Is Torture Ever Acceptable in COIN Operations?

Written by Jacob Uzzell

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'In short, torture has not been thought necessary in the laws of armies, composed chiefly of the dregs of mankind, where its use should seem most necessary. Strange phenomenon! That a set of men, hardened by slaughter, and familiar with blood, should teach humanity to the sons of peace.'

An Essay on Crimes and Punishments, Cesare Beccari, p.64

I. Introduction

It is difficult to make a case for torture. There are strong ethical, practical and legal arguments against it (Bass, 2008, p.238). However, such a reactive response does not enlighten the issues around torture, particularly within counterinsurgency (COIN), in which torture is most likely to be used compared to other types of warfare (Wolfendale, 2009, p.58). This essay will primarily discuss contemporary Western democracies' COIN doctrine and practice, although other COIN and campaigns will be alluded to.

By necessity, the division between absolutism and utilitarian arguments around the ethics of torture must be noted but in this regard, this essay will argue from a utilitarian basis – that the possibility of a situation that would morally justify using torture in COIN could exist – for two reasons. First, if one subscribed to the moral absolutist prohibition of torture in any circumstance, this would be a brief essay. Second, despite the fact that the essay is being argued from a utilitarian perspective, it will argue that torture is never acceptable in COIN, by addressing and critiquing the various arguments in favour and against torture.

In terms of structure, the clearest way of approaching the question in regards to COIN is by investigating the necessity of torture at a tactical and at a strategic level. This demarcation is appropriate due to the fact that one infamous example used by both apologists and critics of torture in COIN is that of France in Algeria (Trinquier, 2006; Vidal-Naquet 1963, p.15; Aussaresses, 2006, p.128). The use of torture by French forces in suppressing the FLN can be interpreted as a tactical victory, but a strategic defeat (US Army and US Marine Corps, 2006, p.165). Therefore, to analyse whether this is true and the implications for whether torture can be justified in other COIN operations is important.

The aim of this essay is to defend the anti-torture norm, but to do so, torture must be appropriately defined, or the arguments are moot. Torture is not a clearly defined term in itself (Dershowitz, 2002a, p.124; Rejali, 2007, p.39), with definitions varying (Miller, 2011) – one interpretation of 'moderate physical pressure' is another man's 'torture' (Byman, 2011, p.298). To move away from subjective linguistic nuances, torture is part of a continuum of coercive questioning. It includes both physical and psychological methods which range from questioning, to interrogation, to abuse, 'enhanced interrogation' or 'torture-lite' and then torture. Part of the issue around torture in COIN surrounds what actually constitutes torture and the 'grey area' of what does and does not constitute torture (Dershowitz, 2002a, p.124; Rejali, 2007, p.39), not only for clarity, but also as the definition of torture is crucial to know what is acceptable in COIN operations. An important criteria when defining torture is evaluating the 'intention and purpose, not the severity of the pain' (Quieroga, J & J Jaranson, 2008, p.654).

Legally, the definition of torture is clear, enshrined in Article 1.1 in the United Nations Convention Against Torture

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(UNCAT, 1984), in which the prohibition of torture and also *bther acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture'* (Article 16.1, UNCAT; CAT General Comment No. 2, 2007) has been accepted in customary international law. Similarly, just war theory, in particular *jus in bello*, the conduct during war, has been protected in the Geneva Conventions which protects captured soldiers, non-combatants and civilians from torture (Geneva Convention III, 1949, Article 3.1.a, Article 17; Geneva Convention IV, 1949, Article 3.1.a).

For the purposes of this essay, 'torture' will be used to mean a combination of two factors, first, the state's abuse of public trust realised through the agency of soldiers in COIN operations (Rejali, 2007, p.39), and second, the type of force used that goes beyond a reasonable amount that would be found illegal by international law, which encompasses a broad definitional scope.

II. Torture as a Tactic in COIN

As a priority, it is imperative to analyse the aims of torture in COIN, and the motivations for why it would be necessary to torture. Henry Shue classifies two distinct reasons to torture in warfare, interrogational and terroristic (2009, p.74), into which the 'interrogational' section is further broken down into two subsections; to gain confessions and information (Rejali, 2007, p.36). Rejali classifies the 'terroristic' motivation as 'retribution' (2007, p.36) and these subsections provide a useful framework for this section of the essay. They can also reflect the different approaches by different regime types conducting COIN operations, as 'interrogational torture … is an adjunct of asymmetric war' which can be carried out by either democratic or non-democratic regimes, but 'terroristic torture is the way of repressive regimes' (Gross, 2009, p.125). However, the evidence from Abu Ghraib in particular seems to contradict this. The reasons behind torturing in COIN cannot be simplistically explained by regime type.

i.   Interrogational Torture: Confessions and Information

Using torture to gain a confession is not a new practice, but the logic and practicalities behind are still flawed (Rejali, 2007, p.462). The reason to torture must also be examined. The implication is that counterinsurgents have detained a suspect who they are more than reasonably sure committed a crime, presumably a serious one. There are no convincing arguments that torture would be an acceptable approach in this situation, (as the reason to torture is not to prevent a further attack), it is purely to secure a confession. One practical argument against torture is in terms of COIN policy, which is to avoid the military undertaking policing operations which they are not trained for. Securing confessions and enforcing rule of law is the responsibility of the police, not a traditional COIN responsibility. Furthermore, using torture to enforce rule of law would be incompatible with a liberal democratic state conducting COIN, and any evidence gained would be inadmissible in court, and so there is no rational reason to torture for a confession. For an autocratic state engaging in COIN it may be feasible, but if it was arbitrary whether a confession was true or not, then it moves from trying to gain a confession to retribution, (which will be addressed in its own right), as well as the implications for strategy. The argument of the necessity for torture in the face of an 'imminent' threat is not an argument in the case of gaining a confession, which could theoretically be applied to that of torture to gain information.

The utilitarian, or consequentialist argument for use torture in extreme circumstances (Lazreg, 2008, p.237) is more appropriate for Rejali's second motivation for the possible use of torture; gaining information which could save lives (Beaumont, 1990, p.64). The example *par excellence* is the hypothetical 'ticking bomb' thought experiment, in which a terrorist group states that it has hidden a bomb in a densely populated area and the terrorist leader – who says they know where the bomb is – has been captured and refuses to reveal the location (BBC, 2006). There are variations on example, and although the basic facts remain the same, the variations are crucial. The key flaw in this may be intuitive, but is rarely made explicit in the literature – the 'ticking bomb' is a *thought experiment* with artificial constraints (Brecher, 2007, p.18; Luban, 2009, p.81), and not close to an empirical study. The real aim of the 'ticking bomb' thought experiment is often missed; the point is to sway the moral absolutists that they have no categorical argument against torture. If it can be argued that there is a certain amount of fatalities, be it 5 or 5,000,000 that would mean that they would eventually concede that torture becomes a moral duty (Anderson, 2010; Luban, 2009, p.80) and furthermore becomes morally repulsive to *not* torture the suspect. However, this is an fallacy of reification, as to accept an extreme hypothetical does not logically follow one should accept torture in any other circumstance as it

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tacitly equates a thought experiment with a general principle.

Returning to the variations of the 'ticking bomb', and the implications for one of the crucial parts of the thought experiment (BBC, 2006), is that of time. There are two major issues relating to the temporal aspect of torture in COIN:

First, torture is not always as crude as inflicting maximum pain on the insurgent – in fact, this is an ineffective approach of torture, effective torture would involve both psychological and physical elements. However, these both take time in order to be most effective – ideally (from the perspective of the torturer) torture should gradually increase pain over days if not weeks, in order to 'break' the victim (Cockburn, 2009; Rejali, 2007, p.474). In the scenario where the terrorist has planted a bomb which will detonate in an hour, 6 hours or even a day, there is no guarantee that torture applied quickly would be effective, and the evidence from both torturers – Galula notes that prisoners interrogated immediately gained poor results, but transferring to better trained intelligence officers would yield better results, but the time taken meant opportunities would be missed (Galula, 2006a, p.183; Heide, 1996 p.61).

The subjective nature of what the 'ticking bomb' actually is also another flaw in the argument. How should a ticking bomb be defined – is a bomb that will detonate in one hour have the same impact on the necessity of torture as a bomb that will detonate in one day? Without clearly defined temporal parameters in the ticking bomb – which is a very practical argument – it becomes difficult to define in which situations torture should be employed. As has been admitted by interrogators themselves (Cockburn, 2009), if it could very likely take a week at the minimum to gain information from an insurgent, then it follows that if a bomb set to detonate in seven days could be defused by gaining information from torture, then it would be morally correct to do so. The same argument could be repeated for one month, or six months. The construct of the 'ticking bomb' now appears to be a lot less convincing. The consequence of this is that almost any situation could be described as a 'ticking bomb' and in fact is (Rejali, 2007, p.518). The consequence of this is that there is a lot less of a barrier to justifying torture. The other issue is that, without strict parameters, the 'ticking bomb' becomes meaningless, as every situation becomes a ticking tomb scenario (Rejali, 2007, p.550), and it becomes counterproductive to evaluating whether torture is necessary.

The US Army and Marines Corps counterinsurgency manual FM3-24 goes into detail regarding interrogation and torture, and obliquely addresses the issue of the ticking bomb scenario, holding an absolutist position upon it – *'Torture and cruel, inhuman, and degrading treatment is never a morally permissible option, even if lives depend on gaining information. No exceptional circumstances permit the use of torture and other cruel, inhuman, or degrading treatment'* (US Army and US Marine Corps, 2006, p.164). It is important to note that this manual was published after the abuses at Abu Ghraib prison were publically acknowledged in April 2004, although Secretary of Defence Rumsfeld refused to acknowledge that the scandal was in fact 'torture' (Hochschild, 2004).

Nevertheless, if the logical and practical flaws are ignored, the actual relevance of the ticking bomb in contemporary COIN can still be examined. To move it into contemporary examples, Rejali argues there are very few analogous real-world examples of a ticking bomb case and its only value is of rhetoric (Rejali, 2007, p.517). It could be that an explanation for this is that governments and armed forces would be unwilling to admit to torture due to the legal repercussions. However, a counterpoint to this is when General Aussaressess openly and unremorsefully admitted to torture (Aussaresses, 2006, p.128), and in Israel, where surveys indicate a weaker norm against torture (Marcus, J, 2006), and where torture was only formally outlawed by the Supreme Court in 1999 (Supreme Court of Israel, 1999) after it was 'virtually institutionalised' for around 12 years (McMaster, 2004, p.11). It is crucial therefore, to examine whether there are empirical cases that would provide a very strong argument for the necessity of torture in COIN operations in extreme circumstances. However, despite Dershowitz's assertion that 'the use of torture to prevent terrorism was not hypothetical; it was very real and recurring' (Dershowitz, 2002a, cited in Brecher, 2007, p.15), the available examples are generally found wanting. Part of the justification for 'coercive interrogation' by the Israeli General Security Services (GSS) was the case of Nasim Za'atari in 2005 (Lelyveld, 2005) who worked for Hamas in scouting targets and assisting suicide bombers. He was interrogated and gave up the name of a Hamas recruiter, who was subsequently assassinated by security forces. Nevertheless, the information available around this case is not comprehensive – which leaves the possibility of whether the information gained from Za'atari caused the arrest of the Hamas recruiter, or if there were other sources of information. Second, GSS explicitly denied that any force used

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could be classified as torture (Lelyveld, 2005). Third, this does not fit the 'ticking bomb' scenario. Za'atari, along with thousands of others in Israel, are arrested for minor offences and then interrogated for any information they have, not specific information (Arrigo, 2004, p.554) and so the ticking bomb does not exist in this incident. Nevertheless, this specific example was used as justification by the Israeli Justice Ministry to 'silence its critics' (Rejali, 2007, p.517).

The case in which the ticking bomb is supposedly vindicated is that of Abdul Hakim Murad, who was tortured by Philippine intelligence officers which supposedly prevented a series of attacks on airplanes (Dershowitz, in Rejali, 2007, p.507). However the facts around the case, if anything, are proof of the inefficacy of torture –the failure of 46 days of brutal torture – Murad talked due to the threat of being extradited to Israel, and the lack of actionable intelligence – the actual intelligence came from decrypting a computer (Rejali, 2007, p.507-508). Furthermore, torture was policy, not a one off event (Brecher, 2006, p.26), and so the parallels to the 'ticking bomb' are not appropriate.

The other clear and well documented examples of torture in COIN operations for information were that of the French in Algeria. Interrogations carried out by the DOP (*Détachement Opérationnel de Protection),* under General Trinquier, the use of which was described as the single most important improvement to COIN operations in Algeria (Galula, 2006a, p184). Trinquier was clear that torture used against suspected members of the FLN was to gain information (Trinquier, 2006, p.18) and attempts to justify it by claiming that if the suspect gave up the information required, the torture would immediately stop – therefore shifting the burden onto the suspect (Trinquier, 2006, p.19). This is clearly an unreasonable rationalisation, and the justification suffers from presumption of guilt. Trinquier also claims that his well-trained interrogators knew the limits, and were disciplined (Trinquier, 2006, p.17, 20, 40). This is problematic for two reasons. The first reason applies to all counterinsurgents who employ torture – that torture is not an exact science, pain cannot be quantified and applied equally (Rejali, 2007, p.449, 453), the second is that Trinquier's claim of discipline is simply not backed up by anecdotal evidence from DOP officers (Cômes, 2002, in Rejali, 2007, p.485).

As has been demonstrated, the post-hoc justification by the French generals in Algeria is contested, and that in terms of information gained, it can be argued that it was the effective *Dispositif de Protection Urbaine* (DPU) which accumulated vast amounts of information through public cooperation and informants, not torture (Rejali, 2007, p.458-459, 481). The challenges Galula's argument, and makes a case that it that it was the DPU, not the DOP which was more important in the resulting collapse of the command structure of the FLN.

ii.   Terroristic Torture: Retribution

Torture as retribution is a very conscious strategic choice, but also as a tactic on the ground, obviously has the potential to be effective – the logic being that if insurgents fear being tortured if they are captured, they are less likely to carry out insurgency. This is flawed for a number of reasons. If insurgents are fighting for an ideological or religious cause, the fear of torture may not deter them. It may also drive insurgents to more extreme acts of insurgency, that the insurgents tactics will react to the threat of the counterinsurgents and the conflict escalates.

In reality, torture of retribution is a barbarous act, and one that is difficult to see the benefits from such a tactic. Certainly it is difficult to take a position that torture for retribution would ever be 'necessary', when looking at COIN objectively. However, research by social psychologists indicate that people closely relate torture and punishment, either consciously or subconsciously (Carlsmith, 2008), and this will therefore have important ramifications for both why and how people torture. If counterinsurgents are not fully in control of the rationale to why they torture– then it is more difficult for a utilitarian to justify torture even in extreme circumstances, when the epistemology of their decision itself is questioned (Carlsmith & Sood, 2009; Bell 2011). Broadly, torture is motivated by the 'perceived moral status of the target, but not the perceived effectiveness of the interrogation' (Carlsmith & Sood, 2009, p.191).

If and when retribution is the primary reason for torture, this is likely to be more about the psychology of the individual COIN officer or soldier. Whilst from an objective position, an individual may have an absolute aversion to torture, or be a utilitarian who only accept torture in certain (and extreme) circumstances, this does not help when assessing the actions of COIN officers and soldiers in the so called 'fog of war'. Torture on the battlefield, or in conflict zones, is a different situation than torture in a controlled, monitored environment, as shown through evidence from South

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Vietnam, Northern Ireland and British Cyprus (Rejali, 2007, pp.469-474) and soldiers, generally untrained at interrogation, in 'unfamiliar contexts with [likely] foreign suspects' are unlikely to be able to discern truths and lies (Rejali, 2007, p.475). Thus, counterinsurgents untrained in interrogation techniques are simply not appropriately trained to interrogate, much less torture. This can be addressed through more appropriate training, as Kevin Bell, a former captain in the US Army, who served in Afghanistan carrying out counterinsurgency operations argues, the Army does not appropriately 'integrate ethics into mission execution' (Bell, 2011, p.45; Wolfendale, 2009, p.58).

III. The Effectiveness of Torture

Dershowitz contends that torture does sometimes work (2002, p.137) and that is the reason it still exists, as it still has value (2002, p.139). It is also important to make explicit the degree of ineffectiveness of torture itself, especially and specifically when it is carried out by counterinsurgents. This is particularly relevant, as 'there is a suspiciously high correlation between the belief that torture is ethical and the belief that torture is effective' (Franklin, 2009, p.282). The discourse is split into two schools of thought (Bass, 2008, p.239; Wolfendale, 2009, p.66) – that torture is right and effective, or torture is wrong and ineffective, and the moral and practical arguments are synergised, when they should be examined separately. Evidence from 20 former US army interrogators, with experience spanning from Vietnam through to Iraq (Janoff-Bulman, 2007, p.430) stated that 'prisoner/detainee abuse and torture are to be avoided at all costs, in part because they can degrade the intelligence collection effort' (Bauer, 2006, p.2).

In physiological terms, torturing for information could very likely be counterproductive, particularly the brutal physical torture causing trauma that would be used out of desperation in a time sensitive context. Ribot's gradient states that 'as the interval between learning and amnesic treatment increases, the resulting amnesia is diminished' (Squire et al. 1975, p.77). Expressed another way – retrograde amnesia resulting from trauma, in this case caused by torture, is more likely to affect newer memories than older memories, so torture, particularly physical torture – examples like 'head trauma, drug injection, or electro-convulsive stimulation' (Squire et al. 1975, p.77) may not result in the desired information about a 'ticking bomb', or any other useful (particularly time sensitive) information.

As referred to previously, the idea of torture which is restrained is also a dubious proposition (Cômes, 2002, in Rejali, 2007, p.485). Escalation is 'the rule, not the aberration' (Luban, 2009, p.83; Vidal-Naquet, 1963, p.15), and particularly in counterinsurgency units, where units are naturally competitive, and this mindset when applied to torture means they 'rapidly slide towards disaster' (Rejali, 2007, p.532). The apologist's argument for torture in exceptional circumstances, particularly when carried out by counterinsurgents, is a fallacy.

As discussed, if torture is an extreme version of questioning, then it follows that questioning is an inefficient method of gaining information. This is asserted by Dershowitz, who claims that torture 'does work and sometimes prevent major disasters that it still exists in many parts of the world and has been eliminated from none' (2002a, p.138). This is a practical, not a moral argument; however for such a strong statement, this is not backed up by evidence, and although there may be is truth within it, does not make it correct (Brecher, 2007, p.25).

If torture had any value in COIN, it would have to be effective in itself for it to be classed as necessary. The attempts to prove that torture can be effective in counterinsurgency as a tactic are not sufficient to be convincing, despite the contrived examples that endeavour to convince the public that torture has a role to play in modern COIN campaigns.

IV. Torture as a Strategy in COIN

Torture is shown to be an ineffectual tactic, but it is also important to look at the wider picture of COIN campaigns, and address torture as a strategy in COIN.

If in COIN 'the population is the prize' according to Galula, and indeed the US Counterinsurgency handbook FM3-24 (Kilcullen, 2007, 19; US Army and US Marine Corps, 2006), then using torture in counterinsurgency operations is unlikely to win hearts and minds of the population (Lasrever, 2007). One potential counterexample is the British campaign in Kenya, which showed it was possible to win a counterinsurgency campaign through the 'security forces and government intimidat[ing] them [the civil population] more effectively than could the insurgents' (French, 2011,

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p.251). However, such transparent brutal coercion by counterinsurgents would be unacceptable as strategy today by liberal democracies due to the legal obligations and likely political backlash. The proposition that states that COIN/revolutionary war is 20% military action, and 80% political (Galula, 2006b, p.63), or even, according to Kilcullen, 100% political, (2006, p.123) should be considered when thinking about strategy. It is important to note that the 'Mao-Galula maxim' has been challenged – that in COIN the military has such a minor, if not insignificant role (Peters, 2009). Nevertheless, the point of the aphorism is to consider the political implications of COIN, alongside the military aspects, which the case of torture, there are some very evident political implications.

As a strategy, torture is counterproductive for a number of reasons. As highlighted by a former US Army interrogator in Iraq, under the pseudonym Major Alexander, who states that 'it [torture] plays into the hands of al-Qa'ida in Iraq because it shows us up as hypocrites when we talk about human rights' (Cockburn, 2009). The fact that it was US troops that were so publicly documented to be torturers in Abu Ghraib is important, as there is a undeniable hypocritical element to this (Gross, 2009, p.144), as ostensibly the US COIN operation in Iraq was to reduce the abuses of human rights and insecurity. It also provides a justification for other states to torture, if the 'world's leading democracy' (Dershowitz, 2002a, p.145) sanctions torture, this sets a dangerous precedent. This, contrasted to Israel's use of torture, which is relatively less damaging, as Israel is already perceived as an 'outlaw' (Dershowitz, 2002a, p.142).

Another issue with counterinsurgents gaining a reputation for torture, is that it would reduce the chances of potential informants co-operating if they know that torture will be used (Rejali, 2007, p.476). Although in other cases, it could provide an incentive to falsely accuse others for the purpose of revenge (Gross, 2009, p.133). This will inevitably lead to degradation in the quality of intelligence, which is undesirable as intelligence is imperative in COIN operations (Spear, 2008, p.398). Heather Macdonald also raises the point about reciprocity (MacDonald, 2009, p.88), and posits the Clausewitzian argument of the absurdity of moderation (von Clausewitz, 2003, p.102) – that as insurgents and terrorist groups are not reciprocal in their acts and they use torture, so counterinsurgents should also torture. However, this is a cyclical argument, and ignores the inverse of the argument, as if counterinsurgents torture, it would result in the enemy feeling justified in using torture as well (McMaster, 2004, p.12). Treating insurgents humanely at least may have some positive effect in terms of reciprocity (Coulam, 2006, p.13), although it should be noted that empirical evidence is lacking to fully analyse the impact of reciprocity and torture.

Furthermore, as there is a clear legal basis against torture in international law, (Prosecutor v. Furundžija 2002) in which there is a *jus cogens* for the prohibition on torture, it would be reasonable to expect this to be reflected in a norm against torture held by the general public. Gross argues that 'enhanced techniques' are only acceptable to intelligence services, not the army or police, and extreme or brutal techniques are not acceptable for any agency (Gross, 2009, p.127). Globally, on average, the majority of public opinion is against the use of torture, even in cases of terrorism (BBC News, 2006; World Public Opinion, 2008). However, global averages do not reveal much, what is more interesting is specific country data.

In regards to country data, it is relatively clear that 'countries that face political violence are more likely to accept the idea that some degree of torture is permissible because of the extreme threat posed by terrorists' (BBC News, 2006). In particular, the view of the US public is important, due to their preeminent role in COIN operations, and the view that the US are one of the best, if not *the* best COIN practitioners (Mumford, 2011, p.21). Polls of the US public give different results, the percentage allowing for torture in certain circumstances ranging from 36% (BBC News, 2006), 44% (World Public Opinion, 2008) to 49% (Pew Forum, 2009). There is a caveat for such data, that responses will be affected by the framing of the question, and also more crucially that even the state level is not sufficient for analysis, as attitude to torture varies by different groups within the state (BBC News, 2006; Pew Forum, 2009). Nevertheless, the implications for this in terms of COIN are that strategically, the higher the proportion of public endorsement of torture, the lower the cost to the state which sanctions torture (Coulam, 2006, p.12), and so one of the barriers to using torture in COIN is reduced.

However, if there is a norm, held by the state or even the public, there is no reason why this would translate into a norm held by counterinsurgents. Huw Bennett implies that there is not a 'cultural norm against excessive force… [which] suffused all ranks' (Bennett, 2010, p.461) as demonstrated by the events in Iraq. Bennett is presumably

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arguing that the torture which occurred in Abu Ghraib was so widespread and tacitly approved for so long displays the *lack* of a norm, as opposed to the breaking of a norm. The norm must also be reflected in training, as soldiers are 'required by duty and honor to uphold our country's statutory and treaty obligations, which state that torture is categorically unacceptable' (Bell, 2011, p.44).

One other point to note is how this supposed norm affects in real terms the torturer, the institution and even the civilian population (Opotow, 2007, p.460). Torturers can be considered damaged, and are not the Weberian 'tragic hero' that are imagined (Ramsey, 2006, p.111), but are treated with disgust upon returning home (Horne, 2006, p.232).

The discrepancy between words and deeds must also be considered, particularly in regards to a discussion about norms on a state level. Despite the number of signatories of various conventions against the use of torture, including the UN Convention against Torture (UNCAT) has risen, this has not translated into a behavioural norm, 'torture is a practice in which leaders engage even though they know it is wrong' (Gilligan and Nesbitt, 2009, p.22). Furthermore, as Gross asserts 'when democracies talk about exempting themselves from long-standing norms of behaviour, repressive regimes are not far behind' (Gross, 2009, p.122).

How torture is defined is also important in the broader notion of COIN within the security studies agenda, as to whether COIN constitutes a new strategic era, and the implications of such a view. This was argued by Alberto Gonzales (who was later forced to resign) in his now controversial legal memos prepared for President Bush in January 2002 (Gonzales, 2002) which argued that the War on Terror was a 'new war' (Gonzales, 2002, p.2; Lazreg, 2008, p.261, 265; Wolfendale, 2009, p.65) with new rules. Consequently, the Geneva Conventions did not apply to al-Qaeda and the Taliban, therefore if not tacitly permitting torture, certainly paving the way for such tactics. Such a legal memo would permeate the chain of command, and influence both strategy and tactics for US troops conducting COIN operations. This was contested in US doctrine in FM3-24 (US Army and US Marine Corps, 2006, p.164), although this was released four years later, when the discourse around the War on Terror had evolved. It is valuable to consider the linguistic element of torture, particularly when dissecting issues like norms and public opinion. As has already been noted, 'torture' is a linguistically fluid and definitional difficult term. The tactics being used by US troops were 'enhanced interrogation' under the Bush Administration, and 'torture' under the Obama Administration (Stout, 2009). A CIA interrogator described the counterterrorism effect as "'before 9/11' and 'after 9/11.' After 9/11 the gloves came off" (Bowden, 2003). This further illustrates how torture is contextual, not absolute.

Whether this argument of a new strategic era is convincing or not, there is a relation of this argument to Ole Wæver's concept of securitization (Buzan, Wæver & de Wilde, 1998, p.21), when the security of the state is allegedly threatened, if torture and other techniques are not employed, then this is a method of rationalising torture (Wolfendale, 2009, p.65). President Bush declared that it was 'military necessity' that allowed any method of interrogation to be used in the War on Terror (Sardar, 2005).

Torture as a strategy is 'far from being a one-off response to a genuine emergency, torture in COIN operations is most often a deliberate policy decision, justified and rationalised … and then carried out by the military through the chain of command' (Wolfendale, 2009, p.66). Interrogations of suspects in COIN operations are not always specific, known threats, but instead the policy reverts to 'dragnet interrogations', where innocent and ignorant people are also interrogated (Arrigo, 2004, p.554) which can be seen clearly in long running COIN campaigns in Israel, Iraq, (Arrigo, 2004, p.555; Ramsey, 2006, p.114) Algeria (McMaster, 2004, p.14), Guatemala (Schirmer, 1998, p.1), Ireland (Conroy, 2000, p.9) and Argentina (Gillespie, 1995, p.243).

The strategic choice to torture does not exist within a vacuum – there are repercussions which cannot be predicted (although they may be anticipated). The use of torture by US forces in Vietnam was transferred to dictators in Latin America (Bass, 2008, p.236; Gillespie, 1995, p.243). Furthermore, throughout the discourse on torture in contemporary COIN, there is also an undercurrent of racism associated with a strategy of torture (Hudson, 2010; Vidal-Naquet, 1963, p.23; Bass, 2008, p.240) which adds to the problems with a strategic choice to torture, as it further challenges the motivations behind the 'necessity' of such a tactic.

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Dershowitz argues that 'torture warrants' could be effective as a means of determining when torture is necessary (2002b), but there are many flaws in such a proposal (Ramsay, 2006, pp.108-109; HRFNYC, 2007b), and these are exacerbated when applied to the military, as such a measure would necessarily require a judge, and in COIN operations abroad, this almost certainly involve a different legal system unfamiliar to Armed Forces legal counsel.

The most high profile case of torture in recent years, Abu Ghraib, was not a series of isolated incidents, but 'resulted from policy formulated at the very heart of government' (McMaster, 2004, p.18). Therefore, the policy of torture can also be a strategic choice, and should be examined as such. It is also important to acknowledge the explicit strategic choice not to torture, as in Italy in 1978, with the capture of Aldo Moro, politician and former Prime Minister by a militant communist group. However, the notable quote from General Carlo Alberto Dalla Chiesa 'Italy can survive the loss of Aldo Moro. It would not survive the introduction of torture (Sabato, in CONADEP, 1984). However, the choice not to torture should be implicit by states when they sign legislation outlawing torture, as nearly all have.

Torture is sometimes framed as a 'necessary evil', as General Bigeard infamously remarked (Le Monde, 2000) or a 'double edged sword' (Horne, 2006, p.205) but for some it is still a 'social good' (Bass, 2008, p.239). The notion of the heroic torturer (Wolfendale, 2009, p.66) reoccurs in the literature. Torture is imagined to be clean and effective, yet it is neither. The cultural impact of television shows like *24* which regularly depict torture being effective which normalises torture (Sardar, 2005). This alters both public opinion (Green, 2005) and also US troops undertaking COIN operations in Iraq (Bell, 2011, p.44), and was taken seriously by high ranking military officers (HRFNYC, 2007a) and even former US President Bill Clinton (HRFNYC, 2007b).

V. Conclusion

This essay has set out to show that both from a moral and a practical perspective, torture is never necessary within counterinsurgency. The instinct that torture may be advantageous has not been proven empirically or even anecdotally. The choice of using torture by counterinsurgents unofficially is likely to continue, but a norm can form against it. Even if there is public support for the use of torture by counterinsurgents as a strategy, the fact that torture is ineffective and regressive as a tactic means that torture is not only unnecessary, but counterproductive. As Gross remarks 'no tactic is permissible if unnecessary' (Gross, 2009, p.240).

Clearly, if the argument put forward by torture apologists that torture is sometimes the morally correct thing to do, which is usually realised through the ticking bomb argument. The 'ticking bomb' was investigated on a tactical level, and dismissed as artificial, and 'intellectual fraud' (Luban, 2009, p.81). However, the 'ticking bomb' may still have value. It certainly has value as political rhetoric for justification of torture (Rejali, 2007, p.517), but rhetoric is generally not good policy, particularly so in this case. Even ignoring this, the fact that torture, according to the US Army manual on human intelligence collector operations, is a '*poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the HUMINT collector wants to hear*' (Department of the Army, 2006, 5-21) negates the apologists moral argument, in favour of the practical argument.

It has been shown that the debate about torture in counterinsurgency reoccurs throughout history (Kramer, 2008, p.3), and will continue to reoccur in relation to new security threats in the future 'debate' around torture, is that there is a lack of data. Transparent data would counteract the torture apologist's argument, but the very nature of torture means that such data is unlikely to ever be released. Torture may be a policy that counterinsurgents have reluctantly (or not) used for the greater good, but even if the policy translate into short term successes, in the long term, by losing moral legitimacy, it will result in losing the campaign (US Army and US Marine Corps, 2006, p.165; McMaster, 2004, p.12). As noted by Bell, 'our training and leadership culture have to reinforce our understanding that the ethical treatment of prisoners doesn't undermine the counterinsurgency strategy (Bell, 2011, p.45). Torture in COIN is not, and should not, be framed as a necessity as a tactic or a strategy, even in extreme situations in which it is tempting to commit a moral, legal and strategic wrong which will undermine the counterinsurgency campaign.

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