

**The Systemic Analysis of the Establishment of  
Torture as Foreign Policy Measure in Modern  
Democratic Institutions with Special Reference to  
the Use of Torture during the “War on Terror”**

by

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## **Declaration**

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own, original work, that I am the owner of the copyright thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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## Summary

This dissertation's primary focus is why torture is used when torture is not an effective means of gathering intelligence. To answer this question the argument for the use of torture, commonly known as the ticking time bomb argument, is discussed. Due to psychological and physiological processes during torture interrogation it was found that torture cannot be relied upon to deliver truthful information. Torture was also found to adversely affect the institutions that are needed for its establishment.

After torture has been found to be of no utility in terms of the appropriation of information the question of why torture is still used is answered by means of discussing societal dynamics as well as the political process surrounding torture. On the societal front it was found that American public opinion towards torture is ambivalent. The reason for this includes a host of socio-psychological factors such as the in-group out-group bias as well the *War on Terror* as a political ideology in its own right. The notion that anybody is likely to torture is also explored by means of discussing the Milgram's Obedience Experiment as well as the Stanford Prison Experiment.

On the political front the notion that the abuses at Abu Ghraib and Guantanamo Bay were the work of *a few bad apples* is dispelled since it formed part of a deliberative political process that tried to make torture a legitimate foreign policy measure. The reason for the existence of this process is the failure of international and domestic checks and balances. On the international front U.S. unilateralism as foreign policy principle is cited as the reason for the ineffectiveness of international measures to stop torture. On the domestic front the *permanent rally around the flag effect* due to the permanent state of mobilization in the *War on Terror* is cited as the reason for the failure of domestic checks and balances.

The lessons learnt from the research enables the creation of measures on how to stop torture even when it is found that the necessary political will is not present within the Obama administration. In the absence of political will it must be manufactured by means of the actions of civil society, the free press and the international community. It was found that the most effective means would be the creation of a committee of inquiry to create the political memory of the use of torture and how it was established. Additionally a memorial must be erected as well seeing that inquiries create political memories but they do not sustain it.

## Opsomming

Hierdie tesis se fokus is om na te vors waarom marteling gebruik word as dit nie 'n effektiewe wyse is om inligting in te win nie. Om hierdie vraagstuk te beantwoord word die argument vir die gebruik van marteling naamlik die tikkende-tydbom-argument bespreek. Asgevolg van sielkundige en fisiologiese prosesse tydens ondervragings wat gebruik maak van marteling kan daar nie op marteling staatgemaak word om die waarheid op te lewer nie. Dit was ook bevind dat marteling die instansies, wat nodig is vir die gebruik daarvan, op 'n negatiewe wyse beïnvloed.

Nadat daar vasgestel is dat marteling geen nutswaarde aangaande die inwinning van informasie bied nie word die vraagstuk waarom marteling steeds gebruik word beantwoord. Op die samelewingsvlak kan daar gestel word dat die Amerikaanse samelewing onseker is oor of marteling gebruik moet word al dan nie. Verskeie redes vir hierdie opinie word aangevoer waarvan die *in-group out-group bias* en die *Oorlog teen Terreur* as politieke ideologie slegs twee daarvan uitmaak. Dat enige persoon in staat is tot marteling onder die regte stel omstandighede word ook bespreek na aanleiding van die *Milgram's Obedience Experiment* en die *Stanford Prison Experiment*.

Op die politiese vlak is daar vasgestel dat die menseregteskendings in Abu Ghraib en Guantanamo Bay nie die werk was van slegs 'n paar individue was nie, maar deel uitmaak van 'n doelbewuste politiese proses wat marteling as 'n legitieme buitelandse beleidskwessie wil afmaak. Die rede waarom die beleidsproses bestaan kan toegeskryf word aan die mislukking van inter- en intranasionale wigte en teenwigte. Op die internasionale vlak kan daar gestel word dat die Verenigde State se unilateralistiese modus operandi die rede is vir die mislukking van internasionale maatreëls teen marteling. Op die intranasionale front kan daar gestel word dat die Amerikaanse publiek verkeer in 'n permanent *rally around the flag*-toestand asgevolg van die permanent mobilisasie in die *Oorlog teen Terreur*.

Uit die lesse wat geleer is uit die navorsing kan daadwerklike stappe gedoen word om die gebruik van marteling stop te sit alhoewel die Obama-administrasie se politiese wil ontbreek. Met die tekort aan politiese wil moet die politiese wil geskep word deur die burgerlik samelewing, the vrye pers asook die internasionale gemeenskap. Daar was gevind dat die mees effektiewe wyse om marteling stop te sit sal deurmiddel van 'n kommissie van

ondersoek wees. Die kommissie se doel sal wees om te bepaal hoe marteling tot stand gekom het en 'n politiese herinnering te skep. Daar moet ook 'n bykomende maatreël wees, naamlik die oprigting van 'n monument aangesien kommissies van ondersoek politiese herinneringe skep maar nie in stand hou nie.

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## **List of Abbreviations**

BSCT – Behavioural Science Consultant Team

CIA – Central Intelligence Association

FLN – Front de Libération Nationale

HUMINT – Human Intelligence

ICRC – International Committee of the Red Cross

MP – Military Policeman

MRE – Meal Ready to Eat

OLC – Office of Legal Council

POW – Prisoner of War

SAS – Special Air Service

SERE – Survive Evade Resist Escape

SPE – Stanford Prison Experiment

UN – United Nations

UNCAT – United Nations Convention against Torture and Cruel, Inhumane or Degrading Treatment or Punishment

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## **Chapter 1 - Introduction**

### **1.1 Identification of the Research Theme**

Torture has been used as a method of punishment since ancient times. According to Swain the first instance of torture for informational purposes was in 1310 in England during the reign of King Edward II (Swain, 1965: 17). Seven hundred years later torture is still used worldwide with the torture in the detention camps in Guantanamo Bay and Abu Ghraib by the U.S. government being the most infamous and recent example.

Torture is defined by the United Nations Torture Convention of 1984 *as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. With the exclusion of pain or suffering arising only from, inherent in or incidental to lawful sanctions* (UN, 1984). For the purposes of the thesis it is important to distinguish between three types of torture that feature in the United Nations' (UN) convention namely retributive, informational and torture for the sake of forcing confessions seeing that the thesis will focus exclusively on informational torture.

To this day torture is still used extensively all over the world under the pretence that it's an effective way of gathering intelligence. The use of torture has negative, society-wide implications that include jurisprudence (Bekerman, 2005) and how human rights are perceived (Waldron, 2005). The main hypothesis of the thesis is thus that torture is an ineffective means of gathering intelligence. By proving this hypothesis two main research questions flow from it.

The first research question that the thesis aims to answer is why torture is still used so widely and extensively if it is inherently flawed? The assumption is that the use of torture is an emergent property of the interaction between social and political entities.

The second research question follows from the answers from the first question namely what steps can be taken within the social and political systems that will lead to the discontinuation of torture? Seeing that international monitoring mainly led to the shift from scarring techniques to clean techniques and not to discontinuation of torture (Rejali, 2007: xviii) the answer will be more complex than merely imploring good global citizenship from states.

## **1.2 Significance of the Research Theme**

In 2009 the Obama administration declassified documents that outline the flawed legal process that eventually led to the use of torture in Guantanamo Bay and Abu Ghraib (Stein, 2009). The timely declassification of these documents is especially advantageous for the thesis seeing that this case is very well known, illustrative and are unmatched by any other report with reference to detail, accuracy and proximity to the source. The timing of the release will also guarantee that the thesis will be one of the first full-length academic texts that make use of these documents. The use of torture by the U.S. government during the *War on Terror* will therefore serve as the case study.

Apart from the topical nature of the thesis the author also regards the research significant because of the wide impact that the use of torture has. Examples include the loss of moral standing of states that partake in the practice as well as how human rights are perceived by the general public when the use of torture becomes common knowledge

## **1.3 Identification of the Research Problem**

The research problem can be divided into a hypothesis and two distinct but interrelated research questions. The hypothesis is that torture represents severe limited utility in terms of intelligence gathering as well as wider institutional problems such as jurisprudence, the participation of doctors and the emotional toll it takes on torturers

After the hypothesis is proven two questions remain unanswered. The first will be why torture is still used so extensively despite the limited utility of the practice, democratic decision making and international conventions against torture? Preliminary research states that the

security situation, properties unique to torture and how it relates to institutional structure are important factors.

After answering the first research question the necessary information will be at the writer's disposal to make institutional recommendations that will halt the spread of torture if implemented correctly and answer the second research question of how torture can be halted.

#### **1.4 Demarcation of the Study**

The research will primarily focus on the use of torture by the American military during the *War on Terror* which started after the 11<sup>th</sup> of September 2001 until 2009 although other more historic examples will also be used especially pertaining to the hypothesis. The relationship between the attributes of torture, the American intelligence service, political decision making and society will be focused on during the answering of the two research question. The second research question will especially focus on political institutions and torture.

It must also be stated that the torture debate in the U.S. is an ongoing affair. This makes a retrospective analysis of events pertaining to the case study impossible. This study is therefore demarcated to the use of torture by the U.S. government from the 11<sup>th</sup> of September 2001 until the declassification of a set of documents on the 24<sup>th</sup> of August 2009.

Due to the sensitive nature of the U.S. government's use of torture and the secrecy surrounding it some of the declassified documents are not declassified in their totality. In certain aspect the study is therefore demarcated by default to the informational limits of the abovementioned documents.

#### **1.5 Literature Survey**

Rejali has written extensively on the proliferation of torture techniques throughout the world as well as the use of *clean* techniques instead of techniques that leave permanent physical marks to thwart the attempts of international monitors (Rejali, 2007). There has also been journalistic enquiries into episodes of torture in Israel in 1988, Northern Ireland in 1971 (Conroy, 2000) in South Africa during Apartheid (Pauw, 1997) and comparative work between South Africa and Argentina (Gravil & Merret, 1991).

Recently, under the auspices of the American Centre for Strategic Intelligence Research, the Intelligence Science Board has started with a cross-disciplinary study of *educing information*. This body of literature focuses on ways of reliably and effectively eliciting information from detainees by other means than torture (Centre for Strategic Intelligence Research, 2006). The mere existence of this research already hints to the fact that previous techniques, that include torture, are not perceived as being effective.

The meaning of the term torture has also attracted attention, how it's defined and interpreted between different legal systems (Bekerman, 2005) and how a loosely-worded UN definition has led to human rights violations (Koryagin, 1988) pose as examples. Seidman proposes that despite problematic definitions the physicality of torture disallows the public and government institutions to readily explore why torture exists and proliferates (Seidman, 2005). Attempts to narrow the judicial definition of torture is seen by Waldron as a possible archetype for further jurisdiction that will damage the rule of law in the USA and how human rights are perceived (Waldron, 2005). According to Nicole a better understanding of the term and international awareness of torture hinges on dialogue with victims and torturers (Nicole, 1987). Shue moves away from the definition of torture and denounces torture on philosophical grounds (Shue, 1978).

Sociological research by Hooks and Mosher state that the recent human rights atrocities in Abu Ghraib does not follow out of the simplistic rationalization of a *few bad apples* but rather US security concerns that place information above human rights concerns. According to them the system that rationalizes violence is the reason why torture has come to be a systemic property of the US military (Hooks & Mosher, 2005). From the field of psychology various sources have denounced torture or has given explanations for certain parts of it's proliferation like obedience to authority in the famous Milgram's Obedience Experiment (Milgram, 1963) and the notion of *cultural tilt* (on how bystanders accept and even take part in a violent system) (Staub, 1989). Zimbardo's book *The Lucifer Effect* also sheds light on prisoner and prison guard/warden relations, how adversely skewed power relations can lead to the dehumanization of prisoners and the comparison to the Stanford Prison Experiment and the Abu Ghraib detention centre (Zimbardo, 2007)

Arrigo classifies the justifications for torture in four separate models namely the animal instinct model, the cognitive failure model and the data processing model and the rogue model of truth telling. The animal instinct model states that the suspect will provide the necessary truthful information under threat of death or severe pain. The cognitive failure model states that a suspect will provide truthful information as soon as the suspect becomes disorientated enough by pain and the cognitive defences break down. The data processing model uses a dragnet approach that relies on interrogating a vast amount of suspects and then creating a plausible flow of events afterwards. The rogue model of torture relies on the outsourcing of torture to other national intelligence agencies. She dispels the utility of all these approaches based on an institutional input and output model (Arrigo, 2004: 456). Game theory has also been applied to torture to explore the rationale where torture is used by the state for informational purposes or those of intimidation. The situation is seen as one where the torturer, detainee and state interact in an environment of incomplete information and from this model it's deduced that a culture of *strong victims* is the only way in which torture for informational purposes will stop (Healy & Wantchekon, 1999).

Although all of these sources give significant insight towards the subject of torture they all share an unintegrated approach meaning that all the sources focus on small segments of a bigger puzzle. The reason for this is probably the cross-disciplinary nature of torture. Another problem is that the research is not juxtaposed against a real-life, irrefutable case study. The reason for this is that no real case study, with such a wealth of information, has ever existed before the Obama administration decided to declassify documents relating to the U.S. use of torture. With the benefit of the aforementioned research on torture and the declassified documents this dissertation stands in good stead to deliver a worthy contribution to the debate on the use of torture.

## **1.6 Methodological Aspects**

Although policy recommendations have been made by various human rights organizations and different authors none have employed systems theory to this task. The advantage of systems theory is that it provides a holistic view of the enabling circumstances of torture and its proliferation. It therefore affords a more dynamic view of torture than previous reductionist approaches and sees torture as an emergent property of institutions and political decision.

Another advantage of this approach is that it identifies leverage points. Leverage points are points in a system where changes can be brought about that have the maximum impact with the least amount of change to the system as a whole (Jackson, 2003:68). This dissertation will therefore deliver policy recommendations that are based on a more dynamic model that focuses on torture while taking into account the interrelation between torture, institutions, political decision making and torture.

The methodology that will be followed will be that of the systematic literature review with a qualitative approach to the information. Although micro-levels of analysis will be discussed e.g. the interpersonal nature of torture between victim and torturer as well as the possible society-wide, macro-level, implications of torture the main focus will fall on the meso-level institutional characteristics seeing that the focus will be on ways in which institutions can guard themselves against deciding on the use of torture.

The goal of this methodology is a thesis that combines theoretical experts from conflict studies, social psychology, law and policy studies and applies it to journalistic accounts and declassified documents, that pertains to the torture during the U.S. *War on Terror*, in a systemic fashion that will lead to suggestions to enable institutional and societal change to halt the use of torture.

### **1.7 Theoretical Aspects**

Theoretical difficulties relating to torture can be partially attributed to the covert nature of torture. Torture's covert nature causes information of an episode or related episodes of torture to be kept secret or to be incrementally declassified on a later date. As of yet no set of modern episodes of torture have ever been declassified in full. This means that no body of theory has ever been built around an undisputed case study and repeated or refined on another case study.

Another theoretical problem is that torture does not form part of one field of academic enquiry and scholars rarely attempt to work outside of their chosen academic fields. Torture could be said to have historic, social-psychological, medical, political, policy and conflict aspects. This inherent cross-disciplinary nature of torture and the unwillingness of scholars to work outside of their chosen field arrests the development of a unified body of theory on the subject.

## **1.8 Conceptual Aspects**

The most important conceptual aspect is the use of the concept torture. The reason for this is that within the case study the U.S. Government's Office of Legal Council tried to make torture a legitimate foreign policy option by means of reinterpreting the U.N. definition of what torture is.

## **1.9 Structure of the Study and Outline**

Chapter 1 serves as introduction to the study by stipulating exactly what the study will address. This is done by means of illustrating the uniqueness and significance of the study in relation to previous academic works on the subject of torture. In addition to a discussion on the methodological and theoretical aspects brief chapter outlines are also provided.

Chapter 2 will discuss the limited utility of torture. The express purpose of this chapter is to prove the hypothesis that torture is an unreliable way to gather intelligence and undermines the practice of effective intelligence gathering techniques. This will be done by means of a systemic literature review that introduces the shortcomings of the much cited ticking time bomb argument for torture and juxtaposes it with a host of practical reasons of why torture will not work. In addition the different institutional tolls that the use of torture takes will be discussed with a vast array of examples which includes democracy.

Chapter 3 forms part of the systemic model of torture and illustrates how society delivers two vital inputs to the torture process namely consent and torturers. The use of torture by the U.S. government is used as case study. Societal consent will be illustrated by examining the American public's opinion on torture as well as social-psychological reasons why the American public hold these views surrounding torture. One of them will be the *War on Terror* as political ideology. This discussion will be followed by an examination of the various linkages between public opinion and governmental policy (that will be discussed during the following chapter). After this examination the focus shifts to the question of how society supplies torturers and will be demonstrated by means of the Milgram's Obedience Experiment and the Stanford Prison Experiment which were conducted under the auspices of Yale

University and Stanford University and authored by Stanley Milgram and Phillip Zimbardo respectively.

Since chapter 3 has illustrated the power of circumstance and how it can influence human behaviour Chapter 4 focuses on how the U.S. government succeeded in creating these circumstances by making torture part of their foreign policy. A host of different factors will be looked at to explain this policy phenomenon including the American history of torture and the impact of the terrorist attacks of the 11<sup>th</sup> of September 2001 (commonly referred to as 9/11). The policy process and how the U.S. Justice Department tried to make torture a legitimate foreign policy option by means of the Geneva Convention of 1949, overriding presidential power, the definition of torture, torture techniques and bypassing Congressional oversight mechanisms. This attempt would also not have been possible if the international and domestic checks and balances on abusive behaviour did not fail. From the international point of view the reasons for the U.S. tendency to wield power unilaterally will be explored. From a domestic viewpoint the reasons for the failures of democratic checks and balances within the U.S. will also be investigated.

Chapter 5 uses the lessons learnt from the previous two chapters to recommend ways in which torture can be stopped. Traditional approaches such as monitoring and legislation are examined as well as the recommendation of torture warrants. After these approaches have been discussed the level of political will to stop torture of the Obama administration is examined. In the likely event that the political will is lacking the systems model is used to explore approaches in which political will can be manufactured and the Church Committee of 1975 is used as a historic example of this. Possible challenges to the creation of a commission are discussed and well as conditions for their inception as well as their social functions. An additional measure to stop torture namely memorials are discussed.

## **1.10 Conclusion**

In this chapter the focus of the dissertation was discussed by means of the identifying the research theme. The hypothesis, that torture is an ineffective means of gathering intelligence, was identified in this section. From the hypothesis the research questions of why torture is still used and what can be done to stop it originated. This research theme is deemed to be

significant due to the declassified documents relating to the case study (that was demarcated as the use of torture by the U.S. government from after 11 September 2001 until 2009) that are at the author's disposal as well as the wide impact of torture on states that partake in it.

In addition to this a literature survey was done and it was found that the literature is not well integrated due to the cross-disciplinary nature of torture as subject matter. This lack of integration within the subject matter will be addressed by means of a methodology that makes use of the holistic view afforded by systems theory. The problem of a unified body of theory and problems relating to the concept of torture was also discussed before a structure and outline of the study was provided.

When the research theme was identified it was mentioned that the hypothesis of the study was that torture is an ineffective means of gathering intelligence. The following chapter titled *The Limited utility of Torture* will prove this hypothesis correct by discussing the utilitarian argument for torture in the guise of the ticking time bomb argument, the practical ineffectiveness of torture as well as the negative effect of torture on a wide-ranging set of institutions.

## Chapter 2 - The Limited Utility of Torture

### 2.1 Introduction

Any human interaction with a large enough difference in authority, has the potential of having torture as a property. It is therefore impossible to talk of the first instance of torture seeing that authority differentials are as old as human interaction itself. What could be said is that torture has been used for different purposes and that individual societies interact differently to torture according to the zeitgeist and security needs. Europe is a case in point where Victor Hugo wrote in 1874 that *torture had ceased to exist* but less than a century later torture was used by the British with regards to suspected members of paramilitary groups in Northern Ireland and the French during the Algerian War (Summerfield, 2003: 773).

After the 11<sup>th</sup> of September 2001 terrorist attacks, when two passenger planes were flown into the Twin Towers, one plane into the Pentagon and another plane supposedly heading for the White House crashed after passenger intervention, the zeitgeist and security needs of the American society changed in such a manner that favourable circumstance for torture has been created. The American military openly used torture in Abu Ghraib, Guantanamo and other covert detention centres throughout the world in the belief that breaking the traditional prohibition on torture was a necessary evil at the start of what became known as the *War on Terror*. This belief stems from the assumption that torture is strategically effective and useful and provides the necessary *actionable intelligence*.

This chapter challenges this assumption by firstly discussing the utilitarian argument for torture in the guise of the often cited ticking time bomb scenario. After the political philosophical argument has been made a more practical treatment of the subject will commence that questions the effectiveness of the practice in producing truthful information. In keeping with the holistic focus of the dissertation the wider institutional implications of torture will also be discussed in terms of the medical, judicial, intelligence gathering, societal and democratic institutions. In addition the effect of torture on torturers will also be reported. In the conclusion it is stated that the overwhelming evidence against this underlying assumption makes the use of torture a highly questionable practice and ends with asking why

it is still used if all evidence points to the fact that torture is morally repugnant, strategically ineffectual and downright dangerous.

## **2.2 The Political Philosophy of Torture**

Torture can be used for several purposes: the ancient Mayans thought of torture as a rite of victory in battle; dictators use torture to instil fear by means of the terror that torture evokes; until two centuries ago the judiciary used torture as criminal punishment; the constabulary used it a means of extracting confessions. All the abovementioned purposes of torture are regarded by liberal democracies as an absolute taboo. Liberal democracies which by definition place a high regard on the sanctity of the individual and his/her rights would not allow the adverse cruelty of torture with the exception of torture for informational purposes. This allowance is mostly due to the hypothetical scenario of the ticking time bomb (Luban, 2005: 1425-1436) that exists within a utilitarian moral framework. According to the Schlesinger Report on torture in Abu Ghraib this rationalization for torture is the most cited moral ground for the use of torture and cursory glances at any opinion piece on torture makes a mention of this argument (Luban, 2005: 1440).

John Stuart Mill introduced the greatest happiness principle to utilitarian arguments. This states that the correct action in any situation is those that lead to the greatest amount of happiness and /or prevent the greatest amount of unhappiness. In the political realm this will mean that a policy maker will have to foresee the consequences of different policies and merely choose the policy that amounts to the greatest amount of happiness. The utilitarian argument for torture makes use of the ticking time bomb scenario where a terrorist has information pertaining to the location of a ticking time bomb in a crowded area that cannot be evacuated before the bomb detonates. It would then be permissible to torture the terrorist seeing that loss in utility, even in the case of death, would hopefully result in the safety of the targets of the time bomb. The death and/or severe bodily and psychological trauma of one individual are therefore rationalized on the grounds of the amount of lives that will be saved if the location of the bomb was known (Casebeer, 2003).

A common critique of all utilitarian arguments in general is its consequentialist property that does not account for non-consequentialist elements such as human rights seeing that the

pursuit of happiness or the avoidance of unhappiness can lead to the use of individuals as means to an end (Haworth, 2004: 197-200). Consequentialism is also said to oversimplify complex moral situations to a mere cost-benefit analysis as Bernard Williams states in Luban (2005: 1444): *Consequentialist rationality will have something to say even on the difference between massacring seven million, and massacring seven million and one.*

As stated beforehand the ideology of liberalism attaches great importance to the individual autonomy, dignity and liberty of all members of society and that these fundamental rights can only be withheld in case where individuals are impeding the rights of others. By means of the ticking time bomb argument torture can be used, in theory, to defend the liberties of the innocent. In practice the information gained from torture can only be said to be morally significant after torture has been done and if it fits with other previous assumptions and information to create a plausible but not necessarily true story. Even if the information were to be true one can only deduce the moral value of the information on a *post facto* basis. Torture is thus a moral lottery where the moral permissibility of the practice hinges on the questionable truthfulness of the information it provides (see the ineffectiveness of torture). Another practical consideration is that torture would only be effective if it were used on a wide array of subjects to gain a complete understanding of the threat. It therefore follows from this argument that the practical considerations of the ticking time bomb argument causes the use of torture to eventually lead to the widespread proliferation of human rights abuses, the very same rights it was said to protect in the first instance (Hilde, 2008: 1-4).

Luban also shows that the ticking time bomb argument is very seductive in the sense that it will lead to any liberal to pronounce that torture might be of some use and makes the subject of torture open for debate. It also serves the unique argumentative function of separating torture from one of its mutually inclusive properties namely cruelty by bestowing the torturer with the image of a professional who dutifully does the morally repugnant task of torturing for the sake of the greater good. He goes further in his analysis to show that the ticking time bomb loses all credibility outside of the very narrow hypothetical confines set out by the argument (Luban, 2005: 1439-1444), as also illustrated by Casebeer.

Casebeer makes use of Walzer's notion of a *supreme emergency*, where it might be morally permissible to violate the rights of a person if an extreme emergency that threatens the existence of a nation state, community or culture is temporally and spatially imminent and

these violations take place in a last resort scenario (Casebeer, 2003). In theory it is therefore possible to foresee a situation where a person can be tortured for informational purposes that will end the *supreme emergency* but in practice the chances of this situation actually taking place is null due to the fact that no single threat of terrorism can create a supreme emergency. Even if no other alternative to torture exists then the usefulness of this approach hinges on the efficacy of torture to produce accurate information (Casebeer, 2003). This efficacy will now be investigated.

### **2.3 The Practical Ineffectiveness of Torture**

Bennet, a senior army interrogator, in Janoff-Bulman (2007: 430) states that: *Beyond the moral imperative, the competent interrogator avoids torture because it's counter-productive and unreliable ... In my two decades of experience as an interrogator, I know of no competent interrogator that would resort to torture. Not one.* In *Statement on Interrogation Practices 20* former American army interrogators state that torture is counterproductive in *The War on Terror*. According to these interrogators, with over 200 years of experience, effective mission accomplishment and HUMINT (human intelligence) collection are impeded by torture seeing that torture and other forms of ill-treatment interferes with a skilled interrogators efforts to establish rapport (Bauer, 2006).

Effective interrogation is done by trained interrogators who use the methods of social psychology to elicit information from detainees. For an interrogation to be successful the interrogator must take the needs, motives and self-perception of the detainee into account. The ticking time bomb scenario seems to have taken hold of the collective psyche and therefore torture seems to be the only answer at the cost of more thoughtful techniques (Janoff-Bulman: 2007: 431).

Other reasons why torture will not work are the mental processes of disassociation, attribution of meaning and purpose as well as conditioned safety signals (O'Mara, 2009: 5) during episodes of pain. Disassociation under extreme circumstances such as bodily trauma includes detachment from the situation, the minimization of pain perception and constricted consciousness. During one study 37% of patients who arrived at an emergency ward with severe injuries such as fractures or amputations did not report any pain for a sustained time

period amounting to hours in some instances (Rejali, 2007: 447) (Janoff-Bulman: 2007: 433). Mental escape therefore helps detainees to cope with the pain from torture.

Attribution of purpose and meaning to pain and suffering is also another mental coping mechanism where the sensation of pain is made tolerable. Logic dictates that the person who would have the greatest amount of valuable information would also have the greatest resolve and add the most meaning to a certain political cause. The abovementioned mechanisms thus interact with pain and commitment in a positive feedback cycle that will not produce reliable information (Janoff-Bulman: 2007: 433). Other complications also include the fact that torturers are not able to calibrate the correct amount of pain for each individual because individuals have the same threshold for the sensing of a stimulus (sensation threshold) and the sensation of pain (pain perception threshold) but individual thresholds exist for when intense pain is felt (pain tolerance threshold) and conscious toleration of pain (encouraged pain threshold). At present no way exists on how to measure these different amounts of pain (Rejali, 2007: 449). It is therefore impossible for a torturer to administer just the right amount of pain, as torture folklore suggests, for extracting information from a detainee. This is the reason why torturers ask victims to indicate when they are ready to talk (Rejali, 2007: 453).

Conditioned safety signals, conditioned behaviour that reduces pain, further affects the effectiveness of torture since the torturer wants to attain information from the detainee while the detainee wants to evade the physical pain and mental stress. In this situation the conditioned safety signal is talking seeing that the detainee is less likely to be tortured while talking. Whether the information is truthful or not is not important for the detainee because talking temporarily leads to respite from the stressful situation. The process of torture will therefore lead to plausible but confabulated information (O'Mara, 2009: 4).

The condition safety signal of speaking for the sake of not being tortured instead of conveying the truth brings attention to the topic of reliable lie detection. The effectiveness of torture and the idea of the human lie-detector seem to fight for prominence in intelligence folklore. Rejali (2007: 464) cites a systematic literature review of all available sources which deal with deception detection. The success rate was judged to be only 57% and later research has whittled this figure down to 56.6%. Truth perception is stated to be 67% while an alarming rate of 44% has been said to be the limit of lie detection. Training does lead to more accurate lie detection with CIA interrogators having a success rate of 73%. Torturers do not have

access to this type of training and would therefore, on average, have less lie detection accuracy than the accuracy that can be gathered from merely flipping a coin (Rejali, 2007: 464).

Under situations of torture when the subject is willing to speak it might also happen that the subject has lost the ability to recall past events. This especially happens during electro torture and sleep deprivation that affects the hippocampus and prefrontal cortices since sleep is very important for the proper functioning of these two parts of the brain that control memory. Heightened and prolonged levels of stress associated with torture also affect the structural integrity of the hippocampus and prefrontal cortices due to sustained level of the stress hormone called cortisol (O'Mara, 2009: 2-3). Recent events are particularly prone to this phenomenon. According to the theory of Ribot's gradient trauma to the brain affects the most recent memories first. This means that even if subjects are willing to talk the information has been tarnished by torture (Rejali, 2007: 467). In these instances where the subjects decided to share the necessary information it could be stated that the information could have been appropriated by other less invasive means such as rapport-based interrogation.

Most torture interrogations go hand-in-hand with sleep deprivation and the repetition of questions. This technique is known as *sweating* this combination, even in the event of cooperative prisoners, can lead to confabulation due to the fact that it causes frontal lobe dysfunction (O'Mara, 2009: 3). Sleep deprivation has a comparative effect to alcoholic inebriation in that it heightens suggestibility and errors in judgment. The repetition of affirmative questions lead to the prisoner's belief that the statements are true and combination with sleep deprivation leads the detainee to believe that he actually has the information although the information is fictional. The plausible story that is then concocted between the interaction of torturer and detainee is also highly regarded because of circumstance and the detainee's confident delivery (Rejali, 2007: 468-467). From this analysis it could therefore be stated that on physiological and neurobiological grounds the whole notion of extracting veridical information by inducing a sustained state of pain, stress and anxiety is not supported by medical science (O'Mara, 2009: 1).

The notion that torture can be conducted in a professional manner is questionable. Rejali mentions two reasons. The first follows from the difference in pain perception between individuals and the inability to measure this. Torturers are therefore forced to inflict the

maximum amount of pain in the hope of *breaking* an individual. If this person does not *break* and all the allotted procedures have been tried torturers will move beyond regulations as in the case of Abu Ghraib. The other reason is that torturers are in competition with each other for advancement and prestige. This is most succinctly summed up in the following quote: *Our problem is as follows: are you able to make this fellow talk? It's a question of personal success. You see, you're competing with the others. In the end your fists are ruined* (Rejali, 2007: 454). During the Battle of Algiers the use of torture became second nature for the French soldiers. Most notably a high ranking officer named General Paris de Bollardere, amongst others, resigned from the French army in protest of the wide proliferation and systemic use of torture (Rejali, 2007: 454-456). The protests had no effect and Worth reports that he had a conversation with a German member of the French Foreign Legion who *matter-of-factly* spoke of the torture of prisoners (Werth, 1962: 30). This system of torture took top priority above other means of investigative techniques at the expense of the French counterinsurgency campaign. One particularly illustrative incident was when a locksmith in Algiers was tortured. He resisted the French torture and produced no information although he did have a piece of paper in his pocket that contained bomb blueprints and the address of a bomb factory in Algiers (Rejali, 2007: 486).

### **2.3.1 Torture's Institutional Requirements**

Apart from the abovementioned pitfalls of the consequentialist moral philosophy of torture it is also possible to denounce torture within this line of argument. Arrigo's research on the limited utility of torture makes use of an utilitarian framework to pronounce that torture for informational purposes is an exercise in futility and that through organizational dynamics torture affects the function of institutions like the health care system, the judiciary, torturers, intelligence agencies and society at large (Arrigo, 2004: 562). Another insight is that various rationales, or combination of rationales, for torture lead to different institutional requirements and consequences (Arrigo, 2004: 544-546). These extra institutional requirements and negative externalities associated with the ticking time bomb scenario therefore makes even the act based utilitarian calculation for torture more complex than merely weighing the discomfort/life of one terrorist against those of innocent victims (Casebeer, 2003).

The animal instinct rationale states that under threat of death or the experience of severe pain will make the subject bend to the will of the torturer (Arrigo, 2004: 547). The institutional requirements for this rationale would be the active participation of medical professionals as advisers to the torturer. This will lead to considerable ethical problems and resistance from the health sector. The situational outcome hinges on the individual and therefore varied subject's ability to deal with pain and provide accurate information under stressful conditions (Arrigo, 2004: 547-548).

The cognitive failure rationale assumes that by means of severe mental and physical disorientation the subject loses self-awareness and is no longer able to withstand the informational demands of the torturer. Compliance by means of disorientation requires biomedical research and the training of torturers. The CIA's infamous MKULTRA project led to unethical research into brainwashing on unwitting subjects and the training of torturers, by necessity, leads to the dehumanization of the torturer (Arrigo, 2004: 550-554).

The data processing rationale holds that the widespread interrogation of subjects will lead to enough information to accurately understand the scope of terrorist operations without necessarily interrogating the hard-line terrorists. This dragnet approach to information gathering requires almost impossible levels of coordination between agencies of torture, the police, judiciary, the government and military. The drawbacks of this rationale include the creation of immense amounts of data, both true and false, moral outrage against the torturers and creation of further resistance from terrorists (Arrigo, 2004: 554-559). Another factor associated with this approach is unnecessary torture, imprisonment and killing. During the Battle of Algiers the chief of the FLN, Saadi Yacef recruited 1,400 operatives. The dragnet approach of investigation followed by French General Massua led to the disappearance of 3,024 Algerians as well as the imprisonment and likely torture of 22,600 other Algerians. This relates to the statistic that at least 15 innocent Algerians were tortured for every FLN member (Rejali, 2007: 482-483).

In the rogue rationale for truth telling under torture, torture is outsourced to either foreign intelligence agencies, done secretly in government sponsored agencies or criminal groups. This approach has the benefit of torturing without necessarily dirtying the hands of state officials but it does cause other difficulties such as political indebtedness, harbouring of

criminal elements, and blackmail from torturers and validity of the interrogation (Arrigo, 2004: 546 & 560-561).

#### **2.4.1. The Medical & Psychological Professions**

Another negative externality is the compulsory presence of members of the medical profession during torture. Doctors take part in torture to assist the torturer in not killing the suspect. The presence of a medical professional also adds to the legitimacy of the practice in the view of the torturer (Kelman, 2005: 132). In the case of the *War on Terror* doctors take part in torture in two ways. Firstly, in 2002, the command of Guantanamo Bay created the Behavioural Science Consultant Team (BSCT) which includes doctors. Their responsibilities *inter alia* include planning interrogations, assessing techniques and the fitness of detainees for interrogation. This group of doctors were guided by the American Department of Defense's new ethical guidelines, published in 2005, that makes no provision for torture and subordinates ethics to U.S. interpretations of *applicable law* and therefore disregards the risk of harm doing and violation of international standards (Sonntag, 2008: 168-169). These enabling factors leads to what Lifton in Sonntag (2008: 163) calls *atrocious-producing situations* defined as situations that *are so structured, psychologically and military that ordinary people readily engage in atrocities*. Secondly, in such circumstances doctors also get influenced by the property of *dual loyalty* where ethical considerations towards a patient are pitted against the interest of a state. If the doctor is not equipped with the necessary human rights knowledge or ethical compass these factors result in active participation in torture through the process of victim blame, moral disengagement or ideological totalitarianism. (Sonntag, 2008: 162-164).

Active participation includes medical assessment and treatment of victims before and during torture with the goal of determining fitness for torture or the preparation of the victim for more torture and the falsification of medical reports to conceal torture. All of the abovementioned acts go against the UN Convention against Torture and Cruel, Inhumane or Degrading Treatment or Punishment (UNCAT), the Tokyo Protocol (Sonntag, 2008: 172) and the Hippocratic oath. The World Medical Organization has also banned any participation in torture from doctors. It then follows from this discussion that the participation of doctors in torture leads to various breaches in ethics concerned with the medical profession while the same can be said for other professions with a code of ethics and regulatory bodies like

journalism, psychology and law (Arrigo, 2004:548). With regards to journalism in Algeria and France during the Battle of Algeria the French government actively discouraged the publication of any material relating to the use of torture during the war. The editor of *Editions de Minuit* was even taken to court for this and the apparent publishing of *dissertation propaganda* (Werth, 1962: 30).

### 2.4.2 The Judiciary

The relaxation on the prohibition of torture albeit by means of torture warrants or narrowing the definition of torture to the point that certain methods are applicable to certain situations will result in a systemic corrupting effect of the judiciary (Waldron, 2005:1718) Waldron makes three distinct legal arguments against torture:

Firstly, torture goes against the general spirit of Anglo-American law since this law system has a tradition of refuting the use of torture. Even though torture was once used in the law of proofs in the beginning of the nineteenth century torture began to be regarded by jurists, as described by Edward Peter, *as the supreme enemy of jurisprudence and the greatest threat to law and reason that the nineteenth century could imagine* (Waldron, 2005: 1719).

Secondly, the juridical stance towards torture serves as what Waldron refers to as a legal archetype. This notion is based on the legal philosophical criticism of legal positivism that states that positivists seem to regard laws as a mere collection of rules at the expense of the fact that *various provisions, precedents and doctrines hang together, adding up to a whole that is greater than the sum of its parts*. According to the legal philosopher Dworkin the emergent features of a legal system that follows from the abovementioned interaction between provision, precedents and doctrines serve the purpose of illuminating gray areas in the law by means of conveying the whole underlying spirit or meaning of legal doctrine (Waldron, 2005: 1721). Torture can therefore serve as a legal archetype defined as *a particular provision in a system of norms which has a significance going beyond its immediate normative content, a significance stemming from the fact that it sums up or makes vivid to us the point, purpose, principle, or policy of a whole area of law. Like a Dworkinian principle, the archetype performs a background function in a given legal system. But archetypes differ from Dworkinian principles and policies in that they also operate as foreground provisions. They*

*work in the foreground as rules or precedents, but in doing so, they sum up the spirit of a whole body of law that goes beyond what they might be thought to require on their own terms. The idea of an archetype, then, is the idea of a rule or positive law provision that operates not just on its own account, and does not just stand simply in a cumulative relation to other provisions, but operates also in a way that expresses or epitomizes the spirit of a whole structured area of doctrine, and does so vividly, effectively, and publicly, establishing the significance of that area for the entire legal enterprise (Waldron, 2005: 1723). Other legal archetypes include habeas corpus, the right to bear arms in the Second Amendment and the precedent set by *Brown v. Board of Education* (Waldron, 2005: 1724-1725).*

Just as habeas corpus is archetypal of legal notions regarding physical confinement torture will serve as an archetype for any legal notion regarding law and force examples of this include the Eighth Amendment on cruel and unusual punishment and laws resorting to procedural due process (Waldron, 2005: 1729-1734).

Thirdly, the role of argument in legal practice is used to enforce the prohibition of torture. Argument is the primary means by which legal positions are enforced or changed. The success of a legal argument also hinges on how well it reverts to previous juridical practice because legal argument cannot function in isolation of the law. A relaxation of the prohibition on torture will lead to a whole new set of arguments relating to the use of force. The abovementioned role of argument as mode of change and legal archetype will therefore lead to unpredictable change in the juridical system. Waldron also laments the loss of continuity in juridical arguments against the unwieldy use of force that will emerge from the loss of torture as the argumentative tool that is used to illuminate the juridical system's rejection of cruelty (Waldron, 2005: 1734 -1738).

Apart from theoretical arguments against the use of torture other more practical arguments that relate to international laws and conventions can be made that are still relevant even if the prohibition of torture is relaxed locally. These arguments relate to extradition and war crimes. Under the United Nations Convention Against Torture of 1975 countries may refuse to hand a suspect over to another country if they suspect that the suspect might be tortured. This took place in 2006 when Britain refused to hand terrorism suspects over to the Algerian authorities based on the Algerian government's inability to guarantee that the suspects won't be tortured

(BBC, 2006). Those who torture in foreign countries under order also have no guarantees that they cannot be tried for war crimes (Coulam, 2006:14).

### 2.4.3 Torturers

Another criticism against the utilitarian ticking time bomb scenario is that it presupposes the existence of torturers. Although Stanley Milgram's obedience experiments has shown that ordinary people can torture, under specific authoritative circumstances, the proponents of the ticking time bomb scenario would have to admit that the importance of the information would call for someone trained in torture interrogation or has shown a propensity of extracting information. A practical example of this when a Military Intelligence officer in Abu Ghraib requested a commander to keep detainees awake and the commander refused on the grounds that *my soldiers don't know how to do it. And when you ask an eighteen-year-old kid to keep someone awake, and he doesn't know how to do it, he's going to get creative* (Wolfendale, 2006: 270). Torturers need the practical skill of inducing pain to gather information without killing the subject. It also requires the capacity to deal with the psychological stress associated with torture. (Wolfendale, 2006: 270-273). As the American torture instructor in Uruguay, Dan Mitrione, states: *You must cause only the damage that is strictly necessary, not a bit more. We must control our tempers in any case. You have to act with the efficiency and cleanliness of a surgeon and with the perfection of an artist* (Rejali, 2007: 446). A common misconception is that torturers come from groups of people with sadistic tendencies. This is not the case. Although acts of torture have been committed by individuals for the sake of sadistic pleasure in some cases governments have sanctioned torture seeing that *a deranged person who receives gratification primarily from feelings of power or from personally inflicting pain on others is usually too unreliable to be counted on by authorities to follow orders* (Gibson, 1990: 78).

The abovementioned skill and capacity must come from training seeing that it is difficult to imagine someone with the innate ability to torture effectively. Torturers usually come from elite military units such as the American Green Berets, the British SAS or the Greek ETA-ESA. These units are renowned for their severe training practices (Wolfendale, 2006: 274). Gibson and Haritos-Fatouros created a model of how torturers are created by means of military training and is applicable to cases in Greece, Brazil, Argentina, Nazi Germany and

America (Gibson, 1990: 85-86). The model illustrates the three necessary elements. Firstly a screening process takes place with the purpose of identifying recruits with the necessary attributes for torture. Secondly social binding is created by means of initiation rites and elitist attitudes. Euphemisms for torture practices are used to create cognitive distance between the act itself and descriptions of it. The Greek ETA-ESA for instance used the term *tea party* to describe a beating with fists and a *tea party with toast* described a beating with clubs. Thirdly a set of procedures are set in place to guarantee obedience from the recruits. The procedures include: dehumanizing the victims; constant harassment with the purpose of suppressing logical thinking; rewards for obedience and punishment for disobedience and the gradual introduction of extreme violence to gradually change moral standing (Gibson, 1990: 83-84). Interrogation trainers that specialize in rapport-based techniques state that the most effective interrogators are open-minded, tolerant, creative, inquisitive, unregimented, extrovert and mentally flexible. The abovementioned units, with the goal of strict adherence to discipline and the unquestioning following of orders, do little to garner these individual characteristics (Arrigo & Bennett, 2007: 416).

It is usually during the survival programs that the recruits are subjected to torture. One such program is the Survive, Evade, Resist, Escape (SERE) program presented at the John F. Kennedy Special Warfare Center and School. This program includes a simulation of conditions in a prisoner of war camp (Wolfendale, 2006: 275). This program had been created to expose soldiers to torture methods used in the Korean War against American prisoners of war (Mazetti & Shane, 2009). During the British SAS training recruits are subjected to 48 hours of interrogation. The interrogation includes the use of the infamous *five techniques* (blindfolding, stress positions, exposure to white noise, sleep deprivation and deprivation of food and drink) that the British used in Ireland in 1971. According to the European Commission on Human Rights the *five techniques* are defined as torture techniques. The experience of being tortured leads to the desensitizing to the administering of pain to others (Wolfendale, 2006: 276).

The training results in a case of unquestioning obedience to authority and in combination with the strict hierarchical structure of the military cases of torture are bound to fall outside the ticking time bomb scenario seeing that the guilt or innocence of the suspect is unrelated to the torturer applying his skills. Torture therefore ends in being a *crime of obedience* where acts of violence are done because of obedience to authority. It can therefore be stated that the type of

training needed to produce torturers will also lead to the type of obedient soldier that will torture under any circumstance and not only the ticking time bomb scenario (Wolfendale, 2006: 283-286). This is especially true for the present American military seeing that career interrogators (individuals trained in language acquisition and rapport based interrogation measures and who denounce the use of torture) have limited career opportunities within the military (they can only achieve the position of warrant officers) or usually get reassigned as intelligence generalist. The strict hierarchy, a folk belief in the efficacy of torture the low rank of interrogators means that officers who make strategic or tactical decisions regarding interrogation has no formal training in this discipline. Therefore they are likely to order the use of torture (Arrigo & Bennet, 2007: 412).

By allowing, condoning or giving of orders for torture the authorities are exposing torturers to a situation fraught with high personal expense, during and after the fact (Lippman, 1979: 36-37). Some South African torturers have indicated that because of their work they even lost all enjoyment from sexual intercourse and their marriages have faltered because of this (Pauw, 1997:63). This was also noted by an Algerian torturer who described the feeling of torture as an unique type of pleasure close to *jouissance* (pleasure with a sexual connotation) and anecdotal reports show that torture is also inherently addictive as illustrated by a French torturer in Algeria: *I Realized that torture could also become a drug* (Rejali, 2007: 485-486). Gibson also states that by exposure to and internalization of violence during training and actual violence creates the possibility of brutal behaviour even when not under orders (1990: 86). Even after training the subjection of severe physical trauma is very stressful for the torturer as well and subsequently high levels of alcohol and drug abuse have been noted to under torturers (O'Mara, 2009: 2).

#### **2.4.4 Intelligence Gathering Institutions and the Military**

Another key institution that is also adversely affected by means of torture is the intelligence gathering institutes. Torture takes less time and effort than other measures such as interviewing, finger printing or surveillance and therefore gets used more at the cost of these, more reliable, techniques. The low quality and large amount of information acquired (see Arrigo's data processing rationale – this chapter) leads to the reliance on more torture and further brutality and less proper investigatory techniques. Through this positive feedback

cycle torture as a tool becomes a crutch with the loss of skill from members of intelligence institutions as the side-effect (Rejali, 2007: 456-457).

In the American case study the willingness to torture also made the intelligence gathering institutions and military vulnerable to wilful political influence. Testimony from the Senate Armed Services Committee shows that then-Vice President Dick Cheney and then-U.S. Defence Secretary Donald Rumsfeld tried to pressure the CIA to create a link between al-Qaeda and Iraq. By means of torturing Ibn-al-Sheikh al-Libi, a Libyan member of al-Qaeda the CIA manufactured the evidence needed for the link between al-Qaeda and Iraq. This justification for the war in Iraq as part of *The War on Terror* proved to be a lie but by then the military was already in Iraq and the fabricated evidence indirectly led to more deaths than the 9/11 attacks (Chomsky, 2009) (Macleod, 2009).

#### **2.4.5 Society**

By expanding on Arrigo's argument one can also state that torture warrants the consent of the society that perpetrates it. In liberal democracies active participation is obviously not needed seeing that only inaction (a form of silent consent) will suffice. By means of systems theory it can be explained that use torture during times of national distress can lead to fundamental changes in the society that condones it. In a system the interaction of elements, within one layer, will lead to emergent properties which in turn will lead to changes in another layer of the system. This means that no acts are isolated and small changes can lead to drastic changes over time (Vallacher, 2007: 445-446).

A relevant example would be a social-psychological system where the interaction between individual neurons that lead to cognition and sensation lead to thoughts and feelings (brain level) that lead to social judgments and values (mind level) which, when shared between individuals during interaction at the social groups and systems level, lead to *inter alia* normative beliefs, social judgments and political ideology. From this perspective it's intelligible that a level wide change in any of the previous layers will eventually cause a change in the higher order beliefs and ideas (Vallacher, 2007: 446).

The introduction of torture is an instance that changes individual's values toward issues such as human rights, morality and responses to undesirable behaviour (Vallacher, 2007: 447). In *Torture's Truth* Seidman also makes the case of the strong cognitive link that exists between the perceptions of the relationship between mind, body and torture (Seidman, 2005). Hilde affirms this most succinctly: *...a society that institutionalizes torture is ultimately one that eats away at its individual and collective capacities to feel revulsion and shame in the face of cruelty towards and suffering of others. This result perhaps seems obvious, but it doesn't arrive in obvious ways* (2008:4).

Thus far the case has been made for the social-psychological link between torture and the different pillars of a decent society but the additional property of national distress that comes with situations where the need for torture is felt has not been discussed. Vallacher states that these circumstances lead to *higher temperature* within the social-psychological system that strengthens the link of positive and negative feedback loops between levels and elements of the system. This means that societal stress or perception of a threat will be more pronounced, less linear and therefore very unpredictable. In addition to these circumstances the self-correcting properties of the system are also tarnished because social groups and individuals tend to resort to any means, including torture, to stop the distress situation without due consideration (Vallacher, 2007: 447-448).

#### **2.4.6 Democracy**

Although democracies face threats from terrorist organizations the consequentialist nature of policy decision making may cause well-meaning policy makers to harm democratic institutions during decision making. This is especially true when uncertainty exist over conflicting outcomes within a high stakes environment where the need for action is pertinent (Mandel, 2005: 209 & 216).

The American decision to torture did take place under these circumstances and it also did irrevocable damage to US democracy even though it solely intended to protect it by means of limiting the rights of prisoners. Mandel illustrates three ways in which this has happened. Firstly, torture, as a human rights violation, was condoned without measures to reinstate those rights. This goes against one of the pillars of democracy namely individual liberty. Secondly,

the limitation of rights will have to be offset by the effectiveness of the measure in protecting democracy (Mandel, 2005: 218). As this chapter has illustrated torture is not an effective means of producing intelligence and therefore the net effect of torture as policy measure is further damage to democracy. Thirdly, the public should be made aware of the purpose the rights limitations where the intent to protect democracy will carry more favour than the intent for revenge or outright malice. The horrendous pictures from Abu Ghraib and Guantanamo Bay illustrate malice and not the protection of democracy. Fourthly, where the moral principles that are held dear by the international community such as the Geneva Convention are flouted democracy is also tarnished (Mandel, 2005: 218).

#### **2.4.7 International Rule of Law**

Especially in the case of the U.S. and the powerful role it plays within the international community it could be stated that the use of torture could set a precedent that other states might follow. This signalling effect could have major implications with regards to the ways in which human rights laws are interpreted internationally (Echeverria, 2007: 2). Alberto Gonzales also shared this view in a 25 January 2002 memorandum to President Bush. He stated that by disregarding the Geneva Convention in the war in Afghanistan it invites other states in other conflicts to also seek legal *loopholes* to further disregard international laws such as the Geneva Convention (2002: 3).

### **2.5 Conclusion**

In this chapter it was illustrated, with an interdisciplinary approach, how and why torture is not an effective means of extracting information. From the political philosophy torture was shown to be the rational choice but only within the narrow theoretical confines of the ticking time bomb argument. The argument was also shown to be a very seductive and dangerous one. Even if these highly unlikely and specific circumstances were met the rationalization for torture would hinge on the truthfulness of the information and the effectiveness of the techniques to produce it. It was shown that due to different individual's psychological and physiological responses to pain and the proven inability of interrogators to detect lies the information from torture cannot be relied upon even in the event of cooperative detainees.

Torture apologists will obviously state cases where torture was effective but what is still indisputable is that torture does not exist in an institutional vacuum. The output of torture warrants certain institutional inputs from the field of medicine, the judiciary, torturers, intelligence agencies, society and democracy itself. These institutional inputs are different from other inputs seeing that they go together with far-reaching and unpredictable ethical, moral, personal and institutional expense. This argument was made to renounce the use of torture within its utilitarian framework.

*The Limited utility of Torture* has proven that torture is not a worthwhile practice and that the effects of this practice is so far-reaching that it might even go as far as to detrimentally transform the ideological pillars of the society, that it was supposed to protect in the first instance. This proof also raises the questions of why torture is still used even if it's ineffectual and what can be done to stop its usage? These questions will be treated in the following chapters.

## **Chapter 3 – The Social Model of Torture**

### **3.1 Introduction**

Peters in Kelman (2005: 128) states that at the macro level torture is implemented as a policy instrument when there exists a perception of a threat to security, a security apparatus and a group is identified as an enemy. The threat to security, particularly the unconventional asymmetric type of threat exemplified by fundamentalist terrorist groups such as al-Qaeda, leads to the justification of torture which then leads to authorization to torture. The reason for this is that the security apparatus is ill equipped to deal with such a threat by conventional means especially when low levels of *actionable intelligence* exists on these groups. The existence of a security apparatus enables the training of torturers as well as the creation and proliferation of torture techniques. The perception of this security threat coming from a certain group leads to the exclusion of these groups from state protection and the eventual dehumanization of the group and its members. These three macro conditions in combination with the social mechanisms of authorisation, routinisation and dehumanization therefore lead to the circumvention of democratic checks and balances and the implementation of torture as a policy instrument (Kelman, 2005: 134).

Although Kelman's insights outline the process it assumes the existence of authorisation routinisation and dehumanization without expanding on it and explaining the linkage between governmental action and societal consent as well as the underlying reasons for it. This makes these insights of limited use for the creation of an effective policy intervention.

These shortcomings will be addressed in the following two chapters with this chapter focusing on American society. Society provides two vital inputs necessary for the systemic use of torture. In the American case consent, in the form of public opinion, and members of the security apparatus that are able and willing to torture are the inputs. This chapter will focus on the creation of a plausible systemic model of how American society could have produced these inputs by firstly exploring what the American public opinion towards torture

is. The identification of the ambivalent public opinion towards torture makes the identification of the underlying social-psychological reasons for the condonation of torture possible as well as the introduction of *The War on Terror* as political ideology. This section of the systemic model is concluded by investigating some plausible linkages between public opinion and governmental policy i.e. ways in which public sentiment is conveyed to policy makers. The following section focuses on how society supplies torturers by discussing the implications of The Milgram's Obedience Experiment (by Stanley Milgram under the auspices of Yale University in 1963) and the Stanford Prison Experiment (by Phillip Zimbardo under the auspices of Stanford University in 1971), two landmark experiments that illustrates changes in human behaviour with respect to authority and circumstances and gives insight into how these two factors can influence anybody into committing an act of torture.

### **3.2 American Public Opinion Towards Torture**

It must be stated that torture is not a regular policy option such as income tax or welfare spending. The reason for this is that the decision was not made in a democratic context because no referendums were held and the Bush election campaign never categorically made torture a debatable policy option. It is therefore possible to hypothesize that American society had nothing to do with what would later happen in Guantanamo Bay and Abu Ghraib. After the photos of the detainees in Abu Ghraib were published and the secret memos became public knowledge in America the torture of detainees shifted from the covert realm of intelligence to the open realm of public scrutiny. By means of this the American public became implicated in torture by their government. The American public could then have acted against torture but they chose not to. From the following discussion it can be seen that the American stance towards torture remained indecisive when it became public knowledge.

#### **3.2.1 Americans Support the Rights of Detainees in Principle**

In a July 2004 survey 88% of Americans showed support for the following statement on international detention laws: *The US has signed a number of treaties establishing international laws governing how a country, in the context of armed conflict, must treat an individual it has detained* (PIPA, 2004:3). The American public also expressed support for human rights of the non-conventional soldiers, such as terrorists, with a majority of 60%

(PIPA, 2004: 3-4). Approximately 68% of the American population stated that the American president should not have the power to disallow a court appearance in front of a neutral judge (PIPA, 2004:4-5).

A majority of 66% stated that governments should never use physical torture. This answer was given after respondents were primed by the following statement: *The US and most countries in the world have signed a number of conventions – that is, treaties that create international laws – that prohibit certain methods for trying to get information from detainees* (PIPA, 2004:5). Nearly 33% found these laws too restrictive. This shows that 66% of Americans would favour a prohibition on torture if they were made to think through all the international laws and prohibitions and 33% reject these prohibitions. These results only pertain to physical torture. In the case of mental torture such as making the detainee believe that his/her family members will be killed a softer stance on the prohibition is favoured with 55% for and 41% against. Only 52% supported a complete prohibition on and humiliating or degrading treatment and 44% found it too restrictive. In the case of threatening physical torture the public was split on 48%. When the pollsters asked respondents who felt that some prohibitions were too restrictive whether any of these types of torture could be done to American detainees by another country the highest support for any of the techniques was 19% for humiliating and degrading treatment (PIPA, 2004: 5).

### **3.2.2 American Public Opinion and the Ticking Time Bomb**

The creation of four different security scenarios and pairing them with 14 different coercive techniques proved to be insightful. The four different scenarios were a combination of two different variables. The variables were modest or high consequences relating to the security situation and modest or high certainty of whether he actually had any useful information to his/her disposal (PIPA, 2004:8).

The scenario of high consequence of and high certainty of information illustrated the seductiveness of the ticking time bomb argument (Chapter 2) seeing that it represents the scenario's attributes. In the three other scenarios the only technique that got any majority support was sleep deprivation with support within the 55-65% range. For the ticking time bomb argument the support for sleep deprivation was 65%. This scenario also elicited

majority support for three other techniques namely hooding (56%), loud noises (56%) and stress positions (53%) (PIPA, 2004:8). These four techniques, with the exception of deprivation of food and drink, which had a 44% approval rate in the ticking time bomb scenario, constitute the infamous five techniques that were used by British soldiers against the IRA (Human Rights First, 2003). In 1978 in *Ireland v. United Kingdom* the European Court of Human Rights ruled that these techniques, in combination, lead to intense physical and mental suffering and were geared for humiliation and breaking physical and moral resistance and should absolutely be prohibited (Human Rights First, 2003). This means that even if the American public supports the prohibition on the laws of torture it could be said that misinformation about what torture entails has led them to give support for four of the five techniques that is regarded by the European Human Rights Court as torture techniques (Human Rights First, 2003).

### **3.2.3 The Relativity of Torture Opinion with Regards to Context**

The American public was specifically asked whether torture should be prohibited in cases specifically pertaining to terrorism based on different arguments for and against torture. On the basis that torture is morally wrong 75% supported the prohibition and on the basis that other countries might reciprocate the same percentage supported the prohibition. The same counts for the argument that uncertainty exists whether detainees are terrorists or would have useful information. 66% supported the argument that torture is not an effective means of getting information and other means should be sought (PIPA, 2004: 7).

Despite the result that goes against torture public opinion is easily swayed by means of arguments for torture. This is indicative of the ambivalent American public opinion towards torture. Approximately 47% supported the argument that it would be immoral to necessarily prohibit the use of torture because the information pertained can save innocent lives. On the following statement: *Given what we learnt from the September 11 attacks, we cannot afford to tie our hands declaring off limits any method for getting information that could be useful in the war on terrorism* nearly 52% of respondents supported the use of torture. The same response was recorded for *Terrorist groups obviously do not feel obliged to abide by international laws against torture and abuse. So the US should not feel obliged to always be limited by these laws when dealing with terrorists.* An overwhelming majority of 63% gave

support to the following argument: *Whenever possible, military interrogators should limit themselves to methods that are humane and consistent with international conventions. However, at times, military necessity may call for making exceptions to these rules* (PIPA, 2004: 7). It could therefore be said that the torture debate under the American public takes place in a context of ambivalence and that how the debate is framed sways public opinion even though prisoner's rights are supported in principle.

### **3.2.4 The Informational Dependency of Torture Opinion**

The American public was also unaware of the fact that senior members of staff did give permission for certain abuses. Knowledge of whether certain politicians gave permission correlated strongly with the opinion that they should be acquitted of their jobs. When individuals were asked whether Secretary of Defense, Donald Rumsfeld, approved or disapproved of certain techniques only 35% were aware of the fact that he approved of making detainees go naked 45% knew of approval for hooding 55% knew of the approval for stress positions although knowledge of this approval correlated strongly with opinions of removing him from office (PIPA, 2004: 13). The International Committee of the Red Cross (ICRC) estimates that less than 30% of the detainees at Abu Ghraib were actual terrorist or acted in a violent manner towards Iraqis. According to the American public 59% of detainees fit this description. Knowledge of the actual number correlated strongly with a loss of support for President George W. Bush during the next election (PIPA, 2004: 14). In theory the American public could have stopped torture by means of the delegate model of political communication (see section 3.4.4) if only they had educated themselves more on the relevant and available facts.

Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment states that: *For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official*

*capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions* (United Nations, 1975). This is arguably the most important convention with regard to torture that America is a signatory to and with regard to non-conventional combatants and terrorists 60% of Americans feel that they should be treated in accordance with international treaties (PIPA, 2004: 4). This treaty in Article 2 also states that: *No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture* (United Nations, 1975). In section 3.2.2 of this chapter it can be seen that in the same survey Americans show majority support for certain coercive techniques under certain circumstances. This goes against the abovementioned UN Convention (which they showed support for with a 60% majority) (PIPA, 2004: 4 & 8).

This dualism in the public opinion to torture can only be explained by asserting that the American public support these conventions in principle but have no idea of the practical implications or carry no knowledge of their contents although the correct information pertaining to torture will be able to influence the opinion with regards to torture towards an absolute prohibition.

### **3.2.5 General American Ambivalence Towards the Use of Torture**

The latest research by the Pew Research center states that the American public has been ambivalent about the use of informational torture since July 2004. The April 2009 survey found that 49% of Americans felt that torture can be used often or sometimes while 47% felt that torture should rarely or never be used. In July 2004 43% of Americans felt that torture can be used often or sometimes while 53% felt it should never or rarely be used. This is one of only two instances during eight surveys spanning this time period that Americans who support torture or the prohibition of it have differed more than ten percentage points on the issue with the highest amount of support for the prohibition being 54% on January 2007 and the highest amount of support being 48% on February 2008 and November 2007 respectively (Pew Research Center, 2009:1-4).

In the previous chapter mention was made that the perceived ease of torture in relation to finger printing, proper interviewing and surveillance will cause it to be used at the cost of

these more effective techniques (Rejali, 2006: 456-457). Arrigo's data processing rational shows that the huge amount of low quality information will lead to more torture and even less quality intelligence (Arrigo, 2004: 554-559). Torture will therefore always be used in exponentially increasing capacities within intelligence gathering constitutions and cannot be used on a controlled basis. Americans who feel that torture can *rarely* be used are thus inadvertently supporting not only torture but its proliferation by means of the positive feedback loop inherent to torture. When seen from this perspective the 25% of Americans that feel that torture is never justified, in the April 2009 poll (Pew Research Center, 2009: 2), are in a severe minority.

No policy maker can therefore take any specific cue from the public on whether to torture or not. This would mean that when the American government decided on torture as a policy option and when, with the leaking of the Abu Ghraib photos, the general public opinion was and is still too ambivalent to put an end to it.

### **3.3 The Social-Psychological Reasons for Torture Support**

Rachlinski notes that *how* the public frames social problems leads to the demand for policy change. In the context of time, interest and informational constraints it's possible that faulty biases and heuristics will influence public opinion as well as the subsequent demand for relevant policy and by extension how existing policy is viewed (2004: 547). What follows is a non-exhaustive discussion on possible, individual biases, fallacies, heuristics and ideologies that explain the general ambivalent attitude towards torture in American society in addressing the social issue of the threat presented by terrorism.

#### **3.3.1 In-Group Out-Group Bias**

Staub (1990: 52-53) explains that differentiation on an in-group out-group basis is one of the most basic human tendencies and can even be seen in infants. This seemingly genetic tendency is amplified by means of socialization where people learn to dislike others based on unfamiliarity and the like. Further exaggeration of this tendency takes place because it is a pleasurable experience to successfully associate with an in-group even if it is based on very

arbitrary measures. This in-group out-group distinction can in certain circumstances lead to discrimination and devaluation of the out-group. Devaluation might be present in the form of suspicion or dislike of the out-group. In more extreme circumstances it can lead to perceptions that certain out-groups are focussed on doing harm or even ending the existence of an in-group. Staub refers to this as an *ideology of antagonism* where a system of beliefs is formed that maintains that one should have superior power at one's disposal to guarantee one's own security (Staub, 1990: 52-53).

This distinction between groups does not only lead to problems associated with caring for others but it can even lead to the exclusion of the out group from the *range of applicability* of moral values. In other words, the out-group is not deemed worthy of the same moral treatment as the in-group. It can therefore be stated that a certain process develops that commences with differentiation, goes over into devaluation and eventually ends in moral exclusion where torture might actively be supported or at least left unquestioned (Staub, 1990: 53).

### **3.3.2 Just World Thinking**

Except for in-group and out-group biases other reasons for passive compliance or active participation in torture exist. One of them is just world thinking. Tests have shown that when seeing an electrical shock administered to someone else some individuals will have the tendency to blame not the administrator but the victim. The rationalization for this is that the world is inherently just and seeing that this type of behaviour has not happened to them there must be something at fault with the victim or he/she must have done something to deserve this type of treatment (Staub, 1990: 56).

### **3.3.3 Resemblance Criterion**

Another misperception follows from a representativeness heuristic called a *resemblance criterion*. This heuristic makes individuals believe that causes and effects are equal; it is therefore difficult to understand that some events have dissimilar causes. This cognitive bias explains conspiracy theories. An example would be the building of the pyramids. It is difficult to fathom that the magnificent pyramids were built by slave labour and rudimentary

equipment so people create explanations such as otherworldly visitors or the inexplicable wisdom of the ancients. The same accounts for torture seeing that the *resemblance criterion* causes individuals to think that information from cruel enemies can only be elicited by means of cruel techniques. It is for this reason that techniques usually used for social influence in normal social settings seem not to be usable in the case of a dehumanized enemy (Janoff-Bulman, 2007: 432).

### **3.3.4 The Availability Heuristic**

It has been noted that the public's level of perceived risk associated with a certain threat is positively correlated with amount of media coverage dedicated to the risk. This feature of public perception can be explained by means of the availability heuristic. The availability heuristic is activated when an individual spuriously correlates the importance of a certain event with the event's cognitive availability (Rachlinski, 2004: 575).

No media analysis is needed to uncategorically state that the 9/11 events and the threat of terrorism had unsurpassed media coverage. This cognitive availability of an imminent terrorist threat leads to the perception of the high risk involved in living in post-9/11 America. This redeeming feature of American public perception then led to the demand for governmental policy (Rachlinski, 2004: 575) and in the case of the use of torture a society-wide reluctance to question the means in which *actionable intelligence* was gathered during *The War on Terror*.

### **3.3.5 The War on Terror as Political Ideology**

Another compelling reason is the effect of ideology. Ideology is a difficult term to define but according to Heywood all ideologies have the same three, fundamental features. Firstly, there is a critique of the existing order. Secondly, there is a vision of a future society. Thirdly the most important factor is a theory of political change (2007: 12). It could be stated that *The War on Terror* has surmounted the idea of just a war and has become an ideology in its own right. *The War on Terror* and the political discourse surrounding it meets all of the abovementioned criteria. Firstly, it obviously criticizes the idea of American society under

constant threat of a 9/11-like terrorist attack. Secondly, there is the vision of a society that lives without this threat and thirdly an all out war against all terrorist organization and the countries that might host them is proposed as the only way in which to rid the American society of this terrorist scourge.

Although an empirical analysis of this subject will never be conclusive one can see what ideologies do and try and measure these effects. Weick, an organizational behaviour and psychology expert, states that organizations control its member in three distinct ways. Direct supervision and orders and routines form two of the ways but the third way is premise control. Premise control constitutes *assumptions and definitions that are taken as given* (Weick, 1995: 113). These controls are highly influential because they influence and set the underlying premises that inform decision making and the way in which people interpret situations. The underlying nature of premises also causes them not to be questioned on a regular basis (Weick, 1995: 113). Out of the definitions of premise controls and ideologies one can state that a large amount of the power that ideology holds over the collective psyche follows from the control over the collective premises that societies hold.

An empirical example of this would be the American opinion towards the capabilities of terrorist groups since 9/11. As of February 2009 the American public's opinion on whether compared with 9/11 the terrorist's ability to strike America is greater, the same or less 44% felt that the threat is still the same. This is the highest since August 2002 although opinions have differed slightly since 9/11 with a lowest of 39% and an average of 40, 75% (Pew Research Center, 2009:4). Another example would be empirical research done by Enders & Sandler. By means of applying time-series methods to data sets relating to worldwide occurrences and treating 9/11 as a structural break it was found that incidents remained at their low pre-9/11 after the event. The terrorist attack on the World Trade Center and the Pentagon was therefore not the start of an outbreak of terrorism. The only difference was that terrorists groups were more prone to use bombing than more logistically difficult and expensive missions such as hostage situations (2005: 260).

It could therefore be said that Americans constantly see the terrorist threats as the same although no attack on US embassies or US soil has happened in this space of time and the levels of transnational terrorism were the same they were before the 9/11 attacks and the resultant *War on Terror*. There must therefore be premises involved in the American

perception of terrorism and means of fighting it that are not based on reality but most probably in relation to the ideology of *The War on Terror*. One such premise is that torture is effective and that the *actionable intelligence* gained from torture makes the U.S. a safer place. This way of thinking, although it has been proven wrong in the previous chapter, causes a lack of public participation in the torture seeing that people are less likely to wilfully challenge a policy if it is perceived to increase his/her safety.

### **3.4 The Linkage Between Government Policy and Public Opinion**

This linkage between government policy choices and the will of the governed primarily by means of voting during general elections, through interaction with civil society by means of lobbying and individual communication between elected congressmen and their constituencies can be regarded as obvious. How the linkage works in practice is more complicated (Erikson & Tedin, 2007: 18). In the following section a non-exhaustive list of plausible linkages between public opinion and governmental policy will be discussed. This serves the purpose of illustrating how the aforementioned public opinion links with governmental policy that will be discussed in the next chapter.

#### **3.4.1 The Rational Activist Model**

The rational activist model presupposes that citizen's are thoroughly and actively engaged in politics in an informed and rational manner. Voting is done by being aware of the various candidates' policy stances and by means of deliberation of the issues in such a manner that the constituencies' will is best reflected by the elected president (Erikson & Tedin, 2007: 19).

#### **3.4.2 The Political Parties Model**

The political parties model begins with the obvious assumption that parties want to win elections by getting the most votes possible. The parties will therefore structure their policies in such a manner in their election platforms that it appeals to the broadest possible voter segment. In this model the voter does not have to be as engaged as in the rational-actor model.

The voter merely has to choose the party that promises the policy stance that represents his political preferences (Erikson & Tedin, 2007: 19).

### **3.4.3 The Interest Group Model**

The interest group model state that interest groups serve as communicative link between representatives and their constituents. Interest groups serve the dual function of informing the constituents of representative performance as well as informing representatives on the wants and needs of the constituents (Erikson & Tedin, 2007: 20).

### **3.4.4 The Delegate Model**

In the delegate model the politician is seen as the voter's delegate. The politician operates under the assumption that he/she is supposed to heed to the public opinion at the risk of not being elected again. Public opinion is therefore closely monitored and anticipated (Erikson & Tedin, 2007: 20).

### **3.4.5 The Political Sharing Model**

Seeing that politicians are raised within society the sharing model proposes that politician's opinions will be representative of the public opinion. According to this model even if there are different points of view about a certain policy the different political opinions within government will realistically reflect that of the broader society (Erikson & Tedin, 2007: 20-21).

## **3.5 The Supply of Torturers**

In chapter one the training involved in creating torturers was discussed. This proved to illustrate how this training conditions individuals to partake in torture without feeling remorse for their victims. This does not explain what happened in Abu Ghraib where usual military

prison warders took part in torture and general mistreatment of detainees. Some of the abuses include: pouring phosphoric chemicals from chemical lights on detainees; threatening detainees with a charged pistol; sodomizing a male detainee with a chemical light and probably a broomstick; the use of military attack dogs to threaten detainees; threatening male detainees with rape; beating detainees with chairs and broomsticks; punching, slapping and kicking detainees; a male MP having sex with a female detainee; putting a naked detainee in a stress position on a MRE box with a sandbag on his head and attaching wires to his penis, fingers and toes to make him believe that if he fell he would be electrocuted; forcing naked detainees to masturbate while being videotaped and putting detainees in sexually explicit positions and photographing them (Zimbardo, 2007: 357).

This not only illustrates the point made in the first chapter that torture has a way of proliferating but also that each individual in society can be a supplier of torture if he or she does not take heed of what circumstances they are in. Lifton in Sonntag (2008: 162-164) made mention of this in the first chapter when he defined *atrocities producing situations* as situations that *are so structured, psychologically and military that ordinary people readily engage in atrocities*. Meta-analyses (a study that quantitatively summarises the empirical findings of a number of studies) have illustrated the large effect of social context on 8 million individuals in 25,000 studies. The social circumstances in which a person is situated can make anyone take part in abuses such as torture. This property of human behaviour can be illustrated by means of the Milgram's Obedience Experiment and The Stanford Prison Experiment in terms of perceived legitimate authority and group dynamics respectively (Cuddy *et al.*, 2004: 1482-1483).

### **3.5.1 The Milgram's Obedience Experiment – The Role of Perceived Legitimate Authority**

In 1962 an advertisement was sent out in a local newspaper to partake in a memory and learning experiment. The test consisted of three people namely an administrator, a teacher and a student (We Have Ways of Making You Talk, 2007) and was conducted by Yale University. The student was supposed to answer easy questions. One question for instance required that the administrator to read three word pairs to the student like: blue box; nice house; wild duck. After this had been read a straight forward multiple choice question was asked namely blue:

sky; ink; box; lamp. The correct answer would be blue box. If the student got the answer wrong a shock from a shock machine would be administered and the teachers were required to administer more intense shocks with every consecutive incorrect answer. The shocks went up in 15 volt increments and the machine was labelled *slight shock, moderate shock, strong shock, very strong shock, intense shock, extreme intensity shock, danger: severe shock and XXX* that constituted a shock of 450 volts (Anderson & Taylor, 2004: 153).

Of course nobody was actually being shocked. The student in the experiment was a trained actor and with every shock resulting from an incorrect answer the actor reacted with an appropriate response to the shocks. The goal of the study was to see whether if and how many teachers would administer the whole 450 volts. In this experiment 65% of the teachers administered the maximum shock even if the student protests violently or stops giving any response whatsoever (We Have Ways of Making You Talk, 2007). Even in versions of the experiment where the student complained that he had a heart condition or only female teachers were used the results did not change. If the teachers asked the administrator if they could stop the experiment they were told to: *Please continue. The experiment requires that you continue. It is absolutely essential that you continue. You have no other choice you must go on* (Anderson & Taylor, 2004: 153-154).

One of these teachers was William Menold. Subsequent interviews with Menold, one of the teacher who shocked the student with the maximum possible amount, reveals that he would try to help the student but he would eventually get mad at him for giving the incorrect answers. He felt that the further he went the *scarier* the situation became but the combination of circumstance and authority made him feel that he was not responsible for what he was doing (We Have Ways of Making You Talk, 2007). What Menolds and the other teachers in the experiment did shows how easily ordinary people can be made to do morally repugnant deeds. In Menolds own words: *If you wanna see what a torturer looks like, just take a look in the mirror. You have these naïve ideas that I would never do that. The answer is, yes, you would* (We Have Ways of Making You Talk, 2007).

For those that feel that the explanatory power of the obedience experiment is curtailed by the notion that the people who took part in the experiment were slyly tricked and coerced into administering the shocks another experiment where abusive practices emerged without using authority to force participant to administer abuse exists (Zimbardo, 2007: 352).

### **3.5.2 The Stanford Prison Experiment – The Role of Group Dynamics**

The Stanford Prison Experiment (SPE) was done in 1971 under the auspices of Stanford University and social psychologist, Philip Zimbardo. Zimbardo would go on to be one of the expert witnesses during the trial of one of the prison guards at Abu Ghraib (Zimbardo, 2007: IX). Zimbardo was interested in seeing what would happen if you put good people in a bad place. The 18 students that were chosen passed the psychological, medical evaluations and had no criminal record or history of drug abuse. The students were assigned to be guards or prisoners at random and there were no redeeming differences between the two groups (Stanford Prison Experiment, 1999).

After a mock arrest some procedures were then done to simulate the oppression of a prison as well as the feeling of shame and emasculation felt by prison inmates. These procedures took the form of a strip search and a delousing. No underwear could also be worn under their dress-like prison uniform that had their new identities (ID numbers which they were supposed to use instead of their real names) on them. Deindividuation was also done by means of wearing a stocking to simulate having one's hair cropped. The guards received no formal guard training but they were told of the seriousness of their tasks and could do everything within reason to maintain order in the prison. (Stanford Prison Experiment, 1999).

During the second day the prisoners rebelled against the guards by barricading their cell doors, within the mock prison on the Stanford University campus, with their beds. The guards who were supposed to contain the rebellion sprayed the prisoners with carbon dioxide from the mandatory fire extinguishers. The leader of the rebellion was forced into solitary confinement. The guards were under the impression that the guards from the night shift were too soft on the prisoners and started to intimidate and harass the prisoners. This harassment took the form of push-ups as well as sitting on the prisoners while they did the push-ups. This type of punishment also took place in Nazi concentration camps (Stanford Prison Experiment, 1999). The prisoners were also stripped. This situation coupled with complete control of the guards to the extent of not granting the prisoners toilet breaks and forcing them to urinate and defecate in buckets that were not cleaned on a regular basis lead to severe emotional strain under the prisoners. The guard's hostility towards the prisoners escalated so badly, especially during the night shift when they fought they were not under surveillance, and the prisoners began to react to the experiment in such erratic ways, one even got a psychosomatic full-body

rash, that the experiment had to be stopped within six days although the experiment was supposed to continue for another eight days (Stanford Prison Experiment, 1999).

In this short space of time the guards became so infatuated with their roles that some of them protested the end of the study. None of the guards ever came late for their shifts, complained or ever asked extra money for doing over time (Stanford Prison Experiment, 1999). Three types of guards emerged from this experiment. There were strict but fair guards, good guys and one third of the guards were hostile and inventive in humiliating the prisoners. One guard was nicknamed John Wayne for his sadistic disposition towards the prisoners. In an interview he remembers telling a prisoner that: *I'm gonna hit you so hard it's gonna kill your whole family* (We Have Ways of Making You Talk, 2007)

Zimbardo explains the abuse of the prisoners on the grounds of the power of situation. He feels that the social roles, rules, uniforms and group dynamics can make good people do terrible things. In the *Lucifer Effect* Zimbardo combines the theoretic work of the SPE with what happened in Abu Ghraib and states that the abuses were a product of the environment. An environment where the usual social and moral constraints against abusive behaviour were not applicable to the situation (Zimbardo, 2007: 352). This situation is also most succinctly summed up by the prison guard named John Wayne himself: *If you have complete control of over other human beings it's a natural human tendency to sort of see what you can do with that. And I think most people would enjoy that.* (We Have Ways of Making You Talk, 2007). Staub states that that these situations, where people are treated in a devalued manner, will lead to further abuses seeing that the devaluation is learnt on a learning by doing basis (1990, 55).

### **3.6 Conclusion**

The goal of this chapter was to explain that the use of torture is not merely a military or governmental problem but also a societal one. The American society was implicated into the use of torture by surveying their opinion towards torture. It was found that the American society supports the prohibition against torture in principle but that these opinions are easily changed by means of context and that the average American has not educated themselves enough about the issues at stake to form an informed and unambiguous opinion. These

reasons lead to a general opinion that can only be described as ambivalent. The ticking time bomb argument's seductiveness was also illustrated empirically.

Seeing that this chapter makes use of systems theory the underlying causes for this ambivalent opinion was discussed as well as the linkage between public opinion and government policy. The first challenge was surmounted by means of social psychology and the advent of seeing *The War on Terror* as a political ideology. The explanatory powers of this paradigm will be explored further in the next chapter. The second challenge was non-exhaustively addressed by means of voter models.

American society and societies in general were also implicated in the use of torture by the provision of would-be torturers. The Milgram's Obedience Experiment and The Stanford Prison Experiment respectively gave scientific testimony to the power of authority and social dynamics in influencing human behaviour.

## Chapter 4 – The Governmental Policy Model of Torture

### 4.1 Introduction

In the previous chapter it was illustrated by means of The Milgram's Obedience Experiment and The Stanford Prison Experiment that individuals are prone to do harm to or even torture others given the correct, authoritative circumstances. This harm referred to by Kelman as *crimes of obedience* and defined as *an act performed in response to orders from authority that is considered illegal or immoral by the larger community* (Kelman, 124: 2005).

After a confidential report written by Major General Antonio Taguba that reported on the systemic and illegal abuse of prisoners in Abu Ghraib was published on 24 April 2004 by *The New Yorker* and photos surfaced of prisoners in sexually compromising positions as well as corpses on the CBS network (Hersh, 2004) the U.S. government made an effort to express the use of torture as equivalent to initiation rituals at American colleges or merely the work of *a few bad apples* (Bovard, 2009: 109) (Hooks & Mosher, 2005: 1630). These attempts to downplay the seriousness of the abuses or, most importantly, shift the blame to low-rung members of the military stand in sharp contrast to the testimony of the legal memorandums, colloquially known as *the torture memos*, written by the Assistant Attorney General for the Office of Legal Council in the United States Justice Department Jay Bybee. These official memos, that the US government published after pressure from the press, especially the *Washington Post*, illustrate how the Bush administration defined torture in very narrow terms, circumvented the Geneva Convention of 1949 by defining Afghanistan as a *failed state* and the prisoners of war from Afghanistan as unlawful combatants, broadening the scope of presidential power over and above the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1987 and its Congressional statute as well as favouring domestic policy above international legal obligations (Dratel & Greenberg, 2005: XIV-XV). The US Secretary of Defence, Donald Rumsfeld, also sanctioned torture techniques (Washington Post, 2004).

Although individuals who did the actual deeds are and should be held accountable in accordance with the first Nuremberg Principle (a set of guiding principles that establishes whether an act constitutes a war crime) and states that *Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment* (International Committee of the Red Cross, 2005) The memorandums draw

attention towards the policy context that lead to the circumstances and (un)spoken consent conducive to the abusive treatment and torture of detainees in Guantanamo, Abu Ghraib and secret military detention centres known as *black sites*, which the Red Cross aren't allowed to inspect or even know the details of the detainees (Washington Post, 2005), which runs contrary to the *few bad apples* rationalization (Kelman, 2005: 124-126). This chapter will analyze the US policy of torture by means of discussing the history of the use of torture as foreign policy instrument, the impact of the al-Qaeda-led 9/11 attacks, how the changing role of the US within the global political system and the state of democracy within the US during *The War on Terror* had led to the loss of international and domestic checks and balances on US power and led the Bush administration not only to fall for the cognitive seductiveness of the torture argument but also the (re)enactment of it.

#### **4.2 An American History of Torture and Governmental Power**

Although this case study of torture could be stated to be the best documented and most institutionalized example of torture within a democratic society it would be a mistake to conclude that this is America's first foray into torture. For the past 50 years the CIA has been developing forms of psychological torture that is designed to thwart attempts at investigation, prohibition and prosecution and have actively practiced it in South Vietnam, Brazil, Iran, Honduras and Latin America at a cost of US\$1 billion annually (McCoy, 2009).

The U.S. government was under the impression that the Soviets have developed a way of extracting information from the human psyche *Special Interrogation Program* was launched to see whether medical science could be helpful in asserting control over individuals. After no success whatsoever the focus shifted to *methods concerned in psychological coercion* this lead to the infamous Project Artichoke the goal of which was the *development of any method by which we can get information from a person against his will and without his knowledge*. This project found that sensory deprivation can lead to a state of mental disorganization within two days. After American prisoners of war (POWs) in North Korea started making false press statements the focus shifted towards training that would possibly be able to increase resistance towards ideological *brainwashing*. This interest lead to the development of the SERE (Survival, Evasion, Resist, Escape) program. Two threads of interrogation research thus developed, one focussed on resistance and the other on developing psychologically-based

torture techniques. In 1963 the later effort culminated in the KUBARK counter-intelligence interrogation manual. This manual stated that psychological torture mechanisms such as sensory overload and deprivation were effective because it led to a state of dependence on the interrogator which made the chance of compliance better (Chomsky, 2009) (McCoy, 2009).

After these techniques were refined the U.S. government began to actively export these techniques to its military allies. The School of the Americas was a U.S. training facility near Panama City where U.S. and troops from other Latin American countries were taught psychological torture techniques such as sleep deprivation, hooding, forced nudity and stress positions from 1946 until 1984. The graduates from this school would later take part in various human rights atrocities throughout Latin America with the torture of Argentines during the *Dirty War* and the El Mozote massacre in El Salvador (Klein, 2005).

The techniques that were taught at the school of the Americas and later at a similar institute in Fort Benning, Georgia were developed by means of experiments on psychiatric patients and tested during the Vietnam War as part of operation Phoenix. During this operation the U.S. ran forty interrogation centres where between 20,000 and 46,000 detainees were killed on an extrajudicial basis and thousands more were tortured (Klein, 2005) (McCoy, 2009). In a historical precedent to the abuses at Guantanamo Bay and Abu Ghraib the Clinton administration used the U.S. government's previously discussed ability to make reservations within international agreements to amend the U.N. Convention Against Torture in 1994. The U.S. government was allowed to create their own custom definition of mental torture. According to the U.S. version of mental torture it includes the four acts of physical pain, the administration of drugs, death threats or threats to harm family or acquaintances. In this version no mention is made of the staples of U.S. psychological torture such as sensory deprivation and self-inflicted pain. This would thus mean that the U.S. made exceptions for their brand of torture within the U.N. Convention Against Torture. This definition of mental torture is still found on a verbatim basis in Section 2340 of the U.S. Federal Code as well as the Expanded War Crimes Act of 1997. This exempts the CIA agents from life imprisonment or a death sentence when it comes to the use of psychological torture and lays the groundwork for torture to proliferate yet again (McCoy, 2009).

The tendency to pay political lip service to torture while leaving loop holes for further abuses intact by means of the wording is also found in the Detainee Treatment Act of 15 December

2005 that states that the U.S. Congress prohibits the use of torture and cruel and degrading treatment. This piece of legislation on the other hand also included the Graham-Levin Amendment that took away the right of detainees at Guantanamo Bay to take legal action against their treatment and as well as recommendations to use information obtained by means of torture when assessing their status (Human Rights Watch, 2005).

It could therefore be stated that America has taken part in torture before and it formed part of their foreign policy since the war in Vietnam. One of the major problems is that this debate is framed in such a manner that the policy decision to torture is framed as a single event and not an emergent property of an American reliance on torture, society and political process. Senator John McCain's statements on torture are exemplary of this seeing that he states that America never took part in torture before 9/11 (Klein, 2005). This new episode of torture is therefore not unique although commentators do tend to address it as if it only started at 9 September 2009 (Klein, 2005). An example of this would be Paul Krugman's remark: *never before have our leaders so utterly betrayed everything our nation stands for* (Chomsky, 2009). This hides the facts that the U.S. government resorted back to an old, latent foreign policy measure which they will resort to again given the correct circumstances (when checks and balances are averted) seeing that: *The natural tendency of Government is towards abuse of power. Men entrusted with power, even those aware of its dangers tend, particularly when pressured to slight liberty* (The Select Committee to Study Governmental Operations with Respect to Intelligence Activities, 1976). The debate over torture should therefore not be framed not as an isolated incident but rather as an extension of intentional and ongoing U.S. foreign policy within a post-9/11 world.

#### **4.3 The Impact of 9/11 and the Policy Reaction to It**

The four hijackings of passenger aircraft during the 11<sup>th</sup> of September 2001 proved to be a unique terrorist attack in a number of ways. The number of deaths on that day was more than all the deaths from transnational terrorism from 1988 until 2000 and no other terrorist attack, national or transnational, ever took more than 500 lives (Enders & Sandler, 2005: 260). The terrorist attack also illustrated that US\$90 billion in losses and the abovementioned casualties could be achieved without the possession of a weapon of mass destruction and that fundamentalist groups, such as al-Qaeda, perceive civilians to be legitimate targets for violent attacks (Enders & Sandler, 2005: 260). The 9/11 attacks can also be seen as the first effective

transnational attack by religious fundamentalists. Before 9/11 most transnational terrorist attacks were motivated by nationalism, separatism, Marxism or nihilism (Enders & Sandler, 2005: 262).

These attacks lead to greater awareness of the vulnerabilities faced from terrorist attacks by industrialized countries (Enders & Sandler, 2005: 260). Within a short space of time after the 9/11 attack the CIA were given permission to capture and use deadly force against al-Qaeda operatives (Arnson & Strum: 2007:1) and manage a worldwide prison network where detainees could be detained on an indefinite basis at secret *black sites* (McCoy, 2009). The Bush administration believed that al-Qaeda and similar terrorist organizations that relied on asymmetrical warfare posed a more serious and unconventional threat than what has ever been faced by previous governments. This perception and the lack of human intelligence (HUMINT), intelligence professionals who have infiltrated these organizations garnered the intelligence paradigm that could be summed up by then Vice-president Dick Cheney's comment during a *Frontline* interview: *We have to work the dark side, if you will. Spend time in the shadows of the intelligence world* (PBS, 2002). Cofer Black, the previous Director of the CIA Counterterrorist Center, echoed this sentiment with his statement regarding operational flexibility: *... after 9/11 the gloves came off* (Black, 2002).

Before 9/11 the *US Army Field Manual 34-52* was the ruling standard on how to conduct the interrogation of prisoners of war. FM 34-52 relied on rapport based techniques but after al-Qaeda members showed considerable resistance against these previously sufficient techniques. In addition the *Manchester Manual* was found on the personal computer of an al-Qaeda member in England. This manual included a chapter on how to resist interrogation in accordance with FM 34-52 (Sands, 2008: 24 & 52). This caused interrogators to ask whether there existed a more flexible approach towards interrogation than what FM 34-52 presented. As Major General Michael Dunlavey, Commanding Officer of Joint Task Force Guantanamo (Sands, 2008: XIV) stated with regards to rapport based techniques: *That won't happen if the detainee knows the route you're taking. You can't interrogate them in the ordinary way. That's the problem I had* (Sands, 2008: 52).

The perception of a severe unconventional threat and a series of unsuccessful interrogations lead to the paradigm that greater operational flexibility was needed when interrogating al-Qaeda members. The Bush administration then turned towards the lawyers of the Office of

Legal Council to establish what degree of operational flexibility was legally feasible. (Dratel & Greenberg, 2005: XIII). Analysis of the legal documents show that operational flexibility with regards to interrogation was achieved by means of wilfully misinterpreting laws relating to the Geneva Convention, presidential power, the definition of torture and what techniques constitute torture.

#### **4.3.1 The Torture Policy Process and The Geneva Convention of 1949**

On 9 January 2002 a memorandum written by John Yoo, the Deputy Assistant Attorney General and Robert Delahunty, the Deputy General Council at the White House Office of Homeland Security was submitted to William Haynes the General Council to the US Department of Defence. This memorandum argued that al-Qaeda members are not eligible for protection the Geneva Convention seeing that al-Qaeda is a non-state actor and the nature of the conflict is different than conventional warfare (Delahunty & Yoo, 2002: 11). The protection of the Geneva Convention was also not applicable to the Taliban, the ruling organization in Afghanistan, seeing that Afghanistan is regarded as a *failed state* and the Taliban as a militia (Delahunty & Yoo, 2002: 14). This memorandum preceded the 18 January 2002 presidential decision that al-Qaeda and Taliban members would not be afforded the protection of the Geneva Convention (International Law of War Association, 2005) and the 19 January 2002 Rumsfeld order that stated that al-Qaeda and Taliban prisoners of war *are not entitled to prisoner of war status for the purposes of the Geneva Convention of 1949* and that commanders should *treat them humanely and, to the extent of appropriate and consistent with military necessity* (Rumsfeld, 2002).

Colin Powell, the Secretary of State, remarked on this abovementioned memoranda that questioning the applicability of the Geneva Convention in terms of al-Qaeda and Taliban members would have the advantage of maximum policy flexibility during the *War on Terror* but it would also have the disadvantage of *reversing over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our troops, both in this specific conflict and in general and it has a high cost in terms of negative international reaction, with immediate adverse consequences for our conduct of foreign policy* (Powell, 2002: 2). William H. Taft, legal advisor at the U.S. Department of State also echoed Powell sentiments by stating that *from a policy standpoint, a decision that*

*the Conventions apply provides the best legal basis for treating the Al-Qaeda and Taliban detainees in the way we intend to treat them. It demonstrates that the United States bases its conduct not just on its policy preferences but on its international legal obligations* (Taft, 2002: 1).

This sentiment, that going against international institutions and agreements had obvious pitfalls, both shared by Powell and Taft, was overridden by Alberto Gonzales the Attorney General. He stated that *The War on Terror* is a new type of warfare that did not resemble the conventional type of warfare that the Geneva Convention is applicable to and this puts a premium on obtaining information as quickly as possible to stop future atrocities. According to Gonzales these factors render the Geneva Convention limitations to be obsolete (Gonzales, 2002: 2).

#### **4.3.2 The Torture Policy Process and Presidential Power**

The abovementioned 9 January 2002 memorandum by Delahunty and Yoo included the first mention of overriding power of the president in foreign relations. According to the Article II of the U.S. Constitution the president is vested with federal executive power and *shall be commander and chief* and that he *shall have Power, by and with the Advice and Consent of the Senate, to make Treaties*. This means that the president has control of how foreign relations will be conducted since the domain of foreign relations is the domain of the executive. This executive power grants the president the right to suspend treaties without being bound by international law. In the case of Afghanistan the status of *failed state* and link with Al-Qaeda are seen to be sufficient grounds for making the Geneva Convention and the War Crimes Act of 1996 inapplicable to Taliban members (Delahunty & Yoo, 2002: 2 & 11 & 37). Delahunty and Yoo therefore concluded that any restriction of presidential power relating to military matters and including the treatment of prisoners could be described as *constitutionally dubious* (Dratel & Greenberg, 2005: XV).

This argument was augmented by the 1 August 2002 memorandum sent by Jay Bybee, the Assistant Attorney General, to Alberto Gonzales. Instead of stating that Congressional intervention pertaining to presidential executive power might go against the constitution the wielding of unquestioned executive power was now depicted as a military necessity. The line of reasoning stated that terrorist groups relied on surprise attacks and secret operations and

that information was therefore even more than important in the fight against terrorism than during conventional warfare. It could therefore be said that Congressional regulation of interrogation techniques could be likened to Congressional regulation of the tactics of armed forces on the battlefield and would therefore go against the Constitutional right of the president as commander in chief (Bybee, 2002: 32-33).

#### **4.3.3 The Torture Policy Process and the Definition of Torture**

The 1 August 2002 memorandum from Bybee to Gonzales, that would later be known as the Bybee Memo, delivers a legal opinion on the standards of conduct with regards to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment under 18 U.S.C. §§ 2340-2340A. This U.S. law *makes it a criminal offense for any person outside the United States to commit to or attempt to commit torture. (1) Section 2340 defines the act of torture as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person with his custody or physical control* (Bybee, 2002: 3).

In his opinion Bybee would redefine what torture is by redefining what severe physical and mental harm entails. On the subject of severe physical harm Bybee makes use of *West Va. Univ. Hosps., Inc. v. Casey* to state that *although these statutes address a substantially different subject from Section 2340, they are nonetheless helpful for understanding what constitutes severe physical pain. They treat severe pain as an indicator of ailments that are likely to result in permanent and serious physical damage in the absence of immediate medical treatment. Such damage must rise to the level of death, organ failure, or the permanent impairment of a significant body function. These statutes suggest that "severe pain," as used in Section 2340, must rise to a similarly high level — the level that would ordinarily be associated with a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of body functions — in order to constitute torture* (Bybee, 2002: 6).

On the subject of severe mental pain or suffering Section 2340 states that severe mental pain or suffering is *the prolonged mental harm caused by or resulting from - (A) the intentional infliction or threatened infliction of severe physical pain or suffering;*

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality (Bybee, 2002: 6-7). In his legal opinion Bybee puts emphasis on the intentional element of torture. In this way he constructs a defence based on the notion of good faith. According to Bybee the law could be negated by showing that a defendant acted in good faith that his actions would not cause severe mental pain or suffering. This can be achieved by proving that he surveyed professional literature, consulted with experts or reviewed evidence that was gained by past experience (Bybee, 2002: 8). The result was that the laws regarding torture would only be applicable to the most extreme acts.

#### **4.3.4 The Torture Policy Process and Torture Techniques**

Two months after the 9/11 attacks the Rumsfeld's aides contacted the Survival Evasion Resist Escape (SERE) personnel to learn whether SERE could help in developing interrogation techniques for use in Guantanamo Bay (Madden, 2009).

James Mitchell was a psychologist at the SERE program and although he has never done a real interrogation he has monitored interrogations during SERE training exercises. According to Mitchell the success of an interrogation hinged upon the psychological concept of *learned helplessness*. The developer of this concept Martin Seligman does not share this view. He states that *learned helplessness* will lead to compliance but not truth telling (Mazetti & Shane, 2009).

Mitchell and another SERE psychologist, Bruce Jessen, served as advisors to the CIA and both advised that al-Qaeda and Taliban members would not respond to conventional techniques due to fundamental personality differences. In the rush to avert another terrorist attack the CIA listened to this advice without taking the history and real purpose of these techniques into account. These techniques that included water boarding, stress positions and sleep deprivation were used in the 1950's to produce *false* confessions from American prisoners of war. A 1956 study on these techniques concluded that these techniques could not

be differentiated from torture and it made prisoners suggestible, malleable and prone to confabulation (Mazetti & Shane, 2009).

In an 11 October 2002 memorandum (JTF-170-J2) from Jerald Phifer, the Director of Joint Task Force 170 at Guantanamo Bay Cuba, requested approval for a set of interrogation techniques to counter advanced resistance from al-Qaeda and Taliban detainees. The techniques were classified in three categories. Category I techniques included yelling and deception which included multiple interrogator techniques and false identities of interrogators (the interrogators would be allowed to identify themselves as coming from a different country with a reputation of using harsh interrogation techniques (Phifer, 2002: 1-2). Category II techniques included stress positions for a maximum of four hours, falsified document or reports, isolation for up to 30 days, use of different environment than interrogation booths, sensory deprivation, hooding, 20 hour interrogations, non-allowance of comfort items such as religious books, meals ready to eat (MREs) instead of hot rations, nudity, forced grooming including facial hair and using detainees individual phobias. Category III techniques, that were reserved for the most uncooperative detainees included: the use of scenarios to convince him of imminent harm to him or his family, exposure to cold climatic conditions or water, using a wet towel to create the perception of drowning by means of activating the mammalian diving reflex (McCoy, 2009), non-injurious physical contact such as poking and pushing (Phifer, 2002: 1-2).

After the legal processes where the al-Qaeda and Taliban detainees were not afforded the legal protection of the Geneva Convention that is implied by prisoner of war status and the president's power as *commander-in-chief* it was possible to pronounce in the legal brief on these techniques that: *The counter-resistance techniques proposed in the JTF-170-J2 memorandum are lawful because they do not violate the Eight Amendment to the United States Constitution or the federal torture statute as explained below. An international law analysis is not required for the current proposal because the Geneva Conventions do not apply to these detainees since they are not EPWs (enemy prisoners of war) (Beaver, 2002: 4).* In addition a memo would later be written to John Rizzo, General Council to the CIA, by the Principal Deputy Assistant Attorney General, Steven Bradbury that addressed the issue of whether certain techniques such as dietary manipulation, stress positions, water boarding and sleep deprivation used in combination would constitute torture. In conclusion Bradbury stated that: *In the view of the experience from past interrogations, the judgment of medical and*

*psychological personnel, and the interrogation team's diligent monitoring of the effects of combining interrogation techniques, interrogators would not reasonably expect that the combined use of the interrogation methods under consideration, subject to the conditions and safeguards set forth here and in Techniques would result in severe, physical or mental pain or suffering within the meaning of sections 2340-2340A (Bradbury, 2005: 68).*

On 2 December 2002 Donald Rumsfeld, the U.S. Secretary of Defence, approved an action memorandum, from William Haynes, that gave permission to the Commander of SOUTHCOM to allow the use of category I and II techniques and only the use of non-injurious physical contact out of category III. It was stated that the all the category III techniques were legally permissible but should not be used as a matter of policy. The memo also had a handwritten note from Rumsfeld: *However, I stand for 8-10 hours a day. Why is standing limited to four hours?* (Haynes & Rumsfeld, 2002: 1). Rumsfeld's approval reached Camp X-Ray, the maximum security facility at Guantanamo Bay, on the 2<sup>nd</sup> of December 2002. The torture interrogation of, Detainee 063, Mohammed al-Qahtani, alleged to be the 20<sup>th</sup> 9/11 hijacker began (Sands, 2008: 8). Qahtani was subject to 48 interrogations of between 18 and 20 hours within 54 days. He was forced to do dog tricks, threatened buy an attack dog, forced to wear a bra and thong on his head, strip searched and forced to stand naked in front of a female interrogator. The combination of physical and psychological abuse had the effect that he had to be hospitalized twice for a heart condition. The unrestrained way in which he was interrogated within the framework of Rumsfeld's approval lead to him not being prosecuted due to the fact that he was tortured (Woodward, 2009).

#### **4.3.5 The Torture Policy Process and Congressional Oversight**

According to U.S. law 413 on General Congressional Oversight Provisions the President has to ensure that the congressional intelligence committees are fully informed of all intelligence activities as well as any likely intelligence activities (Cornell University, 2009). The decision to use torture as a policy instrument shows that this oversight mechanism is faulty. Different reasons for this exist but it can all be attribute to the misuse of the Gang of Eight. The Gang of Eight forms part of the Intelligence Oversight Act of 1980 that was written shortly after the Church Committee's recommendations. This system allows the president to limit access of intelligence and covert activities to *the chairmen and ranking minority members of the*

*congressional intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President* (Cornell University, 2009) but only under emergency circumstances. The state of constant mobilization and emergency brought on by *The War on Terror* means that this temporary accommodation eventually became the customary way of making intelligence policy decisions (Hayes, 2009).

The quality of these briefs are also problematic. The members of the Gang of Eight aren't allowed to make notes or have their staff present during a briefing. They are also not allowed to discuss what happens during the briefing with anyone seeing that they are briefed on an individual basis. As the former U.S. government counterterrorism expert, Richard Clarke, states: *That's oversight? That's pretence at oversight. That's a box check. The law required us to do that and we did this* (Hayes, 2009). Vicky Divoll, general counsel of the Senate Intelligence Committee in 2002, echoes this sentiment by stating that this system causes *the very programs that are among the most risky and controversial, and that therefore should get the greatest congressional oversight in fact get the least* (Mazetti & Shane, 2009).

#### **4.4 The Failure of International and Domestic Checks And Balances**

From the analysis of the legal documents, the perceptions that fostered the birth of the torture policy and the subversion of congressional oversight cognitive seductiveness of the torture argument are illustrated. The Bush administration decided on the use of torture without questioning their premises or even the origin of the torture techniques (Mazetti & Shane, 2009). The interpretation of laws is dubious at best and the product of the policy has done irreparable damage to the legitimacy U.S. foreign policy.

This leaves commentators and analysts to fall into the trap of value judgments. The false premise of that they hold is that the policy process is inherently just and that failed policy reflects upon the morals and values of the policy makers. This premise is false seeing that constitutional safeguards and due policy processes exist to curtail the non-consequentialist negative influences of policy decisions that emerge under conditions of uncertainty and time constraints (Rejali, 2007: 536). By bearing this in mind one is forced to reframe the torture debate. The question should not be *why* the policy decision to torture was made seeing that this line of thought leads up the blind alley of value judgments. The question should be *how*

the torture evolved from a theoretical possibility to real world enactment. This line of thought shifts the intention from inherent disgust to the more analytical question of how international and domestic checks and balances on U.S. power failed in the post 9/11 climate.

#### **4.4.1 Unilateralism as Foreign Policy Organizing Principle**

Participation in the international community (multilateralism) restrains states by means of the institutional checks and balances on sovereign policy power. In the case of the U.S. their unique role in the global political system makes it possible to influence these sets of checks and balances (Echeverria, 2004: 2) and in some cases even operate totally outside it. Ironically this means that the U.S. is not afforded the protection from bad policy decisions that other weaker states enjoy.

Ruggie in Monten (2007: 121) defines multilateralism as *an institutional form [including norms, regimes, and formal multilateral organizations] that coordinates relations among three or more states on the basis of generalized principles of conduct*. Multilateralism can therefore be seen as an international *social contract* where states trade policy autonomy with each other on differing issues to eventually reach an equilibrium point where mutual policy demands are met. In the strictest sense multilateralism does not refer to the automatic or accidental policy fit since it's an active and deliberate process. Unilateralism, on the other hand, is when policy choices are made outside of a rule-based institutional framework or without consultation with other states. (Monten, 2007: 121-122).

This principle of foreign policy organization has especially been implemented by America in terms of defence matters. Since 2001 America has withdrawn support for the Comprehensive Nuclear Test Ban Treaty of 1996, Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1997, Biological and Toxin Weapons Convention of 1972, Anti-Ballistic Missile Treaty of 1972 and attacked Iraq even though it fell outside the legal framework of the Charter of the United Nations of 1945. Donald Rumsfeld, the American Secretary of Defense's notion that *the mission determines the coalition, and we don't allow coalitions to determine the mission* also

shows that even collaborative efforts are built around American policy objectives and not negotiated policy compromises (Monten, 2007: 122).

The American unilateral approach to foreign policy is based on the assumption of American political exceptionalism. American political institutions, culture and history are seen as inherently different to any other state and because of the American foreign policy assumption that America has a responsibility to better the world community. This perceived international *noblesse oblige* flows from a combination of normative and causal belief represented by the neo-conservative group of thinkers and changes in the post Cold War world political system. (Monten, 2007: 131).

#### **4.4.1.1 International Causes of Unilateralism: Unilateralism as Emergent Property of Post-Cold War Political System**

After World War II the US took part in multilateral treaties on a hegemonic basis where multilateral treaties and institutions did not curtail US political power but served to express it seeing that hegemony is a form of leadership where policy making power is wielded by means of the consent of the governed instead of coercion. In this system consent is manufactured by means of, what is commonly referred to as, an institutional bargain. Within this institutional bargain states wilfully gave up policy autonomy to the US and granted the US greater policy freedom within the multilateral framework and chose not to sanction the US even when action was taken outside the framework. In exchange the other states got military protection, economic aid, protection against internal dissent, entry towards US markets as well as a set of rules and institutions that lead to international stability and other collective goods that flowed from such an arrangement (Skidmore, 2005: 209-210).

This institutional bargain has two inherent tensions. Firstly, the US can invoke special policy autonomy up until the point that other members of the multilateral framework feel that they will benefit from another form of international political organization. Secondly, it is very costly to act as sponsor of multilateral institutions and the main enforcer of its rules and regulations. This system could therefore be said to be very unstable because of the pro-US institutional double standard and the fine balancing act where the US tries to appease the

members of the multilateral system by means of sponsorship while trying to let other states carry some of the costs involved (Skidmore, 2005: 211-212).

This system's, with its in-built contradictions, success was due to the Soviet Union non-participation and especially the resulting Cold-War which bound the US and its allies in a mutually dependent relationship. The US needed allies to curtail the power of the Soviet Union which caused the them to temporarily give up the balancing act between almost exclusive sponsorship and making their allies cover some of the costs. Their allies on the other hand sought protection from the Soviet expansionism and were willing to give the US almost complete policy autonomy in exchange for security. After the end of the Cold War the abovementioned tensions were resurrected again seeing that the US was not willing to carry the burden of sponsorship anymore and its allies were unwilling to grant the US its previous levels of policy autonomy. This had the effect that the US decided on expressing US power by means of the unilateral route instead of the hegemonic one (Skidmore, 2005: 212-213) (Gardner, 2005: 27).

#### **4.4.1.2 US Unilateralism and Militarism as Neo-Conservative Political Ideology**

In December 2002, prior to the outbreak of the war in Iraq, the American public was surveyed by the Pew Research Center on their attitudes towards multilateralism. On the question of whether the US should cooperate fully with the UN 67% agreed and only 25% agreed that should go their own way without consulting their allies seeing that they are the most powerful country in the world (Skidmore, 2005: 220). This dissonance between governmental international policy and public opinion can be explained on two fronts. Firstly unilateral organizations seem to be better organized than the widely dispersed multilateral minority and the American political system is prone to minority influence due to its decentralized and open nature. This leaves the political playing field wide open for minority groups to influence governmental policy (Skidmore, 2005: 220). One such group is the neo-conservatives.

The neo-conservatives held direct policy influence especially after 9/11 (Ikenberry, 2004:7). The reason for this is that directly after the 9/11 attacks the neo-conservatives had a distinct advantage compared to other policy makers and think tanks in the form of a relevant policy. It was not a customized policy, it might have been older than a decade but it addressed the

terrorism issue and their first-mover advantage allowed them to frame the debate (Clarke & Halper, 2004: 138). Max Boot, a highly regarded, self-proclaimed neo-conservative and senior fellow at the Council on Foreign Relations, was asked by the *Christian Science Monitor* how much political power neo-conservatives have within Washington and the Bush administration. He replied that although neo-conservatism's all-round political influence is exaggerated and could partly be explained due to the fact that their ideas are forcefully and clearly articulated 9/11 did have an impact on the war in Iraq because *9/11 brought various doubters including Bush and Cheney around to the neocon [servative] sic point of view* (Christian Science Monitor, 2004).

On the 20<sup>th</sup> of September 2001, a few days after the 9/11 attacks, the *Project for a New American Century*, a neo-conservative think tank, wrote an open letter to George W. Bush. The letter recommended a regime change in Iraq (Project for the New American Century, 2001). The war in Iraq is illustrative of the combined influence of the neo-conservatives and 9/11 on Bush, whose first presidential campaign was against nation building and excessive international military intervention. Bush also chose the headquarters of the American Enterprise Institute, a think tank described as the *de facto headquarters for neo-conservative policy* which has been campaigning for a war in Iraq more than ten years prior to the outbreak, for an important speech where he stated that victory in Iraq will greatly help towards peace in the Middle East (Christian Science Monitor, 2004).

Except for a policy that addressed terrorism neo-conservatives also have an influence on policy by means of links with the Republican Party and senior officials within the Bush administration (Christian Science Monitor, 2004). The Project for the New American Century, a neo-conservative think tank that is chaired by William Kristol, states that they are a *non-profit educational organization dedicated to a few fundamental propositions: that American leadership is good both for America and for the world; and that such leadership requires military strength, diplomatic energy and commitment to moral principle* (Project for the New American Century, 1997). In their 3<sup>th</sup> of June 1997 *Statement of Principles* they state *inter alia* that defense spending should be increased and that the US should accept responsibility for creating an international order that coincides with US security, principles and prosperity. This statement was signed by government officials such as Dick Cheney, Donald Rumsfeld and Paul Wolfowitz as well as Jeb Bush. Richard Perle, a Pentagon policy advisor until 2004, is also associated with this think tank (SourceWatch, 2008). The date of

the statement, which predates the 9/11-attack, as well as the abovementioned list of officials show that the neo-conservatives already had a measure of influence within the government prior to the 9/11 terrorist attacks (Project for the New American Century, 1997).

#### 4.4.1.2.1 Neo-Conservative Normative Beliefs

Normative beliefs can be described as a set of mental criteria that inform judgments on whether something is inherently wrong or right. The American political decision makers have the following set of normative views regarding American unilateralist foreign policy.

Firstly, the widely held belief exists that American foreign might is *inherently benign and virtuous*. This is most succinctly summed up by Woodrow Wilson on American principles: *they are the principles of forward-looking men everywhere... They are principles of mankind and must prevail*. George W. Bush echoed this sentiment in his inaugural speech in January 2005: *The survival of liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world* (Monten, 2007: 131).

Secondly, what is seen as beneficial for American foreign policy is automatically seen as beneficial for the rest of the world as well as stated by neo-conservatives Robert Kaplan and William Kristol: *Americans should understand that their support for pre-eminence is as much a boost for international justice as any people is capable of giving* (Monten, 2007: 131-132).

Thirdly, the American polity and its institutions are regarded as such exceptional institutions that it should not be subjected to any form of outside influence. Francis Fukuyama, a member of the neo-conservative group – The Project for the New American Century (Project for the New American Century, 2007), states that this normative belief stems from a wider normative belief that the American nation state is a source of legitimacy in its own right in contrast to Europeans that look to multilateral agreements and approval for legitimacy. The neo-conservatives such as John Bolton have also reinforced this normative belief with the following statement: *The question of legitimacy is frequently raised as veiled attempt to restrain American discretion in undertaking unilateral action... Our actions, taken consistently with Constitutional principles, require no separate, external validation to make*

*them legitimate* (Monten, 2007: 131-132). This belief is also echoed by Robert Kagan: *Multilateralism is a weapon of the weak* and Max Boot: *Power breeds unilateralism. It is as simple as that* (Ikenberry, 2004: 15).

#### 4.4.1.2.2 Neo-Conservative Causal Beliefs

Causal beliefs are beliefs regarding the cause of a certain outcome and are used especially during planning of strategic objectives. According to Monten America holds two causal beliefs relating to unilateralism. The first is that the Bush administration believed that the large power differential in the global system, with America as the hegemon, will lead to less competition from its international peers. The overwhelming power of America therefore does not provoke competition but leads to the stabilization of the system with America at the forefront. This neo-conservative logic will therefore endorse the wielding of this power in a unilateralist fashion seeing that this practice will lead to a larger power differential with America at the forefront. A natural consequence of this is that American position is quintessentially based on military power and the provision of security (Monten, 2007: 133-134) (Ikenberry, 2004:7).

The second set of causal beliefs involves the discount rate in international political interactions. Robert Axelrod states that cooperation can only flow out of anarchy if there exists multiple rounds of interaction and a discount rate or a *margin at which future gains are discounted relative to immediate gains* (Monten, 2007: 127). When America embarked on the *War on Terror* the discount rate changed dramatically seeing that America puts a bigger emphasis on immediate unilateral strategic control than the future benefits that flow from multilateral policy interaction. The American administration also has what James Mann refers to as an *extraordinary optimistic assessment of American capabilities* and they feel that there has been no decline in US power. The premises that drive the logic of multilateral interaction is therefore not present (Monten, 2007: 134-135).

Multilateralism is not seen as a way to institutionalize American international pre-eminence but rather as a burden due to the constraints it puts on international policy autonomy. This notion has given birth to the idea of *new unilateralism*. The neo-conservative commentator Krauthammer in Ikenberry (2004: 9) sums this idea up as follows: *After eight years during*

*which foreign policy success was largely measured by the number of treaties the president could sign and the number of summits he could attend, we now have an administration willing to assert American freedom of action and the primacy of American national interest. Rather than contain power within a vast web of constraining international agreement, the new unilateralism seeks to strengthen American power and unashamedly deploy it on behalf of self-defined global ends* Another more philosophical notion is that multilateralism is a means that other states use to constraint US policy up to the point that it threatens US sovereignty. This view is widely held by neo-conservatives and especially so by John Bolton before he became Under Secretary of State for Arms Control and International Security in 2001 (U.S. Department of State, 2007) (Ikenberry, 2004: 9).

One of the principles that guide US unilateralism is that terrorism cannot be fought within the multilateral context because the inherent constraints within the system limit the severity and ability to strike pre-emptively therefore the neo-conservatives insist that military might must be put at the forefront of international relations so that the US can be seen not only as an able but also willing military contender. According to neo-conservative logic a military show of force will pre-emptively stop strikes against the US due to force (Ikenberry, 2004: 9).

The neo-conservative success with the adoption of their policy also had a very important operational effect. Their focus on bringing justice to not only the terrorist groups but also the states that harboured them by military means lead to a much more dangerous movement towards *state-on-state* conflict compared to political and intelligence based means that have proven to be successful antiterrorist measures in Northern Ireland and the Basque region of Spain. This had the effect that the policy focus was on way to thwart further terrorist attacks instead of addressing the issues that lead to the 9/11 attacks in the first place (Clarke & Halper, 2004: 138).

#### **4.4.2 The Domestic Failure of Checks and Balances**

It has been noted that in times of national distress or external threat the so-called *rally around the flag* effect leads to the broadening of the power of the president (Skidmore, 2005: 222). Due to distress policy decision making authority moves up the echelons of government at the cost of a more consultative approach. In the aftermath of the 9/11 attacks the Bush presidency

enjoyed unparalleled levels of support and the approval, 90% on the 21<sup>st</sup> of September 2001 as the American public rallied around the flag (Belt, 2004: 1-2).

According to Dahl in Belt (2004:2) a certain amount of *loyal opposition* is important to avoid tyranny and one of the reasons that the decision to wage war is left over to the U.S. Congress is that it is the most representative body in the U.S. political system and the public opinion has always been an important check on presidential power. Public opinion research has shown that the way a situation is framed and the analogies used is also of importance in framing public attitudes towards governmental policy (Belt, 2004: 5).

Greider (2004: 11-13) makes the argument that *The War on Terror* is similar to the Cold War seeing that the adversary is depicted as omnipresent and not described in any resolute terms. In this way fear is created and maintained in the American psyche which influences the public opinion towards policy related to *The War on Terror*. This fear serves as constant justification for an ongoing pre-emptive set of wars collectively known as *The War on Terror* and related policy measures such as USA Patriot Act of 2001. The constant mobilization of American citizens and politicians by physical, financial or especially by ideological means leads to democratic collapse within U.S. society where *skepticism is weakness, silence is patriotic and admission of error is dishonorable*.

*The War on Terror* could therefore be described as an ongoing situation with a constant *rally around the flag effect* where the *loyal opposition* and the checks and balances on policy issues related to *The War on Terror* such as the torture policy is not present. Bovard in *Attention Deficit Democracy* states that *the government claimed absolute power – this claim has received little or no effective challenge* (Bovard, 2005: 109).

#### **4.5 Conclusion**

In this chapter the focus shifted from a systemic model of how societies can provide approval and torturers for the torture process to how the U.S. government created the circumstances that fostered torture by means of policy decisions and legal means. By reinterpreting the torture question from *why* the U.S. government decided to *how* the torture policy could be enacted valuable insights were gained. In short it can be stated that the torture policy is an

emergent property of policy decision making without the usual checks and balances that the international community and civic democratic opposition provide. The absence of which made a theoretical policy possibility a real-world enacted policy.

The root causes of this absence of checks and balances were also discussed. On the international level the unique role of the U.S. in the global post-Cold War political framework and the neo-conservative influence that bred military unilateralism was discussed. On the domestic level the permanent mobilization in American society led to a sustained *rally around the flag effect* where U.S. governmental power is neither checked nor balanced by civil society and therefore goes unchallenged.

In the next chapter the lessons learnt from the previous two chapters will be used to investigate the effectiveness of current measures to stop the proliferation of torture and outline new measure that can effectively counter torture.

## **Chapter 5 – How to Stop Torture**

### **5.1 Introduction**

In the previous chapter the focus was on answering the question on why torture was used during the *War on Terror* even though torture is not an effective means of gathering *actionable intelligence*. It was found that the answer is a complex interaction between an array of different societal, psychological, historical, organizational and political factors. It was also found that the use of torture by the U.S. government is not an isolated event by any means but rather the continuation of human rights abuses. This analysis still left the last question on how these processes can be stopped unanswered.

In this chapter present approaches such as legislation and monitoring as well as the use of torture warrants will be discussed. The amount of political will from the Obama administration that is necessary for these approaches to work will also be measured. Two additional approaches to stop torture by means of manufacturing political will are also discussed. Firstly, inquiries are discussed with reference to measures that are needed for its inception, history, its social function and limitations. The Church Committee of 1975 was successful under an uncannily similar set of circumstances faced today but over time there are limits to inquiries. The reason for this is that inquiries create political memories but they do not sustain it. Memorials as a supplementary step towards the maintenance of political memory will therefore also be discussed.

### **5.2 Approaches to Torture and Why They Don't Work**

The traditional approaches have always been legislation like the Geneva Convention of 1949 or the Optional Protocol to the UN Convention Against Torture and monitoring of detention facilities to investigate whether detainees are being treated in a humane manner. There have also been calls for the regulation of torture by means of warrants. The line of reasoning is that temporary and proper regulation and evaluation of results will create a body of knowledge that will conclude the torture debate one way or another (Rejali, 2007: 523-527).

From the previous chapter one could notice how laws and regulations can be thwarted by means of intentionally misapplying the law. The U.S. foreign policy of unilateralism and their

unique role in the global order has the advantage of granting the U.S. immense policy autonomy *vis-à-vis* other states. Since this policy autonomy grants the U.S. the ability to work outside of the multilateral framework or be granted special privileges within it, which the Clinton-era customized definition of mental torture within the Geneva Convention is an example of, international regulations will not be an effective means of stopping the proliferation of torture if the U.S. political will to stop torture does not exist.

Although monitoring has the advantage of scrutinizing whether abuses have occurred on a first-hand basis Rejali in *Torture and Democracy* notes that within the history of torture techniques there has been a distinct shift from what he calls *scarring techniques* to *clean techniques* that leaves no physical marks. This shift is due to the fact that *clean techniques* are still just as painful and damaging but are less likely to be noticed by monitors and judges. Democracies do this to ward off scandal and guarantee legitimacy for their political elite because human rights are one of the core values within democracies. It could therefore be said that monitoring has merely lead to the shift in technique, in democracies that do favour torture, from whipping and beating towards the usage of water boarding, sensor deprivation and electro torture (Rejali, 2007: 405-410). As in the case of the legislative approach to torture the lack of political will to stop torture can not be supplemented by means of monitoring.

If governments believe that torture works they will keep on torturing until torture is proven not to work. The argument for the regulation of torture by means of warrants is based on the premise that the regulation of torture will diminish the secrecy surrounding torture and create enough information to prove whether torture works or not. It would also be possible to closely monitor the effect of torture on torturers (Rejali, 2007: 523-524).

With relevance to torture warrants Rejali notes four distinct problems with torture before the inevitable conclusion that torture does not work is reached by means of the warrant approach: Firstly, historical research has shown that torture will start with a specified group like criminals about will eventually broaden in scope. This is especially so during wars of an asymmetrical nature where distinction between friend and foe are difficult to make. Secondly, especially when torture is used for informational purposes the time perceived time constraint and reluctance to give information from the detainee will lead to the breaching of prescribed techniques. Thirdly, the regulated institutionalization will eventually lead to the torturers

becoming a politicized faction in their own right (Rejali, 2007: 531-532). This will lead to a parallel administration of torture professionals that govern themselves and the inevitable loss of control over them. Historical examples include the Gestapo, the French in Algeria and the Americans in Central America. Fourthly governments are not likely to stop torture even though they know that it does not work. The reason for this is that using torture shows that pressured officials are willing to do anything at their disposal to do their job. As Rejali states: *When a public official is prepared to spill the blood of a detained, helpless individual, breaking bonds of law and morality, this appears to satisfy a debt incurred by the violence of a terrorist.* This sentiment is echoed by an active CIA agent: *The larger problem with torture here, I think, is that this kind of stuff just makes people feel better* (Rejali, 2007: 529-535).

From the assessment of the most popular or debated approaches to counter or at least manage torture one will notice that none of them are effective when the political will to stop torture is absent. In the following section the stance taken towards torture by the Obama administration is investigated to infer the amount of political will in the present administration towards the stoppage of torture.

### **5.3 The Obama Administration's Level of Political Will to Stop Torture**

During his presidential campaign Obama was an outspoken critic of the Bush administration's counterterrorism policies. Obama is quoted to have accused Bush of *excessive secrecy, indefinite attention, warrantless wiretapping and enhanced interrogation techniques like simulated drowning that qualify as torture through any careful measure of the law or appeal to human decency.* With regards to the CIA he affirmed that the CIA were governed by the same rules as the military and were not allowed to use techniques such as water boarding. According to Obama the interrogation programme should also be investigated (Gorman, 2008).

During the following presidential debate the moderator posed the question of whether a terrorist should be tortured if he has information of a ticking time bomb. Obama replied by stating that *we cannot have the president of the United States as a matter of policy that there is a loophole or an exception where we would sanction torture ... there are going to be all sorts of hypotheticals, an emergency situation, and I will make that judgement at that time*

(Schoenfeld, 2007). From this statement it could be seen that Obama is still granting himself freedom of policy movement when it comes to torture and is not categorically prohibiting the use of torture even though he does by political lip service to it (Schoenfeld, 2007). In a *Wall Street Journal* article an unnamed government official opined that Obama will possibly take a middle road with regards to the techniques the CIA is allowed to use but with greater oversight. This view is also shared by a former counterterrorism official in the Clinton and Bush administrations named Roger Cressey (Gorman, 2008).

On the 22<sup>nd</sup> of January 2009 Obama signed an executive order called *Ensuring Lawful Interrogations*. This document ordered that facility at Guantanamo Bay should be closed within a year, that all *black sites* should be closed and that the Geneva Conventions should be applicable (Obama, 2009: 2 & 4). According to Prof. James Hill, a practicing lawyer, this executive order's wording is of such a nature that torture could still take place under certain circumstances. Reasons for this include that the order only applies to armed conflicts and not to counterterrorism efforts and certain rulings only apply to the CIA and does not mention other agencies such as the Department of Homeland Security and the Defense Intelligence Agency (Hill, 2009).

On the 20<sup>th</sup> of April 2009 Obama stated, with relevance to the torture memorandums that were released by his administration four days earlier, that: *For those who carried out some of these operations within the four corners of legal opinions or guidance that had been provided from the White House, I do not think it's appropriate for them to be prosecuted* (Washington Post, 2009). Obama therefore feels that the CIA agents who trusted the legal opinion of the Bush administration should not be punished *and that nothing will be gained by spending our time and energy laying blame for the past* (Peter, 2009). The UN Special Rapporteur on torture Manfred Nowak, has stated that Obama's stance might serve as a mitigating factor but he has called for an independent investigation into the abuses seeing that Obama's intentions are not in accordance with the Geneva Convention and constitutes a breach of international law under the Nuremburg Principles (Peter, 2009) (McCoy, 2009).

In reaction to this pressure from Nowak and a plea from congress that the likes of Alberto Gonzales, John Yoo, Jay Bybee and Steven Bradbury, who informed the torture policy decisions be prosecuted Obama went against his previous statement. On the 24<sup>th</sup> of August

2009 preliminary investigations have been launched that will focus on 10 cases where it is felt that interrogators even went beyond the broad legal limits set by the Office of Legal Council but not the Geneva Convention. A special prosecutor, John H. Durham, has been named by Attorney General Eric Holder to investigate these cases (Peter, 2009) (Cohen, 2009) (Washington Post, 2009). Breaches of the Geneva Convention will thus not be investigated.

During a confirmation testimony Obama's nominees gave support for the CIA with regards to transferring prisoners to other countries without legal rights as well as indefinite detention of terrorism suspects. It was also mentioned that lawsuits by former detainees should be stopped to protect state secrets instead of withholding certain types of evidence. On the international front the British court was pressured by the Obama administration to not publish details on the alleged torture of a prisoner in U.S. custody. Afterwards the Obama administration thanked the British *for its continued commitment to protect sensitive national security information* (Savage, 2009). The CIA director, Leon Panetta had during his confirmation hearing stated that if approved interrogation techniques were not capable of producing information there would be asked for *additional authority*. Anthony Romero, the executive director of the American Civil Liberties Union, opined that this sequence of events might lead to the proliferation of *some of the most problematic policies of the Bush presidency* (Savage, 2009).

According to McCoy the Obama administration does not represent a stop of the torture policy but rather a return to the Cold War torture policy of outsourcing torture (McCoy, 2009). Allan Nairn observes that the Obama administration has not completely banned torture but has merely changed the way in which torture is administered. Obama has resorted to torture by proxy, the custom used since the Vietnam War of not using U.S. military or intelligence agencies for torture but rather sponsoring foreigners to administer it (Nairn, 2009). The Bush administration changed this modus operandi of torture to a more hands-on approach but with the following statement in his executive order: *No individual currently detained at Guantánamo shall be held in the custody or under the effective control of any officer, employee, or other agent of the United States Government, or at a facility owned, operated, or controlled by a department or agency of the United States, except in conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions* (Obama, 2009:4) Obama has left the legal loophole open for torture by proxy. Nairn opines that what Obama is doing is that he is merely stopping the small

amount of torture by Americans but the majority of torture, done by foreign U.S. patrons, is left unscathed. This could even lead to an increase in torture (Nairn, 2009). By not taking responsibility the U.S. government is again setting itself up for the bipartisan torture policy of the Cold War. Human rights were seemingly supported but the covert way in which torture is outsourced, which has the advantage of producing plausible deniability for the U.S. will inevitably lead to another torture scandal (McCoy, 2009).

Ali al-Fakhiri's better known as Ibn al-Sheikh al-Libi eight-year torture interrogation and eventual *suicide* in a Libyan prison is very informative case study on this point. Al-Libi was regarded as the most important al-Qaeda member in U.S. custody. Pressure from the Bush administration on interrogators to prove a link between al-Qaeda and Iraq caused him to falsely state, while being tortured, that there was a direct link between al-Qaeda and the Iraq government. The impetus from the Bush administration was said not to focus on what he knew but using him to rationalize the war in Iraq (Macleod, 2009).

Initially Al-Libi was under Pakistani custody. Under U.S. custody he was held in Bagram in Afghanistan then USS Bataan after this he was held at a secret location in Egypt Guantanamo Bay. With the planned closure of Guantanamo Bay al-Libi was put under Libyan custody in Abu Salim prison by the Bush administration (Macleod, 2009). This move is exemplary of the move by the Obama administration to let other intelligence agencies do their bidding as policy and laws are enacted that force the closure of secret *black site* prisons. Recently six al-Qaeda members were caught but were not extradited to the U.S. but were put under the custody of four Mid-East countries. The two highest-ranking al-Qaeda members since the inauguration of Obama are under Pakistani custody and not American custody. The new director of the CIA, Leon Panetta, has said that the CIA might continue its program of extraordinary rendition as long as there are guarantees of the humane treatment of the detainees (Mazzetti & Schmitt, 2009). Al-Libi's *suicide* in Libya after eight years of imprisonment and during investigations into torture makes the timing of such a curious nature that the foreign guarantees posed by other states, that the Bush administration also relied on, should be questioned (Macleod, 2009) (Savage, 2009).

#### **5.4 Manufacturing Political Will**

The Obama administration could be said to be in an extraordinarily powerful position with regards to torture. It could choose to adjudicate responsibility for what happened by means of an enquiry. Over and above this the Obama administration can take responsibility for how torture is regarded by future and present generations by shaping the collective memory when torture as policy measure is at its most salient but as Nairn (2009) points out: *Obama could stop torture but he chooses not to.*

This poses considerable difficulty for a change in policy seeing that the U.S. president's de jure and de facto veto authority on security policy matters deadlocks any change on policy. It is therefore important that a policy shift away from torture is orchestrated outside of the executive (Huq & Schwarz, 2007). In policy studies this is referred to as a bottom-up approach to policy. In section four of the third chapter there was a brief focus on the linkage between public attitudes and governmental policy and some of the different ways in which it works. It was also found that the general American opinion on torture was ambivalent and that torture proliferates due to circumstance and psychological mechanisms common to all humans. These circumstances will cause the proposed bottom-up policy change plan to be ineffective except if the American populace can be educated about the ineffectiveness and dangers of torture as foreign policy and by means of the linkages between public opinion and governmental policy put a stop to the use of torture as foreign policy instrument. In this way political will will be manufactured by means of the general populace.

McCoy notes that this cyclic use of torture as foreign policy is characterized by firstly blaming *a few bad apples* and then arguing that torture helps keep the U.S. secure and lastly calling for national unity by stating that *we need to move forward together* as the Obama administration is doing now. The cases of U.S. torture in Vietnam (1970), Brazil (1974), Iran (1978), Honduras (1988) and in Latin America (1997) also fell under the public scrutiny but lack of action allowed torture to proliferate further. This time around outsourcing torture to other countries will most probably not protect the Obama administration as much as other forms of political insulation have helped to protect previous American administration from torture's backlash seeing that the U.S. use of torture has garnered unmatched levels of attention both locally and internationally since Abu Ghraib. *Unless some formal inquiry is convened to look into a sordid history that reached its depths in the Bush era, and so begins to break this cycle of deceit, exposé and paralysis followed by more of the same, we're likely, a few years hence, to find ourselves right back where we are now. We'll be confronted with*

*the next American torture scandal from some future iconic dungeon, part of a dismal, ever lengthening procession that has led from the tiger cages of South Vietnam through the Shah of Iran's prison cells in Tehran to Abu Ghraib and the prison at Bagram Air Base in Afghanistan (McCoy, 2006).*

An inquiry into torture is therefore of the utmost importance. The reason being is that the American history of torture is a contested idea. The way in which the recent torture debacle is framed makes the general public believe that this is an isolated event that does not need to be addressed seeing that it will not happen again and is not due to an ingrained policy process. This constitutes an abuse of history and should be addressed while torture is still a salient topic seeing that how this episode of torture is ingrained in the American political memory will depend on whether torture will be used as a foreign policy measure or not. If the abuses of Abu Ghraib and Guantanamo are seen as seen as isolated events and that torture is necessary to secure the safety of the U.S. then torture will proliferate again (McCoy, 2009).

This is especially so seeing that the Obama administration has reverted to the previous Cold War tactic of exporting torture to other countries. By doing this all promises of not using torture will not last (McCoy, 2009). On the other hand if these cases are judged to be the emergent property of a combination between a historical precedent, set 50 years ago, and a specific set of circumstances then it will be possible to stop the proliferation of torture by means of framing the torture debate in the correct manner by means of a formal inquiry. If done correctly this inquiry will affect the American perception towards torture in such a manner that torture will not be able to proliferate again.

### **5.5 The Church Committee as Historic U.S. Example of Inquiries**

Although the systemic use of torture during *The War on Terror* arguably represents the most institutionally condoned form of human rights abuses, since slavery, in American history it does have a very similar historical precedent. This precedent was rationalized by the fight against communism and substantiated by means of political rhetoric such as: *It is now clear that we are facing an implacable enemy whose avowed objective is world domination by whatever means and at whatever cost. There are no rules in such a game. Hitherto acceptable norms of human conduct do not apply. If the United States is to survive, long-standing American concepts of "fair play" must be reconsidered* which carries an uncanny resemblance

of the Dick Cheney's statement of working through *the dark side* in the fight against terrorism (Hayes, 2009).

In a 1974 exposé for the *New York Times* Seymour Hersh reported on the covert activities of the U.S. executive branch's agencies including the CIA, FBI and NSA. On the international front the U.S. government tried to overthrow the government in Chile, hire the Mafia to assassinate Fidel Castro and ordered the assassination of Patrice Lumumba of Congo by means of bio toxins. On the local front they tried to force Martin Luther King to commit suicide by sending him tapes of himself and his mistress with the message: *There is but one way out for you. You better take it before your filthy, abnormal fraudulent self is bared to the nation* (Hayes, 2007). They tested LSD on unsuspecting members of society, which resulted in the death of a civilian. As well as impeached on the fundamental rights to privacy and freedom of association by reading every telegraph sent to or from the US for more 30 years and surveying civil rights leaders and political activists during *Operation Chaos* (Hayes, 2009) (Huq & Hayes, 2007).

In reaction to these allegations the Senate launched *The Select Committee to Study Governmental Operations with Respect to Intelligence Activities*. This committee, colloquially and henceforth known as *The Church Committee* found that *Domestic Intelligence Activity Has Threatened and Undermined The Constitutional Rights of Americans to Free Speech, Association and Privacy. It Has Done So Primarily Because The Constitutional System for Checking Abuse of Power Has Not Been Applied* (The Select Committee to Study Governmental Operations with Respect to Intelligence Activities, 1976).

Additionally the Church Committee stated that the loss of checks and balances, that made the actions of the U.S. intelligence community feasible was resultant of the circumstances (the perceived communist threat) that lead to the centralization of power in the executive, the freedom of intelligence agencies to wield power on an unchecked basis, the misuse of secrecy in intelligence affairs and the active avoidance of the rule of law (The Select Committee to Study Governmental Operations with Respect to Intelligence Activities, 1976). From the previous chapter it should be noted that this dissertation's analysis of torture as a policy instrument matches the findings of the Church Committee on a point for point basis. The Church Committee temporarily succeeded in curtailing the U.S. intelligence community by installing relevant policy measures and appropriate oversight mechanisms.

### **5.5.1 Inquiries – Conditions for Inception**

After Maher Arar, a Canadian and Syrian citizen was extradited to Syria and tortured for a year a Canadian commission of enquiry was launched due to sustained media pressure. The commission found that Canadian intelligence produced false information that led to his extradition, torture and him eventually signing a false confession. The Canadian government officially apologized and Arar was financially compensated. This was one of the first instances where governments took responsibility for the consequences of participation in the *War on Terror* (Macklin, 2008: 12).

Arar's wife, Monia Mazigh's, decision to put Arar's ordeal in the public domain and run a well managed media campaign on his behalf was one of the reasons why Arar's rendition and torture were eventually investigated by a commission. This serves to show that public and media pressure are essential for getting human rights abuses to be investigated by governments (Macklin, 2008: 19). The fact that the Canadian government was under the rule of separate political parties during the rendition and the investigation also played a role into the investigation (Macklin, 2008: 20).

The role of the media, civil society and the international in applying sustained political pressure on the Obama administration can force the creation of a commission that will not only investigate ten cases that are only investigate breaches of the Office of Legal Council's memorandums but also the whole chain of command can therefore not be understated. In the American case it can be said that the change in political parties could also have a positive effect on the chances of a commission of enquiry but Obama reluctance to look at the past might be highly detrimental to this effort. The establishment of an inquiry into the use of torture to manufacture the political will not to torture can therefore be said to be the media and human rights group's responsibility.

### **5.5.2 Inquiries – Social Functions & Limitations**

An inquiry is a mechanism of addressing the wrongful deeds of public officials. The inquiry is independent of the government and although judges preside over them they are not trials. This means that commissions do not sentence officials although commissions are authorized to do fact-finding and launch investigations that can then be used in trials. Policy recommendations will also be made such as oversight mechanisms for intelligence agencies such as in the case of the Church Commission. Commissions also serve the important social function of informing the general public what exactly happened during a troublesome event (Macklin, 2008: 22).

In this way an inquiry serves the purpose of making what happened part of the political memory. In most instances remembrance is not a natural process but it lies open to political influence and ruling regimes makes us of history in such a way that it serves as a strategic resource (Knauer & Walkowitz, 2004: 4 & 189) seeing that the understanding of the past has important political consequences (Hodgkin & Radstone, 2003: 1). In relation to torture and commission of inquiry political influence can be achieved in several ways: The further proliferation of torture will can be achieved by intentionally prolonging the commission. In that way public scrutiny will be diverted until public interest on the matter starts to wane (Macklin, 2008:14). Another matter investigating intelligence organizations is the fact that the function of generating publicity if the correct facts pertaining to a troublesome event are that some of the information should be kept confidential for national security purposes (Macklin, 2008: 22). The rationalization affirms that full disclosure of the facts during a commission will inevitably lead to a breach in national security seeing that the information is of such as sensitive type and should therefore not be made public knowledge. This prolongs the time between the abuses and the inquiry itself which will lead to further difficulties in ascertaining the truth. Proponents of torture in America have also tried to rid themselves of responsibility by means of destroying evidence seeing that the CIA has already destroyed 92 interrogation videotapes in anticipation of an inquiry (McCoy, 2009).

The perception that torture is an effective means of gathering intelligence is exceptionally troublesome for the establishment of an inquiry although chapter one has proven it limited utility. This view is purported by the politicians that have been shown to have supported the used of *advanced interrogation techniques*. The newest example of which are the two much anticipated CIA memorandums that were declassified on the 24<sup>th</sup> of August 2009 after an extended campaign by the former vice-president Dick Cheney. The memorandums, that are

heavily censored, do not prove that *advanced interrogation techniques* work although they are said to do so. Tom Parker, the policy director of Amnesty International America opined that: *Perhaps unsurprisingly, given Vice President Cheney's track record, the two CIA memos released today are hardly the slam dunk we had been led to expect. There is little or no supporting evidence in either memo to give substance to the specific claims about impending attacks made by Khaled Shaik Mohammed in highly coercive circumstances* (Ackerman, 2009).

The reason for purporting the alleged utility of torture is quite logical. Admittance of a mistake of this magnitude would be tantamount to admitting to a gross violation of human rights and would make the perpetrators liable to criminal investigations. One of the reasons that torture is therefore still used in democracies is the fact that the perception that it works serves certain individual's political interests and protects their liberty. This perpetration of obscure justifications of why torture is integral to counter terrorism also has the added effect that it appeases the public into silence seeing nobody will actively work against something if they assume that it is important for their safety. In actual fact a U.S. major who makes use of rapport-based techniques has reported that many of the new al-Qaeda recruits come to al-Qaeda because they have heard of the human rights abuses that have been done at Abu Ghraib and Guantanamo (Cockburn, 2009).

The Church committee temporarily succeeded in stopping the misuse of power by the CIA by means of creating oversight mechanisms for intelligence organizations such as the Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence but within only two decades have these regulations have been misused to proliferate torture, for example, by means of the misuse of the presidential Group of Eight privileges under the Intelligence Oversight Act of 1980 (Hayes, 2009) (Mazetti & Shane: 2009). This is not to say that the Church Committee was unsuccessful but rather to state that these forms of enquiry only go half way in eradicating the social malaise which they address seeing that their primary social function is to get to the truth surrounding a certain matter and inform policy surrounding it (Macklin, 2008: 22). The use of torture is a cyclic phenomenon in American politics and committees to not operate as watch dogs over policy or help in sustaining the needed public and political attention torture will resurface as it has in the past. Commissions therefore create the political memory but they do not sustain it.

## 5.6 Monuments and War Memorials - Additional Measures to Stop Torture

What is needed in addition to a committee is a measure that will make the use of torture and the correct sequence of events part of the American society's political memory on a sustained basis. Monuments fulfils the purpose of being sources of collective memory (Knauer & Walkowitz, 2004: 189) and they address a country's political history. Most importantly they *tell us that the moment we become unwilling to do the actions that an idea entails, at that moment the idea dies: It becomes a form, a thing to be paid lip service, or a target of cynicisms* (Mayo, 1988: 74-75). This is especially true in the case of torture throughout the last 50 years of American history. The use of torture has not formed part of the political memory of Americans and through a type of forgetfulness torture has proliferated and even got institutionalized while human rights has only been paid lip service to by politicians.

Memorials are an ideal way of dealing with political forgetfulness in relation to human rights issues seeing that the social purpose that memorials serve are the declaration of the complete hierarchy of human values such as identity, service, honour and humanitarianism in ascending order. Humanitarianism is the highest social purpose of memorials seeing that it not only serves a way of remembering wars but also as a way of questioning it and its means. In this sense memorials that represent humanitarianism serves as a reminder of the cultivation of humanity. Examples of these are the preservation of prison camps and sites of massacres than *counter inhumanity with humanity*. These types of memorials serves the whole spectrum of human values seeing that it states that something of importance happened, a service is done by educating present and future generations, honour is bestowed on victims and above all humanitarianism is expressed by pleading that inhumanity should not be forgotten and should not be allowed to be repeated (Mayo, 1988: 64-67).

It is therefore of the utmost importance that the findings of the commission be as accurate as possible and that the maximum possible amount of disclosure is achieved so that the American public will know exactly what the memorial represents because a particular purpose and sentiment provides meaning to memorials while memorials reciprocally reinforce and sustain the values and goals that correspond to the sentiment (Mayo, 1988: 62-64).

## **5.7 Conclusion**

This chapter's focus was an investigation into possible approaches to stop the proliferation of torture. Although approaches such as legislation, monitoring exist and other measures such as warrants are debated the fact still stands that all these measures are of questionable utility without the existence of political will. The Obama administration's stance towards torture serves as an indication of the amount of political will to sop the use of torture. In the present absence of political will policy against torture should be done by means of a bottom-up approach of manufacturing political will. Seeing that the political will to stop torture is not present and the American public is ambivalent about the use of torture the onus falls on the free press, civil society organizations and the international community to manufacture the necessary political will.

Recommendations were made based on the previous successes of the Church committee that addressed a similar set of circumstances. The utility of inquiries were shown to be that inquiries are capable of investigating a matter of public interest on an independent basis and inform the public. The one shortcoming of inquiries is that they create the political memory but they do not sustain it. By not sustaining a political memory the U.S. government and citizenry are bound to make the same mistake again seeing that the use of torture is a cyclic phenomenon. It was found that one way in which political memory can be sustained is by means of memorials that reflect and sustain the sentiment that torture is a futile practice that should not be attempted.

## 6. Concluding and Evaluative Chapter

Chapter 2 – *The Limited utility of Torture* has proven that torture is not an effective means of gathering intelligence outside of the narrow theoretical confines of the seductive ticking time bomb argument. It was found that two sets of reasons exist for this. Firstly, in practical terms the dynamics of torture was shown to be of such a nature that it will not necessarily lead to truthful information due to psychological and physiological reasons. Secondly, torture does not exist within an institutional vacuum and was shown to have extremely hazardous effects on the medical and psychological professions, the judiciary, torturers, intelligence gathering institutions, the military, society, democracy and the international rule of law. *The Limited utility of Torture* ends by posing the first research question of how torture can still be used in modern democracies even though torture is known to be an ineffective means of gathering intelligence.

This abovementioned research question was partly answered in Chapter 3 – *The Social Model of Torture* where the U.S. societal dynamics in relation to torture was examined. It found that the American public opinion towards torture is ambivalent and that the American public also falls for the seductiveness of the torture argument in the guise of the ticking time bomb argument. Practical reasons for this include low levels of knowledge about events surrounding the abuses at Abu Ghraib and Guantanamo. Social-psychological reasons for this include the in-group out group bias, just world thinking, the resemblance criterion, the availability heuristic and the *War on Terror* as political ideology. From the analysis of the supply of torturers it was found that anybody is likely to torture if the correct circumstances are in place. The role of legitimate authority and group dynamics was found to be important circumstantial factors as illustrated by means of the Milgram's Obedience Experiment and the Stanford Prison Experiment.

The second part of the answer to the first research question is treated in Chapter 4 – *The Systems Political Model of Torture* which focuses on the political process surrounding the decision to use torture as foreign policy measure. It finds that although the events of 9/11 and the threat caused by al-Qaeda did play an important role in making torture part of U.S. foreign policy the U.S. government has extensively used torture in the past and this is not their first

foray into torture. By examining the ways in which torture was made part of U.S. foreign policy it is illustrated that the use of torture was a decision at the top echelons of government and that this decision was made possible by the failure of international and domestic checks and balances. On the international front U.S. unilateralism in the post-cold war political system and the political ideology of the neo-conservatives are cited as reasons for this decision. On the domestic level a constant *rally around the flag effect* caused by the *War on Terror* has led to unquestioned governmental power by means of the disappearance of the so-called *loyal opposition*.

Chapter 5 – *How to Stop Torture* answers the second research question of what can be done to stop the use of torture by means of using the lessons learnt in the previous chapters. It finds that traditional approaches such as monitoring and legislation are not effective means of stopping the use of torture if the political will to stop using torture does not exist. The amount of political will needed to put a stop to torture in was found to be lacking in the Obama administration. This led to a discussion on ways in which political will can be manufactured by the international community, free press and civil society organizations by applying political pressure for the inception of a commission that will bring all the relevant facts about the U.S. use of torture as foreign policy instrument to light. A historic analysis of the Church Commission has shown commissions to be effective in stopping human rights abuses by fact-finding and creating the political memory. One of the shortcomings of commissions was found to be that they do not sustain this political memory and over time these abuses start again albeit in a slightly different form. The argument is then made that a monument or war memorial in conjunction with a commission will stop torture by reminding the American public of its futility on a permanent basis.

### **6.1 Aim and Main Findings of the Study**

The aim of the study was to investigate why torture is still used even when it was found that torture is not an effective means of gathering intelligence and what can be done to stop its use. It was found that beyond the narrow theoretical confines of the ticking time bomb argument that torture is not an effective means of gathering information and that competent interrogators prefer rapport-based techniques. The reasons for this is that a host of psychological and physiological reasons exist that causes the use of torture not to lead to the truth surrounding an intelligence matter. It was also found that torture does not operate within

an institutional vacuum and that torture also has an adverse effect on a wide array of institutions.

From the societal perspective it was found that the American public opinion was constantly ambivalent towards torture although they support laws against human rights abuse. This ambiguity was found to be caused by the ticking time bomb argument and social-psychological reasons such as the in-group out-group bias and just world thinking. The role of the *War on Terror* as political ideology was also found to be of importance in influencing American public opinion. Political policy making and public opinion was also shown to be connected in a multitude of ways. It was also discovered that depending on the circumstances any person can become a torturer.

It was found that the abuses at Abu Ghraib and Guantanamo Bay was not the work of *few bad apples* but formed part of a deliberative and historic governmental process to make torture a legitimate part of U.S. foreign policy. This political decision was caused by means of the failure of checks and balances. On an international level the checks and balances fell away due to U.S. unilateralism in their foreign policy. On an domestic level the democratic checks and balances fell away due to a permanent rally around the flag effect brought on by means of permanent mobilization due to the *War on Terror*.

The traditional approaches towards torture were found to be ineffective without the necessary political will to stop torture. This very political will is lacking in the Obama administration and the only means of completely stopping torture in the American case study as by means of manufacturing political will. Political will can be manufactured by means of an in-depth inquiry into the U.S. use of torture and the erection of a monument to make the atrocities and a willingness to stop it part of the U.S. political memory.

## **6.2 Success of the Research Methodology**

Although the research methodology could be described as a success in terms of the systematic literature review the case study approach taken to the use of torture ca be said to be problematic when used without due caution. The reason for this is that the case study focused almost exclusively on the U.S. use of torture. Seeing that the U.S. government has a unique function in the world political system the lessons learnt and suggestions that where made are probably not wholly applicable to other democracies that use torture. These lessons and

suggestions should therefore be applied with caution when used on other cases seeing that findings from case studies can not be applied without further analysis.

### **6.3 Lessons Learnt**

At first it was believed that the use of torture by the Bush administration was an emergent property of the situational circumstances of a post 9/11 United States. The work of McCoy (2009) was instrumental in displaying that the U.S. government has relied on torture on a systematic basis for the past 50 years. This information also led to discovery of this historic tendency within the Obama administration.

Torture was also shown to be a very complex and dangerous problem that requires a cross-disciplinary focus. The lack of a unified theory surrounding torture is very problematic and academics should make themselves available for a collaborative study of torture. The notion that torture works or can be condoned under certain circumstances slows the rate of progress towards this effort to stop the use of torture on a permanent basis by dividing academic and policy makers in two different camps.

In stopping the human rights abuses the importance of civil society, the free press and the international community was shown to be of immense importance. The main lesson of this dissertation could therefore be said to be that active participation in civil society within democratic states is not a luxury but a responsibility.

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