

10. Torture and the Paradox of State Violence

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Our approach to torture in this paper is primarily criminological rather than philosophical. We are opposed to torture (and we regret that this should seem worth saying), but we leave it to other contributors to spell out the normative reasons why torture is wrong. What interests us as criminologists is *how* state agencies and individual officials come to order, condone or engage in torture. We draw on sociology, psychology and anthropology to try and understand this phenomenon. We also try to make some connections between the social science literature and the philosophical debate.

This paper derives from a much larger project which centres on the concept of 'state crime' and its place in criminology.¹ Recently we have become interested in the work of Norbert Elias² and the light it can shed on both state and anti-state violence.³ Elias interests us because of the connections he makes between macro-social processes of state formation and individual sensibilities. Specifically, he argues that the development of a state monopoly of violence is linked, in complex ways which we cannot go into here, to the development of sensibilities which increasingly abhor interpersonal violence. Spierenburg drew on Elias's work to explain the abolition of torture in the European enlightenment.⁴ Rationalist critiques of torture's ineffectiveness as a truth-finding device, he argues, long predated the abolition of torture but only became effective because a change in sensibilities made cruelty abhorrent.

Elias's theory raises an obvious problem, which we call the 'paradox of state violence'. If states depend on a monopoly of organized violence (using the term, as Elias's translators do, in a broad and morally neutral sense), but cultivate an abhorrence of violence, why does this not lead to abhorrence, or at least deep unease, at the state's own practices? Elias was well aware of this paradox or 'contradiction' (1987: 81) but he says frustratingly little about how it is resolved.

- 1 See P. Green and T. Ward, *State Crime: Governments, Violence and Corruption* (London: Pluto Press, 2004)
- 2 N. Elias, *The Civilizing Process*, trans. E. Jephcott (rev ed., Oxford, Blackwell, 2000)
- 3 T. Ward and Young, 'Elias, Organised Violence and Terrorism' in M. Mullard and B. Cole (eds.) *Globalisation, Citizenship and the War on Terror* (Cheltenham, Edward Elgar, 2007), P. Green and T. Ward 'Violence and the State' in J. Sim, S. Tombs and D. Whyte (eds.) *State, Power, Crime* (London, Sage, 2009).
- 4 P. C. Spierenburg, *The Spectacle of Suffering* (Cambridge: Cambridge University Press, 1984), pp. 188-90.

A. Three solutions to the paradox

There appear to be three possible resolutions to the paradox, so far as torture or any other type of state violence, is concerned:

- (i) It is incompatible with humane sensibilities and therefore unacceptable;
- (ii) It is compatible with human sensibilities so long as it is used in a rational, rule-bound manner which contributes to the state's overriding goal of maintaining and protecting the pacified social spaces in which 'civilized' life is possible;
- (iii) It is incompatible with humane sensibilities but nevertheless acceptable, because certain persons in certain situations are exempt from civilized restraints.

For the sake of logical completeness we should perhaps add a fourth possibility. Some practices may be seen as compatible with humane sensibilities but nonetheless unacceptable for some other reason, for example because, like the methods of conditioning in Burgess's *A Clockwork Orange*, they deny the value of free will. It is unlikely that many people take this attitude to torture.⁵

Solutions (i) to (ii) seem at first sight to define three clear-cut and mutually exclusive attitudes towards violence, and we shall show that elements of these three solutions can be found in the contemporary debate about, and practice of, torture. The practice of torture, however, rarely exemplifies either (ii) or (iii) in pure form. It is, rather, the interplay between them that makes torture possible.

I. Legal humanitarianism: torture as taboo

The state's use of force is supposed to be legitimate in accordance with humane sensibilities because it is used in a parsimonious and humane fashion to protect citizens against violence. If the humane, civilized, use of force is opposed to barbaric violence, then the epitome of barbarism, the thing no civilized official would do, is torture.

Legitimate state violence comes in three main forms, policing, punishment and warfare.⁶

Policing relies on the use of force as an ever-present possibility (Bittner 1981). In theory, in liberal societies, force is only ever used as last resort and to the minimum extent necessary. The craft of good policework consists largely in avoiding recourse to force except as a last resort.⁷ Of course, a large literature testifies that the reality is

5 A. Burgess, *A Clockwork Orange* (Harmondsworth, Penguin, 1972).

6 H. Steinert, 'The Indispensable Metaphor of War: On Populist Politics and the Contradictions of the State's Monopoly of Force', *Theoretical Criminology* 7 (2003): 265-91

7 Ibid.; W. K. Muir, *Police: Streetcorner Politicians* (Chicago, University of Chicago Press, 1977).

often different;⁸ but torture, officially at least, is the antithesis of legitimate police work. The temptation to torture is nevertheless a recognised ethical problem for police officers, as the much discussed ‘Dirty Harry problem’ indicates.⁹

Punishment involves the deliberate infliction of suffering, but a major penal trend in post-enlightenment societies is away from the infliction of suffering by direct violence to the body.¹⁰ Even the death penalty is supposed to be administered with a minimum of physical pain. Force is used (officially) only to get the offender to comply with the punitive measures. Again, torture epitomizes the barbarous ‘other’ to modern, humane, penal practices. It is what Waldron calls a ‘legal archetype’, by which judges and officials assert their civilized credentials:

The prohibition on torture is expressive of an important underlying policy of the law Law is not brutal in its operation. Law is not savage. Law does not rule through abject fear and terror, or by breaking the will of those whom it confronts. If law is forceful or coercive, it gets its way by nonbrutal methods which respect rather than mutilate the dignity and agency of those who are its subjects. The idea is that even where law has to operate forcefully, there will not be the connection that has existed in other times or places between law and brutality.¹¹

Waldron observes in a footnote that those who, like the late Robert Cover, believe that the central feature of law is ‘that it works its will “in a field of pain and death”’ will be unimpressed by his argument.¹² We would suggest, however, that both Cover and Waldron are right: the ‘legal archetype’ is important precisely *because* of the legitimacy it confers on law’s violence.

Warfare, involving as it does the infliction of death and destruction on an immense scale, poses the paradox of state violence in its most acute form. It does not fit easily into a humanistic paradigm, despite being governed by something called ‘international humanitarian law’. Even in warfare, however, there is a taboo against intimate, asymmetrical violence. You may kill large numbers of people who pose no immediate threat to you if you do it anonymously, at a distance, by bombing, missiles or gunfire. Or you may kill at close quarters in a desperate struggle, where it’s a question of kill or be killed. What you may not do is wilfully to kill or torment helpless prisoners, civilians or wounded enemies at close quarters. Even warfare, in its ‘civilized’ form, is antithetical to torture.¹³

- 8 E.g. J. Skolnick and J. J. Fyfe, *Above the Law* (New York, Free Press, 1993); W.A. Geller, and H. Toch (eds.) *Police Violence* (New Haven, CT, Yale University Press, 1996).
- 9 C. B. Klockars, ‘The Dirty Harry Problem’ *Annals of the American Academy of Political Science* 452 (1980): 33-47. See also Steinhoff, Ch. 2 above.
- 10 M. Foucault, *Discipline and Punish* (Harmondsworth, Penguin, 1977); Spierenburg, *Spectacle of Suffering*.
- 11 J. Waldron, ‘Torture and Positive Law: Jurisprudence for the White House’ *Columbia Law Review* 105 (2005): 1681-1750, p. 1720.
- 12 Ibid., n. 207, quoting R. Cover, ‘Violence and the Word’ *Yale Law Journal* 95 (1986): 1601-1629, p. 1601.
- 13 The claim of ‘civilized’ mass killing to moral superiority over ‘barbarous’ violence against civilians is, of course, debateable: see for example P. Richards *Fighting for the Rain Forest: War, Youth and Resources in Sierra Leone* (Oxford, James Currey, 1996); B. Grosscup, *Strategic Terror: The Politics and Ethics of Aerial Bombardment* (London, Zed, 2006).

II. Bureaucratic instrumentalism: acceptance of regulated torture

Unlike most instances of interpersonal aggression, state violence is commonly depicted as being disciplined and rational. In hierarchical organizations, it is commonly the case that those who calculate whether violence is necessary are not those who carry it out. Thus the agents of violence can differentiate themselves from those who display ordinary aggression, because they do not act on the basis of their own emotions or desires but at the behest of others, and because they do not act for their own ends but for some greater good which their superiors have calculated that their actions will serve.

Systematic and sustained torture practices seemingly cannot exist independently of bureaucratic structures which maintain organizational hierarchies of ‘facilitators and perpetrators’. Huggins’ work on Brazilian torturers reveals that one of the chief distinguishing features between police officers who became torturers and those who did not – indeed the most important predictor of torture – was ‘membership of an elite and/or physically separate and insular police operations or intelligence unit.’¹⁴ No-one could torture routinely unless they were associated with an interrogation squad. It is in this sense that Rejali has argued that ‘there is no such thing as “THE torturer”...to speak of the torturer abstracts the fact that the torturers are all situated in an institution known as the State. It disguises a complex institutional and social relationship as a relationship between two individuals.’¹⁵ While accepting Rejali’s rationale we nonetheless see value in understanding the psycho-social processes which act upon individuals in the process of discivilization.

The experiments of Stanley Milgram indicate the importance of the ‘agentic state’ in which individuals see themselves as passively carrying out the decisions of those in authority.¹⁶ In such circumstances conscience alone is not enough to dissuade people from engaging in barbarous behaviour. In the face of authoritative commands the temptation to be resisted is in fact to follow one’s own humane sensibilities.¹⁷ But obedience to ‘authority’ as a psychological trait is to be distinguished from ‘obedience to violent authority’.¹⁸

Most torture regimes authorize, through legal means, violence against perceived enemies.¹⁹ Legitimizing state violence in the case of torture also requires the deployment of public justifications which most commonly take the form of utilitarian

- 14 M. K. Huggins, M. Haritos-Fatouros, and P. G. Zimbardo, *Violence Workers: Police Torturers and Murderers Reconstruct Brazilian Atrocities* (Berkeley, University of California Press, 2002).
- 15 D. Rejali, *Torture and Modernity* (Boulder, Westview, 1994) p. 9.
- 16 S. Milgram, *Obedience to Authority* (New York, Harper & Row, 1974).
- 17 H. Arendt, *Eichmann in Jerusalem* (Harmondsworth, Penguin, 1965), p. 150.
- 18 M. Haritos-Fatouros, *The Psychological Origins of Institutionalized Torture* (London, Routledge, 2003).
- 19 E. Peters, *Torture* (Philadelphia, University of Pennsylvania Press, 1996); R. D. Crenstein, ‘The World of Torture: A Constructed Reality’, *Theoretical Criminology* 7 (2003): 293-318

arguments advancing a greater good. The fact that these have been consistently discredited and rejected in case law²⁰ has not it seems reduced their persuasive power.

In his critique of US legal and academic apologies for torture, David Luban calls the utilitarian approach ‘the liberal ideology of torture’.²¹ It would be misleading to suggest that *only* liberals embrace this ideology. As Huggins demonstrates, authoritarian Latin American regimes consistently justified their employment of torture in utilitarian terms. The ticking bomb scenario, which Luban sees as the keynote of the ‘liberal ideology’ and expounded most recently by Harvard Professor Alan Dershowitz, has a long and undistinguished pedigree.²² But utilitarianism is, Luban argues, the only ideology of torture most liberals could be tempted to embrace.²³ Like the humanitarian solution, it is predicated on a rejection of cruelty. Pain is to be administered parsimoniously, within a rational framework, and only in accord with strict legal rules (e.g. with a torture warrant issued by a judge, subject to judicial review and accountability). It is to be future-oriented, serving the state’s highest goal – the prevention of greater violence. Torture is to be highly managed and clinically maintained: while Ignatieff favours what he sees as more ‘acceptable’ forms involving stress-induced or psychological violence,²⁴ others from the same utilitarian perspective offer suggestions including the insertion of sterilized needles under the finger nails and dental drills applied to un-anaesthetized teeth.²⁵ In so-called ‘torture lite’, direct physical contact is generally to be avoided: the key techniques are sensory deprivation and ‘self inflicted pain’ caused by standing for hours in stressful positions.²⁶ Such methods are depicted as ‘light years away from real torture and hedged about with bureaucratic safeguards...nothing to do with the Abu Ghraib anarchy’.²⁷ Those who reject them, we are told, ‘have missed at least one half of the humanitarian equation – and the better half at that’.²⁸

- 20 N. S. Rodley, *The Treatment of Prisoners Under International Law* (Oxford, Clarendon, 1999), pp. 80–84.
- 21 D. Luban, ‘Liberalism, Torture and the Ticking Bomb’ in K. J. Greenberg (ed.) *The Torture Debate in America* (Cambridge, Cambridge University Press, 2006), p. 36.
- 22 A. Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (New Haven, CT, Yale University Press, 2002).
- 23 Steinhoff, Ch. 2 above provides an ostensibly non-utilitarian, ‘rights-based’ defence of torture in ‘Dirty Harry’ situations, but not of *institutionalized* torture which is what concerns us here.
- 24 M. Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror* (Edinburgh, Edinburgh University Press, 2005).
- 25 Dershowitz, *Why Terrorism Works*.
- 26 A. W. McCoy, *A Question of Torture: CIA Interrogation from the Cold War to the War on Terror* (New York, Owl Books, 2006).
- 27 H. MacDonald, ‘How to Interrogate Terrorists’ in Greenberg, *Torture Debate*, p. 84.
- 28 L. A. Casey and D. B. Rivkin, ‘Rethinking the Geneva Conventions’ in Greenberg, *Torture Debate*, p. 211

III. Licensed barbarism: exempting torturers from restraint.

The third solution to the paradox of state violence which posits simply that, in certain situations, agents of the state do not transgress civilized inhibitions on interpersonal violence and cruelty because they are exempt from them. This is not a position one often finds clearly stated in the philosophical and ethical literature; but an honourable exception – in that he states the position only in order to denounce it – is Stephen Holmes:

To respond to the savages who want to kill us, we must cast off our Christian-liberal meekness and embrace a ‘healthy savagery’ of our own. We must confront ruthlessness with ruthlessness. We must pull out all the stops. After victory we will have plenty of time for civility, guilt feelings and the rule of law.²⁹

For Holmes, this is the subliminal message behind various political and legal arguments of the US administration. Holmes suggests that torture is emotionally satisfying because it mirrors the characteristics imputed to the enemy; to rephrase his argument in anthropological terms, torture is a *ritually*, rather than rationally-instrumentally, appropriate response to terrorism because it is based on the principle of *mimesis*, the re-enactment of the violence it is intended to counter.³⁰

For Elias, the civilizing process involves a renunciation of this kind of ‘magical thinking’ in favour of a more ‘detached’ attitude which, though less emotionally satisfying, enables human beings to respond to their environment more effectively.³¹ Such detachment, however, is much easier to attain in relation to natural phenomena, which can be understood as the manifestation of impersonal forces, than towards acts of violence which are the product of human agency. Even in the most pacified societies, the urge to respond to malevolent human action by revenge or retribution, rather than a calm and detached search for the most effective means of preventing a recurrence, remains strong.³² Elias feared that the triumph of such emotionally involved responses over rational analysis would bring about nuclear annihilation, and the same risks can be seen in the war on terror.

- 29 S. Holmes, ‘Is Defiance of Law a Proof of Success? Magical Thickening in the War on Terror’ in Greenberg, *Torture Debate*, p. 127.
- 30 See M. Taussig, (2002) ‘Culture of Terror – Space of Death: Roger Casement’s Putumayo Report and the Explanation of Torture,’ in A. L. Hinton, (ed.) *Genocide: An Anthropological Reader* (Oxford, Blackwell, 2002); C. K. Mahmood, ‘Trials by Fire: Dynamics of Terror in Punjab and Kashmir,’ in J. A. Sluka, (ed.) *Death Squad* (Philadelphia, University of Pennsylvania Press, 2000); Ward and Young, ‘Elias, Organised Violence and Terrorism’.
- 31 N. Elias, *Involvement and Detachment* (Oxford, Blackwell, 1987).
- 32 D. Garland, *The Culture of Control* (Oxford, Oxford University Press, 2001).

From the point of view of bureaucratic instrumentalism, the ideal torturer would be thoroughly detached, applying pain without emotional satisfaction or distress in order to achieve organizational goals.³³ It seems psychologically implausible, however, that this attitude could be sustained for long. As Haritos-Fatouros argues, mere obedience to a supposedly legitimate authority may be sufficient to explain why people are willing to inflict torture for brief periods while under the supervision of an authority figure, as in the notorious Milgram experiments, but ‘Milgram’s model ... does not explain obedient torturing or killing over a long period in the absence of authority’.³⁴

A method adopted by some torturing regimes to free their torturers from humane inhibitions is to initiate future torturers, suddenly and dramatically, into a secret world in which the rules, expectations and rationality of ordinary life do not apply.³⁵ Recruits are first broken down by being subjected to arbitrary violence and senseless orders, and then inducted into an elite that obeys no laws except the orders of superior officers. During the period of the Greek Junta, for example, officers within the Special Interrogation Section (ESA) were afforded extraordinary powers. Even low ranking members had the power to stop and arrest military personnel of any rank.³⁶ A strategy of affording unlimited authority to torturers, training them out of humane sensibilities while dehumanizing their potential victims, instils a sense of extraordinary power in otherwise ordinary people:

‘The officers would tell us that the prisoners were worms and we had to crush them, they were Communist, enemies of the state; they told us that ESA men could kill and not be judged by anybody; they said an ESA man was equal to an army major’³⁷

Once a torturer has been ‘created’ what commonly follows is a social – psychological process through which ‘perpetrators develop an intense, fanatic commitment to some higher good and supposed higher morality in the name of which they commit atrocities’.³⁸ Staub argues that this higher moral ideology combines with a differentiated self (in which the torturer is able to exclude targeted groups from his ‘moral universe’) to produce a person capable of inflicting extreme and inhumane violence.

These psychological insights call into question any attempt to justify the bureaucratic instrumentalist to torture on utilitarian grounds.³⁹ For a utilitarian, each person’s pain counts equally. It seems almost inconceivable that any torturer could do

33 J. Wolfendale, ‘Training Torturers: A Critique of the “Ticking Bomb” Argument’, *Social Theory & Practice*, 32, no.2 (2006): 269-87, p. 273

34 Haritos-Fatouros, *Psychological Origins*, p. 160.

35 Huggins *et al.*, *Violence Workers*; Haritos-Fatouros, *Psychological Origins*.

36 *Ibid.*, p. 34.

37 ‘A’ (former torturer), quoted *ibid.*, p. 34

38 E. Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (Cambridge, Cambridge University Press, 1989), p. 64.

39 See Wolfendale, ‘Training’.

his job while accepting the equal moral worth of his victim. For utilitarian reasons – to reduce the potentially overwhelming psychic costs of torture to the torturer – the latter has to learn to regard the former as less than human, or as an evil person who deserves to suffer. But having learned that, the torturer will hardly be motivated to use torture in the parsimonious way that utilitarianism advocates.

Seemingly irrational initiation rites alternating unpredictably between lenience and severity were rationally designed to encourage in cadets obedience without question to orders without logic.⁴⁰ Within this framework disturbing, violent and debasing practices may be seen as part of a rational paradigm in which exposure to authoritative, irrational and nonsensical violence delivers the torturer into a world in which previously held norms and sensibilities no longer apply, no longer correspond to the new reality. The torturer enters a bureaucratically defined torturing space where traditional rules of engagement and humane sensibility give way to violence without borders.

Would be torturers are brutalized and humiliated but at the same time they are encouraged to see themselves as superior and elite members of a state which at all costs must be protected.⁴¹ Those who threaten that state are ideologically and systematically dehumanized so that acts of great cruelty against them are diminished in affect for the torturer. There is a tacit recognition by torture trainers of the stress and resistances which accompany the infliction of torture violence and training involves a myriad of social modelling and systematic desensitization techniques to counteract those inhibitions to violence.⁴² The apparent irrationality embodied in the training experienced by torturers and their subsequent behaviour is, from the perspective of a torturing regime, brutally rational. To create torturers who will be unrestrained in their delivery of violence against targeted populations is always part of a wider strategy of counterinsurgency and provides a lethal tool in the cultivation of fear and control. Licensed violence exists *within* a bureaucratic-utilitarian strategy, not in opposition to it. Within an Eliasian perspective, Abram de Swaan has captured this synthesis well in his concept of *enclaves of barbarism*.⁴³

Torture and other forms of state terror seem to be both rational and irrational;⁴⁴ there is a dialectic between the civilizing process and barbarity. Elias argues that state formation leads to a civilizing process which diminishes interpersonal violence (and indeed state violence). The civilizing process also involves the recognition of at least a minimal level of equality, so that in at least limited respects all persons are seen as entitled to protection and humane concern (hence the unacceptability of

40 Haritos-Fatouros, *Psychological Origins*, p. 34

41 Ibid.; Huggins et al., *Violence Workers*; J. T. Gibson, 'Factors Contributing to the Creation of a Torturer' in P. Suedfeld (ed.) *Psychology and Torture* (New York, Hemisphere, 1990);

42 Ibid., p. 85.

43 A. de Swaan, 'Dyscivilization, Mass Extermination and the State', *Theory, Culture & Society* 18(2001): 265–276.

44 Green and Ward, *State Crime*, pp. 111–6.

slavery).⁴⁵ But Elias also indicates that sometimes the civilizing process does not accord all citizens equality. Certain groups within society (for reasons relating to state and identity) may be excluded from the protection generally afforded by the state's monopoly of violence. This exclusion exposes these groups not only to higher degrees of interpersonal violence but more significantly to all the violent resources of the state. If we accept Elias's later position⁴⁶ that civilization is, in fact, a precarious and reversible process, then 'order *and* barbarism, design *and* impulse, organization *and* wildness'⁴⁷ may exist concurrently. Within the civilizing process runs a counterflow, so that while the state promotes civilized modes of behaviour it is also capable of extreme and barbarous violence against those sections of its own population or of other societies not afforded the same degree of protection.

In de Swaan's view, the key feature of the 'bureaucratization of barbarism' is the *compartmentalization* of the target population, the sites of torture or murder, the roles of the perpetrators, and their emotional experiences:

wildness and brutality are let loose, or maybe even instilled, and at the same time instrumentalized, for specific purposes, within demarcated spaces at an appointed time: an archipelago of enclaves where cruelty reigns while being reined in all the while.... [T]he regime creates and maintains compartments of destruction and barbarism, in meticulous isolation, almost invisible and well-nigh unmentionable.⁴⁸

The well-documented practices of past authoritarian regimes like those of Argentina, Brazil and Greece, clearly fit this model, but so in many respects do the practices of the 'war on terror'. There are, of course, very significant differences. Rather than enclaves *within* the society from which torturers are drawn, the American enclaves are physically remote from it, and with a few well-known exceptions the captives are not US citizens. Abu Ghraib was situated not in a pacified society but in the heart of a war zone, though it did constitute an 'enclave' within the command structures of the US military.⁴⁹ Perhaps partly for these reasons, the creation of torturers does not appear to require anything resembling the fearsome initiation rites documented in Brazil and Greece. The USA is not a totalitarian state and torture faces serious challenges from civil society and elements of the judiciary,⁵⁰ the political class and – perhaps most significantly – from within the military hierarchy.⁵¹ Nevertheless, the use of torture within the 'war on terror' does appear to fit de Swaan's

45 T. L. Haskell, 'Capitalism and the Origin of Humanitarian Sensibilities', *American Historical Review* 90 (1985): 339-361, 546-576

46 See especially N. Elias, *The Germans* (Cambridge, Polity, 1997)

47 de Swaan, 'Dyscivilization', p. 267

48 *Ibid.*, p. 269

49 Maj-Gen. A. M. Taguba, *Article 15-6 Investigation of the 800th Military Police Brigade* <http://www.npr.org/iraq/2004/prison_abuse_report.pdf> (accessed 21 July 2008) pp. 38-44.

50 Notably the majority of the Supreme Court in *Hamdan v. Rumsfeld* 126 S. Ct. 2749 (2006), overturning President Bush's decision that Common Article 3 of the Geneva Conventions did not apply to 'illegal combatants'.

51 McCoy, *Question*; P. Sands, *Torture Team: Deception, Cruelty and the Compromise of Law* (London, Allen Lane, 2008).

concept of ‘dyscivilization’. It is not a wholesale regression into barbarism (‘decivilization’), but rather a calculated deployment of barbarism in the service of the state, ostensibly for the purpose of preserving civilization itself.

Violent bureaucracies diffuse responsibility for torture⁵² by separating decision from action.⁵³ At the same time, they create scope for, and may even demand, initiative and inventiveness on the part of low-level operatives.⁵⁴ Statements from military police personnel in Abu Ghraib, for example, indicate that intelligence officers gave them instructions such as ‘Loosen this guy up for us. Make sure he has a bad night. Make sure he gets the treatment’.⁵⁵ Rather than supervision or criticism of the precise methods used, they received positive feedback on the results achieved, so they assumed they were doing the right thing.⁵⁶

In order to exercise the degree of inventiveness required to carry out such general instructions, guards or interrogators must adopt an attitude that resembles sadism at least to the extent that they are able to imagine the effects of their actions in producing pain and humiliation, and desire to produce those effects. The desire may or may not be erotically charged, or its fulfilment pleasurable, but the torturer learns to behave in ways that are outwardly indistinguishable from sadism. One Greek torturer interviewed by Haritos-Fatouros was variously described by his victims as:

‘...zealous and unlimited in his variations on torture.’

‘He tortured following the whim of the moment and laughed while torturing. He was literally a sadist.’

‘...severe but not cruel...he only pretended to be a savage’⁵⁷

The Stanford Prison Experiment provides a classic illustration of ‘the ease with which sadistic behavior could be elicited in individuals who were not “sadistic types”’⁵⁸ by giving one group power over a group of anonymous others and leaving them to improvise means of maintaining control. Zimbardo, the ‘superintendent’ of the simulated prison, has noted the parallels with events at Abu Ghraib.⁵⁹

52 M. K. Huggins, ‘Torture 101: What Sociology Can Teach Us’, *Anthropology News* 45, no. 6 (2004): 12-13.

53 Z. Bauman, *Modernity and the Holocaust* (Cambridge, Polity, 1989)

54 See for example McCoy, *Question*, pp. 86-9, discussing US training manuals of the 1980s.

55 Taguba, *Investigation*, p. 19. The chaotic climate in which the Military Police carried out their vague instructions from Military Intelligence is vividly portrayed in P. Gourevitch and E. Morris, *Standard Operating Procedure: A War Story* (London, Picador, 2008)

56 M. Danner, *Torture and Truth: Abu Ghraib and America in Iraq* (New York, New York Review Books, 2004)

57 Haritos-Fatouros, *Psychological Origins*, pp. 69-70.

58 C. Haney, C. Banks, and P. Zimbardo, ‘Interpersonal Dynamics in a Simulated Prison,’ *International Journal of Criminology and Penology* 1 (1973): 69-97, p. 89.

59 P. Zimbardo, *The Lucifer Effect: How Good People Turn Evil* (London, Rider, 2007), pp. 352-5. As Zimbardo notes, the same parallel is drawn independently in J. R. Schlesinger (Chair) ‘Final Report of the Independent Panel to Review DoD Detention Operations’ in K. J. Greenberg and J. L. Dratel (eds.) *The Torture Papers: The Road to Abu Ghraib* (Cambridge, Cambridge University Press, 2005), pp. 970-3.

The dynamics of dysciviliation are frighteningly simple. Once pacified public spaces are established – and the process by which they are established is long and complex – people generally abstain from violence because they know it carries high moral cost. It will cause shock and disapproval, damage one's reputation (unless one is among the minority who cultivate a reputation for violence), and possibly bring about public humiliation and the intervention of coercive state agencies. Most of the time we do not need to think about these consequences because we develop a 'habitus' – a term Elias used long before Bourdieu – of peaceable behaviour, and the idea of infringing the ban on public violence simply does not enter our heads. Once we find ourselves, however, in a setting where violence seems to be expected and approved, our unthinking, peaceable habitus no longer allows us to negotiate encounters with others successfully. What the Stanford Prison Experiment, and historical studies of the Third Reich,⁶⁰ demonstrate is how is how adaptable most people are to these situations; how rapidly they will develop a new habitus, be it one of conforming to the new rules or of inventive and pleasurable cruelty. The more people around one succeed in shedding their inhibitions against violence, the easier it is shed those inhibitions oneself. Lifton in his work on Auschwitz doctors demonstrated that 'the average person entering' such institutions of violence 'will commit or become associated with atrocities'.⁶¹ And average people can and have entered these institutions of violence, sometimes, at alarmingly high rates. At the most repressive moment in Uruguay's rule of terror (1985) over twenty percent of the country's medical personnel were engaged in torture practices. According to Weschler their sustained involvement could largely be attributed to 'professional ambition and financial reward'.⁶² Those who refused to be involved, however, 'disappeared at such a rate that Uruguay's medical and health care programs entered a state of crisis'.⁶³

For most people, somewhat reassuringly, there do seem to be limits to this process of easy adaptation to a new social environment. Why else would torturing regimes need such brutal initiation methods? Why did Greek torturers need to be told 'that if a warden helps a prisoner, he'll take the prisoner's place and the whole platoon will flog him'?⁶⁴ Why would the Nazis need a special hospital to treat SS men who 'had broken down while executing women and children'?⁶⁵ It seems that extremes of physical cruelty and destruction do run up against inhibitions that are more than skin-deep.

The ways to overcome these inhibitions, however, are well understood. The victims must kept at a physical and/or psychological distance; they must be anonymous

60 A compelling example is C. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: Harper Perennial, 1998).

61 R. J. Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York, Simon & Schuster, 1986), p. 425.

62 L. Wechsler, *A Miracle, A Universe: Settling Accounts with Torturers* (Chicago, University of Chicago Press, 1998), p. 127.

63 E. Scarry, *The Body in Pain* (Oxford: Oxford University Press, 1985), p. 42.

64 Haritos-Fatouros, *Psychological Origins*, p. 58

65 M. Burleigh, *The Third Reich* (London, Macmillan, 2001), p. 604.

and dehumanized, excluded from the class of beings to whom moral sentiments apply.⁶⁶ The methods of ‘torture lite’ are well suited to produce these effects, because they require relatively little direct physical violence and at the same time achieve the anonymization and dehumanization of the victims. Hooding, employed as a means of sensory deprivation, also achieves the effect of concealing the victim’s face, reducing him to an anonymous body, and at the same time concealing the torturer from him.⁶⁷ As Major-General Fay noted in his investigation of Abu Ghraib, ‘The use of clothing as an incentive (nudity) is significant in that it likely contributed to an escalating “de-humanization” of the detainees and set the stage for additional and more severe abuses to occur’.⁶⁸ Treating prisoners as dogs – a form of humiliation deemed especially suitable for Arabs – gave a further twist to the spiral of dehumanization. When dehumanization is coupled with intense pressure to get results from interrogation, the dangers of ‘force drift’⁶⁹ – the escalation of abuse when interrogators encounter resistance – are obvious.

C. Conclusion

We began by outlining three possible attitudes to torture: one which regards it as incompatible with civilized values and absolutely unacceptable; one which regards it as acceptable so long as it is strictly regulated and parsimoniously employed; and one which is willing to throw aside all civilized restraints, albeit only within certain limited spaces. The public and academic debate about torture is almost entirely a debate between the first two positions. Our argument is that the utilitarian case for limited torture is socially and psychologically implausible.⁷⁰ The ethical torturer, who scrupulously inflicts the minimum amount of pain justified by the greater good, is as much a myth as the humane executioner averting his eyes from the severed heads on the guillotine.⁷¹ To create spaces where torture is permissible is to create spaces where civilized norms do not apply – enclaves of barbarism.

Moreover, dyscivilization is incompatible with the maintenance of a liberal society. For a state to torture while permitting the existence of a free press, a vibrant

66 See H. C. Kelman. and V. L. Hamilton *Crimes of Obedience* (New Haven, Yale University Press, 1989); H. Fein, ‘Genocide: A Sociological Perspective,’ *Current Sociology* 38 (1990): 1-111; Zimbardo, *Lucifer Effect*, Ch. 13.

67 Huggins, ‘Torture 101’

68 G. R. Fay, *AR 56 Investigation of the Abu Ghraib Prison and 205th Military Intelligence Brigade*, <<http://www.defenselink.mil/news/Aug2004/d20040825fay.pdf>> (accessed 21 July 2008), p. 10.

69 The phrase used by Dr Mike Gelles, chief psychologist of the US Naval Criminal Investigative service and an important opponent of torture and coercive interrogation within the US Military (quoted by McCoy, *Question of Torture*, p. 128 and Sands, *Torture Team*, p. 161)

70 In this we are in agreement with Luban, ‘Liberalism’ and Wolfendale, ‘Training Torturers’.

71 A. I. Applbaum, ‘Professional Detachment: The Executioner of Paris’, *Harvard Law Review* 109 (1995): 458-486, p. 461.

civil society, a reasonably independent judiciary, and a population part of which has strong feelings of religious or ethnic solidarity for the victims, is not only immoral but deeply stupid – as the more rational elements of the US military and the FBI understand very well.⁷² It is therefore likely that the drift towards torture after 9/11 was not the product of rational calculation but an emotionally satisfying response to a crisis which demanded the appearance of resolute action, however uncertain the results.⁷³ In the words of the CIA's counterterrorism chief, 'After 9/11, the gloves came off'⁷⁴ – a phrase perfectly symbolizing the casting off of civilized restraints.

The choice is not between pragmatism and moral scrupulousness; the choice – forgive the cliché – is between civilization and barbarism. It really is that simple.

- 72 J. Rives et al., 'JAG Memos re: Recommendations of the Working Group to Assess the Legal, Policy and Operation Issues Relating to the Interrogation of Detainees Held by the US Armed Forces in the War on Terrorism', February-March 2003' in Greenberg, *Torture Debate*; McCoy, *Question*; Sands, *Torture Team*.
- 73 J. Katz, *Seductions of Crime: Moral and Sensual Attractions in Doing Evil* (New York: Basic Books, 1988); Holmes, 'Defiance'; McCoy, *Question of Torture*, pp. 206-9
- 74 Cofer Black, 2002, quoted *ibid.*, p. 119. Marshall Billingslea, Principal Deputy Assistant Secretary of Defense, introduced new guidance on interrogations to a meeting of military lawyers with the words: 'Guys, wake up, smell the coffee, take your gloves off' (quoted by Sands, *Torture Team.*, p. 166). And (then) Brigadier-General Janis Karpinski, commander of military prisons in Iraq, recalls being told by Major General Miller to 'tak[e] off the kid gloves' and get 'actionable intelligence' from her detainees (J. Karpinski, *One Woman's War*, quoted by Zimbardo, *Lucifer Effect*, p. 336).