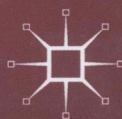


**THE
POLITICS
OF
TORTURE**

TRACY LIGHTCAP

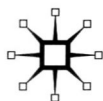


The Politics of Torture

Tracy Lightcap



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THE POLITICS OF TORTURE

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Preface

As J. R. R. Tolkien once said, “The tale grew with the telling.” This book began with reports in the press concerning the so-called “lap dance interrogation” outlined in the *Schmidt—Furlow Report* (Schmidt and Furlow 2005) concerning FBI allegations of abuses in interrogations of detainees at Guantanamo Bay prison. The stories told of female military intelligence interrogators questioning detainees in their t-shirts and using close physical contact, among other techniques, to upset the detainees’ concentration during interrogation (Schmidt and Furlow 2005). As might be expected, this technique elicited a strong reaction from the strictly religious Muslim males they were questioning. The stories reminded me of something similar I had read and I soon tracked it down: it was Aleksandr Solzhenitsyn’s account of a similar interrogation by a female NKVD officer during the Stalinist Terror (Solzhenitsyn 1973). It was a short step, fueled by curiosity alone, that led to the comparisons in table 2.1 of this book and then to an attempt to explain the similarities in techniques used during the War on Terror to those used by the NKVD so much earlier. Many years and much reading and reflection later, this book resulted.

As is usually the case, this effort could not and was not accomplished alone. I received useful advice and criticisms from many people at various stages of my work. I particularly benefited from conversations over the entire period with David Ahearn. He read the original—and lengthy—paper that led to this book and has offered continually trenchant criticisms and suggestions about my ideas and the evidence I have offered for them. Kipton Jensen and Barry Prather read the penultimate draft of this book and made comments that led to several revisions, as did an anonymous reviewer of the submitted text. At initial presentations of earlier versions of this work I was aided by comments from Ross Burkhart, Cornell Clayton, Justin Wert, and Helen Knowles. John Tures, Alexander Gungov, Will Moore, and Scott James offered critiques and additional material that helped iron out my thinking on many issues. LaGrange College gave me a timely sabbatical that allowed me to finish the bulk of the writing for

this book. I wish to thank my editor, Farideh Koohi-Kamali, for her faith in this project and her associates Robyn Curtis and Tiffany Hufford for their unfailing help in getting this manuscript to print. Finally, I would like to thank my wife, Ann Margaret Pointer, and my son, Allen Lightcap, for their help, advice, and support during this book's long and sometimes frustrating gestation. I literally could not have finished this book without them. As is usually—and truthfully—said, much that is useful in this book is the result of my interactions with these intelligent and perceptive people. I must take responsibility for the obstinance that has led to its faults.

Abbreviations

ABC	American Broadcasting System
ACLU	American Civil Liberties Union
AUMF	Authorization to Use Military Force
BICE	Bureau of Immigration and Customs Enforcement
CBS	Columbia Broadcasting System
CID	Criminal Investigation Division (U.S. Army)
CIS	Criminal Investigation Service (U.S. Navy)
COIN	Counter Insurgency (as in COIN warfare)
CPA	Coalition Provisional Authority
CPSU	Communist Party of the Soviet Union
DEA	Drug Enforcement Administration
DTA	Detainee Treatment Act
FOIA	Freedom of Information Act
GC	Geneva Conventions
GOSPLAN	State Planning Committee
GUGB	Main Directorate of State Security (secret police of the NKVD)
ICRC	International Committee of the Red Cross
JAG	Judge Advocate General (Department of Defense)
JPra	Joint Personnel Recovery Agency (Department of Defense)
JTF	Joint Task Force
MCA	Military Commissions Act
MI	Military Intelligence
MP	Military Police
NBC	National Broadcasting Company
NEP	New Economic Policy
NKVD	People's Commissariat for Internal Affairs
OGPU	All-Union State Political Directorate (secret police)
OLC	Office of Legal Council
SERE	JPra Survival, Evasion, Resistance, Escape program
SPC	Specialist (non-commissioned rank in the U.S. armed forces)
UCMJ	Uniform Code of Military Justice
USC	United States Code (code of federal laws)
VKP(b)	All-Union Communist Party (Bolshevik)
WMD	Weapons of Mass Destruction

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Introduction

For Anwar Sa'eed al Sheik it began in early 2003 when he left his native Syria to join the insurgency in Iraq and fight against the Americans. He did not last long as an insurgent; he was arrested by the U.S. Army on October 7, 2003, and sent to the Baghdad Central Detention Center in Abu Ghraib prison. Once there, he was transferred to the "Hard Site," the internal cell block isolator used for dangerous prisoners and those who, like al Sheik, might have intelligence value.¹ He had already been threatened with torture but things got worse for him quickly at the Hard Site. His head was covered with a sandbag and he was stripped naked, continually threatened with rape, made to stand in "stress positions" for hours, and threatened with worse punishment. Al Sheik resisted his interrogators at first but soon gave a second set of interrogators a full confession concerning his activities.² He was then transferred back to the regular prison, but 18 days later he was sent back to the Hard Site where new interrogators threatened him with life imprisonment (al Sheik 2004).

On November 24, al Sheik was involved in the second of the "firing incidents" at Abu Ghraib that day. The guards at the Hard Site were informed that he had a gun in his cell. When they tried to search al Sheik's cell, he produced a pistol from its hiding place and began shooting. After trying without success to disable al Sheik with non-lethal rounds from a 12-gauge shotgun, the guards shot him in the legs with 00 buckshot from the same weapon, breaking one of his legs in the process (Taguba 2004b, Zernike 2005).³ He was then taken to the prison hospital. During his short stay there al Sheik was again threatened with severe torture (al Sheik 2004).

It should surprise no one that al Sheik was not handled with kid gloves on his return to the Hard Site; after all, he had tried to kill some of his captors. The actual treatment he received, however, went well beyond the normal bounds of prison discipline. Al Sheik's leg was still broken and he was on crutches. He was forced to walk back to the Hard Site and, once back in his cell, was deprived of his crutches, stripped naked, and had his life

threatened. Soon afterward, a team from the night guard led by Specialist Charles Graner entered his cell. They forced al Sheik to eat pork and drink liquor, both anathema to Muslims, beat his broken leg, and, again, threatened him with rape. The guards then handcuffed al Sheik and hung him from his bed. They ordered him to curse Islam and hit his broken leg until he did so. He lost consciousness and awoke to find himself still hanging between the floor and his bed. One of the guards then urinated on him and called Graner, who laughed at al Sheik when he arrived. After several hours his handcuffs were finally removed and he was allowed to sleep.

After threatening al Sheik most of the next day, Graner hung him from the door of his cell with his arms behind him. He pleaded for Graner not to do this since he believed his shoulder was broken. He was ignored and left to hang for over eight hours, losing consciousness again.⁴ He was then examined by a doctor who determined, after x-rays were taken, that al Sheik did not have a broken shoulder but that it was badly hurt. He was then taken back to his cell, having to crawl the entire way because he could not walk on his broken leg. For the next week, al Sheik was questioned every night while he was constantly threatened with death by armed guards, hung to his cell door, and terrorized by police dogs (al Sheik 2004). He was questioned by investigators attached to Major General Anthony Taguba's AR-15 investigation of the 800th military police brigade at Abu Ghraib soon afterward. Al Sheik's deposition concerning these allegations was found credible, largely due to corroborating evidence and testimony. Major General Taguba decided to include the deposition, among others, in his final report (Taguba 2004a). Al Sheik was later to repeat this testimony at Specialist Graner's court martial that resulted in a ten-year prison sentence for Graner (Zernike 2005).

For Samuel Provance, it began in September 2003 when he was sent to Abu Ghraib to replace the noncommissioned officer in charge of system administration for military intelligence who had been wounded in one of the frequent mortar attacks on the prison.⁵ At first, his duty at the prison was, like all active duty in Iraq at the time, dangerous, but otherwise unremarkable. This began to change when new teams of interrogators and civilian contractors arrived at Abu Ghraib from the detention center at the naval base at Guantanamo Bay in Cuba, where a new prison complex had been built to hold suspected terrorists captured around the world. The Guantanamo teams quickly took over direction of interrogations of detainees in the Hard Site. Provance had particular access to the consequences of the new interrogation routines since he both maintained the secret computer records and manned the top-secret section of the newly established Joint Interrogation and Debriefing Center. In these capacities, he had constant contact with interrogators and analysts at Abu Ghraib. He began to hear some disturbing accounts from them (Provance 2006).

The other soldiers told Provance about detainees being kept naked in their cells, starved, deprived of sleep for extended periods, and threatened by police dogs. One of them described how military police guards had instructed him and others about techniques for striking detainees or knocking them unconscious without leaving marks. Another described exercising the detainees to exhaustion in the summer heat (“smoking”). A particularly close acquaintance confirmed accounts by released detainees that they had had cigarettes put out in their ears and that their families had been threatened with rape by U.S. soldiers (Provance 2006).

In January 2004, Provance was interviewed by U.S. Army Criminal Investigation Division (CID) investigators working for Major General Taguba’s AR-15 investigation. He felt relieved when the investigation was announced, feeling that the abuses he had heard of would now be curtailed. To his chagrin, however, Provance soon discovered that he was one of very few soldiers at Abu Ghraib to level with the CID concerning treatment of detainees there. Despite his concerns—he was sure that he would be at least ostracized by soldiers who feared disciplinary action and at worst put in jeopardy of violent retaliation—he continued to cooperate until he was redeployed to Germany, rejoining his original unit in February 2004. Public revelations concerning the prisoner abuses at Abu Ghraib followed soon afterward in April as did the leak of much of the substance of Major General Taguba’s report. Provance was disappointed with discouraged by the outcome of these public exposures; the CID seemed to be concentrating on a few of the military police (MP) guards instead of the military intelligence (MI) interrogators who instigated the abuses. But he had not made these thoughts known and, since his commander strictly forbade any soldiers in his company to speak to the news media about Abu Ghraib, he was only disappointed with the attitudes of his superiors. Then Provance was informed that he would be interviewed by Major General George Fay in conjunction with the AR-15 investigation of Abu Ghraib itself and of the 205th Military Intelligence Brigade (Provance 2006).

Provance’s interview with Major General Fay was a trying one. He answered all the questions that the general posed but then asked one of his own: Why wasn’t the general asking questions about the military intelligence interrogators? His account of Major General Fay’s reaction is interesting,

I answered his questions to the best of my ability. After doing so, I told him that I didn’t understand why he had no questions about the MI interrogators. I volunteered that most of what I knew or had heard came from them. He was not interested. I repeated that I had heard a number of very troubling accounts. He looked annoyed by this, but then he invited me to share some details with him. I then shared with MG (Major General) Fay much of the account that I just wrote in this statement. MG Fay was clearly

very unhappy to have all of this account. He pulled out my statement to CID from January and quoted back to me the passage in which I said I was glad something was done because what had been going on was shameful. He then said he would recommend administrative action against me for not reporting what I knew sooner than the investigation. He said if I had reported what I knew sooner, I could have actually prevented the scandal. I was stunned by his statements and his attitude. (Provance 2006, 8–9)

Apparently the most disquieting of his revelations to Major General Fay concerned the interrogation of General Hamid Zabar of the Iraqi Army. To obtain General Zabar's cooperation, his 16-year-old son was arrested and abused in prison. The general was then hooded and taken to another cell. When his hood was suddenly removed, he was confronted with his son by military intelligence interrogators. Provance had been particularly bothered by this incident, which was confirmed subsequently to Major General Fay's investigators by one of Zahar's interrogators (Provance 2006).⁶

In May Provance had a series of unpleasant surprises. When Major General Taguba's AR-15 report was leaked in its entirety to the media, he discovered that he was the only MI (military intelligence) soldier who had testified to abuses at Abu Ghraib. Soon afterward, he was summoned to his commander's office and given a written order not to speak to anyone about Abu Ghraib, an order he soon found had been issued to him alone. Provance had long been convinced that there was an effort by the army's command structure to suppress information about abuses at the prison; he now felt he had a duty to speak out. ABC News had tried to contact him earlier, but Provance had not responded. On May 16 they contacted him again and he consented to an interview, which was shown on the nightly news two days later. This interview led to his first contact with the congressional investigation into the situation; he spoke first with Senator Lindsey Graham and then with his committee's staff. As a result tensions in his unit increased and he was soon "flagged" (i.e., administratively reprimanded) and had his top secret clearance revoked, essentially ending his career in military intelligence. After his Senate testimony Provance was also reduced in rank, again for disobeying orders. Provance's subsequent career in the military was spent in close cooperation with his Judge Advocate General Corps (JAG) lawyer, contesting the various actions against him. He was honorably discharged in October 2006, still convinced that the command of the armed forces was unwilling to face the source of the detainee mistreatment scandal. He continues to be active in groups calling for further investigation and a final reckoning about Abu Ghraib (Provance 2006).

For people in the United States, it began on April 28, 2004, when viewers of the CBS television newsmagazine *60 Minutes II* were shocked to be

confronted with a dozen photographs documenting inhumane treatment of Iraqi detainees by U.S. military police and others at Abu Ghraib. Two days later, Seymour Hersh published an article in *The New Yorker* giving further details about abuses at Abu Ghraib and referring extensively to Major General Taguba's then still secret AR-15 criminal investigation, followed by a more detailed report on June 14 (Hersh 2004a, 2004b). After that the story spread, as it became apparent that the commanders of Coalition Forces in Iraq had been informed of possible problems by the International Committee of the Red Cross (ICRC) during the previous year and that accounts of detainee mistreatment that had been widely discounted before appeared to have been confirmed by the subsequent multiple Department of Defense investigations (ICRC 2004, Ricchiardi 2004). It was further revealed that the criminal abuses of detainees had occurred not only in Iraq but also in Afghanistan and at the prison for detainees at Guantanamo Bay (Jones and Fay 2004, American Civil Liberties Union 2006c, Schlesinger et al. 2004). Subsequently, continuing requests under the Freedom of Information Act by the American Civil Liberties Union (ACLU) and others as well as independent investigations revealed a disturbing similarity in patterns of abuse, patterns that suggested an overall scheme of interrogation and incarceration that departed radically from past U.S. policy on both matters (Physicians for Human Rights 2005, Center for Constitutional Rights 2006a, ACLU 2006d). The evidence now at hand indicates that the interrogation practices adopted by military and civilian intelligence agencies during the War on Terror, like those described by Anwar Sa'eed Al Sheik and Samuel Provance, were in violation of international conventions that the United States had sponsored and officially abided by for much of modern history. As we shall see, the revealed practices clearly contravene international standards proscribing torture and inhumane treatment of prisoners taken during wartime. Further evidence has shown that the use of torture and abusive practices was extensively debated in executive circles in the United States, subjected to legal and policy analysis, and approved by officials at the highest levels.⁷

The torture and abuse of U.S. detainees in Iraq, Afghanistan, and Guantanamo Bay have contributed to a foreign policy debacle of unprecedented scope and intensity. Islamic radicals have long held that the United States and its allies are engaged in a war to undermine Islam itself. Furthermore, they have warned that in this war the United States would stop at nothing to destroy the cultural and political basis of the modern Middle East and replace it with a secular, capitalist, and Christian alternative (Rodenbeck 2006). America's enemies in the Middle East could not have thought up a scenario that more closely fits their narrative explaining the U.S. intervention in Afghanistan and Iraq than the events at Abu

Ghraib and other prisons holding Islamic detainees. When combined with the constant friction that occupation by a foreign and culturally dissimilar power inevitably creates, the image of tortured and abused detainees has fueled insurgencies and greatly complicated the reconstruction of both countries and the reestablishment of order in them. In addition, the “soft power” of the United States—the power it has as a result of its domination of communications and its cultural and ideological hegemony—has been undermined not only in the developing world, but also among America’s allies in Europe and Asia (Nye 2004). Distrust of U.S. intentions and policies reached new heights worldwide and, for the first time, outright fear of U.S. power became commonplace (Pew Global Attitudes Project 2006). Although the collapse of U.S. prestige was not complete, Colin Powell, former secretary of state, was right when he said that the torture and abuse of detainees has undermined the moral basis of the War on Terror (DeYoung and Baker 2006). The election of Barack Obama in 2008 and changes in policy by the new president have alleviated some aspects of the crisis but, as we shall see, the damage to the U.S. “brand” is still considerable and the danger of a reinstatement of torturous interrogations still exists.

How did this happen? Why did the United States start using torture and abusive techniques as a tool of interrogation in the War on Terror and how did they come to be adopted? Jackson (2006) has identified three different strains of thought concerning these questions. The first ties the abuse of detainees directly to policies of the Bush administration. There are two tracks to this explanation. Some hold that the abuses were due to a lack of effective leadership and control of the prison systems in Iraq, Afghanistan, and Guantanamo Bay. The many investigations undertaken by the armed forces and the Department of Defense into these matters are a good example of this. All have pinpointed either unclear policies concerning intelligence interrogation, shortages of personnel or training, or poor coordination and supervision by commanders as the root causes of the problem (Human Rights First 2004; for the best overview, see Schlesinger et al. 2004). The second track is more accusatory, tying the torture of detainees to deliberate policy decisions made by members of the Bush administration. Here the focus is on the results of the prolonged debate within the administration over interrogation practices as the need for intelligence concerning terrorist organizations increased and the pivotal decision was made that the application of the Geneva Conventions to War on Terror detainees was conditional (see Danner 2004 for the text of the memos in question). Critics of these deliberations tie the abuse of detainees directly to President Bush, Vice President Cheney, and their circle of advisors, holding that the ambiguities of policy mentioned above

stem from the decision both to redefine torture and to blur the limits of interrogation techniques—an argument that is very persuasive, as we shall see (Hersh 2004b, Hooks and Mosher 2005, or Greer 2004). Furthermore, the decision of the Department of Defense to migrate interrogation techniques from Guantanamo Bay to Iraq is generally and correctly cited as the precipitating cause of the widespread proliferation of torture and abuse of detainees there (Danner 2004).

The second explanation focuses on systematic factors influencing the adoption of torture by threatened regimes. There is an established research tradition addressing general questions about the suppression of human rights, but studies specifically addressing the use of torture are both recent and rare. There are two main threads of research. The first harks back to the United States' and other developed nations' involvement in guerrilla wars in the developing world. Here the abuse of detainees is tied either to the continuation of imperial attitudes and methods in now "neocolonial" environments (see *Historians Against the War* 2006 or Harbury 2005) or to the degrading effects of guerrilla warfare on constraints on treatment of prisoners of war (Forsythe 2006). From these perspectives, the reappearance of prisoner abuse is related to a longstanding predilection for the use of torture and abuse by U.S. forces and others engaged in "asymmetric warfare" in the Third World. As Jackson (2006) points out, America's record of abusive treatment of prisoners in colonial wars is a longstanding one. From Indian wars to the Philippine insurrection to Vietnam and the COIN (counter insurgency) wars in Latin America, U.S. armed forces and, in more modern times, intelligence agencies using third-party personnel have treated prisoners with no more and sometimes less regard than has been shown in the War on Terror (Otterman 2007, Jackson 2006, McCoy 2006, Harbury 2005). Further, as some critics have pointed out, this is by no means a solely U.S. trait. Indeed, the abuse of prisoners appears to be common among former colonial powers (Rejali 2007, Forsyth 2006, Jackson 2006).

A related perspective is offered by more recent comparative quantitative studies of torture. Davenport and Armstrong (2005), Davenport, Armstrong, and Moore (2007), and Davenport, Moore, and Armstrong (2008) have examined the incidence of torture in autocratic and democratic regimes under various levels of threat from civil war, political dissent, and guerrilla war. Their research leads them to conclude that when threats to regimes are high enough, there is a strong propensity for governments of all kinds to revert to torture, a propensity strengthened by any prior experience of using torture. Furthermore, although democracies are less likely to engage in torture when not under threat (though the actual incidence is unexpectedly high), the use of torture under conditions of

threat is virtually identical for autocratic and democratic regimes. Indeed, like the more qualitative critiques cited above, these studies remark how unusual it would be if torture of detainees did not happen, given the circumstances leading to the War on Terror. Rejali's (2007) comparative history of the development of torture techniques supports these findings. His work shows conclusively that many torture techniques, including those used at Abu Ghraib described by al Sheik and Provance, originated in democratic countries, not in authoritarian states.

Finally, there is a thread of explanations concerning the cultural and psychological framework providing individual and social justifications for torture. Here perspectives show more diversity of approach. Some scholars have focused on the degrading effects of war itself as an enabler for detainee abuse. As war dehumanizes those waging it, the barriers to abusive behavior become significantly lowered; a mere igniting spark could blast them aside (Calhoun 2005, Hedges 2003). Others have described the construction of social narratives that dehumanize enemies in the War on Terror, narratives that so drastically change perceptions of wartime prisoners as to make falling into abusive patterns easy (Jackson 2006). Finally, some have emphasized a combination of conditions involving euphemistic justifications for torture, administrative quiescence, insularity and secrecy, and competition among interrogators as determinative (Huggins 2004).

All of these perspectives have something to offer the interested scholar, but all have weaknesses as explanations for the official adoption of torture by the United States. It is true that both organizational failures and administrative decisions have had a role to play in the appearance of widespread use of torture in interrogations by the United States. But this observation begs important questions. Why did the organizational failures occur? Why were official decisions made that facilitated the informal legalization of torturing detainees? It is also true that the United States has a long history of prisoner abuse and remains faced with substantial external threats, facts that fit the scenario for the use of torture suggested by both historical and quantitative studies. However, the abuses visited on America's enemies in the past were never the result of anything like the systematic deliberations and careful vetting of decisions that provided legal justification for the tortures in Iraq, Afghanistan, and Guantanamo Bay. Why did U.S. officials suddenly allow the torture and abuse of detainees to become part of a wide-ranging policy debate? Why were decisions made to legalize torture and abusive interrogation techniques? Moreover, in the United States most of the torture techniques used in the past were either informally practiced by local police departments and isolated armed force units or, like the Phoenix Program in Vietnam, carried out largely by third