

Torture of the Other – Racism as an Element of Torture in Contemporary

Military Operations

by

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Abstract

This paper engages in an intellectual journey into the world of racism and its relationship with crimes against humanity generally, and more specifically with torture. The main path of this inquiry is to answer whether there is a link between racism and torture and therefore, whether racism can be an element of some types of torture of prisoners of war and can racism be a reason for some modern day torture of prisoners of war. I will demonstrate that there is a correlation between the torture of the racialized Other and racism by the dominant group. Further, I seek to understand the theoretical underpinnings and operationalization of racism. The research and analysis of racism and torture that I have undertaken have inspired me to search for more knowledge so that I may have an impact on public awareness of racism and torture. Also, I hope that the research undertaken will assist in the process of identifying and then combating racism in order to tilt the scales more towards equality and justice.

Acknowledgements

To: A woman who has suffered too much.

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CHAPTER ONE

INTRODUCTION

INTRODUCTION

At the end of a slow day as I was sitting in my comfortable office, I noticed the red light flashing on my telephone. There was a message waiting and I decided to let it wait just a few more moments. It was Friday and a long weekend was approaching. Normally I am proactive and would have responded eagerly to the message but the next time I noticed the red light it was Tuesday morning of the following week.

I reached for the phone and pressed the appropriate buttons to hear the message. I was instantly stunned and changed. I listened intently and as the caller expanded on her message, I felt guilt and remorse. There was passion and anger in her voice. I did not immediately understand the passion and anger. From her perspective she relayed to me in the tone and manner of her speech that **she** had been humiliated and physically and psychologically abused contrary to Canada's position to protect her as a citizen of Canada. It was not until I was close to finishing this thesis that I believe I somewhat understood.

I can no longer sit in a comfortable pew without feeling somewhat - no - significantly uncomfortable. I will never be the same. This was for me a life altering experience. I hung up the phone and sat there for what seemed minutes

but turned out to be hours, repeating over and over again in my mind what I had heard on the phone.

This experience began my journey to enlighten myself on the issues of racism and torture. I needed to find what caused the passion and anger in her voice. I needed to know what the passion and anger was all about and if there is a way to bring strength and effort to bear against the combination of racism and torture. I have sought out an uncomfortable path and identified experts in values and ethics to guide me. I also looked for support in the academic community. Both groups have helped me listen and hopefully better understand. I will succeed.

STATEMENT OF OBJECTIVES

This thesis will engage in an analysis of racism and torture in the military and to some extent in law enforcement relative to Canada and the United States. The thesis could also be modified to apply elsewhere. To achieve this, I will engage in an inter-textual and archival analysis of materials and cases in the subject areas of human rights, racism, and torture. As well, I will explore, by way of example, six case studies involving prisoners of war. The purpose of the case studies is to put a face to racist torture and to present specific examples of racist torture so the reader can graphically see racist torture in action.

This paper engages in an intellectual journey into the world of racism and its relationship with crimes against humanity generally, and more specifically with torture. The main path of this inquiry is to determine whether there is a link

between racism and torture and therefore, whether torture at times is committed as an act of racism either by an individual or an individual on behalf of a nation state. This inquiry will focus on racism and torture in relation (i) to prisoners of war captured or detained on the battlefields of Vietnam (1960s) and Iraq (2003-4); (ii) military prisoners captured on location during a peacekeeping mission in Somalia (1994); and (iii) persons arrested or detained by law enforcement under the guise of the “war on terror” in other settings such as airports in the United States (2001 to present).

My aim is to demonstrate there is a correlation between the torture of the racialized Other and racism by the dominant group. I chose to pursue this thesis to address my struggle with the links between racism and everyday oppression. The use of torture in modern warfare provides me with examples of individuals and states using torture on a daily basis. I am seeking to understand the theoretical underpinnings and operationalization of racism. The research and analysis of racism and torture that I have undertaken has inspired me to search for more knowledge, so that I may have an impact on my own and the public’s awareness of the true nature of racism. Also, I hope that the research undertaken will assist in the process of identifying and then combating racism, with the hope of tilting the scales more towards equality and justice. This thesis is the beginning in a long process of learning and action with the goal of contributing to the process of eradicating racism and torture from Canadian society through a contribution to the current Canadian literature on racism and torture.

Darius Rejali describes four accounts of torture in society.¹ They are: (1) the Humanist account; (2) the Developmentalist account; (3) the State Terrorist account; and (4) the Foucaultian account.² Alan Dershowitz and Michael Ignatieff have put forward the Lesser Evil account of torture and Sherene Razack has put forward the Racist account of torture. Michael Ignatieff³ and Allan Dershowitz⁴ describe the Lesser Evil account of torture as the theory of the “legal” torture of individuals by the state in order to prevent what is perceived to be an imminent catastrophe with considerable loss of life. The Racist account of torture proffered by Sherene Razack, is based on her study of the Somalia Peacekeeping activity by Canada in 1993 and is the theory of race hatred and torture.⁵ It is my thesis that the recent revelations of tortures by western military and law enforcement personnel occurring in other venues such as Iraq and Syria, are similarly motivated by racism or race hatred.

It is my intent to explore racism as a part of torture perpetrated by western military and law enforcement in Vietnam, Somalia, Iraq and Syria and to use Razack’s analysis to build my assessment tool for the Racist account of torture. This will form the focus of the later chapters on torture and the cases studies.

In demonstrating a link between racism and torture using the proffered Racist account of torture model, I will attempt to answer the following questions:

(1) Is racism an element in some types of torture of prisoners of war?

¹ Rejali, Darius, *Torture and Modernity*, Westview Press, Boulder, Colorado, 1994, at page 160.

² Rejali, note # 2 at 160.

³ Ignatieff, Michael, *The Lesser Evil: Political Ethics in an Age of Terror* (Princeton University Press, Princeton New Jersey, 2004) at ix.

⁴ Dershowitz, Alan, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (Yale University Press, New Haven Connecticut, 2004) at 146.

⁵ Razack, Sherene, *Dark Threats and White Knights: The Somalia Affair. Peacekeeping and the New Imperialism* (University of Toronto Press, Toronto, Ontario, 2004) at 7.

(2) Is racism a reason for some types of modern day torture of prisoners of war?

If it is possible to say yes to these questions, then with a calculated approach to the systemic structure of dealing with prisoners of war and detainees, we can expose the mandate to interrogate prisoners by the state or organization, processes of recruitment and selection of the soldiers and law enforcement officers, and the education and training of these recruits which creates the enforcement arms of the state or organizations. This can be the starting point from which changes can be addressed through understanding, recruiting, training and affecting the systemic problems that have led to the ill-treatment of the prisoners and detainees.

Before moving too far into the research, it is imperative to clarify operational definitions that will form the basis of the paper's theoretical framework. As an introduction to the concepts the next section provides the definitions used in this thesis. These are discussed more fully in Chapter Three and Four.

DEFINITIONS

I have chosen as a working definition for this paper a definition proffered by Angie Fleras and Jean Lock Kunz. Their definition of racism includes ideas and implies superiority based on biological or cultural characteristics, institutionalized power which denies or excludes minorities.⁶ Further, they state that racism is rooted in a dislike of the "other" because of biology but also

⁶ Fleras, Angie, Kunz, Jean Lock, Media and Minorities (Thompson Educational Publishing Inc., Toronto, 2001) at 33.

because of culture.⁷ This particular definition was chosen as it integrates the notion of a superior force against a perceived inferior group based, for the most part, on differences. The definition takes into account differing cultures and the belief of the dominant group that the subordinate group is lesser both biologically and culturally. This is reflected in the actions of a dominant military force engaging in war with a different culture which is perceived as a subordinate people. The dominant force feels that they then have the right to treat the prisoners any way they wish including using torture.

I have also adopted as a working definition of systemic racism, Fleras' and Kunz's description of discrimination that is entrenched within institutional structures, functions, and processes of social institutions.⁸ An understanding of systemic racism recognizes that long standing social and cultural mores carry within them value assumptions that contribute to racism in ways that are substantially or entirely hidden and unconscious. Systemic racism cannot be isolated to a single action or statement. Systemic racism can occur in the absence of overt or conscious racism but where systemic arrangements or policies and procedures within the state or organization's mechanisms allow indirect racism to happen.⁹ The definition of systemic racism is important to this paper because although the specific actions of torture against the racialized Other are carried out by individuals, the justification, impetus and acceptance can be found in the institutional structures.

⁷ Fleras, note # 2 at 34.

⁸ Fleras, note 3 at 38.

⁹ *Public Service Alliance of Canada v. Canada Department of National Defence*, at 12-16.

For the purpose of this paper, I have chosen the definition of torture stated in the 1987 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* Article 1:

“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 party has committed or is suspected of having committed, or intimidation 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 incident to lawful sanctions.”¹⁰

This Convention was written with the purpose of including all means of torture and for the first time makes reference to discrimination as a reason above and beyond previously mentioned definitions. Earlier international definitions of torture were less fulsome and did not take into consideration racism as a reason for torture. Racist acts need to be part of the definition of torture.

Also for the purpose of this thesis, the definition of prisoners of war includes persons dressed in uniform and those not dressed in uniform held by military units and civilian law enforcement, pursuant to a declared war, a peacekeeping mission, or the ongoing international war on terrorism. The term “Other” is used to describe individuals or groups of people who have been identified by western white society as different than they are.¹¹ The term “Racialized Other” refers to those who are classified as different because of their

¹⁰ www.hrweb.org/legal/cat.html.

¹¹ Miles, Robert, *Racism* (Routledge, New York, 1990) at 11.

race.¹² The racialized Other is looked upon as not having the same qualities as members of western white society. The racialized Other is often considered sub-human. This category of “sub-human being” is defined in the eyes of the torturer or their leaders as one who is subordinate to another, less than human, failing to attain the level associated with “normal” human beings, or not worthy of being considered a human being. In part, racism is the treatment of the racialized Other as sub-human because of the colour of their skin, their race, their ethnicity and/or nationality.¹³

The structure of the thesis is outlined in the following section.

STRUCTURE

In this chapter I have covered the “what and the why” of the thesis. The chapter has also included why I am writing this thesis and the questions I am attempting to answer. As well, it has introduced working definitions and provided for an understanding of the structure and methodology used to explore racism and torture.

Chapter Two identifies the various pieces of international legislation to which the United States and Canada are signatories and discusses the evolution of international treaties and domestic laws on human rights soon after World War II.

Chapter Three explores the historical, scientific and evolutionary debates over the sources of racism and the various definitions of racism and systemic

¹² Marshall, Gordon, Oxford Dictionary of Sociology (Oxford University Press, New York, 1998) at 549.

¹³ D’Souza, Dinesh, The End of Racism (The Free Press, New York, 1995) at 15.

racism. This leads to working definitions, which can be used to demonstrate the links between racism and torture.

Chapter Four is an examination of torture. This chapter discusses the perceived need to use torture in various forms, to extract intelligence information in order to prevent future crimes against humanity such as another 9/11¹⁴. Academics such as Alan Dershowitz, Michael Ignatieff, Geoffrey Robertson, Darius Rejali, Sherene Razack and Antonio Cassese will be consulted to speak to the term torture and why the world is open to torture and other crimes against humanity. Specific methods of torture are not discussed because I do not believe a single isolated act as a part of a torture process constitutes racism. The method of torture therefore, from my perspective, is not important. It is the fact that an individual is tortured that is the key for me. The issue of torture also touches on the concept of rendering suspected terrorists, described as prisoners of the war on terror, to other less legally restricted countries where torture is a normal part of the interrogation process by law enforcement. Further, there is a discussion on how power plays a part in torture through analysis of experts such as Lukes, Foucault, Scarry and others. As well, this chapter identifies the major torture accounts as described by Darius Rejali and then describes the Lesser Evil account of torture and finally the Racist account of torture.

Chapter Five will, by the use of six case studies, provide a summary of the Racist account of torture and will link together racism and torture. Six specific

¹⁴ 9/11 is the internationally accepted abbreviation for the September 11, 2001 attack on the United States World Trade Centre and the Pentagon by international terrorists.

case studies will be analyzed to demonstrate that the Racist account of torture can be proven and authenticated.

Chapter Six will summarize the findings and provide the conclusions I have reached based on the research completed for this project.

METHODOLOGY

This thesis begins with an inter-textual analysis of materials and case studies in the subject areas of human rights, racism and torture in relationship to prisoners of war. The collection process began with texts that analyzed racism and torture. The Internet was also used to identify and collect data on the various international treaties and state legislation on the topic of prisoners of war and crimes against humanity more specifically torture. As news of torture unfolded in Iraq and other countries over the last couple of years, Internet sources played a significant role in the collection of new and developing case material and examples of racism and torture.

A literature review revealed an extensive body of relevant material on the issue of racism. Theorists such as Evelyn Kallen, Antonio Cassese, Philomena Essed, Sandra Fredman, Angie Fleras, Jean Lock Kunz and Dinesh D'Souza help in the general formulation of the concept of racism. The racialized Other is discussed by theorists Michael Foucault, George Fredrickson, Carl Schmitt, Tzvetan Todorov, Noam Chomsky, and Robert Williams. Willard Gaylin and Rush Dosiier provide an understanding of hatred and its role in both racism and

torture. Edward Bernays, Noam Chomsky, Randal Marlin and Jacques Ellul provide insight into propaganda and its role in racism and torture.

Academics such as Antonio Cassese, Alan Dershowitz, Michael Ignatieff, Edward Peters, Sherene Razack, William Shultz and others have recently written on the interrelationship between subjects of racism and torture. Darius Rejali, in his book Torture and Modernity: Self, Society, and State in Modern Iran, suggests there are four principal accounts or explanations of modern torture. These are further elaborated on as the basis for building other accounts of torture.¹⁵ None of these accounts create a theory for why there is torture today but rather discuss some perceived reasons for some instances of torture by the state.

Torture has a significant history. There is very old as well as very recent literature on the subject. To further find or engage materials from the military, military handbooks that graphically demonstrate torture techniques were also employed. The Central Intelligence Agency (CIA) has also recently released their manual on interrogation. Given the psychological damage inflicted by torture, psychology texts were researched to delve into the psychology of hatred, propaganda and torture.

¹⁵ Rejali, note 3 at 2.

CHAPTER TWO

THE HISTORICAL PERSPECTIVE OF RACISM AND TORTURE

INTRODUCTION

In order to place racism and torture in a current day context, it is important to look at the evolution of the legal concept of human rights. With an understanding of the concept of human rights, the reader will better understand why all people need to be protected regardless of who they are or where they live. The reactions include racism, systemic racism and finally physical and mental torture and eventual killings of the racialized Other in defense of the status quo. This chapter begins with the framing of human rights in a historical perspective commencing with the concept of human rights. The purpose of this framing of human rights in a historical perspective is to demonstrate that all persons regardless of race, colour, origin and culture, are equal under both state and international laws.

THE ROLE OF FORMAL DECLARATIONS OF “RIGHTS”

The appearance of human rights as a set of popular propositions limiting the sovereign leadership can be traced to England and the Magna Carta in 1215.¹⁶

¹⁶ Robertson, Geoffrey, Crimes Against Humanity: The Struggle For Global Justice (The New Press, New York, NY, 2002) at 2.

The first appearance of “rights” in the modern sense, declared as such and enforceable in the courts, was in the 1688 *Bill of Rights*, which also emerged in England.¹⁷ In 1679, the first *Habeas Corpus Act* provided the enduring right to challenge the lawfulness of detention tested promptly by the courts.¹⁸ Habeas corpus requires that one must be brought before a judge within a limited timeframe to have law enforcement or the state show why the individual must be kept in custody.

The British *Bill of Rights* of 1689 and the French *Declaration of the Rights of Man and Citizen* of 1789 were all born out of the struggle to overthrow autocratic rule and to establish governments based on the consent of the people. These laws proclaimed that everyone was born free and equal and that the purpose of government was to protect everyone’s natural liberties.¹⁹ From the beginning, that language of rights branched out into two dialects. Mary Ann Glendon states that:

“The first dialect influenced by continental European thinkers like Rousseau, had more room for equality and fraternity and tempered rights with duties and limits combining political and civil rights with public obligations to provide relief for the poor. They then evolved into social and economic rights.²⁰ The second dialect derived from Anglo-American thinkers, emphasized individual rights of liberty and initiative, more than equality or social solidarity and was infused with a greater mistrust of government.”²¹

¹⁷ Robertson, note 2 at 2.

¹⁸ Robertson, note 3 at 3.

¹⁹ Glendon, Mary Ann, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, New York, NY, 2001) at xvi.

²⁰ Glendon, note 2 at xvi.

²¹ Glendon, note 3 at xvi.

In August 1945, the Allies, composed of Great Britain, the United States and the Soviet Union, issued a charter setting forth the *Nuremberg Principles*.²² Largely crafted in Washington, the *Nuremberg Principles* stated that to wage a war of aggression was a crime against international society and that to persecute, oppress or do violence to individuals or minorities on political, racial, or religious grounds in connection with such a war, or to exterminate, enslave, or deport civilian populations, was a crime against humanity. The *Nuremberg Principles* left untouched peacetime violations of human dignity.²³ These principles therefore do not take into consideration more modern methods of warfare and peacekeeping where there are no definitive declarations of war but rather a series of incursions.²⁴

According to Henry Steiner and Philip Alston, the *Universal Declaration of Human Rights* provided a rallying point for the freedom movements that spurred the collapse of totalitarian regimes in Eastern Europe and the demise of apartheid.²⁵ It is this *Universal Declaration of Human Rights* that is believed to be the primary inspiration for most rights instruments in the world today.²⁶

On August 12, 1949, the International Committee of the Red Cross updated its *Charter*, establishing four separate treaties known as the *Geneva Conventions*.²⁷ The Red Cross sought only to ensure that soldiers conformed to

²² Glendon, note 4 at xvi.

²³ Glendon, note 5 at 8.

²⁴ Where there is no definitive declaration of war there is ambiguity for the aggressors to take advantage of the situation and decide the rules of engagement on their own. This produces actions that breach codes of conduct and principles of engagement justifying in their minds abuse of the opposition by torture and other unauthorized acts of aggression.

²⁵ Glendon at xvi.

²⁶ Ignatieff, *The Lesser Evil*, note 2 at 128.

²⁷ www.genevaconventions.org/

certain basic principles of humanity. But Article Three extended the scope of the *Geneva Conventions* to civil wars and other non-international conflicts.²⁸ Article Thirteen recognized that, in these new types of conflicts, combatants would not necessarily wear soldiers' uniforms and they would no longer be readily identified by uniform.²⁹ Therefore, soldiers are covered by the *Geneva Conventions* regardless of whether they were captured wearing a military uniform or not. In most of my later examples of torture the captured and tortured are dressed as civilians and are not considered soldiers. They are not then granted prisoner privileges as stated by the Geneva Conventions on prisoners of war.

The concepts and history of international human rights are important to this thesis because they demonstrate that the world has grown in sophistication by developing rules and laws to attempt to make life equal for all or reduce irregularities. Unfortunately, the written word has failed to deliver equality. International and state laws have grown in substance, and if applied, bring strength to the international community to prevent inequality. But irregularities persist. From my perspective, if some people are treated as having less value than others then it is because society wants it to be that way otherwise such treatment would be prohibited and the prohibition enforced.

With the knowledge that legal rights and human rights exist, there is a need to look at and discuss the moral issues of legal rights and human rights. The next section takes the reader through thoughts and ideas on the roles legal rights and human rights have played in society.

²⁸ www.genevaconventions.org/

²⁹ Ignatieff, Michael, *The Warrior's Honour: Ethnic War and the Modern Conscience* (Penguin Books, New York, NY, 1998) at 128.

THE CONCEPT OF “HUMAN RIGHTS”

In his book The Rights Revolution, Michael Ignatieff writes that “constitutions do not create our rights; they recognize and codify the ones we already have, and provide for the means for their protection.”³⁰ He goes on to say that “we already possess our rights in two senses: either because our ancestors secured them or because they were inherent in the very idea of being human. Such inherent rights would include the right not to be tortured, abused, or starved.”³¹ Inherent rights are rights which attach to personhood. They are not given to you, as they are rights you have because you are human.³² Freedom and equality are examples of inherent rights. Torture, abuse and forced starvation are actions taken by someone external to you and they are the opposite of freedom and equality.³³ Allowing persons to be tortured violates their inherent rights; they are no longer free.

Michael Ignatieff states that these inherent rights are what we now call human rights. They have force whether or not they are explicitly recognized in the laws of the nation-states. Therefore, “human rights may be violated when no state law is being infringed.”³⁴ Legislatures and governments do not give us our human rights but only our legal rights.³⁵ As well, Ignatieff states “Governments

³⁰Ignatieff, Michael, The Rights Revolution (House of Anansi Press Ltd., Toronto, 2000) at 28.

³¹ Ignatieff, The Rights Revolution, note 2 at 28.

³² Ignatieff, The Rights Revolution, note 3 at 28.

³³ Ignatieff, The Rights Revolution, note 4 at 28.

³⁴ Ignatieff, The Rights Revolution, note 5 at 28.

³⁵ Human rights are derived from the fact that you are human. These rights are the live unmolested and free from abuse. Legal rights are rights bestowed upon you from a state as a member of the state. These rights could include the right not to be tortured or the right to vote.

and legislatures exist to protect, defend, and where we deem necessary, extend our human and legal rights.”³⁶

CONCLUSION

The legal framework created under international law and reemphasized under state laws suggests that we have a society where everyone is presumed equal under the law. As well, everyone has rights and responsibilities just by virtue of the fact that they are human. But not everyone agrees with and adheres to this concept. Some portions of western white society view individuals and groups as lesser those who do not look the same as they do, do not have the same culture or religion, or are not on the same economic level.

In the next chapter on racism, the paper explores the concept of the racialized Other and its links to racism. The racialized Other is created by white western society and considered a threat, causing nervousness and hate. This hatred sets the stage for racism, systemic racism and torture of the racialized Other.

³⁶ Ignatieff, The Rights Revolution, note 6 at 28.

CHAPTER THREE

RACISM DEFINED AND THE RACIALIZED OTHER

INTRODUCTION

The purpose of this chapter is to begin to define and describe racism. This chapter will begin the process of identifying the racialized Other. Further, it will show that the racialized Other is treated as less than human because of the perception that they either have inferior qualities or are considered a specific species that is not human mostly because of their race. Once the concept of the racialized Other is established and better understood, it is possible to see the connection between the process of dehumanizing someone because of their race and torturing someone because of their race. This chapter begins with defining racism based on several scholars such as George Fredrickson, Michael Foucault, Dinesh D'Souza, Oliver Cox, Michael Bouton, Francis Henry, Evelyn Kallen, Noam Chomsky, and Angie Fleras.

To obtain a solid understanding of racism, one needs to explore the different definitions of racism as they change and grow over time. This is elaborated on in the next section.

RACISM DEFINED

In his book Racism: A Short History, George Fredrickson states that deep-seated cultural differences are used as the justification for hostility and discrimination against newcomers from the Third World to several European countries. This has led to an understanding of cultural racism as a new form of racism according to which racism is not just based on colour of skin but also on where you are from, your religion and your manner of living.³⁷ Fredrickson believes that racism is a theory about humans being different. It is where groups and individuals think negatively about other groups or individuals over which they have no control. He states that racism is also more than a theory; it is a practice whereby racism attempts to “directly sustain or proposes to establish a racial order, a permanent group hierarchy that is believed to reflect the laws of nature or the decrees of God.”³⁸

Frederickson, in his book entitled White Supremacy, provides a definition of basic racism as “a mode of thought that offers a particular explanation for the fact that population groups that can be distinguished by ancestry are likely to differ in culture, status and power.”³⁹ Within Fredrickson’s conception of racism there are the two components - difference and power. There is, from his perspective, a mindset that regards the racialized Other as permanently and unabridged different. This sense of difference allows for the motivation for the

³⁷ Fredrickson, George, M., Racism: A Short History (Princeton University Press, Princeton, New Jersey, 2002) at 6.

³⁸ Fredrickson, note 2 at 6.

³⁹ D’Souza, note 2 at 36.

use of power to take advantage of the racialized Other in cruel and unjust ways.⁴⁰ This definition is race based and power based but does not take into consideration the cultural and geopolitical circumstances under which racism is occurring, and thus leaves the definition incomplete. Dinesh D'Souza in his book The End of Racism,⁴¹ and Evelyn Kallen in her book Ethnicity and Human Rights in Canada⁴² define racism as the dominant class attempting to rule others by defining the Other as inferior or sub-human.

The General Conference on UNESCO held in Paris, France in 1978 adopted the *Declaration on Race and Racial Prejudice*. Article 2 states that:

“Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgments on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity. Racism includes racist ideology, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutional practices resulting in racial inequality.”⁴³

Again, this definition is race based and does not take into consideration issues of culture and geopolitics.

Subhas Ramnchanran, in his 1982 book entitled Racism: Nonwhites in Canada, reviews several scholars on racism including Michael Bouton, Oliver Cox, and Francis Henry. Here first to Michael Bouton's 1970 definition of racism as “a doctrine that a man's behaviour is determined to be inherited

⁴⁰ Fredrickson, note 3 at 9.

⁴¹ D'Souza, note 3 at 25.

⁴² Kallen, Evelyn, Ethnicity and Human Rights in Canada, Oxford University Press, Don Mills, Ontario, 1995, Page 21.

⁴³ Bolaria, B.Singh & Li, Peter, Racial Oppression in Canada, (Garamond Press, Toronto, 1988) at 16.

characteristics deriving from separate racial stocks, having distinctive attributes and usually considered to stand to one another in relations of superiority and inferiority.”⁴⁴ Oliver Cox writing in 1959 states that “racial prejudice is a social attitude propagated among the public by an exploiting class for the purpose of stigmatizing some group as inferior, so that the exploitation of either the group itself or its resources, or both, may be justified.”⁴⁵ Francis Henry writing in 1978 stated “individual racism is conscious personal prejudice; institutional racism is that which is carried out by an individual because of others who are prejudiced; and structural racism has its base in the inequalities rooted in the operations at large.”⁴⁶

Writing in 2001, Sandra Fredman describes racism as “relationships of domination and subordination, about the hatred of the Other in defense of “self”, perpetrated and apparently legitimated through images of the Other as inferior, abhorrent, even sub-human.”⁴⁷ These definitions are also race based but begin to discuss culture and the needs of the state. This is an added dimension to the definition of racism and begins to include more than just the colour of skin or origin of the Other.

Michael Foucault believes that “racism occurs when the theme of racial purity replaces that of race struggle, and when counter history begins to be converted into biological racism. State sovereignty becomes the imperative to

⁴⁴ Ramncharan, Subhas, Racism: Nonwhites in Canada (Butterworths, Toronto, 1982) at 2.

⁴⁵ Ramncharan, note 2 at 2.

⁴⁶ Ramncharan, note 3 at 90.

⁴⁷ Fredman, Sandra, Combating Racism with Human Rights (Oxford University Press, New York, 2001) at 10.

protect the race.”⁴⁸ Further, Foucault believed that state racism is biological based on colour purity and centralized. The state becomes responsible for the biological protection of the race (e.g. Nazis).⁴⁹ Racism, according to Foucault, is a way of separating out groups that exist within a population and allows power to fragment the population into subspecies. The state then protects those it deems acceptable and refuses to protect those it deems not acceptable.⁵⁰ This definition too is race based but it adds the dimension of acceptability of the racialized Other by the state as long as the racialized Other cooperates with the state and conforms with its societal norms. Here the definition is again expanded to include actions by the state to organize its population into species and subspecies and action is then taken by the state to enforce the separation.

The purpose in exploring the previously mentioned definitions is to demonstrate that there are significant discrepancies in what people perceive to be racism. Some states are thus able to rationalize that they are not racist by relying upon an “acceptable” definition, such as those that describe racism as solely based on race and power.

Assessing the definitions relative to today’s environment, I have chosen as a working definition for this paper the definition proffered by Angie Fleras and Jean Lock Kunz, in their book Media and Minorities, as stated earlier.⁵¹ This paper will apply this definition of racism to the torture of prisoners of war by

⁴⁸ Davidson, Arnold, Michael Foucault: Society Must Be Defended, Lectures at The College de France, 1975-76, Picador Press, New York, , 2003. Page 81.

⁴⁹ Davidson, note 2 at 82.

⁵⁰ Davidson, note 3 at 82.

⁵¹ Fleras, note 4 at 33.

western law enforcement and military personnel to demonstrate that racism can be an element in this type of torture.

I have also adopted from Fleras and Kunz their definition of systemic racism. Fleras and Kunz describe systemic racism as a “subtle yet powerful form of discrimination that is entrenched within institutional structures (rules, organizations), functions (norms, goals), and processes (procedures) of social institutions.”⁵² Systemic racism is an extension of racism whereby today’s institutions such as law enforcement organizations and military corps have over time created barriers to restrict the racialized Other, ensuring they do not become a significant influence within western society. These barriers include language, education, access to financial resources, and occupational restrictions such as degrees or western work experience for professionals like doctors, lawyers and engineers. These barriers are enforced through professional western standards and education and in some respects through immigration status. Systemic racism brings pain and suffering to the racialized Other through processes, policies and procedures imbedded within western society.

From defining racism and systemic racism, this paper moves to discuss the history of racism. This will allow the reader to better understand why racism exists today in western society and see the possibility that the concept of racism can be reversed.

⁵² Fleras, note 5 at 38.

THE HISTORY OF RACISM

According to George Fredrickson, racism originated in the fourteenth or fifteenth centuries and is mainly a product of the West.⁵³ Fredrickson suggests that there were two distinct parts that combined to create racism. These distinct parts were difference and power.⁵⁴ The fact that the Other was different from the white westerner rationalized the use of power against them, lead to a range of unjust behaviours from social discrimination to genocide.⁵⁵

The European explorers, from their perspective, found the continents of Africa and the Americas in different and less advanced stages of development. Africa was considered by Europeans as still in the agrarian stage while the peoples of the Americas were considered still nomadic. Non-whites inhabited most of the continents and were viewed as less developed and therefore less than civilized.⁵⁶ Alexis de Tocqueville remarked that Europeans perceived themselves as more civilized and advanced. This then led, according to de Tocqueville, “to arrogance on the part of the conqueror and a degradation of the conquered peoples of Africa and the New World of the Americas.”⁵⁷ Dinesh D’Souza believes that racism was developing when the issue of climate and environmental explanations were no longer valid reasons for the difference in skin colour and the lack of perceived intellectual development.⁵⁸

⁵³ Fredrickson, note 4 at 6.

⁵⁴ Fredrickson, note 5 at 9.

⁵⁵ Fredrickson, note 6 at 9.

⁵⁶ D’Souza, note 4 at 51.

⁵⁷ D’Souza, note 5 at 56.

⁵⁸ D’Souza, note 6 at 56.

Europeans, according to D'Souza, considered American aboriginals as backward. "The American aboriginals were called savages thus likened to jungle animals because they were perceived to be primitive and in some situations could be brutal." As a result, Europeans believed that nature, history and "God" created racial inequalities.⁵⁹

The Europeans felt the American aboriginals were not human but at the same time were not animals either. But African blacks were considered animals and beneath the human standards or sub-human.⁶⁰ The Americas were considered the land of milk and honey whereas Africa was considered uninhabitable with its deserts and jungles. Africa was considered primitive, as were the black inhabitants. The term black took on a connotation of civilizational backwardness.⁶¹ The conquering white Europeans allowed these concepts to take hold in their attitudes towards the racialized Other. Anyone who was not considered white was not considered equal. Rather they were considered inferior or animal like. This is important to my thesis as it sets the stage for the torturer to justify his or her torturing as well as the state's acceptance of this behaviour.

From briefly looking at the history of racism as a concept of difference and power, it is now important to discuss how the categorization of those individuals and groups into the racialized Other led to fear and hatred of the racialized Other.

⁵⁹ D'Souza, note 7 at 58.

⁶⁰ D'Souza, note 8 at 59.

⁶¹ D'Souza, note 9 at 65.

RACISM AND THE HATRED OF THE RACIALIZED OTHER

Racism arises out of ignorance of the racialized Other.⁶² The Other is categorized in terms of real or attributed differences when compared to Self.⁶³ The racialized Other is defined as a population group that is treated unequally purely because it possesses or is perceived to possess physical or other characteristics socially defined as denoting a particular race.⁶⁴ A racist concocts stereotypes, which are considered false generalizations about other people. A racist then develops prejudices and hostilities against those other people.⁶⁵ This ignorance is thought to result in fear of the racialized Other.⁶⁶ It is important to note that we are afraid of what we do not understand and as a result we hate what we fear. You cannot have racism without hostility says Alvin Poussaint.⁶⁷

To further the Racist account of torture it is important to link hatred of the racialized Other with the racist act of torture. Therefore hatred needs to be defined and shown as a step in the process of racist torture. The Oxford Dictionary defines hatred as “the condition or state of relations in which one person hates another; the emotion or feeling of hate; active dislike, detestation, enmity, ill-will, malevolence.”⁶⁸

Willard Gaylin, in his book entitled Hatred: The Psychological Descent Into Violence, states that there always needs to be an object for hatred.⁶⁹ A

⁶² Fleras, note 6 at 33.

⁶³ Miles, note 2 at 11.

⁶⁴ Marshall, note 2 at 549.

⁶⁵ Marshall, note 3 at 25.

⁶⁶ Marshall, note 4 at 549.

⁶⁷ D’Souza, note 10 at 25.

⁶⁸ www.askoxford.com/

⁶⁹ Gaylin, Willard, M.D., Hatred: The Psychological Descent Into Violence (Public Affairs, New York, 2003) at 21.

racist's hatred of the racialized Other is based on a feeling of being threatened or humiliated by the very presence of the racialized Other as a free member of one's society. In order to hate the racialized Other, there must be fear of the racialized Other and there must be a perception of the racialized Other as a danger.⁷⁰

Hate requires both passion and a preoccupation with the disdained group. And among the population of haters there will be a range of intensity and degrees of hate.⁷¹ There will be those who can torture and kill and those who can only passively approve such actions.

There are three main components of hatred according to Gaylin. Hatred is clearly and most obviously (1) an emotion, an intense emotion, that is, a passion; (2) hatred is also a psychological condition; a disorder of perception; a form of quasi-delusional thinking; and finally, (3) hatred requires an attachment.⁷² The choice of the victim is more often dictated by the subconscious needs and the personal history of the hater than by the nature, or even the actions of the hated.⁷³

Rush Doser in his book Why We Hate, suggests that hate has a near limitless ability to dehumanize its victims, shutting down the most basic capacities for sympathy and comparison.⁷⁴ Hate can arise in an infinite number of forms as religious hatred, racial hatred, sexual hatred, class hatred, cultural hatred, gender hatred, and political hatred.⁷⁵ In the name of hate, human beings carry out

⁷⁰ Gaylin, note 2 at 26.

⁷¹ Gaylin, note 3 at 27.

⁷² Gaylin, note 4 at 26.

⁷³ Gaylin, note 5 at 28.

⁷⁴ Doser, Rush W. Jr., Why We Hate (Contemporary Books, New York, New York, 2004) at ix.

⁷⁵ Doser, note 2 at xii.

the most shocking and repulsive acts imaginable. These inhuman acts can go by many different names: oppression, torture, genocide and terrorism.⁷⁶

Doser believes that:

“Hate is a primitive emotion that marks for attack or avoidance those things that the hater perceives as a threat to survival or reproduction. Hate is an extreme form of aggressive dislike. Someone filled with racial or ethnic hatred experiences immediate, irrational hostility whenever he or she encounters any number of the hated group or class irrespective of that particular individual’s unique qualities or beliefs.”⁷⁷

Doser also suggests that the destructive power of hate comes from the coming together of prejudice with aggression and anger. The racist hates all types of people such as all blacks, all Jews and all aboriginals. The hater sees someone first and foremost as a stereotype.⁷⁸ One of the most striking aspects of hate is how it cuts off the ability to empathize with those who are hated. Hate is blind to the suffering of others. It allows the most terrible cruelty and torture to take place without the slightest pity.⁷⁹ In the context of hate, the “us versus them” divisions are deeply felt and sometimes lethal.⁸⁰ Dosser further states “where dislike is transmitted into hatred, empathy vanishes, and opponents are transformed into dehumanized “them” subject to ruthless extermination.”⁸¹

According to Patricia Marchak, in her book Reigns of Terror, the concepts of hate and racism are current themes involving state crimes against their own

⁷⁶ Dosser, note 3 at 1.

⁷⁷ Dosser, note 4 at 15.

⁷⁸ Dosser, note 5 at 20.

⁷⁹ Dosser, note 6 at 24.

⁸⁰ Dosser, note 7 at 42.

⁸¹ Dosser, note 8 at 47.

citizens.⁸² Minorities are attacked when majorities in the communities feel threatened in one way or another. Victims are identified and attacked based on their territorial locations, their occupations, their lifestyles, their class situation, their political beliefs or even their age.⁸³ Using propaganda, the state usually describes these victims as evil and threats to the security and safety of the state's other citizens.⁸⁴ Patricia Marchak states, "Ordinary people can inflict torture, mass murder and other atrocities on unarmed civilians because of the human tendency to obey authority; praise; group support; conformity to group norms; distancing; dehumanizing; and modernity."⁸⁵

From the understanding of racism and hatred of the racialized Other there is a need now to look at the process of the state in its attempt to ensure its power over the racialized Other is sustained and passed through its bureaucracy to the target victims (the racialized Other). One of the major processes used by states to do this is propaganda. This phenomenon will be explored in the next section. This is important as it demonstrates the link between the needs or desires of the state and the actual use of torture against the racialized Other by the state instruments such as the police and military.

HATRED, RACISM AND PROPAGANDA

To sustain hatred, the enemy must be seen as evil and a menace to the well being of the person who hates. This is often achieved through the use of

⁸² Marchak, Patricia, *Reigns of Terror* (McGill-Queen's University Press, Montreal, PQ, 2003) at viii.

⁸³ Marchak, note 2 at viii.

⁸⁴ Marchak, note 3 at viii.

⁸⁵ Marchak, note 4 at 110.

propaganda. The following definitions demonstrate how propaganda has changed over time to suit the needs of the state.

Edward Bernays first wrote of propaganda in 1928.⁸⁶ He began with a definition of propaganda from William Thomas Brande (1842), where Brande called propaganda “a term of reproach to secret associations for the spread of opinions and principles which are viewed by most governments with horror and aversion.”⁸⁷ Bernays stated that by 1915, however, “governments began to systematically deploy the entire range of modern media to rouse their populations for frantic assent.”⁸⁸ The propagandized, he stated, “do whatever he would have them do, exactly as he (the state) tells them to, without knowing it.”⁸⁹ Bernays defined propaganda as “the mechanism by which ideas are disseminated on a large scale...in the broad sense of an organized effort to spread a particular belief or doctrine.”⁹⁰ In further defining propaganda, Bernays suggested that “propaganda becomes vicious and reprehensible only when its authors consciously and deliberately disseminate what they know to be lies, or when they aim at effects which they know to be prejudicial to the common good.”⁹¹ Propaganda can be used to manipulate positions both for good and evil.

According to Jacques Ellul and as expounded on in his book Propaganda – The Formation of Men’s Attitudes, “The technique of propaganda first consists of precisely calculating desired action in terms of the individual who is to be made to

⁸⁶ Bernays, Edward, Propaganda, Ig Publishing, Brooklyn, New York, 2005 (1928) at 10.

⁸⁷ Bernays, note 2 at 10.

⁸⁸ Bernays, note 3 at 11.

⁸⁹ Bernays, note 4 at 20.

⁹⁰ Bernays, note 5 at 48.

⁹¹ Bernays, note 6 at 50.

act.”⁹² Second, Ellul states “propagandists can alter opinions by diverting them from their accepted course, by changing them, or by placing them in an ambiguous context.”⁹³ The propagandist starts from apparently fixed and unmovable positions. A person can then lead another person where he does not want to go and over paths that he will not notice.”⁹⁴ Further, Ellul states “propaganda must attach itself to a feeling or an idea.”⁹⁵ As well, propaganda “must build on a foundation already present in the individual.”⁹⁶ Ellul also suggests that hate, hunger and pride make better levers of propaganda than do love and impartiality.⁹⁷

Propaganda is further defined by Ellul as “a set of methods employed by an organized group that wants to bring about the active participation in its actions of a mass of individuals, psychologically unified through psychological manipulations and incorporated in an organization.”⁹⁸ According to Ellul, “psychological action is designed to shape and develop and sustain the morale, and to immunize the soldiers against enemy psychological attacks.”⁹⁹ This definition raises the possibility, to be explored in what follows, that the torturer is reacting on behalf of the state and is being manipulated to perform racist acts of torture.

⁹² Ellul, Jacques, Propaganda: The Formation of Men's Attitudes, Vintage Books, New York, 1973, page 34.

⁹³ Ellul, note 2 at 35.

⁹⁴ Ellul, note 3 at 35.

⁹⁵ Ellul, note 4 at 36.

⁹⁶ Ellul, note 5 at 38.

⁹⁷ Ellul, note 6 at 37.

⁹⁸ Ellul, note 7 at 61.

⁹⁹ Ellul, note 8 at 136.

Once propaganda begins to utilize and direct an individual's hatreds, Ellul suggests "he no longer has any chance of retreat, to reduce his animosities, or to seek reconciliations with his opponents."¹⁰⁰ Moreover, Ellul states "the individual now has a supply of ready-made judgments where he had only some vague notions before propaganda set in. Those judgments permit him to face any situation."¹⁰¹ For the individual, there will never again be reason to change judgments and there will only be one truth.¹⁰² Ellul further suggests that propaganda codifies social, political and moral standards. Of course an individual needs to establish such standards and categories but the difference is that propaganda gives an overwhelming force to the process. Individuals now have difficulty modifying their judgment and thought patterns.¹⁰³ Racism can thus be codified into social, political and moral standards for police and military who then act out what they perceive to be the will of the state.

According to Ellul, the force of propaganda gives the appearance of objectivity but in fact the individual has nothing but prejudices and beliefs.¹⁰⁴ The individual is conditioned to believe there is only one truth and must conform to that truth or he will not be accepted by his peers. Acceptance is a very strong tool to induce conformity.

Further, Ellul suggests that the individual believes the propaganda and considers them to be truths. The process allows him to throw off all sense of guilt. With no guilt, the individual then loses all feeling for the harm he might

¹⁰⁰ Ellul, note 9 at 163.

¹⁰¹ Ellul, note 10 at 164.

¹⁰² Ellul, note 11 at 164.

¹⁰³ Ellul, note 12 at 136.

¹⁰⁴ Ellul, note 13 at 165.

do and all sense of responsibility other than the responsibility propaganda instills in him.¹⁰⁵ Propaganda builds a monolithic or one dimensional individual. These are individuals that can think or react in only one way and usually the way of thinking and reacting is controlled by the state or institution they belong to.¹⁰⁶

Ellul believes that the individual now has a set of prejudices and beliefs as well as objective justifications:

“His entire personality now evolves around those elements. He will defend himself against new ideas because it threatens to destroy his certainties. He thus actually comes to hate everything opposed to what propaganda has made him acquire. Propaganda has created in him a system of opinions and tendencies, which may not be subjected to criticism. That system leaves no room for ambiguity or investigation of feelings. The individual has received irrational certainties from propaganda, and precisely because they are irrational, they seem to him part of his personality. He feels personally attacked when these certainties are attacked. There is a feeling akin to that of something sacred. And this genuine taboo prevents the individual from entertaining any new ideas that might create ambiguity within him.”¹⁰⁷

Ellul states that propaganda’s aim is to make the individual become another person and obey impulses that are foreign to him. He begins to obey someone else like a great leader or a great cause. In large groups, an individual blends in but also he disappears entirely.¹⁰⁸ The individual can no longer judge for himself because he relates his thoughts to the entire complex of values and prejudices established by propaganda.¹⁰⁹ Ellul further suggests that once propaganda has

¹⁰⁵ Ellul, note 14_at 163.

¹⁰⁶ Ellul, note 15_at 165.

¹⁰⁷ Ellul, note 16_at 166.

¹⁰⁸ Ellul, note 17_at 164.

¹⁰⁹ Ellul, note 18_at 170.

established these sets of values and prejudices into individuals and groups, the state can use propaganda to its advantage.

Randal Marlin, in his 2002 book, Propaganda and the Ethics of Persuasion, states propaganda is “the organized attempt through communication to affect belief or action or inculcate attitudes in a large audience in ways that circumscribe or suppress an individual’s equally informed, rational, reflective judgement.”¹¹⁰ Oliver Thomson states “propaganda chooses to flatter the individual. The person is told they are ethnically or racially superior, religiously superior and finally militarily superior. They would be told, for example, that they were the master race, God’s chosen people and the invincible.”¹¹¹

Key for this paper is Randal Marlin’s belief that the military can become an instrument of propaganda. The soldiers are recruited through propaganda. Marlin suggests that military recruiters “appeal to the sense of belonging, to the fear of being left out and not counted as a somebody in one’s peer group.”¹¹²

The state takes the young recruits from their family and surroundings and places them in a new environment where they are susceptible to new ideas.¹¹³ Explaining this concept, Randal Marlin uses the term “Hitler Thought”, whereby “soldiers are led to believe the enemy is barbarous and so the soldiers were not concerned about killing their enemy.”¹¹⁴ According to Marlin, wartime propaganda fuelled hatred and anger against the enemy. This was done by

¹¹⁰ Marlin, Randal, Propaganda and the Ethics of Persuasion, Broadview Press, Peterborough, Ontario, 2002, Page 22.

¹¹¹ Marlin, note 2 at 45.

¹¹² Marlin, note 3 at 98.

¹¹³ Marlin, note 4 at 56.

¹¹⁴ Marlin, note 5 at 81.

“turning the enemy into a non-human creature, unworthy of rights or respect in the eyes of the propagandees.”¹¹⁵ Finally, to bring sharpness to the definitions of propaganda, Noam Chomsky defines propaganda, as “thought control” while Bernays believes it is the engineering of consent.¹¹⁶ Applying these definitions to the military, one can see that propaganda is used by the state to control its military and police to ensure they reflect the beliefs of the state and do the bidding of the state without question. The values and ethics of the troops and police become those of the state. If the state chooses to racially segregate and punish the racialized Other then the troops and police will consciously or unconsciously carry out its wish. Both Bernays and Ellul suggest that propaganda used properly by the state can create a military or police force that will obey the wishes of the state without question and reflect the values and ethics of the state in their daily work. If the state wants tight control over a specific group then the military and police will do whatever is necessary to achieve that control. This activity would be done consciously and unconsciously.

RACISM, PROPOGANDA AND LAW ENFORCEMENT/MILITARY

Propaganda plays an important role in the development of law enforcement officers and military soldiers. Law enforcement and military instructors, using propaganda, will categorize the enemy as demons or less than human so that the rules that apply to conduct among “ordinary” people can be

¹¹⁵ Marlin, note 6 at 98.

¹¹⁶ Chomsky, Noam, Hegemony or Survival (Metropolitan Books, New York, N.Y., 2003) at 7.

suspended.¹¹⁷ This suspension is perceived to be needed in order to achieve operational and strategic objectives leading to abuse and torture by police and soldiers.

Sherene Razack, in her recent book Dark Threats and White Knights: The Somalia Affair, states that military culture is inherently racist, sexist and homophobic.¹¹⁸ If the military culture is as suggested by Razack, then the state has control over a highly tuned instrument that can be easily persuaded to torture and kill the racialized Other.

But throughout Western European history, terms such as heathens, infidels and savages have been used in the justification of imperialist conquest.¹¹⁹ Whole societies have been characterized as “non-people” solely on the basis of skin colour and cultural differences. All racial minorities have suffered in this way.¹²⁰

For example, United States soldiers described their opponents during the Vietnam War by using the pejorative term “Gook”. By defining the enemy as objects, or at least sub-human, it is easier to order their torture and destruction and to persuade those who must do the torturing, that their actions are not subject to the moral constraints that rule out torture as acceptable human behaviour. Rush Dozier examined studies conducted on Russian soldiers’ activities while at war to subdue Chechnya. Russian and Western human rights observers have gathered thousands of pages of documentation of torture, committed by Russian soldiers in

¹¹⁷ Gaylin, note 6, at 187.

¹¹⁸ Razack, note 2 at 57.

¹¹⁹ Forrest, Duncan, A Glimpse of Hell: Reports on Torture World Wide (New York University Press, New York, 1996) at 73.

¹²⁰ Forrest, note 2 at 73.

the most recent conflict in the rebellious North Caucasus Province.¹²¹ According to Dozier, there is a Russian military culture that portrays the enemy as inhuman.¹²²

Patricia Marchak suggests that military troops told by their superior officers to torture and kill people, do so because they obey authority. If we regard authority as legitimate, we are predisposed to believe its pronouncements and accept its assurances. Professional soldiers are expected to regard their superiors as the legitimate arm of the state irrespective of their personal relationships with those individuals. Obedience is a normal condition within any line hierarchy that has legitimacy. Law enforcement and the military are the epitome of line authority organizations. It would not be surprising for soldiers to accept as truth that a specific group is the enemy and to torture and kill on command.¹²³

Philip Zimbardo completed a study in 1973 on power and authority. In his study, American students were randomly divided into two groups labeled prisoners and guards. The students chosen to be prisoners were dressed as prisoners while the students chosen to be guards were dressed as guards. They were instructed not to have personal relationships with the other group and to obey a series of regulations. The regulations for the student prisoners were essentially humiliating. Within a few days the student guards became arrogant, demanding and inhumane in their treatment of the student prisoners. Zimbardo's results showed that when people have absolute power over others, they lose moral

¹²¹ Doser, note 9 at 69.

¹²² Doser, note 10 at 70.

¹²³ Marchak, note 5 at 111.

inhibitions against committing cruel acts.¹²⁴ This supports actions by police and soldiers to mistreat their prisoners without concern for the prisoners' human rights. Once the police or military are placed in a position of dominance and perceive the captives as lesser beings, they feel justified in abusing the captives. This activity becomes the norm.

CONCLUSION

Racism and hatred set the stage for progression to torture. Racism acted out can lead to torture. The understanding of racism combined with the hatred of the racialized Other and the use of propaganda by the state creates an environment whereby the state's enforcement implements such as the military and the police will react to the state's desire to control. Torture is just one of the many methods that are available for the suppression and control of the racialized Other by the state. A problem arises when the state has expressed a specific desire to control but not torture. The military and police use torture as one of their tools without the state checks and balances. Torture becomes another tool to be used in the daily working of the streets and is not controllable by the state all of the time. The next chapter defines torture, provides a history of torture, the theories of torture and demonstrates tortures affects on humans.

¹²⁴ Marchak, note 6 at 112.

CHAPTER FOUR

THEORIES OF TORTURE

INTRODUCTION

The purpose of this chapter is to build on the last chapter of racism and link racism and torture together forming the Racist account of torture. I will demonstrate through an analysis of torture and the existing theories on torture, that racism is an element in some types of torture.¹²⁵ In order to do this I will begin by defining torture both from a classical perspective and a modern perspective. This will provide the reader with a good sense of what torture is and how it is used. The chapter will then offer a discussion on the purposes of torture in modern times setting the stage for an understanding by the reader of what torture is from a legal perspective and from a psychological perspective; what torture is used for by the state and the state's instruments such as the police and military; and finally, why racism is an element of some torture. To focus the reader on state use of torture, this chapter describes and analyses power as an element of torture, the four types of torture accounts as outlined by Darius Rejali and then proceeds to explore the Lesser Evil account of torture as described by Alan Dershowitz and Michael Ignatieff. From there, the reader will be introduced to my perspective on how racism is linked to torture to form the Racist account of torture as described by Sherene Razack.

¹²⁵ This torture referenced here is torture committed in the battlefield by soldiers, in military prisons to soldiers captured in battle and torture carried out during interrogations by law enforcement engaged in combating terrorism.

The purpose of this chapter is not to compare theories of torture or build on their deficiencies or efficiencies. Rather, the goal is to demonstrate that torture continues to exist, that there are several modern accounts of torture that try to explain why torture continues to exist, and finally, that in some instances the racialized Other is tortured for no other reason than that she/he is a racialized Other. I also hope to demonstrate to the reader that racist torture at times dominates when all of the state proffered reasons for torture are exhausted yet the torture continues and the target of this process is the racialized Other.

TORTURE DEFINED

Edward Peters states that torture began “as a legal practice and has always had as its essence, public character, whether as an incident in judicial procedure or as a practice by state officials outside the judiciary proper.”¹²⁶ Torture was the infliction of suffering, however defined, upon anyone or for any purpose.”¹²⁷ Peters adds a legal definition of torture as torment inflicted by a public authority for public purposes.¹²⁸

The 1987 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* defines torture in Article 1 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 party has committed or is suspected of having committed, or intimidation 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

¹²⁶ Peters, Edward, *Torture*, University of Pennsylvania Press, Philadelphia, 1985, Page 2.

¹²⁷ Peters, note 2 at 4.

¹²⁸ Peters, note 3 at 3.

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 incident to lawful sanctions.”¹²⁹

From my perspective, this Convention was written to include all means of torture and adds discrimination as a reason for torture. The inclusion of discrimination is the recognition that torture is not only about the gathering of information, gaining confessions, or punishing someone but also that torture is used against the racialized Other to discriminate against them. As well, with the mention of the public official in this definition, there now is the recognition that torture has been used in the past by states to discriminate against individuals and groups and could be used for the same purposes in the future.

Carlos Gonsalves, writing in the Journal of Traumatic Stress, conceptualizes torture as “a sophisticated institution that targets and undermines the individual as well as social structures through a systematic and deliberate campaign.”¹³⁰ Gonsalves believes torture is symptomatic of the breakdown of the rule of law. From a legal perspective, Gonsalves suggests, “Torture is committed with full knowledge and intent to do harm to a person for a specific reason.”¹³¹ From my perspective, people do not torture for the sake of torture but have a very specific reason. These reasons may include anger, fear and hatred, the need to punish someone for what they have done, the need to convince someone to do something they do not want to do, the need to gather intelligence from someone who does not want to speak, or the need to punish a person because they are of

¹²⁹ www.hrweb.org/legal/cat.html.

¹³⁰ Gonsalves, Carlos, Journal of Traumatic Stress, Volume Six, Number Three, 1993, at 352.

¹³¹ Duner, Bertril, An End of Torture: Strategies For Its Eradication,(Zed Books Limited, London, U.K., 1998, at 88.

another colour, race or from a different culture or religion that the torturer does not like. Finally, people torture people to gain or exert power over them. I will explore these reasons further in this thesis.

The process of torture involves something far more complex and insidious than the simple infliction of pain on the body. “The basic goal of torture”, says Dr. Richard Mollica, a Harvard University psychologist and a pioneer in the study of torture trauma, “is to destroy the person’s worldview, how they see the world, and their place in it”.¹³² According to Judith Pilowsky, a Toronto psychologist, “torture is an attempt to smash the self, to break the person. “I’m broken, I’m destroyed, I’m nobody, I’m nothing” say the victims over and over again.”¹³³ The purpose of breaking someone is, from my perspective, to control the individual. The tortured will now say and do whatever the torturer desires because of fear of more pain or psychological damage. Once you can control a person you have power over them.¹³⁴

The next section of this chapter discusses in greater detail the history of torture, the various reasons for torture and attempts to answer the question: why torture?

THE HISTORY OF TORTURE

Torture exists today and is an integral part of modern life. It is probable that torture has been with mankind from the beginning. But the recorded history of torture states that it began as a legal practice and has always had as its essence

¹³² Gardner, Dan, The Face of Torture, (The Ottawa Citizen, February 2, 2004) at A1.

¹³³ Gardner, note 2 at A6.

¹³⁴ Power as it relates to torture is discussed in the torture and power section later in this chapter.

its public character, whether as part of a judicial procedure or as a practice of state officials outside the judiciary.¹³⁵ The history of torture in Western Europe can be traced from the Greeks, through the Romans, through the middle ages, and then down to the legal reforms of the 18th Century. By the end of the 18th Century, torture was, for the most part, officially abolished by law. However, torture never really disappeared. Torture, prior to its legal abolition, is considered classical torture and the torture that followed its abolition is considered modern torture.¹³⁶ From the late 19th Century, torture was legally reinstated in many parts of Europe and its colonies. Torture was greatly accelerated by changing concepts of political crime in the 20th Century. It is believed that torture is currently used in one in three countries in the world.¹³⁷

In Greek history there was a shift from a largely archaic and communal legal system to a more complex one where the issue of evidence and the distinction between free men and slaves were first identified. In the 6th Century, B.C., there were two types of evidence. There was natural evidence which was offered from a citizen and then there was coerced evidence which was forced from a non-citizen usually through torture or intimidation.¹³⁸ There was civil and criminal law at this time but there was also political use of both of these branches of the law whereby political leaders were seen to use the laws to suit their political needs.¹³⁹

¹³⁵ Peters, note 4 at 4.

¹³⁶ Rejali, note 4 at 6.

¹³⁷ Peters, note 5 at 5.

¹³⁸ Peters, note 6 at 13.

¹³⁹ Peters, note 7 at 17.

Under Roman law in the 2nd Century, A.D., initially only slaves could be tortured. At that time, the Romans were divided into two groups, the *honestiores* and the *humiliores*. The *honestiores* were the privileged class and the governing class whereas the *humiliores* consisted of the rest of Roman society made up of the minor tradesmen, the poor and the displaced. By the 6th Century the *humiliores* could, along with the slaves, be tortured under Roman law.¹⁴⁰ The rationale for the torture could be found under the concept of treason. The Emperor, therefore, could define an act by slaves or *humiliores* as treason and justify the use of torture.

In the 4th Century, Germanic invaders of the Roman Empire adopted the Roman legal principles including torture. They added disgraced freemen and non-freemen in their list of those that could be tortured under law. The offences that resulted in torture included diminished personal honour, murder, being a traitor, deserting the military and being a coward.¹⁴¹ The circle of who could be tortured legally and what they could be tortured for grew larger each century. In the 5th and 6th Centuries witnesses who were slaves could only give evidence after they had been tortured as it was believed that torture brought veracity to their testimony.¹⁴² The past torture of slaves and non-aristocrats is the same as the current torture of the racialized Other. They are groups identified by the state as lesser than the citizens of the state and can be tortured by the state because of who they are.

¹⁴⁰ Peters, note 8 at 18.

¹⁴¹ Peters, note 9 at 36.

¹⁴² Peters, note 10 at 31.

The 12th Century brought a revolution in law in Europe that shaped jurisprudence in both civil and criminal matters. This continued until the 18th Century. During this time there was the continual study of and the expanded practice of law. The printing press was also invented making information on the laws and the relevant jurisprudence available to those who had an interest. Law schools flourished and the Courts grew in size and importance.

By the second half of the 13th Century through to the end of the 18th Century, torture was an integral part of the criminal procedure of the states and in the Latin Church throughout Europe.¹⁴³ Under Roman-Canonical legal procedure, proof needed to be sought, produced and examined. Witnesses needed to be classified and interrogated under oath and the accused needed to have a means of defense against the charges. Confessions were important and torture was still used in some circumstances. As police powers were broadened to allow for investigations of the evidence, torture began to grow as a means of obtaining confessions and other proof against the accused.¹⁴⁴

By the 18th Century, there was a growing literature on the need to abolish torture. With the new range of sanctions such as prisons, the revolution in the law of procedures and the diminishing role of confessions for conviction, there was no longer a need for torture as an integral part of the legal procedures. Michael Foucault stated that when the 18th Century brought a new age of penal justice the focus on the body changed and therefore torture and repression decreased.¹⁴⁵ Physical punishment was dying out. Foucault suggested there were still traces of

¹⁴³ Peters, note 11 at 54.

¹⁴⁴ Peters, note 12 at 54.

¹⁴⁵ Foucault, note 3 at 16.

torture that had not been eradicated. He further stated that “the expiration that once rained down upon the body must be replaced by the punishment that acts in depth on the heart, the thoughts, the will, the inclination...Punishment...should strike the soul rather than the body.”¹⁴⁶ Here, from my perspective, Foucault is suggesting that in order to reform individuals one needs to shift from punishing the physical body and needs to shift to changing the person’s behaviour by creating habits to more appropriate behaviour through discipline.

According to Edward Peters, the humanitarian-progressionist states which flourished in the 17th and 18th century, through writing and dialogue moved successfully to abolish torture as they felt it was no longer needed. This served as the end of classical torture¹⁴⁷. But by the end of World War I, torture was back and increased in frequency and intensity. This was the beginning of modern torture.¹⁴⁸ Modern torture will be discussed further in the next section.

TORTURE IN MODERN SOCIETY

The objective of modern torture was to locate, isolate and cripple the prisoner’s soul. Peters suggests that this was due to new religions, secular authoritarian and totalitarian states, which exerted a demand for total citizenship and subjection on their populations.¹⁴⁹

¹⁴⁶ Foucault, note 4 at 16.

¹⁴⁷ Classical torture was ceremonial and consisted of processions and rituals and ultimately public executions.

¹⁴⁸ Modern torture is private not public. It is guided by new punitive principles where you do not seek to punish the criminal act of the body but punish instead the delinquent life of your prisoner.

¹⁴⁹ Peters, note 13 at 78.

The early part of the 20th Century produced new forms of states that were strong enough to abolish courts, laws and procedures within their borders as they chose fit to do. As a result, torture reappeared in the USSR, fascist Italy and Spain, and finally Nazi Germany. Alex Mellor states that the fundamental causes of the reappearance of torture were first, the appearance of the totalitarian state; second, the perceived necessity imposed by modern warfare to collect intelligence that was believed to be needed immediately and at any cost; third, the creation of special services and special methods of interrogation in support of the intelligence gathering function; and finally, fourth, the state practice that praises the occupation of the spy and recognizes no restraint upon the treatment of the prisoner.¹⁵⁰

The defense of the nation state entailed the defense of the people. Now the nation state had to be defended from enemy national states as well as from international revolutionary movements that in themselves rejected ethnic states as counter revolutionary states. Now in the 20th Century, political crime was looked at as a vulnerability. In fascist states, the secret police used torture regularly on suspected enemies of the state, the party and the people. In Nazi Germany, where the state and the law were subordinated to the people and the party, people were tortured because they were communists, Marxists, Jehovah's Witnesses, saboteurs, terrorists, members of the resistance movements, antisocial elements, refractory elements, Jews, or Polish or Soviet vagabonds.¹⁵¹

¹⁵⁰ Peters, note 14 at 106.

¹⁵¹ Peters, note 15 at 125.

Alex Mellor stated that Intelligence collection was mostly political and is always needed on an urgent basis. Therefore the agents of the state tasked with the collection of intelligence ignore citizens' protections under law. As well, espionage creates counter espionage which in turn leads to spies and terrorism and torture.¹⁵² Problems arise when police are used by the state for both criminal and political offences. The police become controlled by the state rather than the judiciary. The police and other agents of the state no longer follow the law and do what they are told to do by their superiors.

Edward Peters believes that the main cause of the return of torture is the growth in state security police and political police, and the military as extra-judiciary organs of the modern state.¹⁵³ The interrogation of prisoners of war, carried out in the heat of battle, guided only by the least enforceable rules against the enemy unprotected by a common law, marks the conduct of warfare in the modern world. The existence of international conventions and agreements about the rights of prisoners has not prevented the autonomous military from using their own rules to deal with potential informative prisoners. If you are captured as a spy there is less protection for you.¹⁵⁴

Torture also occurred in the colonization from Europe. Colonial administrators and their police used torture in the 20th Century because it served to control the population being colonized. It also served to protect racial differences, decrease the violence of revolutionary movements, and keep the indigenous populations from exercising their lawful rights. Algeria is an excellent

¹⁵² Peters, note 17 at 107.

¹⁵³ Peters, note 18 at 114.

¹⁵⁴ Peters, note 19 at 115.

example whereby French troops used torture while colonizing and occupying Algeria. The first victims of torture in Algeria by the colonial army were Arabs who were considered as less than human and qualified as the Other by the French occupiers.¹⁵⁵ This torture of the Arab people in Algeria by the colonial army of France is another example whereby the racialized Other is tortured by the representatives of the state.¹⁵⁶ As well as through colonization, the use of torture by states has traveled the world through globalization and imperialism. According to Alfred McCoy, in his most recent book, A Question of Torture, much of the abuse using torture and synonymous with the era of authoritarian rule in Asia and Latin America seems to have originated in the United States and disseminated by the American Central Intelligence Agency as an agent of the United States.¹⁵⁷ This is a disturbing trend. The world's super power is seen to be sending it's agents to foreign countries around the world to assist these countries in using torture in seeking intelligence and as well, teaching other states' agents the methods of torture to be used to control those who would attempt to compromise the interests of the United States abroad.

The purpose of modern torture is discussed in the following section.

THE PURPOSE OF TORTURE IN MODERN SOCIETY

Cesare Beccaria wrote in an essay on crime and punishment in 1764, that torture is utterly useless for extracting the truth from the accused:

¹⁵⁵ Peters, note 20 at 138.

¹⁵⁶ This supports the racist theory of torture as an explanation for the torture.

¹⁵⁷ McCoy, Alfred, A Question of Torture, Metropolitan Books, New York, 2006, page 11.

“Torture took no account of individuals differing resistance to pain: the requirement (...) that pain became the crucible of truth, as if truth’s criteria lay in some wretch’s muscles and sinews, only confuses all relations. It is a sure means to acquit the sturdy villain and condemn the weakly innocent (...).”¹⁵⁸

In today’s environment, Bertril Duner suggests that one purpose of torture is “to secure intelligence about the “enemy” or to intimidate the perceived, actual or potential supporters of the opposition, or to obtain confessions of complicity in an illegal event.”¹⁵⁹ He further states “sometimes even non-violent dissent will attract torturous treatment, usually as a means of securing confessions or information about other enemy soldiers, but also as a means of punishment for past actions.”¹⁶⁰

Torture does not always meet the tactical needs of the military. The reason, according to William Shultz, that torture is risky as a process for gathering accurate and timely intelligence, is because it is difficult to tell before the torture who is a terrorist and who is not.¹⁶¹ One never really knows who has the information and who does not. Further, one never really knows ahead of time who will give the information accurately and who will deceive. Also, one never knows after the torture whether they have extracted the truth or not. Torture is an unreliable method on all fronts.

As well, people respond to torture in different ways. There are those who will respond quickly to torture and there are those who will endure the torture as a

¹⁵⁸ Cassese, Antonio, Human Rights In a Changing World (Temple University Press, Philadelphia, Pennsylvania, 1999) at 88.

¹⁵⁹ Duner, note 2 at iix.

¹⁶⁰ Duner, note 3 at iix.

¹⁶¹ Schultz, William, Tainted Legacy: 9/11 And The Ruin of Human Rights, (The Thunder’s Mouth Press, New York, NY, 2003) at 164.

religious or physical discipline.¹⁶² As a result, the outcome of the torture is always in doubt. The torturer will never really know whether he or she has gleaned the truth or has what he or she has set out to obtain.

In 2002, the Washington Post published a lengthy investigation of the United States Government interrogation tactics quoting numerous unnamed intelligence officials. Without exception, the reporters wrote “the current national security officials interviewed for this article defended the use of violence against captures as just and necessary.”¹⁶³ Some sources were quoted as stating, “If you don’t violate someone’s human rights some of the time, you probably are not doing your job.”¹⁶⁴

Prisoners arrested by the United States Government outside the United States are often tortured by military police and Army Special Forces troops who beat the prisoners and confine them to tiny rooms.¹⁶⁵ This is done so that the professional interrogators can quickly extract information from the prisoners who fear even greater punishment. The alleged terrorists are often blindfolded and thrown into walls, bound in painful positions, subjected to loud noises and deprived of sleep.¹⁶⁶ Colonel Roger King, a spokesperson for the United States mission in Afghanistan confirmed the use of sleep deprivation, use of lights or noise and vision restrictions such as hoods, in the United States Bagram Military base.¹⁶⁷

¹⁶² Shultz, note 2 at 164.

¹⁶³ Priest, Dana, Washington Post, December 26, 2002 at A01.

¹⁶⁴ Priest, note 2 at A01.

¹⁶⁵ Priest, note 3 at A01.

¹⁶⁶ Priest, note 4 at A01.

¹⁶⁷ Priest, note 5 at A01.

There is an excellent example of the mix of both physical and mental torture and has come to symbolize for me the United States torture regime in Iraq. The picture shows a prisoner tied and bound and hooded yet holding what is believed to be his son who is two or three years old. This picture combines the physical torture of the hood and bindings with the psychological torture of what may happen to his son.¹⁶⁸ From my perspective, there could be no greater example of torture of a man. The prisoner holds his son to calm him down but feels that if he does not cooperate he will not only lose his life but that of his son as well. As a parent myself, I can feel his pain.

One of the more terrifying threats is mock execution, in which prisoners are told they are to be executed and taken right to the point where a trigger is pulled but only a click is heard. In some cases bullets are actually fired just beside the prisoner's head. Experts who treat victims of torture agree that even though there is no physical pain involved, mock executions are one of the most psychologically devastating tortures.¹⁶⁹ The next section moves from the physical use of torture to discussing torture and how torture is connected to power.

TORTURE AND POWER

Power, according to Steven Lukes is “the ability to constrain the choices of others, coercing them or securing their compliance, by impeding them from living as their own nature and judgement dictate.”¹⁷⁰ Lukes further suggests that

¹⁶⁸ Khan, Sheema, For the Children's Sake (The Globe and Mail, July 28, 2003) at A1.

¹⁶⁹ Khan, note 2 at A1.

¹⁷⁰ Lukes, Steven, Power, A Radical View, Second Edition, Palgrave, MacMillan, New York, 2005, Page 85.

power will be present when it is in the interest of those who hold the power and will be used against those who do not.¹⁷¹ He further references Frantz Fanon in his book Black Skin, White Masks, as defining power as “the dominant group controlling the interpretation and communication processes”¹⁷² and can as a result project their own culture on other lesser groups thus injecting power mechanisms which in turn make those subject to power feel inferior of themselves and in constant fear of those with the power.¹⁷³ In order to induce these power mechanisms, the state may use torture as one of the major instruments to secure compliance and domination.¹⁷⁴

Once the tortured person is broken, Michael Foucault suggests that power then modifies the person to obey the authority.”¹⁷⁵ Foucault states:

“A man who is chained up and beaten is subject to force being exerted over him. Not power. But if he can be induced to speak, when his ultimate recourse could have been to hold his tongue, preferring death, then he has been caused to behave in a certain way. His freedom has been subjected to power. He has been submitted to government. If an individual can remain free, however little his freedom may be, power can subject him to government. There is no power without potential refusal or revolt.”¹⁷⁶

Foucault is separating the actual physical torture from the reason for the torture and its subsequent outcome. Physical torture is a means to gaining control of the victim of torture. Control then allows the torturer to assert his or her power over the tortured. Foucault believes that the tortured victims lose their freedom when

¹⁷¹ Lukes, note 3 at 86.

¹⁷² Lukes, note 4 at 120.

¹⁷³ Lukes, note 4 at 120.

¹⁷⁴ Lukes, note 5 at 144.

¹⁷⁵ Foucault, Michael, as quoted in Barker, Philip, Michael Foucault: An Introduction (Edinburgh University Press, Edinburgh, Scotland, 1998) at page 38.

¹⁷⁶ Foucault note 2 at 38.

they begin to talk against their will. The torturer then gains power over the tortured and is capable of further manipulating the tortured victim. This is important because it supports my thesis that racist torture occurs because it is a control mechanism over the racialized Other. If the racialized Other cooperates and does what is demanded by the torturer, then the torturer can fully control the individual. Once control is taken, the torturer can then assert the power gained from the control.

Torture according to Foucault was all about power. By the use of torture you were considered “strong and exalted due to the visibility of the power.”¹⁷⁷ Power allowed you to keep order and wage war. It allowed you to set and enforce the rules and obligations for the people of the state. Power identified who the enemy was at the first sign of rebellion and civil war. Also power used on the people made them reject individualism.¹⁷⁸ This rejection was due to the control the state was able to project on the people because torture or the continued threat of torture had broken the people and given power to the state.

Several other scholars such as Elaine Scarry, Ezat Mossallenejed, Nigel Rodley, Eric Sottas and Talal Asad, reflect on torture and power supporting Foucault. These scholars support the theory of the interconnectedness of power and torture. Their specific beliefs are addressed next.

Elaine Scarry, in her book, The Body In Pain, suggests there are three simultaneous phenomena in the structure of torture. The first is “the infliction of

¹⁷⁷ Foucault, note 5 at 16.

¹⁷⁸ Foucault, note 6 at 57.

pain”¹⁷⁹, followed by “the objectification of the subjective attributes of pain”¹⁸⁰, and finally, “the translation of the objectified attributes of pain into the insignia of power – the emblem of the regime’s strength.”¹⁸¹ For Scarry torture is all about power.

Ezat Mossallanejed, in his book, Torture in the Age of Fear, suggests that modern states use their authoritarian nature and their lack of accountability to allow torture to be common practice.¹⁸² He further states that there is state and non-state terrorism that compliment each other seeking power.¹⁸³ Further, Mossallanejed suggests that torture is used as a tool for political repression.¹⁸⁴ As well, as a strategy of political repression, he states that torture is sanctioned as a part of state terrorism in order to control the state population. This is maintaining power not gained from the total population but rather a small segment.¹⁸⁵ As well, Mossallanejed states that torture can be used as a “means of intimidation against the whole population. It can be practiced by tyrannical regimes as a preventative measure against the masses’ dissent.”¹⁸⁶ Again these are references to torture as an object and tool of power.

Nigel S. Rodley, in an essay from An End to Torture, states that torture is a part of counter-insurgency where the state rules by force and intimidation.¹⁸⁷ Further, Rodley suggests that the purpose of torture is to gather intelligence about

¹⁷⁹ Scarry, Elaine, The Body in Pain, Oxford University Press, New York, 1985, page 51.

¹⁸⁰ Scarry, note 2 at 51.

¹⁸¹ Scarry, note 3 at 51

¹⁸² Mossallanejed, Ezat, Torture in the Age of Fear, Seraphin Editions, Hamilton, Ontario, 2005, page 11.

¹⁷⁷ Mossallanejed, note 2 at 18.

¹⁸⁴ Mossallanejed, note 3 at 30.

¹⁸⁵ Mossallanejed, note 4 at 35.

¹⁸⁶ Mossallanejed, note 5 at 36.

¹⁸⁷ Duner, Betril, Ed., An End To Torture, Zed Books, New York, 1998, page x.

the perceived enemy or to intimidate perceived or actual supporters of the opposition.¹⁸⁸ Sometimes, according to Rodley, “even non-violent dissent will attract the same treatment, usually for securing confessions about confederates, but also as a means of de facto punishment.”¹⁸⁹ Rodley also joins other scholars mentioned above by referencing power as a key purpose of torture.

Eric Sottas suggests that there are links between “socioeconomic underdevelopment and massive violation of civil and political rights.”¹⁹⁰ He further suggests that there is torture to gain political opportunities.¹⁹¹ Finally he states that extreme inequality creates situations for violence which in turn more extreme inequality within a society.¹⁹² Here there is the reference to power and torture by the state for reasons of the survival of the state.

Talal Asad, in his book, Formations of the Secular, states that the use of torture by “liberal democratic states” is part of their attempt to control populations of non-citizens. He does not believe it is for disciplining citizens but rather it is a means used to meet the state’s interests.¹⁹³ This is another example of torture used for power by the state.

Power, it is suggested above, is the state’s goal for without power they believe they cannot survive. The use of torture in modern society is therefore prevalent because of this perceived need for the retention of power and the use of power against both internal and external enemies as decided upon by the state.

¹⁸⁸ Duner, note 2 at x.

¹⁸⁹ Duner, note 3 at x.

¹⁹⁰ Duner, note 5 at 71.

¹⁹¹ Duner, note 6 at 73.

¹⁹² Duner, note 7 at 78.

¹⁹³ Asad, Talal, Formations of the Secular, Stanford University Press, Stanford, California, 2003, page 115.

One way of using this power can be to turn prisoners of the state over to other states where torture is either legal or acceptable treatment by a state. Rendition (rendering to torture) is the official term.¹⁹⁴ This process of torturing prisoners is further elaborated in the next section of this chapter.

RENDERING TO TORTURE

From a proactive tactical perspective, it is precisely because some people believe torture sometimes does work and can sometimes prevent major disasters that torture still exists in many parts of the world and has not been totally eliminated. It also explains why the United States Government sometimes “renders” terrorist suspects to nations like Syria, Egypt and Jordan.¹⁹⁵ These countries have intelligence services that have close ties to the Central Intelligence Agency.¹⁹⁶ Here prisoners are transported by one state to another for the sole purpose of torture under the guise of seeking information.¹⁹⁷ In some cases, United States intelligence agents remain closely involved in the interrogation. Techniques used in interrogations include torture and threats to families, which are illegal techniques in the United States but are routine in some countries.¹⁹⁸

After September 11, 2001, rendering to torture activities has occurred frequently. A United States diplomat said. “It allows us to get information from terrorists in a way we cannot do on United States soil.”¹⁹⁹

¹⁹⁴ Priest, note 6 at A01.

¹⁹⁵ Aubry, Jack, Harb Urges Perspective in Arar’s Treatment (Ottawa Citizen, January 1, 2004) at A1.

¹⁹⁶ Aubry, note 2 at A1.

¹⁹⁷ Aubry, note 3 at A1.

¹⁹⁸ Aubry, note 4 at A1.

¹⁹⁹ Dershowitz, note 2 at 138.

The Washington Post reported that United States Officials were frustrated by the silence of jailed Al-Qaeda suspects and might have to resort to pressure tactics or extradition to countries where security forces resorted to torture.²⁰⁰ As well, the Christian Science Monitor claimed in July 2002, that the United States was shipping suspects to Egypt, Syria, and Jordan.²⁰¹ These countries use torture, which extracts information more quickly than more benign interrogation methods.²⁰²

Irshad Manji in her book entitled The Trouble With Islam, states that her country of origin, Syria, cooperates with the United States when it comes to torturing prisoners of war and receives those who are classified as terrorists in order to extract information to be used by the American military against the war on terror. That way the United States can claim to have a relatively clean human rights record.²⁰³

The Washington Post, December 26, 2003 article entitled “US Decries Abuse But Defends Interrogations”, quoted a United States soldier as saying “We don’t kick the shit out of them.”²⁰⁴ We send them to other countries so that they can kick the shit out of them.”²⁰⁵

Torture and rendering to torture are physical acts but tell very little about why people are tortured or rendered to torture. The next section delves into this issue.

²⁰⁰ Shultz, note 3 at 36.

²⁰¹ Shultz, note 4 at 157.

²⁰² Shultz, note 5 at 157.

²⁰³ Manji, Irshad, The Trouble With Islam: A Wake-up Call For Honesty and Change (Random House Canada, Toronto, Ontario, 2003) at 126.

²⁰⁴ Them means military prisoners.

²⁰⁵ Priest, note 7 at A1.

PRINCIPLE ACCOUNTS OF TORTURE

There are four principal accounts of torture described by Darius Rejali. The Lesser Evil account of torture by Alan Dershowitz and Michael Ignatieff and the Racist account of torture by Sherene Razack are added to this list of principle accounts of torture. The purpose of discussing these accounts of torture is to demonstrate that torture still exists in our modern society, that there are state sponsored reasons proffered for torture and finally that one of the outcomes of state sponsored torture leads to the torture of the racialized Other for no reason other than he/she is a racialized Other.

Darius Rejali in his book Torture and Modernity: Self, Society, and State in Modern Iran, states there are four principal explanations of modern torture. They are: (1) the Humanist account; (2) the Developmentalist account; (3) the State Terrorist account; and (4) the Foucaultian account.²⁰⁶ Other theorists and authors have put forward a fifth and a sixth principal explanation of modern torture, (5) the Lesser Evil account by Alan Dershowitz and Michael Ignatieff and (6) the Racist account by Sherene Razack. All six theories are ways of looking at modern torture.

I struggle with establishing what a torture theory should do and why it should exist. The accounts of torture mentioned above all cover a specific perceived reason for torture in its completeness. They provide partial explanations for why torture may continue to exist in today's world. From my perspective, a torture theory should first explain why torture is used and under

²⁰⁶ Rejali, note 5 at 160.

what circumstances and for what gain to society. The second part of the theory should focus on whether or not this approach works.

My study of the above mentioned theories, however, brings me to conclude that none of the theories attempts to explain modern torture to its fullest as a theory should. Each account has its own focus and does not attempt to compare itself with other theories or address all reasons for torture. Although this thesis is based on the Racist account of torture I am not attempting to say that it is any more or less valid or any more or less complete than the others but rather that this theory exists and from my perspective is as valid as any other. This is problematic when one attempts to compare theories of torture. As the reader will discern, each account addresses a specific perceived reason for the existence of torture and does not attempt to address all torture.

Torture is alive today more than it has ever been and is an integral part in all forms of state governments including democratic states such as the United States and Canada, Central and South America, the Middle East, Africa, and Europe and Asia. Over the past two centuries, torture also thrived in secular authoritarian states, totalitarian states and fascist states. The following sections on the accounts of torture will describe the various theories of modern torture.

THE HUMANIST ACCOUNT

The Humanist account of torture is defined as a theory of torture where torture only exists where a society is not civilized but rather where the state is autocratic and undemocratic. It claims that human beings are inherently worthy

of respect and that people treat other people with dignity. According to the supporters of this theory, “as societies become more civilized and establish vital public structures, barbaric practices such as torture will eventually disappear.”²⁰⁷ Hannah Arendt, stated in her book The Origins of Totalitarianism, that torture appears whenever bureaucratic life overwhelms the public and democratic life of modern societies.²⁰⁸ As well, Arendt states that “there is an inevitable tension between the bureaucracy and the concept of democracy and therefore torture will not end. Political leaders need capable and impartial bureaucrats to administer the laws, policies and procedures of the government in an efficient and effective manner.”²⁰⁹ Arendt feels that the bureaucrats are specialists in their fields and resent the elected government regulating their work. On the other hand the elected government has difficulty regulating the bureaucrats.²¹⁰ According to Arendt, as a result the government becomes autocratic and undemocratic and can no longer act according to the rule of law. This can then result in oppression, torture and genocide.²¹¹ When states become autocratic or undemocratic, torture is used to obtain confessions, and to set an example for others who do not follow the government’s lead. Further, torture is used to outmaneuver opponents and to make the environment too hostile for opposition.²¹² As well, Arendt suggests that due to the government’s immaturity they are taken advantage of by the bureaucracy and tension is created. The end result is that the strong bureaucracy

²⁰⁷ Rejali, note 6 at 160.

²⁰⁸ Arendt, Hannah, The Origins of Totalitarianism, New Edition, A Harvest Book, New York, New York, 1968, Page 446, as quoted by Rejali.

²⁰⁹ Rejali, note 7 at 161.

²¹⁰ Rejali, note 8 at 161.

²¹¹ Rejali, note 9 at 162.

²¹² Rejali, note 10 at 161.

then uses torture in unregulated ways to prevent the government from dominating it. People no longer interact as equal subjects. The common good is no longer the goal. They no longer follow the rule of law but rather, act according to administrative rules and quotas or “instrumentalist rationality”.²¹³ It should be noted that Arendt’s comments only relate to totalitarian forms of regimes. Therefore, this theory is insufficient in explaining why torture should continue to exist in democratic societies.

DEVELOPMENTALIST ACCOUNT

The Developmentalist account of torture is defined as a theory of torture where torture exists but declines as the state modernizes and only increases where insurgency attempts to affect the stability of the state. It is concerned with the dynamics of economic modernization within a state. This theory is based on the modernization of the economy and the state government. The supporters of this account suggest that as society becomes more modern, torture decreases because the economic and political environments are better.²¹⁴ As a result, theoretically, torture would no longer be needed as the people of the state would accept the government of the day and have no reason or desire to confront the government because their state is economically and politically sound.²¹⁵ This account suggests that the people learn to regulate themselves according to the needs of the state as they are introduced to the civic and labour disciplines. The Developmentalist account does not totally do away with torture as its adherents

²¹³ Rejali, note 11 at 161.

²¹⁴ Rejali, note 17 at 165.

²¹⁵ Rejali, note 18 at 165.

feel that there is a necessity at times for the police and the military to reserve the ability to use torture in certain controlled circumstances.²¹⁶

The police and/or military would, under the direction of the state, only use oppression and torture in order to protect the state from insurgency.²¹⁷ This in turn would form disciplinary habits which in turn would facilitate political and economic development. The Developmentalist theorists could then attempt to justify torture as essential and a beneficial response to high levels of civil violence in developing nation states. They suggest this form of counter insurgency warfare is violent but essential and preferable to have civil strife.²¹⁸

In the Developmentalist account, the state has trained its enforcement arms but fails to control them. They are allowed to work without direct supervision by the state trusting they will use their powers and influence to support the needs of the state. This creates a lack of ability by the government to ensure the safety of all people. Law enforcement may not see the same enemy and torture increases. Supporters of this theory believe that law enforcement when left alone will always work for the benefit of the state. The leadership of law enforcement provides the agents with direction and control through their guidance.²¹⁹ However, if law enforcement chooses to disagree with the state, they can redirect their energy to groups they deem as enemies of the state. From my perspective, this could lead to the torture of the racialized Other as individuals or

²¹⁶ Rejali, note 19 at 167.

²¹⁷ Rejali, note 22 at 167.

²¹⁸ Rejali, note 23 at 165.

²¹⁹ Rejali, note 27 at 166.

as groups because of the misguided perception of law enforcement. This will be explored further in the section on the Racist account of torture.

The Developmental account of torture fails to sufficiently explain all torture and its continued existence. This account focuses on controlling insurgency thus requiring the use of torture. It does not address any of the other theories such as torture for the benefit of regulating the population, capturing and preventing terrorist attacks or torturing to suppress the racialized Other.

STATE TERRORIST ACCOUNT

The State Terrorist account of torture is defined as a theory of torture where torture is used by the state to prevent external terrorist attacks from destabilizing the state. Theorists suggest that only states have the resources necessary to systematically torture people and only states have the financial and human resources necessary to support the creation of and the ability to “sustain torture complexes.”²²⁰ This account of torture, like the previous accounts, is state based. Noam Chomsky and Edward Herman describe the use of torture as “a mode of governance characterized by standards in multiple detention centres, applicable to hundreds of detainees and used with the approval and intent of the highest state authorities.”²²¹

The State Terrorist account of torture also has an international economic dimension whereby torture complexes are supported by various foreign states through the supplying of arms, expertise and training to states where these

²²⁰ Rejali, note 29 at 167.

²²¹ Rejali, note 30 at 168.

complexes exist but cannot be independently supported thereby linking the torture complexes to the international economic system.²²² The supporting states could render victims to these torture centres where the host state would torture the individual based on the needs of the supporting states.

Theorists of this account of torture suggest that this account exists because of the creation of national security states in developing countries. The task of the state run operatives of torture is to crush class protests and support and maintain economic growth on behalf of multinational interests.²²³ Here supporters of this theory explain that torture exists in order to keep and maintain labour discipline and to ensure the cost of labour is kept within an acceptable range for capitalist interests.²²⁴

FOUCAULTIAN ACCOUNT

The Foucaultian account of torture is defined as a theory of torture where torture is needed to regulate behaviour by the people. The supporters of the Foucaultian account of torture²²⁵ believe that there would be no state torture if there were several issues resolved and aligned. Torture in the Foucaultian account of torture would only be used to make people learn to regulate their actions.²²⁶ This regulation would be accomplished by ensuring the people support the government, follow the governments lead by preventing internal mobility as required by the state, by accepting changes to the laws of the state based on the

²²² Rejali, note 31 at 168.

²²³ Rejali, note 32 at 168.

²²⁴ Rejali, note 33 at 168.

²²⁵ Rejali, note 37 at 173

²²⁶ Rejali, note 46 at 171.

perceived needs of the government, and by accepting direction from the state regardless of its affect on the people to ensure the needs of the state are primary.

Foucault believed that modern torture is wasteful and therefore affects the economy in a negative way. He identifies discipline with a restricted economy.²²⁷ Further Foucault stated that torture destroys life and wastes money. The problem with this account of torture is that one cannot distinguish between economies of waste and utility.

The Foucaultian account of torture relies heavily on the changes to the penal system and the rise in the use of prisons to punish and to bring order and discipline to the state. This account fails to explain the proliferation of modern day torture.

THE LESSER EVIL ACCOUNT

The Lesser Evil account of torture is defined as a theory of torture where state law enforcement has in custody someone who they feel has knowledge of a pending terrorist attack and the state has the legal right to torture that individual because the consequences of the torture are significantly outweighed by the results of the pending attack. Theorists of the Lesser Evil account of torture attempt to justify torture as the lesser of many evils. According to this theory, there are individuals that possess knowledge of an imminent terrorist attack that will be devastating and will cost many lives. This account of torture is state based similar to some of the above accounts. The supporters of this account of torture attempt to justify torture as they feel that if an individual who is perceived to have

²²⁷ Rejali, note 48 at 172.

knowledge of a pending terrorist attack and disaster, and does not cooperate with law enforcement or the military and provide the information, the person should be legally tortured by the state to gain sufficient information to prevent the attack.²²⁸ Dershowitz quotes instances where this has worked but preaches caution and control to the point where judicial warrants should be used to legitimize the procedure.²²⁹ But he is attempting to justify this account of torture.

Proponents of the Lesser Evil account of torture believe that the end justifies the means and in a war on terrorism with many lives at stake, torture is the lesser of many evils.²³⁰ The only caution they provide is that in a free and democratic society torture needs to be regulated by legislation in order to ensure its use is not abused.²³¹ As well, Dershowitz feels that there should be responsibility and accountability for breaches of the legal process.²³² In support of the Lesser Evil account of torture, Alan Dershowitz attempts to justify torture when authorities feel there are no other means left to law enforcement.²³³ He states:

“if torture is legitimized then there would be a need for a torture warrant based on reasonable grounds that there was some catastrophe coming and the person in custody can provide evidence to allow law enforcement to prevent the catastrophe and save lives.”²³⁴

In not supporting torture, Michael Ignatieff believes that “force in the absence of consent tends to get out of hand. When populations resent and hate you, the

²²⁸ Dershowitz, note 5 at 136.

²²⁹ Dershowitz, note 6 at 136.

²³⁰ Dershowitz, note 7 at 136.

²³¹ Dershowitz, note 8 at 136.

²³² Ignatieff, *Lesser Evil*, note 4 at 19.

²³³ Dershowitz, note 9 at 136.

²³⁴ Dershowitz, note 10 at 141.

temptation to dehumanize them becomes irresistible, and what begins as coercion can end in terror.”²³⁵ Therefore, according to Ignatieff, liberal states should not allow those who defend them to have any moral discretion implied in the Lesser Evil account of torture.²³⁶ Further, according to Ignatieff, states should ban extreme interrogations and other uses of violence because once the torture begins it becomes next to impossible in preventing the lesser evil from moving into the greater evil.²³⁷ Ignatieff adds “hatred is a powerful source of nihilism.”²³⁸ Coercive means becomes an end in itself. It creates a downward spiral of brutality.”²³⁹

Again according to Ignatieff, “torture begins as a lesser evil to extract timely information to prevent greater harms, and slowly but surely torture becomes a standard technique, explicitly used to humiliate, terrify, degrade and subdue entire populations.”²⁴⁰ “Liberal democracy”, suggests Ignatieff, “stands against torture because it stands against any unlimited use of authority against human beings.”²⁴¹

Dershowitz states, in his attempt to justify torture, that the United States Court of Appeals for the Eighth Circuit has already approved torture as a way of securing information needed to stop a crime. In *Leon v. Wainwright* (1984), Miami Police strangled a suspect of a kidnapping until he divulged the whereabouts of his victim. The Appeal Court upheld the conviction against the

²³⁵ Dershowitz, note 11 at 86.

²³⁶ Ignatieff, *Lesser Evil*, note 5 at 141.

²³⁷ Ignatieff, *Lesser Evil*, note 6 at 118.

²³⁸ A belief in nothing, loss of any restraining or inspiring set of goals.

²³⁹ Ignatieff, *Lesser Evil*, note 7 at 127.

²⁴⁰ Ignatieff, *Lesser Evil*, note 8 at 136.

²⁴¹ Ignatieff, *Lesser Evil*, note 9 at 137.

kidnapper.²⁴² Therefore, Dershowitz believes this type of torture and consequently any type of torture is acceptable to some courts of law in the United States. From my perspective, these are lower court decisions and the case has not been scrutinized by higher courts. It is my belief that if the case was appealed and went before the Supreme Court of the United States, there would be a far different judgment based on the Constitution of the United States.

Both Dershowitz and Ignatieff write and describe this account of torture. Dershowitz believes that there are times when this type of torture is needed and supports this position in law thus attempting to justify torture. Ignatieff on the other hand acknowledges that this account of torture exists but does not believe that torture should be used under any circumstances. It is interesting to note that although the name of the account of torture is new, the concept is not. There are many references to torture being used over the centuries to gain intelligence essential to the survival of the state under imminent danger. With the evolution of military intelligence, espionage and police work, over the centuries, state agents were given exceptional powers of torture for exceptional circumstances. In the 13th Century, European law called this activity a response to exceptional crime or crime so dangerous to society or outrageous to God that its prosecution procedure was permitted enormous latitude and made was for torture as a lesser evil.²⁴³ A French General in Algeria in 1971 published his memories and defended the French army's use of torture for military expedience. His name was General Jacques Massu. The book entitled La Vraie Bataille d'Alger, proffers the lesser

²⁴² Ignatieff, Lesser Evil, note 10 at 125.

²⁴³ Peters, note 21 at 3.

evil account as an argument for the legitimacy of torture. General Massu did not invent this account and was not alone in citing it. The French courts coined the new French word “Massuisme: the argument that torturers may be responsible servants of the state in times of extreme crisis.”²⁴⁴

From my perspective, to torture someone who the state believes has information of an imminent catastrophe does not make any sense. You have no idea what information the person possesses. As well, you will not know if the person has supplied the correct information until after the event if it does happen or is prevented in the process of happening. The probability is that the person will tell you what you want to hear and it will not be accurate. You only succeed in crushing the person’s rights as a human being. As a result, from my perspective, the Lesser Evil account temporarily captures the defense of the state and the control of people but does not provide the results sought by the state. I support Michael Ignatieff in that the Lesser Evil account leads to the destruction of society through the indiscriminant use of torture.

It is my belief that the Lesser Evil account of torture fails to justify torture even though Dershowitz attempts to do so. It only explains one specific corner of the concept of torture. There is also no expectation by its supporters that this torture regime would bring an end to torture. It did not bring an end to torture in the classical era of torture. From my perspective, this theory is unable to justify torture because one cannot be certain that the person you torture possesses the correct information or that the person you torture will tell you the truth or what you want him to tell you.

²⁴⁴ Peters, note 22 at 177.

Only the Lesser Evil account of torture tries to justify torture. The others suggest there are utilitarian or instrumental reasons for torture but they do not attempt to justify torture. For example, supporters of the Humanist account of torture explain that some torture exists because there is tension between the bureaucracy and the concept of democracy leading to an autocratic and undemocratic state and therefore torture will not end. The Developmentalist account of torture explains that some torture exists because the state feels they need torture to defend its developing economy from insurgency. The State Terrorist account of torture suggests that torture is used as a mode of governance to suppress class protests and support and maintain economic growth on behalf of multinationals. The Foucaultian account of torture explains that some torture exists because there is a need for some people to regulate their actions in support of the government.

Each of these theories proffers an explanation of some torture that exists in society. But once the explanations are no longer relevant under the circumstances, torture continues. This revelation brings me to suggest there are other reasons not specified previously as to why the torture continues when there is no longer a root cause. I explore this theory next in the Racist Account of torture.

THE RACIST ACCOUNT

The Racist account of torture is defined as a theory of torture where people are tortured only because they are seen by the states to be the racialized

Other. Theorists such as Sherene Razack proffer the Racist account of torture in an attempt to explain the reason for some torture but not to justify it. Like some of the previous accounts of torture, this account is state based.

Razack defines racism in the Somalia peacekeeping context as the dehumanization of the Other while at the same time believing in our own superiority.²⁴⁵ Razack does not define torture but rather defers to the incidents where Canadian peacekeepers physically abused Somalis during their peacekeeping mission. Here Razack states that the violent acts were racially motivated.²⁴⁶ She states that the beatings, torture, humiliations, rape, and killings of Somalis by Western peacekeepers are best understood as colonial violence. The violent practices in which peacekeepers engaged in Africa are practices intended to establish Northern nations as powerful and superior, nations in full control of the natives they have come to keep in line.²⁴⁷ From my perspective, this statement is a clear definition of racist torture in the context of military and law enforcement.

Sherene Razack further states that her study of the Canadian Peacekeepers torture activities in Somalia demonstrates the essence of racism, a dehumanizing of the Other, and is accompanied by a profound belief in our own superiority, a superiority in the thousand ordinary phrases used to express national character and belonging, and to expel so many others from the nation.²⁴⁸ Razack also says

²⁴⁵ Razack, note 3 at 14.

²⁴⁶ Razack, note 4 at 55.

²⁴⁷ Razack, note 5 at 55.

²⁴⁸ Razack, note 6 at 14.

that the torturers' activities are carried out in the name of social superiority.²⁴⁹ As well, Razack states that there is a shared belief that the "white north has a right and obligation to discipline and instruct the nations of the south."²⁵⁰ Razack also states that military culture is inherently racist, sexist and homophobic. She goes on to say that the soldiers' violence is therefore a necessary if unfortunate feature of an organization that values aggression and violence.²⁵¹ Razack adds to this theory of Racist torture by using the Canadian peacekeeping activity in Somalia as a case study that would provide an opportunity to examine up close how individuals perform national and international racism.²⁵²

To articulate the modern day Racist account of torture from my perspective, I draw together present day racism with present day torture in the battlefield, on peacekeeping missions and where law enforcement pursues the war on terror. The working definition of racism chosen for this thesis is combined with the definition of torture selected for this paper. By combining relevant parts of these two definitions, I chose the following to be used to assist in defining the Racist Account of torture.

It is my belief that the Racist account of torture begins with a state or organization which controls the state, believes it is superior based on biological or cultural characteristics. The state uses their institutional powers to deny or exclude minorities. The state's or organization's thinking is rooted in a dislike for the racialized Other because of biology but also because of culture. Agents of the

²⁴⁹ Razack, note 7 at 56.

²⁵⁰ Razack, note 8 at 56.

²⁵¹ Razack, note 9 at 57.

²⁵² Razack, note 10 at 8.

state or organization then intentionally inflict severe pain or suffering, whether physical or mental, on a person based on racism of any kind.

The Racist account of torture can be demonstrated when torture is perpetrated on the racialized Other by a dominant, superior thinking society because of a perceived threat to their culture, the state economy and political control. This action has been taken by states whose military and police forces dominate the racialized Other through war, occupation, or defense of their homelands. Most specifically, from my perspective, this torture account documents a reaction to the fear of the racialized Other.

Iris Chang in her book, The Rape of Nanking, demonstrates the concept of the Racist account of torture. In 1937, the Japanese attacked Nanking, China, and there are estimates of approximately 260,000 to 350,000 people tortured and subsequently killed by Japanese soldiers during the attack and occupation.²⁵³ Iris Chang summarizes her beliefs that one of the factors in the atrocity was the contempt for the Chinese by the Japanese soldiers. She suggests that this contempt or hatred was cultivated over many years through Japan's use of propaganda, education and social indoctrination of their soldiers.²⁵⁴ Further, Chang states that there were leaders in the Japanese army that thought they were a superior race to the Chinese and considered the Chinese as sub-human whose torture and "murder would carry no greater moral weight than squashing a bug or butchering a hog."²⁵⁵ In 1937, a Japanese soldier wrote in his diary "a pig is more valuable now than the life of a [Chinese] human being. That's because a pig is

²⁵³ Chang, Iris, The Rape of Nanking (Penguin Books, New York, 1997) at 4.

²⁵⁴ Chang, note 2 at 218.

²⁵⁵ Chang, note 3 at 218.

edible.”²⁵⁶ Chang’s analysis and that of other scholars reference the Chinese in the eyes of the Japanese occupying force as inferior racialized Others because they believe the Chinese are both biologically and culturally inferior. The Chinese are de-humanized by torture and subsequent murder. This example fits within my definition of the Racist account of torture. The state of Japan believed it was superior to China based on biological and cultural characteristics. The soldiers, acting as agents of the state, tortured and killed the Chinese because of Japan’s hatred and the perceived threat to Japan by the Chinese people.

Another example of racist torture in modern times is explained above in the discussion of torture by the French military in the Algerian rebellion in the mid 1950s. In 1956, in Algiers the Zone Autonome d’Alger began an insurrection which comprised of a campaign of mass casualties bombing of European civilians, as well as selected assassinations of prominent supporters of the regime, both Algerian and European.²⁵⁷ Here, in an attempt to crush a rebellion from within Algeria by native Algerians against the French backed and controlled elite of the country, the French military grew from a small number to 400,000 troops. This military force used extreme brutal measures including torture in order to subdue the Algerian population. The military suggested that due to the lack of intelligence to identify the perpetrators, they needed to regard all Algerians as suspects. They stated that the guilty could not be distinguished from the innocent so they assumed all Algerians were suspects and justified the torture and killings of Algerians as they deemed necessary. The leaders admitted the institutionalized

²⁵⁶ Chang, note 4 at 218.

²⁵⁷ Hutchison, Martha, Revolutionary Terrorism: The FLN in Algeria, 1954-1962, Hoover Institute Press, Stanford, California, 1978.

and systematic use of torture on Algerians.²⁵⁸ Pierre Vidal-Naquet, in a published study on torture in 1972 stated that “the highest political authorities condoned it while refusing to accept the responsibility for its consequences.”²⁵⁹ As well, Mohamed Lebjaoui, a leader of one of the resistance movements, commented that although they pretended that torture was only used against immigrants, it was actually used against all Algerians.²⁶⁰ Hutchinson further suggests that torture was used to make people talk but also to dehumanize the people and to convince them of their inferiority.²⁶¹ Finally, Hutchinson believes that the government and higher military authorities permitted torture by putting effective control of torture in the hands of lower level soldiers involved in the combat activity. As well, the government and senior military personnel covered up and excused all torture as an unfortunate necessity of intelligence gathering during an internal war.²⁶² From my perspective, the target of the torture by the military was the Algerian population of Arabs.²⁶³ Although this example can be perceived as an example of the state terrorist account of torture, I believe it is more a racist act against the people of Algeria when the military treats all Algerians (Arabs) the same regardless of whether or not they may have been involved in the insurgency. Therefore, I submit that this example also falls within my definition of the Racist torture account. Here French troops authorized by France are used to torture Arab

²⁵⁸ Hutchinson, note 2 at 122.

²⁵⁹ Hutchinson, note 3 at 124.

²⁶⁰ Hutchinson, note 4 at 125.

²⁶¹ Hutchinson, note 5 at 125.

²⁶² Hutchinson, note 6 at 126.

²⁶³ Heggoy, Alf, Insurgency and Counterinsurgency in Algeria, Indiana University Press, London, 1972.

Algerians (racialized Other) who are considered inferior to the French occupiers, in order to control and exclude the Arabs.

From my perspective, a more recent example of a Racist account of torture by soldiers in the heat of battle is the United States invasion and occupation of Iraq beginning in 2003. My case studies further on in this paper will demonstrate what I believe to be specific cases of racist torture by soldiers during the invasion and occupation of Iraq. The United States is, for the most part, an occupying force from the west, in a country composed for the most part of non-white Arab soldiers, insurgents and civilians. There is plenty of evidence of torture by this occupying force both in the heat of battle and inside prisons (Abu Ghraib and Guantanamo Bay) controlled by the United States military.²⁶⁴ The humiliation or sub-human treatment of the Iraqi prisoners and civilians was for the purpose of dehumanizing the racialized Other. This supports my theory that the Racist account of torture exists. Here there is torture perpetrated on the racialized Other by a dominant military force representing and sanctioned by the United States in an occupied land.

Again from my perspective, racist torture exists and the theory of Racist Torture succeeds as nation states and societies believe that some people are more equal than others and torture is power to be used by perceived superior thinkers in an attempt to control and punish the racialized Others. Racist torture can lead to rebellion and the breakdown of the society. States would not grow economically if there is continued strife within the state. From my perspective, torture, ethnic

²⁶⁴ Danner, Mark, Torture and Truth: America, Abu Ghraib, and The War on Terror, New York Review on Books, New York, 2004, Page 9.

cleansing and genocide occur because of the hatred by leaders of states for the presence within their state of the racialized Other.

From my perspective, torture is alive and thriving all over the world and will continue to exist as long as there is resistance to other cultures and a fear and hatred of the racialized Other. Even after it becomes apparent the torture will no longer serve to assist the state in reaching its torture goals, the torture continues. The only conceivable reason for this is that the victim is a racialized Other and the torturer's fear and hatred take over. Torture is not justified under any circumstances and is detrimental to the state and the tortured victims. Continued unchecked torture of the racialized Other is a sign of future ethnic cleansing and genocide. It is a warning sign of future chaos. The Racist account of torture does explain torture.

SUMMARY

The Humanist account of torture gets its strength from the desire of most people to treat others equally and with compassion. But this account will never lead to the end of torture as long as the tension between state government and the bureaucracy continues. The Humanist account of torture has failed to explain torture by only attempting to explain one portion of the use of torture.

The Developmentalist account of torture gets its strength from the need to regulate the state in order to continue to be viable economically. But in the end it does not fully explain reasons why torture exists. Good economics is not developed through the use of torture. This account does not take into

consideration the activity of markets both domestic and international whereby the local or national markets are dependant on the global economy. Peace and stability are needed in order for the global economy to work. Therefore, the global economy needs to discourage torture.

The State Terrorist account is an attempt to explain control of citizens through the use of torture. The use of torture will never lead to an end of torture because there will always be pockets of dissent within the state and therefore there will still be a perceived need to suppress the rebels through the use of torture. This account would be found mostly in totalitarian regimes and to a lesser extent in democracies. This account also does not take into consideration torture used against external enemies in time of conflict. This account fails to explain torture.

The Foucaultian Account of torture acknowledges the existence of modern torture but points to its excessive and wasteful character.²⁶⁵ It does not fully explain torture used by the state. Proponents of this account suggest that power is gained over the population through state control. Power then allows the state to regulate all aspects of daily life within the state. This account explains the use of torture in gaining support and regulating peoples' activities in order to better control the economy. It does not explain torture's use under other circumstances such as economic failure or external enemies of the state.

The Lesser Evil account of torture attempts to justify torture to obtain intelligence on possible pending disasters such as a terrorist attack with the result of significant loss of life. It is the significant loss of life and the hatred for the

²⁶⁵ Rejali, note 48 at 173.

potential perpetrators that gives this account strength. There is no expectation by its supporters that this torture account would bring an end to torture. Rather there is a high probability that its condoned legal use would be the beginning of a significant increase in the torture of the racialized Other based on suspicion and hatred. This account does not fully explain any other reason for torture nor does it, from my perspective, prove torture is justified.

The Racist account of torture, from my perspective, explains some of the use of torture by the state. This may occur in circumstances where there is conflict between the racialized Other and the state in such areas as employment, the economy, mobility, migration and immigration. As well, some torture appears when the instruments of the state do not understand the racialized Other and therefore fear them which in turn leads to hatred and then the physical act of torture on the racialized Other.

The key thread running through all of these accounts of torture is power and the state sanctioned activity. Torture is not effective in attaining the goals of the states as articulated by any of the supporters of these theories. Each of these accounts touches on one or two specific areas where some torture is used in an attempt to keep the state regulated in some way. However, these theories are weak as they are not fulsome enough in describing all torture use. They can only explain some torture under some circumstances. Torture is growing rather than shrinking.

CONCLUSION

Modern torture and the different accounts of torture were discussed in this chapter to demonstrate that torture is a sophisticated tool used by individuals and states for many reasons relative to state power, including race hatred of the racialized Other.

The next chapter will provide six case studies that link racism and torture and provide convincing arguments to substantiate the Racist account of torture. These case studies also put a face to racist torture. Before case analysis is done to support the Racist account of torture, I developed, using Razack's case study as its basis, an analytical tool to use in identifying whether a specific torture event was, besides all of the tactical reasons, a racist torture event. The next chapter outlines the analysis tool and rationalizes each element.

CHAPTER FIVE

CASE STUDIES OF RACISM AND TORTURE

INTRODUCTION

Six case studies have been chosen to demonstrate that racism is an element of the torture of prisoners captured by western law enforcement, military or peacekeepers. The case studies are listed below in chronological order. Each case study is analyzed separately and then cumulatively to summarize the findings and compare the findings to the criteria for inclusion as a Racist account of torture.

As this thesis was developing, many of my colleagues and advisers thought that the most difficult obstacle would be to find cases of torture by law enforcement, the military and the peacekeepers. And secondly, they thought that there would be difficulty in demonstrating that racism played a part in the reasons why people were tortured. Once the research for this thesis began, it became very clear to me that the difficult part would be the selection and the culling of the cases.

It is also clear that torture is evident in the war on terror launched by the United States and is carried out by both law enforcement and military personnel in the United States and abroad. The war on terror is not the only contemporary

setting where torture occurred and is occurring. There is evidence to demonstrate that both Canada and the United States have tortured individuals, both civilians and military personnel, during peacekeeping missions in Africa (Somalia).

Before commencing the case analysis the following section will explain the assessment tool developed to identify cases of torture that could be positioned as a Racist account of torture.

ASSESSMENT TOOL FOR THE CLASSIFICATION OF CASE STUDIES

AS MODELS OF THE RACIST APPROACH TO TORTURE

The following seven elements have been chosen as items to be present within a torture process to classify a case as a Racist account of torture. Certainly many of these tortures initially fall within the other torture theories articulated earlier. However, racism can be demonstrated as the significant factor in torture in the following cases. Based on the selected definitions of racism and torture, the Racist account of torture should contain most of the following elements:

- (1) The act of torture. Self-evidently there needs to be the actus reus ie. the act(s) need to fit within the definitions of torture discussed in Chapter 4;
- (2) The tortured victim is a member of a class of people that could be considered as a racialized Other by the torturer. This would include from the western white society any biologically different race or culture, not having the same qualities and often considered sub-human;

(3) The tortured victim was de-humanized in some way. Physical and mental pain is delivered to the victim treating the person as less than human;

(4) The torturer was a member of a dominant or occupying state or organization.

(5) The torture does not reflect the reason for arrest or detention. The torture is inflicted without a perceived goal in mind such as punishment or obtaining information or a confession;

(6) Pejorative names for the tortured are used by the torturer;

(7) If the torturer was charged and convicted of the torture, the sentence or disciplinary action did not fit the gravity of the crime.

These seven factors are my interpretation of what would be essential indicators in order for the torture to be classified as a Racist account of torture. Sherene Razack lists several common characteristics of the torture carried out by the Canadian Peacekeepers in Somalia and with that list to assist me, I chose the above seven elements as key for the Racist account of torture. Razack listed the following common characteristics:

- Torture is practiced openly;
- There were lots of witnesses;
- There were lots of participants;
- Trophy photos were taken;
- There were writings in books and diaries of their activities;
- Victims are often children or youths;

- Violence sexualized with rape or sodomy occurring;
- Encounters are white armies or law enforcement;
- Acts perpetrated against black or Other populations.²⁶⁶

Combining the seven elements builds the case for the Racist account of torture. One must begin the case for a racist explanation of torture with an actual incident of torture whether physical or psychological. From there it is important for the tortured to be seen as or perceived as a racialized Other. This is, of course, in the eyes of the beholder. One torturer could perceive only black people as the racialized Other, while other torturers may include persons of perceived Arab decent. The torturer must be an agent of the state or organization perpetrating the torture. Pejorative names help contribute to dehumanizing the racialized Other when torturing them and are indicative of racist attitudes on the part of the torturer. A disproportional light sentence would indicate that the torture was not unacceptable to the state even though there were no tangible gains from the action. Not all seven factors may be present in the Racist account of torture but like all profiling, the more indicators that are present, the more likely the torture is racist in nature only. Numbers 1, 2, 3, and 4 of my list are essential and the others would add weight to the profile. Number 1 is essential because there is a need for the actus reas. Number 2 is important as there needs to be a group or individual that the torturer attacks with his use of torture that is different than him or herself or there is no racism. Number 3 is also essential because the de-

²⁶⁶ Razack, note 10 at 53.

humanization of the person through torture solidifies the act of torture as not just the application of physical pain but as the very specific goal of the torturer. Finally, number 4 is essential as it focuses the torture on the role of the state or dominant organization in the systemic process of tortures on the racialized Other.

SUMMARY OF CASE STUDIES

The following cases were selected by looking through the literature on torture by the North American military and law enforcement in recent times. I attempted to vary the incidents to identify different groups and different operations to demonstrate that torture does not just occur on the battlefield. To my surprise at the beginning I had many to choose from and found it difficult to limit the number of cases.

The first case study I will examine is that of Lieutenant Calley. This is a case that came out of the Vietnam War, and saw Lieutenant Calley convicted of torturing and killing prisoners of war at My Lai, Vietnam in 1968.²⁶⁷

The second case study is about Shidane Abukar Arone. This is a 1993 case study about a Somali youth (Arone) who was captured while breaking into the Canadian peacekeepers' compound in Somalia. Arone was tortured and subsequently died as a result while in the custody of Canadian peacekeepers in Somalia.²⁶⁸

²⁶⁷ Sack, John, Lieutenant Calley: His Story (Viking Press, New York, NY, 1971) at 8.

²⁶⁸ Ministry of Public Works and Government Services Canada, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia. Dishonoured Legacy: The Lessons of the Somalia Affair, (1997, Volume One) at 322.

The third case study is about Maher Arar, a Canadian citizen of Syrian birth, and a Muslim by religion. This is a 2003 case that is currently ongoing. As this thesis is being completed, Canada has commenced an inquiry into this matter. The results will not be on the official Canadian Government record for some time. This case began when Arar was arrested while in-transit through the United States to Canada. Arar, who was traveling and legally using Canadian documents, was arrested as a suspected terrorist by the United States Government. He was interrogated, deported and rendered to the government of Syria. Arar alleges Syrian government agents then tortured him.²⁶⁹

The fourth case study is also a 2003 case involving Nagem Sadoon Hatab, an Iraqi who was a prisoner at Camp White Horse, a United States prison for prisoners of war in Iraq. He was tortured and died as a result of wounds that were found to be consistent with being beaten and dragged to death.²⁷⁰

The fifth case study is about Yahya Jhodri Hamoodi, a 50-year-old Iraqi police officer, who was detained by United States Lieutenant Colonel Allen West in Iraq in 2003. Hamoodi was first beaten and tortured by United States soldiers under Colonel West's command, and was then subsequently personally tortured by Colonel West.²⁷¹ Finally, the sixth case study examines the 2003 torture and abuse of Iraqi prisoners of war held in the Abu Ghraib Prison in Iraq by the

²⁶⁹ Kennedy, Mark, (Ottawa Citizen, November 22, 2003) at A4.

²⁷⁰ Rogers, Rick, (Union Tribune, February 3, 2004) at A1.

²⁷¹ Sontag, Deborah, How Colonel Risked His Career by Menacing Detainee and Lost (The New York Times, nytimes.com, May 27, 2004) at 4.

United States military. These prisoners were tortured both physically and psychologically.²⁷²

CASE STUDY ONE –LIEUTENANT WILLIAM CALLEY

On March 16, 1968, in South Vietnam, United States soldiers from Charlie Company, 11th Brigade, American Division under the orders of Lieutenant William Calley, entered the village of My Lai and started torturing and killing unarmed Vietnamese civilians, primarily old men, women, children and babies.²⁷³ Joanne Bourke in her book, Men and Killing, recounts that the soldiers “laughed as they raped and sodomized women, they ripped vaginas open with their knives, they bayoneted babies, they scalped corpses, they carved ‘C Company’ or the ace of spades onto chests. At no stage did they receive any resistance except for further pleadings.”²⁷⁴ By mid-day the United States soldiers had tortured and killed 347 people, although some sources estimate the number was as high as 500.²⁷⁵

This incident during the Vietnam War was kept from the American public for some months but eventually Lieutenant Calley was tried and convicted of premeditated murder and sentenced to life imprisonment.²⁷⁶ Seymour Hersh in his book, My Lai 4, wrote that the attack on My Lai was a typical search and destroy mission.²⁷⁷ This tactic was created by the United States military in an

²⁷² Schmitt, Eric, Iraq Prison Scandal: Army Report Says Flaws in Detention Didn’t Cause Abuse (The New York Times, nytimes.com, July 23, 2004) at A1.

²⁷³ Sack, note 2 at 8.

²⁷⁴ www.peacecorpsonline.org/messages/messages/2629/2021178.html

²⁷⁵ Sack, note 3 at 1.

²⁷⁶ Sack, note 4 at 1.

²⁷⁷ Hersh, Seymour, My Lai 4, Random House, New York, 1970, Page 4.

attempt to pacify to civilians. The military wanted to be able to kill the Viet Cong soldiers and move the civilians out of strategic locations for their soldiers to occupy.²⁷⁸ This basically called for entering a specific territory and searching for enemy soldiers by capturing everyone in the vicinity and interrogating them. If they were Viet Cong they were killed. If they were civilians they were only to be questioned and released. But Calley was observed by his fellow soldiers, beating and terrorizing Vietnamese people to gain intelligence information.²⁷⁹ In another incident, Calley was observed interrogating a monk by beating him then killing him.²⁸⁰ The majority of Vietnamese people Calley came into contact with that day he killed, but he also tortured many of them seeking intelligence information and also randomly torturing them as a prelude to killing them.

In his own words, Lieutenant Calley discussed his feelings about his participation in the torture and killings at the My Lai massacre in Vietnam. He stated that he “pictured the people of My Lai: the bodies and they didn’t bother me. I had found I had closed with (a military term meaning made physical contact with); I had destroyed the VC (Viet Cong soldiers): the mission that day. I thought, it couldn’t be wrong or I’d have remorse about it.”²⁸¹

In rationalizing the torture and killings, Calley wrote that he “felt superior there (Vietnam). I thought I’m the big American from across the sea. I’ll sock it to these people here.”²⁸² Discussing his Asian girlfriend, Lieutenant Calley stated

²⁷⁸ Hersh, note 2 at 4.

²⁷⁹ Hersh, note 3 at 30.

²⁸⁰ Hersh, note 4 at 62.

²⁸¹ Sack, note 5 at 8.

²⁸² Sack, note 6 at 31.

that he could not possibly bring her back to the United States saying, “Put a mongrel there, and what would she be? A mongrel. Not a human being.”²⁸³

While at Officer Candidate School, Calley believed he was taught that he had to follow orders without challenge regardless of what the order was.²⁸⁴ When Calley was asked by his soldiers what to do with prisoners during the attack on My Lai he advised his soldiers “well, everything is to be killed.”²⁸⁵ It should be noted he used the term “everything” to denote human prisoners thus dehumanizing them. Calley wraps up his story by saying that “We were not in My Lai to kill human beings, really. We were there to kill an ideology that is carried by – I don’t know. Pawns. Bloks, Pieces of flesh, and I wasn’t in My Lai to destroy intelligent men. I was there to destroy an intangible idea.”²⁸⁶ Two days after his conviction and sentencing, Calley was released on orders from President Nixon and received a Presidential pardon.²⁸⁷

The case of Lieutenant Calley and his men clearly meets the test for the Racist account of torture. The victims of the torture were, for the most part, Vietnamese civilians, the majority of whom were old men, children, and women. They were tortured, raped, and subsequently left to die.

As the majority of these victims were civilians, there were many alternative actions that could have been taken. They could have been captured and moved to more secure locations prior to or during the attack. This would have been standard operating procedures for a search and destroy process. The

²⁸³ Sack, note 7 at 67.

²⁸⁴ Sack, note 8 at 91.

²⁸⁵ Sack, note 9 at 103.

²⁸⁶ Sack, note 10 at 104.

²⁸⁷ www.peacecorpsonline.org/messages/messages/2629/2021178.html, at 1.

soldiers, however, followed orders and tortured and killed “everything” as described by Lieutenant Calley.

The brutality of the tortures confirms the dehumanization of these people. According to Lieutenant Calley, the victims were “things”. The torturers were members of the United States military and therefore, agents of the state. The victims that were captured and tortured to gather intelligence and determine enemy troop locations and booby traps, and subsequently killed were non-white Vietnamese and would qualify in the eyes of Lieutenant Calley and his companions as racialized Others. During the Vietnam War the Vietnamese were pejoratively called “gooks, dinks or slopes”.²⁸⁸ This was an attempt to dehumanize the Vietnam people. Finally, Lieutenant Calley received a Presidential pardon shortly after his conviction. In granting the pardon, the leader of the United States condoned the torture and random killings of Vietnam people and sanctioned this behaviour by his soldiers. The torture and killings served no purpose in advancing military objectives. There was sufficient evidence to prove Lieutenant Calley was guilty of torture and murder but the President of the United States and Commander in Chief of the United States military felt the actions of torture and murder were justified.

CASE STUDY TWO - SHIDANE ABUKAR ARONE – SOMALIA

On March 16, 1993, an unarmed 16-year-old Somali youth named Shidane Abukar Arone was captured by Canadian peacekeepers.²⁸⁹ The “peacekeepers”

²⁸⁸ Hersh, note 5 at 8.

²⁸⁹ Razack, note 9 at 4.

were actually members of a Canadian elite fighting airborne regiment in Somalia. Arone was attempting to break into the Canadian military compound. Arone was dressed in civilian clothes and did not offer any resistance when confronted. Once captured and subdued, Canadian Peacekeepers bound his ankles and wrists. Over the course of the next three hours, Arone was severely and brutally beaten and tortured with burning cigarettes. Arone was rendered unconscious from time to time due to these acts of torture. One of his guards stated that he wanted "to kill this fucker, I want to kill this guy".²⁹⁰ Another Canadian Peacekeeper arrived at the bunker and proceeded to beat Arone to death.²⁹¹ The exact cause of Arone's death was never determined, because no autopsy was performed. Medical evidence based on photographs and the description of the torture was such that the death was probably caused by brain swelling resulting from the cumulative effects of blows to the head.²⁹²

During pre-deployment preparations in Canada, racist symbols, including Nazi swastikas, and Ku Klux Klan and Confederate or 'Rebel' flags, had been displayed in the barracks of the soldiers accused of involvement in Arone's torture and death.²⁹³ Racist pejoratives such as 'nigger' were used on a regular basis by the Peacekeepers.²⁹⁴ As well, neo-Nazis and other varieties of white

²⁹⁰ Somalia Inquiry, Ministry of Public Works and Government Services Canada, Volume 1, supra note 312 at 294.

²⁹¹ Somalia Inquiry, note 2 at 294.

²⁹² Winslow, Donna, The Canadian Airborne Regiment in Somalia: A Socio-cultural Inquiry (Ministry of Public Works and Government Services Canada, Ottawa, 1997) at 322.

²⁹³ Somalia Inquiry, note 3 at 294.

²⁹⁴ Winslow, note 2 at 294.

supremacists were known to be present among Canadian military members assigned to the mission in Somalia.²⁹⁵

Once Canadian Peacekeepers were in Somalia, derogatory terms were used to refer to the local population. A number of terms, including "Somali", "smufty" and "nignog", were reportedly used by Canadian Peacekeepers as pejoratives for Somali people.²⁹⁶

The Canadian Peacekeeper contingent had a particular problem with Somali children and young men trying to break into the Canadian compound at Belet Huen, Somalia, and tried to contain incidents of attempted incursion.²⁹⁷ Documentary evidence reveals other alleged severe beatings of suspected thieves by Canadian Peacekeepers on March 14th and 15th, 1993.²⁹⁸ In another reported incident, on February 26, 1993, at an orders group, an officer allegedly stated in response to a concern about thieves "...[K]ill the bastards and I'll cover for you...".²⁹⁹ This comment demonstrates acceptance of torture and murder by the Canadian chain of command. There were 50 documented incidents, including mistreatment of detainees and the killing of Somalis, which occurred between the start of deployment and March 16, 1993, the date that Shidane Arone was killed.

Peacekeepers dealt with intruders by tying them up and holding them overnight in a bunker known as "the pit".³⁰⁰ The captured Somali thieves were not technically considered prisoners of war as this was a peacekeeping mission,

²⁹⁵ Winslow, note 3 at 294.

²⁹⁶ Winslow, note 4 at 293.

²⁹⁷ Winslow, note 5 at 294.

²⁹⁸ Winslow, note 6 at 294.

²⁹⁹ Winslow, note 7 at 322.

³⁰⁰ Winslow, note 8 at 294.

but instructions by senior military leaders had been given to treat them as prisoners of war while in Canadian custody.³⁰¹ Senior officers testified that they were told to capture and abuse the prisoners.³⁰²

There is no doubt that Arone was tortured prior to being killed. Graphic pictures were produced as evidence at the inquiry.³⁰³ Arone was in Canadian Peacekeepers' custody, having been captured attempting to break into the Canadian compound. There was clear protocol established for such break-ins and the written protocol did not include torture. The captured suspect was to be held in custody until the next day, when there would be an investigation and a determination as to what was to be done to the individual.³⁰⁴ The normal course of action was to bind and hold the suspects for twenty-four hours and then release them with a warning.³⁰⁵

Arone was a Somali youth from an African country. He was non-white and from a low economic class within Somalia. This description, from my perspective, would ensure that the mostly white, North American, soldiers from an elite squad, of a higher socio-economic background, would consider Arone as a racialized Other. The soldier torturers were acting as agents of the state. The torture and humiliation of Arone was so severe as to constitute a dehumanizing act. Arone was treated like an animal being bound and gagged then physically tortured which led to his death.³⁰⁶

³⁰¹ Winslow, note 9 at 294.

³⁰² Winslow, note 10 at 318.

³⁰³ Winslow, note 11 at 294.

³⁰⁴ Winslow, note 12 at 294.

³⁰⁵ Winslow, note 13 at 294.

³⁰⁶ Winslow, note 14 at 294.

Seven Canadian soldiers were indicted for various crimes relating to the torture and murder of Arone.³⁰⁷ One soldier attempted suicide and has not been tried.³⁰⁸ Another soldier was convicted and sentenced to five years and dismissed from the military. He actually served only five months in a penitentiary once he was released from the military.³⁰⁹ One officer received a one year sentence and another received three months.³¹⁰ The other soldiers involved in the torture of Arone were either found not guilty or received reprimands with no incarceration time.³¹¹ For the torture and murder of a youth who attempted to break into a compound to steal goods, the soldiers involved actually received very little punishment. As well, no action was taken against senior officers responsible for the soldiers.³¹² This is a case where racism played a significant part in the soldiers' actions. This torture and eventual killing as a result of the torturing, is the assertion of the superiority of the Canadian Peacekeepers from a predominantly white culture over the Somali youth from a predominantly black African lower class culture. This case qualifies as a Racist account of torture.

CASE STUDY THREE – MAHER ARAR

Maher Arar, who holds both Canadian and Syrian citizenship, claims that Syrian officials tortured him while detaining him in Syria for a year without charges.³¹³ United States officials deported Arar, an Ottawa, Ontario, resident

³⁰⁷ Winslow, note 15 at 294.

³⁰⁸ Winslow, note 16 at 294.

³⁰⁹ Winslow, note 17 at 294.

³¹⁰ Winslow, note 18 at 294.

³¹¹ Winslow, note 19 at 294.

³¹² Winslow, note 20 at 339.

³¹³ Aubry, note 5 at A1.

and software engineer, to Syria after he was detained at JFK Airport in New York in September 2002. Arar was in transit to Canada, traveling from the Middle East on a Canadian passport.³¹⁴ United States officials have been quoted as saying that Arar had the names of a large number of known Al-Qaeda operatives, affiliates, or associates in his wallet or pockets when arrested at JFK Airport.³¹⁵

Arar pleaded with United States officials not to send him to Syria because he believed he would be tortured.³¹⁶ United States law strictly forbids sending people, even on national security grounds, to a country where it is likely the deportee will be tortured.³¹⁷ United States Attorney General John Ashcroft claims the United States deported Maher Arar to Damascus, Syria, in 2002, only after the CIA received assurances from Syrian government officials that Arar would not be tortured.³¹⁸

Arar denies he had any links to terrorism and says that the confession he made while in a Syrian prison was given in order to stop the torture he was receiving.³¹⁹ His confession included an admission he trained at an Al-Qaeda training camp in Afghanistan in the 1990s.³²⁰ Arar claims he was beaten and tortured with electrical cables and kept in a small cell he called the grave. The

³¹⁴ Aubry, note 6 at A1.

³¹⁵ Aubry, note 7 at A1.

³¹⁶ Fife, Robert, Security No Excuse for Torture, Martin Says (Ottawa Citizen, November 22, 2003) at 4A.

³¹⁷ Kennedy, Mark, Ottawa Citizen, November 22, 2003, A4.

³¹⁸ Fife, note 2 at A4.

³¹⁹ Fife, note 3 at A4.

³²⁰ Fife, note 4 at A4.

Syria government denies it tortured Arar and possesses a confession of terrorist activities signed by Arar.³²¹

Maher Arar has never been charged with an offence in any country, although it would be illegal in both Canada and the United States to belong to or support Al-Qaeda. According to Amy Jarret, a spokeswoman for Solicitor General Wayne Easter at the time of Arar's deportation to Syria, the Canadian Government considers Arar to be innocent.³²² For their part, United States officials state that Arar was deported because he was a suspected member of Al-Qaeda.³²³ In its most recent report on human rights abuses in Syria, the United States State Department admitted that torture in Syria is common, and methods of torture include beatings, electrical shocks, pulling out fingernails, forcing objects into the rectum, and bending prisoners into the frame of a wheel while whipping exposed body parts.³²⁴ Given this information, the United States had to have known that deporting Arar to Syria as a suspected Al-Qaeda terrorist would likely lead to his torture.

Due to lack of concrete proof or admission from the United States or Syrian Governments, it is difficult to prove that Arar was tortured while he was imprisoned in Syria. There is, however, strong evidence that he was tortured. On October 14, 2005, Professor Stephen Toope wrote a "Fact Finder" for the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. After extensive review of the facts presented at the inquiry, a review

³²¹ Sallot, Jeff, U.S. Trusted Syria's Assurance in Arar: Ashcroft (The Globe and Mail, November 21, 2003) at 1.

³²² Fife, at 5 at A4.

³²³ Aubry, note 8 at A1.

³²⁴ Sallot, note 2 at A1.

of public written materials, interviews and in camera testimony and unredacted documents, Toope concluded that Arar was tortured in Syria.³²⁵ It is my contention that the United States government rendered Arar to torture when they deported him to Syria. The RCMP and the Canadian Security Intelligence Service (CSIS) maintained agency files on Arar soon after September 11, 2001. Both of these organizations have admitted to sharing intelligence information on Arar, in particular, with the United States.³²⁶ Had United States authorities been able to prove Arar was a terrorist at the time of his detention, Arar would have been arrested and placed into United States custody. Obviously, this did not occur and Arar ended up being sent to Syria.

Further, it is my contention that Arar was racially profiled while traveling in-transit through the United States and was sent for an immigration check even though he was in-transit and would not normally be subject to such an examination.³²⁷ A check of his travel documents would have reflected that there was information in the United States terrorist suspects' data base from Canadian law enforcement collected by the RCMP and CSIS. Based on the information in the United States data base Arar was probably initially held as a suspected terrorist until the Canadian information and possibly information from Syria,

³²⁵ Toope, Stephen J., Fact Finder, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, October 14, 2005, Ottawa, Ontario, Page 23.

³²⁶ Fife, note 6 at 4A.

³²⁷ Being racially profiled means the border guards, in this instance, U.S. Immigration, would be watching for suspected terrorists to enter the U.S. through the airport. There are many indicators of a suspected terrorist including being an Arab male, within 25 to 35 years of age, traveling alone from a known terrorist based country. Arar fit all of these indicators. Normally in-transit travelers are only given a cursory check as they are confined to a secure area and would be flying out of the U.S. within a short time. Based on the previously mentioned profile Arar would have been sent for a document query and examination. This would probably have uncovered the intelligence reference to terrorist connections provided by the Canadian police authorities.

could be confirmed. After thorough questioning and follow-up with other law enforcement agencies, the United States authorities were unable to confirm that Arar was a terrorist. However, Arar is a young Arab male, who has traveled throughout the Middle East, and therefore would have fit the profile of a 9/11 type terrorist.³²⁸ After lengthy questioning and more background checks, Arar should have been released and deported or allowed to continue his journey to Canada, as he was traveling on Canadian travel documentation. He should have been classified as a Canadian and treated as such.

In my opinion, the Arar incident is a blatant case of “rendering to torture” by the United States Government. There appears to have been no other reason to send Arar to Syria other than to have him tortured. The United States officials had to know his fate and were therefore complicit in it. They were acting as agents of the state.

Arar was sent to a country where he would almost certainly be tortured, even though the United States could have taken a more expedient, legal, and cheaper route by deporting Arar to Canada. Knowing that Arar would be tortured, the United States officials bundled him up and flew him to a certain and very specific destiny at the hands of the Syrian torture regime.

United States officials cleared him before he was deported because if they had any evidence that he was a security risk, he would not have been allowed to leave. If he was a terrorist or even a suspected terrorist, the United States Government would not now allow him to walk freely on the streets of Ottawa,

³²⁸ Based on a physical description of the 9/11 terrorist, they were young, Middle-Eastern men between 25 and 40 years of age.

Ontario, as he is now doing. The treatment Arar received was disproportionate to the perceived risk he posed.

From my perspective, this “rendering to torture”, was a racist act based on a deep dislike for Arar by his handlers because he met a terrorist profile and was mentioned in intelligence files, and met the handlers criteria as a racialized Other. There was insufficient evidence to keep him in custody in the United States and Arar would have been free if they had allowed him to continue on to Canada. Therefore, the United States law enforcement action in deporting Arar to Syria could only be interpreted as rendering him to torture because he fit a profile of the racialized Other.

No charges have been laid against Arar or against his torturers. There is, however, a Canadian Federal Government Inquiry into the matter, which is ongoing. This level of attention by the Canadian government to the case of Arar bodes well for the veracity of Arar’s story. As Arar’s torturers are in Syria, there will be no criminal sanctions against them. Even though it may be proven Arar was tortured and that United States law enforcement officials illegally rendered him to torture, there will be no accountability for these actions. The Arar case qualifies as a Racist account of torture.

CASE STUDY FOUR - NAGEM SADOON HATAB

Nagem Sadoon Hatab was an Iraqi prisoner who was killed while in custody at Camp White Horse during the United States war in Iraq. Medical experts have disagreed on what killed the 52-year-old Hatab. He died on June 5,

2003. United States Government prosecutors argued that he died of injuries after being dragged by the neck from one holding area to another.³²⁹

Although guards tortured Hatab, and although he died in their custody, the United States military investigating officer said he had not seen evidence to substantiate charges of negligent homicide against the two Marines charged with Hatab's death.³³⁰ The two Marines are currently facing lesser charges of assault arising from Hatab death. Hatab was a ranking member of Saddam Hussein's Baath Party.³³¹

During the preliminary hearing into Hatab's death, a former Marine guard testified that it was common practice in Iraq to kick and punch prisoners who did not cooperate, even some who did cooperate were kicked and punched. A United States soldier stationed in Iraq and granted immunity for his testimony, said guards often abused prisoners at the Camp White Horse detention center.³³² Colonel William Gallo, a military investigator, stated that on the day of his arrest Hatab while in custody and unable to resist, was hooded and handcuffed. He was then kicked and slapped and beaten. One of the Marines charged in his torture and subsequent death has admitted to beating him. The next day Hatab was taken from his holding cell, stripped naked and left to lie on the ground. He died later that night.³³³

This case fits the racist account of torture. Hatab was taken into custody on the battlefield and held in a United States military prison by United States

³²⁹ Rogers, Union Tribune, February 3, 2004, page A1.

³³⁰ Rogers, note 2 at A1.

³³¹ Rogers, note 3 at A1.

³³² Rogers, note 4 at A1.

³³³ www.telegraph.co.uk

soldiers acting as agents of the state. In custody Hatab was being held by an occupying force of mostly non-Arab soldiers. As he was in custody, hooded and handcuffed, he was unable to escape or cause any harm to his handlers. He was systematically beaten and tortured over a two day period until he died. As a suspect in the killings of United States soldiers on the battlefield, he was subjected to cruel and unusual punishment.³³⁴

Hatab was dehumanized by being tortured and subsequently being treated like an animal and dragged around the prison by the neck and left naked in the prison yard where he subsequently died. Further, he was humiliated during the torture process by being paraded around as a beaten animal by his captors. The torturers were United States Marines in a combat zone in Iraq. Hatab was a suspect and in custody therefore posed no further threat to the United States military. Hatab fit the category of the racialized Other as he was an Arab male and belonged to a population (Iraqis) being occupied by the United States military. At the time of writing two marines have been charged and await court martial. This case fits the criteria for categorizing it as a Racist account of torture.

CASE STUDY FIVE- LIEUTENANT COLONEL ALLEN B. WEST

In December 2003, Lieutenant Colonel Allen B. West, a United States Army Artillery Officer and a veteran of the 1991 Gulf War, was assigned as a civil military-affairs officer in Iraq. His job placed him in daily contact with local leaders, with the responsibility of helping local leaders to run local elections, and stamp out insurgents.

³³⁴ Rogers, note 5 at A1.

During his time in Iraq, military intelligence units told Lieutenant Colonel West that they had solid information, from three sources, about a plot to assassinate him. Intelligence identified an Iraqi policeman who was allegedly involved in the assassination plot. Local Iraqi police told Lieutenant Colonel West that the policeman was not acting in a cooperative manner. United States soldiers under Lieutenant Colonel West's command then attempted to beat the information from the policeman and tortured him in an effort to make him talk.³³⁵

Once it was clear that the soldiers were not being successful in their approach to information gathering, Lieutenant Colonel West entered the interrogation room, sat across from the man, drew his pistol, and placed it in his lap. Lieutenant Colonel West told the victim he had come either to get information, or to kill him. After about 20 minutes of unsuccessful questioning, Lieutenant Colonel West grabbed the man, held him down near a box full of sand used to discharge jammed weapons, and said "This is it. I'm going to count to five again, and if you don't give me what I want, I'm going to kill you." Lieutenant Colonel West held the man down, counted to five, and then fired his pistol into the discharging box about a foot from the Iraqi policeman's head.³³⁶ The victim began talking but none of the information he provided proved accurate. The prisoner was held for 45 more days and then released without charges.³³⁷

On October 4, 2003, Lieutenant Colonel West was relieved of his command. On October 18, 2003, Lieutenant Colonel West was told he either had

³³⁵ Sontag, Deborah, How Colonel Risked His Career, *The New York Times*, nytimes.com, May 27, 2004, page 4.

³³⁶ Sontag, note 2 at 4.

³³⁷ Sontag, note 3 at 4.

to resign or face court martial. Not wanting to lose his pension West refused to resign.³³⁸ A military hearing heard the charges against Lieutenant Colonel West in November 2003. Ninety-five members of Congress signed a letter to the Secretary of the Army supporting Lieutenant Colonel West.³³⁹ The military decided against court-marrying West and fined him \$5,000. West subsequently submitted his resignation, which became effective during the summer of 2004, when he retired with full benefits.³⁴⁰

The physical beating of the Iraqi policeman conducted by the soldiers qualifies as torture. The process of firing the gun near the victim and threatening to kill him in order to make him talk also qualifies as torture.

There were other alternatives to torture under these circumstances. The person was under physical control and there were opportunities for other interrogation methods. The victim was arrested because other soldiers thought he had knowledge of a potential assassination. Other means of preventing the possible assassination were available but were not taken.

The torture and psychological damage done to the victim were inhumane. The victim was bound and hooded and shown to other people in the area as a captured animal. The torture was carried out by agents of the state and demonstrated that the victim was without his human rights thus being treated as sub-human. The victim was an Iraqi police officer and in the eyes of the torturers, he could be considered a racialized Other. He was of another colour, culture, and religion.

³³⁸ Sontag, note 4 at 4

³³⁹ Sontag, note 5 at 2.

³⁴⁰ Sontag, note 6 at 5.

The investigation proved there was sufficient evidence to charge Lieutenant Colonel West and have him face a court martial. West was fined and permitted to resign once his full pension benefits accrued. In reality he was never punished for his admitted crime of torturing the Iraqi policeman. The efforts of the 15 members of the United States Congress, who wrote a letter of support in favor of West, demonstrate that his actions of torture were supported and condoned by high-level American politicians. This type of support sends a strong signal to all United States soldiers that torture is acceptable and thus feeds the actions of other soldiers. This case qualifies as a Racist account of torture.

CASE STUDY SIX – IRAQI PRISONERS OF WAR IN ABU GHRAIB PRISON AND OTHER DETENTION CENTRES IN IRAQ

Several United States Military personnel are now facing criminal charges for alleged abuse of Iraqi prisoners at Abu Ghraib Prison in Baghdad, Iraq.³⁴¹ The charges laid against the soldiers include conspiracy, dereliction of duty, cruelty and maltreatment, assault and indecent acts. As a result of the investigation, some United States military and civilian personnel were relieved of duty. Additional military personnel and civilian employees are also facing severe administrative reprimands. A battalion commander, a company commander and the United States military commander of the prison are facing questions about their fitness for command.³⁴²

³⁴¹ Starr, Barbara, Washington, WWW.CNN.COM

³⁴² Starr, note 2 at 1.

Recent and numerous digital photos have been leaked to the media around the world confirming the torture of many Iraqi prisoners of war in United States military custody. The pictures show Iraqis nude or partially clothed and hooded, with the soldiers posing next to the prisoners.³⁴³ The Geneva Convention specifically prohibits making detainees and prisoners of war subject to public curiosity and humiliation. There is no doubt that these prisoners were and are still being tortured.³⁴⁴

According to the United States Army, one Iraqi prisoner was told to stand on a box with his head covered, wires attached to his hands. He was told that if he fell off the box, he would be electrocuted. It was this picture, and dozens of others, that prompted an investigation by the United States Army. In some photographs published in newspapers all over the world, the male prisoners are positioned to simulate sex with each other. And in most of the pictures, the American soldiers are laughing, posing, pointing, or giving the camera a thumbs-up.³⁴⁵

One soldier involved claimed "we help getting them to talk with the way we handle them. We've had a very high rate with our style of getting them to break. They usually end up breaking within hours."³⁴⁶ There are no substantiated cases of Iraqi prisoners cooperating in this way. The United States Army found that interrogators asked reservists working in the prison to prepare the Iraqi

³⁴³ Starr, note 2 at 1.

³⁴⁴ Hersh, Seymour, Torture at Abu Ghraib (The New Yorker, May, 10, 2004) at 42.

³⁴⁵ Hersh, Torture, note 2 at 42.

³⁴⁶ Schmitt, Eric, Iraq Prison Scandal, New York Times, July 23, 2004, page 1.

detainees, physically and mentally, for questioning.³⁴⁷ One of the civilian interrogators at Abu Ghraib was questioned by the United States army, and he told investigators he had "broken several tables during interrogations, unintentionally," while trying to "fear up" prisoners. He denied hurting anyone.³⁴⁸

The Army also has photographs that show a prisoner of war with wires attached to his genitals and others where prisoners are either simulating or actually performing sex acts with other prisoners. Another picture shows a dog attacking an Iraqi prisoner. A guard said that dogs were "used for intimidation factors."³⁴⁹ Part of the Army's own investigation contains a statement from an Iraqi detainee who charges that a translator, hired to work at the prison, raped a male juvenile prisoner: "They covered all the doors with sheets. I heard the screaming and the female soldier was taking pictures."³⁵⁰ There is also a picture of an Iraqi man who appears to be dead and badly beaten.³⁵¹

Lieutenant General Paul T. Mikolashek, the Army Inspector General, filed a report on the abuse of prisoners in Iraq, which was made available to the public on July 23, 2004. This report differs from conclusions in an earlier inquiry completed by Major General Antonio Taguba. Mikolashek's inquiry uncovered abuses in what became a major scandal over American military treatment of prisoners in Iraq. The report examines 94 alleged abuses in Iraq and Afghanistan from September 2002 to June 2004. This inquiry attributed the abuses to the "unauthorized actions taken by a few individuals, coupled with the failure of a

³⁴⁷ Schmitt, note 2 at 1.

³⁴⁸ Hersh, Torture, note 3 at 42.

³⁴⁹ Hersh, Torture, note 4 at 37.

³⁵⁰ Hersh, Torture, note 5 at 42.

³⁵¹ Hersh, Torture, note 6 at 42.

few leaders to provide adequate monitoring, supervision and leadership over those soldiers." The report concluded, "These abuses, while regrettable, are aberrations."³⁵² However, a report by the International Committee of the Red Cross in February found that "methods of ill treatment" were "used in a systematic way" by the United States military in Iraq.³⁵³ As well, Amnesty International and Human Rights Watch have produced their own studies, which provide proof of torture and mistreatment of prisoners at Abu Ghraib Prison.³⁵⁴ Moreover, the Inspector General report found that poor training in the handling of detainees and ambiguous instructions in dealing with prisoners increased the risk of abuse. Investigators found that both conditions existed in American-run detention operations in Iraq. The report further stated, "A command climate that encourages behavior at the harsher end of the acceptable range of behavior towards detainees may unintentionally increase the likelihood of abuse."³⁵⁵

There were 125 cases examined which identified abuse, including deaths, sexual assault and theft. Of the 94 cases of confirmed or deemed possible misconduct there were 20 deaths. Forty-five of the instances occurred at the time when the detainee was captured; typically the most uncertain and dangerous period for soldiers while, 21 of the cases took place at detention centers, like Abu Ghraib. Another 19 cases occurred at collection points in the field, the location of 9 cases could not be determined.³⁵⁶

³⁵² Schmitt, note 3 at 1.

³⁵³ Schmitt, note 4 at 1.

³⁵⁴ Schmitt, note 5 at 1.

³⁵⁵ Schmitt, note 6 at 1.

³⁵⁶ Schmitt, note 7 at 1.

Michael Posner, Executive Director for Human Rights First, sums up this matter quite eloquently by saying "It's hard to see how you can document 94 cases of abuse or other violations and not recognize that there is a systemic problem here."³⁵⁷ The example of abuse in United States prisons and detention centres in Iraq is not like the other previous cases. As it combines a large number of cases of torture, it is more of a reflection of the overall abuse of prisoners of war in Iraq by the United States military.³⁵⁸ This case does, however, serve to advance the thesis of the Racist account of torture.

All of these tortures and alleged torture cases are working their way through the United States Military justice system. The documented tortures were for the most part carried out by United States Military personnel or American civilians acting on behalf of the United States Military. The victims were being detained as prisoners of war by agents of the state and therefore should have been provided with their rights under the Geneva Conventions. They, for the most part, were not protected.

The interrogation methods used and the torture inflicted did not need to be carried out. All were in secure confinement and did not pose a personal threat to the lives of their detainees. The interrogations could then be delayed until the appropriate surroundings and personnel were available. For the most part the victims were arrested on the battlefield and no longer posed a threat. Examples given above clearly demonstrate the interrogators or torturers were attempting to dehumanize their prisoners. The victims were Iraqi nationals or insurgents. They

³⁵⁷ Schmitt, note 8 at 1.

³⁵⁸ Schmitt, note 9 at 1.

were young Arab men and certainly qualify as racialized Others by their occupiers, the United States military. The United States military reports put the blame for these instances of torture on a few rogue soldiers. As a result, there is no expectation that there will be any accountability at any level of the system.

This case study demonstrates that there is torture on a major level and that it is systemic in nature. The fact that the superior western military force used this torture on the racialized Other at a time when the victims were captive and could not resist being held prisoner lends creditability to the fact the torture was racist in principle.

I have attempted to stay away for the most part from the physical methods of torture. I have done this because I believe strongly that torturing of the racialized Other was done in some instances with specific methods that include such methods as sexual, religious or cultural ideology but for the most part the torture was torture for the sake of torture and the methods used were not from the torturers' perspective important. It is obvious from the photographs and the evidence given at trial that guards used such techniques as forcing prisoners to simulate sex acts and taking their picture to use as blackmail, destroying or dishonoring the Koran, using dogs aggressively and having female guards interrogate the prisoners. Some of these torture techniques are racist and specifically performed against the prisoners not only to force them to provide information but also to humiliate them and dehumanize them.

CONCLUSION

The purpose of the case studies is to put a face and name to racist torture. These case studies support the Racist account of torture. The cases are, from my perspective, examples of racist torture and can be seen as incidents within a larger context. The tortures in Vietnam and Iraq are similar to those in China and Algeria and Nazi activity in WWII.

In all these cases the torturers were members of a military force or law enforcement acting in a capacity of agent of the state. All tortures de-humanized the victims in some way through the use of force techniques accompanied by psychological torture. The tortured victims were not an imminent threat to the torturer. All those tortured could be classified as the racialized Other. They were of a different race and culture. Finally, the torturers for the most part were charged with assault or torture or murder but in the end they were treated extremely leniently, in that they received pardons, were found not guilty or guilty of lesser charges that led to minor punishments.

These case studies reflect systemic racism perpetrated on the racialized Other through torture by a western predominantly white society and serve to put a face and a name to racist torture and the Racist Account of torture.

CHAPTER SIX

CONCLUSION TO THE THESIS

CONCLUSION

The modern Racist account of torture, from my perspective, draws together present day racism with present day torture in the battlefield, on peacekeeping missions and where law enforcement pursues the war on terror. Further, it is my belief that the Racist account of torture begins with a state or organization which believes it is superior based on biological or cultural characteristics. The state uses their institutional powers to deny or exclude minorities. The state's thinking is rooted in a dislike for the racialized Other because of biology and also because of culture and religion. Again from my perspective, the state and its leaders sees the racialized Other and does not understand them. Through this lack of understanding due to their differences, the state begins to see the racialized Other as a threat to the current state's way of life. This leads to a fear on the part of the state and its instruments of the racialized Other. From there, propaganda and other subtle means such as institutional systemic policies and procedures are used by the state to persuade the masses and their enforcement arms, such as the military and police, to hate the racialized Other. Then when opportunities present themselves the state through their enforcement arms use torture to ensure the state stays in a position of power. The

state tortures the racialized Other because they are the racialized Other and exercises state power only because of who the racialized other is perceived to be.

It is, therefore, my opinion that there is an account of torture that can be considered as a racist act whose main purpose is to torture because the victim is a racialized Other. I believe I have answered the thesis questions in that I have proven through my research that there is a link between racism and torture and that at times, torture is committed as an act of racism.

The main path of this inquiry is to answer whether racism is an element in some types of torture of prisoners of war and that racism is a reason for some types of modern day torture of prisoners of war.

Researching and writing this thesis has been a remarkable journey into a world I thought I knew but obviously I did not. There were many things I did know based on life experiences and some modest reading I had done. I was not, however, prepared for the incredible experience of researching the topics of racism and torture. I was very surprised to find there were actual accounts of state torture. I thought there was torture used by evil people and by others to induce confessions or intelligence. It was the same for racism. I knew people of different races at times disliked or hated each other. I also knew there was anger swelling up inside innocent people who were for some reason discriminated against. But I truly did not know or understand why. This journey has answered these questions.

By completing my thesis and writing my findings, I hope that I have found nuggets of gold to be used by others to further the research and analysis of both

racism and torture. I hope that by highlighting these topics, other students of humanity will be able to find what they are looking for in a more complete and expeditious manner. I hope I have left a trail to be followed and be built on by future generations to contemplate and possibly take action against these two destructive elements in our societies around the world.

I believe I have answered the thesis questions. I believe I have demonstrated that racism is an element in the torture of prisoners of war and that racism is a reason for some modern day torture of prisoners of war. The answers to these questions are clear from the research and analysis within the chapters that outline the Racist account of torture (Chapter 4) and the case analysis in support of the Racist account (Chapter 5). But I am still left with many questions that I ponder today. I now know what these issues are but I do not yet know how to influence change. There are some basic and obvious approaches to change including teaching about racism in our schools and universities and teaching what torture truly is in order to emphasize racism's impact. Writing books and articles is another obvious way of expressing our concerns and making the knowledge available to others. But there is a fundamental shift needed in the attitudes of societies to bring change. I am not yet certain of the journey needed here or the process needed to affect the desired change. I do know that some form of action is required.

Nothing will change unless we begin the journey of change. We need to take the first step of knowledge transfer from books and articles to the spoken

word and speak out about the anger and outrage that is genuinely in the hearts and minds of the racialized Other.

I am left with questions. I am left with the question of why racism and torture and this Racist account of torture are allowed to continue in our modern society. Why do our leaders condone racist torture on behalf of humanity? I am left with the question of how to bring about fundamental change. I am left with the question of whether we as ordinary citizens of Canada can step forward and bring about change. Can I stand up for those oppressed by racism and torture? If I can answer the last question, I can solve the other questions through a focused effort to take the necessary steps to contribute to the education that racism and torture is not tolerated in our society and for that matter in all societies. I, along with my colleagues, can become advocates and begin the journey towards tolerance and peace through education, demonstration and if necessary, prosecution.

My thesis also taught me how to research and write more effectively. This will allow me to take other steps forward to learn about other forms of racism and torture. It will also allow me to research, write and speak about change for our society. This is the beginning.

Thank you for reading this paper and hopefully you will understand my passion and help me move forward.

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