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REVIEW ESSAY

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# Understanding the U.S. Torture State

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ANTHONY GREGORY

When I was a child in Reagan's America, a common theme in Cold War rhetoric was that the Soviets tortured people and detained them without cause, extracted phony confessions through cruel violence, and did the unspeakable to detainees who were helpless against the full, heartless weight of the Communist state. As much as any other evil, torture differentiated the bad guys, the Commies, from the good guys, the American people and their government. However imperfect the U.S. system might be, it had civilized standards that the enemy rejected.

In April 2004, the world was shocked to see photos that exposed the torment of prisoners at Abu Ghraib, one of Saddam Hussein's most infamous prisons, which had been taken over and used by U.S. forces in Operation Iraqi Freedom. Well, most of the world was shocked. Some people, mostly conservative commentators, dismissed or defended the barbarity, even comparing it to frat-boy hazing. Others were disgusted but shrugged it off as the work of a few bad apples, not something that should draw judgment down on the whole of U.S. policy and the brave men and women in uniform. Still others of us were horrified but did not see the mistreatment as an aberration—we expected such torture to occur in a war of aggression, supposed we had not seen the worst of it, and even argued that what goes on in America's domestic prisons easily compared with some of the milder photos that were dominating the nightly news.

A national debate arose out of that scandal. More than one question was pondered: Do these photos depict torture? Is this problem anomalous or systemic? Who should be held accountable? Should torture always be illegal?

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Over the next few years, more torture controversies came up. The question of whether waterboarding actually constitutes torture was particularly disheartening. Some of the U.S. government's defenders said that the United States should not and does not torture, but also that waterboarding does not constitute torture. Others said that even if the United States does torture, it is doing so in service of a greater good.

We have come to the point where the rhetoric of Reagan's day no longer holds: American exceptionalists and conservatives no longer claim emphatically that the United States does not and never will torture, as they did previously (however disingenuously). An Associated Press poll in June 2009 found that 52 percent of Americans thought torture was justified in some situations—up from only 38 percent in 2005. In Barack Obama's America, torture is now normalized.

But Americans should recoil from torture absolutely; should recognize that it is not an anomaly of the George W. Bush war in Iraq, but a practice with decades of U.S. precedent; should understand that responsibility for the Bush-era torture went all the way to the top; should know that domestic and international laws have been unambiguously violated in the war on terrorism; should understand and oppose torture even when it is “only” psychological or used against domestic criminal convicts; and should recognize that Obama has not put a stop to the abuse. A single book will offer a crash course in all these elements of the U.S. torture state: *The United States and Torture: Interrogation, Incarceration, and Abuse* (Albany: New York University Press, 2011), a remarkable multidisciplinary collection of essays by scholars, lawyers, and journalists compiled by Marjorie Cohn, past president of the National Lawyers Guild and a professor at Thomas Jefferson School of Law.

## Not Just Bush

It is crucial to recognize that torture is not a new policy that began with George W. Bush's war on terrorism. Despite the Cold War rhetoric, the U.S. government had already been responsible for torture for decades, particularly in Latin America. The preface to *The United States and Torture* was written by Dianna Ortiz, a nun who was raped, burned, beaten, and otherwise tortured in Guatemala in 1989, all under the auspices of a U.S. commander, she is sure (pp. xi–xiv). There is no reason to doubt her. A chapter by Bill Quigley surveys the legacy of the School of the Americas, a U.S. Army installation with origins in Panama in 1946 that was moved to Fort Benning, Georgia, in 1984 and renamed the Western Hemisphere Institute for Security Cooperation in 2001. “Together these schools have trained more than 60,000 members of the military from 22 Central and South American countries” (p. 55). Students were trained in “the systematic use of torture and executions to neutralize dissidents” (p. 56). In 1996, the Pentagon admitted using torture training manuals in the School of the Americas. The manuals “were based on materials used in the Vietnam War in the 1960s” (p. 57).

Some of the worst graduates include Bolivian General Hugo Banzer, who seized the country in a violent coup in 1971; Guatemalan dictator General Romeo Lucas Garcia, who is implicated in “5,000 political murders and up to 25,000 civilian deaths” (p. 59); Panama’s famed dictator Manuel Noriega; and “most of the Chilean military who overthrew the democratically elected government of Salvador Allende on September 11, 1973” (p. 58).

El Salvador was probably the scene of most of this U.S.-sponsored barbarity. American support for the death squads is the focus of Terry Lynn Karl’s chapter. The Reagan administration repeatedly defended the regime in El Salvador, despite its outright murder of moderate reformers, Jesuit priests and nuns, and other innocent men, women, and children. “On December 10, 1981, units of the Atlactl Battalion and the Third Infantry Brigade detained between 500 and 900 people in the village of El Mozote and the surrounding area, then executed them in groups, first the men, and then the women and children” (p. 77). It is telling that “U.S. aid totals in the two years of greatest repression (1980–1981) were far greater than the total for the previous 33 years” (p. 77). This is one great shame of both the Carter and the Reagan administrations.

Even before George W. Bush took office, what became one of his most scandalous torture programs—the outsourcing of abusive interrogation to foreign thugs, a practice known as “extraordinary renditioning”—was already being developed. Jane Mayer tells of its fledgling beginnings in the Clinton years, when it was also used in the war on al-Qaeda, with most of the renditioned detainees handed over to Egypt, “the largest recipient of U.S. foreign aid after Israel” (p. 142). Shawki Salama Attiya claims that at the hands of Hosni Mubarak’s brutal regime “he suffered electrical shocks to his genitals, was hung from his limbs, and was kept in a cell in filthy water up to his knees” (p. 143). The abuses merely expanded under Bush, who renditioned at least dozens of terror suspects. Some of these suspects, such as Canadian citizen Maher Arar, who was tortured in Syria, appear to have been completely innocent of any terrorist-related activities.

Just as U.S.-sponsored torture did not begin with Bush, it did not end with him. The last chapter, written by Thomas Ehrlich Reifer, points out that the Obama administration has “implied that it would continue the practice of extraordinary rendition” and that, as of the time Reifer wrote his essay, Obama “is not complying with the UN Convention Against Torture, the Geneva Conventions, or other obligations under international and domestic law, as reports from the *Washington Post* and other reputable news organizations indicate that torture continues at various U.S. prisons oversee” (p. 313). Of course, indefinite detention without charge has also continued, and Obama has shielded Bush officials from legal recourse.

## Psychological Abuse and Solitary Confinement

One misconception about torture is that it has to leave a physical mark or be physical at all. Alfred W. McCoy’s chapter, “The CIA’s Pursuit of Psychological Torture,”

dispels this myth, detailing the agency's most disturbing past in attempting to master the art of mind control. Starting in the late 1940s and early 1950s and guided by a report on Nazi experiments, chemist Henry Beecher consulted for the CIA in psychological experiments in postwar Germany. "Beecher [later] won a classified military contract to test heavy LSD doses on unwitting human subjects at Massachusetts General Hospital in 1953–4," which was "a clear violation of the Nuremberg medical code" (p. 28). McCoy explains how severe psychological torture techniques can be and traces their propagation "among anti-communist allies across Asia and Latin America" and their link to the Phoenix Program in South Vietnam (p. 33).

The importance of psychological torture is not lost on U.S. officials, who have cooperated with professional psychologists to hone this diabolical craft in the war on terrorism. "[Psychologists] helped to define what constitutes 'torture' in general terms of detainee breaking points" to help the administration find the threshold of what would "officially constitute illegal torture," writes Stephen Soldz. The psychologists "were not just monitors of abuse" (p. 179). They helped design it. U.S. troops were put through abusive conditions to "evaluate how much stress an individual could tolerate. It was these psychologists on whom the government relied, when it 'reversed engineered' . . . techniques to design 'counterresistance techniques' to break down detainees" (p. 179). Soldz is highly critical of the American Psychological Association for what he says is complicity in this shameful collaboration between members of the profession and the torture state.

Just as physical torture is not the only kind of torture, so wartime enemies are not the only victims. Lance Tapley indicts the entire institution of solitary confinement in America's supermax prisons as a form of torture. But is he exaggerating?

Severe pain and suffering as punishment are plainly the norm in a supermax. Even when mental suffering alone is considered—ignoring, for example, the coordinated beatings and violent subjugation of recalcitrant prisoners in a practice known as "cell extraction"—the prolonged solitary confinement of prisoners has increasingly been described by United Nations agencies and human rights organizations as cruel, inhuman, degrading, and torturous.

You do not have to take the United Nations' word for it. Tapley describes compellingly a totalitarian hell for domestic prisoners. Nothing like it can be found in the world of criminal justice, especially in the so-called civilized world. And what are "cell 'extractions'"? The author describes the extraction of one prisoner who endured them "up to five times a day":

Five hollering guards wearing helmets and body armor charge into a cell. The point-man smashes a big shield into the prisoner, knocking him down. The others spray Mace into his face, push him onto the bed, and twist his arms behind his back to handcuff him, connecting the cuffs by a chain to leg irons. Then they haul him into the corridor, cut off all his clothes, and carry him screaming through the cell block while they continue to Mace

him. They put him in an observation room, and bind him to a special chair. He remains there for hours, naked and cold, yelling and mumbling. (p. 218)

Estimates of how many American prisoners sit in supermaxes range between thirty-six thousand and one hundred thousand. Not all inmates are violent rapists and murderers. Many are mentally troubled. Their terrible treatment is one reason why some of us were not so shocked by the photos at Abu Ghraib.

## Legal Violations and Philosophical Dilemmas

Yet there was something especially evil about the Bush administration's torture policies. Many thousands were detained without due process and were exposed to particularly disturbing cruelties. As many as one hundred died in detention, and many were tortured to death.

The chapter by Marc D. Falkoff, a lawyer for a Guantánamo inmate, humanizes such prisoners, many of whom were swept up in the war in Afghanistan, called the "worst of the worst" by American officials, and deprived of due process for years, even as the Supreme Court struck down one administration attempt after another to circumvent habeas corpus. Falkoff's client, Adnan, appears to be an innocent victim of circumstance, deprived of the right to see the evidence against him and accused of connections with al-Qaeda, an organization about which he seems to know nothing. He suffers from chronic headaches and inner-ear pain, the results of a 1994 car accident. He is denied suitable food or anything like adequate medical attention for his many health problems. The water he is given has bugs in it. Excerpts from the proceedings and interrogations indicate a code of justice reaching Kafkaesque absurdity. After years of torturous confinement, Adnan went on a hunger strike. In response, "twice a day, soldiers force-feed Adnan a liquid nutrient by inserting a tube up his nose and into his stomach. His arms and legs are strapped to a special restraint chair during the feedings" (p. 174). The United Nations considers force-feeding to be torture.

The legal questions surrounding the Bush administration's detention and torture policies are discussed at length in multiple chapters in *The United States and Torture*. His narrow redefinition of torture to escape the sanctions of the Geneva Conventions and U.S. law is exposed as a despicable yet still technically failing undertaking. The book confronts the extremist argument that the president can inflict deadly abuse or torture even on a child without being in violation of the law.

Michael Ratner writes about attempts to bring U.S. torturers to justice outside U.S. borders in other nations' courts. Jeanne Mirer makes a comprehensive case that the lawyers who guided Bush administration torture policy are legally culpable. Phillippe Sands demonstrates starkly that the arguments made by John Yoo and others that the president was above all international law are completely without merit. According to Jordan J. Paust's chapter, the various legal memos of infamy from Yoo, Jack Goldsmith, Steven G. Bradbury, and Jay Bybee, far from providing a legal shield

for the administration, demonstrate their authors' complicity in the U.S. torture state. Vice President Dick Cheney and Secretary of State Condoleezza Rice are also exposed for their involvement in "the Bush legacy of serial and cascading criminality" (p. 296).

The book also tackles some philosophical issues. John W. Lango has an interesting chapter in which he grapples with the common yet seemingly absurd argument that torture might be necessary to stop a ticking time bomb and save thousands or millions of innocent lives. After a thoughtful discussion of the potential ethical dilemmas, he convincingly concludes, "Despite real-world counterexamples to moral absolutism about informational torment, torture and other cruel, inhuman, or degrading treatment or punishment must be legally prohibited absolutely" (p. 114). Richard Falk's chapter criticizes the left-liberal mindset that appropriately recoils in horror at the prospect of torture, but not in such completely asymmetrical wars as Vietnam, Kosovo, and Iraq. Although "the prohibition of 'torture' has been benevolently inscribed in the political mentality of liberal legality . . . the reliance on one-sided warfare stirs no comparable moral concern" (p. 126). He traces that disconnect back to World War II and the reliance on weapons of mass destruction in the Cold War and calls on people to see wars against the defenseless as deserving condemnation in moral terms and not only in practical ones.

## Understanding the U.S. Torture State

Abu Ghraib was no aberration. It was the result of policies approved by George W. Bush and his immediate executive, military, and legal subordinates. It was also morally consistent with policies that the U.S. government had pursued since at least the dawn of the Cold War. American officials have used torture domestically and internationally, directly and indirectly, through methods both physically brutal and psychologically crippling. It is express U.S. policy, even when the government denies that what it is doing is torture, for it has explicitly endorsed techniques long recognized internationally to be forms of torture. Torture is also a predictable outcome of U.S. wars of aggression.

At the center of American government is an ethical bankruptcy. There is a rot at the center of the U.S. warfare and welfare state. But aside from the mass looting and mass killing, there is also systematic abuse of helpless detainees—in U.S.-occupied Iraq and Afghanistan, at Guantánamo, in the dungeons of U.S.-backed and U.S.-sponsored foreign dictatorships, in the hands of terrorists trained by the U.S. Army, in the practice of thugs in league with the CIA, and even in America's state and federal prisons.

Nothing better demonstrates the moral degeneracy of American political culture than the U.S. torture state. Read Marjorie Cohn's chilling book and learn about the cruelty inflicted in your name, with your tax dollars, on the guilty and innocent, foreigners and U.S. citizens alike.

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