Original Article

From surveillance to torture: The evolution of US interrogation practices during the War on Terror

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Abstract The war on terrorism weakened the distinction between observing suspicious bodies and torturing them. This article examines 'enhanced interrogation' (or torture) practices developed after 9/11 and considers that techniques used overseas by the United States may be applied domestically. The role of the FBI is highlighted since it now has assumed the central authority to interrogate all terrorist suspects held by the United States. Although enhanced interrogation no longer is permitted, the conservative perspective still views it as legitimate conduct and ignores the victimization of innocent people misidentified as terrorists.
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Far too little attention has been paid to the evolution of US security policy overseas that may be brought home for domestic application.[1] Of course, different rules and guidelines govern overseas versus domestic agency practices. But, after 9/11 the lines increasingly have become blurred, particularly as they involve the interrogation of terrorist suspects. This essay addresses the prospect that conduct such as 'enhanced interrogation' (or torture) may be used in the United States and, in select cases, already has been. In this regard, the harsh pretrial treatment of American citizens Jose Padilla and Bradley Manning, as well as the indefinite detention of several thousand Muslim immigrants living in the United States, underscores that authorities are willing to use such techniques against domestic subjects. If torture occurs in the future, it will be under FBI auspices. In 2010, the Bureau became the lead entity to conduct interrogations of terrorist suspects captured by the United States anywhere in the world. The new High Value Detainee Interrogation Group (HIG), supervised at FBI headquarters, took over such authority in this area from the Central Intelligence Agency (CIA) and US Department of Defense (DOD). In order to evaluate the prospect of future interrogation abuse, it is instructive to reconstruct FBI conduct in the distant and not-too-distant past, including overseas during the Bush Administration.

Torture is a form of political violence. After 9/11, its routine use, long abandoned by Western democracies, became a policy choice with few modern American precedents.[2] The vast majority of the people US authorities indefinitely imprisoned overseas falsely were identified as terrorists and had not committed any crimes. This preventative incarceration sets a dangerous precedent. While the Obama administration curtailed the practice of torture by

US forces (but continued to outsource it to willing nations under 'extraordinary rendition'), there is ample reason to believe enhanced interrogation could be reinstituted under different leadership. The War on Terror does not seem to have an endpoint, and how US authorities treat terrorist suspects in the future is subject to change.

A major problem is the government's tendency not to differentiate between suspects identified as foreign terrorists versus domestic terrorists, as well as others, such as whistle-blowers, who are viewed as engaging in anti-government behavior. To date, the diversity of torture victims suggests that different types of subjects too often are treated the same. What can be identified as 'vigilante punishment' has been carried out without sufficient foundational rationalization. The construction of ambiguous, new legal classifications, such as 'enemy combatant' and 'unlawful' enemy, provides executive power with too much secret discretion. As a result, the process of identifying suspects for harsh interrogations is subject to distortion and can lead to expansive, rather than restricted, application.

FBI Surveillance and Counterinsurgency

Since the FBI for most of its history operated primarily in the domestic field, and concentrated its investigations on political surveillance and federal criminal violations, its new role brings challenges and poses potential threats to the civil liberties of Americans. The recent scholarship on the FBI, which includes both broad interpretative works (Cole and Dempsey, 2002; Powers, 2004; Theoharis, 2004, 2007; Greenberg, 2010, 2012; Weiner, 2012), as well as case studies (Cunningham, 2004; Culleton, 2004; Price, 2004; Charles, 2012; Rosenfeld, 2012), probes the different dimensions of the surveillance apparatus developed during the Cold War and afterwards. An important debate focuses on the needs of security versus liberty, and ways to protect both simultaneously. Critics note the FBI often exceeded its authorized powers and loosely defined enemies in order to maximize its conservative influence. The greatest violation of civil liberties occurred during the Cold War. Under the Counter Intelligence Program (COINTELPRO) from 1956 to 1971, the FBI relied on secret illegal methods (such as warrantless wiretaps and break-ins) and concealed this activity from outside investigators. It also conducted extensive counterinsurgency to disrupt social movements.

While COINTELPRO began as an anti-Communist effort, it mushroomed to surveil and attack a broad range of political activity, including civil rights and black power groups, socialists associated with the New Left, anti-war and women's organizations, as well as right-wing extremists. The FBI conducted almost 1 million political security investigations between 1955 and 1975. While the counterinsurgent efforts targeted a much smaller number of subjects, it strategically was designed to impede the development of progressive politics. About 2000 FBI disruptive actions took place during the 1960s. Leaders of social movements, identified as 'key activists,' specifically were targeted for harassment in their day-to-day activities. In 1976, the US Senate Church Committee, which investigated abuse by the intelligence community, called COINTELPRO 'a sophisticated vigilante program aimed squarely at preventing the exercise of First Amendment rights of speech and assembly' (Greenberg, 2010, p. 32).

After COINTELPRO ended, the FBI went through a period of reform, with new restrictions placed on its spying. However, gradually over time the Bureau resumed aggressive surveillance against a broad range of political activity on both the Left and the Right. After 9/11, the legal authority for surveillance expanded under the USA Patriot Act (2001).

A new 'preventative' approach took form, which 'generally demand[s] sweeping executive discretion, eschew[s] questions of guilt or innocence (because no wrong has yet occurred) and substitute[s] secrecy and speculation for accountability and verifiable fact' (Cole and Lobel, 2007, p. 5). FBI investigative activity increased dramatically with new methods of cyber surveillance and data mining, greatly expanding the reach of the FBI in tracking subjects. While there are no known reports of torture during post-9/11 domestic security investigations, some political activists and groups complain about harassment, such as overt surveillance and intimidation by FBI operatives; and they fear secret FBI contact with employers and landlords, which is known to have occurred in the past (Greenberg, 2012).

In contrast to the post-9/11 period, during the 1990s the FBI benignly treated American terrorists, such as Timothy McVeigh (Oklahoma City), Ted Kaczyznski (Unabomber), and Eric Rudolph (Atlanta Olympics) before trial. They were subject to long and repeated questioning, but the Bureau abided by 'law enforcement' methods – no coercion or physical threats. In a related manner, the interrogation of overseas Muslim terror suspects Ramzi Youssef and Sheik Omar Abdel Rahman during the 1990s seems to have avoided abuse. Before the first interview of Youssef, who was convicted in the case concerning the 1993 World Trade Center bombing, FBI interrogators twice read him his Miranda rights (Lance, 2006). During the pre-trial imprisonment of Rahman, the blind Islamic cleric who preached *jihad* at several New York City mosques, none of his lawyers charged improper conduct by authorities.

In my view, civil libertarians and privacy advocates who are critical of the expansion of spying also should recognize that after 9/11 surveillance and torture have become not entirely separate practices but are part of a continuum of state security conduct. The war on terrorism accentuated profiling and weakened the distinction between observing suspicious bodies and torturing them. After 9/11, the body became a central focus of domestic surveillance systems. Advancements in biometric technology led to the identification of threatening subjects based on physical characteristics. In 2007, the FBI held more than 55 million sets of fingerprints and planned new efforts to collect palm prints, scars, tattoos, iris eye patterns and facial shapes to identify potential suspects (Lyon, 2003; Nakashima, 2007, 2008; Muller, 2010). The observation of the body also formed the basis of 'suspicious activity reporting' programs. In order to identify behavior that might be a precursor to terrorism, city police were trained to gaze at people in everyday life noticing facial expressions and body movements. Bodily appearance could determine if authorities viewed a subject as innocent or guilty (American Civil Liberties Union, 2004; Farrall, 2011).

The FBI's Role in Overseas Torture

Among the many studies of overseas interrogation (Danner, 2004; Cole, 2005; Greenberg and Dratel, 2005; McKelvey, 2007; Mayer, 2008; Honigsberg, 2009), the central role of the FBI is underappreciated. In a major departure from its domestic focus, the Bureau acted in conjunction with the CIA and DOD in ways that degraded what is considered acceptable conduct by authorities. During the 1990s, the FBI had expanded its overseas operations investigating crimes (Powers, 2004), but at that time rarely participated directly in terrorism interrogations. When the FBI began in 2002 to deploy its agents to prison facilities in Iraq, Afghanistan, and Guantanamo Bay, Cuba, it never issued formal guidelines about their participation in detainee interrogations. This omission freed them to collaborate with the

CIA and DOD without reporting detainee abuse to their superiors (Office of Inspector General, 2008). While FBI policies prohibit agents from using threats and force during interrogations within the United States, the absence of guidelines for their conduct in a military zone did not preclude participation in practices that many critics view as contrary to the nation's democratic traditions (Danner, 2004; Cole, 2005; Greenberg and Dratel, 2005; Mayer, 2008).

FBI agents had a permanent presence at the torture prisons in order to prioritize prisoners and gather evidence for future prosecution. For example, agents assumed three functions at the Kandahar and Bagram facilities in Afghanistan: fingerprinting and photographing all incoming prisoners; helping to determine which detainees should be considered 'high value' and transferred to facilities at Guantanamo Bay (Gitmo) for further interrogation; and, lastly, conducting dozens of interviews of detainees separate from, but also in coordination with, the DOD and CIA (Mackey and Miller, 2004; Office of Inspector General, 2008). At Gitmo, more than 500 FBI agents variously were posted at the facility and participated in more than 700 prisoner interviews. The Bureau also secretly wiretapped the facilities used by prisoners and lawyers advocating on their behalf (Rosenberg, 2013). The FBI's eventual objection to 'aggressive' and 'coercive' tactics was not based on human rights considerations. Rather, the Bureau viewed torture practices through a narrow prosecutorial perspective, worried that enhanced techniques undermined their ability to build effective legal cases. As a declassified FBI memo noted: 'The continued use of these techniques has the potential of negatively impacting future interviews by FBI agents as they attempt to gather intelligence and prepare cases for prosecution.' The Bureau 'favors the use of less coercive techniques, ones carefully designed for long-term use in which rapport-building skills are carefully combined with a purposeful and incremental manipulation of a detainee's environment and perceptions' (FBI Behavioral Analysis Unit, 2003) After investigating allegations of FBI participation in torture, the US Justice Department weakly concluded: 'In only a few instances did FBI agents use or participate in interrogations using techniques that would not be permitted under FBI policy in the United States' (Office of Inspector General, U.S. Department of Justice, 2008, p. xxxi). Little information about FBI misconduct has been disclosed.

The Politics of Torture

After the 11 September 2001, terrorist attacks the FBI initially was given a virtual 'blank check' by Congress to amass new powers in its domestic activities. The US Justice Department also loosened FBI Guidelines and within a year the number of domestic terrorism investigations tripled. A similar blank check in the exercise of power characterized the Bush Administration's development of overseas interrogations practices. Officials determined that Al Qaeda and Taliban fighters constituted an 'unlawful' enemy because they targeted civilians. As a result, international legal protections provided by the Geneva Conventions as well as United Nations Conventions did not apply to them. Placed in this category, prisoners had no recognized legal status and could be detained indefinitely without accountability. The 'Bybee Memo' of 1 August 2002, named after Assistant Attorney General Jay S. Bybee, also asserted the administration was exempt from US laws that prohibited torture because they restricted the President's wartime powers: 'Congress may no more regulate the President's ability to detain and interrogate enemy combatants than it may regulate his ability to direct troop movements' (Hooks and Mosher, 2005; Lobel, 2008, p. 391).

The President's far-ranging power to torture pushed the 'Imperial Presidency' (Schlesinger, 1973), critiqued in the past by liberals, into a new area. Vice President Dick Cheney, a leading advocate of enhanced interrogation, had been a long-time exponent of expanded Presidential powers to reverse post-Watergate controls on the executive branch. Bush embraced the theory of the Unitary Executive, which in part empowered him to authorize torture. As Charlie Savage notes, this theory provided 'putative legal justification for holding that a whole range of laws that establish rules, regulations, and controls on military and intelligence matters are unconstitutional and do not need to be obeyed because such decisions – such as how to interrogate detainees or go about wiretapping – are for the president alone to decide' (Savage, 2007; Lindley, 2008). Of course, the Bush administration, which retained a high moral purpose, did not view enhanced interrogation as torture. US interrogators were permitted to inflict pain in detainees as long as it did not cause 'serious physical injury, such organ failure, impairment of bodily functions, or even death' (Cole, 2009, p. 41). By this narrow standard, it would not be torture if an interrogator crushed a lit cigarette into a detainee's ear or pulled out their fingernails. Moreover, the torturer's intention mattered. Bush's legal memos claimed if an interrogator caused serious injury by accident – that is, without intention to do so – they were not guilty of torture. Regarding psychological harm, it counted as torture only if it resulted in long-term trauma (Luban, 2006). US officials almost always maintained their terror tactics were directed toward interrogations without broader objectives, such as the exertion of American power to intimidate local populations to help establish supremacy in the oil-rich Middle East (Cohn, 2007).

Torture includes the infliction of psychological wounds. Mind and physical body are interconnected and should not be viewed as separate entities. Ill health can result from threats of serious injury when interrogators express intentions to castrate a person and kill their family members, or conduct mock executions. The International Committee of the Red Cross, which made its first visit to the Abu Ghraib prison in Iraq in 2003, described prisoners with signs of concentration difficulties, memory problems, incoherent speech, acute anxiety reactions and suicidal tendencies (Danner, 2004). Indeed, international law includes psychological harm in its definition of torture. The United Nations Convention on the Prohibition of Torture, ratified by the United States in 1994, refers to 'severe pain or suffering, whether physical or mental'. The Geneva Conventions, which purport to set the rules governing war, prohibits threats, intimidation and even insults directed at prisoners of war (McCarthy, 2005, p. 104).

Many innocent people were interned in torture prisons. According to an US Army interrogator at the Kandahar facility in Afghanistan:

> Often the first task for interrogators is sorting out who's been caught, distinguishing the fighters from the farmers, the terrorists from the townspeople – to some, evil from good. Prisoners might be captured at gunpoint on the field of battle, rounded up in predawn raids on safe houses, or turned over by warlords or foreign intelligence services with agendas of their own (Mackey and Miller, 2004, p. xxii).

In Iraq, the roundup of prisoners was just as indiscriminate. Pentagon reports indicate up to 90 per cent of Abu Ghraib prisoners were innocent of terrorist-related crimes and served no intelligence value (Danner, 2005; Sullivan, 2005). Of the 'high value' detainees imprisoned at Gitmo, a 2006 study found that a majority (55 per cent) had not committed any acts hostile

to the United States or its allies. Only about 8 per cent could be characterized as Al Qaeda fighters (Phillips, 2010, pp. 75–76).

Interrogation Techniques

Overall, US forces detained more than 50 000 people in overseas prisons and secret 'black sites.' The Abu Ghraib prison held the most people, on average about 7000. The total number of people tortured is unknown. In 2004, DOD referred to 300 official abuse allegations and substantiated charges in about half of those investigated (Danner, 2004, p. 331). The US interrogation team, with FBI personnel present, used more than 20 different techniques in addition to disrupting daily religious prayers and intentionally mishandling the holy Qur'an. While the most notorious technique was waterboarding, others included canine intimidation, sexual abuse, attaching electrical wires to the body to simulate electrical execution and repeated beatings. These methods were called 'hooding', 'abdominal slap', 'cold cell', 'forced nudity', 'forced grooming', 'longtime standing', 'cramped confinement', 'short-shackling' and 'walling.' The interrogators referred to 'physical stress' or 'harsh-up' techniques, which included forcing detainees to do strenuous exercise, to position their bodies as if sitting in an 'invisible chair', and handcuffing them close to their feet to prevent them from standing or sitting comfortably. Different techniques were used in tandem. When a hood was placed over the head, a subject might be naked and become the victim of an assault. The hood increased the difficulty of breathing and increased anxiety and disorientation (Danner, 2004, pp. 261–262, 292–293).

At Gitmo, a declassified FBI memo described the devastating effect that 3 months of isolation had on Mohammad Al-Khatani (detainee number #63). He experienced hallucinations, as described:

> Observations by guards, psychologists and members of various Interview teams all indicate that #63's behavior has changed significantly during his three months of isolation. He spends much of his day covered by a sheet, either crouched in the corner of his cell or hunched on his knees on top of his bed. These behaviors appear to be unrelated to his praying activities. His cell has no exterior windows, and because it is continuously lit, he is prevented from orientating himself as to time of day. Recently, he was observed by a hidden video camera having conversations with non-existent people. During his last interview on 11/17/02, he reported hearing unusual sounds, which he believes are evil spirits, including Satan. It is not clear to us whether these behaviors indicate that #63 is hallucinating or whether these behaviors are a conscious effort designed to convince us of his mental deterioration in an effort to be released from isolation. Indeed, during his last interview, he repeatedly requested to be returned to Camp Delta to be among his fellow detainees. Although we are uncertain as to his mental status and recommend a mental evaluation be conducted, there is little doubt that #63 is hungry for human interaction. Our plan is designed to exploit this need and to create an environment in which it is easier for #63 to please the interviewer with whom he has come to have complete trust and dependence thus developing a motivation to be forthright and cooperative in providing reliable information (FBI Behavioral Analysis Unit, 2003, p. 3).

Al-Khatani, who had links to the 11 September hijackers, subsequently was subjected to a harsh torture regime. A dog leash was tied around his neck and interrogators humiliated him

by forcing him to do dog tricks. He was waterboarded during 20-hour interrogation sessions. He was stripped naked in front of female interrogators and held down 'while a female interrogator straddled the detainee without placing weight on him.' Interrogators instructed him to pray to an idol shrine. DOJ reports also discuss psychological torture and humiliation such as 'forced shaving for hygienic and psychological purposes', 'discussing his repressed homosexual tendencies in his presence', 'male interrogator dancing with him' and 'describing his mother and sister to him as whores' (Office of Inspector General, 2008, pp. 102–103).

Medical personnel routinely injected 'truth serum' (such as sodium pentothal) into suspect bodies to lower inhibitions, as well as other chemical substances and mind-altering drugs. DOD reports also reference 'chemical restraints': hydrating detainees with intravenous fluids without their consent. The complicity of US doctors in the torture regime included diagnosing the medical conditions of detainees and administering anti-psychotic medications, such as Haldol, so the prisoners could be subjected to further abusive interrogation. Detainees were not told what drugs were proscribed; some prisoners believed US authorities were poisoning them. Moreover, if detainees refused the drugs, a team of US personnel known as the Immediate Reaction Force administered medication by force (Kaye and Leopold, 2012).

Gitmo prisoners on protest hunger strikes were force-fed so they did not die and further could be interrogated. At its height in 2005, about 200 people out of nearly 800 detained at the facility refused food. Military officials inserted tubes into their stomach through their nasal passages. The practice of force-feeding the subordinate subject to further their subordination made their lives dependent not on their own will but on US power. Military and intelligence officials made the decision to 'take life and let live' (Wilcox, 2011, p. 102). When a second major hunger strike spread in early 2013 among 100 prisoners out of 166 at the facility, President Barack Obama directly approved force-feeding, despite criticism from international human rights groups (Bachman, 2013). Officials invented deceptive and misleading terms to refer to hunger strikes, for example, describing them as 'long-term non-religious fasts' and in documents referring to their actions as 'medical management of detainees with weight loss' (Leopold, 2014).

Mental health professionals in the Behavioral Sciences Consultant Team helped craft interrogation plans based on psychological assessments of the weaknesses of particular prisoners. Other medical personnel instructed interrogators about how much pain could be inflicted without causing severe injury or death (Boseley, 2013). But these efforts strategically to control injury were not always effective. At least 19 prisoners at Gitmo died during interrogations. Several hunger strikers were murdered. 'The dream of perfectly controlled violence,' Lauren Wilcox notes, 'is a fantasy of sovereign power' (2011, p. 114). Moreover, dozens of detainees attempted suicide, which the US military called 'manipulative self-injurious behavior' (Risen and Golden, 2006).

The DOD and the CIA instructed doctors and psychologists to violate the ethical codes of their profession. Both constructed distorted guidelines for medical personnel to relieve them from having to adhere to ethical codes, such as 'Do no harm' and 'Put patient interest first.' The US torture command claimed such codes did not apply to the doctor–prisoner relationship since the prisoners were not ill. Medical staff were labeled as 'safety officers.' As a result, they were instructed to ignore patient confidentiality, to participate in interrogations, and were able to avoid reporting the abuse of detainees to outside investigators. In sum, American officials imposed the idea that torture was a medically acceptable practice (Boseley, 2013).

Most Gitmo prisoners were denied regular access to writing materials during the period of their interrogation, which prevented them from documenting abuse. Once provided pen and paper, some wrote poems about their torment and tormentors. One detainee wrote:

> My rib is broken,
>
> And I can find no one to heal me.
>
> My body is frail.
>
> And I can see no relief ahead.
>
> Before me is a tumultuous sea;
>
> The land continues to call me.
>
> But I am sailing in my thoughts.
>
> The impious have murdered in my home.
>
> I wish someone would comfort me.
>
> At night I taste bile and cannot sleep (Noaimi, 2007, p. 58).

The US military imprisoned few women, assuming they were not members of Al Qaeda or the Taliban, which encouraged a gendered torture program.[3] Interrogators relied on female military guards to degrade male prisoners in order to help 'break' them. Prisoners were forced to wear women's underwear on their heads while naked and handcuffed. Female guards pretended to smear their menstrual blood on prisoner faces. Detainees were forced to masturbate and engage in simulated sexual acts. Piles of male bodies with genitals exposed and in contact became associated with anal sex. American practices were based on the stereotype that acts associated with homosexuality not only were against Islamic religious law but would illicit intense feelings of shame and humiliation. Since Arab culture placed more emphasis on modesty and sexual privacy than American culture, sexual humiliation would be an effective form of punishment. Overall, the sexual misconduct also can be viewed as not exceptional, but a common facet of both prisoner life and colonial domination. In this sense, the American actions reflected US nationalism, patriotism, and the desire for empire (Hersh, 2004; Puar, 2004).

Intelligence officials secretly used photography to advance the security program. Full details about these photographic materials have not been disclosed, but survivor testimonies almost always mentioned that photography and film by US forces furthered their degradation. US authorities took several thousand pictures. Dauphinee (2007) notes that 'the shame and humiliation they [the detainees] experienced *extends to the visual record of it*. The visual record, in other words, is part of the torture' (p. 147). McClintock (2009) also notes the photos were 'shown outside the prison, to intimidate the prisoners' families and communities' and used to blackmail detainees into becoming spies for the United States (p. 59). But the visual record from Abu Ghraib, once made public in 2004, evoked worldwide outrage. These images were not heroic. Grinning prison guards drinking beer and smoking cigarettes as they degraded the detainees suggested an organized entertainment spectacle. Many viewers of these representations of torture, particularly in the Middle East, probably identified with inmate suffering. While pictures cannot adequately represent a body

in pain (Scarry, 1985), the visual record was so shocking and offensive that viewers could not easily ignore it even among those sympathetic to its application.

In addition to enhanced interrogations conducted at Gitmo and Abu Ghraib, the CIA operated a separate detention and torture program at 'black sites' in Poland, Thailand, and other nations. From approximately 2002 through 2007, at least 119 people were held under conditions described as 'brutal and far worse than the CIA represented to policymakers and others,' according to a recently declassified US Senate report. The Senate report was based on a review of more than 6 million internal CIA documents and mentions several torture techniques publicly disclosed for the first time, including medically unnecessary 'rectal feeding' and 'ice water baths.' The level of systematic torture at these secret black sites was worse than occurred elsewhere and was concealed from the international community to prevent any degree of accountability. CIA officials called the detention facility known as COBALT a 'dungeon' because it had no source of light. Detainees 'were kept in complete darkness and constantly shackled in isolated cells with loud noise or music and only a bucket to use for human waste.' Some interrogators were untrained and used enhanced techniques without proper approval (U.S. Senate Select Committee on Intelligence, 2014, pp. 4, 10, 49–50, 99–104).

No Legal Accountability

The blank check for interrogations included the absence of subsequent legal accountability. The Obama Justice Department opposed the creation of a bipartisan commission to examine war crimes and refused to prosecute anyone in the Bush administration (Cole, 2012). Moreover, civil litigation against the United States for torture failed within the American legal system. In a lawsuit brought by two Americans, Donald Vance and Nathan Ertel, against Defense Secretary Donald Rumsfeld, the United States Court of Appeals for the Seventh Circuit ruled in 2012 that US military personnel are protected against damage claims stemming from combat activities in a war zone (Mesner-Hedges, 2012). Vance and Ertel served as American private contractors in Iraq subject to abuse by DOD interrogators in 2006 after they tried to expose corruption by US forces. Very little protection for whistleblowers exists within the military and intelligence establishment. In a Petition to the US Supreme Court, attorneys for the plaintiffs describe a variety of 'torturous techniques' as follows:

> Vance and Ertel allege that after they arrived at Camp Cropper they were …. held in solitary confinement, in small, cold, dirty cells and subjected to torturous techniques forbidden by the Army Field Manual and the Detainee Treatment Act. The lights were kept on at all times in their cells [.] Their cells were kept intolerably cold [.] There were bugs and feces on the walls of the cells [.] Vance and Ertel were driven to exhaustion; each had a concrete slab for a bed, but guards would wake them if they were ever caught sleeping. Heavy metal and country music was pumped into their cell at 'intolerably-loud volumes,' and they were deprived of mental stimulus … They were often deprived of food and water and repeatedly deprived of necessary medical care …. [T]hey were physically threatened, abused, and assaulted by the anonymous US officials working as guards. They allege, for example, that they experienced 'hooding' and were 'walled,' i.e., slammed into walls while being led blindfolded with towels placed over their heads

> to interrogation sessions. [Petitioners] also claim that they were continuously tormented by the guards (Petition for a Writ of Certiorari in the Supreme Court of the United States, *Donald Vance and Nathan Ertel v Donald Rumsfeld,* 2013, pp. 7–8).

Whether legal immunity also should apply to US private defense contractors has not been determined. In response to litigation, the contractor Agility Holdings agreed to pay more than $5 million for participating in enhanced interrogations against 71 former Abu Ghraib inmates (Yost, 2013). The government's employment of private contractors to torture underscores its extra-legal practices. During Obama's presidency, the number of contractors on the ground in both Iraq and Afghanistan surpassed the number of US troops (Center for Constitutional Rights, 2012).

The US position towards the International Criminal Court, which considers torture both a war crime and a crime against humanity, further reflects its insistence on unilateral action without accountability. The United States refused to ratify the Court's statute, unlike virtually every Western democracy. In 2002, the US Congress passed the American Service members Protection Act (also known as the Hague Invasion Act), which empowers the President to seek the release of any American detained for ICC prosecution. The US also sought bilateral immunity agreements with dozens of nations not to extradite Americans to the ICC (Cohn, 2007).

Interrogations at Home

While legal and constitutional prohibitions are designed to preclude domestic torture, the cases of American citizens Jose Padilla and Bradley Manning demonstrate significant post-9/11 prisoner mistreatment before a criminal conviction. The FBI arrested Padilla in 2002 for plans to detonate a radioactive 'dirty bomb.' But Padilla had not yet built a bomb and was far from carrying out an act of terrorism. After being declared an 'enemy combatant,' he was confined in a naval brig in Charleston, South Carolina, and interrogated for months by FBI and DOD intelligence officials. He was treated like foreign prisoners overseas, as he was held indefinitely without charge and was refused the right to see a lawyer during interrogation. In 2008, Padilla filed a civil rights lawsuit against the Bush Administration claiming he suffered 'extreme isolation, sensory deprivation, severe physical pain, sleep deprivation, and profound disruption of his sense and personality, all well beyond the physical and mental discomfort that normally accompanies incarceration' (Byrne, 2009). Padilla's legal briefs reveal:

> A substantial quantum of torture endured by Mr Padilla came at the hands of his interrogators. In an effort to disorient Mr Padilla, his captors would deceive him about his location and who his interrogators actually were. Mr Padilla was threatened with being forcibly removed from the United States to another country; including US Naval Base at Guantanamo Bay, Cuba, where he was threatened his fate would be even worse than in the Naval Brig. He was threatened with being cut with a knife and having alcohol poured on the wounds. He was also threatened with imminent execution. He was hooded and forced to stand in stress positions for long durations of time. He was forced to endure exceedingly long interrogation sessions, without adequate sleep, wherein he would be confronted with false information, scenarios, and documents to

> further disorient him. Often he had to endure multiple interrogators who would scream, shake, and otherwise assault Mr Padilla. Additionally, Mr Padilla was given drugs against his will, believed to be some form of lysergic acid diethylamide (LSD) or phencyclidine (PCP), to act as a sort of truth serum during his interrogations (*United States v Jose Padilla*, 2006, pp. 4–5; ACLU, 2012a).

FBI agents arrested US Army Private Bradley Manning in 2010 for allegedly leaking thousands of classified DOD and US Department of State documents to the website WikiLeaks. Bradley's confinement at a US Marine brig in Quantico, Virginia, has been described as soft torture. He spent about a year in solitary confinement before his trial commenced. He sat alone in his cell for 23 hours a day, was forbidden to exercise, and was placed under continuous surveillance via Closed Circuit Television. Manning was stripped naked and deprived of sheets and pillow for bedding, his eyeglasses were confiscated, and he was barred from speaking to reporters (Greenwald, 2010).

Is long-term isolation and solitary confinement a form of soft torture? Many human rights investigators and psychiatrists believe it is torture, and the bipartisan National Commission on America's Prisons concurred with this view in a 2006 report. Prolonged isolation can lead to depression, cognitive and perceptual disturbances, paranoia and psychosis (Lennard, 2012). Glenn Greenwald pointed to the chilling effect of Manning's mistreatment. 'Who would want to challenge the US Government in any way – even in legitimate ways – knowing that it could and would engage in such lawless, violent conduct without any restraints or repercussions?' (Greenwald, 2010).

Post- 9/11 intelligence practices include two major FBI interview programs directed at Arab Americans designed not only to intimidate but also to collect intelligence and recruit informers. The first interview program commenced immediately after the 11 September attacks, when agents approached more than 8000 Arab American Muslim males to ask about terror sleeper cells. None were found. While little public information surrounds these mass interviews, no subjects have alleged abusive treatment. The second set of mass interviews occurred before the 2004 Presidential election. As part of the so-called 'October Plan,' agents interrogated more than 2000 Arab Americans about potential threats related to the upcoming election. The FBI stated publicly these interviews were part of a short-term program of 'aggressive and obvious' surveillance. In these interviews, agents asked a series of scripted questions, such as: What was the subject's view of the FBI? Had they observed any criminal activities and were they willing to contact the FBI if they did? Did they know of any person who might be in place to conduct or facilitate an attack? Did they know of anyone making inquiries or taking actions to procure or store dangerous chemicals, weapons, or explosives? Did they know of anyone attempting to acquire or modify SUVs or other heavy vehicles? Did they know of anyone who may possess a commercial driver's license with authority to transport hazardous materials? Did they have knowledge of anyone who has shown interest in or has attempted to acquire radiological materials from labs, or medical or disposal facilities? Did they have any information about anyone who may be conducting surveillance of potential US targets? Civil liberty groups, including the American Civil Liberties Union, began to advise subjects they were not compelled to participate in this interrogation program. However, in several known cases the FBI threatened immigrant subjects with deportation if they did not cooperate.[4]

In addition to interviews, the federal government indefinitely detained more than 5000 immigrants and visitors to America in order to 'rule out any terrorism connections.' This 'hold until cleared policy,' based on FBI intelligence background checks, was premised on a suspicion of guilt without accountability. Very little information about these detainees has been released to the public, including their names. While in custody, many immigrant detainees were subject to cruel and degrading treatment at the hands of prison authorities. At the Metropolitan Detention Center in Brooklyn, New York, people were denied health care, shackled, beaten and forbidden to practice their religion. They were placed in solitary confinement and prevented from contacting family or obtaining an attorney. Many cells were equipped with cameras for continuous monitoring. Coercive interrogations were common (Olshansky, 2007). In another repressive move, the indefinite detention of American citizens newly has been codified into law. Section 1021 of the National Defense Authorization Act (2012) provides the legal foundation for Americans to 'disappear' without trial if accused of support for Al Qaeda or associated terrorist forces. Greenwald (2011) writes: 'This is a substantial statutory escalation of the War on Terror and the President's powers under it and it occurs more than ten years after 9/11, with Osama bin Laden dead, and with the US government boasting that virtually all Al Qaeda leaders have been eliminated and the original organization (the one accused of perpetrating the 9/11 attack) rendered inoperable'.

The FBI not only helps identify Americans for possible detention, recalling its Security Index during the Cold War.[5] The Obama administration also placed the FBI in charge of a new interrogation structure to deal with terrorist suspects under the HIG unit, which operates along a military model. HIG follows the US Army Field Manual when questioning suspects, which may deny Miranda protections (Kornblut, 2009; Hsu, 2010). Without the right to remain silent, subjects can fall victim to harsh interrogation methods. The Army Manual remains an elastic document subject to change without public accountability and had provided guidance for torture practices executed under the Bush administration. So far, the public knows about only one case in which HIG has been used: the interrogation of Boston Marathon terrorist Dzhokhar A. Tsamaev. Initially, Tsamaev was not read Miranda rights under a public safety exception (Savage, 2013) and further details of his interrogation have not been disclosed.

Recent Guidelines for Interrogation

FBI interrogators currently are permitted to use isolation on terror suspects. The most recent FBI guide for interrogations ('Cross Cultural, Rapport-Based Interrogations') allows for a variety of manipulative techniques, as if the prior detainee abuse during the War on Terrorism had never occurred. The emotions of detainees carefully are manipulated through methods known as 'Emotional Fear Up,' 'Emotional Pride and Ego Down,' 'Emotional Futility,' and 'The All Seeing Eye or We Know All' (FBI, 2010, p. 13). The FBI guide includes the following discussion:

- 'Isolation of the detainee not only ensures the safety of other detainees but also prevents the individual detainee from drawing strength from the support and companionship of other detainees … A large part of the Interrogators advantage is the natural fear of the

unknown that the detainee will be experiencing. Exposure to other detainees will mitigate that fear.'

- 'In order to create the optimum conditions for productive interview, if the policy of the facility permits, consider having your detainee placed in an individual cell several days before you begin interrogation.'
- 'The Interrogator often enters the interrogation with two distinct advantages. First, the subject may be suffering from the shock of capture that undermines their psychological and emotional stability often causing them to say and do things against their own interests. Second, while long serving intelligence officers may have the experience of dozens of interrogations behind him or her, it is often the source[']s maiden voyage into this uncertain territory.'
- 'Your intention is to induce an internal discomfort in the source that will make him dependent on the Interrogator for some sense of normalcy. Your goal is to separate the source from the anchors of the outside world and reset the operative value system to those of the interrogation world (which is the world that you control). You are trying to replace his concern for and loyalty to his comrades with concern for his own fate.'
- 'All non-coercive questioning techniques are based on the principle of generating pressure inside the source without the application of outside force. This is accomplished by manipulating him psychologically until his resistance is sapped and his urge to yield is fortified.'
- 'To protect FBI Agents from false accusations of abuse which is a known Al Qaeda counter-interrogation method, two FBI Agents should be physically present in the interview room at all times' (FBI, 2010, pp. 7–14; ACLU, 2012b).

New intelligence analysis (Intelligence Science Board, 2009) about manipulating a detainee's emotional environment cautions against certain approaches practiced in the past. For example, constructing dramatic emotional ups and downs can be counterproductive and serve to fortify the subject's resistance.

> Repeatedly increasing and decreasing distressing stimuli may cause a detainee to build some tolerance or immunity to his distress reaction. As a person's coping resources are alternately taxed and then relaxed, the overall reserve of coping power may build or strengthen over time. This has been likened to the way our muscles get stronger: by progressive overload, followed by recovery. Increasing, then decreasing, the stress on a resistant detainee may therefore have the effect of increasing his power to resist (Intelligence Science Board, 2009, p. 68).

Moreover, there is revisionist thinking about the usefulness of 'breaking' a subject. This reconsideration is based on the failure of obtaining good intelligence from many of the prisoners tortured during the War on Terrorism, as noted:

> [T]he concept of breaking a detainee – which some imagine as a culminating point when the detainee 'surrenders' and permanently ceases all efforts to resist – appears to be a false premise that profoundly misrepresents the nature of human interactions and decision making. It also indicates a serious lack of understanding of how memory works. Those who operate on the basis of this concept risk missing valuable information the detainee may possess, let alone the possibility of persuading the detainee to provide 'complete' information (Intelligence Science Board, 2009, p. 67).

The use of fear to scare detainees also may not serve the interrogator's interest in ways previously assumed. It may produce results in the short run ('compliance') but serve to inhibit the productivity of future interactions once the interrogator is 'trapped in the role of hated tormentor' (Intelligence Science Board, 2009, p. 66). Intelligence Science Board observes:

> Ongoing fear is likely to contribute to a detainee's intense negative feelings toward the intelligence interviewing professional and further strengthen him in an enemy 'social identity.' This may make it difficult for the interviewer to assume an alternative attitude when such a change is indicated, or to try to build an operational accord. The interviewer (and potentially later interviewers) may be trapped in the role of hated tormentor.
>
> In essence, though fear in some situations may produce short-term *compliance*, heightening and sustaining fear may severely disrupt development of an operational accord and actually compromise long-term success (Intelligence Science Board, 2009, p. 66).

While interrogation practices have evolved since the early days of the War on Terror, guidelines still permit the manipulation of detainee emotions and environment in order to dominate them. From a human rights perspective, the period before interrogation is just as important as the interrogation itself. Official mistreatment jeopardizes the autonomy of the subject and their ability to respond freely during questioning. Subjects should be afforded full agency to defend themselves and cast aside unfounded assumptions about their guilt.

Conclusion

The field of 'critical terrorism studies' can help frame ideas about the evolution of US interrogation practices. Generally, a focus on 'human security' (Hampson, 2008, pp. 229–243; Owens, 2010, pp. 39–49; Paris, 2011, pp. 71–79), which privileges the safety and integrity of individuals, is useful to contextualize state conduct during the War on Terror. Security can be viewed 'from the perspective of those people(s) without power – those who have been traditionally silenced by prevailing structures' (Booth, 2005, p. 14). There is a need to 'emancipate' the terrorist suspect. Ultimately, emancipation is about being freed from all forms of violence and being 'governed by dialogue and consent rather than power and force' (Linklater, 2001, p. 31). In order to achieve emancipation in security (McDonald, 2009), we need to recognize the state itself may engage in crimes against individuals to advance particular policies. The framing of the terror threat may be manipulated by policymakers for the purpose of social control of populations both at home and overseas.

In this regard, a fundamental problem remains: Who exactly is categorized as a terrorist? A uniform definition of terrorism does not exist within the American government and, as a result, leaders often misuse the label to characterize internal political opposition. Under both the Bush and Obama administrations, the criminalization of domestic dissent by the FBI has led to the misapplication of the terrorist designation to a broad range of legitimate protests, including: anti-globalization, environmental, animal rights, anti-war, Occupy Wall Street, as well as demonstrators at the Republican and Democratic Party national conventions (Greenberg, 2013). Will these types of protestors ever be detained indefinitely?

Will the ghost of Osama bin Laden be used to turn surveillance of domestic dissent into arrest and hard interrogation? The President could issue new executive orders, and Congress could change the law, to open the door further to torture practices. Meanwhile, the American public seems divided on the torture question. Two months after 9/11, an opinion poll found that about one-third of Americans supported torture to fight terrorism. Overtime, opinion seemed to harden. Most public opinion polls conducted during the Bush presidency reported that about 40 per cent supported torture overseas. Under Obama, a pro-torture majority began to emerge for the first time. The issue became highly depersonalized and partisan, not unlike the death penalty (Luban, 2006; Rejali, 2011). However, the way officials framed the Terror Scare may help to explain popular support. Officials often exaggerated the threat of terrorism by linking it to a doomsday scenario involving Weapons of Mass Destruction (Jackson, 2005). According to this view, since Islamic radicals want to obtain a nuclear weapon to use against America, the government should freely torture to prevent mass casualties. A new popular and scholarly debate about torture included arguments in favor of judicial 'torture warrants' (Dershowitz, 2002, pp. 156–160).

During the 2012 Presidential campaign, almost all the Republican candidates supported a return to enhanced interrogations. In a nationally televised debate, Herman Cain approvingly referenced waterboarding. 'I agree that it was an enhanced interrogation technique …. Yes, I would return to that policy. I don't see it as torture. I see it as an enhanced interrogation technique.' Congresswoman Michelle Bachmann concurred: 'If I were president, I would be willing to use waterboarding. I think it was very effective. It gained information for our country. And I also would like to say that today, under Barack Obama, he is allowing the A.C.L.U. to run the C.I.A' (Bensen, 2011). A Mitt Romney policy paper argued the Bush practice was effective and claimed Obama's suspension of it 'hampered (or will hamper) the fight against terrorism' by forbidding techniques 'that we should feel, as a nation, that we should have a right to use against our enemies' (Savage, 2012).

The conservative view of torture as legitimate conduct persists despite the American government's victimization of thousands of innocent people misidentified as terrorists. US interrogators, now led by the FBI, should rethink their threat analysis. The FBI's new role, institutionalized under HIG, still permits manipulation of environments, prolonged isolation, and sleep deprivation. Without public accountability, HIG could become empowered in the future to engage in coercion and force. When democratic nations tolerate torture, whether or not they leave visible scars, they lose legitimacy to lead on the world stage. 'It is difficult to torture just a little,' writes Dinah Pokempner, General Counsel of Human Rights Watch. 'Torture, like power, appears to be habit-forming. The rational for torture in an age of terror – averting imminent and massive harm to civilians by torturing the right source – easily slides to cover ever more remote sources and more hypothetical harms' (Pokempner, 2005, p. 167). Accountability, transparency, and effective checks on power remain essential to preserve democratic practices.

Notes

1 Thanks to Lama Abu-Odeh, Julie Rajan, Jeannette Gabriel and Susan Maret for commenting on an earlier draft of this article.

2 During the early Cold War, the US intelligence establishment developed torture techniques, but limited their use to US military soldiers undergoing 'torture-resistance training' in the event Communist enemies captured them. In

overseas military conflict during the twentieth century, US armed forces and the CIA did not torture captured enemy soldiers. But, the notorious Phoenix Program developed by the CIA during the mid-1960s targeted thousands of Vietnamese civilians sympathetic toward the communist Vietcong through torture and killing. See Otterman, 2007; Doyle, 2012; Harbury, 2005.

3 The number of female prisoners held at Abu Ghraib is unknown, but several sources (including the Taguba Report), reference their rape by US prison guards and naked videotaping of them. See Danner, 2004, p. 292; and Wilkinson, 2004.

4 I obtained the declassified FBI file (2739 pages) on this program under the Freedom of Information Act. See Greenberg, 2012, pp. 286–295.

5 In 1939, the FBI unilaterally established the Custodial Detention List, later replaced by the Security Index and the Administrative Index (ADEX), providing for a legal detention system that identified as many as 26 000 people. Unlike the current detention provision, Congress never directly sanctioned these efforts, which occurred in the context of the Cold War.

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