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THE AFTERLIVES OF TORTURE: THE GLOBAL IMPLICATIONS OF REACTIONARY US POLITICS

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Of course, the United States has a long history of torture. But prior to the terrorist attacks of September 11, 2001, there was no such thing as a pro-torture constituency among the American public. Today, that is categorically untrue because more than half of Americans say they would endorse or accept the use of torture to “keep Americans safe.” How did this happen?

After 9/11, top Bush administration officials assumed that physical and psychological violence would be necessary to elicit actionable intelligence from captured terror suspects and made torture a defining aspect of interrogation and detention policy in the global “war on terror.” But it wasn’t the torture program per se that triggered this rising public support for torture; it was politics—specifically, reactionary politics. Let me make a small point here that I will develop later: the Republican Party is, today, the pro-torture party, but the relationship between pro-torture views and reactionary politics is a reality of American political culture that partisanship alone cannot explain.

The 2016 election is a case in point. All the Republican candidates for president ran on platforms that endorsed the resumption of “enhanced interrogation techniques,” the official euphemism for US torture in the post-9/11 era. Donald Trump’s campaign rhetoric was the most aggressive; he pledged to bring back the waterboard and “a hell of a lot more,” and he linked this to his mantra to “make America great again.” Although Hillary Clinton didn’t share this nostalgia for torture, she didn’t make robust anti-torture arguments either, as this might have diminished her liberal hawk credentials. Immediately after Trump won the election, he listed resurrecting waterboarding as one of his top five priorities.

Why would President Trump or anyone else want to resurrect the waterboard?

Those who endorse this view are operating on one or more of the following assumptions: that waterboarding and other forms of custodial violence “work;” that

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the kinds of people subjected to these techniques in the “war on terror”—Muslims—deserve it; and that the cancelation of the Bush administration’s torture program by President Obama was a mistake that should be reversed. The appeal of this rhetoric reflects the way in which support for torture has become a litmus test for a brand of hard-eyed American nationalism of the reactionary variety, in which the universal principle of human dignity is scorned as some politically correct liberal fiction.

This desire for a renewed license to torture, and the *possibility* of resurrection, is suggestive of how torture haunts US politics today. “Desire” begs the question as to why public attitudes have shifted toward a pro-torture position in recent years, whereas “possibility” taps into changes in the exercise of executive power since 9/11. “Resurrection” suggests something that came and went but threatens to return, which I will explore through the concept of “the afterlives of torture.”

A Brief Synopsis of the Rise and Fall of Torture in the War on Terror

Five days after the 9/11 attacks, President Bush signed a memorandum authorizing the CIA to embark on a “kill or capture” mission that would come to include secret detention and interrogation operations overseas. Vice President Dick Cheney, who took control of the national security portfolio, persuaded himself that US agents should be permitted to use “any means at our disposal” in the fight against terrorism.¹ This reference to “any means” was not just a dog whistle for torture; it was a hint that Cheney saw the terrorist attacks as an opportunity to roll back the post-Watergate/post-COINTELPRO checks on the executive branch of government and to reassert a brand of national security realpolitik that, to his mind, had been undermined by “defeatism” in the post-Vietnam era and eroded further by multilateral trends in the post-Cold War 1990s. Cheney’s vision and the policies that flowed therefrom were both illiberal in the sense that they represented a deep hostility to checks and balances, and anti-liberal in the sense that they pressed the belief that anyone deemed to be a threat—actual or potential—to US national security was rightless.

This illiberal and anti-liberal vision called into being a “new paradigm” as its intellectual authors described what they constructed in the shadows to unleash the government’s prerogatives to wage a global “war on terror.” One early new paradigmatic development, which would prove absolutely pivotal to subsequent decisions to license torture as policy (and to the targeted killing policy that later supplanted it), was President Bush’s November 13, 2001 military order. Our enemies, he pronounced, were “unlawful enemy combatants.” Now, it should be noted that, in any war or armed conflict, people fall into one of two categories: combatants (i.e. soldiers) and civilians (which encompasses everyone else). This

new third category, unlawful enemy combatants, was cut from whole cloth and flowed from the earlier decision to classify the terrorist attacks as an *act of war* rather than what they actually were: a crime against humanity. If the 9/11 attacks were an act of war, then the terrorists who perpetrated them, as this reasoning went, were not civilians because civilians can't make "war" and you can't declare war on civilians. If they weren't soldiers either, you wouldn't have to treat those who were captured like prisoners of war. The purpose of inventing this new category of people who were neither soldiers nor civilians was to generate a legalistic basis for depriving them of any rights. According to President Bush's order, foreigners taken into US custody could not challenge their detention or appeal to any court anywhere over how they would be treated. Hence, anyone who was captured, kidnapped, or sold for bounty into US custody *was* an unlawful enemy combatant and had no rights. What this meant in principle and would come to mean in practice was that the president was asserting his right to disappear people and to authorize interrogators to use "any means at our disposal." These "any means" included authorizing the CIA to kidnap people from foreign countries and disappear them into secret prisons termed "black sites," where they could be held incommunicado as "ghost detainees" or extraordinarily rendered (that is, transferred extra-legally) for purposes of interrogation to the security services of other states with well-established records of torture.

This idea that the government could authorize torture as well as kidnapping and forced disappearance, and that people designated as enemies in this Manichean global conflict had no right not to be subjected to these practices, epitomizes a right-wing view of executive power—the unitary executive thesis—that Cheney and his ideological allies used to fuel policymaking for the "war on terror." The cornerstone of this thesis is the assertion that Article II of the US Constitution can be interpreted to unfetter the president, as commander-in-chief in wartime, from the rules and restrictions of federal or international laws in his pursuit of national security. By removing the checks on presidential discretion, there is an underlying assumption that US intelligence, upon which the president would base decisions, is flawless.

The CIA's torture program put the unitary executive thesis into practice, starting with the March 2002 capture of the first suspected high-value detainee (HVD), Abu Zubaydah, who was transferred from Pakistan to a black site in Thailand (the first of several where he was detained during his years in CIA custody). The escalating harshness of Abu Zubaydah's treatment was due to two factors. First, top officials believed—incorrectly—that he was a major figure in al-Qaeda (he wasn't even a member at the time of 9/11) and demanded that his interrogators elicit the actionable intelligence he was assumed to possess. Second, to run the HVD program, the CIA hired two psychologist contractors who had no real-world

interrogation experience or expert knowledge about terrorism. The brutal and dehumanizing methods they were authorized to use on Abu Zubaydah were designed to create and exploit conditions of “disability, disorientation and dread.” The guiding theory, if one can call it that, was derived from experiments on dogs to produce “learned helplessness.” The psychologist contractors were guided by the assumption that, once people were made helpless to resist, interrogators could access the bounty of actionable intelligence stored in their heads.

One important factor distinguishing CIA torture after 9/11 from that of the Cold War era relates to the fact that in the 1990s it became a viably prosecutable offense. Therefore, CIA agents involved in the torturous interrogation of Abu Zubaydah were correct to fear their vulnerability to future prosecution. To ameliorate their anxiety and to immunize those acting on orders from Washington, lawyers in the Justice Department’s Office of Legal Counsel (OLC) produced two memos dated August 1, 2002: one memo interpretatively narrowed the definition of torture to exclude anything but the most extreme forms of physical pain and prolonged mental suffering, and the other memo provided legal cover for the tactics already in use on Abu Zubaydah, including waterboarding.

Although these OLC memos were written for the CIA, the White House forwarded them to the Pentagon, which adopted similar legal rationales to authorize coercive interrogations of detainees held in military custody in Guantánamo and Afghanistan and, later, Iraq, following the invasion in 2003. Those US officials who protested this decision to reinterpret the law to legitimize torture—including the State Department and the top lawyers for all four branches of the military—were not just ignored, they were overridden, because the OLC had assured the Bush administration that what they were doing to detainees was “legal.”

Several key events set the stage for an end to the torture program. The first was the April 2004 publication of shocking photographs from the Abu Ghraib prison in Iraq, which created a scandal of global proportions. Another key event was instigated by Senator John McCain, a torture survivor from the Vietnam War, who authored legislation in 2005 to re-prohibit tactics that violate Geneva Convention rules. McCain intended this legislation to apply to everyone in US custody, but Cheney lobbied Congress—at the time controlled by Republicans—to incorporate a “CIA exception,” which McCain did.

A third key event was a November 2005 *Washington Post* article reporting that the CIA had engaged in kidnappings and ran black sites in Europe (subsequently revealed by Human Rights Watch to be in Poland, Romania and Lithuania). But the decisive blow was leveled by the Supreme Court in June 2006 when it ruled in *Hamdan v. Rumsfeld* that Common Article 3 of the Geneva Conventions—the so-called “humanitarian baseline”—applies to all people in US custody and warned that violations may constitute war crimes. At a press conference in September

2006, President Bush complained about the vagueness of Common Article 3's prohibition and criminalization of "outrages on personal dignity." Nevertheless, the *Hamdan* ruling forced the administration's hand; the black sites were emptied and fourteen HVDs who had been disappeared and tortured for years were relocated to Guantánamo.

Throughout the rise and fall of the torture program, the Bush administration transitioned through the three forms of denial described by sociologist Stanley Cohen in his seminal book *States of Denial*. The first phase, literal denial—we don't torture—collapsed with the publication of the Abu Ghraib photographs in April 2004, at which point government officials adopted implicatory denial—that is, implicating "bad apples" who, they claimed, had violated policy and "shamed" American values. The implicatory denial phase collapsed six weeks later when the Bush administration was forced by the pressures of the Abu Ghraib scandal and late-breaking Congressional interest in classified interrogation and detention operations to release some legal memos—including the OLC's August 1 document—and policy directives—including Secretary of Defense Donald Rumsfeld's three-course menu of torture tactics. These documents, which were instantly and aptly termed the "torture memos," provided the first conclusive proof that torture was a matter of *policy* authorized from the top. At that point, the government adopted what Cohen terms euphemistic denial—what *we* do isn't "torture," it's "enhanced interrogations." President Bush, Vice President Cheney and other officials who defended their policy decisions topped off these euphemizations with claims that these practices were "legal," "necessary" and "effective."

David Luban has termed this rationalization of torture by states that pride themselves on being political democracies "the liberal ideology of torture." However, "liberal torture" is oxymoronic. When the United States (or any government) asserts a right to torture people to keep society safe, what is being demonstrated is not a commitment to representative rule but the depth and breadth of nationalistic reactionism. Harming "them" for "us" instrumentalizes certain human beings for the benefit of others. The "them" can be anyone outside the nationalistic construct of the legitimate community. Indeed, the popularity of pro-torture rhetoric in the contemporary United States is a potent marker of reactionary disdain for the normative values of universal humanity and human dignity.

The Afterlives of Torture

So, while the CIA's torture program stopped while Bush was still in office, it was decisively canceled in January 2009 when President Barack Obama signed an executive order taking the agency out of the interrogation business. It is at this juncture that the "afterlives of torture" era begins. The famously secretive Cheney

came out of the shadows to mount a public campaign deriding the new president as “soft on terror.” Cheney, who described waterboarding as “a dunk in the water” and its use “a no-brainer,” and who claimed—falsely—that it had been highly effective, saw Obama’s repudiation of the prerogative to torture as a reversal to the inroads he and his ideological allies had made in advancing the unitary executive thesis. Other politicians and pundits followed Cheney’s lead, and this set the stage for calls to resurrect “enhanced interrogation techniques.” But some reactionary nationalists rejected the soft-touch intentions of euphemizations. Conservative commentators preferred “waterboarding,” which became the popular signifying term for US torture more broadly and painted critics as America-hating far leftists and squishy terrorist sympathizers.

This pro-torture campaign was effective: in 2009, for the first time, public support for torture tipped over the 50 percent mark. According to Darius Rejali, who has done extensive research on public attitudes,

We discovered that, when it comes to torture, people appear to be driven more by social cues, superstition, resentment and indecision than by philosophy, morality or rational outcomes . . . In . . . our controlled survey experiments, so far we have found that respondents who favor torture don’t care whether it produces a positive or negative security outcome.

Rejali had put his finger on the explanatory power of American reactionism: people who are ill-informed about policy matters take their cues from influential figures. This is a general truism, but when it comes to torture specifically, the cues on offer from right-wing figures validate their indifference to rationality and reality, which in this context would include the strategic damage that the torture policy did to US interests and security. This indifference to rationality and reality is not a passive posture; on the contrary, the call to resurrect torture is a means of expressing nationalistic and racialized resentments that take the form of hostility toward any curbs or criticisms of officialdom’s policy choices to brutalize (or assassinate) enemy “others.”

In this afterlives era, the strands of reactionism that undergird American pro-torture attitudes can be divided into two general categories: one category, exemplified by Cheney and other champions of the unitary executive thesis, is the quasi-intellectual realist project to legitimize the illegal—for example, denying that waterboarding is torture when Americans do it, and, even if it is, to assert that the US government’s pursuit of national security should not be constrained by international law or subject to judicial intervention. This is textbook reactionism in the sense that this camp wants to roll back the hands of time, to undo the late twentieth century curbs and consequences for crimes of state. The other category,

which Trump exemplifies, is the aggressively anti-intellectual position characterized by ignorance about the law, indifference to the fact that torture doesn't "work" and open hostility to the principle of human dignity as inimical to an "America first" political agenda. To these strands of pro-torture attitudes I would add a third to understand the force of American reactionism: the cowardice of mainstream liberals who, with few exceptions, have failed to aggressively press fact-based accounts of the failures of the torture program or to adopt muscular rhetoric to counter the ignorance and xenophobic racism holding up support for torture. This liberal failure contributes directly to the non-existence of a broad anti-torture constituency and, therefore, to the possibility of resurrection.

The Haunting Legacy of Torture

Because of this possibility of resurrection, torture continues to haunt US politics. By this, I mean that it *exists*, but is hidden, repressed, denied and lied about. To explore this idea, I draw on Avery Gordon's concept of "haunting" in *Ghostly Matters*. As Gordon explains:

[H]aunting is one way in which abusive systems of power make themselves known and their impacts felt in everyday life, especially when they are supposedly over and done with . . . or when their oppressive nature is denied . . . Haunting raises specters, and it alters the experience of being in time, the way we separate the past, the present, and the future. These specters or ghosts appear when the trouble they represent and symptomize is no longer being contained or repressed or blocked from view.

Now let me lay out a few of the specters of torture that haunt US politics and alter the experience of being in time. Barack Obama gave refuge to the ghost when he decided not to prosecute those responsible for the torture program. He rationalized this refusal by saying it was time for the nation to "look forward, not backward." We could regard this as a ghostly matter because the *existence* of the torture program was not negated by its cancelation. Likewise, the torture memos—although most had been withdrawn during the Bush years—were key to Obama's rationalization that state agents who authorized or perpetrated torture had acted "in good faith" since the memos had given them legal cover. The enduring power of those memos has a haunting effect by confusing the legal meaning of torture and closeting its rightful consequences.

Moreover, the Obama administration did not repudiate the unitary executive thesis but rather relied on and refined it to rationalize the territorially boundless

targeted killing program. Under Obama, drone warfare and other forms of extra-judicial execution supplanted interrogation and detention to become the strategic cornerstone of US counter-terrorism warfare. The asserted right to kill anyone suspected of posing a terrorist threat relies on similar contra-legal rationales that the United States can pursue its national security interests globally in a manner unconstrained by international law, and the accompanying assumption that US intelligence is flawless.

I would identify three main reasons why torture haunts US politics: secrecy, unaccountability and lies. First, secrecy: the CIA program lives on through classification, thus turning this piece of the nation's history into subjugated knowledge, hidden away but not gone. Let me give two examples of the haunting effect of secrecy. One is the fate of the Senate Select Committee on Intelligence (SSCI) report on the CIA program. What began as a bipartisan investigation in 2009 devolved into a political brawl over the truth about torture by 2012 when the 6,000-plus page report was completed. *Because* the SSCI report concluded that the authorization of torture had been an abject failure in producing actionable intelligence and had severely damaged national security interests, CIA defenders and pro-torture enthusiasts in Congress attempted to have every copy of that report destroyed. They failed, but barely; during his last days in office, Obama ordered his copy to be preserved in the presidential archives, but allied himself with the pro-torture/anti-SSCI report camp by ordering that access to it must be restricted for the maximum time allowed by law.

The other example of the haunting effect of secrecy is the people who embody the subjugated knowledge of torture; I am referring to those individuals who were tortured by the CIA and remain imprisoned at Guantánamo, including five men the government is trying to prosecute for their alleged roles in the 9/11 attacks. Their own memories of their torture were classified as state secrets by the Obama administration. The 9/11 military commission trial has dragged on for years in the pre-trial phase because the government has committed itself to keeping the CIA's secrets secret. This floundering trial, which was supposed to provide justice for the victims of 9/11, is haunted by the ghostly apparition of torture.

Second, lack of accountability: torture is a federal crime under US law and a gross crime under international law. According to Kathryn Sikkink, who has done comparative transnational research on the prosecution of officials responsible for torture and other gross human rights violations, the Latin American region emerged as a global leader in what she terms "the justice cascade" because dozens of former leaders were put on trial and convicted for their crimes of state. She found that the broader benefits of prosecuting officials include lower levels of repression and better human rights records in those countries.

In the United States, it is not simply that no officials have been held accountable for the crime of torture. Rather, some people responsible for the torture program have been promoted to even higher levels of authority. One example is Trump's appointment of Gina Haspel as director of the CIA. He made this appointment not despite but *because* she had been directly involved in the black site program. The pro-torture camp lauded her promotion as a vindication of the program and even erstwhile liberals such as Senator Dianne Feinstein, one of the authors of the SSCI report, voted to confirm her. This unaccountability and whitewashing contribute to the fact that torture is no longer even understood as a crime in the popular imagination. To apprehend and accept the criminality of torture would be an affront to the reactionary position that America never errs and should never apologize. Moreover, letting officials of past administrations get away with torture does nothing to deter the possibility of a future administration attempting to resurrect it. This future possibility has a disrupting effect on the present. And because of the power and influence of the United States, this unaccountability undermines the strength of the anti-torture norm globally.

Third, official lies and failure to acknowledge the truth have a distorting effect on reality. Although Obama fulfilled his promise to end torture, it was not until August 2014 that he officially acknowledged it as the intentional actions of officials. But the manner of his acknowledgment was hardly a reckoning with the truth. He said: "We did a whole lot of things that were right [after 9/11]. But we tortured some folks." The broader implication of this failure to acknowledge or deal with the truth creates opportunities for lies, fabrications and false narratives that torture "worked," that its use "kept Americans safe" and that its cancelation has diminished our capacity to "fight terror." Thus, the secrets remain classified, those responsible for torture enjoy impunity and the lies and fabrications about the efficacy of torture continue to be bought and sold in the public square. And so torture haunts US politics, like a ghost that threatens to take over the house.

The Explanatory Power of Reactionary Politics

Let me conclude with a personal reflection on how I have come to understand rising public support for torture through the lens of reactionary politics. Since the start of the "war on terror," I have conducted research and taught courses about the torture program and resistance to it—a resistance waged almost entirely and exclusively by lawyers and legal intellectuals. I was never terribly interested in why public opinion was moving in an increasingly pro-torture direction. I credit my students for forcing me to think more deeply about this issue, especially students at the American University of Beirut (where I taught for three years)—most

of whom were not Americans but Arabs and Europeans. They could not understand why the US public could embrace such vile and ridiculous views. I had nothing on offer to address their bafflement beyond shallow platitudes about rampant Islamophobia and high levels of ignorance about the world. They made clear to me that these weren't explanations, but rather merely manifestations of something else.

That something else, I came to realize, is the political and ideological force of reactionism. To understand this, I turned to the works of Richard Hofstede, Anton Lieven and Corey Robin, who offer largely concurring explanations about American reactionism. Robin emphasizes that racism and nationalistic xenophobia are triggered or exacerbated as a reaction to demands for rights by or for racial minorities or foreign "others." We see this domestically in the rhetoric of "blue lives matter" as a negative and popular response to the Black Lives Matter movement as well as in the escalating demonization of immigrants and Muslims. We also see this reactionary legacy in the pervasive hostility to international law and human rights that aim to provide supranational standards for governmental policies in the treatment of people at home and abroad. American racism and xenophobia are exacerbated by a brand of Christian fundamentalist religiosity that manifests, in Lieven's terms, as pre-Enlightenment and anti-Enlightenment rejection of modernity, including the modern norm of a universal humanity. The third key to this reactionism is anti-intellectualism, whose long history and deep roots Hofstede traces; contemporary know-nothing animosity to expertise enjoys popular status as an American virtue and by the same measure intellectuals and well-informed people who possess the critical faculties to accurately assess reality are scorned as un-American cosmopolitans and traitors.

What gives this paranoid, anti-intellectual, racist and xenophobic reactionism the force it currently enjoys is the fact that it has become the ideology of the Republican Party, which, as Lieven and Robin argue, has been "southernized." This southernization (by no means confined to the American south) has come to dominate US political culture, and manifests, in Lieven's terms, as "a harsher form of nationalism". If the 9/11 terrorist attacks seemed to vindicate this harsh nationalism, the "war on terror" provided the opportunity for it to be played out on a global stage and on the bodies and lives of enemies and "others."

In this environment where reactionism wraps itself in the flag, public support for torture is, arguably, an inevitable byproduct of broader trends of violence-loving other-hating. To the extent that mainstream liberals may not subscribe to these views but are unwilling to confront them head on, they are left with nothing but hope that the system—the haunted system—will somehow miraculously keep the ghost at bay.

But I want to end on a hopeful note, and torture helps me do that. Among all the rights that human beings can claim, the right not to be tortured is “special” because of the clarity of the condition in which it occurs—custody—and because it is a universal right—everyone has it under all circumstances—and because the prohibition of torture imposes a particularly clear limit on what states can do to people and because violations are prosecutable offenses. For these reasons, I believe that support for torture represents the weak underbelly of reactionism. The means of attacking this weak underbelly begin with a battle for narratives and an informational offensive to take back the field of public understanding about what is *wrong* with torture even in terms that reactionaries ostensibly care about, like national security. No apologetic liberal defensiveness will do; what is needed is harsh, muscular, fact-filled attacks on pro-torture positions because this is a way of attacking the forces of reactionism at their weakest spot and, by extension, defending human rights and humanitarian principles on a global scale.

Educating the public about what is wrong with torture, pursuing legal cases to bring violators to account, and organizing politically to assail and marginalize its supporters could become the twenty-first century version of the movement to abolish slavery. Torture, like slavery, is inimical to the principle—fragile though it might be—of human dignity. If we are unwilling to fight the forces of reactionism over torture to defend human dignity, we should recall the words of George Orwell in *1984*: “If you want a picture of the future, imagine a boot stamping on a human face—forever.”

Note

1. Cheney made this statement in a September 16, 2001 interview on NBC *Meet the Press*.