Ideology, Strategy, and Politics: the United States resorting to the use of torture during the War on Terror

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Abstract

Following the 9/11 terrorist attacks, the Bush administration decided to disregard international conventions and laws by using torture during the War on Terror. This paper establishes the legal and historical framework of international and domestic torture policies, its definition, and the role the United States played in establishing these rules and regulations before and after 9/11 took place. More specifically, it argues that there are three important explanations as to why the United States decided to establish a torture program. The first reason is a matter of ideology, the second a matter of strategy, and the third a matter of politics. On the one hand, the United States wanted to establish a world order in which their values were deemed most important, while on the other hand, they believed their core values were superior to international values which led them to believe they had to safeguard their constitution. Moreover, according to the matter of strategy, the US was determined to protect their country by all means necessary, also known as Machiavellianism and Jacksonianism. Lastly, as established by a matter of politics, the US removed many legal obstacles to ensure the legality–or better, the lack of illegality–of their actions.

Keywords: United States; Bush administration; 9/11; War on Terror; Torture program; Machiavellianism; Jacksonianism

List of Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Commission on Human Rights
AI	Amnesty International
CAT	Convention against Torture
CCPR	Covenant of Civil and Political Rights
CIA	Central Intelligence Agency
CIDT	Cruel, Inhuman, or Degrading Treatment or Punishment
ECHR	European Court of Human Rights
ECPT	European Convention for the Prevention of Torture
IAPL	International Association of Penal Law
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
OLC	Office of Legal Counsel
SERE	Survival, Evasion, Resistance, and Escape
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Introduction

On the 11th of September 2001, the United States was struck by several terrorist attacks. Four large passenger planes were hijacked by members of al-Qaeda with the intent to crash them into several important landmarks situated in the United States, of which three succeeded. Nearly 3,000 people were killed in these attacks including 400 first responders (Taylor). After these attacks took place, the US decided to take measures to ensure the safety of its people against future attacks. In doing so they have traded in the liberty of the people they held captive to obtain security by for instance using coercive interrogation and the detainment and torture of people in prisons such as Guantanamo Bay in Cuba and Abu Ghraib in Iraq (Mayerfeld, *The Promise of Human Rights* 120).

This thesis will focus on the uses and methods of torture the United States has used in the War on Terror, what the legal definition of torture is, and how it has been established in both international and domestic laws. Throughout history, the US has contributed to a great extent to the creation and drafting of the Universal Declaration of Human Rights, in which they put an emphasis on the importance of human rights (Ignatieff 1). These beliefs greatly contradict their actions during the War on Terror. Why would they claim to value human rights while they violate them at the same time? I aim to uncover the reasons, motivations, and justifications that drove an increased use of torture in the US after 9/11. More specifically, this thesis will seek an answer to the following research question: Why did the United States resort to the use of torture in the War on Terror from 2001 until 2009?

In order to reply to my research question, I will use a number of academic articles and books from a variety of disciplines, including International Relations, Political Science, Human Rights, History, and International Law. Moreover, I have used many quotations that were originally published in primary sources to obtain a clearer and more concise understanding of the policies implemented by the Bush administration and their thought process. These sources mostly consist of academic articles and books. The methods of my research are taken from history: I read and analyze written texts and sources critically and frame them in their own contemporary historical context. Within history, I have been using sources of legal and international history, political history, and US presidential history. I apply these sources to the torture debate to achieve a better understanding on why the US decided to use torture during the War on Terror.

I will reply to my research question by giving a clear and concise definition on torture

and its legal and historical framework, by providing an overview of the historical role the US has played in this framework, and by offering an explanation of the US torture program after 9/11. I will delve into three explanations and justifications as to why the US decided to resort to the use of torture during the War on Terror. The first explanation is a matter of ideology, the second is a matter of strategy, and the third a matter of politics. In my conclusion, I will answer my research question and try to determine what the best course of action is for the future to help prevent torture from being used by other nations.

Chapter I: Torture in Time and Space

Definitions and Interpretations of Torture: A Legal and Historical Framework

During the eighteenth and nineteenth centuries, torture – defined as the infliction of physical and psychological pain as punishment or as a way to extort information – was progressively outlawed in Europe and the Americas because of the rise of theories such as the Enlightenment, humanism, natural law, and rationalism. However, this legal abolishment did not stop torture from being used. Famous examples of the continuation of torture could be seen with the continuation of racial segregation and lynching in the US South at the beginning of the 20th century, before and during World War II, under totalitarian regimes (Nowak et al. 2), and up to our contemporary times, as is revealed in the cases of Guantanamo Bay and Abu Ghraib. In 1948, torture and Cruel, Inhuman, or Degrading Treatment or Punishment (CIDT) were prohibited, and the United Nations General Assembly voted unanimously to adopt the Universal Declaration of Human Rights (UDHR). Article 3 of the UDHR states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Furthermore, the Third Geneva Convention in 1949 stated the following in Article 17: "No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to the unpleasant or disadvantageous treatment of any kind" (qtd in [McCoy 3]). The prohibition and punishment of torture and CIDT were established in Article 5 of the UDHR in 1948, Article 3 of the Geneva Convention on Humanitarian Law in 1949, Article 3 and 15 of the European Court of Human Rights (ECHR) in 1950, the UN Standard Minimum Rules for the Treatment of Prisoners in 1955, Article 4 and 7 of the Covenant of Civil and Political Rights (CCPR) in 1966, Article 5 and 27 of the Inter-American Commission on Human Rights (ACHR) in 1969, and Article 5 of the African Commission on Human and Peoples' Rights (ACHPR) (Nowak et al. 2). Human rights were absolute and non-derogable, even when war, terrorism, or other public emergencies which could threaten the nation would occur could these rights not be violated (Nowak et al. 2).

However, these prohibitions did not stop torture from taking place around the world. In the 1960s and 1970s, torture was used by the French troops in Algeria, by the Portuguese in its former African Colonies, by the Greek military Junta, and by several dictatorships in

Latin America. These events led to Amnesty International (AI) launching a campaign against torture in 1972 on the official Human Rights Day. When General Augusto Pinochet Ugarte overthrew the government in Chile in September 1973, it became known that he used torture and enforced disappearances, the international community decided to make reforms and implement new measures to put a stop to this. The Human Rights Commission sent a telegram expressing their concern to the Chilean government in 1974 and a year later the UN General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also known as 'the Declaration' (Nowak et al. 2-3). The General Assembly solicited the Commission on Human Rights to use the Declaration as a model to draft the first bindings of the Convention against torture in 1977. In 1978, the International Association of Penal Law (IAPL) had prepared a draft that emphasized that the states were obligated to make the practice of torture illegal and implement proper punishments, and by doing so aiming to make torture a crime under the international law. They wanted an international committee that could monitor if the law was abided by and if this was not the case the capability to bring these conflicts to the International Court of Justice (ICJ) (Nowak et al. 3). In March 1984, the Human Rights Commission adopted the draft Convention of the Working Group in which ten independent experts were appointed to establish a Committee against Torture. In this draft, two important questions about the Convention of Torture had not been answered: "the competence of the Committee against Torture to issue country-specific comments and suggestions concerning State reports under Article 19 and the mandatory character of the inquiry procedure under Article 20 CAT" (Nowak et al. 4). These issues were soon resolved with Article 28 CAT also known as the 'opting-out clause' and Article 19(3) CAT on general comments that needed to be added to the report and send to the State Parties (Nowak et al. 4). After these compromises were made, the UN unanimously adopted the Convention of Torture in December 1984. It went into force in 1987, and in 1988 the first session of the Committee against Torture was held in Geneva (McCoy 3-4; Nowak et al. 5). The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) thus provided a first comprehensive legal definition of torture that was established with Article 1(1) of torture and comprises any act that intentionally inflicts severe pain or suffering on a person–psychologically or mentally–to achieve a specific purpose. The purposes of the infliction can consist of trying to obtain information or a confession from a third party, punishing a person for an act they are suspected of or have committed, trying to intimidate or coerce a person for a specific goal, or using torture as a discrimination method.

Another important key element to the definition of torture is the involvement or consent of a public official or other personnel who are acting in an official capacity (Nowak and Monina 22-23).

Along with the UN, the Council of Europe also brought conventions to life to stop torture from happening, such as the European Convention for the Prevention of Torture (ECPT) which was adopted in 1987 and went into force in 1989. Their main task was visiting places of detention within the territories of their Member States without them knowing beforehand and talking to the detainees to give recommendations to improve the conditions and the treatment of the people who were detained (Nowak et al. 5-6). An important provision that was introduced in Article 3 of the Convention Against Torture was the principle of non-refoulment. This principle obliges states to not only refrain from torture methods and CIDT but also refrain from extraditing, returning, or expelling people to other countries or territories where there are considerable reasons to assume that they would face the threat of torture. This Article is especially important for the protection of refugees or victims of torture who have fled their countries, however, many states have complained about this principle under Article 22 CAT (Nowak et al. 7-8). Another important principle that was implemented in Article 5 CAT was 'aut dedere aut iudicare' which means that State Parties are obliged to arrest or reprimand any perpetrator of torture that is residing in his or her territory or state and in accordance with principle must decide whether or not to extradite the person to his or her home state. As of today, few countries have decided to comply with this Article and principle (Nowak et al. 8).

According to Gerrit Zach and Nowak and Monina, the international definition of torture not only contains the elements of inflicting severe pain and suffering whether psychical or mental, intention, purpose, and the involvement of a public official. They also define another important element that serves as a distinguishing criterion, which is powerlessness (42; 23). Nowak et al. agree with this notion and show that the importance of the element of the powerlessness of a victim has been exemplified by many methods of torture that are typically used, such as subjecting victims to psychical punishments while being stripped naked, electric shocks, waterboarding, etc. In these methods, indiscriminate and systematic violence is used to put the victim in a situation where he is isolated from the outside world and detained in a secret place where he is subjected to different forms of pain and suffering to break their will to gain something which will result in the victim feeling powerless (Nowak et al. 1).

The use of indiscriminate violence is particularly important to distinguish torture from

other forms of inhuman treatment. Certain articles of the UNCAT only pertain to torture and not forms of cruel, inhuman, or degrading treatment or punishment (CIDT). Because of these differences, two schools of thought have arisen (Nowak and Monina 24). The first is led by the European Court of Human Rights (ECtHR) which distinguishes torture from CIDT by the severity and intensity of the suffering or pain that is inflicted. The second one distinguishes them by emphasizing the purpose of violence, which is usually oriented to the extortion of information (Nowak and Monina 24).

For this reason, and with an emphasis on torture's goals, Juan Méndez, the UN Special Rapporteur on Torture, advocated for the adoption and elaboration of a Universal Protocol that set certain standardized methods to be used in non-coercive interviews to prevent torture from happening. He based his proposal on the PEACE model of interviewing which was used in England and Wales in 1992. The most important elements that should be implemented were:

> Interviewers must, in particular, seek to obtain accurate and reliable information in the pursuit of truth; gather all available evidence pertinent to a case before beginning interviews; prepare and plan interviews based on that evidence; maintain a professional, fair and respectful attitude during questioning; establish and maintain a rapport with the interviewee; allow the interviewee to give his or her free and uninterrupted account of the events; use open-ended questions and active listening; scrutinize the interviewee's account and analyze the information obtained against previously available information or evidence; and evaluate each interview with a view to learning and developing additional skills (qtd in [Nowak and Monina 33-34]).

Méndez believes that torture has been and is still used by many law enforcement personnel because they are under the assumption that coercion and mistreatment are needed to obtain the needed information and confessions and these ideas have been exemplified by the popular media. Scientific evidence, however, shows that these coercive methods can result in the person being questioned doubting his or her memories to the extent of leading to false confessions. These methods also fuel hatred and a need for vengeance in the victims which can only be viewed as more damaging to the community (Nowak and Monina 33).

The Role of Torture in United States History

Torture has been a part of United States policy throughout history, both domestically and internationally. Torture was used domestically as a method in the times of nation-building, slavery, colonial empire, and after the Civil War when the lynching of African American citizens continued well into the first half of the 20th century (Mayerfeld, "Playing by our own rules" 96-97). Torture was used internationally during the end of the 19th century and the beginning of the 20th century by U.S. troops against revolutionaries in the Philippines. Moreover, the United States also adopted a policy, especially in Asia and Latin America, known as 'torture by proxy.' During the Vietnam war, South Vietnamese troops, occasionally with the assistance of U.S. troops, tortured people who were suspected of being members of the Viet Cong. Dictatorial regimes in Latin America committed all sorts of atrocities, including torture, under the aegis of the US (Mayerfeld, "Playing by our own rules" 97).

An important element in the narrative of the relationship between the US and torture is the institutionalization of the practice as a tool of national security and foreign policy. This happened mostly through the practices and actions of the Central Intelligence Agency (CIA). The CIA employed officials who were part of the aforementioned dictatorial regimes and were known to use methods of torture. In doing so, the CIA was essentially paying these officials to uncover information by using torture practices. It has also come to light that officials in Latin America had been informed on which methods of torture they should use and were sometimes even supervised by US employees (Mayerfeld, "Playing by our own rules" 97). At the beginning of the Cold War, the CIA developed practices of interrogation which used torture, as well as sponsoring studies that delved into the uses of torture. In 1963, instructions on how best to interrogate people who had been detained were added to the KUBARK Counterintelligence Interrogation handbook of the CIA. These instructions included paragraphs where the approval of certain techniques that would cause infliction of bodily harm, the use of "medical, chemical, or electrical methods or materials"(qtd in [Mayerfeld, "Playing by our own rules" 97-98]), and a redacted third category was desired from headquarters (Mayerfeld, "Playing by our own rules" 97-98). Themes such as, "the exploitation of psychological weaknesses, withholding of food and drink, disruption of sleep, sensory deprivation (hooding, prolonged isolation), and self-inflicted pain (forced standing, stress positions)" (qtd in [Mayerfeld, "Playing by our own rules" 98]) that were apparent in the KUBARK manual could be seen again during the training of Latin American officials and after 9/11. Another CIA manual was used to train Honduran officers in 1983 which was

called Human Resource Exploitation Training Manual stated the following: “the interrogator should be in a position to “manipulate the subject's environment, to create unpleasant or intolerable situations, to disrupt patterns of time, space, and sensory perception” (qtd in [Mayerfeld, “Playing by our own rules” 98]). Both manuals used methods of torture in which psychological duress was inflicted rather than torture that involved psychical harm (Mayerfeld, “Playing by our own rules” 98). However, the torture practices that took place after 9/11 were not just inspired by the aforementioned manuals but also by a program known as Survival, Evasion, Resistance, and Escape (SERE), which was used by the United States military. This program contained rigorous training in which military personnel underwent extreme forms of abuse to prepare them for what was to come if they were ever captured by the enemy (Mayerfeld, “Playing by our own rules” 99).

These developments greatly contradict the role the United States has had in creating the United Nations and the drafting of the Universal Declaration of Human Rights. During the Cold War, the US emphasized the importance of human rights, political democracy, and market freedom within their foreign policy (Ignatieff 1). Nevertheless, during the ratification process of the United Nations Charter, southern Democrats were worried that the ratification could mean the interference of the international community in regards to the Jim Crow laws. To please the southern Democrats, Article 2(7) was added to the Charter which entails the following: “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state”(qtd in [Ruggie 305]). The Senate even considered and nearly adopted the Bricker amendment in 1954 which was a constitutional amendment that would deny the president the right to sign an international treaty that conflicted with the Constitution (Ruggie 305). The United States met with much resistance within the country to ratify certain international treaties which resulted in many non- or late ratifications. They eventually did ratify the Genocide Convention in 1988, the International Covenant on Civil and Political Rights in 1992, and the Convention Against Torture as well as the Convention on the Elimination of All Forms of Racial Discrimination in 1994 (Ruggie 323-324). The United States has not ratified the Statute of the International Criminal Court (ICC) to this day, because they fear they might lose their constitutional right of due process protections (Ruggie 306).

The United States has a history of ratifying or supporting multilateral agreements or treaties on the condition that American citizens would be exempted. For instance, the Bush administration negotiated with allied countries to guarantee that they would not hand over US citizens to the ICC (Ignatieff 4). Moreover, they ratified the International Covenant on Civil

and Political Rights (ICCPR) on the condition that they could still inflict the death penalty on juveniles (Ignatieff 5). The use of Exemptionalism by the United States can also be seen by their failure to abide by the rules and regulations set by treaties they have signed or ratified and their practice of negotiating on treaties which they will later refuse to ratify (Ignatieff 6-7).

Torture program after 9/11

In the aftermath of the 9/11 attacks, President Bush authorized the CIA to arrest and hold suspected terrorists in secret out-of-the-country prisons. In December 2001, advice on the special interrogations strategies and methods from SERE was requested by the CIA and the Defense Department. SERE was a special training module that subjected members of the military to harsh conditions in order to prepare them for the possibility of getting captured by the enemy. As a response to these requests "enhanced interrogation techniques", such as sleep and food deprivation, forced standing, loud sounds, confinement in small boxes, and waterboarding, were developed (Mayerfeld, *The Promise of Human Rights* 131-132). Multiple prisons were used to torture and abuse prisoners in Afghanistan, Iraq, at Guantanamo Bay, and at "black sites", which were secret CIA prisons around the world. The American Civil Liberties Union reported that the inmates at these sites were "beaten; forced into painful stress positions; threatened with death; sexually humiliated; subjected to racial and religious insults; stripped naked; hooded and blindfolded; exposed to extreme heat and cold; denied food and water; deprived of sleep; isolated for prolonged periods; subjected to mock drownings; and intimidated by dogs" (Mayerfeld, *The Promise of Human Rights* 120). Moreover, some people were also sent to be tortured by security forces operated by other countries in what is known as the extraordinary rendition program (Mayerfeld, *The Promise of Human Rights* 120).

During the imprisonment, multiple detainees died while in custody as a result of the severe techniques they were exposed to. One prisoner froze to death, others died from asphyxiation, and another was beaten to death (Mayerfeld, *The Promise of Human Rights* 121). The prison in Abu Ghraib became well known because images of the torture practices were captured and disclosed to several media outlets leading to outrage amongst the public. The people who were captured torturing people were held accountable and the acts that could be seen on the images were regarded as isolated incidents by a group of 'bad apples'. Bush and Donald Rumsfeld both argued that the images portrayed abuse rather than torture (Ramsay 105). In 2009 the Obama administration put an end to "enhanced interrogation

techniques", demanded the closure of the prisons that had been established by the CIA, and he released multiple interrogation memos that had been developed within the Bush administration to the public (Mayerfeld, *The Promise of Human Rights* 124).

Chapter II: US Torture Policy after 9/11

After 9/11, the US resorted many times to the use of torture. This was part of a complex strategy the US adopted to counter the phenomenon of terrorism and to wage a global war against it. Torture came to define many US agencies' methods for gathering information, detaining suspects, and/or wage a psychological war against terroristic groups. But what are the origins, roots, motivations, and justifications that allowed for this escalating use of torture by the US after 9/11?

A matter of ideology

One of the main reasons the United States resorted to the use of torture after 9/11 can be linked to ideology. The United States was determined to establish an international order that resonated with the same values and ideals they were accustomed to (Ruggie 304). However, at the same time, they also wanted to protect and safeguard certain elements of their constitution and rights from outside interference (Ruggie 305). Some administrations believed that international human rights and American values were interchangeable, while others believed that American values were superior to international standards (Ignatieff 1). These superior feelings or a strong messianic vision can be seen throughout American history with for instance the ideas that the US was a "City upon a Hill" according to Puritan John Winthrop, Manifest Destiny to justify Westward Expansion, Wilsonialism, and Roosevelt's concept of "four freedoms". These ideas show the interest the US had in sharing their values with the world because they believed they were destined to do so.

However, a conflict does exist between national interest and the aforementioned messianic mission. The messianic vision has resulted in many multilateral engagements between the US and the international community which realists would advise against when it comes to the national interest of a country (Ignatieff 13). The US has had many successes in the past which have led to the belief that they are universally significant in the world. American nationalism is the belief that the US is a country unlike any other, some would even say superior to others (Randall 18) and because of this they have a God-given right, and some would even say burden, to expand their ideals to other parts of the world (Randall 19; Steele 248). The US was founded on the principle that they were "a morally superior outsider" (Randall 20). According to Steele, the US feels a responsibility to spread its ideas and it could be seen as weak or shameful to abandon this responsibility. Robert Kaplan even

worried that if they were to ever abandon their responsibility by being militarily weak, other ideologies or values could potentially gain ground around the world (Steele 251). Many Americans, therefore, believe that they cannot learn from the international community because their American values are equal to human rights in general. In the messianic vision, the US is unable to learn from other countries because they are the only ones capable of teaching the world what it means to be free (Ignatieff 13-14). American Exceptionalism is the idea that it is the mission of the US to spread their rights and values around the globe because they are capable of changing the world for the better and because their beliefs and values trump other beliefs and values (Lawatch 13). According to realists, American Exceptionalism was designed to protect the sovereignty and power of a country and the messianic vision adds that it was also designed to protect and defend their identity and destiny (Ignatieff 14).

In the 1980s, a conservative nationalist view gained ground regarding international standards. Lawyers such as John Bolton, Jeremy Rabkin, and Jack Goldsmith did not believe the US needed to adhere to the norms and standards of the international community because, as they believed, the most powerful state should not and could not be constrained by the rules and regulations the international community had set up. These ideas had major support within the Bush administration and which, therefore, resulted in their opposition to the ICC, their decision to back out from Kyoto, and ultimately the belief that they had the right to interpret the Torture Convention and the Geneva convention in a way that fitted their narrative (Ignatieff 22).

After the torture practices of Abu Ghraib had come to light, Secretary of State Colin Powell said the following: “Watch America. Watch how we deal with this. Watch how America will do the right thing. Watch what a nation of values and character, a nation that believes in justice, does to right this kind of wrong. Watch how a nation such as ours will not tolerate such actions” (qtd in [Mayerfeld, *The Promise of Human Rights* 113]). These words embody the idea that the US is an exceptional country that can do no wrong, despite that they had used methods that were not allowed to be used according to both the Geneva Convention and the Torture Convention. With the War on Terror the US is not fighting a country but a contradicting ideology or practice of doing things, which could also be seen with the War on Drugs and the War on Poverty (Lawatch 11). Another example of American Exceptionalism when it comes to the War on Terror can be found in President Bush’s State of the Union address in 2003: “The American Flag stands for more than our power and our interests. Our Founders dedicated this country to the cause of human dignity, the rights of every person, and the possibilities of every life. This conviction leads us into the world to help the afflicted and

defend the peace and confound the designs of evil men" (qtd in [Lawatch 13]). Moreover, in the National Security Strategy from 2002, the Bush administration stated that the US wanted to bring peace and free societies to all continents by fighting people who opposed their ideals such as terrorists and tyrants (Lawatch 13). The idea that Americans were the heroes trying to save the savages helped justify torturing people for many American soldiers who were deployed during the War on Terror. As can be seen in the following statement by an American soldier who was against the abuses that were happening in Abu Ghraib, "Every time I said something about how I was worried about the treatment of the detainees, they would either say, thy [sic] are the enemy and if I was out there they would kill me, so they didn't care"(qtd in [Lawatch 21]). This excerpt shows that the American ideology of spreading their ideals across the globe and fighting for freedom led to the suppression of basic human rights (Lawatch 21). Soldiers believed in the ideology spread by their country and therefore believed that to win the war they needed to resort to extreme measures (Lawatch 24). There were numerous investigations to decipher whether or not violations of basic human rights were taking place, at Abu Ghraib for instance, however, these investigators only looked into the soldiers who were torturing but not into the people giving them the orders. According to Lawatch, this unwillingness shows that the leaders of the War on Terror believed they were following a righteous path (24). The US felt justified torturing people during the War on Terror simply because they were raised on the notion that they were destined to do what it takes to spread their ideologies.

Another important ideological reason why the US resorted to the use of torture can be explained by the idea of racial superiority. By dehumanizing the enemy, it becomes easier to treat them inhumanely (Randall 22-23). A feeling of us vs them was created by the Bush administration to justify their war as can be seen in the following declaration by Bush: "They hate our freedoms – our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other," (qtd in [Randall 80]). Furthermore, Razack argued that the US citizens would understand the actions of the government because they would believe that these methods were inevitable when it comes to the "civilized" West interacting with "savages". The making of an enemy is important to a government to gain sympathy from the people. Austin even argued the following: "racism makes it permissible to murder and torture people. And it makes it possible for us to forgive such acts of violence and to call them by another name" (qtd in [Randall 81]). In the documentary Human Rights Watch, a soldier who had been stationed in Afghanistan said the following: "I think part of the problem is the blatant racism against the Arabs. Just blatant, you know. When you have an enemy, you

kinda have to demonize them a little bit like that in order to make yourself capable of pulling a trigger" (qtd in [Randall 81-82]).

A matter of strategy

The second reason why the US resorted to the use of torture during the War on Terror was to protect their national security. The techniques that were accepted within the torture program were intended to inflict severe pain and suffering because the Bush administration believed it would help obtain information from the detainees that was needed to keep the US safe. It was seen as a necessary evil even though at the same time they did not believe the techniques should even be considered as torture (Mayerfeld, *The Promise of Human Rights* 122). These justifications could also be seen in several statements that were made in multiple memos by the Justice Department's Office of Legal Counsel (OLC) which stated that Congress was not allowed to restrict the president's decisions when they related to matters of war and national security (Mayerfeld, *The Promise of Human Rights* 141). Moreover, in 2009, Vice President Dick Cheney defended the use of torture and any other measures that were deemed necessary if they were used to protect the safety of American citizens after 9/11 had happened (Randall 77). These beliefs can be explained through the ideological traits known as Jacksonianism and Machiavellianism. According to Walter Russell Mead, Jacksonians believe in individualism, self-reliance, and taking action in cases of a perceived threat to national interest or security. Critics believe that Jacksonian policies are best described as "trigger happy cowboy diplomacy" because once they feel threatened, they will do whatever it takes to achieve victory. Moreover, Machiavellianism was a theoretical approach by Niccolo Machiavelli who believed that rulers should use evil methods when it was deemed necessary (Randall 20-21; Kane 148). The Jacksonianism and Machiavellianism approaches were used to justify the way the US responded to the 9/11 attacks to the public as can be seen in Bush's address to Congress after the attacks had taken place: "tonight we are a country awakened to danger and called to defend freedom. Our grief has turned to anger, and anger to resolution. Whether we bring our enemies to justice, or bring justice to our enemies, justice will be done" (qtd in [Randall 74]). In the liberal ideology, the use of torture can also be justified when it is perceived as the lesser evil or a means to an end to protect the national good (Hajjar 200). Moreover, Conrad et al. argue that the American public would be more inclined to support torture if it was used on people they perceive as threatening, such as racial and ethnic minorities and people who are identified as a threat to the security of the country (Conrad et al. 992). Conrad's research showed that nearly half of the American population

was against using methods of torture on individuals, however, this number declines when these individuals are classified as threatening (Conrad et al. 993-994). Their research discovered two notable results, American people are more likely to accept torture as a legitimate method in the War on Terror when the person being tortured is of Arab descent and/or is suspected of being a terrorist (Conrad et al. 1003).

Furthermore, the security model is used by authoritarian and liberal states who believe torture to be a valid method to acquire the intelligence that is needed to put a hold on security threats (Blakely 374). These liberal states usually do not claim to be in favor of the use of torture, but when they do admit they used it they will often justify it on security grounds or by claiming that the use of torture was not sanctioned by the state and, therefore, the individuals who used it were labeled 'bad apples'. The 'bad apples' defense was used by the US after photographs were released of American soldiers torturing detainees at the Abu Ghraib prison (Blakely 375). Another argument in support of the national security defense is the 'ticking terrorist' argument which means that any terrorist who does not talk or give information will result in another terrorist planting and exploding other bombs which will result in American casualties. The 'ticking terrorist' argument was used by the Bush administration to justify torture as can be seen in a memo in which Jay Bybee advised the following to the President in 2002:

> In the current circumstances, however, an enemy combatant in detention does not himself present a threat of harm [. . .] Nonetheless, leading scholarly commentators believe that interrogation of such individuals using methods that might violate Section 2340A [of title 18 of the US Code, which implements the UN's Convention Against Torture] would be justified under the doctrine of self-defense, because the combatant by aiding and promoting the terrorist plot 'has culpably caused the situation where someone might get hurt. If hurting him is the only means to prevent the death or injury of others put at risk by his actions, such torture should be permissible, and on the same basis that self-defense is permissible (qtd in [Blakely 377]).

Bybee argues that anyone who is suspected of being involved with terrorists is complicit in hurting others. Because they are hurting others, the use of violence and torture against them should be allowed because these uses should be seen as self-defense. Therefore, to protect the lives of American citizens it was deemed necessary to use "enhanced interrogation techniques", also known as torture, in places such as Guantanamo Bay and Abu Ghraib to discover potential threats (Blakely 378). However, Derschowitz argues that if the US would

want to use torture in a ticking bomb situation in a justified manner, they should implement it in the law and advocate for juridical approval to obtain a torture warrant (Ramsay 108).

Another model that can be used to explain the justification of torture by liberal states such as the US, is the legitimacy model. This model explains how liberal states claim the right to torture by claiming certain identities. The torturer becomes the hero and the person being tortured becomes the enemy, therefore, legitimizing the use of torture by heroes (Blakely 388). The Bush administration used this model because they justified the use of torture by vilifying the enemy and identifying them as evil, while the US claimed the identity of the upholders of freedom and peace as can be seen in the following excerpt from a speech by President Bush to the nation after 9/11:

> America was targeted for attack because we're the brightest beacon for freedom and opportunity in the world. And no one will keep that light from shining [. . .] Today, our nation saw evil, the very worst of human nature. And we responded with the best of America [. . .] with the caring for strangers and neighbors [. . .] We go forward to defend freedom and all that is good and just in our world (qtd in [Blakely 389]).

Another example of these sentiments can be found in another speech by President Bush in 2002:

> Our cause is just and it continues [. . .] Thousands of dangerous killers, schooled in the methods of murder, often supported by outlaw regimes, are now spreading throughout the world like ticking bombs, set to go off without warning [. . .] My hope is that all nations will heed our call, and eliminate the terrorist parasites who threaten their countries or our own (qtd in [Blakely 389]).

The Bush administration used these constructed identities to gain legitimacy for their foreign policies. They were to be seen as trustworthy people who were trying to defeat terrorists who were threatening the freedom of all and were deemed pure evil (Blakely 389). Three weeks before the Senate banned CIDT of anyone vice-president Dick Cheney tried to exempt certain counter-terror operations who were active abroad from this ban (Blakely 390).

Although torture was used to extract information to protect American lives the US, Senate Armed Services Committee believed that by torturing people the US has accomplished the opposite: "the abuse of detainees in U.S. custody . . . damaged our ability to collect accurate intelligence that could save lives, strengthened the hand of our enemies, and compromised our moral authority" (qtd in [Mayerfeld, *The Promise of Human Rights* 124]).

Moreover, Blakely argues that it might seem plausible that important information can be obtained through the use of torture, however, conclusive evidence to support these claims does not exist (379).

A matter of politics

A third element that facilitated the use of torture by the US after 9/11 was the removal – a deliberate political choice, in the end – of many legal obstacles that would or could have otherwise prevented these uses. The US had many reservations, understandings, and declarations (RUDs) before they would even consider ratifying the ICCPR and the Torture Convention. These RUDs weakened the obligations the US had in regards to for instance the prohibition of torture and other forms of CIDT and they restricted the abilities of US court systems to enforce and hold people accountable for the matters established in said treaties (Mayerfeld, *The Promise of Human Rights* 114). Another legal obstacle that was removed before the 9/11 attacks took place was the establishment of the domestic legal authority the president would gain to be allowed to violate international law that had been established. After 9/11, the Bush administration used this authority to be allowed to violate the international law prohibitions that had been established on torture and other forms of CIDT. Moreover, Congress and the courts are now actively trying to ban all judicial enforceability from international treaties, and because the US had not ratified the Rome Statute of the ICC, they were able to avoid any international legal repercussions (Mayerfeld, *The Promise of Human Rights* 114).

In 2002, the OLC and the State Department debated on whether or not the Geneva Convention was to be considered in the war in Afghanistan. John Yoo and Robert Delahunty, for instance, argued that the Geneva Convention did not apply to detainees from al-Qaeda and the Taliban because Afghanistan had not ratified the Geneva Convention (Mayerfeld, *The Promise of Human Rights* 132; Ramsay 106). If the Geneva Convention did not apply US officials would have free reign without having to fear prosecution by the international community. White House Counsel Alberto Gonzales, Secretary of Defense Donald Rumsfeld, and President Bush agreed with these claims establishing that the Geneva Convention did not apply to the war in Afghanistan (Mayerfeld, *The Promise of Human Rights* 132). Therefore, detainees from al-Qaeda and the Taliban were not allowed the status of prisoner of war and lost the right to humane treatment which were both established within the Geneva Convention. Because of this, the Bush administration ensured that prisoners from

Afghanistan did not legally deserve humane treatment, however, Bush released the following statement to the public:

> Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva (qtd in [Mayerfeld, *The Promise of Human Rights* 133]).

The statement implies that whether or not prisoners will be treated humanely is not a matter of legality but a policy choice (Mayerfeld, *The Promise of Human Rights* 133).

Another method to legitimize the use of torture during the War on Terror was included in several memos that were released between 2001 and 2004, namely redefining the definition of torture to fit the US Department of Justice and Defense's narrative (Bassiouni 397). These memos argued that interrogation techniques that could be classified as torture needed to meet the following criteria: "to inflict pain, ... equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function or even death"; "severe pain and suffering must be inflicted with specific intent"; and "the provisions of Geneva are not applicable to the interrogation of unlawful combatants" (qtd in [Costanzo and Gerrity]). The Bush administration argued that the pain caused by the interrogators: "[M]ust be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death" (qtd in [Bassiouni 399-400]). According to Jay Bybee, the pain must last a substantial amount of time, months or years, for it to be considered torture (Bassiouni 399-400). Because of this narrow definition of torture, the Bush administration tried to legalize its torture techniques. Moreover, because of the criteria of intent any interrogator that would claim not to have intended to inflict severe pain or injuries would be excused (Mayerfeld, *The Promise of Human Rights* 144).

The Bush administration also appointed John Bolton as an ambassador to the United Nations who was skeptical of international law and said the following: "It is a big mistake for us to grant any validity to international law even when it may seem in our short-term interest to do so because over the long term, the goal of those who think that international law really means anything are those who want to constrict the U.S" (qtd in [Mayerfeld, *The Promise of*

Human Rights 116-117]). Because of these influences, the US set a certain agenda in which they were allowed to violate any treaties they deemed harmful to the national interest (Mayerfeld, *The Promise of Human Rights* 116-117). The War on Terror is often also referred to as the "The Lawyers' War" because generals, who would be in control during a normal war, were not the ones in control of how the detainees were treated, instead, government attorneys were. The treatment of the detainees was directly determined by the advice the lawyers were providing to the government (Mayerfeld, *The Promise of Human Rights* 129-130). Lawyers who were moderate or even against certain techniques were overruled by legal hardliners because they were supported by the Bush administration. These hardliners had a broad representation within the OLC, which was beneficial for the Bush administration because the OLC issued binding legal standpoints for the executive branch. Because of this, there was almost no opposition against torture techniques and other forms of ill-treatment at the higher level (Mayerfeld, *The Promise of Human Rights* 130).

After 9/11, multiple secret memos were written by the OLC in which extreme torture tactics were legitimized. Most of these memos were written by Deputy Attorney General John Yoo and had been approved by OLC Director and Assistant Attorney General Jay Bybee (130). One of these memos gave the president the authority to order certain interrogation techniques that essentially legalized torture. This memo was published in the Washington Post in 2004 after which the memo was withdrawn and replaced by a different memo that criticized some of the arguments made. However, additional memos that authorized torture techniques in detail and memos that legitimized the use of these techniques were never withdrawn by the Bush administration and only came to light when the Obama administration released them to the public in 2009. Because of these secret memos, the practice of torture was made legal (Mayerfeld, *The Promise of Human Rights* 131). Moreover, these memos established that Congress was not allowed to "place any limits on the President's determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response" (qtd in [Mayerfeld, *The Promise of Human Rights* 132]).

A memo by Diane Beaver, heavily influenced by a memo by Yoo and Bybee, gave a legal endorsement to use the following techniques after military interrogators had requested it: "stress positions, isolation up to thirty days, hooding, twenty-hour interrogations, nakedness, manipulation of phobias, death threats against detainees and their family members, cold temperatures, cold water, and waterboarding" (qtd in [Mayerfeld, *The Promise of Human Rights* 138]). The memo by Bybee and Yoo claimed that waterboarding

was not considered torture because, during US military SERE training, the soldiers were also subjected to this interrogation technique. However, they failed to realize that the conditions of soldiers who knew that this was part of their training, had sympathetic trainers, and knew that they were not actually in danger were far different circumstances than those of the detainees who were subjected to a more aggressive version in which they feared for their lives. CIA officials endorsed this with the following statement: "the SERE waterboard experience is so different from the subsequent Agency usage as to make it almost irrelevant" (qtd in [Mayerfeld, *The Promise of Human Rights* 137]). Rumsfeld expanded upon this memo by approving twenty-four interrogation techniques in which isolation, sleep deprivation, and environmental manipulation in which the temperature of the room the detainee was held in were constantly manipulated. In addition, Rumsfeld allowed military personnel to make suggestions for new torture methods by stating the following: "If, in your view, you require additional interrogation techniques for a particular detainee, you should provide me, via the Chairman of the Joint Chiefs of Staff, a written request describing the proposed technique, recommended safeguards, and the rationale for applying it with an identified detainee" (qtd in [Mayerfeld, *The Promise of Human Rights* 138-139]). There was a substantial amount of uncertainty when it came to the legality of the approved torture techniques. Jack Goldsmith who had replaced Bybee as Director of the OLC in 2003 withdrew the Yoo military Interrogation Memo but left the Bybee-Yoo Techniques Memo in place. His explanation was the following: "I wasn't . . . confident that the CIA techniques could be approved under a proper legal analysis. I didn't affirmatively believe they were illegal either, or else I would have stopped them. I just didn't yet know" (qtd in [Mayerfeld, *The Promise of Human Rights* 139]). The following directors of the OLC, Daniel Levin and Steven Bradbury, also stated that the Bybee-Yoo Torture Memo and the techniques that came with it broke no laws in the US. Bradbury even released three secret memos in which he specified how the aforementioned techniques should be used, under which conditions, and why these techniques should not be considered torture. One of the techniques he specified upon was the waterboarding technique, which according to Bradbury could not be seen as torture as it did not result in severe pain and suffering (Mayerfeld, *The Promise of Human Rights* 139-140). In 2005, Senator John McCain managed to win congressional support to implement an amendment that would prohibit CIDT of people that the US held in custody. However, the Bush administration undermined this amendment by adding provisions that would take away its practical effect, such as the protection of US government agents from any liability and the

Graham-Levin Amendment that limited the rights of detainees being held in Guantanamo Bay (Mayerfeld, *The Promise of Human Rights* 140).

Conclusion

The United States resorted to the use of torture in the War on Terror from 2001 until 2009 because of three matters that were of different nature, namely a matter of ideology, a matter of strategy, and a matter of politics. The matter of ideology can be linked to certain ideals that Americans have deemed valuable throughout their history. They have a strong sense of nationalism, a messianic vision, and American Exceptionalism because of which they believe they have a God-given right or even responsibility to spread their ideals and values throughout the rest of the world (Ignatieff 13; Randall 18-19; Steele 248). They believe they are an exceptional country that needs to protect and defend its ideals no matter the cost. The Bush administration used these ideological notions to justify the use of torture during the War on Terror. They believed the use of torture was needed to protect their values and ideals from people they deemed inferior, and it helped them spread their values to the rest of the world (Lawatch 13). The US also used torture to protect their national security in a matter of strategy. To protect their nation, torture was deemed a necessary evil to obtain information from the detainees in order to keep the country and its people safe, as can be seen in the ticking terrorist argument. These beliefs are also known as Jacksonianism and Machiavellianism (Randall 20-21; Kane 148). Research showed that the American people were less inclined to condemn torture if the person it was used against was of Arab descent and/or suspected of being a terrorist (Conrad et al. 1003). The Bush administration used the legitimacy model to vilify the people they wanted to torture and claimed to be the upholders of freedom and peace to create a contrast between the Americans, the ‘heroes’, and the detainees in the War on Terror, the ‘villains’ (Blakely 389). Authoritarian and Liberal states such as the US, usually do not publicly state that they are in favor of using practices such as torture and people who are caught using these methods are, therefore, usually acknowledged by the government as ‘bad apples’ (Blakely 375). Lastly, the US deliberately decided to remove legal obstacles that could have otherwise be used to prevent methods of torture. The US implemented RUDs in order to weaken the US´s international obligations, the Bush administration restricted the courts, gave more rights and powers to the president, and they drafted many memos that legitimized the uses of certain techniques most people would argue to be torture (Mayerfeld, *The Promise of Human Rights* 114; 130-132; Bybee 130). These three matters opened the doors to torture for the US during the War on Terror.

Throughout history, a shift in the US has taken place in strategy, politics, and ideology which has had major implications for the international community. One of the

consequences of this shift is that torture in a way has become an acceptable approach in foreign relations policies. Even though the use of torture has not been legalized, the new approach has become Jacksonianism and Machiavellianism: an accepted and justified means to end (Randall 20-21; Kane 148). Another consequence of this shift is that all the efforts of the international community and conventions to prohibit the use of torture and to protect the people it could be used against have been in vain. The legal structures that are in place are not working as they should be working because countries such as the US that have a big influence in the global community can simply bypass the system as they please. Because of this, new strategies need to be devised in order to end torture practices. The international community needs to stop allowing countries to have RUDs and should demand compliance. They need to finance domestic and transnational watchdogs who can monitor governments and policies in order to ensure that they are not using their powers in unethical or illegal manners. Moreover, the ICC needs to have more power and they need to have more jurisdictions around the world to hold countries accountable. In the US itself, policies also need to change. The Bush administration should be held accountable for its actions and they should not be able to get away with shifting the blame towards soldiers who were caught but who were simply following orders (Ramsay 105). Because the responsible parties were allowed to break many international and domestic laws by using matters of ideology, strategy, and politics that fitted their narrative, a wrong message is being sent. A message that states that powerful countries can do as they please as long as they cover and justify their actions.

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