: confess to the alleged methods and argue that they did not amount to torture. Lieutenant Bissell Thomas, accused of beating prisoners for information, based much of his defense on details meant to persuade the court that he was showing “extreme aversion and reluctance.”³⁴ Most of the strikes, he protested, were dealt with an open hand, not a fist; the prisoners fell from shoves, not blows to the face; the strikes were from the side, not straight out from the shoulder.³⁵ A soldier testified in the trial of Captain George Brandle that the rope used to hang detainees for several seconds in order to produce information was wrapped on their jaws, not their necks, causing no wounds or suffocation, but only slight marks.³⁶ Glenn went so far as to suggest that the water cure carried the health

³² Ibid.

³³ Glenn GCM 30755.

³⁴ Thomas GCM 16870, 68.

³⁵ Ibid, 7.

³⁶ Brandle GCM 19802, 13-15.

benefits of cleaning out the stomach and even curing fevers, as if the “cure” were merely an uncomfortable medical procedure or spa treatment.³⁷

If interrogators were not causing severe pain and suffering, what were they doing? Ryan claimed that his intent was to “frighten” the enemy into divulging information.³⁸ Likewise, Glenn says that the water cure “did frighten my guide. It did not injure him in any way...”³⁹ Another officer testified to a board of inquiry in similar language, arguing that he was merely trying to “frighten” captured guerrillas, not “injure” them.⁴⁰ Thomas softened the verb even further, pleading that he merely wished to “*surprise* these prisoners into an unwilling confession.”⁴¹

Frequently, defendants matched these arguments with favorable comparisons to what the enemy did. At Glenn’s trial, another American soldier discussed other tortures by the Filipino insurgents, including burning noses to a crisp and beating U.S. soldiers to death with clubs.⁴² Other witnesses talked of insurgents burying people alive.⁴³ Some courts took the bait. Lieutenant Edward Hickman was accused and acquitted of administering the water cure, and favorable comparisons were an integral part of the legal defense’s strategy. “[A] considerable amount of evidence was put before the court by the defense to show the illegal methods used by the insurgents in the conduct of their own operations and their complete disregard for the laws of war . . . In *Hickman* in particular, the court ‘invite[d] attention to the abnormal and disgraceful methods of armed resistance to the authority of the United States [and] the treachery of the

³⁷ Glenn GCM 30755, 99-100, 120-121.

³⁸ Ryan GCM 31443, 34, 41.

³⁹ Glenn’s statement in GCM 30755, 6.

⁴⁰ Quoted in Einolf 2014, 184.

⁴¹ Quoted in *ibid*, 45. Emphasis added.

⁴² Glenn GCM 30755, 75-76.

⁴³ *Ibid*, 92.

natives generally...”⁴⁴ Citing, among other reasons, these difficult circumstances, the court also showed “leniency” toward Glenn, fining him fifty dollars and giving him a month off without pay.⁴⁵

Glenn made other comparisons as well. He described his methods as “far gentler” than the interrogations tactics that the New York and San Francisco police departments used. He also lamented the use of the term “water cure,” because it brought to mind “old-fashioned” uses of water that Glenn claimed were much more severe. By contrast, “the so-called water cure as it is administered here causes neither pain nor permanent injury.”⁴⁶

Following Glenn’s light sentence, Army Judge Advocate General George B. Davis protested to Secretary Root in a memorandum. Davis names the danger posed by the specificity problem: that the difference between levels of coercion is one of degree rather than kind:

No modern state, which is a party to international law, can sanction, either expressly or by a silence which imports consent, a resort to torture with a view of obtaining confessions. If it does, where is the line to be drawn? If the ‘water cure’ is ineffective, what shall be the next step? Shall the victim be suspended, head down, over the smoke of a smouldering fire; shall he be tightly bound and dropped from a distance of several feet; shall he be beaten with rods; shall his shins be rubbed with a broomstick until they bleed? [The United States] cannot afford to sanction the addition of torture to the several forms of force which may be legitimately employed in war.⁴⁷

Davis wonders where the line should be drawn because torture is not inherently delineated.

Soldiers separated words like “abuse” and “torture” from what they were doing.

Witnesses for Glenn said that no “force” was used when Ealdama was suffering the water cure.

“I never saw any cruelty,” reported one soldier. “He was not abused in any way,” claimed

⁴⁴ Mettraux 2003, 144. See also Hickman GCM 33367.

⁴⁵ See the court’s verdict in Glenn GCM 30755.

⁴⁶ Glenn’s written statement in *Ibid*, 4-5.

⁴⁷ Quoted in Jones 2012, 384.

another.⁴⁸ None were denying the use of the water cure; they only viewed the technique as being in a realm separate from cruelty and abuse. Some of the evidence, while gathered after the fact, strongly suggests the prior importance of a spectrum of severity for creating justifications. Sargent Januarius Manning testified that his commanding officer told him to oversee the application of the water cure to Filipino prisoners, “and to see that the men did not abuse the prisoners...to see that they did not get too much.”⁴⁹ That the officer thought his soldiers could administer the water cure to the prisoners without abusing them is a paradox only resolved by the torture norm’s lack of specificity (and perhaps some wishful thinking).

The diary of cavalryman Frederic Presher also suggests that officers divided the water cure from other forms of abuse at the time that the abuses occurred. Presher describes one incident in which detainees held and interrogated by his company “were kicked and cuffed and beaten but no information was forthcoming. One was knocked senseless by a blow from the butt of a scout’s carbine and the other one tied up by his thumbs but the officers would not allow that so he was cut down in a few seconds. Other means of persuasion were used to be sure, but still ‘No habla’. Then the ‘Water Cure’ was tried, a cure which is said to be sure.”⁵⁰ The officers were willing to countenance the water cure, but tying a man up by his thumbs went too far.

Evidence for the “Cheaters Win” Argument

While those at the top never openly endorsed torture, they may have created the conditions under which the use of torture was unsurprising. They did this by valuing, encouraging, and promoting “aggressive” operations. Theodore Roosevelt (before and during

⁴⁸ Glenn GCM 30755.

⁴⁹ U.S. Senate 1902, 2252

⁵⁰ Presher 1901.

his time as Vice President and President) and like-minded officers wanted soldiers in the Philippines to push as far as they could against the laws and norms of war. Roosevelt and some officers (especially MacArthur) understood methods like the “water cure” to be on the wrong side of the line, but they clearly valued soldiers who spent their time right at that line.

One place to look for evidence of the “cheaters win” hypothesis is in the civilian leaders’ criteria for military placements. Did those willing to push boundaries get rewarded? Not at first. McKinley’s policy of attraction and domestic political strategy did not require a “hard hitter,” but rather an office-bound, on-message general, which is just what he got in Otis.

The results, however, were underwhelming, and behind the scenes, members of the military had begun petitioning the military hero-turned-politician (but not yet Vice President) Theodore Roosevelt.⁵¹ Roosevelt met with two members of the military, including retired Major General Francis Greene, in the summer of 1899 to discuss concerns about the situation in the Philippines, and the following day wrote to Secretary of State John Hay. Roosevelt recommended replacing Otis with Greene “with instructions not simply to defend Manila, but to assume aggressive operations and to harass and smash the insurgents in every way until they are literally beaten into peace.”⁵² While this request was not initially carried out, Roosevelt’s star was rising, and he would continue to gain influence on personnel choices and policy when he became McKinley’s running mate in the 1900 presidential elections. On the way, he heard from military members such as his former fellow commander in Cuba, General Samuel Young. Young recommended replacing Otis with Henry Lawton, another war hero from the U.S. campaigns against Native Americans. Roosevelt agreed: “With you and Lawton I know there is no delay...in taking the initiative, no failure to appreciate that the enemy must be hit and

⁵¹ The following correspondences are recounted in Jones (2012).

⁵² Roosevelt 1899.

smashed and followed up on the run and smashed again. We must have a man in command who is continually at the front and who means hard hitting and the finishing up of the whole business.” (Lawton would die in combat before he got the chance.)

Like Otis, MacArthur was probably not picked for his reputation for enacting tough measures, but he did preside over increasingly coercive policies. Civilians and soldiers were both on board with the policy. In the fall of 1900, Taft said that after the election, “[T]he time will have come to change our lenient policy.”⁵³ Taft probably did not have direct influence on the military given his frosty relationship with many of the officers, especially MacArthur.⁵⁴ Taft may have been indirectly influential, however; it is plausible that officers would have been encouraged by the fact that even the man who coined “our little brown brother” to describe Filipinos was comfortable with harsher methods and became an advocate for them. MacArthur instructed his commanders to “completely destroy” the rebel’s infrastructure in cities and towns. To do this, they would need to apply martial law and those provisions of General Orders 100 that allow for crackdowns, “*the more drastic the application the better.*” MacArthur also stipulated “that unnecessary hardships should not be imposed upon persons arrested and that the laws of war are not violated in any respect touching the treatment of prisoners.”⁵⁵ These latter words sound almost like an obligatory legal disclaimer, and may well have been discounted as a result (though this is only speculation).

MacArthur’s announcement may have been more of a summary of what officers had already agreed to rather than brand new guidelines. Roosevelt had continued to hear from his military friends in the Philippines that a change was necessary. One such friend was Major John

⁵³ Gates 2002, chapter 5. Gates argues that Taft consistently advocated for a more aggressive policy than most officers of the military, despite stories to the contrary.

⁵⁴ Miller 1982.

⁵⁵ Quoted in Jones 2012, 206.

Parker. Parker wrote in October 1900 that “the fundamental obstruction to complete pacification” was “the attempt to meet a half-civilized foe ... with the same methods devised for civilized warfare against people of our own race, country and blood.”⁵⁶ The U.S. military was too hamstrung by rules based on the policy of benevolence; they had “applied the methods of the kindergarten where other nations habitually, and successfully, use the most stringent measures.” Officers needed to be allowed to “make a few punitive examples...”⁵⁷ Roosevelt forwarded Parker’s note to Secretary of War Root, and soon some of the changes that Parker requested became official policy.⁵⁸ Violence instigated by US forces (which included Major Glenn and those under him on “water detail”) escalated around this time, especially on the island of Panay, suggesting that Parker was not alone.

Roosevelt’s instructions sometimes had the tone of someone who wanted his subordinates to fight a lawless war, and only the context of certain quotes gives their true meaning. For instance, following the trial of Brigadier General Jacob Smith, who was accused of ordering the killing of civilians, Roosevelt wrote a letter listing all the terrible things that the insurgents had done. To this he added: “I...heartily approve the employment of the sternest measures necessary to put a stop to such atrocities and to bring this war to a close.” By itself, the statement looks like it would be compatible with whatever the most aggressive soldiers might do. But the next sentence in the letter includes important caveats: “It would be culpable to show weakness in dealing with such foes or to fail to use all *legitimate and honorable methods* to overcome him.”⁵⁹ Clearly Roosevelt wanted his soldiers to go as far as legally possible in

⁵⁶ Quoted in Gates 2002, chapter 5.

⁵⁷ Quoted in Jones 2012, 204.

⁵⁸ Ibid.

⁵⁹ Smith GCM 30739.

fighting the enemy, but he did not include things like the water cure among the “legitimate” means.

This is not the only example of such instructions from Roosevelt. In the fall of 1901, just two weeks after Roosevelt took the oath following McKinley’s assassination, a company of seventy-six American soldiers lost over half of their men in a surprise attack. The event became known as the Balangiga massacre after the town in which it occurred. Chaffee immediately blamed the massacre on the “soft mollicoddling of treacherous natives.” Roosevelt was right with him. He ordered Chaffee “in no unmistakable terms” to use “the most stern [*sic*] measures to pacify Samar.”⁶⁰ Chaffee used the shift of mood following the massacre to apply tough measures elsewhere as well.

Birtle argues that Chaffee specifically selected those officers most willing to use harsh tactics for the most important assignments:

Chaffee not only approved of the use of extreme measures, but replaced squeamish officers with those who were not afraid to “make a wilderness” out of guerrilla-infested regions. The most notable example of this occurred in the fall of 1901 when Chaffee shuffled the command system to place several noted “hardliners” in command of those few provinces that were still in a state of rebellion. He assigned General Bell to overcome Malvar’s guerrilla army in Batangas, and Brig. Gen. Jacob H. Smith to oversee the reduction of the island of Samar.⁶¹

Torture occurred under both Bell and Smith.

Bell’s willingness to push the rules to their limits was put in writing in early December 1901. Bell counted off a number of transgressions of civilized war that Filipino insurgents had committed. Bell wrote that he intended to “severely punish, in the same or lesser degree, the

⁶⁰ Miller 1982, 205-206.

⁶¹ Birtle 1998, 133.

commission of acts denounced in the aforementioned articles.”⁶² It is highly likely that much of the military shared Bell’s sentiments. For one, Chaffee approved the document. More telling was the wide respect accorded to Bell throughout the war. In a moment of rare agreement, both Chaffee and Taft thought he would be the best person for the Batangas post, and part of the reason for this was his “ruthlessness.”⁶³ Historian Brian McAllister Linn suggests that Bell also probably would be the choice of “the vast majority of soldiers if consulted.”⁶⁴ In Batangas, Bell proceeded to herd people from the rural areas into camps, outside of which scorched earth tactics – including free fire zones and the burning of crops – were used. Ironically, McKinley had once condemned Spain for such tactics: “It was not civilized warfare. It was extermination.”⁶⁵ Bell was also one of the officers most willing to tacitly encourage the use of “pressure” during interrogation and look the other way while it occurred.⁶⁶

The point of the preceding paragraphs is not to argue that every instance of “tough talk” led directly to torture. Rather, the idea is to expose how the military’s and the McKinley and Roosevelt administrations’ beliefs about the laws of war created conditions ripe for torture. The occurrence of other atrocities alongside torture, endorsements for a list of harsher methods by Bell and Parker, and broad encouragement of “stern measures” by Roosevelt suggest an overarching philosophy about what constitutes effective war-fighting. This set of beliefs translated into the appointment of officers who were increasingly willing to condone or use torture the farther down the chain of command one looks. Though some generals “teamed up”

⁶² Quoted in Miller 1982, 207.

⁶³ Linn 2000, 300.

⁶⁴ Ibid. Linn also argues that Bell was “respected enough to check officers. . .from engaging in indiscriminate counterterrorism.” However, Bell does not give one the impression that he regularly restrained himself. “[T]he innocent must generally suffer with the guilty,” he claimed, and it was impossible to tell “the actively bad from only the passively so.” See Miller 1982, 208.

⁶⁵ Quoted in Kramer 2006, 153.

⁶⁶ Einolf 2014.

with the law by using some of the harsher provisions in General Orders No. 100 to jail and execute the enemy, others believed that the military was hampered by the rules of “civilized” warfare in fighting a “half-civilized foe.”

Some officers understood General Orders 100 to be so lenient as to undo itself in certain circumstances. Water cure user James Ryan quoted General Orders 100 in his written defense: “To save the country is paramount to all other considerations.”⁶⁷ Ryan’s interpretation seemed to be that when the safety of the country is at stake, the law is that there is no law. Even the Judge Advocate General Davis admitted that soldiers could exceed the limits of General Orders 100 in certain emergencies in a letter to Root regarding the Glenn case. Davis simply thought that Glenn’s company did not face sufficiently dire circumstances.⁶⁸

Glenn argued at trial that his actions were well within orders. He understood MacArthur’s orders to be a call for a “relentless” campaign of martial law, granting wide latitude to commanders in the field.⁶⁹ He quoted orders from Chaffee to the commanding general of Southern Luzon as follows: “The Division Commander directs, no matter what measures be adopted, information as to whereabouts of this force must be obtained.” He also brought the court’s attention to similar relayed note: “In compliance with instructions from Division Commander, Department Commander directs that information of the whereabouts of the Caballes [a Filipino officer] be obtained, no matter what measures be taken.”⁷⁰ Though orders such as these almost always came with caveats, Glenn interpreted them to mean that he should push as far as he could against the laws of war.

⁶⁷ Ryan GCM 31443.

⁶⁸ Davis’ letter in Glenn GCM 30755.

⁶⁹ Glenn and Russell’s written statement in *Ibid.*

⁷⁰ Glenn GCM 34401, 18.

Glenn believed that only “pressure” and “punishment” would work for gathering intelligence in the Philippines. Through questioning of his own witnesses, Glenn (who, as a lawyer with knowledge of international law, represented himself) attempted to show that Filipinos never gave information voluntarily, only when they were “punished”.⁷¹ Interestingly, Glenn wanted to convince the court that Filipinos had to endure some sort of coercion at the hands of the Americans in order to share information without facing even more extreme measures from the insurgents. That is, the insurgents would punish any Filipino who voluntarily cooperated with the American soldiers, but the insurgents would grant a free pass to Filipino informants that cooperated with the Americans as a result of force.⁷²

Ryan echoed the idea that, in terms of coercion, American soldiers were necessarily in a kind of “race to the bottom” with the enemy. Because American soldiers’ hands were so often tied, Ryan argued, they could not “inspire...the same fear” in the Filipino population that the enemy could. “The result is simple; they [the population] took their chances with the less rigorous of the two parties, and events have proven their reasoning was correct. [A]s long as these methods are pursued, [t]he Filipino will delight in an outward show of Americanism, and gloat inwardly over his real loyalty to insurrection.”⁷³ This, Ryan claimed, is why the United States Army could not play nice: “Having arrested them and knowing that the truth can be gotten from the average native only under pressure or fright, especially this being true during active insurrection; must I lay aside my sword and take up the functions of a missionary?”⁷⁴

Ryan’s “tough talk” about swords and missionaries suggests the role of norms in defining what severity is for American soldiers. Effective intelligence-gathering during war, Ryan is

⁷¹ Glenn GCM 30755, 90-93.

⁷² Ibid.

⁷³ Ryan GCM 31443, 9.

⁷⁴ Ibid, 5.

asserting, requires a different set of standards from what most people find wholesome. This separates the cheaters win argument from intuitive accounts. Captain Daniel Boughton, writing on behalf of Hickman, makes a similar point. The U.S. Army, he argues, has done “work that may or may not have been distasteful. It was sent to the Philippines by the American people. What for? To hold receptions, dress parades, and pink teas?”⁷⁵ Glenn also argues that interrogations must be on terms that might appear out of place in polite company: “I have never been taught by any of the books I have studied, nor by any of those able soldiers whose rules of war or practice it has been my good fortune to study that a campaign or scout had to be conducted upon the lines of a woman’s afternoon tea or a Sunday school picnic.”⁷⁶ These sentiments echo Major General Lloyd Wheaton’s view of effective counterinsurgency as an activity set apart from the “gentler” activities of peacetime: “You can’t put down a rebellion by throwing confetti and sprinkling perfumery.”⁷⁷ Birtle estimates that “by the end of the Philippine War there were few American soldiers who would have argued with him.”⁷⁸

In sum, while Roosevelt and the supreme commanders (Otis, MacArthur, and Chaffee) in the Philippines never condoned torture, their general push for aggressive methods of war-fighting created a context in which torture occurred (though the evidence for this connection is not bountiful). Evidence for the “cheaters win” hypothesis is stronger amongst members of the army under the supreme commanders. Interrogators did not want to be confined by rules. According to one soldier, when it comes to gathering intelligence, “[S]cruples often mean flat failure or belated action.”⁷⁹

⁷⁵ See Boughton’s letter in Hickman GCM 33367, 4.

⁷⁶ Glenn’s written statement in GCM 30755, 6-7.

⁷⁷ Quoted in Birtle 1998, 135. The imagery in the quotes from this paragraph also suggest that the soldiers feared the “feminization” of war.

⁷⁸ Ibid. Einolf (2014, 183-186) argues that US soldiers in the Philippines underwent a kind of “moral inversion” where they came “to see evil actions as good.” I’m arguing along similar lines here.

⁷⁹ Quoted in Einolf 2014, 179.

Searching for the Middle Ground

Christopher Einolf calls American torture in the Philippines before the second half of 1900 “early experimentation.”⁸⁰ The term is apt. But what was the goal of the experimentation? Einolf implies that the soldiers were searching for techniques that worked and would not result in their prosecution. My interpretation runs along these lines. Soldiers were trying to find an interrogational middle ground – not too overtly harsh, not too mild. Eventually, many interrogation officers came to believe that the water cure fit the bill.

Early attempts to find this middle ground weren’t sufficiently convincing. Bissell Thomas, who slapped and punched prisoners for information, testified, “I adopted this method...because I believed it to be the least brutal and painful which would be efficacious.”⁸¹ In other words, the entire set of possible effective methods lay on the “more severe” end of the spectrum, but Thomas was choosing the lower end of the range. Other court-martial transcripts reveal a similar approach. Glenn brought several witnesses to the stand to discuss the “classes” of punishment that the Spanish had used in the Philippines in order to show that the water cure was the mildest among them.⁸² In fact, Glenn appears to have chosen the water cure specifically because it could be made more or less severe:

“There is a further distinction between punishments which are manifestly cruel and unusual, and those which are cruel and unusual when taken to excess. The former class invariably results in some physical injury, and the instances cited are burning at the stake, crucifixion, and breaking on the wheel. The present treatment cannot be included with punishments of this character. It is equally difficult to include it in the second class, since

⁸⁰ The quoted text forms part of the title of Chapter Four in Einolf 2014.

⁸¹ Thomas GCM 16870, 68.

⁸² Glenn GCM 30755, 80-89.

punishment can hardly have been carried to excess when it has scarcely begun.⁸³

Yet he claimed that "...if information is to [be] obtained, pressure of some sort is necessary with these people."⁸⁴

"The beauty of the 'water cure' is...there is no lasting bad effect – but it certainly is discouraging at the time."

- Capt. Samuel Lyon, Letter to wife, 1901

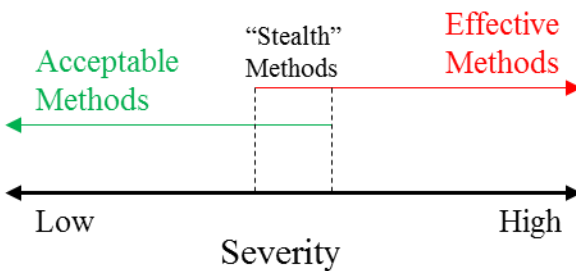


Figure 3: The "beauty" of a middle-ground method

Some soldiers did not hide their pleasure with the extent to which the water cure functioned as a middle ground method. Samuel Lyon, in a letter to his wife, wrote about his plans for getting information from a Filipino whose cooperation Lyon found lacking: "I fear I will have to give the insurgent officer a touch of high life by means of a little water properly

applied – he may do better next time. The beauty of the 'water cure' is – that if you know how to apply it – there is no lasting bad effect – but it certainly is discouraging at the time."⁸⁵ For Lyon, the water cure struck a perfect balance: It was sufficiently "discouraging" to produce information, but did not produce such a "lasting bad effect" so as to be beyond the pale.

Alternative Explanations

Racism

Can racism explain torture in the Philippine-American War? Racialized motives certainly inspired the United States' imperial impulses in the late-nineteenth and early-twentieth

⁸³ Russell and Glenn's statement in *Ibid*, 19. Emphasis in the original.

⁸⁴ Glenn's written statement in *ibid*, 4.

⁸⁵ Lyon 1901. Miller (1982, 184) misquotes this passage. See d'Ambruoso 2016 for a scanned copy of the original letter.

centuries. Paul Kramer (2006, 4) argues that “race as a mode of power and knowledge was a core element in the making of formal colonialism in the Philippines.” Albert Beveridge, the most outspoken pro-imperialist senator of the era, frequently invoked racially-infused language on behalf of his cause. According to Kramer (2006, 2), Beveridge believed that:

The American cause was nothing less than that of the “English-speaking and Teutonic peoples” whom God had prepared for “a thousand years” to become “the master organizers of the world,” possessors of what he had called, in the 1898 address, “the blood of government.” The enemy had also become more focused in Beveridge’s imagination as Filipino guerrillas disappeared into villages and forests. He urged his colleagues to “remember that we are not dealing with Americans or Europeans” but with “Malays” corrupted by “hundreds of years of savagery, other hundreds of years of Orientalism, and still other hundreds of years of Spanish character and custom.” What “alchemy,” he asked, “will change the oriental quality of their blood and set the self-governing currents of the American pouring through their Malay veins?”

Even McKinley’s phrase, “benevolent assimilation,” suggests hierarchy and paternalism resembling a “White Man’s Burden” tone typical of the times in which a ‘superior race,’ in its condescending magnanimity, offers a helping hand to the ‘lower races.’

Racism played a role specifically in motivations for the use of more hard-nosed war-fighting tactics. Certainly Major Parker’s letter to Roosevelt, with the comments about the need to get tough on a “half-civilized foe,” suggests the importance of race in characterizing the methods of the enemy. Soldiers and politicians frequently used racially-charged words like “savage” to describe the insurgents’ primary methods of war and justify a severe response. These apologists, Kramer (2006, 146) explains, “...claimed that the Filipinos’ guerrilla war, as ‘savage’ war, was entirely outside the moral and legal standards and strictures of ‘civilized’ war. Those who adopted guerrilla war, it was argued, surrendered all claims to bounded violence and mercy from their opponent.”

Kramer also finds evidence specifically connecting torturers with racist sentiments:

In 1902, Albert Gardner, in Troop B of the First U.S. Cavalry, composed comic works that made light of torture in a way that suggested familiarity and ease. The first, playing with the torture's name, was a mock-testimonial patent-medicine advertisement addressed to "My Dear Doctor Uncle Sam," by a certain "Mariano Gugu." The author complained of a recent bout of "loss of memory, loss of speach [sic] and other symptoms" of a disease called "insurrectos"; among other things, he "had forgotten where I placed my Bolo and my rifle." He had been miraculously cured with "only one treatment of your wonderful water cure." "No hombre's shack is complete without a barrel of it," he concluded in a postscript.⁸⁶

Gardiner also wrote an ode to the water cure that began, "Get the good old syringe boys and fill it to the brim / We've caught another nigger and we'll operate on him..."⁸⁷ Kramer notes the absence of any need, pretended or real, for gathering intelligence in the song, suggesting that racism and hatred are the primary motivators.

I agree that racism cannot be ignored. Soldiers' letters and diaries were peppered with references to "gugus" and "niggers".⁸⁸ Some even tried their hand at amateur racialized anthropology. For instance, Major Glenn compared Filipinos to the Indian insurgents that the British faced in 1857-8. "The East Indian resembles the Malay in certain racial characteristics, but in point of civilization and education and in many of the manly virtues our English friends state that they are so far superior to our Filipinos that a comparison is useless. It is fair, however, to make a comparison of them as to their treachery, duplicity, the wonderful power of collective secrecy and some other distinctly oriental characteristics."⁸⁹

⁸⁶ Kramer 2006, 140-141.

⁸⁷ Quoted in *ibid*, 141.

⁸⁸ See Miller 1982, especially Chapter 10, for several examples.

⁸⁹ Exhibit #31 in Glenn GCM 34401, 10.

Inadvertently, racism played a major role in Senator Henry Cabot Lodge's favorite explanation for atrocities during the war:

What is it which has led them to commit these atrocities which we all so much regret and over which we sorrow? I think I know why these things have happened. I think they have grown out of the conditions of warfare, of the war that was waged by the Filipinos themselves, a semicivilized people, with all the tendencies and characteristics of Asiatics, with the Asiatic indifference to life, with the Asiatic treachery and the Asiatic cruelty, all tintured and increased by three hundred years of subjection to Spain.⁹⁰

Though Lodge's sentiments may sound outrageous to modern ears, they were common at the time.

If racism (or revenge or hatred rooted in something else) were the primary motivator for torture, then we might expect to see many examples of torture without interrogation that Kramer finds in Gardner's water cure song. But there are not many. In the court-martial trials, all the defendants claimed to be seeking intelligence, and no one, including the prosecution, the prosecution's witnesses, or the judge, challenged the defendants on that point. All of the cases involved what all witnesses testified to be an interrogation setting. Ryan maintained that the interrogation stopped as soon as the prisoners confessed.⁹¹ Gaujot claimed, "I did not coerce them for my own gratification, but for the purposes of obtaining information..."⁹² There is no evidence that these claims are not true. The regularity with which torture matches with interrogation suggests that arguments based on racism, hatred, and revenge are incomplete at best.

Rational Choice and Desperation

⁹⁰ Quoted in Kramer 2006, 148.

⁹¹ Ryan GCM 31443

⁹² Judge Advocate General Davis' letter in Gaujot GCM 30756, 5.

Linn argues that torture did not occur at random. “Unlike executions, which usually were retaliatory, torture had a very practical motive – it was used to secure information or extort confessions.”⁹³ A “thin” rational choice model that does not evaluate actors’ beliefs for their soundness provides a very simple explanation for torture: certain actors believed torture to be the best means to a given end. This argument gets extra force given soldiers’ beliefs that insurgents would kill any Filipinos that cooperated with Americans voluntarily, but they would forgive those who divulged information under torture. Taft even reported to a Senate committee that “there were some amusing instances of Filipinos who came in and said they would not say anything unless tortured; that they must have an excuse for saying what they proposed to say.”⁹⁴ Strangely, Taft’s testimony implies that American torture was rational because *Filipino insurgents* believed that it was effective – too effective to fault their brethren for breaking under its yoke.

Soldiers used torture later in the war, suggesting that it may have been a “strategy of later resort,” to use Alexander Downes’ phrase. The argument that the United States turned to torture out of strategic desperation has timing problems, however. Torture was most prevalent at the end of the war when the writing was already on the wall for the insurgency. Torture under Chaffee’s appointments, in addition to the other harsh counterinsurgency tactics by Bell and others, occurred after the Americans had captured Aguinaldo and much of the insurrection had given up. Perhaps American soldiers and politicians were desperate for the war to be over, but they were not facing imminent defeat at any point, and certainly not in mid-1901 or later.

There is also little evidence that soldiers updated their beliefs and preferences according to torture’s results. Ryan testified that the presidente “admitted what I already knew” under

⁹³ Linn 2000, 222.

⁹⁴ Quoted in Miller 1982, 213.

torture.⁹⁵ This makes Ryan's necessity defense strange, since he needed only consult his own memory to replicate what the detainee produced. Glenn described his use of the water cure against Ealdama as only slightly successful, but even this appears to be an exaggeration. Ealdama was supposed to lead a group of American soldiers to an insurgent camp. Instead, the party only caught glimpses of insurgents, and nothing came of the semi-encounter. Overall, I saw no evidence of soldiers carefully evaluating the water cure for effectiveness.

The search for the "middle ground" interrogation tactics that were sufficiently harsh but did not go too far has rational choice elements. Soldiers were looking for a method that fit the bill, according to their beliefs. Yet the rational choice argument by itself seems incomplete, because it skips over what may be the most interesting part: the origins of those beliefs. As I argue above, norms structure and shape the search for middle ground methods, enough to make a rational choice argument appear incomplete by itself.

Domestic Politics

The election of 1900 mattered to both sides of the war. The Philippine resistance leaders stepped up the guerrilla campaign in the months leading up to the election hoping turn the American people against the war. These leaders hoped that the Americans would show their dissatisfaction by voting for William Jennings Bryan over McKinley. In August of 1900, a Filipino general implored his soldiers, "Let us for a little while longer put forth heroic deeds of arms ... McKinley falls by the way side, the people abandon him and incline to the political party of Mr. Bryan whose fundamental teaching is the recognition of our independence."⁹⁶ The move was risky, and it ultimately backfired: "[B]y tying independence to the election, the

⁹⁵ Ryan GCM 31443, 129.

⁹⁶ Quoted in Linn 2000, 187.

revolutionaries increased their short-term appeal, but at the cost of widespread demoralization when McKinley was reelected.”⁹⁷

The US Army, unsurprisingly, experienced the opposite effect. In the lead-up to the election, the Army tried to keep the war news quiet. Then, when the potential for electoral accountability was in the rear-view mirror, MacArthur and company ramped up coercive measures. This was not purely in reaction to insurgent tactics; the guerrilla war had been ongoing for almost a year. It wasn't out of desperation, either; the defeat of Bryan put the wind at the US Army's back. The election governed the timing. MacArthur's official announcement came in December 1900, but as Glenn recalled while on trial, MacArthur met with his top officers and plans were leaked immediately after the election.⁹⁸

The election mattered for torture as well. Torture only became widespread after the election, but it is not clear why. Perhaps soldiers feared that any revelations of abuse would prompt campaign-pressured politicians to call for their heads. Maybe the Army wanted to avoid casualties before the war, which caused it to be more cautious, which in turn presented less need for prompt intelligence, reducing the urge to torture. The latter seems more likely. Officers under MacArthur believed that Army policy was “much influenced by fear of what the newspapers may say and its possible effect upon the election.”⁹⁹ Finally, it may have been difficult to plan effective campaigns because a victory for Bryan could have resulted in a reversal of overall strategy.

Whatever the case, American torture in the Philippines did not occur by popular demand. While the White House may have considered recalling MacArthur from duty close to the time of

⁹⁷ Ibid. See also Gates 1973, 161-163.

⁹⁸ Glenn GCM 30755.

⁹⁹ Quoted in Linn 2000, 213.

the election because of “his apparent passivity and his failure to communicate his plans,” there is no evidence that McKinley or Roosevelt felt the need to appoint someone who would bend or break rules because of electoral concerns. The lack of accountability, especially the substantial autonomy of local commanders, seems to be positively correlated with the frequency of torture. The further an actor was from electoral accountability, the more likely he would be to support torture. Hence, the elected officials and the commanding officers never condoned it, the officers below the commanding officers “winked” at it, and local commanders sometimes advocated and practiced it. This gives some credence to Wallace’s speculation that the fragmentation of forces in counterinsurgencies can reduce accountability and lower barriers to detainee abuse.

Organizational Culture

Torture was not embedded in the US Army’s organizational culture at the beginning of the war. If it had been, the army would have been torturing detainees right away. Even in counterinsurgency mode after 1899, soldiers did not automatically start torturing people.

Yet torture grew on certain members of the army, and became something the army simply did in spite of its own leadership. A letter from Henry T. Allen to another officer suggests as much:

You, as well as I, know that in bringing to a successful issue was measures out here certain things will take place not intended by higher authorities; that the ‘watercure’ and other unauthorized methods will be resorted to in spite of the strictest instructions. I have heard that under me, although against my orders, the ‘watercure’ and other measures just as bad, or worse, were adopted, and probably under you the same; moreover, it can be said that such things have taken place under all commanders out here.¹⁰⁰

¹⁰⁰ Quoted in Linn 2000, 223.

Allen may have been exaggerating about the extent of abuse to cover any shortcomings he might have had as a leader. Still, the inevitability of detainee abuse was part of the narrative both the army and its civilian oversight told themselves.¹⁰¹

While torture was not an explicit part of the army's organizational culture, vigorous fighting was. General Young spelled out the idea in a speech near the end of the war: "To carry on a war, disguise it as we may, is to be cruel; it is to kill and burn, burn and kill, and again kill and burn. If such an adjective as humane can be applied to war, I would define a humane war as a short war, which is in fact furious and bloody from the very beginning, the more furious a war is in the beginning, the shorter it will be and the less will be the eventual loss of life and property."¹⁰² Young's philosophy lacks some internal consistency. He claims that the "American army is the most humane army that ever waged war,"¹⁰³ but he implies that this is because of the army's forbearance, not its ruthlessness. Young is confident that "our little Jap friends" and "the aggressive army of our German friends" would have ended the war much sooner.¹⁰⁴ The lack of internal consistency is beside the point, however; what matters is what the army told itself, true or not.

The army shared much of Young's beliefs. Brig. General Bell, a barometer for wider sentiments because of his enormous popularity in the army, wrote in a generally circulated telegraph, "A short and severe war creates in the aggregate less loss and suffering than a benevolent war indefinitely prolonged." For this reason, Bell advocated a highly coercive policy that would make resisters "want peace and want it badly."¹⁰⁵

¹⁰¹ See Bell 2000; Root 1916.

¹⁰² Young 1902, 6.

¹⁰³ Ibid, 4.

¹⁰⁴ Ibid, 6.

¹⁰⁵ Bell 1901.

One reason for this “severe war” culture was the army’s admiration for William Sherman, who once said, “War is cruelty. There is no use trying to reform it. The crueller it is, the sooner it will be over.”¹⁰⁶ The connection to torturers in the Philippine-American War is clear: In his written defense, Edwin Glenn spent pages quoting Sherman on the classification of detainees as guerrillas and criminals rather than prisoners of war.¹⁰⁷ In a separate trial, Glenn also presented his superiors’ orders, which sound very much like Bell’s: “The policy to be pursued in this Brigade, from this time on, will be to wage war in the sharpest and most decisive manner possible...short, severe wars are the most humane in the end.”¹⁰⁸ Glenn tried to fit his use of the water cure into the army’s vigorous fighting culture, arguing that he chose the morally superior and “humane” route, since his action “directly resulted in the saving of many human lives and directly injured no one.”¹⁰⁹

The organizational culture argument is most convincing in this case when combined with the “cheaters win” argument, because the latter partly informs the content of the former. Soldiers encouraged each other to pursue a short and severe war from both a practical and an ethical standpoint. Some intelligence officers applied severity to interrogation, a small and unsurprising leap given the context that the culture created.

Conclusion

Contrary to historian Paul Kramer’s (2006) assessment, the United States did not wage a “war without limits” in the Philippines, even after things heated up in late 1900. Limits mattered, though not in a straightforward way. Lack of norm specificity allowed actors to argue

¹⁰⁶ Quoted in Risjord 2002, 143.

¹⁰⁷ See Glenn and Russell’s written statement in Glenn GCM 30755.

¹⁰⁸ “Exhibit 1” in Glenn GCM 34401.

¹⁰⁹ Glenn’s written statement in Glenn GCM 30755, 10.

that the water cure was merely mild punishment, and to downplay its importance by comparing it favorably to what the enemy was doing. Limits also defined what it meant to use “the sternest measures.” They helped to convince some actors that the United States would have to do as the adversary does or risk being stifled by their own rules. “Limits” – that is, norms and laws – can still structure the decisions of those who appear to operate without them.

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Chapter 4: Tracing and Explaining US Torture in Vietnam

Introduction

To call torture from the early Cold War up to and including the Vietnam War a single case would exaggerate the closeness of the connections between the earliest and latest examples of abusive interrogation. Still, there are reasons to group the CIA's 1950s behavioral control program with its use of coercive interrogation in Vietnam in the 1960s and 1970s. In fact, the interrogation techniques used by the CIA in Vietnam late 1972 and early 1973 are traceable to the CIA's predecessors and founding. The CIA also coordinated with the US militaries on detention and interrogation, though most military torture had separate origins. While the CIA has done many other things, and many of them legitimate and even mundane, torture haunts much of the CIA's history like a stubborn shadow.

I demonstrate below that the U.S. government, through the CIA, pushed the ethical envelope with its behavior control and torture programs because prominent thinkers worried that their enemies' unscrupulousness put the United States at a disadvantage. When the CIA and the US military applied these and other coercive techniques in Vietnam, some justified their acts by contrasting their own behavior with that of the Vietnamese, both South and North. The evidence is mixed, however. Some of the soldier's interrogation techniques were probably as much about revenge and racism gathering intelligence. Moreover, several CIA and military interrogators tried to hide from monitors, and seemed to have little faith in trying to justify their acts through minimization and euphemisms. So while my main arguments receive some support in this chapter, the evidence corroborates other claims as well.

Along the way to explaining the mind control and torture program, I hope to make a contribution to the study of US Cold War foreign policy more generally. Both Truman and Eisenhower were afraid of what the Cold War might compel free societies to do. Truman feared that the CIA would become a Gestapo-like secret police, and he appeared to hope that the CIA would stick to simple intelligence reporting. Eisenhower was afraid of the United States becoming a garrison state. For the latter, the CIA was just the ticket for waging a cost-effective, largely clandestine Cold War that might need to run afoul of accepted norms of the time, but would keep most of the American public's innocence and freedom intact.

The next section gives an overview of the early Cold War through the Vietnam War, and American torture therein. After that, I explore how far realism, the long-dominant explanation for Cold War relations among superpowers, can take us in understanding the CIA's mind control and torture programs. I then examine evidence for realism's alternatives. The chapter concludes with some thoughts on the connection between this case and the next one.

The Early-to-Mid Cold War

The Central Intelligence Agency grew out of the Office of Strategic Service (OSS), an intelligence agency set up during, and exclusively for, World War II. The OSS engaged in intelligence reporting, spying, counterespionage, and special operations under the direction of General William J. Donovan. The OSS conducting many daring missions, including parachuting teams behind enemy lines and delivering arms to fortify pockets of resistance. When it was dissolved at the end of World War II, many of its members and fervent supporters despaired. They envisioned a permanent intelligence agency to counter the emerging primary threat, the Soviet Union.

After intense lobbying, the Central Intelligence Agency was created through the National Security Act of 1947. The act included a crucial loophole – it authorized the CIA to perform “such other functions and duties related to intelligence affecting the national security as the National Security Council may from time-to-time direct.” These “other functions and duties,” mostly clandestine operations, would become the main focus of the CIA, involving the majority of the agency’s people and financial resources.¹

Some of those functions and duties included experiments in mind control. The CIA had been greatly influenced by the show trials under Stalin, and more recently Joseph Cardinal Mindszenty’s almost-hypnotic, false confession of treason in Budapest in 1949. Perceptions that other communists such as the North Koreans and Chinese were involved in mind control also played a role in the CIA’s decision to begin its own research.² The projects on mind control took on various names, including BLUEBIRD, ARTICHOKE, and the most well-known one, MKULTRA. Much of what is known about these programs comes from a FOIA request by author John Marks in the 1970s. Marks’ request turned up seven previously overlooked boxes of material on MKULTRA and its predecessor. The documents were mostly accounting data of minimal value, though they do fill in some parts of the story. (Richard Helms, longtime overseer of behavioral control research and Director of Central Intelligence in the early 1970s, ordered most of the material on MKULTRA destroyed in 1973.) Hearings from the middle of same decade led by Senator Frank Church (a.k.a., the Church Committee) are also informative.

These projects consisted of various experiments, some of which now sound strange and almost comical. The most well-known tests involved giving LSD to unwitting subjects, with the hope of using the drug in interrogations. The CIA also used a number of other drugs, including a

¹ Weiner 2007, 32.

² *New York Times* 1977.

combination of stimulants and depressants, as well as the drug that became known as the “truth serum,” sodium pentothal.³ The connection to interrogation is direct: The drugs were meant to “cause mental confusion of such a type that the individual under its influence will find it difficult to maintain a fabrication under questioning.”⁴ Some of the first subjects – that is, drug recipients – in the series of mind control programs were North Korean detainees in real interrogations.⁵ The military did some LSD testing in the 1950s as well, with similar intentions. “The record also shows, however, that few if any Americans other than those working with the CIA had access to LSD in the early 1950s.”⁶

Paralleling the drug testing, another set of techniques emerged as a result of the CIA’s obsession with communist mind control. The CIA and the military hired Lawrence Hinkle and Harold Wolff, two doctors from Cornell University’s Hospital in New York City, to study the methods that produced the show trials and docile, compliant captives in Russia, China, and North Korea. Hinkle and Wolff first shared their results privately with Allan Dulles and others at the CIA, and then published them in a medical journal. Hinkle and Wolff looked through agency files on the subject and also interviewed former communist interrogators and prisoners. Interestingly, they did not find that the communists used drugs, hypnosis, or any other “magical weapons” for drawing out confessions,⁷ as earlier observers had expected.⁸ Rather, through systematic isolation, a deadening routine, and removal of mental and sensory stimuli (see Table 1), prisoners broke down until they welcomed the chance to confess, however falsely, and in

³ Marks 1979.

⁴ Quoted in Smith 2003, 170.

⁵ Marks 1979, 19.

⁶ *Kronisch v. United States* 1998.

⁷ Marks 1979, 128

⁸ See, for instance, Janis 1949. Quoted in McCoy 2006, 22-23.

some cases even with the promise of a death sentence.⁹ Interestingly, the authors describe the treatment as “torture,” but only in a passing sentence on the ninth page of their study.¹⁰ Although the LSD testing got more attention when it was revealed, the isolation and sensory deprivation techniques that Hinkle and Wolff describe would have more lasting impact in both manuals and actual interrogations.

Table 2: "The Detention Regimen" practiced by the Soviets, according to Hinkle and Wolff (1957, 605).

1. Total Isolation: No Communication of any Sort with any Person
2. Cell: 6 x 10—Barren—No View Outside—Light in Ceiling Burns Constantly
3. Rigid Regimen—Strict Time Table. For Example:
a. Early Rising
b. Short Time for Washing
c. Eat—(No Utensils)
d. Sit—(Fixed Position)
e. Exercise—(Walk Alone)
f. Sit—(Fixed Position)
g. Eat—(No Utensils)
h. Sit—(Fixed Position)
i. Sleep—On Back, Hands Out, Face to Light
4. Immediate Punishment for Infractions
5. Food: Plain, Distasteful—Just Sufficient to Sustain Nutrition—Sometimes Excessively Salty
6. Elimination: Slop Jar in Cell—Removed for Infractions—Thereafter, Taken to Latrine only at Pleasure of the Guard
7. Temperature: May be Hot, or Cold and Damp
8. Pain May Result from Fixed Positions During Sleep and When Awake

In the early 1960s, the CIA secretly issued the KUBARK interrogation manual. The manual sometimes eschews physical methods, but it does include a section on the use of “Coercive Counterintelligence Interrogation of Resistant Sources.” Techniques include sensory deprivation, use of drugs and hypnosis, and positional tortures such as forced standing that

⁹ Hinkle and Wolff 1957. Note that the communists were trying to intimidate prisoners and elicit confessions, not gather accurate intelligence. The CIA was more interested in behavioral control and intelligence-producing interrogation, but agency members either did not make this distinction or believed that they could appropriate the enemy’s methods to their ends.

¹⁰ Ibid, 9.

makes the detainee believe that the pain is self-inflicted.¹¹ The overall intended effect is one of “regression” in which layers of personality are peeled back in an attempt to undo those elements of the person that facilitate resistance. Several of the methods described made appearances in Vietnam, in the 1983 CIA manual used to train military and police forces in other countries, and in the war on terror after the September 11 attacks.

The most notorious early case of the CIA’s efforts to put its research into practice involved the KGB officer Yuri Nosenko. Nosenko defected to the United States in 1962, and although he had proved his worth by exposing a high-level mole in Western Europe,¹² his handlers still believed that he might be a KGB plant. They subjected him to solitary confinement under constant lights and constant watch for more than three years. He was given nothing to read. He made calendars and chess sets out of lint on the floor of his cell, but these basic occupations were swept away when he was forced to clean his room. He suffered hallucinations from isolation, a result that echoed some Soviet prisoner responses to similar treatment.¹³

Some authors draw a straight line from the behavioral control experiments through Vietnam (and beyond), suggesting that these markers are all part of a single story about the CIA’s obsession with the use and dissemination of torture and mind control. For example, Alfred McCoy (2006, 64) argues, “From its overall strategy to its specific interrogation techniques, [the] Phoenix [Program, a CIA and South Vietnamese collaboration featuring torture and targeted killings] was the culmination of the CIA’s mind control project.” Though the connections are imperfect with respect to the use of drugs, McCoy is right that Wolff and Hinkle’s findings turned into CIA interrogation practices in Vietnam. The CIA also relied

¹¹ CIA 1963.

¹² U.S. House of Representatives 1978.

¹³ Ibid. See also Marks 1978, 145-146.

heavily on simply looking the other way while the South Vietnamese used bare-fisted techniques. The CIA saved its more tightly-controlled program for detainees that it deemed to be of higher value.¹⁴ Here agents practiced some of the sensory deprivation methods outlined in KUBARK.

The US military did its share of torturing in the Vietnam War, sometimes in connection with the CIA's Phoenix Program, and sometimes separately. Everyone seems to agree that torture by both the North and South Vietnamese was widespread, and the United States often turned a blind eye to its ally's brutal methods. How much the US military actively participated is more hotly contested. Some, like Nick Turse (2013) and Douglas Valentine (2000), suggest lots of American torture, with at least an off-the-record blessing from higher-ups. Others, such as Guenter Lewy (1978) and Mark Moyar (1997), believe direct US participation was more limited and rarely if ever encouraged by high-level officers or their civilian overseers.

Much of what is known about American torture in Vietnam comes from soldiers' testimony in various contexts. Lawyer and activist Mark Lane's book *Conversations with Americans* is made up mostly of interviews in which soldiers confess to torturing and killing Vietnamese soldiers and civilians.¹⁵ Together with other journalists and scholars who were unsympathetic to the United States' posture in Southeast Asia, Bertrand Russell headed an international tribunal on American war crimes in Vietnam.¹⁶ Veterans also testified either directly before Congress, or, in the case of the "Winter Soldier" gathering in Detroit, had their testimony read into the Congressional record.

¹⁴ Duffett 1968, 437.

¹⁵ Lane's book has come under serious criticism. See especially Sheehan 1970.

¹⁶ The proceedings for the Russell Tribunal are reprinted in Duffett 1968.

Darius Rejali (2007, 176) carefully and critically reviews the testimony, removes the likely fabrications, and presents the following helpful summary.

American electro-torture in Vietnam began with some military interrogators adopting magneto torture in the Mekong region between 1963 and 1964. This technique, particularly the use of field telephones for interrogations, spread among American units, peaking around 1967 or 1968 ... Interrogators also adopted other clean techniques, such as slapping and stress positions, and after My Lai and similar scandals that publicized magneto and water torture in Vietnam, some of these lesser-known techniques became more prominent. Torture techniques migrated stateside, appearing sometimes in military training exercises. They were also discussed informally after interrogation training or indirectly through courses training soldiers to resist torture.

Rejali argues that both the testimonies and the government record actually paint a somewhat similar picture: clean techniques using electricity and water, mid-level commander approval or intentional neglect, and no evidence of overall approval of military torture by Washington, DC. Finally, as is usually the case, “just how widespread [torture] was among military interrogators will be impossible to determine.”¹⁷

Notice that Rejali does not say that the military torture techniques began with the CIA’s behavioral control research; most of them did not. Donald Duncan, another military interrogator in Vietnam, testified to the Russell Tribunal that he and his classmates received training in Russian secret police methods, including both “psychological” techniques (like isolation, temperature control, etc.) and more physical methods. But he also says that soldiers “were not interested in using [psychological methods, Russian or otherwise], they weren’t properly motivated to use them, they were tremendously unsuccessful using them, and ... they reverted to the physical methods of interrogation.”¹⁸

¹⁷ Rejali 2007, 177.

¹⁸ Quoted in Duffett 1968, 465.

Since the military and CIA techniques and programs follow separate, if parallel, tracks, their causes are best considered separately (and in parallel). I do this below, starting with realist explanations for the CIA's torture policy during the early Cold War.

Realism's Home Turf

It's hard to think of more comfortable terrain for structural realists than explaining the behavior of the two superpowers during the Cold War. Realists have persuasive explanations for why the United States was preoccupied with the Soviet Union and vice versa,¹⁹ why the Cold War stayed cold,²⁰ and why the most crucial front lines of the Cold War were stable.²¹ As Waltz puts it, structural realism is only meant to explain "a small number of big and important things;"²² it is "certainly no good on detail."²³

Yet realists do not always keep to their self-imposed limits. For instance, Waltz, in describing great power behavior during the Cold War, gets into some finer details of foreign policy, supposedly as a result of structural factors:

Because throughout most of the years since the second World War the United States and the Soviet Union were similarly placed by their power, their external behaviors should have shown striking similarities. Did they? Yes, more than has usually been realized. The behavior of states can be compared on many counts. Their armament policies and their interventions abroad are two of the most revealing. On the former count, the United States in the early 1960s undertook the largest strategic and conventional peace-time military build-up the world has yet seen. We did so even as Khrushchev was trying at once to carry through a major reduction in the conventional forces and to follow a strategy of minimum deterrence, and we did so even though the balance of strategic

¹⁹ Waltz 1988, 622.

²⁰ Gaddis 1986; Waltz 1988, 620-627.

²¹ Jervis 1986, 694-695.

²² Waltz in Keohane 1986, 329.

²³ Waltz 1979, 70.

weapons greatly favored the United States. As one should have expected, the Soviet Union soon followed in America's footsteps, thus restoring the symmetry of great-power behavior.²⁴

The realist argument for why the United States and the Soviet Union engaged specifically in the kind of nuclear arms race that it did is not so clear, however. There is nothing inherent to realism that expects states to generate huge stockpiles way out of proportion with any reasonable state goal one can imagine, regardless of the international environment. Just because two states with different domestic political systems followed the same policy does not mean that international structure or the need for survival compelled such behavior. Realists are at least as likely to expect states to behave as Waltz recommends when discussing what comprises a sufficient nuclear deterrent in other work.²⁵ Realism lacks determinacy here; if the Soviet Union, the United States, or both had decided on a smaller nuclear arsenal to provide an efficient minimal deterrent along the lines of China, then realists would have expected that, too.

Realism needs a little explanatory help in our nuclear stockpiles example. One “assisting” explanation from Robert Jervis adds some psychological content to the mix. Jervis suggests that part of the development of a large arsenal was about impressing oneself, leading to a kind of self-fulfilling prophecy about gaining advantage:

Secretary of State Alexander Haig argued that “perceptions of the military balance ... affect the psychological attitude of both American and Soviet leaders, as they respond to events around the globe.” Thus it is of more than passing interest that President Ronald Reagan insists that his administration has rectified the previous imbalance of strategic forces. That objective analysis of the balance would not lead to this conclusion is not important. What is, is that Reagan has impressed not only the Russians, but also himself, and that if he acts as though the Russians do not have

²⁴ Waltz 1991, 667.

²⁵ Waltz 1990. Waltz argues that a much smaller deterrent force would have been sufficient for both sides in the Cold War.

a significant advantage, then in fact they will not gain much of an advantage.²⁶

Jervis' explanation is mostly consistent with realism, but it goes further. Structural realism can tell us why the Russians and the Americans were preoccupied with each other, but details about why the countries went about their preoccupation in the way they did requires theories and explanations that sacrifice parsimony for the sake of a richness.

So it is with explaining how the United States developed a mind control program, which led to a torture program, in the early part of the Cold War. Realists would not be surprised by such a development. As Stephen Walt explains regarding torture, "Realism depicts international politics as a rough business, and in the absence of a central authority that can enforce moral or legal constraints, realists expect most states will be willing to cross these lines on occasion."²⁷ Anarchy provides only a permissive condition here, however. If the United States had renounced a behavioral control program as ridiculous and inefficient, and focused those resources on developing (or continuing to develop) a top-notch interrogation program based on the best available rapport methods of the time, I suspect realists – especially the ones who emphasize the rational side of realism²⁸ – would not have been surprised about that, either.

Evidence

Desperation (or Frustration?)

Although, like realism, there are theoretical reasons to doubt the desperation argument's determinacy, desperation can give us a start in explaining the development of a behavioral control program. CIA officials saw their situation in desperate terms. Long after his time

²⁶ Jervis 1986, 699.

²⁷ Walt, "Realism on the Rack."

²⁸ See, for instance, Mearsheimer 2001.

heading up covert operations for the CIA, Michael Burke told John Marks (1979, 28), “One was totally absorbed in something that that has become misunderstood now, but the Cold War in those days was a very real thing with hundreds of thousands of Soviet troops, tanks, and planes poised on the East German border, capable of moving to the English Channel in forty-eight hours.” With regard to LSD and the suspicion that Russian scientists had developed an offensive capability with it, one officer testified, “[It] is awfully hard in this day and age to reproduce how frightening all of this was to us at the time, particularly after the drug scene has become as widespread and as knowledgeable in this country as it did. But we were literally terrified, because this was the one material that we had ever been able to locate that really had potential fantastic possibilities if used wrongly.”²⁹ Agency official Hugh Cunningham sums up the mood: “What you were made to feel was that the country was in desperate peril and we had to do whatever it took to save it.”³⁰ Cunningham’s remarks show how the desperation argument shades into the “cheaters win” explanation – “whatever it takes” always means extreme measures, never modest ones. The “cheaters win” evidence presented below continues the theme: actors were desperate, and acceptable practices were deemed insufficient for Cold War-sized challenges.

US soldiers in Vietnam also became desperate at times. Peter Martinsen, an interrogator in the war, described how his fellow interrogators felt about their work: “They had been trying to rationalize and say: ‘I’d rather torture one Viet Cong than have one of my friends die because we didn’t get some vital information.’ This was a very common rationalization.”³¹ Martinsen reported being under a lot of pressure from officers above him to produce results. “They kept

²⁹ US Senate 1976, 392-393.

³⁰ Quoted in Marks 1979, 28.

³¹ Testimony of Peter Martinsen, in Duffett 1968, 432.

telling me, ‘You must get information now. *Now!*’³² Under this pressure, Martinsen and his fellow interrogators tortured prisoners, usually with beatings or electricity from field telephones, to try to get them to talk.

In explaining times when he would take coercion to another level, Martinsen describes his own feelings in a way that is close to, but not quite captured by, desperation. When Martinsen’s unit picked up an armed Vietnamese man, he “started the interrogation. My interpreter was beating this man with a wooden mallet...on the knee-caps and shoulder blades ... This didn’t yield much information. We were being watched by my commanding officer and I got *very frustrated*. I decided to try out a new idea. I had the man dig his own grave with a gun at his head, and he dug his grave until I counted off the minutes that he had to live.”³³ Martinsen also uses the word “frustrated” to describe a fellow interrogator’s decision to stick bamboo splinters beneath a detainee’s fingernails.³⁴ Frustration is not simply reducible to desperation. Perhaps US interrogators and their superiors started out as desperate, but soon exasperation and anger took over. In this way, the desperation argument takes a few steps toward the revenge explanation. Although Martinsen is not referring to specific retribution, both desperation and a desire for revenge share anger as a potential intermediate step on the way to torture.

The “Cheaters Win” Argument

The CIA’s belief that cheaters have the advantage was first the OSS’s belief. Donovan, the director of the OSS, told the head of the OSS’s Research and Development branch, Stanley Lovell, “I need every subtle device and every underhanded trick to use against the Germans and

³² Ibid, 428. Emphasis is in the original.

³³ Ibid, 430. Emphasis added.

³⁴ Ibid, 428.

Japanese—by our own people—but especially by the underground resistance programs in all the occupied countries. You’ll have to invent them all, Lovell, because you’re going to be my man.”³⁵ The fact that Donovan says that he wanted Lovell to look at *every* underhanded trick suggests that he believed deviousness to have some inherent utility. This wasn’t the only appeal of OSS work, however. Lovell seemed to get special pleasure from doing unscrupulous work, and he figured that others would, too. He writes that his strategy for recruitment was “to stimulate the Peck’s Bad Boy beneath the surface of every American scientist and to say to him, ‘Throw all your normal law-abiding concepts out the window. Here’s a chance to raise merry hell.’”³⁶ Though some scientists may have been drawn to hell-raising, Lovell saw utility in circumventing laws.

Following the war, President Harry Truman was uncomfortable with a peace-time intelligence agency. He told an advisor: “[W]e have to guard against a Gestapo . . . You must be careful to keep [national defense] under the control of officers who are elected by the people...”³⁷ Truman understood that because intelligence gathering is necessarily done in secret, any agency put in charge of intelligence could also be a clandestine arm of the U.S. government, beyond the corrective reach of a democratic populace. He finally relented and inaugurated the first Director of Central Intelligence, Sidney Souers, in charge of the Central Intelligence Group (CIG), a chronological bridge between the OSS and the CIA. Truman invited Souers and Admiral William Leahy to a lunch and an “induction ceremony.” Leahy recalls: “At lunch today in the White House, with only members of the Staff present, Rear Admiral Sidney Souers and I were presented [by President Truman] with black cloaks, black hats, and wooden daggers, and

³⁵ Quoted in Marks 1979, 10.

³⁶ Quoted in Ibid, 11.

³⁷ Quoted in Jeffreys-Jones 1989, 30.

the President read an amusing directive to us outlining some of our duties in the Central Intelligence Agency [sic], ‘Cloak and Dagger Group of Snoopers.’”³⁸ The implication of this satire is clear: Truman foresaw that the CIA would be the place to which politicians would turn to do distasteful deeds in the name of national security.

Some early proponents of an independent intelligence agency viewed the extra-legal character of clandestine operations as a necessary and integral component of quality intelligence-gathering right from the start. One was General John Magruder, director of the Strategic Services Unit, another forerunner to the CIA. According to Magruder, “Clandestine intelligence operations involve a constant breaking of all the rules of correct procedure according to which the regular government departments must operate. To put it baldly, such operations are necessarily extra-legal and sometimes illegal. No regular government department, be it War, State or Navy, can afford to house such operations within itself or otherwise identify itself with them. Independence of association with them is therefore essential.”³⁹ Magruder believed that part of an independent intelligence agency’s *raison d’être* was its value as a vehicle for activities that flirted with lawlessness. James Angleton, a longtime counterintelligence officer with the CIA, would echo the sentiment years later in the Church Committee hearings: “[I]t is inconceivable that a secret intelligence arm has to comply with all the overt orders of the government.”⁴⁰ Magruder maintained that even the Truman White House tacitly understood that this is what the CIA should do, but there is little evidence for this assertion.⁴¹

The preceding evidence (and much of the evidence that follows) does not assume that individuals speaking and writing of clandestine operations were talking about behavioral control

³⁸ Central Intelligence Agency 2008.

³⁹ Magruder *undated*.

⁴⁰ Quoted in Holzman 2008.

⁴¹ Weiner 1997, 14.

at the same time. Rather, I am suggesting that many early supporters and (eventual) members of the CIA believed that the United States would be at a disadvantage vis-à-vis other countries (especially the Soviet Union) if it did not have a way to perform functions on and outside of the boundaries of what was considered acceptable and lawful behavior. The CIA became that “way.” The cheaters win and organizational arguments blend here: a certain tolerance for lawlessness defined the CIA’s organizational culture. This is the context in which the behavioral control research programs emerged.

Interest in human experimentation dates at least back to the waning of World War II. American officials searched Germany and the rest of Europe for Nazi scientists and their findings. Chemical and biological weapons research were of particular interest, as was the science behind the V2 rockets, among the most advanced in the world at that time. One part of the United States’ interest was simply to make sure other countries did not get their hands on these things – and guarantee that Germany wouldn’t retain them. The other part was that intelligence officials and parts of the United States military wanted to use German research to improve offensive capabilities. This is why, under the names Operation Overcast and Operation Paperclip, the United States imported several German scientists (many of whom might otherwise have been convicted of war crimes) along with their written records.⁴²

The CIA and the US military were especially interested in Nazi scientists because of their experiments on humans. Six medical doctors that experimented at Dachau contracted with the United States after the war to develop behavioral control methods.⁴³ American facilitators may have been convinced that a certain Nazi-like ruthlessness was just the ticket for the harsh environs of mid-twentieth century international politics. Eisenhower would echo this sentiment

⁴² Cockburn and St. Clair 1998, chapter 6.

⁴³ Jacobsen 2014.

with regards to Germany's wartime economy a few years later when he was president: "We could lick the whole world if we were willing to adopt the system of Adolph Hitler."⁴⁴ Though Eisenhower worried about the implications of a permanent war economy for American democracy, he saw instrumental value in a more unencumbered, aggressive national posture.

Central figures of the early Cold War suspected that in some aspects of the great power struggle, the Soviet Union had the upper hand because it was not bound by accepted norms of conduct or the corrective force of public opinion and the vote. The authors of NSC-68, for example, claim that "[t]he free society is limited in its choice of means to achieve its ends," since it must use force only as a last resort. Meanwhile:

The Kremlin is able to select whatever means are expedient in seeking to carry out its fundamental design. Thus it can make the best of several possible worlds, conducting the struggle on those levels where it considers it profitable and enjoying the benefits of a pseudo-peace on those levels where it is not ready for a contest. At the ideological or psychological level, in the struggle for men's minds, the conflict is worldwide. At the political and economic level, within states and in the relations between states, the struggle for power is being intensified. And at the military level, the Kremlin has thus far been careful not to commit a technical breach of the peace, although using its vast forces to intimidate its neighbors, and to support an aggressive foreign policy, and not hesitating through its agents to resort to arms in favorable circumstances.⁴⁵

The Soviet Union, unbound by any norm or corrective, would have the advantage of choosing the most expedient means and timing. George F. Kennan's famous telegram from Moscow also hints at the advantages of foreign policy untethered by norms and laws: "[T]he [Soviet] leadership is at liberty to put forward for tactical purposes any particular thesis which it finds

⁴⁴ Gleason 1953.

⁴⁵ National Security Council 1950, Part IV. The NSC-68 authors do argue that free societies have some advantages in the struggle, however; they emphasize the greater appeal of free societies which they hope will attract a wider set of allies.

useful to the cause at any particular moment and to require the faithful and unquestioning acceptance of that thesis by the members of the movement as a whole.”⁴⁶ Kennan, however, also believed the Soviet Union to be at distinct disadvantages as well – hence his belief in the policy of containment, justified by the notion the Soviet Union would eventually unravel on its own.

Both Truman and Eisenhower were worried about the dangers that the requirements of fighting the Cold War would have for democracy. The belief that following democratic norms would hinder the United States’ ability to fight the Cold War suggests a trade-off between standards and effectiveness. The case of Truman also shows the limits of the “cheaters win” argument: Such a belief by itself may not be sufficient to determine behavior. Truman fought to weaken the CIA for much of his tenure, and he criticized the agency for going too far a decade after his presidency was over.⁴⁷

Eisenhower was much keener on using the CIA. As biographer Stephen Ambrose (1983, 111) puts it, Eisenhower believed that “nuclear war was unimaginable, limited conventional war unwinnable, and stalemate unacceptable. That left the CIA’s covert action capability.” Under the leadership of Eisenhower’s pick Alan Dulles, the CIA expanded its mind control research considerably with the development of the MKULTRA program. It’s not clear how much Eisenhower knew about MKULTRA,⁴⁸ but his willingness to choose the CIA for semi-lawless deeds suggests that he at least set the tone.

⁴⁶ Kennan [X] 1947, 573.

⁴⁷ Truman 1963.

⁴⁸ Given the number of informal conversations that Eisenhower had with the Dulles brothers, he almost certainly knew about some of the details of MKULTRA. He once reassured a congressman that “[t]here is a very great aggressiveness on our side that you have not known about and I guess that is on the theory of why put burdens on people that they don’t need to know about.” He confessed that he “knew so many things that I am almost afraid to speak to my wife.” Quoted in Thomas 2012, chapter 10.

To keep close tabs on his favorite outlet for fighting the Cold War, Eisenhower appointed a committee to investigate the CIA. General James Doolittle, the committee's chairman and a friend and adviser to Eisenhower, included this in his report:

It is now clear that we are facing an implacable enemy whose avowed objective is world domination by whatever means and at whatever costs. There are no rules in such a game. Hitherto acceptable norms of human conduct do not apply. If the US is to survive, longstanding American concepts of "fair play" must be reconsidered. We must develop effective espionage and counterespionage services and must learn to subvert, sabotage and destroy our enemies by more clever, more sophisticated means than those used against us. It may become necessary that the American people be made acquainted with, understand and support this fundamentally repugnant philosophy.⁴⁹

Ambrose calls this passage "a concise summary of Eisenhower's own views. . ." ⁵⁰ It gets to the heart of the matter: "fair play" endangers survival.

The CIA was engaged in more than just torture. It was involved in chemical and biological weapons research, both of which were considered taboo at the time. The CIA would soon add assassination to its tally of norm-flouting deeds. And as Ward Thomas (2001) argues and the Doolittle quote above implies, even espionage was considered unsavory business at the time. All of this suggests that members of the CIA and the politicians that gave the agency assignments did not simply happen to believe in the efficacy of torture; rather, to various degrees, they possessed a more general philosophy about the need to bend and occasionally break the rules in a dangerous world.

Since the CIA's practices spanned presidents of various levels of enthusiasm for an aggressive intelligence agency, does this mean that presidents were not consequential? Should we look instead to the CIA's organizational culture, which carries on the CIA's traditions even

⁴⁹ Doolittle 1954.

⁵⁰ Ambrose 1983, 227.

after its membership is completely replaced? Certainly the CIA has cultivated an internal environment ripe for norm-breaking, but this does not mean that civilian oversight has been inconsequential. Rather, as the Eisenhower case demonstrates, presidents can call forth and put to use the CIA's seedy reputation to greater or lesser degrees. They can also indicate how far the CIA can go and still evade punishment. As the Doolittle report suggests, the CIA under Eisenhower and Dulles could—and did—go pretty far.

Evidence from the KUBARK interrogation manual is mixed. The KUBARK authors approvingly quote one psychologist who claims that “most people who are exposed to coercive procedures will talk and usually reveal some information that they might not have revealed otherwise.”⁵¹ Yet they do not conform to a simple harsher-equals-more-effective formula. They warn that “under sufficient pressure subjects usually yield but...their ability to recall and communicate information accurately is as impaired as the will to resist.” They also find death threats to be “worse than useless.” They tout the threat of pain as being more effective than the actual infliction of pain. In describing the characteristics of a good interrogator, KUBARK prizes knowledge – of the case, and of a subject's personality, language customs, etc. – over flexible ethics.⁵²

Despite KUBARK's more measured tones, the CIA looked specifically for people of questionable moral fiber to carry out some of its programs. When searching for an assassin to do the CIA's bidding in the Congo in 1960, the agency settled on a “forger and a former bank robber” who would “try anything once.” According to one CIA officer, “He is indeed aware of the precepts of right and wrong, but if he is given an assignment which may be morally wrong in the eyes of the world, but necessary because his case officer ordered him to carry it out, then it is

⁵¹ CIA 1963, 83.

⁵² Ibid, 84, 92, 90, 10.

right, and he will dutifully undertake appropriate action for its execution without pangs of conscience. In a word, he can rationalize all actions.”⁵³

Similarly, the CIA looked for deviants to carry out its behavioral control program, and those in charge of hiring and contracting out research would either pass over those who were too squeamish or hide the true reasons for the work from them. In one ARTICHOKE memo, an agent worried that a certain potential hire’s “ethics might be such that he might not care to cooperate in certain more revolutionary phases of our project.” In another memo, the author reports approvingly, “His ethics are such that he would be completely cooperative in any phase of our program, regardless of how revolutionary it may be.”⁵⁴ In other words, the less ethical, the better.

George White is the quintessential example of an ethically-challenged CIA hire. White was a former OSS operative who worked for the Federal Narcotics Bureau in New York.

According to Marks (1979, 91-92),

White lived with extreme personal contradictions...He was a law-enforcement official who regularly violated the law. Indeed, the CIA turned to him because of his willingness to use the power of his office to ride roughshod over the rights of others—in the name of “national security,” when he tested LSD for the Agency, in the name of stamping out drug abuse, for the Narcotics Bureau. As [a] close associate summed up White's attitude toward his job, “He really believed the ends justified the means.”

White was just the man to help the CIA implement its unwitting testing program on “marginal” subjects. Because White was surrounded by drugs and knew all of the cops, he could pay prostitutes in heroin or get them out of legal trouble in exchange for secretly slipping their Johns drugs (about which there is more below). White seemed too crazy for the CIA at times.

⁵³ Quoted in Macy and Kaplan 1980, 165.

⁵⁴ Quoted in Marks 1979, 31. Note the use of the euphemism “revolutionary.”

According to another CIA official, “He was a pretty wild man. I know I was afraid of him. You couldn't control this guy ... I had a little trouble telling who was controlling who in those days.”⁵⁵

Like the OSS, the CIA's core was cut from slightly different cloth than what George White offered. They had a similar ends-means philosophy, plus more education. Nelson Brickham, a longtime CIA officer and Yale graduate who helped develop a forerunner to the Phoenix Program in Vietnam, summarized: “I have described the intelligence service as a socially acceptable way of expressing criminal tendencies. A guy who has strong criminal tendencies – but is too much of a coward to be one – would wind up in a place like the CIA if he had the education.”⁵⁶

The Phoenix Program is itself another (qualified) example of the implementation of the belief that advantages can be gained by trespassing normative bounds. “CIA representatives recruited, organized, supplied, and directly paid CT [Counter-terror] teams, whose function was to use Viet Cong techniques of terror—assassination, abuses, kidnappings, and intimidation—against the Viet Cong leadership.”⁵⁷ Or as Chalmers Roberts of the *Washington Post* put it, these CIA-directed teams “work[ed] on the theory of giving back what the Viet Cong deals out—assassination and butchery.”⁵⁸ It was an effort to “beat the enemy at his own game,” according to one SEAL veteran who worked with Phoenix's CT teams.⁵⁹

The “cheaters win” argument is limited by the treatment of high-value detainees. Arrested individuals who the Americans had reason to believe might be able to provide

⁵⁵ Quoted in Ibid, 91.

⁵⁶ Quoted in Valentine 2000.

⁵⁷ Marchetti and Marks 1974, 236-237.

⁵⁸ Quoted in Otterman 2007, 63.

⁵⁹ Quoted in Valentine 2000.

important intelligence, especially strategic (as opposed to tactical) intelligence, were generally not left to the most thuggish of the interrogators, the South Vietnamese reconnaissance units. They were brought to National Interrogation Centers (NICs), where the methods of interrogation were at least perceived by CIA practitioners to be less harsh – but more effective – than those employed by their South Vietnamese counterparts.

Lack of Specificity Evidence

Through BLUEBIRD and ARTICHOKE, the predecessors to the behavioral control program MKULTRA, the CIA played down the seriousness of their proposals. Richard Helms, then the Assistant Deputy Director for Plans, wrote to Director Allen Dulles the purpose of the program: “[W]e intend to investigate the development of a chemical material which causes a *reversible non-toxic* aberrant mental state, the specific nature of which can be reasonably well predicted for each individual. This material could potentially aid in discrediting individuals, eliciting information, and implanting suggestions and other forms of mental control.”⁶⁰ Calling chemicals like LSD “non-toxic” is selective and misleading, as is the emphasis on “reversible” (i.e., no lasting damage) resulting from the experiments. CIA officials also reassured their superiors (and perhaps themselves as well) that a medical team would “backstop” the interrogation experiments to make sure things did not get out of hand.⁶¹ In response, “Mr. Dulles agreed that these experiments should go ahead on a laboratory basis under medical and security controls which would insure that no damage was done to the individuals who volunteer for the experiments.”⁶²

⁶⁰ Helms 1953, reprinted in Earman 1963. Quoted in US Senate 1977. Emphasis added.

⁶¹ ARTICHOKE/BLUEBIRD Document #136, 1952.

⁶² Ibid.

The behavioral control program was really an array of programs, however, and unwitting experiments (i.e., those for which the term “volunteer” should not apply) took place as well. The most famous case concerns Frank Olson.⁶³ In November 1953, Olson, a member of the Army Chemical Corps’ Special Operations Division, met members of the CIA division primarily responsible for LSD caretaking and experimentation, including the head of the division, Sidney Gottlieb. The meeting was part of a three-day retreat to discuss collaborations between the Army and the CIA on the subject of chemical storage. At the retreat, Gottlieb surreptitiously spiked several drinks, including Olson’s, with LSD. According to one observer, Olson became “psychotic. He couldn’t understand what happened. He thought someone was playing tricks on him...”⁶⁴ According to his family, Olson was never the same again. He became by turns agitated, paranoid, and deeply depressed. He committed suicide before the end of the month.

Twenty-two years later, Gottlieb defended himself before a Congressional hearing by downplaying the perceived dangers: “[G]iven the information we knew up to this time, and based on a lot of our own self-administration, we thought it was a fairly benign substance in terms of potential harm.”⁶⁵ Such a comment on “self-administration” of LSD might produce snickers now, but this is a standard way of taking advantage of the blurriness of torture that repeats itself in various ways in each of the cases in this book. Gottlieb’s defense was not just an ex-post rationalization, either. CIA documents touted LSD as a limited drug at the time the drug was being tested: “The use of LSD-25 is relatively safe because of the wide margin of safety between an effective and lethal dose.”⁶⁶

⁶³ The following story draws on Marks 1979, 73-86.

⁶⁴ Quoted in Ibid, 78.

⁶⁵ Quoted in US Senate 1977, Appendix A, footnote 35.

⁶⁶ MKULTRA document #352, 1955, 4.

The difference in context between applying techniques to oneself and experiencing them at the hands of others lurks as a potential problem in all instances of this type of defense, but may be the most pronounced in cases of unwitting LSD administration. A person unknowingly given LSD might believe that he or she is losing sanity or being attacked, and the drug mixed very poorly with certain personalities. Dr. Albert Hofmann, who accidentally discovered the drug, describes the feeling as “horrific ... I was afraid. I feared I was becoming crazy. I had the idea I was out of my body. I thought I had died. I did not know how it would finish. If you know you will come back from this very strange world, only then can you enjoy it.”⁶⁷ Another victim of Gottlieb’s unwitting testing recalls his LSD trip as “the most frightening experience I ever had or hope to have.”⁶⁸

Not all drugs were first tested in-house, however. The CIA set up brothels in New York and San Francisco so that they could pass LSD and other drugs to clients of the establishments. These brothels were the stuff of legend, set up with cameras and two-way mirrors so that agents could observe. Because prostitutes were among the lowest in societal status, the CIA operated with little to fear in terms of wider exposure or legal reprisal. So agents pushed the envelope further. As one agent explains, “If we were scared enough of a drug not to try it ourselves, we sent it to San Francisco.”⁶⁹ Generally, the CIA employed a range of people. Some officers were hesitant. According to the Inspector General’s 1963 Report on MKULTRA, “The concepts involved in manipulating human behavior are found by many people both within and outside the agency to be distasteful and unethical.”⁷⁰ Other agents were less principled. One retired CIA

⁶⁷ Quoted in Marks 1979, 4.

⁶⁸ Quoted in *ibid*, 78.

⁶⁹ *Ibid*, 98.

⁷⁰ Earman 1963, 2.

officer told Marks, “I never gave a thought to legality or morality. Frankly, I did what worked.”⁷¹

In Vietnam, some soldiers made distinctions between methods that the South Vietnamese and US militaries used compared to “classic” images of torture. Richard Welcome, advisor to Provincial Reconnaissance Units (PRU), the local interrogation centers connected with the Phoenix Program, divides abuse from torture: “Prisoners were abused. Were they tortured? It depends on what you call torture. Electricity was used by the Vietnamese, water was used, occasionally some of the prisoners got beaten up. Were any of them put on the rack, eyes gouged out, bones broken? No, I never saw any evidence of that.”⁷² Welcome’s “could be worse” attitude tries to take advantage of what he sees as a blurry line between torture and acts that fall just short.

CIA agents in Vietnam also separated their “psychological” methods from the more physically coercive ones that the South Vietnamese used. Frank Snepp, the most outspoken of the CIA’s interrogators in Vietnam, apparently made such a distinction. He was put in charge of interrogating Nguyen Van Tai, a former North Vietnamese deputy minister of “public security” who became one of the architects of the 1968 attack on the US embassy. After his arrest in 1970, Tai was held at first by the South Vietnamese for several months: “They administered electric shock, beat him with clubs, poured water down his nose while his mouth was gagged, applied ‘Chinese water torture’ (dripping water slowly, drop by drop, on the bridge of his nose for days on end), and kept him tied to a stool for days at a time without food or water while questioning him around the clock.”⁷³ After he was shown pictures of himself with Ho Chi Minh,

⁷¹ Marks 1979, 45.

⁷² Quoted in Moyar 1997, 91.

⁷³ Pribbenow 2007.

Tai partially confessed to his identity. The CIA, convinced of his value, moved him to the National Interrogation Center (NIC) in Saigon. There, Tai was kept in solitary confinement for three years in a completely white room with no windows and the lights on around the clock. Tai's CIA handlers kept the industrial air conditioning on all the time because "like many Vietnamese, [Tai] believed his blood vessels contracted when exposed to frigid air."⁷⁴

Although Snepp's book does not discuss Tai's treatment by the South Vietnamese in detail, Snepp's reaction to beatings of other prisoners suggests that he viewed South Vietnamese treatment as condemnable (on both moral and instrumental grounds) while simultaneously exempting the CIA's methods from reproof. Snepp (1977, 43-44) describes paying a visit to another detainee at the NIC, and then noticing that he was covered in bruises from beating by the South Vietnamese:

I made a full report to the CIA officer responsible for coordinating the Station's dealings with the Interrogation Center. I had always been against strong-arm tactics and said so. Apart from the moral aspect, such techniques made it impossible to develop any rapport with the suspect, which is the key to effective interrogation. I suggested that we send one of our doctors over there to look at the man. That at least would discourage further beatings, since the Vietnamese never like to have their indiscretions exposed to the Americans. The officer, an old Asia hand who always sported a jaunty bow tie, listened to me in silence and then laughed. "Well, now, don't get so excited. The boys over there are just having a little fun. Anyway we can't rock the boat. The Viets would lock us out of the Interrogation Center if we did. We'll just have to overlook this one and go on."

I remember yelling at him, something about his cowardice and the Station's moral responsibilities, and storming out of his office. I wrote a letter of resignation and sent it to the Station Chief. He called me in just before the end of the day and promised he would set things right.

This morning I was taken off the case.

⁷⁴ Snepp 1977, 31.

Snepp did not mention protesting Tai's sensory deprivation and solitary confinement at the time, though, which shows his willingness to give the CIA's methods a pass as compared to those of the South Vietnamese. The quote also shows that Snepp's colleague had ways of downplaying their Vietnamese counterparts' behavior too, minimizing the acts as just "boys...having a little fun."

Years later, after journalists and leaked documents exposed prisoner abuse by the Bush administration, Snepp (2009) had a different take on the methods he used:

Tai asserts that his American interrogators never mistreated him. Indeed, I never laid a hand on him, never humiliated him, and when he asked for medical care, extra rations or clothing, I accommodated him. I even tried to establish rapport by discussing French poetry with him.

But I did become complicit in the psychological manipulation and torment of a prisoner. Never mind that the North Vietnamese inflicted far more brutal treatment on the American inmates of the "Hanoi Hilton." My "success" in promoting a "dialogue" with Tai was based on his lingering fear that, without dialogue, he would be tossed back to the brutal South Vietnamese -- an impression I encouraged. The isolation, the chilled air, the disorienting new routine were all things I imposed.

My CIA colleagues and I used to rationalize our tactics, and some still insist that psychological intimidation, verbal threats and tight handcuffs are perfectly acceptable in terms of both morality and expediency. But I believe there is an organic connection between the tactics I applied against Tai and those approved by the Bush Justice Department. Controlled brutality is a slippery slope, and once you pass through the moral membrane that should contain our worst impulses, it becomes so very easy to rationalize another step, and yet another, in the wrong direction.

Snepp's warning about brutality's "slippery slope" suggests that the lack of specificity argument can help explain torture in both Vietnam and the Bush administration's war on terror, the next chapter's case.

The evidence for the lack of specificity explanation is mixed, however. With unwitting LSD testing, the CIA knew that it was crossing a line. The agency worked hard to keep the whole program a secret. The department in charge of MKULTRA was given considerable autonomy so as to minimize exposure both within and outside of the department.⁷⁵ The Inspector General's Report summarizes why:

The sensitive aspects of the program as it has evolved over the ensuing ten years are the following:

- a. Research in the manipulation of human behavior is considered by many authorities in medicine and related fields to be professionally unethical, therefore the reputations of professional participants in the MKULTRA program are on occasion in jeopardy.
- b. Some MKULTRA activities raise questions of legality implicit in the original charter.
- c. A final phase of the testing of MKULTRA products places the rights and interests of U.S. citizens in jeopardy.
- d. Public disclosure of some aspects of MKULTRA activity could induce serious adverse reaction in U.S. public opinion, as well as stimulate offensive and defensive action in this field on the part of foreign intelligence services.⁷⁶

Though some CIA agents may have believed that the agency could play down the level of danger to which it exposed its subjects, others didn't agree that such an effort would be sufficient.

Perhaps the MKULTRA people came to same conclusion that the HTLINGUAL agents did. HTLINGUAL was a program to open and read letters from US citizens bound for communist countries. A memo confesses "full knowledge that a 'flap' will put us 'out of business' immediately and may give rise to grave charges of criminal misuse of the mails by

⁷⁵ Helms 1953.

⁷⁶ Earman 1963, 1-2.

government agencies.” HTLINGUAL agents saw no possibility of ducking blame: “Since no good purpose can be served by an official admission of the violation, it must be recognized that no cover story is available to any Government Agency. Therefore, it is important that all Federal law enforcement and US Intelligence Agencies vigorously deny any association, direct or indirect, with any such activity as charged.”⁷⁷ Given CIA acknowledgement about placing “the rights and interests of US citizens in jeopardy” via MKULTRA, agents may have had strong doubts about the ability of the agency to come up with a suitable cover story, especially concerning unwitting drug testing.

Then again, maybe a skilled lawyer with questionable principles can rationalize anything. When the CIA compiled a list of “potential violations of, or at least questionable activities in regard to, the CIA’s charter” (called the “Family Jewels”), soon-to-be Director of Intelligence William Colby was underwhelmed, as he summarized later (1978, 341):

[P]erhaps I revealed my own long career in, and resulting bias in favor of, the clandestine profession, when I concluded that this list of CIA misdeeds over twenty-five years really was not so bad. Certainly there were activities on it that could not be justified under any rule or by any rationalization, were outside CIA’s proper charter, and were just plain wrong whether technically forbidden or not. But I was familiar with the procedures of other intelligence and security services in the world; was aware of the kind of encouragement and exhortations CIA received from government leaders and public alike during the Cold War, to be “more effective, more unique and, if necessary, more ruthless than the enemy”; knew the difficulty of enforcing disciplined behavior in an atmosphere of secrecy and intrigue; and knew personally some of CIA’s more bizarre characters, such as...Peter Lorre-like scientists fertile with ideas as to how drugs might help the “mission.”

So I found the most remarkable thing about the list is that it was not more serious, that it did not include more widespread dangers to the lives and liberties of our citizens...

⁷⁷ Deputy Chief, Counterintelligence Staff 1962. Quoted in Macy and Kaplan 1980, 211-212.

Mixing caveats and allowances with justifications, Colby attempts to play down the entirety of the CIA's history of violations.

Some soldiers coming home from Vietnam made little effort to play down the severity of their acts. When Sergeant D.J. Lewis was asked whether the use of field telephones to electrocute prisoners was painful, he answered: "Oh, hell yes, it's painful. I mean, you can hold the two wires and barely crank it and get a jolt. The more you crank the higher the voltage, and it's DC voltage, so that's more intense shock."⁷⁸ Lewis could have said that the shocks were not so bad, but he actually volunteered information (i.e., the DC voltage bit) about how the use of electricity was perhaps worse than we might imagine.

Much of the testimony from soldiers – in Lane's book, at the Winter Soldier gathering, and before Congress – does not include efforts to minimize culpability by taking advantage of torture's blurry definition. If anything, the violence is exaggerated. This may be because their incentives were the reverse of soldiers from the Philippine-American War. The soldiers in the Philippines were defensive, trying to save their skins. Many veterans of Vietnam who came to oppose the war were in a confessional mood, with the intention of showing that the wartime violence was beyond the pale and beneath the country's ideals. Lack of specificity tactics served no function for them anymore. They came home not to defend their behavior, but to try to prosecute the country for creating the conditions under which such behavior was likely. Perhaps these soldiers rationalized at first, and confessed later, as Snepp did, but the evidence for this is limited.

Interaction

⁷⁸ Conroy 2005.

The CIA wanted to make sure that the United States did not fall behind the Soviet Union in the use of behavioral control measures, but agents were also worried about keeping tight control over operations:

There is ample evidence in the reports of innumerable interrogations that the Communists were utilizing drugs, physical duress, electric shock, and possibly hypnosis against their enemies. With such evidence it is difficult not to keep from becoming rabid about our apparent laxity. We are forced by this mounting evidence to assume a more aggressive role in the development of these techniques, but must be cautious to maintain strict inviolable control because of the havoc that could be wrought by such techniques in unscrupulous hands.⁷⁹

The CIA was convinced that it could be “aggressive,” as long as the program was “controlled.”

The KUBARK manual sounds by turns limited and boundless, enough so that observers have drawn opposite conclusions from its pages. John Prados (2013, 116-117) emphasizes that KUBARK “discusses at length how friendly relations with a subject are best suited to eliciting information. It specifically finds strong-arm methods counterproductive.” From this perspective, Prados argues that when CIA agents interrogated Soviet defector Yuri Nosenko, they “threw away the book.” Michael Holzman, by contrast, highlights the darker parts of KUBARK: “[I]t was a way of forming the character of the interrogator, an instrument, not to put too fine a point on it, of moral corruption.” He reminds readers that KUBARK doesn’t prohibit illegal methods; it merely mandates that interrogators check with headquarters before proceeding.⁸⁰ According to Holzman, “A person who has accepted and internalized KUBARK Counterintelligence Interrogation has become quite a different type of person than the one who has not. He is no longer a member of civil society, of a constitutional order.”⁸¹

⁷⁹ US Senate 1976, 393.

⁸⁰ See CIA 1963, 8.

⁸¹ Holzman 2008, 201-202.

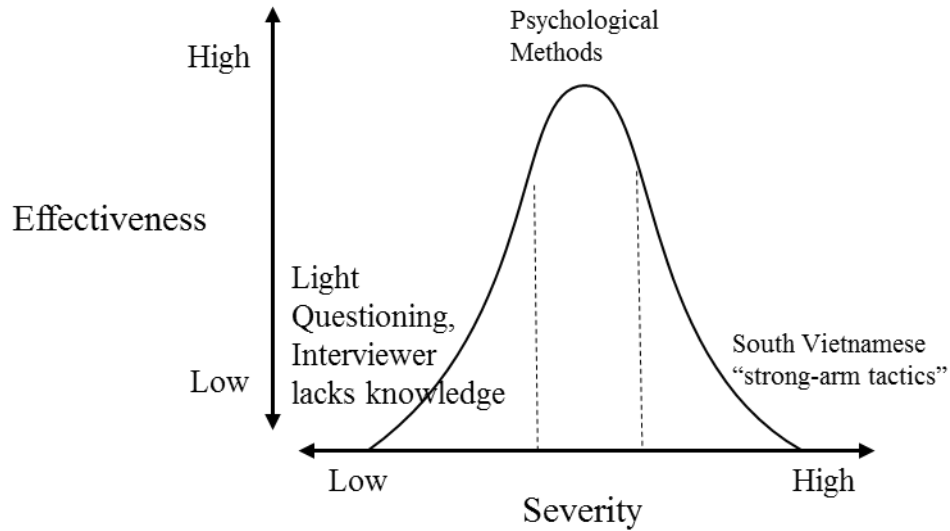


Figure 4: The CIA's Perceptions

These tensions are partly resolved with the recognition that KUBARK advocated few limits for psychological methods, but more restrictions for physical techniques.⁸² From the time of the arrest of the subject, the manual advises achieving the “maximum amount of mental discomfort in order to catch the suspect off balance and to deprive him of the initiative.”⁸³ And when it comes to sensory deprivation, more is more:

The more completely the place of confinement eliminates sensory stimuli, the more rapidly and deeply will the interrogatee be affected. Results produced only after weeks or months of imprisonment in an ordinary cell can be duplicated in hours or days in a cell which has no light (or weak artificial light which never varies), which is sound-proofed, in which odors are eliminated, etc. An environment still more subject to control, such as water-tank or iron lung, is even more effective.⁸⁴

Yet KUBARK does warn against physical coercion. As we have seen, Frank Snepp proved to be a careful student of KUBARK’s tutelage, privileging his psychological methods and condemning

⁸² McCoy (2006) finds a similar contrast.

⁸³ CIA 1963, 85. Emphasis in original.

⁸⁴ Ibid 1963, 90.

“strong-arm tactics” on both ethical and instrumental grounds. Figure 4 summarizes this perspective.

Snepp wasn’t alone, either. He describes a conversation with another CIA interrogator who seemed to be fishing for just the right “middle ground” method:

The chief CIA officer in My Tho took time out over lunch to give me some pointers on an interrogation technique he insists will break a prisoner in less than forty-eight hours, without the need for violence. The ‘Arabic Method,’ he calls it. Simply undress the subject, bandage his eyes, tie him to an armless, straight-backed chair, then let him sit—and sit. Eventually, after three or four hours, he loses all sense of orientation (‘returns to the womb’). Then you begin questioning him, softly and soothingly at half-hour intervals, a voice out of the gloom. Guaranteed: he’ll be eating out of your hand by the following morning.⁸⁵

No violence is needed, the CIA officer contends; just forced sitting, loss of “orientation,” and “gloom.”

Some U.S. soldiers also opted for what they believed to be middle-ground methods, including use of water and electricity. Next to a *Washington Post* picture of 1st Cavalry soldiers temporarily suffocating a Vietnamese detainee with water, a caption reads, “The water technique is said to be in fairly common use among Allied soldiers in Vietnam. Those who practice it say it combines the advantages of being unpleasant enough to make people talk while still not causing permanent injury.”⁸⁶ Figure 5 illustrates soldiers’ efforts to find a technique that was simultaneously effective and acceptable.

⁸⁵ Snepp 1977, 44.

⁸⁶ *Washington Post* 1968. See also Pinkus 2006.

“Those who practice [water torture] say it combines the advantages of being unpleasant enough to make people talk while still not causing permanent injury.”
 – *Washington Post*, 1968

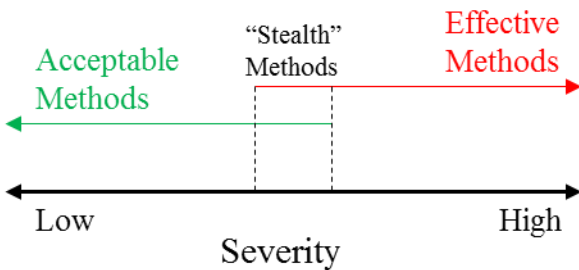


Figure 5: Perceptions of Water Torture in Vietnam

Though his story relies on hearsay, former Army Ranger Philip Wolever expresses a similar view of use of electricity as a reasonable middle-ground method that avoids going too far: "I heard one report--and again, this is just a report. If I had witnessed it I would have pressed charges--[that] a hammer was used to interrogate a female prisoner. It was placed right in the vagina. And something like that you just do not do. I mean a field telephone, if it wasn't overused--I'd have used it because, I mean, in the field, if you had contact, if somebody was just shooting at you, you'd want information. The field telephone is, you know, I think on the lower end of the list of things that probably was used."⁸⁷ That is, something sufficiently harsh like a magneto may be necessary for getting information, but it is far enough to the left on the severity spectrum that it can be considered part of the “Acceptable Methods” set.

Racism and Revenge

A PBS documentary on the Charlie Company, the unit behind the MyLai massacre in 1968, captures how a group of soldiers can descend into a violent rage:

Joe Grimes, Squad Leader: I believe that the month of February was our most devastating month for Charlie Company. It drove us to the ground. It's just like if you had a wound, and they would stick something in that wound and go a little bit deeper. Every time

⁸⁷ Quoted in Conroy 2005.

somebody else got killed, and it was like that wound, and it would go a little deeper. And the hurt never stopped.

Fred Widmer, Radio Operator: Your mindset has to change and you've got to somehow figure out how to adapt. Your attitude towards the villagers, now - everybody's an enemy. You don't know who to trust. You don't know who is a friend, who is a foe. You don't have a scorecard to tell you, well, this village over here is friendly to you, it's okay to go there. Or, this village over here is sympathetic to the Communists... and you start to wonder who's who.

Lawrence La Croix, Squad Leader: They know where the mines and booby traps are, they have to or they can't work in the fields, they can't move between villages, you know. So they know where everything is. But they're not gonna tell you. They're gonna let you blow your leg off. You begin to hate and the hatred becomes very intense and very real.

Fred Widmer, Radio Operator: Finally, you just throw the rulebook away. The rules of the game have changed. Instead of just going through villages, casually going through them, you went into villages, started ripping shit apart. That became the standard now - we're not nice guys anymore.⁸⁸

Charlie Company's crimes include torture using mock execution with a gun, tiger cages (which induce stress positions), electricity, water, and various combinations.⁸⁹ Widmer's statement about the "rulebook" sounds somewhat like the "cheater's win" argument, but the model is not really the same. Charlie Company was interested in intelligence, but they didn't seem to believe that torture was going to be very productive. As William Calley (1971, 78) puts it, "Nothing worked ever." Instead, a desire for revenge drove their behavior.

For reasons that may blend desperation and revenge, soldiers and veterans frequently link deaths in their unit to subsequent torture. According to Martinsen, "There was not much force used – coercion and harassment, yes – but not much physical force until after members of the

⁸⁸ Goodman 2010.

⁸⁹ Calley 1971, 76-78, 95-96. See also Rejali 2007, 582.

detachment were killed and death became a reality.”⁹⁰ Former lieutenant David Rudoj recounts: “We were building this POW compound out at firebase Moore, a brand-new base. A patrol went out in front to a village and settled in. In the middle of the night they all got zapped. The villagers didn't tell them that Charlie was around them. They just let these people go and 11 people died. Eleven guys. Next morning, Americans went out and brought in all the villagers. They also had Vietnamese soldiers with them...And to get information from these people...they wired them up, and they did it in one of the buildings that we built.”⁹¹ Rudoj's unit wanted information, so the revenge argument is not complete by itself, but feelings of anger and a desire for retribution following the death of brothers in arms pushed the men into a realm in which torture was highly likely.

Revenge may play a more subtle role in explaining American torture in Vietnam than the preceding examples suggest. In a revealing question-and-answer sequence that covers the premise of this book, Martinsen explains the meaning of revenge for some soldiers:

[CARL] OGLESBY [Tribunal Member]: How did you learn to use the field telephone in the interrogation process as an instrument of torture?

MARTINSEN: I heard about it before I went to Vietnam. I asked others, “How do you interrogate people?” ... They said, “You get a little field telephone, and you ring him up and he always answers.” That was an overstatement; it's very untrue, but it's a common belief, that pain can elicit information.

OGLESBY: If that torture doesn't work, can you explain why that technique continues in use?

MARTINSEN: A man is given the order to get information and it is irrelevant *how* he gets the information. In the case of a recalcitrant prisoner one gets angry and the anger can degenerate into a strong wish to torture.

⁹⁰ Testimony of Peter Martinsen, in Duffett 1968, 434.

⁹¹ Conroy 2005.

OGLESBY: I understand that, but you said torture isn't really an efficient way of getting information; torture nevertheless continues to be employed. Is there another purpose that the torture begins to serve?

MARTINSEN: I don't know, I can tell you how it is rationalized. There can be a rationalization about torturing to get information that might save lives: torturing that *might* yield information which *might* save lives. The probability of getting information decreases the more you torture a man. Generally, torture doesn't work...

OGLESBY: Do the interrogators begin to use torture as a mechanism of revenge against the people?

MARTINSEN: I don't think it's used to take revenge against the Vietnamese people. I think it's an expression of revenge for being placed in Vietnam in the first place. Vietnam is a disagreeable place to Americans; it's hot; the people are trying to kill you; snakes are trying to kill you, etc. It's really unlike America. A person is bound to be resentful about being in Vietnam.⁹²

Martinsen might be reading into the situation and stretching the word "revenge" to its conceptual limit. But his ideas about what we might call displaced or redirected revenge are certainly plausible, and they apparently come from introspection as well as external observation.

Racism was a common theme in soldiers' testimonies. The Winter Soldier testimony has multiple examples resembling the following:

MODERATOR. The training--What did you consider the Vietnamese? Were they equal with you?

CAMPBELL. The Vietnamese were gooks. We didn't just call the VC or the NVA gooks. All Vietnamese were gooks and they were slant eyes. They were zips. They were Orientals and they were inferior to us. We were Americans. We were the civilized people.⁹³

⁹² Duffett 1968, 453.

⁹³ Campbell's testimony in Winter Soldier Investigation 1971. For similar examples, see also Camile's, Eckert's, and Sachs' responses.

Campbell's testimony shows that racial slurs weren't just limited to enemies, but to all people belonging to the same race.⁹⁴ In certain military units, if a soldier showed the slightest sympathy for the Vietnamese people, his fellow soldiers accused him of "loving gooks."⁹⁵ In some ways, the greater prevalence of confessions of racism in the Vietnam War versus the Philippine-American suggests greater consciousness of racism as a problem, and thus represents slow, ugly progress. But racism clearly played a role in the dehumanization of the Vietnamese and subsequent torture.

Organizational Culture

Much of the evidence from the "cheater's win" section underscores this point: Participants, overseers, and observers understood that a permanent intelligence agency would at least run the risk of being a portal for the government to engage in unsavory business. After all, intelligence agencies, almost by definition, must break other countries' laws in order to function.⁹⁶ Part of the CIA's extralegal character was its approach to interrogation. The subculture that developed around the behavioral control program was defined by attempts at careful control and secrecy, even within the agency,⁹⁷ and the use of science (or pseudo-science),⁹⁸ in addition to the kind of semi-lawlessness that would put CIA scientists in touch with someone like George White. The executive branch did have other options for developing interrogation programs, and the fact that presidents empowered the CIA is significant. Still, the

⁹⁴ Sachs also describes a scenario in which an officer told him not to risk his skin for "gook marines," members of the Vietnamese military. See Sachs' testimony in Winter Soldier Investigation 1971.

⁹⁵ See Roberson's and Worrell's interviews in Lane 1970, 63, 121.

⁹⁶ Goldman 2010, 161-162.

⁹⁷ Helms 1953.

⁹⁸ For more on why there can never be a true science of torture, see Rejali 2007, especially chapter 21.

CIA's strange brew of secrecy, pseudo-science, and extra-legality are an important reason why the Cold War interrogation program looked the way that it did.

Some Vietnam veterans' descriptions of military training are not unlike the first part of Stanley Kubrick's "Full Metal Jacket." According to one veteran, "Training is brainwashing. They destroy your identity and supply you with a new one – a uniform identity that every soldier has. That's the reason for the uniform, for everyone having the same haircut and going to dinner together and eating the same thing ... They destroyed the street kid from Newark and created the sailor. They destroyed the sailor and created the SEAL."⁹⁹ Such a comprehensive approach to identity formation makes soldiers vulnerable to acceptance of a set of norms that do not correspond to those of the outside world. Donald Duncan's testimony about learning interrogation strikes similar notes:

[GISELE] HALIMI [Tribunal Member]: You described...how an effort was made to depersonalize and psychologically break down the recruits to prepare them for antiguerilla [sic] fighting, teach them interrogation methods, torture and the manner in which to get rid of prisoners. Would you indicate briefly to the Tribunal what were the methods used from the moment the recruits arrived until the time when they were sent to Vietnam?

DUNCAN: These methods which you discuss are not something peculiar to Special Forces. This is the standard method of training all young soldiers. I don't even believe it's peculiar to the United States Army; it's essentially a method of depersonalization, isolation, and the changing of a value system, the disorganization of the individual, a reorganization of the individual – and finally with a new value system he does become a soldier ... The main purpose, of course, is to take a man from civilian life, to give him a new set of values, to make him amenable to do things which normally he would not allow himself to do or would not be willing to do. In other words, it's a means of giving him a different rationale or a philosophy.¹⁰⁰

⁹⁹ Quoted in Valentine 2000.

¹⁰⁰ Duffett 1968, 461.

Duncan's thoughts on soldiers acquiring new values brushes close with my norms-centered argument about the supposed efficacy of nastiness. Organization cultures can reproduce, foster, and disseminate beliefs about the inadequacy of "normal" values and the need for different ones. The acquired philosophy would have to rationalize killing, and perhaps torture as well.

Democratic Restraints

Despite the Doolittle Report's words about introducing the American public to the CIA's work, the agency tried very hard to hide its deeds. The extent of the CIA's behavioral control program was known to as few people as possible. Contracted academics typically were not told how their research would be used. The CIA even set up cover foundations to distribute grants to researchers without exposing a government interest. Some of the principle characters – Richard Helms and Sid Gottlieb – behind MKULTRA were also the ones who destroyed most of the MKULTRA files in 1972. Perhaps the CIA cared so much about secrecy because they didn't want potential enemies to know in detail what they were doing. However, that's not what the 1963 Inspector General's Report emphasizes. The report clearly states that the major concern was the ethically questionable nature of the work and the repercussions that wider knowledge of MKULTRA and its predecessors could have for the CIA and its affiliates.¹⁰¹

Rejali cites a number of veterans saying that they were restricted to use of clean torture only. It is not always clear whether soldiers anticipated hiding or playing down their acts, and there's no reason that some of them did not plan on both if necessary. Some evidence suggests that soldiers were primarily trying to hide their deeds. One veteran reported, "We would pretty

¹⁰¹ Earman 1963, 1-2.

much do anything as long as we didn't leave scars on the people"¹⁰² Peter Martinsen says something very similar in this interview with Mark Lane (1970):

Q: Were any direct techniques of torture taught?

A: No, not in the curriculum. Now after the courses, you say to the officer or the sergeant teaching the course, "Sarge, really, how do you interrogate under combat conditions?" And they say, "Well, you take a field telephone and attach it to the man's balls and you wire him up. Then you ring him up."

Q: Who said that?

A: A sergeant. I heard this from officers too. "You ring him up, he always answers." And isn't that illegal? "Yes, but it doesn't leave marks." He said the central rule in interrogation is unsaid officially. But it is always there. It's almost palpable in the air, "You do not leave marks."

Because the officers supervising Martinsen conceded that the methods were illegal, they were likely to be more interested in hiding rather than downplaying their actions.

Donald Duncan testified that he received similar instruction not to leave marks. He states that in devising interrogation techniques, "we were encouraged to use our imagination. The specific thing was always suggested that you do not mark a person. In other words, don't leave physical evidence on his body. Use those types of interrogation where if somebody were to see the prisoner immediately afterwards you couldn't tell that he had been abused."¹⁰³ We can surmise that if that same hypothetically "somebody" stuck around, there would be less abuse overall.

Nick Turse argues that the highest levels of the US military worked hard to cover up US atrocities during the war, presumably to keep themselves from getting in trouble and prevent a

¹⁰² Conroy 2005.

¹⁰³ Duffett 1968, 464.

decline in support for the war effort.¹⁰⁴ Occasionally, commanders like General Westmoreland would issue warnings against poor treatment of prisoners, with at least a temporary reduction in torture.¹⁰⁵ With more and wider exposure, abuse would probably have been less common.

While top-level generals may have been complicit in covering up crimes, there is not much evidence that they encouraged abuse. Rejali (2007, 176) explains:

Veteran testimonials about torture rarely look upon the U.S. military and government in a favorable light. So it is surprising that no veteran mentions any figure like General Massu in Algeria, a general who knowingly allowed troops to use torture techniques. Nor do they identify official army manuals, as in Algeria, that authorized torture techniques. None of the soldiers saw written orders to torture ... Thus, even if some veterans wanted to conclude that torture was U.S. government policy, the testimonial evidence as a whole does not suggest that torture was an official policy directed from Washington, DC.

Rather, the testimonial evidence suggests some commanders in Vietnam tolerated a subculture of torture among military interrogators ... With the possible exception of the CIA, torture techniques appear to have migrated not from the top down, but laterally from unit to unit as the subculture expanded.

Interrogators sometimes felt some pressure from higher-ups to comply with the norm against torture, and worked around the constraints (in response to competing pressure from the same superior officers to produce intelligence). For example, Duncan describes a training class on countermeasures to torture. The punchline of the class was that there were no effective countermeasures; the bulk of the class, therefore, was just learning torture methods. When one recruit asked why they couldn't just learn the techniques directly, the sergeant replied, "We cannot teach you that because the mothers of America would not approve."¹⁰⁶ It's unclear who the "mothers of America" are – politicians, the media, or supposedly squeamish members of the

¹⁰⁴ See Turse's interview in Denvir 2013.

¹⁰⁵ For one example, see Lane 1970, 159.

¹⁰⁶ Duffett 1968, 463.

public? Perhaps the phrase is meant to be used broadly, in which case it resembles a more misogynistic version of Rejali's "monitors." Without the "mothers of America," perhaps torture would have been taught directly and used (even) more frequently.

Conclusion

From its founding, policymakers and bureaucrats inside and outside the CIA understood the agency to be a specialist in extralegal affairs. As such, it was a natural home for a behavioral control program that would have implications for Vietnam War interrogations and beyond. The CIA did not advocate unlimited physical interrogations for its agents, however. Instead, it pushed for what it viewed as a more balanced approach that emphasized "psychological techniques." These included unwitting drug testing and sensory deprivation techniques. In Vietnam, the US military turned to the use of water and electricity. While some soldiers admitted their severity, others insisted that they were tough but limited methods.

My argument doesn't stand on its own, however. Americans felt desperate in the early Cold War; they were very afraid that the Soviets had a leg up. US soldiers became vengeful in the disagreeable and scary jungles of Vietnam. Racism was rampant and consequential. The CIA has had a culture of law circumvention since its founding, and some US soldier training emphasized depersonalization and aggression, suggesting a pivotal role for an organizational culture argument. And both the CIA and the US military showed a strong interest in hiding abuses from democratic oversight, and not simply downplaying severity. An explanation of US torture during the Cold War is not complete without these important additions.

In the mid-1970s, when elements of the CIA's "Family Jewels" were making a sizable splash in major newspapers, President Gerald Ford turned to his cabinet to help manage the

political crisis. Ford's point men were chief of staff Donald Rumsfeld and especially his assistant Richard Cheney.¹⁰⁷ In his memoir, Cheney writes that "the president was often irate about the congressional committees — and with good cause. At times their sensational proceedings seemed sure to cripple America's intelligence capacity, if not destroy it."¹⁰⁸ For Cheney, more supervision, rules, and enforcement spelled reduced effectiveness. Instead of congressional oversight, Cheney wanted to keep the review within his bosses' branch of government, reasoning, "It offers the best prospect for heading off Congressional efforts to further encroach on the executive branch."¹⁰⁹ Cheney would get a chance to empower the presidency, limit legislative control, and realize his vision of an intelligence agency bounded by few rules when he served as vice president during the war on terror, the subject of the next chapter.

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¹⁰⁷ Prados 2013.

¹⁰⁸ Quoted in Savage 2011.

¹⁰⁹ Quoted in Prados 2013, 30.

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Chapter 5: Twenty-first Century Torture: The War on Terror

Introduction

In 2009, after her stint as National Security advisor and Secretary of State under George W. Bush, Condoleezza Rice responded to an activist confronting her on the Bush administration's use of torture: "If you were there in a position of authority and watched Americans jump out of 80 story buildings because these murderous tyrants went after innocent people, then you were determined to do anything that you could, that was legal, to prevent that from happening."¹ By that time, the United States and the world had already learned that "anything you could" meant as coercive as the administration thought it could be without being prosecuted. Rice answers as if anyone in charge would have done the same thing, but this is doubtful since more than one experienced, successful interrogator during the war on terror condemned the administration's use of "enhanced interrogation" and refused to participate in it.² Not everyone would have tortured. Why did the Bush administration do so?

I argue that significant members of the Bush administration were convinced that countering terror required ruthlessness, especially concerning interrogation. To circumvent laws and norms prohibiting torture in the United States, it specifically selected some of the world's nastiest regimes as destinations for its detainees. When the administration wanted to develop its own interrogation program, it chose the Central Intelligence Agency, which was short on interrogation experience but long on willingness to push limits. The Bush administration also announced that the Geneva Conventions rules on detainee treatment would not apply to war on terror captives after key administration lawyers argued that Geneva would put too many

¹ CBS News 2009.

² Soufan 2009; Alexander 2008; Carle 2014.

constraints on interrogators. Much of the detainee abuse that followed, especially by the U.S. military, can be traced to the administration's decision on the Geneva guidelines.

The Bush administration sidestepped normative and legal concerns by dramatically redefining torture. The Office of Legal Counsel (OLC), in coordination with lawyers in the White House and the Pentagon, issued memos that gave interrogators wide latitude to physically and mentally coerce detainees. The OLC sequestered the definition of torture to the most extreme end of the severity spectrum. Because cruelty can always be worse, the OLC exempted most behavior from legal and normative opprobrium. Certain interrogators, politicians, and observers in the media also exploited torture's sliding scale by downplaying the severity of "enhanced interrogations" and calling the torture statutes and treaties "vague". The point here is not that these actors were convinced deep down that the United States was not torturing. Rather, what is most important for explaining torture is that these actors thought they could make such justifications. I argue that the torture norm's lack of specificity opened the door.

The War on Terror and the Torture Therein

Though the United States and its western allies pursued terrorists before the George W. Bush administration, the war on terror was a response to the World Trade Center, Pentagon, and airline attacks on September 11, 2001. Almost three thousand people died in the attack, making it easily the largest terrorist attack on U.S. soil in history. The American people were initially shocked, and then eager to respond. Bush summed this up in a speech before Congress: "Our grief has turned to anger, and our anger to resolution."³

³ White House 2001.

That resolution turned into the ill-defined but still useful term, “war on terror.” I am including under this heading the airstrikes, invasion, and occupation of Afghanistan starting in late 2001; the invasion and occupation of Iraq beginning in 2003; coordination with other countries leading to the arrest and interrogation of suspected terrorists; and the development of detention facilities, including Guantánamo Bay and the CIA’s “black sites,” where suspects were held and interrogated.

Torture during the war on terror occurred through three separate but interrelated paths. First, the Bush administration via the CIA used extraordinary rendition, which is the extrajudicial transfer of persons from one state to another, often with the aim of circumventing human rights laws. The United States has had a rendition program since at least the Reagan administration,⁴ but it was mostly used for “delivering [captives] to a criminal justice system,” not for avoiding one.⁵ Only in the mid-to-late 1990s was the program used to keep detainees in third-party countries, some of whom were subsequently tortured.⁶ After September 11, the Bush administration expanded the program significantly.⁷

States that are parties to the United Nations Convention Against Torture can render their prisoners to other states as long as there are no “substantial grounds for believing” that detainees will be tortured as a result.⁸ The subjective nature of that phrase gives leaders “plausible deniability” and the potential to claim, as Secretary of State Condoleezza Rice did in a speech in 2005, that “the United States has not transported anyone, and will not transport anyone, to a country when we believe he will be tortured.”⁹ Rice’s claim is preposterous. As one official

⁴ Garcia 2010; Prados 2013.

⁵ Horton 2009.

⁶ Hutchinson et al. 2013, 165.

⁷ Mayer 2005.

⁸ United Nations 1984.

⁹ Gilmore 2005.

stated bluntly early in the war, “We don't kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them.”¹⁰ A study by *Mother Jones* documented fifty-three cases of extraordinary rendition to third countries, not including black sites and Guantánamo Bay.¹¹ Among the most well-known of these cases was that of Maher Arar, a Syrian-Canadian arrested at JFK airport in 2002 and sent to Syria. Arar was never charged, and, after being tortured by beatings and electricity in a Syrian prison, he was released a year later.¹²

The extraordinary rendition program also set the stage for a second, related pathway to torture. The CIA, with the help of private contractors, developed its own in-house torture program, used primarily at “black sites” around the world to which those perceived to be high-value detainees were rendered. Although the Senate Torture Report argues that the CIA exceeded its authority in some cases,¹³ we should not exaggerate the CIA’s rogue status. Senior Bush administration officials knowingly and eagerly signed off on the interrogation program in detail. The Office of Legal Counsel (OLC), housed in the Justice Department, declared very abusive practices to be legal in a series of legal documents now known as the Torture Memos. If the CIA had stuck strictly to the letter of what the OLC pronounced permissible, it still would have been able to put prisoners in cramped spaces, force them to hold stress positions, keep them awake for days, and in some select cases, subject them to the water board.¹⁴ The more important the detainee, the closer the management, and in most cases, the more harsh the treatment. According to the CIA, “the confinement conditions and treatment of high profile detainees like

¹⁰ Priest and Gellman 2002. Censored in the original. The next section provides more evidence that the Bush administration knew that transferred captives would be tortured. Some officials have claimed that they had no control over what other states did, but this too is preposterous.

¹¹ Bergen and Tiedemann 2008.

¹² Mayer 2005.

¹³ US Senate 2014, “Findings and Conclusions,” 12. See also Blakeley 2011.

¹⁴ Bybee 2002b.

Abu Zubaydah were closely scrutinized at all levels of management from the outset.”¹⁵

Although there was some pushback within the administration,¹⁶ torture as I define it in this study was the Bush administration’s official policy.

Third, the military began using torture in its own detention facilities – at Bagram Air Base in Afghanistan, Abu Ghraib in Iraq, and so forth. CIA and military torture overlapped at Guantánamo Bay and other sites, and both were influenced by the administration’s position on the Geneva Conventions. Military torture also followed a separate track, with Secretary of Defense Donald Rumsfeld authorizing (and then rescinding authorization for) the use of certain techniques by military interrogators. While some abuse went beyond what was authorized, other techniques were standard operating procedure. The abuse at Abu Ghraib, made famous by photographs, includes both.¹⁷ Major General George Fay summarizes the connection in his report on abuse at Abu Ghraib:

The MPs [Military Police] being prosecuted claim their actions came at the direction of MI [Military Intelligence]. Although self-serving, these claims do have some basis in fact. The environment created at Abu Ghraib contributed to the occurrence of such abuse and the fact that it remained undiscovered by higher authority for a long period of time. What started as nakedness and humiliation, stress and physical training (exercise), carried over into sexual and physical assaults by a small group of morally corrupt and unsupervised soldiers and civilians.¹⁸

Much of the confusion comes from who was authorized to do what to whom. We know now that within the military, forced standing, nudity, and sensory deprivation techniques like hooding and removal of sensory stimuli were approved at the highest levels, though not for every interrogator

¹⁵ Central Intelligence Agency 2013.

¹⁶ Nuñez-Mietz 2013.

¹⁷ Hutchinson et al. 2013, 399-400.

¹⁸ Fay 2004, 9-10. Quoted in *ibid*, 106.

and every detainee.¹⁹ The 2008 Senate Armed Services Committee report goes further than General Fay, but along similar lines: “The abuse of detainees in U.S. custody cannot simply be attributed to the actions of ‘a few bad apples’ acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees.”²⁰

The most important sources of evidence for the war on terror case are the Torture Memos, several of which are available to the public (with some redactions). Three extensive reports that draw on these memos and other primary sources fill in much of the story. In addition to the 2008 report referenced above, the Senate report released in 2014 and the CIA rebuttal refer to documents that are still classified.²¹ The watchdog group The Constitution Project also released a comprehensive, invaluable report on detainee treatment during the war on terror.²² Journalists at the *Washington Post*, the *New York Times*, and the *New Yorker* have contributed significantly to our understanding of the events as well. While significant gaps remain, the lack of a full picture appears no more pronounced for this case than most others in the data-poor world of torture studies.

Evidence

Evidence for the “Cheaters Win” Argument

¹⁹ See Rumsfeld 2002. Though Rumsfeld retracted this memo soon afterward, he continued to approve harsh methods on a case-by-case basis. See, for instance, US Senate Armed Services Committee 2008, 137-138.

²⁰ US Senate Armed Services Committee 2008, xii.

²¹ US Senate 2014; Central Intelligence Agency 2013. The CIA responded to the first draft of the Senate Report, and then the Senate Report was updated in response to the CIA.

²² Hutchinson et al. 2013.

Almost immediately after the September 11 attacks, the Bush administration imagined a war in which normative (as well as financial) constraints would not bind those charged with winning it. Counter-terrorism advisor Richard Clarke recalls President Bush's exchange with Rumsfeld, which set the tone:

"I want you all to understand that we are at war and we will stay at war until this is done. Nothing else matters. Everything is available for the pursuit of this war. Any barriers in your way, they're gone. . . ." When, later in the discussion, Secretary Rumsfeld noted that international law allowed the use of force only to prevent future attacks and not for retribution, Bush nearly bit his head off. "No," the President yelled in the narrow conference room, "I don't care what the international lawyers say, we are going to kick some ass."²³

With the war on terror just a few hours old, Bush was already sharing his belief that to really "kick ass" in wartime, one had to ignore the constraints of "international lawyers."

A few days later, in a well-known interview with Tim Russert on Meet the Press, Vice President Dick Cheney laid out his philosophy for how to fight the war on terror:

VICE PRES. CHENEY: I'm going to be careful here, Tim, because I--clearly it would be inappropriate for me to talk about operational matters, specific options or the kinds of activities we might undertake going forward ... We...have to work, though, sort of the dark side, if you will. We've got to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies, if we're going to be successful. That's the world these folks operate in, and so it's going to be vital for us to use any means at our disposal, basically, to achieve our objective.

MR. RUSSERT: There have been restrictions placed on the United States intelligence gathering, reluctance to use unsavory characters, those who violated human rights, to assist in intelligence gathering. Will we lift some of those restrictions?

VICE PRES. CHENEY: Oh, I think so. I think the--one of the by-products, if you will, of this tragic set of circumstances is that we'll see a very thorough sort of reassessment of how we operate and the

²³ Clarke 2004, 24.

kinds of people we deal with. There's--if you're going to deal only with sort of officially approved, certified good guys, you're not going to find out what the bad guys are doing. You need to be able to penetrate these organizations. You need to have on the payroll some very unsavory characters if, in fact, you're going to be able to learn all that needs to be learned in order to forestall these kinds of activities. It is a mean, nasty, dangerous dirty business out there, and we have to operate in that arena. I'm convinced we can do it; we can do it successfully. But we need to make certain that we have not tied the hands, if you will, of our intelligence communities in terms of accomplishing their mission.

MR. RUSSERT: These terrorists play by a whole set of different *rules*. It's going to force us, in your words, to get mean, dirty and nasty in order to take them on.

VICE PRES. CHENEY: Right.²⁴

Cheney's assertion that the United States must fight “dirty” as the terrorists do exemplifies the nasty-equals-effective argument. Interestingly, Russert uses the phrase “whole set of different rules.” His phrasing and Cheney's response of affirmation imply that for Cheney, terrorists' lawlessness gives them an *advantage*, and so in order to get the upper hand, the United States would have to “get mean.”

The day after Cheney's interview with Russert, President Bush authorized the CIA to capture and detain suspects related to the attacks. The memo is still classified, but the authors of the 2014 Senate Report have had access. The report says that the memo “provided unprecedented authorities, granting the CIA significant discretion in determining whom to detain, the factual basis for the detention, and the length of the detention.”²⁵ Though the September 17 memo does not discuss interrogation specifically,²⁶ it pushed boundaries in terms of detention, and provided an initial basis for the administration's extensive use of the CIA and for the eventual development of the CIA's “black sites.”

²⁴ NBC News 2001. The video recording slightly corrects the transcript released by the administration. See White House 2001.

²⁵ US Senate Select Committee on Intelligence 2014, 11.

²⁶ *Ibid.*

Why the CIA? It wasn't because the agency had a lot of recent detention or interrogation experience at that point. The CIA was going to need help setting up prisons, and it planned on getting help from the Department of Defense or the Bureau of Prisons.²⁷ It also had less experience with interrogation than the military or the FBI, and it would have to bring in contractors (about whom I elaborate below) to create an interrogation program. Rather, the organization's willingness to push boundaries was a key factor in why Bush chose them. "The truth," said one CIA official, "is that the President wanted it. So everyone else wanted to be the most aggressive. A lot of ambitious people played on Cheney and the President's fascination with this."²⁸

Some of Cheney's "unsavory characters" were part of the intelligence agency in Egypt, where the Bush administration, via the CIA, sent one of its earliest (allegedly) high-value detainees. Officials believed that Ibn al-Shaykh al-Libi, whom Pakistani authorities captured and turned over to the United States in the first few days of 2002, was the most senior Al Qaeda official captured to date.²⁹ At first, the FBI handled much of the questioning, and according to some reports, al-Libi was talking.³⁰ But the CIA then forcibly removed al-Libi from Bagram Air Base and FBI access and transferred him to Egypt through extraordinary rendition.

As former CIA officer Vinnie Castrovence explains, "[Al-Libi is] carried off to Egypt, who torture him [*sic*]. And we know that he's going to be tortured. Anyone who's worked on Egypt, has worked on other countries in the Middle East, knows that."³¹ Egypt's primary – perhaps sole – draw was that it did not follow ethical and legal norms of interrogation. In the

²⁷ Ibid, 12.

²⁸ Mayer 2008, 53.

²⁹ Schmitt 2002.

³⁰ Frontline 2005.

³¹ Frontline 2006.

words of former CIA agent Robert Baer, "If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear – never to see them again – you send them to Egypt."³²

But the Bush administration would not be able to render all of their detainees to places like Egypt, and may not have wanted to outsource so much intelligence gathering even if it could. So they developed an in-house program. In late 2001, the defense department asked the Office of Legal Council (OLC) whether detainees in the war on terror were protected by the Geneva Conventions III on the Treatment of Prisoners of War (GPW). John Yoo and Robert Delahunty of the OLC, in a memo to the general counsel at the Defense Department, argued in early January 2002 that the GPW need not apply to Al-Qaeda or Taliban detainees, but remained at least nominally agnostic about whether waving Geneva guidelines as a matter of policy was a sound idea.³³ On January 18, President Bush told members of his administration that GPW would not apply, and Rumsfeld relayed this news to his subordinates the next day. The only additional instructions for detainee treatment contained in Rumsfeld's memo on January 19 sounded notes of restraint, but left a sizeable loophole: "The Combatant Commanders shall, in detaining Al Qaida and Taliban individuals under the control of the Department of Defense, treat them humanely and, *to the extent appropriate and consistent with military necessity*, in a manner consistent with the Geneva Conventions of 1949" (emphasis added). The fact that the military repeatedly drove through that loophole suggests that they believed that following Geneva was often inconsistent with military necessity.

The State Department and some members of the military dissented, and a revealing internal debate ensued. In late January, a memo to President Bush bearing White House counsel

³² ACLU 2005.

³³ Yoo and Delahunty 2002. Yoo would later applaud Bush's policy choices. See Yoo 2006, 44.

Alberto Gonzales' signature, but likely penned in large part by Cheney's lawyer David Addington,³⁴ summed up the policy argument against applying Geneva:

As you have said, the war against terrorism is a new kind of war. It is not the traditional clash between nations adhering the laws of war that formed the backdrop for GPW. The nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians ... [T]his new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners...³⁵

This is strong evidence for the “cheaters win” argument. The memo was not meant for the public, and captures a real policy debate among Bush administration lawyers. It also made clear the problem of “limitations.” The heightened need for intelligence meant that American interrogators could not be fenced in by Geneva, the memo argues. We would need a “new set of rules.”³⁶ Furthermore, the outcome of the debate was highly consequential: The decision to forego Geneva, which President Bush again confirmed two weeks later,³⁷ was instrumental in leading to abuses, especially in the military.³⁸

The CIA also worried about Geneva's constraints, as the 2014 Senate report makes clear:

A letter drafted for [Director of Central Intelligence George] Tenet to the president urged that the CIA be exempt from any application of these protections, arguing that application of Geneva would “significantly hamper the ability of CIA to obtain critical threat information necessary to save American lives.” On February 1, 2002—approximately two months prior to the detention of the CIA's first detainee—a CIA attorney wrote that if CIA detainees were covered by Geneva there would be “few alternatives to simply asking questions.” The attorney concluded that, if that were the case, “then the optic becomes how legally defensible is a

³⁴ Gellman 2008, Chapter 7.

³⁵ Gonzales 2002.

³⁶ Yoo 2006, 47.

³⁷ Bush 2002.

³⁸ Hutchinson et al. 2013; Phillips 2012.

particular act that probably violates the convention, but ultimately saves lives.”³⁹

The CIA viewed “saving lives” and following Geneva as mutually exclusive realms. The agency wanted “flexibility,” in Yoo’s euphemistic terms: “[T]reating the detainees as unlawful combatants would increase flexibility in detention and interrogation, potentially yielding actionable intelligence that could prevent future terrorist attacks and locate al Qaeda personnel and assets.”⁴⁰

The CIA was beginning to set up a separate interrogation program at that time. Since the agency had no recent interrogation experience, it sought the advice of others. The CIA employed two psychologists, James Mitchell and Bruce Jessen, who had experience with the Survival, Evasion, Resistance, and Escape (SERE) training endured by US military members most in danger of capture. The SERE techniques included “stripping students of their clothing, placing them in stress positions, putting hoods over their heads, disrupting their sleep, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures.”⁴¹ Some SERE schools also used the water board, and the Mitchell-Jessen variant that the CIA used was even more brutal than the already-rough training version.⁴² The only “attractive” feature of Mitchell and Jessen’s resume was their knowledge of a kind of science of brutality – there was no other compelling reason for the CIA to hire them. According to the Senate Report, “Neither psychologist had experience as an interrogator, nor did either have specialized knowledge of al Qa’ida, a background in terrorism, or any relevant regional, cultural, or linguistic expertise.”⁴³ The CIA also partnered with experienced interrogators from the FBI,

³⁹ US Senate Select Committee on Intelligence 2014, 20.

⁴⁰ Yoo 2006, 43.

⁴¹ US Senate Armed Services Committee 2008, xiii.

⁴² Mayerfeld 2016, 137.

⁴³ US Senate Select Committee on Intelligence 2014, 21.

but the FBI interrogators were subordinate to the less experienced but more aggressive contracting psychologists.⁴⁴ The CIA and the Bush administration may have valued experience, but they valued harsh measures even more.

A back-and-forth between the CIA and Senate investigators about Mitchell and Jessen's experience clarifies the CIA's preferences in the early days of the war on terror:

The CIA's June 2013 Response states that the Committee Study was "incorrect... in asserting that the contractors selected had no relevant experience." The CIA's June 2013 Response notes [Mitchell] and [Jessen]'s experience at the Department of Defense SERE school, and [Mitchell]'s "academic research" and "research papers" on "such topics as resistance training, captivity familiarization, and learned helplessness- all of which were relevant to the development of the program." The CIA's June 2013 Response does not describe any experience related to actual interrogations or counterterrorism, or any relevant cultural, geographic, or linguistic expertise. The CIA's June 2013 Response provides the following explanation: "Drs. [Mitchell] and [Jessen] had the closest proximate expertise CIA sought at the beginning of the program, specifically in the area of *non-standard means of interrogation*. Experts on traditional interrogation methods did not meet this requirement. Non-standard interrogation methodologies were not an area of expertise of CIA officers or of the US Government generally. We believe their expertise was so unique that we would have been derelict had we not sought them out when it became clear that CIA would be heading into the uncharted territory of the program."⁴⁵

Though the Senate report argues at times that the contractors were pivotal in convincing the CIA to move in harsher directions, the CIA leadership was talking to these contractors in the first place for a reason. The agency's initial interest in outside-the-box interrogation meant that they were looking beyond norms prior to the contractors' influence.

⁴⁴ Soufan 2011.

⁴⁵ US Senate Select Committee on Intelligence 2014, 32. See also Central Intelligence Agency 2013, 49. Emphasis in the original.

The CIA began to test limits early. The Senate report provides the earliest evidence of CIA brainstorming about what would be allowable in terms of interrogation:

[B]y the end of November 2001, CIA officers had begun researching potential legal defenses for using interrogation techniques that were considered torture by foreign governments and a non-governmental organization. On November 26, 2001, attorneys in the CIA's Office of General Counsel circulated a draft legal memorandum describing the criminal prohibition on torture and a potential “novel” legal defense for CIA officers who engaged in torture. The memorandum stated that the “CIA could argue that the torture was necessary to prevent imminent, significant, physical harm to persons, where there is no other available means to prevent the harm,” adding that “states may be very unwilling to call the U.S. to task for torture when it resulted in saving thousands of lives...”⁴⁶

It is unclear how the CIA could have believed the standard necessity defense was “novel.” Much clearer is the agency’s hunch that successful interrogation might require expanding beyond legal bounds. The November 26 memo mentioned “cold torture,” “forced positions,” “enforced physical exhaustion,” “sensory deprivation,” “perceptual deprivation,” “social deprivation,” “threats and humiliation,” “conditioning techniques,” and “deprivation of sleep.”⁴⁷ The memo’s use of the word “torture” and reliance on the necessity defense suggests that it was not yet relying on the not-quite-torture justifications (discussed more at length in the next section) featured so prominently in the Bybee memos from August 2002.

There is evidence that the CIA had explored more above-board detention and interrogation options in early November 2001, and it is not obvious what changed in that month.⁴⁸ It may be that the agency’s – and the administration’s – imaginations simply caught up with their mood change, and the turning point was September 11 itself. In a statement before

⁴⁶ US Senate Select Committee on Intelligence 2014, 19.

⁴⁷ Ibid, 179.

⁴⁸ Ibid, 19; Apuzzo and Risen 2014.

Congress in 2002, the CIA's lead counterterrorism official Cofer Black cryptically reported, "All I want to say is that there was 'before' 9/11 and 'after' 9/11. After 9/11 the gloves come off." For Black as well as many others, following norms and rules after 9/11 would have been like wearing gloves in a bare-knuckled world. This is why Black concluded his statement by advocating the continuation of a policy of "no limits aggression."⁴⁹

When Abu Zubaydah was captured in March 2002, he took al-Libi's place as the United States' most important detainee to date in the war on terror. As with al-Libi, FBI interrogators at first reported success in getting Zubaydah to talk using rapport-building methods.⁵⁰ But they soon came in conflict with the CIA contractors. The CIA had primary authority over interrogation, and the coercive measures began. "At the end of April 2002, the DETENTION SITE GREEN [where Zubaydah was held] interrogation team provided CIA Headquarters with three interrogation strategies. CIA Headquarters chose the most coercive interrogation option, which was proposed and supported by CIA contractor [Mitchell]."⁵¹ The CIA leadership was convinced that more coercive meant more effective.

The CIA was simultaneously petitioning the OLC for legal clearance regarding a set of techniques to use on Zubaydah. The OLC, in a memo bearing the name of Jay Bybee but mostly written by John Yoo, followed up on a few months of verbal assurances with written affirmation of almost all of the requested techniques, including sleep deprivation and use of the water board.⁵² As Yoo explains, the CIA wanted to know "what the legal limits of interrogation [were]."⁵³ The CIA also seemed to subscribe to a nastier-equals-more-effective calculus among

⁴⁹ US Congress 2002.

⁵⁰ Soufan 2011.

⁵¹ US Senate Select Committee on Intelligence 2014, 30.

⁵² Bybee 2002.

⁵³ Quoted in Gellman and Becker 2007.

their set of harsh interrogations. In their petitions for approval, the psychologists emphasized that the water board, which they viewed as the harshest of the bunch,⁵⁴ was an “absolutely convincing technique,” and therefore necessary to break Zubaydah.⁵⁵ Mitchell, Jessen, and the CIA leaders were obviously “convinced”: Zubaydah suffered the water board eighty-three times during August 2002, according to the CIA Inspector General’s Report (2004, 90).

Later in 2002, military interrogators at Guantánamo Bay asked the Pentagon for approval of harsher measures. The leading line of the request states the perceived problem forthright: “The current guidelines for interrogation procedures at GTMO [Guantánamo] limit the ability of interrogators to counter advanced resistance.”⁵⁶ The Guantánamo soldiers believed they were chafing under the yoke of then-current limits on interrogation methods. After Defense Counsel Haynes trimmed the list, Rumsfeld approved all of Haynes recommendations, which included forced standing, sensory deprivation, hooding, removal of clothing, and use of dogs to induce fear.⁵⁷ Other techniques like exposure to cold, the “wet towel” method (similar to the water board), and death threats were deemed legal but required per-use approval. Regarding forced standing, Rumsfeld also hand-wrote, “I stand for 8-10 hours a day. Why is standing limited to 4 hours?”⁵⁸ The implicit message seems to be, when it comes to coercion, more is better.

While Bush did not openly discuss the CIA’s coercive interrogation program until 2006, observers were already noticing at least a year earlier that those responsible for designing and approving the torture program did not suffer professionally – if anything, they were promoted:

What happened to higher-up architects and consultants on
administration policy? Mr. Rumsfeld revealed last week that he

⁵⁴ For evidence that the contractors saw the water board as the harshest of the techniques, see the reference to them in Bybee 2002 (to Rizzo), 2.

⁵⁵ US Senate Select Committee on Intelligence 2014, 36.

⁵⁶ Phifer 2002, 1.

⁵⁷ Ibid, 2.

⁵⁸ Rumsfeld 2002.

twice offered to resign over the Abu Ghraib scandal and was twice turned down by President Bush. Mr. Bybee, who defined torture as pain equivalent to “organ failure,” was nominated by Mr. Bush to the Ninth Circuit Court of Appeals and took his seat there in 2003. Michael Chertoff, who in his capacity as head of the Justice Department's criminal division advised the C.I.A. on the legality of coercive interrogation methods, was selected by President Bush to be the new secretary of homeland security. William J. Haynes II, the Department of Defense's chief legal officer, who helped oversee Pentagon studies on the interrogation of detainees, was twice nominated by President Bush to the Fourth Circuit Court of Appeals. And Mr. Gonzales, who used the words "obsolete" and "quaint" in reference to the Geneva Conventions, was confirmed last week as attorney general, the nation's top legal post.⁵⁹

Bush went out of his way to reward those who pushed for the harshest measures. While their primary “virtue” may have been loyalty, it is hard to separate out loyalty from the vision to which that loyalty adhered, namely, an aggressive approach to detention and interrogation.

Defenders of harsh interrogation, including Bush and Cheney, continued their advocacy of such practices through Bush’s two terms and beyond.⁶⁰ In a chapter on the administration's use of torture, Holmes (2007, 279) writes:

One reason the Administration's defenders remain unmoved by the numerous powerful arguments against the utility of coercive interrogation might be that they are not really focused on the information extracted by these methods . . . They may prize the cruel, inhumane, and degrading treatment of prisoners precisely *because* it violates international norms and the rules of war. Psychologically persuasive evidence that a medicine is effective is that it tastes unbearably foul [emphasis in the original].

Holmes goes a bit too far here; former administration officials and CIA officers use examples to argue their side, even if the evidence does not always add up. However, their initial intuitions

⁵⁹ Kakutani 2005.

⁶⁰ Administration officials continued to push for harsh interrogation even after the program was discontinued. I discuss the implications of this in the conclusion.

and reading of the evidence about the efficacy of torture may well have been (and continue to be) informed by torture's status as an off-limits practice.

In one of his few public appearances since the end of his term, Bush described his thought process after capturing 9/11 mastermind Khalid Sheik Mohammed (KSM): “The first thing you do is ask, what's legal? What do the lawyers say is possible?”⁶¹ In other words, how far would interrogators be able to go in terms of severity?⁶² Interestingly, Bush does *not* say that he first asked, “Who are the most experienced interrogators? Who has the best record of success?” Degree of severity likely informed estimates of the probability of successful interrogation.

The Bush administration pushed the normative envelope in a number of areas during the war on terror, including indefinite detention, closed trials, preventive war, and targeted killing, in addition to detainee abuse. This suggests that torture was not an act specifically plucked from a pile of war tactics for its stellar record as a means of producing intelligence; rather, torture emerged from a broader set of beliefs about the efficacy of policies that some have considered too harsh or unjust to be an accepted practice.

Evidence for the Lack of Specificity Argument

Yoo's memo to Alberto Gonzales in August 2002 includes blanketing permission for the president to use torture as anyone, including the memos' authors, would define it. The justification for this was a controversial reading of the power that the constitution grants to the president during a time of war. Yoo conditions the allowance on the severity of the threat,

⁶¹ Hamby 2009.

⁶² KSM received treatment similar to Zubaydah: he endured 183 applications of the water board in March 2003. See CIA Inspector General 2004, 91; Bradbury 2005.

leading to a legalistic necessity defense.⁶³ While provocative, the thrust of the OLC memos from August 2002 is about why almost all of the CIA's proposed acts did not constitute torture. Yoo's memos are a clinic on how to take advantage of the torture norm's lack of specificity, both in redefining torture and in emphasizing the limited nature of the proposed techniques.

As Noah Feldman puts it in a review of Torture Memos collections, "In order to expand the range of coercive tactics that could lawfully be used against suspected terrorists, [government lawyers] pared down the legal definition of torture to the barest minimum."⁶⁴ The definition of torture in US Code's Section 2340-2340A under title 18, the one that criminalizes torture outside the United States, echoes the CAT's definition: torture consists of "severe physical or mental pain or suffering" in both. Yoo calls this the "key statutory phrase." He writes, "Section 2340 makes plain that the infliction of pain or suffering per se, whether it is physical or mental, is insufficient to amount to torture. Instead, the text provides that pain or suffering must be 'severe.' The statute does not, however, define the term 'severe'"⁶⁵ This is Yoo's opening. He asserts that in order to qualify as "severe pain" as "The victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result." When the statute clarifies "severe mental pain or suffering" as meaning "prolonged" harm, "it must result in significant psychological harm of significant duration, e.g., lasting for months or even years."⁶⁶ The section on torture's definition concludes: "In short, reading the definition of torture as a whole, it is plain that the term encompasses *only*

⁶³ See Bybee 2002b, especially Part V and VI. Recall that while Bybee signed off on the memos and they bear his name, Yoo was the primary author.

⁶⁴ Feldman 2005.

⁶⁵ Bybee 2002 (to Gonzales), 5. Emphasis added.

⁶⁶ *Ibid*, 1.

the most extreme acts.”⁶⁷ The use of “only” in that sentence is almost a confession of what Mayerfeld (2016, 123) calls a “vanishingly narrow definition of the word ‘torture.’”

Given this approach to torture’s definition, it is unsurprising that the OLC approved nearly every technique that the CIA requested. The memos that cover the techniques, which draw heavily on the CIA’s reassurances, fuss over details in an effort to downplay the negative effects. At times, the memos sound remarkably similar to the court-martial defendants from the Philippine-American War. When a detainee is slammed against a wall, he won’t suffer injury, because the wall is “flexible.” For the facial slap, “the goal...is not to inflict physical pain that is severe or lasting. Instead, the purpose of the facial slap is to induce shock, surprise, and/or humiliation.” Stress positions are “not designed to produce pain,” only “muscle fatigue.” The effects of extensive sleep deprivation “will remit after a few good nights of sleep.” Even the water board will not “result in any physical harm” or have “long-term mental health consequences.”⁶⁸ These methods would merely “dislocate his [in this case, Zubaydah’s] expectations regarding the treatment he believes he will receive...”⁶⁹

In memos to the OLC, the CIA and its contractors stressed that they would wield the techniques with a regulated and limited hand. Mitchell and Jessen wrote: “any physical pressure applied to extremes can cause severe mental pain or suffering. Hooding, the use of loud music, sleep deprivation, controlling darkness and light, slapping, walling, or the use of stress positions taken to extreme can have the same outcome. The safety of any technique lies primarily in how it is applied and monitored.”⁷⁰ This quote is misleading given the number of times that the

⁶⁷ Ibid, 13.

⁶⁸ Bybee 2002 (to Rizzo), 2-6.

⁶⁹ Bybee 2002, (to Rizzo), 1-2.

⁷⁰ Quoted in US Senate Select Committee on Intelligence 2014, 36.

contractors used the water board with Zubaydah and KSM.⁷¹ Still, the contractors' view that their techniques could be sold as something less than torture by suggesting degrees of severity that their methods would not approach suggests the importance of torture's blurry definition in justifying harsh methods before and while they were occurring.

The coercive techniques' origins as part of SERE training, like other "we tried it ourselves" justifications, also allowed practitioners and lawyers to portray the methods as acceptable. The Yoo-Bybee memos discuss at length how the SERE training has had little or no long-term adverse consequences for trainees.

These same techniques, with the exception of the insect in the cramped confined space, have been used and continue to be used on some members of our military personnel during their SERE training. Because of the use of these procedures in training our own military personnel to resist interrogations, you have consulted with various individuals who have extensive experience in the use of these techniques. You have done so in order to ensure that no prolonged mental harm would result from the use of these proposed procedures. Through your consultation with various individuals responsible for such training, you have learned that these techniques have been used as elements of a course of conduct without any reported incident of prolonged mental harm.⁷²

The memo makes plain that the CIA played up the SERE training roots in order to play down the severity of the techniques. A *New York Times* investigation sums up the CIA's and the administration's thinking on the matter: "The program began with Central Intelligence Agency leaders in the grip of an alluring idea: They could get tough in terrorist interrogations without risking legal trouble by adopting a set of methods used on Americans during military training. How could that be torture?"⁷³

⁷¹ The CIA rebuttal to the Senate report takes issue with this characterization, but with little to its defense aside from asserting that the Department of Justice approved of the repetitions in follow-up communications. See Central Intelligence Agency 2013, 32.

⁷² Bybee (to Rizzo) 2002, 4.

⁷³ Shane and Mazzetti 2009.

After the OLC released the August 2002 memos, members of the military officers in Guantánamo Bay who were seeking harsher interrogation methods. In October 2002, CIA lawyer Jonathan Fredman attended a Counter Resistance Strategy Meeting with Guantánamo officials. According to the minutes of that meeting, Fredman assured his military counterparts that most things short of killing a detainee would be allowable:

Under the Torture Convention, torture has been prohibited by international law, but the language of the statutes is written vaguely. Severe mental and physical pain is prohibited. The mental part is explained as poorly as the physical. Severe physical pain is described as anything causing permanent damage to major organs or body parts. Mental torture is described as anything leading to permanent, profound damage to the senses or personality. *It is basically subject to perception. If the detainee dies, you're doing it wrong.* Any of the techniques that lie on the harshest end of the spectrum must be performed by a highly trained individual. Medical personnel should be present to treat any possible accidents.⁷⁴

The death of a detainee, in Fredman's view, would be an absolute, difficult to minimize. Otherwise, the proposed methods are "subjective," or open to interpretation. This is the opportunity that Fredman and the Guantánamo interrogators saw in the "vague" language of the statute.

A few years later, George W. Bush would use the same word – "vague" – at a press conference to describe the language in treaties to which the United States was supposed to adhere:

QUESTION: What do you say to the argument that your proposal is basically seeking support for torture, coerced evidence and secret hearings?...

BUSH: Common Article 3 [of the Geneva Conventions] says that, you know, there will be no outrages upon human dignity. That's like — it's very vague. What does that mean, 'outrages upon human dignity'? That's a statement that is wide open to

⁷⁴ US Army 2002.

interpretation. And what I am proposing is that there be clarity in the law so that our professionals will have no doubt that that which they are doing is legal.

The “clarifications” Bush proposed would have allowed the CIA to continue a torture program.⁷⁵

If it had looked, the administration may have found some comfort in its “sliding scale” approach to harsh interrogation from certain members of the press, even some self-described “liberals”. In November 2001, Jonathan Alter of *Time* wrote:

In this autumn of anger, even a liberal can find his thoughts turning to...torture. OK, not cattle prods or rubber hoses, at least not here in the United States, but *something* to jump-start the stalled investigation of the greatest crime in American history. Couldn't we at least subject them to psychological torture, like tapes of dying rabbits or high-decibel rap? (The military has done that in Panama and elsewhere.) How about truth serum, administered with a mandatory IV? Or deportation to Saudi Arabia, land of beheadings? ... We can't legalize physical torture; it's contrary to American values. But even as we continue to speak out against human-rights abuses around the world, we need to keep an open mind about certain measures to fight terrorism, like court-sanctioned psychological interrogation. And we'll have to think about transferring some suspects to our less squeamish allies...

Alter wasn't alone in the press in believing that the post-9/11 world called for harsh but limited interrogation. After details began to leak of the Bush administration's torture program, *Atlantic* correspondent Mark Bowden applauded the administration's approach:

The Bush Administration has adopted exactly the right posture on the matter. Candor and consistency are not always public virtues. Torture is a crime against humanity, but coercion is an issue that is rightly handled with a wink, or even a touch of hypocrisy; it should be banned but also quietly practiced. Those who protest coercive methods will exaggerate their horrors, which is good: it generates a useful climate of fear. It is wise of the President to reiterate U.S. support for international agreements banning torture, and it is wise for American interrogators to employ whatever coercive methods work. It is also smart not to discuss the matter with anyone. If interrogators step over the line from coercion to outright torture, they should be held personally responsible. But no interrogator is

⁷⁵ CQ Transcriptions 2006.

ever going to be prosecuted for keeping Khalid Sheikh Mohammed awake, cold, alone, and uncomfortable. Nor should he be.⁷⁶
(Nor has he been to date, we might now add after thirteen years.)

Even when news of Zubaydah suffering the water board was made public, Bowden did not back down. He continued to use the same “continuum” of coercion logic to excuse the Bush administration’s choices:

Waterboarding is a process by which a detainee is strapped down and forced to ingest and inhale water until he experiences the terror of drowning. It is not torture in the traditional sense of inflicting pain; it inflicts fear, intense, visceral fear, without doing physical harm. It is a method calculated to straddle the definitions of coercion and torture, and as such merely proves that both methods inhabit the same slippery continuum. There is a difference between gouging out a man's eyes and keeping him awake, and waterboarding falls somewhere in between.⁷⁷

It’s unclear whether these journalists had any causal impact on the Bush administration’s choices. The quotes do show, however, that when the Bush administration was ready to sell its methods as something that stops short of torture, it had some sympathetic audience members.

John Yoo suggests in the aftermath that the Bush administration’s policies that detainees were treated “humanely.” He writes:

The White House released a list of the conditions provided to the detainees, including adequate food, clothing, housing, shelter, medical care, and the right to practice their religion. I witnessed these humane standards myself at Gitmo ... Some detainees received the first modern medical and dental care of their lives. To be sure, conditions were not those of a hotel... [However,] US armed forces were ordered to treat the al Qaeda and Taliban humanely, and they did so admirably.⁷⁸

⁷⁶ Bowden 2003, 76.

⁷⁷ Bowden 2007.

⁷⁸ Yoo 2006, 44.

Yoo conveniently skips the fact that detainees were denied sleep for as much as a week, or air for as much as forty seconds, in his discussion of what constitutes “humane treatment.” Meals delivered rectally without medical necessity could hardly count, either.⁷⁹

Yoo’s insinuation that the detainees were receiving the best medical care of their lives uses another version of favorable comparison: a contrast with the supposedly squalid conditions of the detainee’s life before capture. General Janis Karpinski, commander at Abu Ghraib, said in an interview that “living conditions now are better in prison than at home. At one point we were concerned that they wouldn’t want to leave.”⁸⁰ Justifications like these enabled harsher treatment.

Dick Cheney took favorable comparisons to a ridiculous extreme in an interview following the release of the Senate report. When NBC’s Chuck Todd asked him how he defines torture, he said,

Well, torture, to me, Chuck, is an American citizen on a cell phone making a last call to his four young daughters shortly before he burns to death in the upper levels of the Trade Center in New York City on 9/11. There's this notion that somehow there's moral equivalence between what the terrorists and what we do. And that's absolutely not true. We were very careful to stop short of torture. The Senate has seen fit to label their report torture. But we worked hard to stay short of that definition.⁸¹

Cheney had obviously given up on producing any legalistic distinction that day and tried for a sort of shock-effect comparison; the result is absurd. But in a way, Cheney is right about the Bush administration’s efforts: it did try to “stop short of torture,” and it did so by defining torture

⁷⁹ The 2014 Senate report said that the CIA used “rectal rehydration” against at least five detainees. See US Senate Select Committee on Intelligence 2014, “Findings and Conclusions,” 4.

⁸⁰ Quoted in Hersh 2004.

⁸¹ NBC News 2014.

in the narrowest way and showing how just about anything can be justified under such a definition.

Interaction

If the Bush administration could not use the word “torture” to describe their methods, what did it call them? The phrases they picked – enhanced interrogation, robust interrogation, special interrogation⁸² – are telling. They contain my two main explanations simultaneously. Take “enhanced interrogation techniques,” the euphemistic term for the CIA’s torture program that was used commonly enough to warrant an acronym, “EITs”. Andrew Sullivan translated the phrase as “torture-that-isn’t-somehow-torture.”⁸³ Those in the administration who used the phrase clearly wanted to separate the techniques from torture label, thus playing down the severity of the acts.⁸⁴

The euphemism also may allude simultaneously to the effectiveness and the severity of the methods. To “enhance” means to intensify, and also to improve. The enhanced interrogation techniques, then, were more intense and more effective than standard methods, or so the Bush administration would have us believe. But they were not quite torture. They occupied the idealized middle ground. As one lawyer who wrote the guidelines for a more coercive military interrogation program put it, “We wanted to find a legal way to jack up the pressure ... We wanted a little more freedom than in a U.S. prison, but not torture.”⁸⁵

⁸² Mayer 2008, 151.

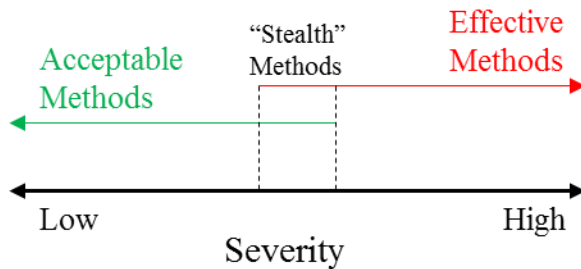
⁸³ Sullivan shows a parallel with the German “Verschärfte Vernehmung,” a phrase used by the Nazis to describe similar techniques. See Sullivan 2007. I have not seen any evidence that the CIA or any other Bush administration members learned of the term from Nazi documents, trials, or stories, however.

⁸⁴ Much of the media started using the term “enhanced interrogation” after the Bush administration went public with it, and there was a debate as to whether simply using the term (rather than “torture”) validated the administration’s position. See the NPR Ombudsman’s discussion of the matter in Shepard 2009.

⁸⁵ Quoted in Priest and Stephens 2004.

Figure 6: Bush seeks a middle-ground.

“...the procedures were **tough**, and they were **safe**, and **lawful**, and **necessary**.”
- George W. Bush, Speech, September 2006



Bush himself reached for this middle

ground when he first acknowledged the CIA program in 2006 and began to sell it to the public.

He starts with another euphemistic phrase for the approved torture methods:

The CIA used an *alternative set of procedures*. These procedures were designed to be safe, to comply with our laws, our Constitution, and our treaty obligations. The Department of Justice reviewed the authorized methods extensively and determined them to be lawful. I cannot describe the specific methods used – I think you understand why – if I did, it would help the terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks on our country. But I can say the procedures were *tough*, and they were safe, and lawful, and *necessary*.⁸⁶

Taking the italicized words from the last sentence together, the procedures were tough and necessary. In other words, it was necessary to be tough. But the CIA was not out of control.

The procedures were limited and legal. (See Figure 6 for a graphical display.) Yoo would back up Bush’s claims the same year with similar reasoning in his book: “President Bush chose the right policy, one that provided the United States with flexibility to develop the rules that should

⁸⁶ Bush 2006. Emphasis added.

apply to the new enemy of global terrorism, but which, in treating the enemy humanely, maintained American values.”⁸⁷

Cheney used a similar tactic in defending the CIA program:

[A] small number of terrorists, high-value targets, held overseas have gone through an interrogation program run by the CIA. It’s a tougher program, for tougher customers. (Applause.) These include Khalid Sheikh Mohammed, the mastermind of 9/11. He and others were questioned at a time when another attack on this country was believed to be imminent. It’s a good thing we had them in custody, and it’s a good thing we found out what they knew. (Applause.)

The procedures of the CIA program are designed to be safe, and they are in full compliance with the nation’s laws and treaty obligations. They’ve been carefully reviewed by the Department of Justice, and very carefully monitored. The program is run by highly trained professionals who understand their obligations under the law. And the program has uncovered a wealth of information that has foiled attacks against the United States; information that has saved thousands of lives. (Applause.)

The United States is a country that takes human rights seriously. **We do not torture — it’s against our laws and against our values.** We’re proud of our country and what it stands for. We expect all of those who serve America to conduct themselves with honor.⁸⁸

The United States needed this “tougher program,” according to Cheney. But because of the wiggle room that Cheney saw in coercive interrogation, he believed that he could at least sell the idea that the United States could adopt this set of techniques and still be a country that “takes human rights seriously.”

Alternative Explanations

Democratic Restraints and Monitoring

⁸⁷ Yoo 2006, 44.

⁸⁸ Cheney 2008. See also Frey 2008.

Coming in to the office of the Vice Presidency, Cheney already had strong beliefs about the importance of shifting the balance of power in favor of the executive branch. As noted in the previous chapter, he viewed the Church committee's work during the Ford administration as unwarranted encroachment by Congress that threatened to hamper the CIA's intelligence-gathering capabilities. He also railed against congressional overreach both *as* a member of Congress during the Iran-Contra Affair and afterward.⁸⁹ He brought this conviction back to the executive branch during George W. Bush's terms: "White House officials said Cheney's long-held constitutional views fit well with Bush's determination to show a strength his father was accused of lacking. This would not be a 'prudent,' compromising White House, and Bush would not disparage, as his father had, 'the vision thing.' A bold presidency called for bold use of power...[T]he vice president pushed on an open door with Bush."⁹⁰

The September 2001 attacks presented a substantial opportunity for Cheney, and increasingly Bush, to see their vision through. The rally-around-the-flag effect was considerable. Bush enjoyed a ninety-percent approval rating soon after the attacks.⁹¹ Congress was not in a position to deny the executive branch much in the way of capabilities. It passed several sweeping pieces of legislation, including authorization of force: "[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."⁹² This was the language behind the amorphous "war on terror." The OLC also penned

⁸⁹ Cheney et al. 1987; Cheney 1989.

⁹⁰ Gellman 2008, Chapter 4.

⁹¹ Gallup Inc. 2016.

⁹² US Congress 2001.

a memo in 2001 arguing that the president had “broad constitutional power” to wage war with minimal interference.⁹³

Congress had little knowledge and oversight of the administration’s interrogation programs. The Senate report emphasizes all the ways in which the CIA did not inform Congress. The CIA responds by trumpeting all the ways in which it did. Even still, the CIA confesses that it withheld details, especially early on: “We disagree with the [Senate] Study’s conclusion that the Agency actively impeded Congressional oversight of the CIA detention and interrogation program. We believe the record demonstrates that CIA leaders made a good faith effort to keep oversight committee leaders fully briefed on the program *within the strict limits on access that had been set by the White House.*”⁹⁴ More Congressional oversight would likely have spelled less torture. This is why CIA legal counsel John Rizzo, in an interview, discussed “scaling the program back and...bringing more members of Congress into it” in the same breath.⁹⁵

Torturers were not just worried about their own government finding out; they also feared backlash from media and public opinion in other countries. Cofer Black, in a memo to George Tenet, addressed the risks associated with the CIA maintaining a detention facility: "As captured terrorists may be held days, months, or years, the likelihood of exposure will grow over time ... Media exposure could inflame public opinion against a host government and the US, thereby threatening the continued operation of the facility."⁹⁶

Army legal advisor Diane Beaver also feared monitoring by human rights groups at Guantánamo Bay. At the *Counter Resistance Strategy Meeting*, Beaver explained, “We may need to curb the harsher operations while ICRC [International Committee of the Red Cross] is

⁹³ Yoo 2001.

⁹⁴ Central Intelligence Agency 2013. Emphasis added.

⁹⁵ Moughty 2015.

⁹⁶ US Senate Select Committee on Intelligence 2014, 12.

around. It is better not to expose them to any controversial techniques ... The ICRC is a serious concern. They will be in and out, scrutinizing our operations, unless they are displeased and decide to protest and leave. This would draw a lot of negative attention.”⁹⁷ Beaver would go on to write a legal memo for the Army arguing that a number of proposed harsh interrogations would be legal. Apparently she doubted whether the ICRC would agree, and she believed that the consequences of ICRC contact would be detrimental and maybe fatal to the continuation of the program. Moreover, the connection Beaver makes between the ICRC and “negative attention” implies that she was worried about wider exposure, under the assumption that more attention would be more constraining.

Beaver turned out to be right: Wider circles of people with knowledge of the interrogation program led to less torture. For starters, the number of lawyers influencing the interrogation policy grew. When more lawyers from the Department of Defense and State weighed in, the torture policy began to fade.⁹⁸ Also consequential was the Abu Ghraib revelations. Christophe Girod, who led Washington, DC’s ICRC office, “said that the revelations about Abu Ghraib had an enormous impact, including at Guantánamo. ‘After Abu Ghraib, everything changed,’ he said. ‘It was an awakening, media-wise and political-wise.’”⁹⁹ Monitoring reduced torture.

Neither the Abu Ghraib incident nor the leak of one of the Yoo-Bybee torture memos in 2004 cost George W. Bush the election later that year, however. While elections are about a lot of things, national security played a prominent role that year, and the public was not sufficiently disgusted with Bush to oust him despite the revelations. For some voters, the revelations may

⁹⁷ US Army 2002, 3.

⁹⁸ Nuñez-Mietz 2013.

⁹⁹ Hutchinson et al. 2013, 55.

have helped build a case that Bush was “tough” on terrorism. One 2004 exit poll showed that voters who were more concerned about terrorism than any other issue broke for Bush over Kerry, eighty-six percent to fourteen percent.¹⁰⁰ US public opinion polls show some tolerance for torture, too. Gronke and Rejali (2010) look at public opinion polls from the Bush years and find that support for torture was low, but their measurement conflated the responses “rarely justified” and “never justified” into a single category. Perhaps those who thought torture was rarely justified also believed that detainees like KSM, a key figure in the 9/11 attacks, were just the sort of characters for whom a government’s rare right to torture should be preserved. If so, torture of KSM may have garnered majority support. Thus, while the military, the CIA, and the Bush administration in general certainly didn’t welcome exposure, politicians did not pay a clear price for voter knowledge of the torture program.

Desperation

To show the terrorist threat has been overblown since 2001, John Mueller has collected a sampling of alarmism over al Qaeda’s next moves following the 9/11 attacks:

In 2003, a group of 200 senior government officials and business executives, many of them specialists in security and terrorism, pronounced it likely that a terrorist strike more devastating than 9/11 – possibly involving weapons of mass destruction – would occur before the end of 2004. In May 2004, Attorney General John Ashcroft warned that al Qaeda could “hit hard” in the next few months and said that 90 percent of the arrangements for an attack on U.S. soil were complete ... On the first page of its founding manifesto, the massively funded Department of Homeland Security intones, “Today’s terrorists can strike at any place, at any time, and with virtually any weapon.”¹⁰¹

¹⁰⁰ NBC News 2004.

¹⁰¹ Mueller 2006.

It's not hard to imagine desperation springing from such scary estimates. Perhaps most surprisingly, Mueller's examples come at least a year after the September 2001 attacks. The mood right after the attacks was, if anything, more desperate.

The first chapter of Jane Mayer's book on torture during the war on terror is aptly titled "Panic." Directly following September 11, political leaders believed that another attack was likely, and that they were probably the next targets. According to Roger Cressey, who led the Terrorist Threats Sub-Group of the National Security Council, "They thought they were going to get hit again. They convinced themselves that they were facing a ticking time bomb...I firmly expected to get hit again too. It seemed highly probable." Another former administration official called the anthrax incidents of October 2001 "really, really scary. They thought Cheney was already lethally infected." Although Cheney never had the reputation of a cuddly teddy bear, but after September 11, a family friend described him as "more steely, as if he was preoccupied by terrible things he couldn't talk about." Lawrence Wilkerson, a critic of much of the war on terror policies, said, "Cheney was traumatized by 9/11. The poor guy became paranoid." Part of the problem was that Cheney and Bush wanted to see raw intelligence reports. The stream of threats that these reports contained made people "paranoid," and sowed the seeds for an extreme response, even though much of it "garbage," according to Cressey.¹⁰² The genesis of the torture program, therefore, "...was very much in the context of the threat streams that were just eye-popping at the time."¹⁰³

Organizational Culture

¹⁰² Mayer 2008, 2-6.

¹⁰³ Quoted in Shane and Mazzetti 2009.

Michael Hayden, the CIA director when the Bush administration finally acknowledged the CIA's coercive interrogation program in 2006, spoke to a group of foreign ambassadors about the program. He said, "This is not CIA's program. This is not the President's program. This is America's program."¹⁰⁴ Is he right? Or was the CIA's torture program more a narrow product of the CIA's organizational culture, containing a certain attitude toward illicit activities forged at the agency's founding?

Certainly some of the "creative content" of the program came from the CIA. John Rizzo claims as much: "I was the first lawyer inside the government to hear about this proposed interrogation program. It was a creature of CIA ... This was something our people came up with, this proposed program."¹⁰⁵ Yet just because CIA agents dreamed up the plan does not mean that torture was embedded in the CIA's culture. It may have felt like a creative venture because the CIA had not done anything of the sort recently. Although the CIA obviously had a history with coercive interrogation, the war on terror led to a definite shift.¹⁰⁶ The agency had not had its own program since the Cold War. The only recent connection to torture had been extraordinary rendition, which the Bush administration expanded (as mentioned above). As for the in-house program, the CIA was not "torture-ready". It had to seek outside sources. FBI interrogator Ali Soufan claims that the contractors were more to blame for harsh interrogations than mid- and lower-level CIA agents.¹⁰⁷ FBI documents from April 2002 suggest a sea change with the arrival of the contracted psychologists at Abu Zubaydah's detention site, comports with Soufan's recollections.¹⁰⁸ Even within the sub-department put in charge of interrogation,

¹⁰⁴ Quoted in US Senate Select Committee on Intelligence 2014, "Findings and Conclusions," 6.

¹⁰⁵ Moughty 2015.

¹⁰⁶ Blakeley 2011; US Senate Select Committee on Intelligence 2014, 19.

¹⁰⁷ Soufan 2009. For a dissenting view, see Thiessen 2012.

¹⁰⁸ US Senate Select Committee on Intelligence 2014, 26-27.

three CIA agents approached by the leadership refused to be trained in the enhanced techniques.¹⁰⁹ The CIA needed personnel changes and outside expertise in order to marry torture to their existing structure and know-how.

Since the details of the CIA's interrogation program have been unveiled, several current and former CIA officials have come forward to either condemn the acts, describe a different CIA than the one portrayed under the Bush Administration, or both. For instance, Robert Baer told ABC News that torture is "bad interrogation. I mean you can get anyone to confess to anything if the torture's bad enough."¹¹⁰ Another former CIA officer, Larry Johnson, wrote in the LA Times after talking with other former CIA members, "What real CIA field officers know firsthand is that it is better to build a relationship of trust – even with a terrorist, even if it's time-consuming – than to extract quick confessions through tactics such as those used by the Nazis and the Soviets, who believed that national security always trumped human rights."¹¹¹ Ex-CIA officer and Inspector General Fred Hitz had a similar view of the wider culture of the CIA: "If there is support for this kind of torturous behavior in the Agency, it's not the Agency I remember."¹¹² The former agents quoted above joined the CIA after most of the early Cold War behavioral control experimentation was over. This is not to say that the CIA did not have defenders of the harsh interrogation program – it certainly did, and it still does – but the evidence casts doubt on the idea that the CIA's culture was a primary factor in determining national policy. In light of this, it is not surprising that many in the agency *opposed* the CIA exemption that the Bush Administration pushed into the "Military Commissions Act," a law that banned the use of harsh

¹⁰⁹ Rejali 2007. For an account of another CIA agent who rejected the use of harsh interrogations, see Carle 2014.

¹¹⁰ Ross and Esposito 2005.

¹¹¹ Johnson 2005.

¹¹² Spannaus 2006.

interrogations for other agencies.¹¹³

Higher-ups in the administration fostered an atmosphere ripe for transgressions through the creation of new agencies and by promoting certain individuals. CIA contractor James Mitchell was given security clearances to go with legal affirmations until he could personally administer the water board to high-value detainees.¹¹⁴ Within the military, Donald Rumsfeld created the Special Access Program (SAP) to conduct secret operations and harsh interrogations because he thought the military leadership was too cautious; members of SAP were behind some of the abuses at Abu Ghraib prison in Iraq.¹¹⁵ Given these beginnings, it is hard to imagine a culture developing within SAP that did not condone torture.

The example of General Miller shows how the organizational culture argument blends into the “cheaters win” explanation. Miller, who presided over harsh interrogations at Guantánamo Bay, was transferred to Iraq to “Gitmo-ize” the Abu Ghraib prison¹¹⁶ – that is, to bring torture techniques from Guantánamo to Abu Ghraib. He told interrogators in Iraq that they were being too lenient,¹¹⁷ which helped create a culture of harshness. Like the Bush administration, Miller derived the effectiveness of techniques in part from their proximity to the laws. Regarding the use of extreme temperatures for interrogation, Miller once declared, “If the Torture Statute says 80 degrees is bad, we will set the thermometer at 79.9 degrees.”¹¹⁸ For Miller, “bad” was good. Evidently, the Bush administration liked this approach.

Revenge and Racism

¹¹³ Hosenball and Isikoff 2006. See also Spannaus 2006.

¹¹⁴ Leopold 2014.

¹¹⁵ Hersh 2004.

¹¹⁶ White and Higham 2004.

¹¹⁷ Hutchinson et al. 2013, 398.

¹¹⁸ Quoted in Mayer 2008, 203.

Many of the signs that revenge motivated post-9/11 policies like torture cannot quite be considered evidence: Bush's announcement in downtown Manhattan that "the people who knocked these buildings down will hear all of us soon," and the resulting roar of the crowd¹¹⁹; the twinkle in Bush's eye as he declared that some terrorists "are no longer a problem to the United States and our friends and allies" (presumably because they've been killed or 'disappeared')¹²⁰; or Cheney's half-smile (or smirk?) as he described the CIA interrogation program, followed by enthusiastic applause.¹²¹ These examples are suggestive, but not conclusive. There is no objective way of measuring a twinkle or a smirk and firmly deducing its meaning.

Moving closer to evidence, Cheney talked about detainee treatment in terms of what they "deserved": "They don't deserve to be treated as a prisoner of war. They don't deserve the same guarantees and safeguards that would be used for an American citizen going through the normal judicial process." Cheney pushed for military commissions with limited rights for terrorism suspects, because, in his words, "We think it guarantees that we'll have the kind of treatment of these individuals that we believe they deserve."¹²² In early 2002, he claimed that Guantánamo detainees were being treated "better than they deserve."¹²³ Off-the-cuff estimates of what terrorists "deserve" are likely to be characterized by revenge.

Cofer Black made some exclamations that sounded vengeful bordering on creepy. He told two agents shortly after 9/11, "I want bin Laden's head shipped back in a box filled with dry ice ... I want to be able to show bin Laden's head to the president."¹²⁴ To convince the White

¹¹⁹ Quoted in Walsh 2013.

¹²⁰ Bush 2003.

¹²¹ Cheney 2008.

¹²² Quoted in Bumiller and Myers 2001. Eventually, the Bush administration came to believe that even military commissions were too generous for some prisoners, opting instead for indefinite detention without trial.

¹²³ BBC News 2002.

¹²⁴ Quoted in Levenson 2007.

House about the merits of his plan for pursuing al Qaeda, Black said, “When we’re through with them, they will have flies walking across their eyeballs,” after which he “became known in Bush’s inner circle as ‘the flies-on-the-eyeballs guy.’”¹²⁵ It’s difficult to imagine such theatrical utterances without some motivation for revenge. With his gloves-came-off language, it is clear that Black thought dramatically (and probably vengefully) about detainee treatment, too.

The actual treatment of detainees suggests that revenge may have motivated the treatment. Although such observations mix up dependent and independent variables, the sheer number of times that Zubaydah and KSM were subjected to the water board makes revenge a likely influence.¹²⁶ It is difficult to imagine any interrogation team calmly and coolly administering the water board to KSM 183 times in a month.

Racism was less blatant in this case than in previous ones, as one might expect. A US military interrogator in Afghanistan, who took up the pseudonym “Chris Mackey” when he returned, feared that he and his fellow interrogators might come to resemble soldiers in previous wars:

Mackey wondered how [increasing levels of] hostility would affect his work as an interrogator, and how the antagonistic environment would generally alter his troops’ outlook and behavior toward their detainees. “It made me wonder sometimes whether we were becoming like the troops in Vietnam who had become so prejudiced against the ‘gooks’ and ‘slopes’ and ‘Charlie,’ ” he mused.¹²⁷

Mackey suspected that he and other soldiers were entering a nasty spiral in which hostility bred racism and racism in turn inspired more hostility, with torture as one of the symptoms. But he was even more aware of the dangers of racism than US soldiers in Vietnam, who in turn were

¹²⁵ Woodward 2002, 52.

¹²⁶ Mayerfeld 2016, 138.

¹²⁷ Phillips 2012, Chapter 2.

more cognizant of their own racist tendencies than the American Army in the Philippines. Awareness doesn't nullify racism, but it may be the first step toward its reduction, and suggests that the feelings may not have been as strong in the later war.

Revenge and racism were probably behind the excesses at Abu Ghraib as well. According to Sgt. Ken Davis, "People were being told to rough up Iraqis that wouldn't cooperate. We were also told they're nothing but dogs. You start looking at these people as less than human, and you start doing things to them you would never dream of. And that's where it got scary."¹²⁸ Interrogations in Iraq and Afghanistan were not initially divorced from a real need for intelligence, but, as with the CIA's repeated use of the water board, anger and dehumanization sometimes took a front seat even if they were only lurking at the beginning.

Conclusion

In an effort to sort through the debate between the CIA and the 2014 Senate Report authors, Robert Jervis critiques both sides. Regarding the CIA, Jervis (2015) argues, "[A] Goldilocks view of the CIA's interrogations—that they were not so cruel as to constitute torture but just harsh enough to compel hardened terrorists to divulge critical intelligence—seems too convenient to be true." Jervis is right: the Goldilocks view may not be true, but it was convenient – and consequential.

The desperation that key actors felt, especially in the months and years following September 2001, conditioned responses as well. But desperation did not lead inexorably to torture. Surely the FBI was very interested in intelligence, too, but their interrogators were not as persuaded that nastier meant more effective. Certain elements of the CIA and the military

¹²⁸ Gibney 2007.

were convinced, however, and the Bush administration picked them to lead interrogation efforts, even if it meant choosing away from experience.

After the Senate Report revealed that the CIA had used rectal rehydration without medical necessity, Obama's Director of Central Intelligence John Brennan, who was in the CIA through the Bush years, thought he could still play ignorant on the question of whether CIA tactics during the early war on terror amounted to torture.¹²⁹ By contrast, imagine a political leader in the mid-1950s claiming that he was not sure whether the Hiroshima and Nagasaki bombs were really of an atomic character. Some acts are more amenable to gray area justifications and pleas of ignorance, either feigned or real, and some are less so.

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¹²⁹ Mazzetti and Apuzzo 2014.

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Chapter 6: Conclusion

When faced with a security problem, political actors want to be both tough and ethical. Sometimes they believe that being tough requires not always adhering to what many view as appropriate behavior. But these same actors rarely want to be egregiously and blatantly unethical. So if they see that it is possible, they shoot for a middle ground between what they perceive to be widely acceptable and what they believe to be effective. This middle ground might not truly exist, but the promise of a “best of both worlds” scenario may be hard to resist.

So it was with torture in this book’s three cases. In the Philippine-American War, American soldiers claimed that Filipinos would only divulge information if they were “pressured” or “frightened,” but they also claimed that the “water cure” and other favored methods did not cause “pain” or “permanent damage.” In the early Cold War, some policymakers were convinced that they would sometimes have to compromise liberal values in order to take on the communists, who were not similarly bound. CIA agents developed, tested, and used interrogation practices that they reassured themselves to be mostly harmless. Finally, during the war on terror, politicians and bureaucrats were convinced that standard interrogation tactics would not suffice, but they did not want to do something brazenly illegal, either. Accordingly, well-placed lawyers minimized the definition of torture to make room for “enhanced interrogation techniques,” which practitioners and supporters touted to be both safe and effective.

To conclude, I will elaborate on the contributions that this study makes. Then I will examine the generalizability and limits of the central arguments. Finally, I will consider the

future of the norm against torture and whether we might expect a continuation of this book's key observations.

Takeaways

This book contains at least four main takeaways, or contributions and implications. First, the anti-torture norm has had persistent lack-of-specificity problems. CIA dissenter Glenn Carle, in response to the Bush administration's redefinition of torture, writes, "I was stunned. This undermined 800 years of Western law, from the Magna Carta to the Geneva Conventions."¹ Perhaps so, but his framing makes it sound like the Bush administration was the first to do such a thing. A similar tone of shock colors Dana Priest's quote at the beginning of this book. In reality, actors have been playing a similar game for years. Torture has never been as "unthinkable" to liberal democracies as we might like to believe. Thus, while the Bush administration's approach has been unique in some ways (as I elaborate below), characterizing one's own behavior as less than torture is an old game.

The second takeaway is an implication of the first. One way to lessen the instances of torture is to tackle the specificity problem by going after "cruel, inhuman, [and] degrading treatment" with more vigor. Too much of the discussion in the United States has been over whether the "enhanced interrogation techniques" are really torture. A recent Republican primary debate boiled America's torture problem down to one question, which was posed to several candidates: "Is waterboarding torture?" While bringing up a specific technique, paired with the 't-word,' may make the question more difficult for the candidates to dodge, it gives candidates far too much wiggle room to continue advocating harsh treatment even if they decide that

¹ Carle 2014.

waterboarding is torture (which more than one did not).² Perhaps future candidates could answer this question: “Some politicians have argued that enhanced interrogation techniques are not severe enough to deserve the word torture. Yet the UN Convention against Torture also prohibits ‘cruel, inhuman, or degrading treatment’ of detainees, and our own Constitution rules out cruel and unusual punishment. Do you think the United States should be treating detainees in cruel, inhuman, or degrading ways?”

Comparing the European Union and the United States reveals the importance of prohibiting (with enforcement) torture’s slightly milder cousins. Jamie Mayerfeld describes the importance of unequivocal language in the European Convention on Human Rights.

Beginning in 1951, ratifying states have pledged in Article 3 that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The prohibition is stated in absolute terms: unlike most other rights asserted in the Convention, it admits no exceptions. The prohibition may not be suspended even during an emergency “threatening the life of the nation” (art. 15[2]). It also extends beyond torture to include all inhuman or degrading treatment or punishment, thus forbidding brutality in all its forms and removing the temptation to fiddle with the meaning of the word “torture.”³

This is one reason why Mayerfeld finds a better, though not perfect, human rights picture in Europe as compared to the United States. The latter ratified the Convention against Torture (CAT), but added caveats – “reservations, understandings, and declarations” – that limited the treaty’s reach. Subsequent statutes that were supposed to be sufficient to protect human rights ended up narrowing torture’s definition, especially with regard to mental and psychological torture, where only acts causing “prolonged mental harm” constituted criminal mental abuse. The US version also forced prosecutors to prove intent on the part of the alleged torturer. The

² Team Fix 2016.

³ Mayerfeld 2016, 93.

Yoo-Bybee and Bradbury memos sailed right through these loopholes: “With this definition, it became remarkably easy for the OLC lawyers to argue that all manner of psychological torment did not constitute torture as defined by the Torture Statute, because it was not inflicted with the specific intention of causing prolonged mental harm.”⁴ Because of their commitments to human rights treaties, it would be difficult for parties to the European Convention on Human Rights to play the same game.

Third, implicit links between norm-breaking harshness and effectiveness are influential and need reexamination. Equating nastiness and effectiveness can lurk behind the ubiquitous necessity defense. If an actor says, “We had to get tough with detainees because we desperately needed intelligence,” or “We can’t afford scruples if our enemies don’t have any,” some variation on the “cheaters win” argument is probably operating as an underlying assumption. Given the frequency with which torturers use the necessity defense, the “cheaters win” argument may have wide applicability.

Fourth, my study shows that norms can have broad influence, and can affect even those who seem to ignore them. Norm violators constitute a hard case for the impact of norms.⁵ If norms can influence even their violators, then the scope of normative impact may be much wider than is commonly understood. For most actors, we would do well to ask not if norms influence their behavior, but how.

Scope

⁴ Mayerfeld 2016, 156.

⁵ As such, this paper heeds the call from some scholars for more constructivist work on hard cases, especially those dealing with security. See Garcia (2011). See also Johnston (1996).

Which norms are more likely to be susceptible to the “cheaters win” model? Though the following list is surely incomplete, I offer here a starting point. First, norms will not lead to their own violation if the norm is so robust and deeply internalized that thoughts of violation do not even occur to the actor. For instance, the norm against cannibalism is so robust in the United States and most other places in the world that politicians and generals would probably never even think to violate the norm, no matter how intimidating to enemies such a policy might prove. But if a person can “think the unthinkable” – as with torture – then the act is not really unthinkable. Likewise, wartime violence like assassination and civilian victimization have not really been rendered too taboo to mention, inviting initial consideration followed by “bad is good” logic.

Second, norms that prohibit harsh acts whose efficacy is debated may open the door for alternative means of determining effectiveness. The norm against targeted killings is one possible example.⁶ Because the effectiveness of targeted killing is not well-established,⁷ some may use harshness as an indicator. Importantly, targeted killing may actually be an effective tool of war. The “cheaters win” argument does not simply explain blunders, and hunches about the effectiveness of cheating may in fact be correct.

Third, ethical norms preventing acts that are almost guaranteed to harm someone physically,⁸ emotionally, psychologically, or in other ways may be more likely to be susceptible to the “cheaters win” sequence. One possible example is civilian victimization. Civilian

⁶ Nils Melzer (2008, 5) defines targeted killing as “the use of lethal force attributable to a subject of international law with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.”

⁷ For a summary of the scholarly debate, see Price 2012. For an example of think-tank analysts debating the effectiveness of targeted killing, see Masters 2011. Policymakers and military strategists have debated this as well; see quotes from John Brennan and General Stanley McChrystal in Worth, Mazzetti, and Shane 2013.

⁸ This may be especially surprising since some scholars argue that norms prohibiting acts that inflict bodily harm are more likely to have standard regulatory and constitutive effects. See Price 1998; Keck and Sikkink 1998.

victimization clearly causes harm, and some may expect such pain to yield gain in difficult circumstances (such as those faced by Churchill below). By contrast, consider the norm of creating states with similar features.⁹ It is more difficult to imagine the founders of a new nation-state believing that those who cheat on the standard form of state-building have an advantage.

A premise behind the lack of specificity argument in this book is that torture is particularly susceptible to enabling justifications because it lies on a sliding scale with milder acts. What other norms are susceptible? One problem with identifying such norms is that susceptibility itself is probably a continuous variable: norms may be more or less susceptible. Another problem with identifying norms is that collective understandings about how clear a line is can, within certain limits, change over time. Hugo Dobson (2003) argues that Japanese anti-militarism norms were well-defined until the late-1990s and early-2000s, when the requirements of emerging UN peacekeeping norms began compromising strict understandings of what it meant to adhere to pacifist commitments. Israel's recent use, and subsequent ban, of white phosphorus shells, which are legal for creating smokescreens on the battlefield but prohibited from direct use against human targets because they cause chemical burns, is another possible example. Under heavy criticism from its use of white phosphorus in Gaza in the 2008-2009 campaign, Israel decided to shelve the weapons, perhaps clarifying what could have been an emerging grey area between chemical and conventional weapons.¹⁰

While specificity can change, inherent characteristics still matter. Nuclear weapons, for example, are probably much more amenable to an absolute ban than torture. Almost all explosions are either nuclear or non-nuclear, and their status is quickly known to all. Still,

⁹ See Meyer et al. 1997.

¹⁰ Kershner 2003.

nuclear weapons have required agreement to keep them separate, even if they are inherently disposed to being walled off from other types of weapons:

The “neutron bomb” is illustrative. This is a bomb, or potential bomb, that, because it is very small and because of the materials of which it is constructed, emits “prompt neutrons” that can be lethal at a distance at which blast and thermal radiation are comparatively moderate. As advertised, it kills people without great damage to structures. The issue of producing and deploying this kind of weapon arose during the Carter Administration, evoking an anti-nuclear reaction that caused it to be left on the drawing board. But the same bomb—at least, the same idea—had been the subject of even more intense debate 15 years earlier, and it was there that the argument was honed that was ready to be used again in the 1970s. The argument was simple—and it was surely valid, whether or not it deserved to be decisive. It was that it was important not to blur the distinction—the firebreak, as it was called—between nuclear and conventional weapons, and either because of its low yield or because of its “benign” kind of lethality it was feared, and it was argued, that there would be a strong temptation to use this weapon where nuclear weapons were otherwise not allowed, and that the use of this weapon would erode the threshold, blur the firebreak, and pave the way by incremental steps for nuclear escalation.¹¹

Maintaining the nuclear “firebreak” necessitated social forces – criticism and debate – to keep them that way. At the same time, such a firebreak was possible because of inherent characteristics. It would be harder to imagine a torture threshold on which most people could consistently agree.

Under which circumstances might the normative effects from my main argument be more likely to occur? I offer here another non-exhaustive list. First, moments that citizens, civilian leaders, or the military determine to be critical to the life of the state might push key individuals to see norms as a fence dividing them from more effective means. Walzer calls these “supreme emergencies,” a phrase used by Winston Churchill in 1939. Walzer (2000, 251) argues that the phrase “contains an argument: that there is a fear beyond the ordinary fearfulness...of war, and a

¹¹ Schelling 2006, 6090-6091.

danger to which that fear corresponds, and that this fear and danger may well require exactly those measures which the war convention bars.”

The second set of circumstances bears some similarities to the first. The “cheaters win” explanation become more likely if events persuade actors that the world is a more dangerous place than they previously believed. The September 11 attacks were just such an event. The Bush administration justified “new thinking” regarding detainee treatment by arguing that the war on terror was “new” and the dangers faced were “unprecedented.”¹² This squares with work in political psychology about how surprising events can amplify emotional responses and cause preference shifts and reversals.¹³ Actors may also go on the hunt for new arguments (or new-to-them arguments) about what constitutes torture in the face of what they consider new dangers. Perhaps what was once unthinkable cruel would suddenly appear not so extreme in the face of a serious nuclear threat (as from the early Cold War) or a group of determined terrorists (from the war on terror). In such times, determined actors may erode norm specificity to get “tougher” with the opposition.

Third, if an enemy uses “unscrupulous” means in war, a political actor might be convinced that his or her country is now engaged in a “dirty war” in which such means are necessary. This is especially true if the enemy lands a punch or two while operating outside of war’s laws and norms, causing the newly bruised to consider the possibility that rule-following would put them at a disadvantage. Having an opponent that does not “fight fair” also weakens the argument that one’s side must stick with the laws and norms of war in order to engender the same treatment from the other side.

¹² Jackson 2007, 356-7.

¹³ Mercer 2013.

Unscrupulous enemies also open the door for actors to take advantage of the lack of specificity in a norm. In this case, the enemy supplies real-time examples of egregious behavior that can be used for favorable comparisons. The enemy's behavior can even *become* the definition of torture, as we saw with Cheney in the previous chapter.

Finally, I have focused on the United States in the empirical chapters. To which types of states and actors does my argument apply? While actors under any regime type may be susceptible to "cheaters win" thinking, certain democratic actors may be particularly disposed. Surrounded by human rights norms and other standards limiting violence, these actors are more likely to generate a "bad-is-good" philosophy (as opposed to a "what's the problem?" mindset that may characterize non-democratic regimes more accustomed to higher levels of violence). Democratic actors might also be especially nervous that their countries have been "softened" by liberal norms.

There is also a strong chance that torturers in democracies historically have been more likely to exploit the torture norm's lack of specificity. Just as Rejali (2007) finds that democratic torturers fear being caught, the same set will also want to play down the severity of their acts even if they are caught. Danger of exposure is higher in democracies with free presses as well as human rights laws and enforcement. The gap between democracies and non-democracies may be narrowing, however, as global monitoring, peacekeeping, and international court capabilities (which can raise the costs of human rights abuses) increase.

Limits

Beyond regime type, I am reluctant to specify types of actors that would be more likely to fit the models I have detailed. It might be tempting to associate "cheaters win" believers with

hawkish foreign policy beliefs generally. Hawks believe that the international realm can be a brutal place, and dealing with its worst actors requires force. It would not be surprising if hawks extended their thinking to interrogation, in which strict rule-following would curtail coercion. Yet some hawks categorically reject torture as wrong, and are not willing to play any “minimization games” that take advantage of the torture norm’s lack of specificity. Theodore Roosevelt is one. He advocated tough war-fighting measures, but he showed little tolerance for torture. He understood the water cure to be a “mild torture,” but he still thought the practice should be abandoned and its users punished. He promoted some generals who were tolerant of torture, but those generals were more well-known for other characteristics and achievements. To take one example, J. Franklin Bell, a general who winked at torture, was promoted to Roosevelt’s cabinet after the war.¹⁴ But Bell was highly regarded for his thorough knowledge of counterinsurgent war-making and his successful pacification of northwestern Luzon and the province of Batangas, not his tolerance of torture.¹⁵ He was celebrated as a tough fighter, not a law-breaker. The story is more complicated than the straight-forward rewarding of torturers.

Like Roosevelt, war on terror hawks such as John McCain and Lindsey Graham have also pushed for aggressive war-fighting without torture, and therefore are not well-covered by my argument. Perhaps Roosevelt, McCain, and Graham subscribe to a kind of moral absolutism that does not countenance “grey zone” thinking when it comes to detainee treatment.¹⁶ If so, then arguments in favor of a comprehensive torture ban may be right at home in some strands of essentially conservative thought.

¹⁴ Miller 1982, 260.

¹⁵ Linn 2000, 300.

¹⁶ Roosevelt was known for his rigidity on law-and-order matters. See Morris 2002.

Neither half of my thesis does particularly well in explaining why torture ends when it ends.¹⁷ In the war on terror, most detainee abuse ended after 2005.¹⁸ Yet beliefs about the utility or importance of off-limits practices, including torture, did not change. Neither did the conviction that the interrogation methods used could at least be sold as something short of torture. Bush and Cheney continued to trumpet the efficacy and legality of “enhanced interrogation techniques” after the administration was out of office. This may be the nature of explaining events and behavior that have “so many causes”¹⁹: one thing causes a series of events (in this case, resulting in torture) to occur, and something else ends it. Still, the inability to explain the variation in the war on terror shows the limits of my arguments’ explanatory power.

The Present and Future

While the norm against torture has had some persistent robustness problems that predate the war on terror, the Bush administration may have done some new damage to the norm’s prospects. The Constitution Project summarizes the developments:

In the course of the nation’s many previous conflicts, there is little doubt that some U.S. personnel committed brutal acts against captives, as have armies and governments throughout history.

But there is no evidence there had ever before been the kind of considered and detailed discussions that occurred after September 11, directly involving a president and his top advisers on the wisdom, propriety and legality of inflicting pain and torment on some detainees in our custody.²⁰

Attorney General John Ashcroft, who, along with other top cabinet members, received regular requests for approval of particular techniques from the CIA, reportedly “argued that senior White

¹⁷ See Conrad and Moore 2010.

¹⁸ Hutchinson et al. 2013, 7.

¹⁹ Jervis 1988, 675.

²⁰ Hutchinson et al. 2013, 1.

House advisers should not be involved in the grim details of interrogations ... According to a top official, Ashcroft asked aloud after one meeting: ‘Why are we talking about this in the White House? History will not judge this kindly.’”²¹

Thus far, history has judged the administration all too kindly on this particular topic. As Rejali notes, torture, once universally condemned, has become essentially a partisan issue in the United States not unlike the debate over the death penalty.²² Part of the reason is the continued support for an enhanced interrogation program by former Bush administration officials, including Bush and Cheney themselves. The lack of some kind of bipartisan truth commission to help the country come to terms with war on terror abuses may also be a factor.

Another important reason is the willingness of some 2016 presidential candidates to take on the mantle of American torture and bring it into a new era. In fact, the leading Republican candidates have produced talking points very much in line with this book’s central thesis. Senator Ted Cruz seemed to be taking a clear stance against torture when he said, “Torture is wrong, unambiguously. Period. The end. Civilized nations do not engage in torture and Congress has rightly acted to make absolutely clear that the United States will not engage in torture.”²³ But when asked whether use of the water board was torture during a debate, Cruz said, “Well, under the definition of torture, no, it’s not. Under the law, torture is excruciating pain that is equivalent to losing organs and systems, so under the definition of torture, it is not. It is enhanced interrogation, it is vigorous interrogation, but it does not meet the generally recognized definition of torture.” While saying that he would not bring back enhanced interrogations “in any sort of widespread use,” he did promise that “if it were necessary to, say, prevent a city from facing an

²¹ Greenburg et al. 2008.

²² Mayer 2014.

²³ Spiering 2014.

imminent terrorist attack, you can rest assured that as commander in chief, I would use *whatever enhanced interrogation methods we could* to keep this country safe.”²⁴ Cruz, like many before him, is seeking a middle ground: He pledges to use “whatever methods” are necessary, but sticks to euphemistic “enhanced interrogation” language.

With less consistency, likely Republican nominee Donald Trump has taken a similar line. According to Mr. Trump, “[W]aterboarding is peanuts compared to what they’d do to us, what they’re doing to us, what they did to James Foley when they chopped off his head.”²⁵ Trump has apparently been worried that the debate over rule-following has been making us appear too weak: “Can you imagine — can you imagine these people, these animals over in the Middle East, that chop off heads, sitting around talking and seeing that we’re having a hard problem with waterboarding? We should go for waterboarding and we should go tougher than waterboarding.”²⁶ Regarding whether “waterboarding” was torture, Trump said, “It’s so borderline. It’s like your minimal, minimal, minimal torture.”²⁷ Yet when pushed about whether he would openly endorse law-breaking, Trump pulled back: “I...understand that the United States is bound by laws and treaties and I will not order our military or other officials to violate those laws and will seek their advice on such matters.” Thus, after a wild journey, Trump, like Cruz, vowed to “use every *legal* power that I have to stop these terrorist enemies.”²⁸ Regardless of the fall 2016 election outcome, the limited/unlimited, middle-ground language appears to have a future in the United States given its status as a stable fixture in one of the two major parties.

²⁴ Team Fix 2016. Emphasis added.

²⁵ ABC News 2015.

²⁶ Federal News Service 2016.

²⁷ Quoted in Johnson and DelReal 2016.

²⁸ Quoted in McCarthy 2016. Donald Trump also sounds vengeful. He said of the water board, “Believe me, it works. And you know what? If it doesn't work, they deserve it anyway, for what they're doing.” (Quoted in Johnson 2015.) Revenge, of course, goes beyond my thesis.

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