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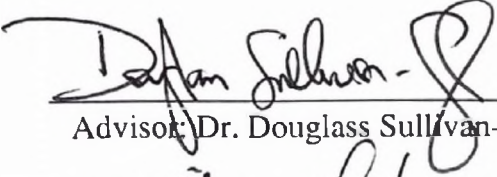
THE USE OF TORTURE AS A TOOL OF ANTI-TERRORISM: DERIVING
LESSONS FOR THE FUTURE THROUGH A COMPARISON OF ARGENTINA'S
DIRTY WAR TO THE UNITED STATES' GLOBAL WAR ON TERROR

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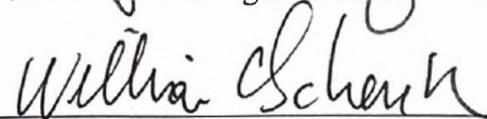
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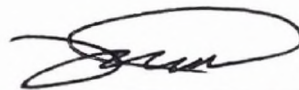
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ABSTRACT

KENT DOUGLAS FORD:

The Use of Torture as a Tool of Anti-Terrorism: Deriving Lessons for the Future through a Comparison of Argentina's Dirty War to the United States' Global War on Terror (Under the direction of Dr. Douglass Sullivan-Gonzalez)

A frequent criticism of international law, particularly the area concerning human rights, is that it attempts to create order in an anarchic state without the analogous counterpart of domestic law's enforcement agents. This thesis looks at how the international human rights legal regime has developed since World War II in order to understand its role in the systematic use of enforced disappearances and torture in Argentina's 1970s dirty war and the United States' current global war on terror. Chapter one provides a history of the development of the law and some analysis as to its efficacy. Chapter two offers a significant background of the events that took place in Argentina, an understanding of which is necessary for chapter three to draw parallels between the Argentine and the U.S. cases. Building on the Argentine background, chapter three shows that the trajectory of events in the United States case was the same as in Argentina's, even though the scale of abuse was not as severe. Chapter four concludes the comparison by taking lessons from Argentina's attempts at reconciliation and applying them to suggestions for the current U.S. government to move America past this dark chapter in its history.

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LIST OF ABBREVIATIONS

CAT	Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
EIT	Enhanced Interrogation Technique
ERP	People's Revolutionary Army
GWOT	Global War on Terror
IACHR	Inter-American Commission on Human Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
OAS	Organization of American States
UCR	Unión Cívica Radical
UN	United Nations

INTRODUCTION

Arresting authorities entered houses usually after dark, breaking down doors, waking up residents roughly, yelling orders, forcing family members into one room under military guard while searching the rest of the house and further breaking doors, cabinets and other property. They arrested suspects, tying their hands in the back with flexi-cuffs, hooding them, and taking them away. Sometimes they arrested all adult males present in the house, including elderly, handicapped or sick people. Treatment often included pushing people around, insulting, taking aim with rifles, punching and kicking and striking with rifles. Individuals were often led away in whatever they happened to be wearing at the time of arrest – sometimes in pyjamas or underwear – and were denied the opportunity to gather a few essential belongings, such as clothing, hygiene items, medicine or eyeglasses. Those who surrendered with a suitcase often had their belongings confiscated. In many cases personal belongings were seized during the arrest, with no receipt being issued...

In almost all instances documented..., arresting authorities provided no information about who they were, where their base was located, nor did they explain the cause of arrest. Similarly, they rarely informed the arrestee or his family where he was being taken and for how long, resulting in the de facto “disappearance” of the arrestee... many [families] were left without news for months, often fearing their relatives unaccounted for were dead.

Certain... military intelligence officers told the ICRC that in their estimate between 70% and 90% of the persons deprived of their liberty... had been arrested by mistake (International Committee).

Any reader familiar with even the most basic details of the *guerra sucia*, or “dirty war,” waged by the military junta government against its own citizens in Argentina during the 1970s will immediately recognize the characteristics of the “disappearances” documented in the International Committee of the Red Cross site visit report quoted above. The arbitrary arrest and detention of thousands of Argentines was commonplace in the government’s systematic implementation of excessive force as it sought to fight what it

labeled an unprecedented war against a new, unique enemy, a new war of ideology. The government claimed extreme new powers for itself in the name of national security, swept aside traditional restraints of its national constitution (Inter-American 13-28), and ignored international outrage over its actions. In this new ideological war against terrorism, the highest levels of government authorized the use of torture, reversing a long legal tradition barring its use, in order to ensure national security at any cost.

As thousands of people disappeared through intricate networks of secret prisons (Argentine National Commission 51-75) where they faced unthinkable treatment at the hands of their captors (20), those on the outside slowly began to realize what was happening, first from isolated accounts of the few who were released (Dworkin xiv) and then from the press as the government's attempts to maintain utmost secrecy slowly broke down (Inter-American 235-38; Argentine National Commission 223). The reaction was often one of stunned disbelief (Sabato 4). Although the worst atrocities were quelled within the first few years of the conflict (Guest 179), the government remained in power until a disastrous foreign war of aggression weakened its position and led to its removal (Dworkin xv). The nation then entered a long period of uncertainty as it attempted to reconcile with its past and come to terms with what had happened, an effort that continues to this day, more than three decades after the "war" began (Barrionuevo; Former Argentine Navy Officer; Smink).

The story of the Argentine dirty war closely parallels that of the United States' modern Global War on Terror (GWOT); in fact, the trajectory of the two conflicts seems almost

identical in many regards. As Brower indicates, for most Americans this comparison will probably invoke expressions of either indignation or shame (Brower). It is tempting to succumb to what may seem an instinctual reaction of indignation; after all, is the United States not fighting a war against terrorism in order to keep Americans safe? Did the terrorists not first attack the very heart of America on September 11, 2001? At the same time, however, feelings of shame may very well immediately follow indignation once the shock wears off and one weighs the facts against the American master narrative.

The reader may immediately associate the ICRC report at the opening of this introduction with the infamous dirty war in Argentina, and although the parallels are striking, that association is incorrect. The International Committee of the Red Cross, citing “serious violations of International Humanitarian Law,” prepared this report for the Coalition Forces following visits to places of internment in Iraq in 2003 (International Committee). Perhaps now indignation changes to shame.

The available literature on torture is immense, perhaps because the problem of torture as a tool of interrogation, coercion, and punishment has existed as long as the problem of state security. In fact, Christopher Einolf points to the use of torture in ancient Greece and Rome, continental medieval Europe, and medieval Japan, Iran and the Ottoman Empire as examples of torture’s prevalence across cultures and through history. As old as torture is, however, its opposition is certainly not young either. Even in those ancient examples, torture was rarely used against citizens, but was reserved for use against groups of an otherness quality: slaves, foreigners, and convicted criminals. Beginning in

the 18th century, European governments started to ban torture and through the 19th century its use dropped, only to rise again in the 20th century (Einolf).

Extensive scholarship exists on the debate of torture's legitimacy, both moral and as a national security concern, with scholars and legal experts in various fields arguing both sides (Calveiro; Hilde; Scarry; Dershowitz). Many scholars have also attempted to understand the apparent contradiction between international human rights treaty ratification and state sovereignty, as well as the role international law plays in the enforcement of human rights norms (Hafner-Burton; Hafner-Burton and Tsutsui; Wotipka and Tsutsui). More recently, a great deal of work has centered around the precise definition of torture, probably as a result of the increasing international codification of the prohibition on torture, and certainly spurred on by the U.S. authorization of its so-called enhanced interrogation techniques (EIT) (Gareau; Greenberg and Dratel; Hatfield; Nowak). While to some human rights proponents the fact that so much has been written on torture and so much thought given to the nuances of its definition, use, and history may be a sad statement indeed. However, one would hope that the more society understands about this terrible practice and the more its effects are known, the more strongly society will resist it so that eventually the theoretical ban against it may become a reality in practice.

Today the absolute prohibition on torture is firmly entrenched as a part of international law, codified in numerous regional and international treaties. Every nation has ratified at least one of the core international human rights treaties, and 80% have ratified four or

more (United Nations, “What are Human Rights?”). It may seem contradictory, therefore, that examples of the use of torture still abound today; we have only to look to Argentina some thirty years ago or even to the United States’ ongoing international conflict to find documented use of torture. Why does there exist such a gap between international law and actual state practice? Why were Argentina and the United States able to seemingly so easily cross the line from a self professed absolute ban on torture to its institutionalization as government policy? Are there lessons to be learned from the past, and, if so, how can they be applied today?

Chapter one of the thesis explores the international law against torture in order to understand how the current body of law began, has developed, and the evolution of its role in protecting human rights over the past several decades. The development of human rights as an international concern largely began following World War II after the world saw the frightening capacity of modern society to violate basic human dignity (Hafner-Burton and Tsutsui; Wotipka and Tsutsui). Tracing the development of international human rights law since then, particularly as it relates to torture, provides a much needed framework for understanding its role in both the Argentine and United States’ cases.

The historical perspective will be important to understand the nature of the law at the time of the Argentine case, as it has developed greatly in the three decades since.

Following those developments leads to the beginning of the U.S. GWOT and sets the stage for the discussion of how the U.S. manipulated the law. This chapter uses the texts of several of the major international human rights instruments as well as a number of

authors writing on the development and promulgation of the law. The chapter concludes by considering where the law stands today, including a discussion of whether or not the GWOT has altered longstanding norms.

In chapter two the thesis turns to the case of Argentina and its ruthless dirty war perpetrated against the Argentine public primarily from 1976 to 1979. Understanding what happened in Argentina will be necessary to develop parallels to the U.S. case and to see how lessons from the one can be applied to the other. This chapter relies heavily on *Nunca Más*, the 1984 report of the Argentine National Commission on the Disappeared, and the 1980 *Report on the Situation of Human Rights in Argentina* by the Inter-American Commission on Human Rights (IACHR) as primary documents to provide an account of events and to provide a sense of how devastating torture can be. First the chapter examines the events leading up the dirty war and how those events led to the military junta's justification of its extreme measures. By examining the role that the international human rights regime played in preventing (or failing to do so) and eventually stopping the abuse, the chapter highlights the deficiencies of the regime in this era. A discussion of Argentina's return to democracy through the election of President Alfonsín and the ensuing process of reconciliation wraps up the chapter and provides the basis for many of the lessons that are drawn in chapter four.

Chapter three shifts the focus to the United States and the GWOT; the purpose of the chapter is to establish parallels to the Argentine case in order to show why lessons that are drawn from Argentina in chapter four apply to the U.S. today. Exploring the

trajectory of the U.S. war, the chapter illustrates the similarities between the current conflict and the Argentine dirty war, beginning with how each nation perceived its threat, how each justified extraordinary tactics under the name of national security, and finally how both governments attempted to craft a legal framework to insulate themselves and their agents from prosecution. Whereas chapter two relies on *Nunca Más* and the *Report on the Situation of Human Rights in Argentina* for primary resource information, chapter three will draw from *The Torture Papers: The Road to Abu Ghraib* to provide an essential understanding of not only the context that led the United States to determine the need for extraordinary measures but also how it went about justifying its actions. Secondary resource material provides additional explanation and analysis of this process.

A comparison of the elections of Barack Obama in 2008 in the United States and of Raúl Alfonsín in 1983 in Argentina concludes the chapter. In order to determine how Obama's election affected the U.S. position on human rights and the use of torture, the chapter pulls from a variety of current news articles, presidential statements and government press releases, as well as public opinion polls. Realizing the symbolic similarities between Obama and Alfonsín as well as the actions taken by each perfectly sets the stage for chapter four to consider the measures that moved Argentina's reconciliation forward as well as limiting factors that held it back and have prolonged the process and how the U.S. can adopt some best practices from that case. The chapter ends with a description of where the United States currently stands nearly nine years into the GWOT and after one year of Obama's commitment to return the nation's policy to one of respect for international law regarding torture and the conduct of the global war.

Comparisons between the dirty war and the GWOT are not new; several authors have drawn connections between the two on different levels. None, however, has provided an in-depth analysis of the two from beginning to end in order to use the Argentine case as an instructional guide to craft recommendations for the United States to move forward. Brower certainly recognizes the lessons that are inherent in the dirty war and he implies that they can be useful in the contemporary situation, but he does not go so far as to formulate suggestions. He concludes his article with an intriguing “question about how to describe our country’s future: will it be *Nunca Más* or *Déjà Vu*?” (Brower 528).

Chapter four does exactly what other comparisons of the two conflicts have yet to do and derives specific lessons from the dirty war and Argentina’s path to national reconciliation as they apply to the United States and the GWOT. Using both political and sociological explanations, the chapter considers why Argentina is still struggling with its thirty-year-old past when initially its return to democracy and subsequent reconciliation seemed so determined and swift. A number of authors contribute to discussion of Alfonsín’s political balancing act after taking office: his initial hardline against the junta followed by an acquiescence to demands for an end to trials, and finally clemency for the vast majority of those involved in the dirty war’s perpetration. Additional more recent information comes from news articles illustrating the continued efforts of Argentina and even the world to achieve justice for the dirty war and perhaps finally move past it.

The second half of the chapter applies the successes and shortcomings of Argentina’s reconciliation to the contemporary United States and particularly President Obama’s

performance thus far with regard to human rights. It finds that Obama has made significant steps forward but that now is the most critical point for decision making that will either move the United States ahead or potentially mire it in a bitter, prolonged debate that has already begun to take shape along partisan lines, a situation that would ultimately leave America confused about, and weakened in, its crucial position with regard to human rights in the world. The development of specific policy recommendations in the chapter is primarily guided by two sources: Amnesty International's "Checklist for the Next US President" (Amnesty International, "Counter Terror"), and Glenn Sulmasy's suggestions for "the 'way ahead' in fighting international terrorism" (Sulmasy). The chapter concludes by selecting from these sources recommendations that, based on the Argentine example, are most likely to succeed, and adapts the recommendations in light of the lessons learned in Argentina. These recommendations provide an actionable framework for President Obama as well as Congress and ultimately the American people to follow in the next year.

It is just as important to note the differences in an analogy as it is the similarities. I do not suppose to argue that the GWOT perpetrated by the United States and the dirty war in Argentina should be weighed equally against one another as a question of factual comparison. Most notably, the Argentine junta waged a three year campaign primarily against its own citizens, within its own borders, while the United States GWOT has been carried out primarily against foreign nationals in Afghanistan and Iraq. Brower argues that just as Argentines rejected comparisons between the dirty war and Nazi Germany's atrocities against the Jews, so might Americans reject comparisons to Argentina based on

the sheer difference in the numbers of people mistreated in each case. He goes on, however, “that the Argentine junta preyed on fewer victims did not alter the vile character of its own transgressions; that many rejected the comparison to National Socialism showed their chilling lack of insight into a shared disregard for human dignity” (Brower 527).

The differences between the two cases that this thesis studies are obvious; at times it is the parallels that do not necessarily appear at first glance. Regardless, this study is not to judge the two cases against one another but to note the similarities not on a simple factual scale but by the legitimacy of each country’s actions based on international norms, as well as the historical legal, social, and moral standards of the states in order to learn from past mistakes.

CHAPTER ONE

The International Law of Torture

The torturer has become—like the pirate and slave trader before him—*hostis humani generis*, an enemy of all mankind.

Justice Irving R. Kaufman
Filartiga v. Pena-Irala
630 F.2d 876 (2d Cir. 1980)

Although much of international law can at times be vague—relying often on custom, generally accepted principles, and the collective judicial decisions and teachings of highly qualified jurists when no explicit convention exists (or even in the interpretation of a treaty when it does exist)¹—the absolute prohibition on torture is explicit. The prohibition against torture has, in fact, achieved *jus cogens* status in international law, thus elevating it to a standard so high that it is considered a fundamental principle of the law from which no state may derivate. In a decision of the International Criminal Tribunal for the Former Yugoslavia, the Appeals Chamber characterized *jus cogens* as “a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules” (Janis and Noyes 148-49; Hatfield). There is no question, therefore, about the legality of torture in the twenty-first century.

¹ ICJ Statute, Article 38 lists the sources of international law that the Court shall apply to include “international conventions... international custom, as evidence of a general practice accepted as law... the general practices of law recognized by civilized nations... [and] judicial decisions and the teachings of the most highly qualified publicists of the various nations...”

While the international stance on torture is clear today, when studying an event such as the Argentine dirty war it is important to consider the event within its historical context, in this case, the status of the law during the specific era. Therefore, in order to fully understand the role of international human rights law in Argentina's case, it is crucial to determine the nature of the law during the 1970s. This chapter will first briefly explore the history of international human rights law and then turn specifically to the 1970s, followed by the developments in the law in the three decades following. Finally, the chapter will consider where the law stands today, as well as provide some analysis as to the efficacy of the large and growing body of international human rights law.

During the Dirty War

In his book *Historia de la tortura y el orden represivo en la Argentina*, Ricardo Rodríguez Molas presents various documents illustrating the history of torture and excessive force in Argentina's history. As early as May 1813 the General Assembly in Buenos Aires banned the "detestable use of torture," and a few months later even the use of public whipping as a punishment in public schools was prohibited. The National Constitution of 1853 declared that the death penalty for political crimes, all forms of torture, and public whippings "quedan abolidos para siempre" (are abolished forever) (Rodríguez Molas 10, 23-24).

While torture and the prohibition against it in Argentina dates back to before the country's independence, the story of its use in world history is even much older. In

ancient and medieval times torture was not uncommon, but generally reserved for use only against “other” groups, those without full citizen or social status such as slaves and foreigners, and with less frequency against citizens who were repeat criminals or of proven “poor moral character.” In fact, Einolf finds that citizenship was the primary deterrent or protection from torture in ancient and medieval times (105-109). Torture was prohibited against citizens in the Roman Republic and early Empire as well as in ancient Athens (McCoy 16), but its use was extended to some citizen groups in the late Roman Empire as two social classes were distinguished. In Europe’s early medieval history, torture was relatively rare and strictly reserved to noncitizen groups, except for cases in which strong evidence of treason (the most serious crime against the state) existed (Einolf 105-109).

Beginning with the 12th century, torture became much more prevalent, including its practice on citizens for ordinary crimes and especially for the crimes of heresy and witchcraft (considered a form of treason). The increased use of torture was due, in part, to the unusually high standard of proof in the medieval legal system. Legal codes of the time required either two eye witnesses to a crime or a confession in order for a judge to find guilt. Even in this period, citizens accused of ordinary crimes were still protected from torture unless other circumstantial evidence provided reasonable cause for the judge to authorize torture in order to elicit a confession. Witchcraft and heresy, on the other hand, were much more frequently punished by torture since the nature of the crimes made them “so threatening and so difficult to detect, [that] civil and ecclesiastical officials

authorized the use of torture on much weaker evidence than would be allowed in other sorts of cases” (Einolf 107-08).

The torture of accused witches and heretics often led to false accusations and mass arrests as the accused admitted guilt and named other supposed practitioners simply in order to end the torture. Einolf describes “an expanding circle of false accusation and confessions,” as “the named parties were arrested and tortured in turn.” This problem of torture as an intelligence tool was recognized as early as the third century A.D. by the Roman imperial jurist Ulpian who recognized that under torture some people “will tell any lie rather than suffer it” (Einolf 108; Hilde 196-97; and McCoy 17) The same continues to be a standard argument of torture’s opponents, an issue that Maeve Garigan raises with regard to the GWOT. Garigan recognizes that while torture does “get people to talk,” what they have to say is often not reliable; “a significant body of research [indicates] that harsh interrogation techniques increase the incidence of false confessions” (Garigan). A working group convened by Secretary of Defense Donald Rumsfeld in January 2003 to study legal and operational issues concerning detainees and interrogation concluded that “army interrogation experts view the use of force as an inferior technique that yields information of questionable quality” (Greenberg and Dratel 332). The same “circle of false accusation and confessions” that Einolf describes in the witch hunts of medieval Europe plagues governments in the modern era as well; it occurred in both Argentina and in the GWOT.¹

¹For examples in the Argentine case see (Guest 30); (Argentine National Commission 4); (Inter-American 78); for examples in the GWOT see (Hilde 198).

During the 18th century, European countries began to ban torture, partially perhaps in recognition of the flawed accuracy of the information it elicited from its victims, and by 1851 it was illegal in all of continental Europe. Governments at the time and traditional explanations for the abolition of torture attributed its demise to enlightened thinking and the progress of humankind. Einolf, however, discusses three alternative explanations proposed by contemporary scholars: a relaxation of the standards of proof necessary for conviction, a change in societal perceptions of the value of pain from a religious view of penitence and spiritual growth to a more scientific and medical view of pain as purely negative, and government adoption of more subtle and effective means to control their subjects (Einolf 109-10; McCoy 17). Whether the traditional or one of the more contemporary theories is most accurate to explain the theoretical abolition of torture, it is clear that by the mid 19th century its use was already banned throughout Europe. The Argentine documents presented by Rodriguez Molas indicate that a similar timeframe transpired in Argentina (10, 23-24).

Modern international humanitarian law began to develop in earnest following World War II and was first embodied in the UN Charter of 1945 soon to be followed by the Universal Declaration of Human Rights three years later. This new explicit recognition of inherent individual rights as an international concern “provided a window of opportunity for states, international organizations, and civil society actors and organizations to place human rights on the international legal agenda” (Hafner-Burton and Tsutsui 1373-74; Wotipka and Tsutsui 729-30). Guest, however, points to inherent flaws in both documents, including the Charter’s failure to define human rights, and the Declaration’s

lack of linguistic clarity when it did attempt to provide the definitions missing from the Charter, which weakened them from the outset. He criticizes that the “legalistic terminology ensured that the vocabulary of human rights is opaque and often misleading” (91-92), an assertion that certainly has proved to be true in the current GWOT (Arredondo 62-63).

In addition to the United Nations, the Charter of the Organization of American States (OAS) and its America Declaration of the Rights and Duties of Man (1948) reflect similar respect for human rights. The UN and regional human rights regimes such as the OAS expressed ideas that “were revolutionary in international relations and international law: they were intended to apply universally to any social and political contexts and were supposed to override states’ sovereign rights” (Wotipka and Tsutsui 730-31). Despite their idealistic goals, these organizations and their expressed principles of universal respect for fundamental rights lacked the force necessary to require compliance; however, they “paved the way for all future international developments on human rights” (730-31). All of these documents lacked a binding, actionable component regarding human rights, something that the U.N. Commission on Human Rights attempted to provide in an International Bill of Rights that came to fruition through the adoption of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which opened for signature in December 1966 (730-31).²

² For treaty ratification status see (United Nations, Chapter IV); Argentina signed both Covenants in 1966 but did not become a party to either until 1986.

Guest describes the period between the foundation of international human rights in the UN Charter and the 1976 coup in Argentina as “thirty years of ‘standard-setting’” as the international community strengthened and added to ideals expressed in the Universal Declaration (93, note 8 at 471-72). Wotipka and Tsutsui agree that those years were a period of significant development in the international humanitarian legal regime as a variety of other international instruments were adopted in the wake of the first documents (730-31). The extensive and quite rapid development of the law (consider that it was only born post World War II; prior to that international protection of human rights was nil [729]) was such that by the start of the dirty war in 1976 the international legal regime protecting human rights had “expanded into a formidable thirty-nine conventions and non-binding declarations,” the effects of which extended well beyond the UN (Guest 93).

In its 1980 report, the IACHR considered “the international legal order” as it applied to Argentina, specifically with regard to Argentina’s specific obligations under instruments to which it was a voluntary member party. The IACHR pointed out Argentina’s membership in the UN and the OAS, specifically cited the respect for human rights found in those organizations’ Charters, and noted that Argentina had actively participated in the conferences at which the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man were concluded. Additionally, the report found that Argentina was “a party to various international instruments on the observance and promotion of specific human rights” (Inter-American 21, note 17 at 21-22)

It is clear that by 1976 when the military junta assumed control in Argentina and began to wage an unprecedented campaign of terror against its own citizens the international law with regard to human rights had undergone a substantial period of maturation since its birth with the UN Charter in 1945. Not only had human rights in a general sense become a matter of international concern, but torture was expressly forbidden by the Universal Declaration of Human Rights (although it failed to define what constituted torture). Argentina was a voluntary member of an array of international instruments and had actively participated in and accepted the growing trend of human rights recognition at an international level. Exactly how these newly developed ideals would be enforced, however, remained to be seen. Just as a theoretical ban on torture developed at the national level in 18th and 19th century Europe, a theoretical international ban had developed by 1976. The universality of the law and its enforcement were not yet proven, however, leaving the door open for the abuse discussed in chapter two.

Three Decades of Development

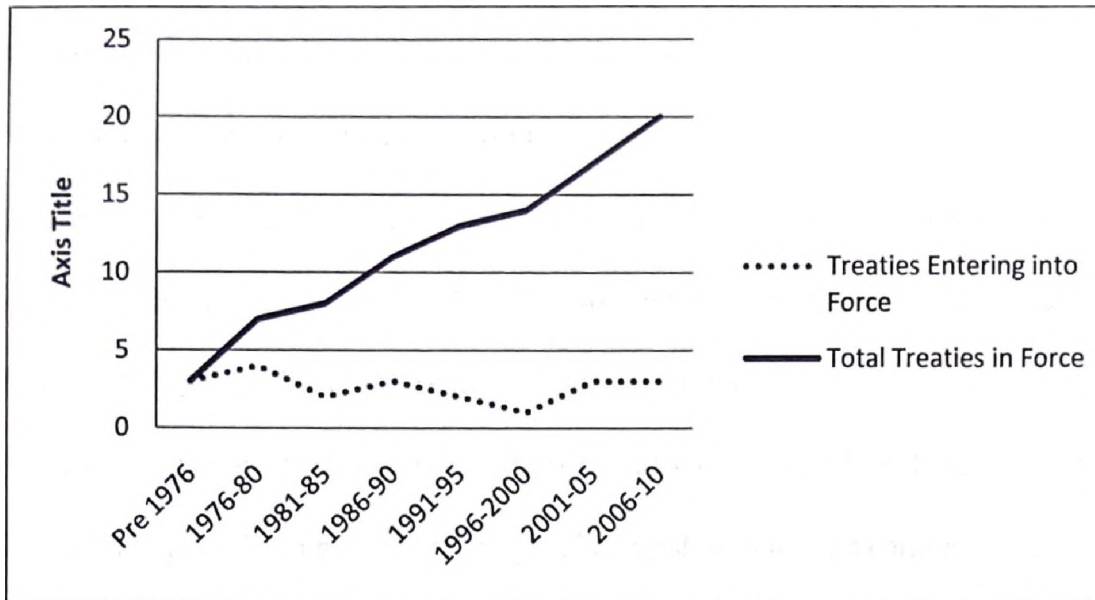
If the three decades of international human rights law prior to 1976 laid the foundation for an international legal regime, the three since then have built the house. The Office of the United Nations High Commissioner for Human Rights lists nine core human rights treaties along with eight optional protocols (United Nations, “International Law”), and the United Nations Treaty Collection website includes five additional treaties in its listing of human rights instruments (United Nations, “Chapter IV”). Of these 22 total documents, 13 of them were adopted and entered into force following the 1976-79 dirty

war and an additional two were adopted in that period but have not yet entered into force. Adoption and ratification information on major international human rights instruments is shown in Table A-1 and information for additional instruments and optional protocols to the major instruments is shown in Table A-2, both found in Appendix A. Figure 1 (following page) traces the entry into force of the 20 international human rights instruments from 1976, as well as indicates the number of treaties entered into force in each period.³ Three observations are clear: of the 22 treaties considered, very few were in force prior to 1976, the number of treaties in force has grown significantly and overall rather steadily since 1976, and there does not appear to have been any period during which treaties were significantly more or less likely to enter into force. Interestingly, however, more treaties entered into force from 1975-80, the period during which the Argentine dirty war occurred, than during any other period.

To understand the role that the large number of new instruments since 1976 has filled, it is important to take into account the nature of the instruments in place in the pre- and post-dirty war period. The body of international human rights law prior to 1976 was mostly guided by the more general concepts established in the early documents such as the UN Charter and the Universal Declaration of Human Rights. The three international human rights treaties entered into force prior to 1976 were more targeted to specific subject areas (genocide, racial discrimination, and statutory limitations of war crimes), but only began to codify the extensive ideals of the early documents. That is, although

³ This brief analysis is not intended to be an exhaustive review of international human rights treaties. The scope of this discussion also does not take into account the valuable contributions of regional human rights regimes and the numerous regional instruments they have contributed to the legal regime. For more information on the development of regional organizations see (Wotipka and Tsutsui, note 16 at 731).

Figure 1: International Human Rights Treaties in Force, 1976-2010



SOURCE: United Nations. "Chapter IV: Human Rights." United Nations Treaty Collection. 14 April 2010 <<http://treaties.un.org>>.

human rights had achieved a certain status as a matter of international concern by 1976, very little had occurred to specifically define and codify the rules per se of the vast new ideals. Filling that gap has been the work of the past three decades. Considering the nature of the instruments entered into force since 1976, it is clear that these documents for the most part are aimed at very specific subject areas, often providing definitions or more finite language to protect rights expressed in the pre-1976 era.⁴

With regard to torture, the absolute prohibition in international human rights clear is clear. As Judge Kaufman stated in the landmark US case of *Filartiga v. Pena-Irala*, the torturer has today reached a status historically held by only the worst classes of individuals in the law of nations; "the torturer has become—like the pirate and slave

⁴ See list of treaties in Table A-1 and Table A-2, found in Appendix A

trader before him—*hostis humani generis*, an enemy of all mankind.”⁵ The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia held in 2002 that the *jus cogens* status of the prohibition on torture “has now become one of the most fundamental standards of the international community,” and is “an absolute value from which no body must deviate.”⁶ To use a domestic law analogy, the early human rights instruments pre-1976 served as a sort of international constitution providing a foundation of broad individual rights considered inherent to all mankind, and the codifying documents post-1976 provided the specific legislation to enact and protect those rights. The CAT, for instance, provides the most accepted to date definition of torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁷

The question that remains is that of why with such a seemingly comprehensive international human rights legal regime including an express prohibition on torture human rights abuses continue to be so prevalent today. The third and final section of this chapter will address the efficacy of international law to enforce human rights standards today, with a look at why states commit to human rights instruments but then do not necessarily follow through with their obligations.

⁵ *Filartiga v. Pena-Irala* 630 F.2d 876 (2d Cir. 1980)

⁶ Case IT-95-17/1 (Appeals Chamber, International Criminal Tribunal for the Former Yugoslavia, 2002) 121 International Law Reports 213 (2002)

⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, text found at (United Nations, “International Law”)

Where We Are Today

“Few deny that the rules of international law actually influence state behavior” (Janis and Noyes 2), but to what extent and under what conditions states live up to international norms is more open to debate. Hafner-Burton and Tsutsui describe “the protection of basic human rights [as] one of the most pressing and yet most elusive goals” of the modern international legal regime (1373). However, even in the era of human rights codification in an ever-growing body of international treaties and norm-setting standards, “violation of human rights is epidemic” (1374). The explosive growth of international human rights law has resulted in “a fundamental shift in the structure of international society” (1374) as nation states have moved from a strict national sovereignty stance with its origins in the 1648 Peace of Westphalia to accept theoretical infringements upon sovereignty by relinquishing some control over what were formerly considered strictly domestic issues. The cases of abuse in the Argentine dirty war and the United States GWOT, as well as countless others since the creation of the international human rights regime, however, call into question “the authenticity of states’ legal commitments” to human rights (1374).

In order to understand how Argentina and the United States were both able to turn from the liberal democratic ideals enshrined in their respective national constitutions to become Judge Kaufman’s “enemy of all mankind,” it is important to first consider what Hafner-Burton and Tsutsui call “the paradox of empty promises,” or the gap between treaty ratification and compliance (1378). First this section will discuss theoretical

perspectives on state compliance and then will turn to three comprehensive studies conducted by Wotipka and Tsutsui, Hafner-Burton and Tsutsui, and Hathaway to provide empirical analysis testing the theoretical approaches. The section will conclude the chapter by drawing from Hafner-Burton and Tsutsui and Einolf to briefly discuss what factors lead states to violate human rights, particularly with regard to torture.

Within the realist and neoliberal constructs political scientists traditionally hold that states only comply with international law when it is in their national interest to do so; therefore, the development of the international human rights regime “has little impact on actual human rights practices” (Hafner-Burton and Tsutsui 1377). On the contrary, international relations constructivists and proponents of international law argue that, as Louis Henkin put it, “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time” (47). Modern history and literature on this topic abound with anecdotal evidence to support both theories, but “systematic empirical evidence to support either is rare” (Hafner-Burton and Tsutsui 1377). Hathaway attributes this lack of analysis on international law compliance to the fact that traditionally scholars of international law concerned themselves with “the formation, promulgation, and codification of international laws” with little regard to “the broader economic and political environment” surrounding the law and states’ responses to it. By contrast, that environment was exactly the focus of international relations scholars who in turn often failed to “explore whether and how international law fits into it” (“Do Human Rights” 4).

Therefore, Hathaway divides the dominant theories on compliance with international law into two categories: rational actor models (states are rational self-interested actors; international law does not play a dominant role) and normative models (states are influenced by legitimate international legal obligations; the normative value of ideas is important) (4-12). Hafner-Burton and Tsutsui also employ a similar two category system of theories (1379-81). Realism, institutionalism, and liberalism all fall under the rational actor model category. Classical realism has given way in recent decades to “a more nuanced approach” known as “neorealism” or “structural realism” that finds “if compliance with international law occurs, it is not because the law is effective, but merely because compliance is coincident with the path dictated by self-interest in a world governed by anarchy and relative state power.” While the institutionalist approach still considers states as unified principal actors acting on self-interest, international regimes (a concept that has recently been expanded to include law as well as formal international legal institutions) “allow countries to engage in cooperative activity that might not otherwise be possible by restraining power maximization in pursuit of long-term goals.” According to this model, international law provides a unique opportunity for cooperation through coordinated behavior to achieve goals to which states consent; compliance occurs so long as the benefits thereof are greater than the costs of noncompliance. Liberalism on the other hand, views compliance as a “by-product of domestic politics” (Hathaway, “Do Human Rights” 5-9). Breaking down the unitary state of rationalism and institutionalism into its various parts, liberalism argues that “state compliance with international law is a function of state preferences determined by domestic political bargaining” among “political institutions, interest groups, and state actors” (Hafner-

Burton and Tsutsui 1380). State ratification of international treaties creates an obligation on the part of the state providing domestic interest groups with a tool to pressure domestic political institutions into compliance (Hathaway, “Do Human Rights” 8).

Normative models, on the other hand, give credence to the idea that norms created by international law influence national actors whether through the managerial model, the fairness model, or the transnational legal process model. Hathaway describes countries under the managerial model as having “a propensity to comply with treaties and that noncompliance will be limited to situations in which there are ambiguities, limitations on capacity or temporal issues.” There is great value placed on the “transformative power of normative discourse and repeated interactions between transnational actors...,” rather than political, military, or economic calculations of strict self-interest (9-10). The fairness model provides that human rights treaties are generally fair, composed of rules that reflect widely held principles codified through a transparent rule-making process. States are likely to comply with international law because it is fair and reflective of what most states accept as just. The transnational legal process model describes international law compliance as a three-stage process of norms internalization: initial interaction between transnational actors generates the “enunciation of the norm applicable to the interaction,” the norm develops into a legal rule for use in future interactions, and with repeated application of the rule over time the norm becomes “internalized into domestic structures through executive, legislative, and judicial action” (11-12).⁸

⁸ For more on the role that norm setting plays in compliance see (Hafner-Burton and Tsutsui 1382-83); (Lutz and Sikkink 655-59); and (Sikkink 16-17).

Obviously the traditional theories of international human rights law compliance are aligned along the two opposite ends of the spectrum. It has been just in the past decade that a number of authors have conducted systematic analysis to provide empirical representations of ratification and compliance trends. To test the theories of why countries ratify international human rights treaties Wotipka and Tsutsui conducted an analysis of 164 countries' ratification of seven core treaties from 1965 to 2001. They found significant support for the normative pressures model and the argument that countries imitate what other countries like them have already done. Contrary to traditional rationalist arguments they concluded that "the international human rights regime has evolved out of social/normative processes rather than out of governments' concerns about power or economic interests." They reject the notion that coercion of more powerful states is key to the ratification of treaties as core countries were less likely to ratify the human rights treaties than were noncore countries. Their study introduces some startling counterintuitive conclusions: first that the Cold War actually contributed to the development of human rights as countries were more likely to ratify human rights treaties, and second, the level of human rights practice is negatively linked to treaty ratification (748-50). The following two studies further consider the link between ratification and compliance and offer some explanation for these counterintuitive findings.

Hafner-Burton and Tsutsui studied the behavior of 153 states from 1976 to 1999 with regard to propensity to ratify international human rights treaties and the subsequent human rights behavior of those countries while Hathaway did the same for 166 countries

over a nearly 40-year period from 1960-1999. Their conclusions are similar. Both found that ratification of human rights treaties does not necessarily immediately translate into improved human rights practices, and that at times it actually has the opposite effect. Hafner-Burton and Tsutsui describe this anomaly as a decoupling of expressed state commitment and actual practice indicating that “international human rights treaties do little to encourage better practices and cannot stop many governments from a spiral of increasing repressive behavior, and may even exacerbate poor practices” (1398). This decoupling is due in part to the ability of human rights abusing countries to use ratification of treaties as a temporary substitute for real improvements as ratification in many ways confers legitimacy upon the abusing state.

Looking separately at democratic versus nondemocratic states Hathaway found that while democratic countries were more likely overall to ratify the CAT than were nondemocratic countries, democratic nations using torture more frequently were less likely to ratify than those using torture less while the exact opposite trend was true of nondemocratic states. He attributes this difference to the fact that democratic states will face more pressure from civil society and domestic groups upon ratification to make real improvements than will nondemocratic states. Therefore, the cost of ratification to democratic nations using torture is greater than its potential benefit, whereas the benefit of improved reputation and legitimacy for nondemocratic states is greater than the potential cost of pressure that those countries consider unlikely anyway. Both studies conclude that while they may initially present a gloomy outlook on the international human rights legal regime, seemingly supportive of the traditional rational actor models, ratification of the treaties

can and often does lead to real improvements. Although the treaties themselves tend to lack real enforcement other than periodic state reporting, ratification further advances the universality of the human rights norms and creates an obligation on the part of the ratifying state that domestic institutions and civil society can leverage to effect real change over time at the domestic level (Hathaway, “The Promise” 26-35; Hafner-Burton and Tsutsui 1395-1402).

Hafner-Burton and Tsutsui consider theories on human rights practices in their study to determine “the domestic and global economic causes” of human rights abuse. They provide extensive discussion on economic, political, demographic, and global factors that tend to be indicative of a state’s willingness to violate human rights norms. While most of that discussion is beyond the scope of this work, it is noteworthy that an unstable economic situation contributes to citizens having grievances that can result in political conflict, “prompting governments to resort to political repression” (1387-88). They also find that there exists “a relationship between involvement in warfare and human rights violations.” Einolf adds to this discussion that governments are more likely to resort to torture when they perceive an extreme threat, a trend that is particularly salient in democratic countries “when terrorist attacks on civilians cause governments to perceive a severe threat.” He also agrees that war time governments are more likely to use torture. Considering historical examples, he concludes that in his study “when total war tactics were combined with ideological and nationalist disrespect for conventional limitations on war, massacre, violence against civilians, and torture of enemy civilians and prisoners of war occurred at unprecedented levels” (113-14).

While the use and legality of torture has a long and storied history, modern international human rights law has been developing rapidly since World War II. At the beginning of the Argentine dirty war in 1976 the international human rights legal regime had established basic norms of human rights, but had not yet matured. Today the law asserts an absolute ban on torture and its use for any reason, but states continue to derogate from their responsibility to abide by that prohibition. Treaty ratification in and of itself may not directly affect human rights practices immediately, but the increasing validity of international human rights standards and the ability of domestic groups to use the law to influence governments does lead to improvements. Scholars have given some consideration to why governments may commit torture and other human rights abuses and have found that an unstable economy, the perception of an extreme threat such as terrorism, and the involvement in war often lead to government abuse. This understanding perfectly sets the stage for chapter two to discuss what happened in Argentina.

CHAPTER TWO

What Happened in Argentina

Lo peor no es perder la vida. Lo peor hubiera sido perder la guerra... Hemos cumplido nuestra misión. (The worst is not to lose life. The worst would have been to lose the war... We have fulfilled our mission.)

General Roberto Viola
La Nación
30 May 1979

In the 1970s Argentina faced what it deemed a significant national security threat: left wing terrorism by various groups that the government labeled as subversives. The government of Isabel Perón declared a state of siege and suspended parts of the constitution in order to combat the threat. Following the coup d'état that overthrew Perón in 1976, the country's military junta government waged a three year dirty war against left wing dissidents. In perpetrating its dirty war the government reacted strongly to a series of terrorist acts that it perceived as a serious threat of communist infiltration and took sweeping measures to squelch the resistance. The government declared its war to be a special one in which it faced a new breed of enemy that utilized nontraditional techniques, remaining hidden, fighting from ambush and relying on terrorist tactics. In response, the government found that the Geneva Conventions, to which it was a party, did not apply, and that the military could use tactics as unconventional to ordinary warfare as those used by the terrorists (Lewis 1-2). By the end of the three years of violence the Argentine government had disappeared at least 8,960 people (Argentine

National Commission 10), known as *los desaparecidos* (the disappeared ones), a word that has since taken its place in the Spanish lexicon. Estimates often place the actual number of disappeared between 10,000 and 30,000 (Gareau 95).

In order to place the events of the dirty war in context the chapter begins with a look at the causes leading to up the military coup against Isabel Perón and the junta's justification for the harsh tactics used to fight the subversives. There is no question that in 1976 the country had been rocked by domestic terrorism and faced a disastrous economic situation. The government response, however, was anything but equal to the crisis in scope and certainly was not within the bounds of the by then widely accepted international human rights norms, vague though they may have been. Considering the role of the international human rights regime and its ability to influence events in Argentina not only helps to understand how the atrocities in Argentina came to an end, but also validates the earlier conclusions of Hafner-Burton and Tsutsui and Hathaway about how the international legal regime affects state practice. Following the cessation of violence in Argentina, the country finally transitioned to democracy in 1983 and the chapter ends with a description of President Alfonsín's efforts at reconciliation.

Causes and Government Justification

While Argentina has been described as having “a remarkable constitutional tradition” (Brower 525), by 1976 it had accumulated extensive experience with military intervention in its political affairs. The national Constitution of 1853 had existed as the

nation's governing document for 123 years when the junta seized power, but for many of those years it had been no more in effect than it would be under the junta's rule. When Hipólito Yrigoyen was elected in Argentina's first democratic election with universal male suffrage in 1916 it seemed as though the country may finally be living up to its constitutional promise. In 1930 while serving a second, non-consecutive term, however, Yrigoyen was overthrown in a military coup and by the start of the dirty war 19 different presidents had held the executive office in 21 administrations (Juan Perón served during three different periods). Twelve of those administrations were placed in power through constitutional elections, and of these 12 only two completed their full six-year term. In the 46 years from 1930 to 1976 civilians held the presidency for only about 15 years. For more than half of the same period Congress was dissolved or relegated to a negligible status. Paul Lewis concludes that "on paper, Argentina was a model liberal democracy, with a Constitution dating back to 1853 and a federal system of national government divided into the classical three branches, checking and balancing one another. In reality, political institutions were little more than a façade..." (Lewis 3; Inter-American 14).¹

The Argentina of 1976 had a history as a "rich and confident nation" (Lewis 4), was "known as an ethnic melting pot..., possessed abundant natural resources, [and] an educated population" (Brower 525). However, it had also faced decades of political bickering that in mid-1969 caused workers unions and associated political parties to rise up against then president Onganía, disrupting "the [temporary] political calm" that had existed for a few years. Student uprisings and violent worker demonstrations caused

¹ For an opposing view see (Guest 12-13) describing early democratic Argentina as "a restless but fundamentally stable democracy;" also (Brower), particularly note 4 at 528.

regular clashes with police, often resulting in injuries, deaths, and serious damages to property. On May 29 over 13,000 students and workers marched on downtown Córdoba in what was one of the most violent uprisings to date, an event that would set the stage for increased violent action. As organizers of the march lost control of the crowd and an “orgy of violence” erupted, police exhausted their supplies of tear gas and withdrew. Mounted troops then entered the city and were turned back. That evening soldiers marched on the barricaded rioters and after a full day of fighting were finally able to restore order. The historic riot came to be known as the *cordobazo* and inspired greater violence as the next year and a half saw “a number of armed revolutionary organizations” emerge (Lewis 7-16).²

By the time Perón returned to Argentina from exile in 1973 violence was commonplace. Armed revolutionary groups such as the Montoneros and the ERP (Revolutionary Army of the People) had emerged and begun to carry out extreme acts of violence throughout the country (Guest 17). Lewis considers three separate studies tracking armed violence in Argentina from 1969-1973 to describe the high levels of terror and tension in the country by the time of the Perón restoration. The study with the most conservative figures found that during the four year period over 1,200 acts of armed violence occurred, or about two every three days. These acts ranged from arms thefts, attacks on property, and bank robberies to kidnappings, assaults on military and police installations, political assassinations, bombings, hijackings, and takeovers (of towns, buildings, prisons, broadcasting stations, etc.). From 1973 to 1976 kidnappings almost doubled to 140 and

² For an in-depth explanation of the *cordobazo* see (Brennan and Gordillo) (in Spanish).

political assassinations nearly quadrupled to 481 (Lewis 51-55; Inter-American, note 19 at 23-25).

Assassinations reached even the most prominent of leaders, including top workers union leaders and even a former president. Lewis makes clear that not only was terror common, but no place was safe from attack:

Every month throughout 1971, 1972, and 1973 was filled with...killings, kidnappings, bombings, and assaults. Here a bank was robbed, there a police station was taken, a radio or a television station was invaded and made to broadcast a message, letter bombs were mailed out to businessmen or public officials, a policeman was killed, an executive was kidnapped for ransom, an office was bombed, a private club was bombed, a factory was bombed, someone's home was bombed. (Lewis 58)

One study's statistics found an average of one bombing per day during the three year period. Argentina's middle class was paralyzed with fear as people drastically altered their lifestyles so that housewives stayed inside their homes, children were sent to school with bodyguards and men went to work with bodyguards (58).

Upon taking office Perón "promised a stepped-up campaign against the 'subversive delinquents,'" but his untimely death in July 1974 placed Isabel Perón, his wife and vice president, in the presidency. She was less than capable; described as "essentially unimaginative, ignorant, and stubborn" (Lewis 93-97). Isabel was not prepared to cope with the issues facing the nation. In November 1974 Isabel declared a state of siege that gave her much broader powers under the constitution, including allowing her to suspend certain civil rights. In February 1975 under powers allowed by the state of siege she

ordered the military to take action against a domestic uprising, and in October she extended the orders to the entire country. Hoping to maintain civilian control while increasing the military's capability to combat the terrorist threat (Guest 19), Isabel issued Decree No. 2770/75 creating a Council of Domestic Security that included the President, her Cabinet, and the commanding officers of the armed forces. The same day Decree No. 2772/75 authorized the armed forces to utilize "whatever 'military and security operations they deem[ed] necessary to annihilate subversive elements throughout the country'" (Gibney).

The subversion coupled with an economy spiraling out of control set the stage for yet another military coup in Argentina's history. Soaring inflation rates of as much as 1,000 percent "touched off widespread black marketeering, smuggling, farmers' boycotts, labor strikes, and employers' lockouts" (Lewis 123). On 24 March 1976 the military finally made its move and removed Isabel Perón from office and began what would be seven years of military rule. Ironically, the military's move came at a time when the rate of terrorist acts was significantly reduced as the extraordinary measures taken by Isabel had drastically weakened the armed revolutionary groups (Guest 19; Lewis 124-25). "By the beginning of 1976, left-wing terrorism was sullen, brutal, and terrifying, but it had ceased to pose a mortal danger to the state... There was no justification for an army coup to wipe out left-wing 'subversion'" (Guest 20; Pion-Berlin and Lopez 64). The junta would, however, continue to use the threat of terrorism as its justification for extreme measures taken in the name of national security.

Initially, the military government was met with acceptance by the Argentine public. Devastated by the terrorist acts of the past several years and tired of the chaotic economy, “the majority of Argentines did not offer resistance” to the new military government (Quiroga, “El Tiempo” 36) that “had wide support among just about all the major interest groups and political parties from the UCR to the Communist Party” (Lewis 126). Dworkin describes the devastated Argentine middle class as welcoming “what it saw as a return to sanity.” Jorge Luis Borges, the famous Argentine writer, believed that “once again Argentina was to be governed by gentlemen” (Dworkin xiii).

The 1976 coup was different from those prior to it in that its purpose was to establish “a government of the Armed Forces, and not merely supported by them...” (Cavarozzi 51, emphasis kept). The junta set about building a complex legal framework within which to solidify its power and justify its actions. It built upon the decrees already instituted by ousted President Isabel Perón, issuing a series of decrees in the months following the coup strengthening executive power and drastically limiting civil rights (Gibney; Inter-American 15-20). “The political organization of the Argentine State [was] substantially altered by the military takeover of March 24, 1976...” The Junta issued the Act for the National Reorganization Process followed by a considerable number of additional provisions and decrees, so that “the Fundamental Text of [the] 1853 [constitution was] still in effect, but in a limited form...” It was applied “only with respect to those provisions that [were not] amended by the current government” (Inter-American 13-20). Key to drawing similarities to the U.S. in chapter three is an understanding of how the Argentine executive crafted its legal framework. The “new legal order [was] composed of

laws and special decrees, institutional acts and statutes, comunicués and specific provisions, resolutions and instruction” aimed at “developing the measures and purposes initially adopted... to preserve national security” (17).

Throughout the dirty war the junta and its agents used the threat of terrorism, of the subversive, as the moral and legal justification for its actions. Even in light of the massive human rights abuses, the military leaders were unrepentant; when the Inter-American Commission on Human Rights visited Argentina in 1979 various government leaders stressed that the nature of the special threat to the nation required the special actions taken. The government was adamant that “the problem of human rights in Argentina could not be analyzed outside the socio-political context” of the terrorist threat, and that “the emergency measures adopted by the Argentine government had to be taken, “in order to exercise the legitimate right to defense against the on-slaught of terrorism” (22-23). The Commission observes that “practically all the authorities... told the Commission that the problem of the observance of human rights in Argentina could not be given precedence over the situation caused by terrorism and subversion” (23). Authorities provided details of terrorist acts and activity to back up their claims; the Minister of the Interior even sent the Commission “a voluminous document” entitled *El terrorismo en la Argentina* (Terrorism in Argentina) (Inter-American 23).

Perhaps worst about the atrocities of the dirty war is the fact that the threat to the nation upon which the junta acted was largely exaggerated and often just false. David Pion-Berlin and George Lopez describe the rationale in Argentina’s dirty war as one based on

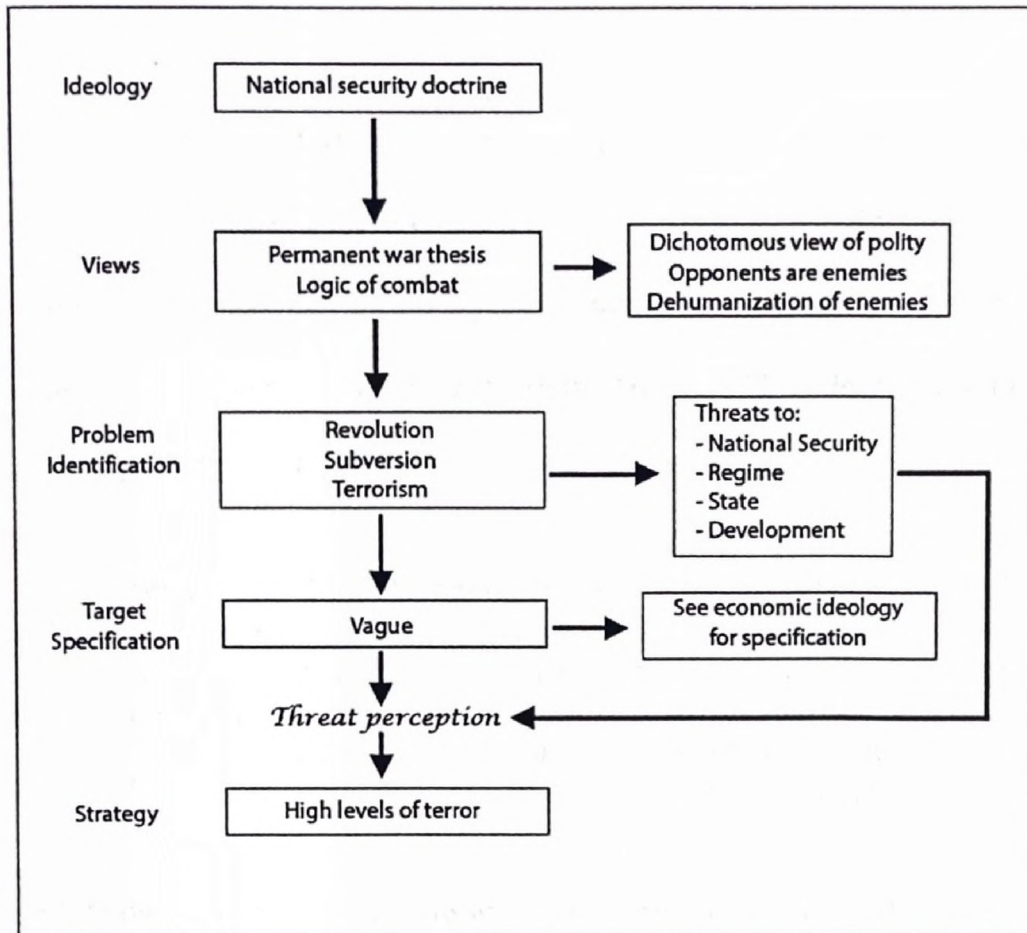
national security doctrine and waged against “real and *perceived* adversaries” (63-63, emphasis added). Mark Osiel’s article “Constructing Subversion in Argentina’s Dirty War,” details how the idea of the enemy that consumed Argentina was “very much a cultural construction” encouraged and manipulated by the government (119). As “the word ‘subversive’ itself came to be used with a vast and vague range of meaning” (Sabato, 4), the government constructed a view of the Other that was broad and could be manipulated to the state’s needs. National security doctrine played to the fears of the public and “licensed broad and continuous attacks against perceived ‘enemies of the state’ by claiming the nation was embroiled in a state of permanent... war” (Pion-Berlin and Lopez 65).

By adopting “the logic of war” as the national mindset in response to terrorism, the government developed a “dichotomous view of the Argentine polity” (65) as containing only “regime loyalists and opponents” (82-3). The driving force behind the government’s ideology was that “a state of permanent... war existed” in which the enemy was waging “an international war against ‘Western Civilization and its ideals’” (70).

In sum, the regime employed a process of ideological deduction. It began with the premise that national security is the state’s paramount objective. It then defined the security dilemma within a framework of permanent war. From there, particular views about the polity and the opposition were formulated, as were the problems and threats associated with the state of permanent war. Given these premises and the perception of threat that they generated, the decision to use coercion became a logical conclusion. (71)

Figure 2 provides a visual demonstration of the reasoning process that led the Argentine government to conclude the use of coercion was necessary and justified in its battle against terrorism.³

Figure 2.1: National Security Ideology and the Deduction of State Terror



SOURCE: Pion-Berlin, David and George A Lopez. "Of Victims and Executioners: Argentine State Terror, 1975-1979." *International Studies Quarterly* 35 (1991): 63-86.

It is clear that while extreme terrorist acts initially posed a significant threat to Argentina's national security prior to 1976, the government's response "exceed[ed] any proportionate response to discernable threat" (Osiel 120), and "turned a limited battle against rebel units into an unnecessary and large-scale" use of excessive power (Pion-

³ For more on the government's construct of National Security Doctrine and its ideological ramifications see (Lewis 131-143).

Berlin and Lopez 68; Osiel 131). Structuring its justification within an ideological doctrine of national security that justified a state of permanent war allowed the government to justify its actions to a fearful public originally willing to accept the government's reasoning even as their friends and family members disappeared (Sabato 3-4; Dworkin xiv-xv).

The level and extent of repression in Argentina's case is what distinguishes it from others in the region. According to Guest, the repression perpetrated by the Argentine government against its own people was unprecedented historically, "the nearest equivalent to the disappearances were the Night and Fog decrees used by the Nazis" to quell opposition in Germany (32).

What made the dirty war different ... was the scale and method. Never before had the resources of a state been geared to systematic torture and murder. The Junta turned disappearances into a government policy and in so doing gave new meaning to the concept of state terror. It was as deliberate, methodical, and calculated as collecting tax, and as such very much out of character with the haphazard brutality of previous military regimes. (32)

While the sheer scale of the disappearances and torture was astounding, the array of torture tactics used and the frequency with which they were implemented was horrific. Table A-3 (Appendix A) provides a list of selected torture techniques most commonly used in Argentina's secret detention centers.

The use of excessive force in Argentina followed a regular pattern of kidnapping, disappearance, and torture that for most people concluded with a fourth step, death. The kidnapping, or arrest, could take place anywhere, at the victim's place of work, on the

street, or most commonly in the victim's home. Armed agents (often unidentified without displaying credentials), would typically enter the home, usually at night, round up all people in the house and hold them in one room while the house was ransacked and valuables removed. The agents would then hood the victim and take him away, effectively disappearing him into a vast network of secret prisons where he would be tortured extensively. Families of the disappeared were provided no information as the whereabouts or wellbeing of their loved ones and often traveled across the country visiting government offices, prisons and military installations in search of news (Sabato 3; Argentine National Commission 10-20; Lewis 150-53).

Reactions and the Role of the International Human Rights Regime

The government attempted to veil its actions in secrecy in order to prevent or delay the public at large and the world from learning the truth of its actions (Osiel 124).⁴ As the truth of what was happening slowly began to sink in for Argentines, people experienced different reactions. "Some people reacted with alarm" while others sought to justify in their minds what they knew was going on (Sabato 4). "Though the evidence was soon undeniable that the junta had been engaged in mass terror, most Argentines were satisfied with its explanation that harsh measures were necessary to save the country" and they convinced themselves that those who disappeared must have truly had some connection to the terrorist groups (Dworkin xiv-xv). In *La reconstrucción de la democracia Argentina* (The Reconstruction of the Argentine Democracy), the Argentine author Hugo Quiroga best describes the mixed reactions and reasoning for it:

⁴ For a discussion on the Argentine government's censorship of the press see (Inter-American 235-238).

Perhaps our society – in that moment – wanted to negate a reality that it not could confront and that caused it contradictory feelings. What is most difficult to maintain is the argument of absolute ignorance of what was happening, when through personal testimonies, commentary, the reports of the victims' families and the unbreathable atmosphere of the period, one could come to know or perceive the authoritarian state's mode of action. (61)

Such a response is not surprising. In his article "How Traumatized Societies Remember: The Aftermath of Argentina's Dirty War," Antonius Robben finds that there is often a gap between recognition and reality following traumatic experiences (123-28).

Guest provides an excellent account of how the international community first began to learn of the atrocities in Argentina and how it responded. Foreign nationals escaping the country spread the word to their respective governments, international organizations began raising awareness by actions such as publishing lists of the reported disappeared, and of course the Madres de la Plaza de Mayo achieved worldwide recognition as one of the earliest domestic groups to offer significant resistance. At the time, the United Nations was the most important international organization involved in the battle over human rights in Argentina. The general failure of the United Nations to prevent or stop the abuses of the Argentine government was often a direct result of its bureaucratic nature⁵ and Argentina's adept ability to manipulate the system in its favor. This failure is indicative of the general failure of international organizations as a whole to intercede on behalf of the Argentine citizens (Guest 89-147).

⁵ Guest describes the United Nations at the time as an organization "drowning in red tape" (Guest 98).

Gabriel Martínez served as Argentina's ambassador to the United Nations on behalf of the junta government. He exhibited an uncanny ability to use the U.N. system to advance Argentina's position and repeatedly defeat any attempt to bring the abuses taking place in Argentina up for discussion. His masterful handling of the situation showed Martínez's "skill in turning the U.N. rule book against Argentina's critics" (Guest 113-15). It was not until President Carter's election and subsequent commitment to human rights, his appointment of Patricia Derian as Assistant Secretary of States for Human Rights and her willingness to take the junta head-on, and the 1979 visit of the Inter-American Commission on Human Rights that the Argentine government finally caved on its policy of widespread use of torture (153-243). "The mass killings effectively came to an end and the disappearance tailed off in the last quarter of 1979. The Junta had too much on its hands at home and abroad to risk continuing its policy of political murder" (179). For three years a major developed nation was enveloped in a state-run terror campaign, yet international human rights law and the international community failed to prevent or stop the atrocities.

Return to Democracy and Reconciliation

Although the worst repression ended in 1979, the junta remained in power until 1983 when its ability to effectively govern was eroded by continued economic woes and a disastrous foreign war. Stabilizing the economy had been one of the junta's goals in overthrowing Perón, but its policies taken beginning in 1978 "caused the symptoms of the crisis that had already manifested themselves six years before to reappear," and

between 1981 and 1983 they “reappeared significantly aggravated” (Cavarozzi 62-63). Figure 2 demonstrates the drastic increase in Argentina’s debt from 1977 to 1983, just one indicator of the disastrous economy that helped bring about the junta’s downfall. A failed attempt to reclaim the *Islas Malvinas* (Falkland Islands) from the British drastically weakened the military’s position and coupled with the economy forced the junta to concede to elections in 1983 (Guest 335-56).

Figure 2.2: Growth of Argentina’s External Debt* (1977-1983)

Years	Public Debt	Private Debt	Total Debt
1977	6,044	3634	9,678
1978	8,357	4,139	12,496
1979	9,960	9,074	19,034
1980	14,459	12,703	27,162
1981	20,024	15,674	35,671
1982	26,341	14,362	40,703
1983	30,108	14,269	44,377

ADAPTED FROM: Cavarozzi, Marcelo. *Autoritarismo y democracia*. Buenos Aires: Editorial Universitaria de Buenos Aires, 2004: 63.

* Measured in millions of U.S. dollars

Raúl Alfonsín campaigned for the presidency on a promise to restore Argentina’s Constitutional protections of civil rights and to protect human rights. His election with 52 percent of the vote was heralded with “a sense of elation and release” both in Argentina and around the world by “foreign correspondents burbling sentimentally” about the country’s return to normalcy (Guest 355-56). Before leaving power, the junta government made several attempts to ensure that its leaders and agents would be protected from any

future attempts at investigation or prosecution. The 1983 Final Document on the War Against Subversion and Terrorism reported the results of an internal investigation into allegations of torture and concluded that “human rights abuses had occurred, but that such actions, ‘were in the line of duty.’” A few months later the Law of National Pacification granted “immunity from prosecution to suspected terrorists and members of the armed forces for human rights violations committed” during the dirty war period (Gibney). President Alfonsín, on his third day in office,⁶ issued an executive order for the arrest and prosecution of the nine military officers who had led the National Reorganization Process. Congress annulled the Law of National Pacification, and the Federal Court of Appeals upheld its action. The stage was set for the investigation and prosecution of the culpable parties, and it appeared as though the nation was on a path to reconciliation (Gibney; Guest 381-83).

The junta members were tried in a five-month trial in 1985 and investigations continued against lower level officers until grumblings within the military led to the Full Stop Law providing a 60 day deadline for charges to be filed. The investigations and arrests that followed led to even more unrest causing Congress to issue the law of “due obedience” in 1987 establishing immunity for all lower level military personnel on the basis that they had merely acted in obedience of orders that they could not question. Two years later when President Menem took office he pardoned nearly 300 people and in 1990 he pardoned the junta leaders who had led the dirty war (Gibney). Argentina’s reconciliation and quest for justice had come full circle.

⁶ Alfonsín was inaugurated on 10 Dec. 1983 and issued Decree No. 158/83 on 13 Dec.

Seven years had transpired from Alfonsín's election and order for the junta leaders to be tried to Menem's pardon of those convicted, but Argentina's national suffering was not yet over. In March 2001 a federal judge reopened a number of dirty war era investigations. Once again all the emotion and conflict spilled out as Argentines took sides, the nation once again dividing against itself. Even today, the conflict continues. Three news headlines from the past three years illustrate the continued efforts to achieve justice: in 2007 "Argentine Church Faces 'Dirty War' Past," in 2009 "Former Argentine Navy Officer to be Tried in Torture Deaths," and in 2010 "Argentina: militar admite detenciones ilegales" (Argentina: Soldier Admits Illegal Detentions) (Barrinuevo; Former Argentine; Smink).

Robben provides an analysis of why the ongoing search for justice in Argentina "prolonged the traumatized state of Argentine society and led to chronic mourning..." (123). Studies of the Holocaust and psychoanalysis assert that "mourning of mass violence is postponed by denial and repression so that time can wear off the most devastating experiences" (122). Refusing to recognize the worst, most inexplicable events "give[s] people a sense of mastery, [and] orients them to the future instead of the past" (125). This helps explain why many people following the return to democracy opposed trials of the military, preferring to forget, if not forgive (Guest 381-91; Sabato 5). With regard to healing, Robben points out that "conflictive memory work does not facilitate working through, but slows it down..." because "people cannot mourn their losses when others deny that those losses took place" (127).

Argentina expresses the classic systems of a society whose wounds cannot heal because of the conflicting viewpoints and the unresolved nature of its past. One of Argentina's biggest mistakes in its attempt at reconciliation was "the protracted nature of the process." Gibney concludes that "what might have been a nation-wide catharsis and search for truth became instead a never-ending chess game..." between two sides of a nation split socially and politically. This understanding provides a background to turn to the United States case to find similarities and also to draw conclusions about how the US can avoid falling into the same protracted process as Argentina.

CHAPTER THREE

Drawing Connections to the Global War on Terror

We also have to work... the dark side, if you will. We've got to spend time in the shadows of the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion... It's going to be vital for us to use any means at our disposal, basically, to achieve our objective.

Vice President Dick Cheney
NBC Meet the Press
16 September 2001

Dick Cheney's words, spoken only five days after the infamous 9/11 terrorist attacks, may have appealed to a nation still reeling from a devastating attack against innocent civilians, but they should have also provided a clear indicator of the Bush administration's willingness to exceed accepted norms in its fight against what it perceived as a serious international threat. Over the course of the next seven years the United States would launch a Global War on Terror (GWOT), invade a sovereign state in violation of international law including the laws of war, and engage in interrogation tactics reminiscent of the Argentine dirty war. Scholars and politicians on both sides of the aisle have lined up to either defend or criticize the course taken in the GWOT, and today the American public remains divided, unsure of its values and position in the world as a supposed defender of human rights.

Establishing the course of events in the GWOT since 2001 demonstrates the strikingly similar trajectory between today's conflict and that of the Argentine dirty war. The first part of this chapter considers the government's justification for its strong response, how the government created an extensive legal framework to justify and shield its actions from scrutiny, and ultimately the use of so-called enhanced interrogation techniques (EIT) that led to torture. Drawing from the previous chapter, this analysis finds a variety of parallels between the two conflicts. Turning to the election of President Barack Obama the work scrutinizes his actions with regard to human rights over the past year and considers where the United States stands today. Ultimately, the chapter concludes that US society finds itself in a position very similar to that of Argentina in the first years of Alfonsín's presidency and establishes the links necessary to justify chapter four's application of lessons learned to the US case.

A Government Legalizes Torture

As in the case of Argentina, the United States' prolonged conflict characterized by excessive force began with a very serious and genuine threat that manifested itself over the course of several years (United States 47-50). Isabel Perón's dramatic removal of office by the junta¹ was the tipping point for Argentina, and in the United States the well known events of 11 September 2001 were the tipping off point that pushed the government to completely reshape its counter terror measures.

¹ Warned of the coming coup, Perón left a birthday party at the *Casa Rosada*, fleeing in the presidential helicopter that instead of taking her home took her to the international airport where she was placed under arrest by military officials (Lewis 127).

Similar to the initial actions of the Argentine junta, the government of President George W. Bush began in 2002 to craft a legal contextualization of domestic and international law that would grant the U.S. flexibility with interrogation and detention of suspects in the GWOT. It becomes clear through the reading of successive memos and legal advisories within the highest ranks of U.S. government that there existed “a systematic decision to alter the use of methods of coercion and torture that lay outside of accepted and legal norms...” (Greenberg and Dratel xix). Just as the junta changed the legal landscape in Argentina, the Bush administration changed that of the United States.

According to a joint study by Philip Heymann and Juliette Kayyem at the Harvard Law School and the Kennedy School of Government at Harvard University, “fundamental changes in domestic and international law have occurred since 9/11, new institutions have been created and unprecedented practices have been adopted” (1). This assessment is reminiscent of the 1980 IACHR report on Argentina finding that “the political organization of the Argentine State [was] substantially altered by the military takeover...” (Inter-American 15). The Heymann report suggests that the government’s decisions in the GWOT “could permanently alter long accepted U.S. traditions and precedents regarding separation of powers, the rights of citizens and relations among nations” (1), and weaken the United States’ world position, ultimately making it more difficult to achieve the ends for which these new means have been adopted (13-14).

To fully comprehend the extent to which the Bush administration sought to manipulate precise definitions and employ the strictest of interpretations of U.S. international human

rights treaty obligations, one must read firsthand the memos that guided U.S. policy in the GWOT for a number of years. The Heymann report found that “for some of the issues [examined in the report]... we exist in a legal state where a certain practice is occurring, but where there are *no rules or guidance* other than internal, often *secret* and sometime *incomplete* rules within the executive branch” (17, emphasis added). The memos contained in *The Torture Papers: The Road to Abu Ghraib* and additional supporting documents in *Torture and Truth: America, Abu Ghraib, and the War on Terror* create a clear picture of the lengthy and deliberate process that government officials of the highest level including the president used to resort to extra-legal measures that “misconceives the rule of law [and] underestimates the capacity of a constitutional order to deal with crises...” (Chesterman).

“Ultimately, what the reader is left with after reading these documents is a clear sense of the systematic decision to alter the use of methods of coercion and torture that lay outside of accepted and legal norms, a process that began early in 2002 and that was well defined by the end of that year, months before the invasion of Iraq” (Greenberg and Dratel xix). Although nothing can substitute a close reading of these memos Figure A-3 provides a timeline of some of the administration’s earliest decisions, and Appendix B contains excerpts of the now famous 1 August 2002 “torture memo” by Assistant Attorney General Jay S. Bybee. Particularly noteworthy is Bybee’s interpretation in the second paragraph and further explained on pages five and six of his memo that the level of pain must rise to the level of “organ failure, impairment of bodily function, or even death” in order to constitute torture (Bybee).

The logic of using such “excessively technical statutory readings” as that employed by Bybee has a “rhetorical appeal to language that involves precise terms and mathematics-like certainty and objectivity.” It is through this sort of process that torture is legalized as “this rhetorical style ensures that there is no appeal to anything more fundamental than the words describing the law, except the need to secure the nation,” and certainly no appeal to “human rights principles, which are rejected as utterly unsuited for the present debate even though they are the principles that ground the American legal system” (Hatfield 136-37). Sadly, this appeal to national security above all else and playing to the vulnerability of a scared populace once again calls to mind the Argentine junta’s ideology in the dirty war. The rejection of human rights principles as unsuited to the U.S. case sounds exactly like the Argentine authorities’ insistence to the IACHR that the terrorist threat to that nation should and did supersede concerns for human rights (Inter-American 23). It is not surprising that the Bybee memo was “overwhelmingly criticized by the American bar... —with a former dean of Yale Law School calling it ‘the most clearly erroneous legal opinion [he had] ever read’” (Hatfield).

Resonating with the Argentine decision to use an overwhelmingly disproportionate military response to the terrorism in 1976, the United States likewise chose an excessive response well outside the realm of proportionality. Joseph Schwartz describes the American military response to terrorism as “a blunt, ineffective, and unjust response to the threat posed to innocent civilians by terrorism” (Schwartz). Returning now to Figure 2.1 demonstrating the rationale of the Argentine junta in determining that the use of torture and other extra-legal measures was necessary, it is clear that this is the same

rationale used in the United States' GWOT. The driving force behind the government's ideology was that "a state of permanent... war existed" in which the enemy was waging "an international war against 'Western Civilization and its ideals'" (Pion-Berlin and Lopez 70).

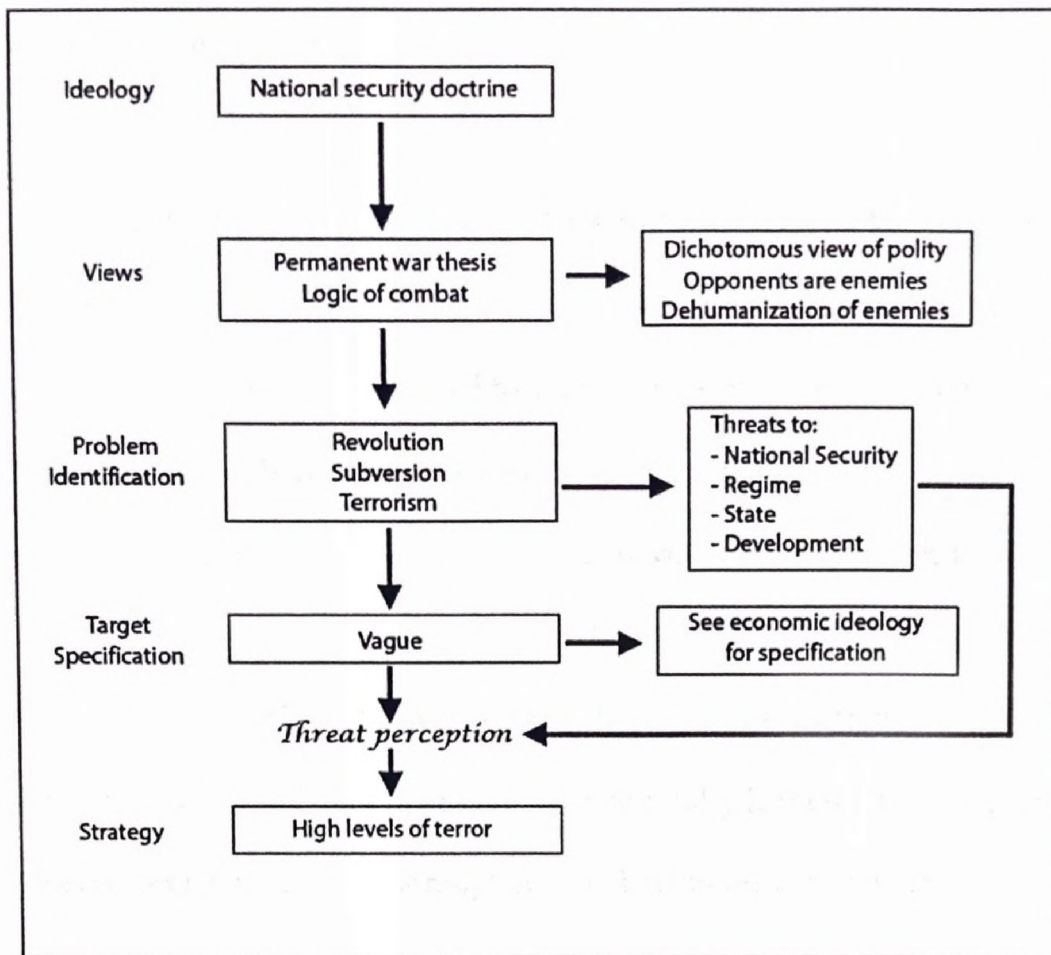
In sum, the regime employed a process of ideological deduction. It began with the premise that national security is the state's paramount objective. It then defined the security dilemma within a framework of permanent war. From there, particular views about the polity and the opposition were formulated, as were the problems and threats associated with the state of permanent war. Given these premises and the perception of threat that they generated, the decision to use coercion became a logical conclusion. (71)

One can trace the same ideological deduction in the U.S. case. Since 9/11, the U.S. government has repeatedly invoked national security as the overriding concern in government policy. This new national security doctrine's "goals... are strikingly – and dangerously – unlimited..." (Schwartz). Next, the government "then defined the security dilemma within a framework of permanent war" (Pion-Berlin and Lopez 71), with President Bush declaring that "we do not know the day of final victory..." (You Are Either). With the ideology of national security doctrine in place and a view of permanent war, the Bush administration developed and promoted a dichotomous construct of the conflict. President Bush went so far as to declare to the world that in the GWOT "you're either with us, or against us" ("You Are Either..."), employing the same mindset of the Argentine junta in its view of the subversive threat in that nation. Along with that view, the U.S. government played to the fear of Americans, implementing "some domestic policies [that] not only trade on the fear but even seem designed to cultivate it: the ritualistic heightening of security measures in airports; the sporadic calling of 'alerts' of

various colors; the clampdown on immigration... [and] the threats to freedom of speech” (Hammond 109). These practices not only maintain the public’s fear providing “license to the administration to assert US military power,” but also maintain thoughts of the “terrorist” and “terrorism” ever present in the American conscious. Continuing along the chart in Figure 2.1 (reprinted on following page), the government certainly identified the problem as terrorism presenting threats to national security and the American state as well as way of life. The target specification was indeed one of “a vague, ill-defined enemy” (Hilde 189). All of these factors fed into the government’s threat perception and thereby made the conclusion to use EIT seem a logical decision.

It may be reasonable to conclude that the U.S. followed a similar reasoning as did Argentina; after all, both countries did face a significant terrorist threat. The question, however, is did the United States’ conclusion to use EIT actually result in torture equally similar to that utilized in Argentina? The discussion of this question is a lengthy, complicated, and still unresolved debate that is for the most part beyond the scope of this work. For comparative value, however, this section will consider the EIT known to have been used or authorized for use in the GWOT with some discussion as to their possible legality.

Figure 2.1: National Security Ideology and the Deduction of State Terror



SOURCE: Pion-Berlin, David and George A Lopez. "Of Victims and Executioners: Argentine State Terror, 1975-1979." *International Studies Quarterly* 35 (1991): 63-86.

Recalling the report of the International Committee of the Red Cross at the opening of the introduction to this thesis and the description of the typical abduction process during the dirty war in chapter two, it is clear that the tactics employed by 1970s Argentina and twenty-first century America with regard to disappearance are the same. While the Red Cross report describes the arrest procedure for detainees held in regular U.S. detention sites (International Committee), the United States has operated a “network of completely clandestine detention centers known as ‘black sites...’ since the beginning of the so-called war on terror” (Calveiro 102). Pilar Calveiro describes this network as “a vast,

illegal repressive network operating within legal structures,” representing “a state-sponsored policy of disappearances” (102).

The number of detainees believed to have transited through the secret network is about 100 (Chesterman; Brower 527, note 45 at 534-535). Just as in Argentina, these disappearances are characterized by an utter lack of information for the families of the victims. “In the absence of a system to notify the families of the whereabouts of their arrested relatives, many were left without news for months, often fearing that their relatives unaccounted for dead” (International Committee). The Committee’s description of families “travel[ing] for weeks throughout the country from one place of internment to another in search of their relatives,” only to finally learn of the disappeared person’s “whereabouts informally (through released detainees)” could just as easily apply to the system of disappearances in Argentina (International Committee). In addition to disappearances, the U.S. utilization of CIA prison planes to secretly transport prisoners and carry out extraordinary rendition, a process by which victims are transported to other countries known to use torture, conjures up images of Argentina’s infamous death flights (Brower 527; Chesterman).

Many of the specific interrogation tactics utilized in the GWOT are exactly those employed by the repressive Argentine regime (Table A-3, Appendix A). Calveiro states that “the use of hoods and isolation techniques share certain similarities with the torture regime in Argentina, which can be considered an early version of this same pattern of repression.” He continues, however, that “the means and scope of current techniques of

solitary confinement are *much more severe*” (Calveiro 105-07, emphasis added). Even waterboarding, the technique that has garnered the most attention in the public sphere and become a household word is not new to the GWOT, but “was used extensively in Central and South America in the 1970s and 1980s...” (Human Rights Watch, “Descriptions”), including in Argentina. Perhaps most telling about U.S. interrogation techniques is the fact that in 2002, the same year in which the U.S. authorized the use of extra-legal interrogation techniques, the State Department condemned several world governments for the use of torture in its annual Country Reports on Human Rights Practices for using a number of the exact same tactics authorized in Bybee’s torture memo (Human Rights Watch, “Descriptions”).

As the Argentine junta realized its end was imminent, it attempted to ensure that its members would be shielded from prosecution. In the U.S. case, rather than waiting, the administration’s extensive legal justification already discussed took care of the immunity issue up front.

“The policies that resulted in rampant abuse of detainees first in Afghanistan, then at Guantanamo Bay, and later in Iraq, were the product of three pernicious purposes designed to facilitate the unilateral and unfettered detention, interrogation, abuse, judgment, and punishment of prisoners... including the desire to absolve those implementing the policies of any liability for war crimes under U.S. and international law.” (Greenberg and Dratel xxi)

As is illustrated by the Bybee memo (Appendix B), a number of the legal memoranda circulated among high level officials in the Bush administration during the early days of the GWOT specifically discussed possible defenses for accusations of torture (Greenberg and Dratel).

Connections between dirty war Argentina and GWOT United States abound; only a few have been discussed here. What becomes evident, however, is that the United States' path to its present situation followed much the same trajectory as that of Argentina 30 years ago. The next section considers further similarities between the two cases, but with regard to their transitions from the perpetrating government to one more respectful of human rights. Together, these two classes of commonalities (trajectory to torture and return to human rights) establish the groundwork for chapter four to apply Argentina's lessons to the United States.

Obama: A New Era?

Much like Alfonsín's 1983 election in Argentina, President Barack Obama's 2008 election in the United States signaled a return to respect for human rights and America's international reputation. If President Bush's reelection in 2004 was indeed "a referendum on the 'war on terrorism'" (Heymann and Kayyem 1), then Obama's election could very well be said to be a referendum on the policies and excesses of the Bush administration. With a little more than a year since his term began, sufficient time has passed to judge Obama's progress and draw comparisons between his efforts thus far and those of Alfonsín in the early part of his presidency.

Three days following his inauguration Alfonsín fulfilled his campaign promise of justice and ordered the arrest and trials of the military junta's leaders. Likewise, on his third day

in office, Obama lived up to his campaign promises on human rights and issued an executive order ending the use of EIT by all U.S. personnel, ending the CIA secret detention facilities, and ordering an investigation into the practice of extraordinary rendition (Obama, “Executive Order”). Since then, President Obama has exhibited a “marked improvement in presidential rhetoric” regarding human rights and the application of constitutional and international legal standards to the GWOT (Roth). Indeed, the president has made significant steps reaffirming U.S. commitment to the standards that were often sidelined during his predecessor’s administration. Through efforts taken to end some controversial policies and close the Guantanamo Bay detention facility, as well as reassuring the world that the United States does once again hold itself to international standards, Obama has improved America’s international image (Obama, “Statement;” Otero). In his Nobel Peace Prize acceptance speech he claimed that “the United States cannot ‘insist that others follow the rules of the road if we refuse to follow them ourselves’” (Roth).

Human Rights Watch classifies the president’s work during his first year as “significant progress... toward ending the Bush administration’s abusive counterterrorism policies,” but labels his record on reform as “mixed” (“US: Obama’s”). Although Obama has made significant changes in Bush-era policies, he has also chosen to maintain some of the regime’s excessive tactics, including, perhaps most alarmingly, the “continued reliance on indefinite detention without charge” (“US: Obama’s”). It remains the official policy of the United States that it can hold some classes of detainees, against whom the government has no intention to file any charges, indefinitely until the cessation of

hostilities in a global war on terror, a conflict with no foreseeable end. To justify this policy, the government relies on an application of the traditional laws of war in what the same government labels a nontraditional conflict.

Thus far, the president has also declined to “seek accountability for past abuses by US officials,” undermining his ability to bring the country in line with international standards. Kenneth Roth, executive director of Human Rights Watch, insists that “it is not enough for the government to stop using torture; perpetrators must also be punished” (Roth). Amnesty International agrees, and is only one of many other civil society groups that join Human Rights Watch in calling for a full investigation and prosecutions (Amnesty International, “Rights Groups”).

The president has shown a return to respect for international law in many regards by allowing the U.S. to participate in the UN Human Rights Council and run for election to the council in 2009, signing the new Convention on the Rights of People with Disabilities, and declaring intent to ratify the UN Convention on the Elimination of All Forms of Discrimination Against Women. A sort of world tour of appearances in Accra, Cairo, Moscow, Oslo, and Shanghai have also been instrumental on the president’s part in “promoting a renewed U.S. human rights agenda” abroad (Roth; MacFarquhar).

President Obama’s election has turned the tide of the Bush administration’s flagrantly ignoring international norms with regard to U.S. conduct in the GWOT. The president has taken a key step by reaffirming the United States’ position on human rights and

international law, and his actions have made real contributions to improving the nation's image abroad. In many ways the transition from the Bush administration to the Obama government has been yet another step in the shared path of the United States and Argentina, reflecting the same change that took place with the transition from the junta to President Alfonsín. What will be a determining factor, however, in the United States' future is the course the government chooses to take in the near future.

CHAPTER FOUR

Lessons Learned: Recommendations for the U.S. Government

You are suggesting that we investigate our own security forces – absolutely out of the question... We fought a war and we were the winners.

General Roberto Viola
President of Argentina
Visit to Washington, DC, March 1981

It is often said that society must not forget the sorrows of past atrocities lest it should allow history to repeat itself. If there is any silver lining to the horrors of the Argentine dirty war it is not only the contributions the country's experience made to furthering the development of international human rights law, but also the lessons it can offer other governments for current and future application. *Nunca Más* opens with the admonition that "Many of the events described in this report will be hard to believe" (Argentine National Commission). Although the Argentine people had lived through the terror of the dirty war, the report's authors felt the need to preface their findings with a warning because it truly is difficult to comprehend how humanity could do what it did in Argentina. Ronald Dworkin echoes the same sentiment in his introduction to the report with an opening line characterizing it as "a report from hell" (Dworkin xi). Most importantly, the authors of *Nunca Más* knew that people would not *want* to believe what had happened, whether out of overwhelming shock at finally having to recognize what had been occurring for three years or out of guilt for some subconscious feeling that they

themselves were complicit in the regimes actions. Joshua Dratel, one of the editors of *The Torture Papers*, spells out this same feeling as it relates to the U.S. case:

As citizens, we surely enjoy rights, but just as surely responsibilities as well. We cannot look the other way while we implicitly authorize our elected officials to do the dirty work, and then, like Capt. Renault in *Casablanca* be “shocked” that transgressions have occurred under our nose. The panic-laden fear generated by the events of September 11th cannot serve as a license – for our government in its policies, or for ourselves in our personal approach to grave problems – to suspend our constitutional heritage, our core values as a nation, or the behavioral standards that mark a civilized and humane society. (Greenberg and Dratel xxiii)

The effects of the dirty war are still felt in Argentina in a very real way. Thirty years after the worst period of the dirty war came to a close; occasionally the news still carries stories of fresh investigations and new trials. After a three decades-long tug of war between clemency and punishment for the highest ranking members of the junta, Argentina is still far from a country reconciled with this part of its past. It is crucial that the United States avoid the same fate; by drawing examples from the Argentine case and applying them to the United States’ current situation there emerge a series of useful policy recommendations for the Obama administration.

What Argentina Can Teach Us

In order that Argentina’s nightmare experience not be in vain it is important for countries around the world to look for instructive lessons in what happened. Ernesto Sabato, chair of the Argentine National Commission on the Disappeared, ended his prologue to the Commission’s report with the optimistic observation that “great catastrophes are always instructive” (Sabato 6). From Argentina’s horror, the following lessons emerge:

1. Following the restoration of order after a traumatic event, a society needs a process by which it can come to understand what it experienced.
2. After an experience as divisive and devastating as that in Argentina, society will not be unified in agreeing on the appropriate course of action, and attempts to satisfy everyone will fail.
3. The prolonged nature of the trials and continued negotiations between the two different sectors of society (pro-junta and pro-democracy) extended the reconciliation process, ultimately causing it to break down.
4. Most importantly of all, society will eventually achieve justice or the country will be forced to continue coping with its wounds.

Considering each of these lessons provides the setting for applying them to the U.S. case in order to conclude with recommendations for the current government.

The Argentine National Commission on the Disappeared was a truth commission that helped Argentines recover by empowering them with an official forum to reconstruct the events of the dirty war. The trial of the military leaders then served as “the second comprehensive attempt to reconstruct the national memory about the war,” an effort that added to, rather than replaced, the already constructed collective memory. Not surprisingly, many people argued that the efforts at discovering the truth were “hindering national reconciliation... stirring up hatred and resentment, [and] not allowing the past to be forgotten” (Sabato 5). This was just one of the “unmistakable characteristics of a society that had not yet come to terms with the massive trauma in its recent past” (Robben 141). President Menem attempted to resolve the conflicting emotions by

pardoning military officials. Robben finds that approach flawed, however, citing Alfonsín's statement that "one cannot decree the amnesia of an entire society because every time anyone trie[s] to sweep the past under the carpet, the past returns[s] with a vengeance" (Robben 142). "Such traumatizing experiences cannot be silenced indefinitely but will eventually break through the façade of assumed innocence" (145).

Inevitably now the question arises of whether the United States case constitutes an experience resulting in massive trauma. The recounting of events in both the dirty war in chapter two and the GWOT in chapter three provide a clear case for the deduction that the cases share many commonalities, both in the government's and society's mindsets and the actions taken to combat terrorism in both instances. There are of course very large differences as well. Argentine society felt the full brunt of torture and terror in a very personal way; nearly 9,000 disappearances were documented, leaving thousands upon thousands more people who were grieving over a missing friend or family member. It was, in fact the unique effect of the phenomenon of disappearance that "generat[ed] a particularly difficult psychological response" (Sikkink 18), allowing Argentina to become "the source of an unusually high level of human rights innovation and protagonism" through and as a result of its experience (2). Despite the fact that the United States public did not have as direct of a traumatic experience, in some ways the results from its experience are the same as in the Argentine case.

The U.S. has experienced a similar course of action as that that occurred in Argentina. Though in a different way, that course of action has been a traumatic experience for

American society and has in some ways led to massive trauma. Robben considers that there are several types of experiences that can cause psychic trauma, one of which is “the infliction of harm on others...” (Robben 124). Torture perpetrated against potentially thousands of detainees in a vaguely defined war certainly constitutes the infliction of harm on others. Given that the U.S. government’s actions were taken with the, at least complicit, approval of the American public, the government’s justification for EIT, bordering on if not equaling, torture is “a test of our moral limits...” (Hilde 183).

Calveiro explains how this process affects individuals: “Quite simply, one sees and one keeps quiet. That is, one knows, the entire world knows, we all know. We know and that knowledge binds us because it makes us, in a sense, a part of the plot of complicity and silence” (104). America, the country whose master narrative is built upon freedom, democracy, and civil liberties has challenged its own master narrative. “It is, perhaps, a dreadful play on words to describe torture as too painful to think about. Yet it is of extraordinary importance to defining who we are as a people and how seriously we take our most solemn commitments” (Levinson 39).

Further, “massive trauma is more than the sum total of individual suffering because it ruptures social bonds, destroys group identities, undermines the sense of community, and entails cultural disorientation when taken-for-granted meanings become obsolete”

(Robben 125). Beginning with 9/11 “the United States fundamentally changed”

(Heymann and Kayyem 11), challenging long held constructs of American society. The photos of abuse at Abu Ghraib that Americans saw broadcast to the world in 2004, the subsequent allegations of further abuses, and the blatant ignoring of international norms

in the conduct of operations in the GWOT further eroded the American master narrative and its associated group identity.

Referring to Sztompka's description of how society is traumatized, Robben details the process as beginning "with a major social upheaval (such as genocide or economic collapse), then leads to disruptive collective conducts, opinions, and moods." The initial terrorist attacks of 9/11 easily fulfill Sztompka's major social upheaval requirement, and division within U.S. opinion on the government's policies and use of extra-legal measures in the GWOT has certainly created a disruptive collective mood. Sztompka concludes that

"If we observe heated debates and public disputes in the media, at public meetings, or in political bodies; if values and judgments are strongly contested; if certain themes become obsessive for artistic expression through the movies, theatre, literature, and poetry; if social movements mobilize for the expression of cultural discontents, then we are certainly witnessing unhealed and potentially evolving trauma." (Sztompka)

In America today one has only to engage in a discussion on the GWOT and any of a number of related controversial issues, read or watch the news, or check out some of the most popular spy drama television series to see that Sztompka would describe the U.S. as an example of unhealed and potentially evolving trauma.

Recommendations for Moving Forward

The United States today finds itself in much the same place as Argentina in the mid-1980s. A government that waged a war against subversive terror, often ignoring human

rights and international legal concerns in favor of a strict national security doctrine, has been replaced with one that promises a return to the pre-war norms that were such an integral part of the nation's identity. In the same way, however, the United States is just as divided as was Argentina, and the president and congress must act to begin the process of reconciliation in the country in order to resolve, once and for all the lingering questions that are the residue of excessive war. Prompt action is necessary because the Argentine example demonstrates that a longer process becomes vulnerable, that it loses its steam so to speak, as bickering between supports and opponents of the justice process morphs with time into entrenched opposition. In addition to the singular anecdotal evidence from the Argentine case, Hathway's extensive study of nations' and human rights compliance trends concluded that "major shocks to the system—such as a change in government—provide limited windows of opportunity for effective large changes in the system" ("Do Human Rights" 27).

"Like postauthoritarian societies in Asia and Latin America, the United States seems to suffer from a culture of impunity over this sensitive topic that has barred both self-examination and serious reform..." (McCoy 208). Currently, there has been no firm indication that the United States will shake its culture of impunity. Considering a series of U.S. public opinion polls from 2005 to the present helps to understand where the American people fall with regard to the quest for justice. In November 2005, 74 percent of Americans believed that U.S. troops or government agents had committed torture against prisoners in Iraq and other countries. Fifty-six percent said they would not support the use of torture even if it would provide information to prevent future terror

attacks (Carlson). Four years later in December 2009, 58 percent supported the use of waterboarding to obtain information from the “Christmas Day” plane bomber (Rasmussen Reports, “Fifty-eight”). This support for measures such as waterboarding reflects a change from four years before when Americans overwhelmingly rejected the use of torture, indicating a shift in the public view or a re-socialization of the public’s perception and acceptance of torture.

An indicator of the massive trauma symptoms in the U.S. is the fact the nation remains split with regard to the use of EIT, as well as toward a truth and justice process.

Consistently through 2009, America split almost exactly down the middle over whether or not to support investigations into the Bush-era interrogations practices (Jones, “No Mandate;” Jones, “Slim Majority;” Rasmussen Reports, “Forty-nine”). Additionally, the country is divided on the closure of the Guantanamo Bay detention facility (Newport), and recent comments by prominent Republicans have blasted President Obama for the stance he has taken with regard to U.S. interrogation policies and respect for the international regime (Montopoli, “Liz Cheney;” “Sarah Palin”).

Turning to the final suggestions for the current government to take, Glenn Sulmasy and Amnesty International offer contemporary, well defined policy suggestions (Sulmasy, Amnesty International, “Counter Terror”). Adapting them based upon the lessons learned in the Argentine experience, the United States government should:

1. Launch a comprehensive investigation into the authorization and use of EIT to determine if and how torture occurred as a matter of policy. The investigation

must be by an independent commission. Small-scale, targeted investigations thus far have been led by the military, the Department of Justice, and Congress, but none of these bodies can lead a truly reliable independent investigation into what occurred as each was involved in the measures taken.

2. Be prepared to press criminal charges based upon the independent commission's findings. Hatfield argues that "If, under American law, a soldier can be executed for torturing a victim to death, why not execute the lawyer who gives permission to torture" (Hatfield)? Although any potential charges would most likely not warrant execution, they were simply doing their jobs is not an acceptable defense for attorneys and other bureaucrats who authorized the implementation of extra-legal techniques.
3. Be prepared to face domestic pressure from some groups; it is crucial to remember that an attempt to please everyone will doom the process as it did in Argentina.
4. Act quickly in order to avoid the sort of embittered stagnation that occurred in Argentina, an issue that seems to possibly already be forming roots along partisan lines.
5. Ensure that the measures taken are supported not only by the President but also by Congress in an effort to prevent a future administration from being able to easily overturn the outcomes.

CONCLUSION

Following the atrocities of the Argentine dirty war, Dworkin observed that

The world needs a taboo against torture. It needs a settled, undoubted conviction that torture is criminal in any circumstance, that there is never justification or excuse for it, that everyone who takes part in it is a criminal against humanity. Argentina will serve the cause of human rights best by not losing a dramatic opportunity to endorse that conviction. Torture is already almost everywhere condemned; even the youngest Argentine soldiers apparently knew that what they did was illegal and wrong, that they had to protect their anonymity with blindfolds and code names. But torture is also almost everywhere used, and the discrepancy is partly the result of a widespread opinion that it is justifiable sometimes, that it is defensible when carefully aimed only at extracting information needed to save lives from terrorism, for example.

The Argentine nightmare shows one of the several fallacies of this view. Torture cannot be surgically limited only to what is necessary for some discrete goal, because once the taboo is violated the basis of all the other constraints of civilization, which is sympathy of suffering, is destroyed. (Dworkin xxvii)

Such a taboo has since been codified and accepted as an international norm, yet the United States, allegedly one of the greatest defenders of democracy in the world willfully broke that taboo. “There is a special reason for the United States, among all countries, to choose adherence to the no-torture ‘taboo’ (and to behave as if it really means it, which would mean, among other things, the end of ‘rendering’ suspects to torture-friendly countries). One might well believe in a ‘contagion affect.’ If the United States is widely believed to accept torture as a proper means of fighting the war against terrorism, then why should any other country refrain” (Levinson 38)?

Living and studying in Argentina over the course of five months in Spring 2009 it was striking to see firsthand the lingering reminders of an oppressive government regime that previously had existed in my mind as simply a part of history, as distant and out of reach as the American Revolution or Civil War. Yet in Argentina the remainders of the dirty war are not solely museum exhibits with relics displayed in sealed glass cases with neatly typed note card identifications. Rather, the museums are still being developed and elements of the period are still visible in everyday life.

Walking down a street in the middle of the historical center one passes a seemingly innocuous building and without stopping to read a small plaque on the wall may never know that just on the other side of the building's walls people were detained and tortured. Just across the street stands the Iglesia Catedral, Argentina's oldest cathedral, begun in the late 16th century. Graffiti on its aging walls screams about the Church's complicity in the events that took place only 30 years ago, reflecting the feelings of many Argentines and indicative of the strained relation between Catholics and their church in the country. Stepping onto one of the steady stream of municipal buses that stop a few yards away, one rides staring at large stickers plastered by the Madres de la Plaza de Mayo on nearly every bus: "*Entre todos te estamos buscando*" (Among everyone we are searching for you), referring to the still missing children born in the clandestine prisons and adopted by families loyal to the dictatorship.

My parents are the same age as so many of the disappeared. The college students with whom I rode the bus to class every day do not even seem to notice the stickers on the

buses any more, but they are the right age to be among the children illegally adopted. Most sobering of all is the realization that the thousands of people who were perpetrators of the violence are largely free and have never been held accountable for their often gruesome roles in the nightmare that Argentina lived for three years. On the city buses, in street side cafes, coffee shops, shopping malls, in the hordes of people crushing down the Avenida Velez Sarsfield at midday I could not help but wonder who among the crowds were survivors of the torture, who the torturers, who the innocent and who the guilty. And of course, they are indistinguishable.

Witnessing firsthand the effects of the dirty war three decades after the worst violence ended inspired me to wonder how such a great nation could submerge itself in such a horrible process. I remember entering my eighth-grade algebra class on the morning of 11 September 2001 and learning of the terrorist attacks in New York and the subsequent gamut of emotions that I felt along with all of America. I recall sitting in my ninth-grade speech class in 2003 and watching the U.S. invasion of Iraq live on television. I remember arguing when accusations that Americans were torturing in the name of national security first began circulating that even though severe torture would be wrong, the United States was surely justified in using more force than usual to protect her people against the threat of international terrorism. In hindsight, I know exactly how such a great nation could submerge itself in such a horrible process. I lived it; I was complicit; and I have learned. Must every person and every country live out this same process in order to learn? Or, in the case of the United States, have even those who already lived it learned anything at all?

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APPENDICES

Appendix A: Figures and Tables

TABLE A-1: Core International Human Rights Treaties

Treaty	Name	Monitoring Body	Year Adopted	Year in Force	States Party ^o
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination	1966	1969	173
ICESCR	International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social, and Cultural Rights	1966	1976	160
ICCPR	International Covenant on Civil and Political Rights	Human Rights Committee	1966	1976	165
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women	1979	1981	186
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture	1984	1987	146
CRC	Convention on the Rights of the Child	Committee on the Rights of the Child	1989	1990	193
ICRMW	International Convention of the Protection of the Rights of All Migrant Workers and Members of their Families	Committee on Migrant Workers	1990	2003	42
CRPD	Convention on the Rights of Persons with Disabilities	Committee on the Rights of Persons with Disabilities	2006	2008	85
	International Convention for the Protection of All Persons from Enforced Disappearance	Committee on Enforced Disappearances	2006	Not yet in force*	18

SOURCE: United Nations. "Chapter IV: Human Rights." *United Nations Treaty Collection*. Accessed 14 April 2010. <<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>>.

United Nations. "International Law." *Office of the United Nations High Commissioner for Human Rights*. Accessed 15 April 2010. <<http://www2.ohchr.org/english/law/>>.

^o As of 15 April 2010

* Pursuant to Article 39 the convention will enter into force following ratification by the twentieth state.

TABLE A-2: Additional Universal Human Rights Instruments and Optional Protocols

Treaty	Name	Monitoring Body	Year Adopted	Year in Force	States Party ^o
	Convention on the Prevention and Punishment of the Crime of Genocide		1948	1951	141
	Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity		1968	1970	53
ICCPR-OP1	Optional Protocol to the ICCPR	Human Rights Committee	1966	1976	113
	International Convention on the Suppression and Punishment of the Crime of Apartheid		1973	1976	107
	International Convention against Apartheid in Sports	Commission against Apartheid in Sports*	1985	1988	60
ICCPR-OP2	Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty	Human Rights Committee	1989	1991	72
	Agreement establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean		1992	1993	22
OP-CEDAW	Optional Protocol to the CEDAW	Committee on the Elimination of Discrimination against Women	1999	2000	99
OP-CRC-SC	Optional Protocol to the CRC on the sale of children, child prostitution and child pornography	Committee on the Rights of the Child	2000	2002	137
OP-CRC-AC	Optional Protocol to the CRC on the involvement of children in armed conflict	Committee on the Rights of the Child	2000	2002	132
OP-CAT	Optional Protocol to the CAT	Committee against Torture	2002	2006	50
OP-CRPD	Optional Protocol to the CRPD	Committee on the Rights of Persons with Disabilities	2006	2008	52
ICESCR-OP	Optional Protocol to the ICESCR		2008	Not yet in force	0**

SOURCE: United Nations. "Chapter IV: Human Rights." *United Nations Treaty Collection*. Accessed 14 April 2010. <<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>>.

United Nations. "International Law." *Office of the United Nations High Commissioner for Human Rights*. Accessed 15 April 2010. <<http://www2.ohchr.org/english/law/>>.

^o As of 15 April 2010

* Article 11, Section 1 provides for the establishment of the Commission; however, a search of the United Nations' website did not find any evidence that such a Commission has been active.

** Pursuant to Article 18 the Protocol will enter into force following ratification by the tenth state. The Protocol opened for signature on 24 September 2009 and currently has 32 signatories.

Figure A-1: Argentine Presidents and Political Regimes, 1916-1989

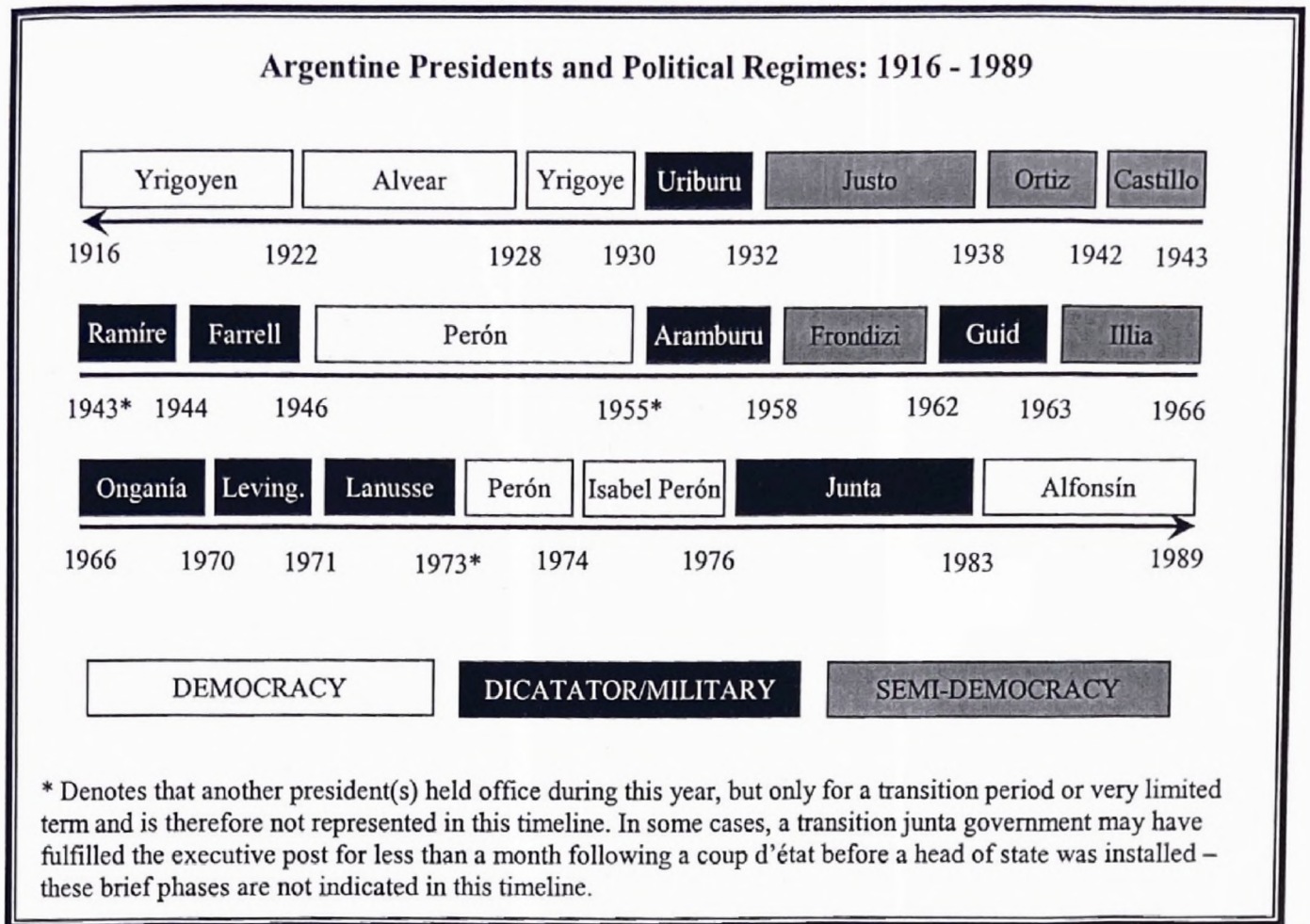


Figure A-2: Selected Tactics and Techniques in Argentina vs. United States

Tactic/Technique	Argentina	United States
Disappearance	X	X
Hooding	X	X
General sensory deprivation	X	X
Exposure to loud music and noise for extended periods	X	X
Extended interrogation	X	X
Solitary Confinement	X	X
Sleep, food and water deprivation	X	X
Forced Nudity	X	X
Forced Humiliating Acts	X	X
Rape/Acts of sodomy	X	X
Electric Shock	X	X
Water boarding	X	X
Physical abuse/beatings	X	X
Death Flights	X	
Mass Executions	X	
Baby theft	X	

SOURCES: International Committee of the Red Cross. "Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation." Feb. 2004.

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Figure A-3: Timeline of U.S. Policy Decisions in the GWOT Prior to the Start of the War in Iraq

- September 14, 2001:** President Bush issues “Declaration of National Emergency by Reason of Certain Terrorist Attacks.”
- September 25, 2001:** Department of Justice finds the President has “broad constitutional power” in the matter of military force, military pre-emption and retaliatory measures against terrorists (persons, organizations or States) and those who harbor them.
- October 7, 2001:** President Bush announces that the U.S. military has begun strikes against al Qaeda in Afghanistan.
- November 13, 2001:** The Administration finds that the principles of law and rules of evidence recognized in U.S. courts should not apply to alleged terrorists and authorizes the use of military commissions as well as the detention of alleged terrorists.
- December 28, 2001:** *Memo:* The Administration determines that habeus corpus does not apply to detainees held in Guantanamo Bay, Cuba.
- January 9, 2002:** *Memo:* The Administration decides that the Geneva Conventions shall not apply to members of al Qaeda or the Taliban militia
- January 16, 2002:** First suspected al Qaeda and Taliban prisoners arrive at Guantanamo Bay
- January 19, 2002:** *Memo:* The Administration decides that al Qaeda and Taliban members are “not entitled to prisoners of war status” under the Geneva Conventions.
- January 26, 2002:** *Memo:* Secretary of State Colin Powell asks for reconsideration of the Administration’s view that al Qaeda and Taliban members are not entitled to POW status under the Geneva Conventions.
- February 1, 2002:** *Memo:* The Attorney General argues to President Bush that the Geneva Conventions do not apply to members of al Qaeda or the Taliban.
- February 2, 2002:** *Memo:* The State Department argues to the White House Counsel that the Geneva Conventions do apply to the war in Afghanistan
- February 7, 2002:** *Memo:* President Bush accepts the Attorney General’s and the Department of Justice’s determination that he has the authority to suspend the Geneva Conventions with regard to the conflict in Afghanistan, although he declines to do so at that time he reserves the right to do so in the future
- August 1, 2002:** *Memo:* Assistant Attorney General Jay S. Bybee states that the Torture Convention “prohibits only the most extreme acts by reserving criminal penalties solely for torture and declining to require such penalties for ‘cruel, inhuman, or degrading treatment or punishment.’”
- October 11, 2002:** *Memos:* A series of memos circulate within the Department of Defense discussing counter-resistance techniques of interrogation. Techniques are divided into Categories I, II, and III. The legality of some Category III techniques is questioned.
- November 27, 2002:** *Memo:* Department of Defense General Counsel advises Secretary Rumsfeld to apply Category I and II techniques and only “mild, non-injurious physical conduct” techniques from Category III.
- December 2, 2002:** *Memo:* Secretary Rumsfeld approves techniques as advised in the November 27 memo.

January 15, 2003: *Memo:* Secretary Rumsfeld rescinds prior permission to use Category II and III techniques except on a case-by-case basis with approval by the Secretary of Defense. He creates a working group on legal policy and operation issues relating to detainees.

March 6, 2003: The Working Group Report recommends considering Geneva Conventions principles in the treatment of detainees but finds that Taliban detainees do not qualify as POW and that the Conventions do not apply to non-state actors detained at Guantanamo. Finds the U.S. is bound to the CAT as understood by the U.S. within the context of Amendments 5, 8 and 14 to the Constitution, and discusses 8th Amendment precedents on torture as well as standard defenses to criminal conduct.

March 19, 2003: President Bush announces that coalition forces have begun striking targets in Iraq

Adapted from: Greenberg, Karen J and Joshua L Dratel, The Torture Papers: The Road to Abu Ghraib. New York: Cambridge University Press, 2005: xxv-xxviii.

Appendix B: The Torture Memo



U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

August 1, 2002

**Memorandum for Alberto R. Gonzales
Counsel to the President**

Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A

You have asked for our Office's views regarding the standards of conduct under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment as implemented by Sections 2340-2340A of title 18 of the United States Code. As we understand it, this question has arisen in the context of the conduct of interrogations outside of the United States. We conclude below that Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering, whether mental or physical. Those acts must be of an extreme nature to rise to the level of torture within the meaning of Section 2340A and the Convention. We further conclude that certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture. We conclude by examining possible defenses that would negate any claim that certain interrogation methods violate the statute.

In Part I, we examine the criminal statute's text and history. We conclude that for an act to constitute torture as defined in Section 2340, it must inflict pain that is difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years. We conclude that the mental harm also must result from one of the predicate acts listed in the statute, namely: threats of imminent death; threats of infliction of the kind of pain that would amount to physical torture; infliction of such physical pain as a means of psychological torture; use of drugs or other procedures designed to deeply disrupt the senses, or fundamentally alter an individual's personality; or threatening to do any of these things to a third party. The legislative history simply reveals that Congress intended for the statute's definition to track the Convention's definition of torture and the reservations, understandings, and declarations that the United States submitted with its ratification. We conclude that the statute, taken as a whole, makes plain that it prohibits only extreme acts.

In Part II, we examine the text, ratification history, and negotiating history of the Torture Convention. We conclude that the treaty's text prohibits only the most extreme

acts by reserving criminal penalties solely for torture and declining to require such penalties for “cruel, inhuman, or degrading treatment or punishment.” This confirms our view that the criminal statute penalizes only the most egregious conduct. Executive branch interpretations and representations to the Senate at the time of ratification further confirm that the treaty was intended to reach only the most extreme conduct.

In Part III, we analyze the jurisprudence of the Torture Victims Protection Act, 28 U.S.C. § 1350 note (2000), which provides civil remedies for torture victims, to predict the standards that courts might follow in determining what actions reach the threshold of torture in the criminal context. We conclude from these cases that courts are likely to take a totality-of-the-circumstances approach, and will look to an entire course of conduct, to determine whether certain acts will violate Section 2340A. Moreover, these cases demonstrate that most often torture involves cruel and extreme physical pain. In Part IV, we examine international decisions regarding the use of sensory deprivation techniques. These cases make clear that while many of these techniques may amount to cruel, inhuman or degrading treatment, they do not produce pain or suffering of the necessary intensity to meet the definition of torture. From these decisions, we conclude that there is a wide range of such techniques that will not rise to the level of torture.

In Part V, we discuss whether Section 2340A may be unconstitutional if applied to interrogations undertaken of enemy combatants pursuant to the President’s Commander-in-Chief powers. We find that in the circumstances of the current war against al Qaeda and its allies, prosecution under Section 2340A may be barred because enforcement of the statute would represent an unconstitutional infringement of the President’s authority to conduct war. In Part VI, we discuss defenses to an allegation that an interrogation method might violate the statute. We conclude that, under the current circumstances, necessity or self-defense may justify interrogation methods that might violate Section 2340A.

I. 18 U.S.C. §§ 2340–2340A

Section 2340A makes it a criminal offense for any person “outside the United States [to] commit[] or attempt[] to commit torture.”¹ Section 2340 defines the act of torture as an:

¹ If convicted of torture, a defendant faces a fine or up to twenty years’ imprisonment or both. If, however, the act resulted in the victim’s death, a defendant may be sentenced to life imprisonment or to death. See 18 U.S.C.A. § 2340A(a). Whether death results from the act also affects the applicable statute of limitations. Where death does not result, the statute of limitations is eight years; if death results, there is no statute of limitations. See 18 U.S.C.A. § 3286(b) (West Supp. 2002); *id.* § 2332b(g)(5)(B) (West Supp. 2002). Section 2340A as originally enacted did not provide for the death penalty as a punishment. See Omnibus Crime Bill, Pub. L. No. 103-322, Title VI, Section 60020, 108 Stat. 1979 (1994) (amending section 2340A to provide for the death penalty); H. R. Conf. Rep. No. 103-711, at 388 (1994) (noting that the act added the death penalty as a penalty for torture).

Most recently, the USA Patriot Act, Pub. L. No. 107-56, 115 Stat. 272 (2001), amended section 2340A to expressly codify the offense of conspiracy to commit torture. Congress enacted this amendment as part of a broader effort to ensure that individuals engaged in the planning of terrorist activities could be prosecuted irrespective of where the activities took place. See H. R. Rep. No. 107-236, at 70 (2001)

F.3d 928, 939–40 (9th Cir. 1999). A good faith belief need not be a reasonable one. See *Cheek*, 498 U.S. at 202.

Although a defendant theoretically could hold an unreasonable belief that his acts would not constitute the actions prohibited by the statute, even though they would as a certainty produce the prohibited effects, as a matter of practice in the federal criminal justice system it is highly unlikely that a jury would acquit in such a situation. Where a defendant holds an unreasonable belief, he will confront the problem of proving to the jury that he actually held that belief. As the Supreme Court noted in *Cheek*, “the more unreasonable the asserted beliefs or misunderstandings are, the more likely the jury . . . will find that the Government has carried its burden of proving” intent. *Id.* at 203–04. As we explained above, a jury will be permitted to infer that the defendant held the requisite specific intent. As a matter of proof, therefore, a good faith defense will prove more compelling when a reasonable basis exists for the defendant’s belief.

B. “Severe Pain or Suffering”

The key statutory phrase in the definition of torture is the statement that acts amount to torture if they cause “severe physical or mental pain or suffering.” In examining the meaning of a statute, its text must be the starting point. See *INS v. Phinpathya*, 464 U.S. 183, 189 (1984) (“This Court has noted on numerous occasions that in all cases involving statutory construction, our starting point must be the language employed by Congress, . . . and we assume that the legislative purpose is expressed by the ordinary meaning of the words used.”) (internal quotations and citations omitted). Section 2340 makes plain that the infliction of pain or suffering per se, whether it is physical or mental, is insufficient to amount to torture. Instead, the text provides that pain or suffering must be “severe.” The statute does not, however, define the term “severe.” “In the absence of such a definition, we construe a statutory term in accordance with its ordinary or natural meaning.” *FDIC v. Meyer*, 510 U.S. 471, 476 (1994). The dictionary defines “severe” as “[u]nsparing in exaction, punishment, or censure” or “[I]nfllicting discomfort or pain hard to endure; sharp; afflictive; distressing; violent; extreme; as *severe* pain, anguish, torture.” Webster’s New International Dictionary 2295 (2d ed. 1935); see American Heritage Dictionary of the English Language 1653 (3d ed. 1992) (“extremely violent or grievous: *severe* pain”) (emphasis in original); *IX The Oxford English Dictionary* 572 (1978) (“Of pain, suffering, loss, or the like: Grievous, extreme” and “of circumstances . . . : hard to sustain or endure”). Thus, the adjective “severe” conveys that the pain or suffering must be of such a high level of intensity that the pain is difficult for the subject to endure.

Congress’s use of the phrase “severe pain” elsewhere in the United States Code can shed more light on its meaning. See, e.g., *West Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 100 (1991) (“[W]e construe [a statutory term] to contain that permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law.”). Significantly, the phrase “severe pain” appears in statutes defining an emergency medical condition for the purpose of providing health benefits. See, e.g., 8 U.S.C. § 1369 (2000); 42 U.S.C. § 1395w-22 (2000); *id.* § 1395x (2000); *id.* §

1395dd (2000); *id.* § 1396b (2000); *id.* § 1396u-2 (2000). These statutes define an emergency condition as one “manifesting itself by acute symptoms of sufficient severity (including *severe pain*) such that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—placing the health of the individual . . . (i) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.” *Id.* § 1395w-22(d)(3)(B) (emphasis added). Although these statutes address a substantially different subject from Section 2340, they are nonetheless helpful for understanding what constitutes severe physical pain. They treat severe pain as an indicator of ailments that are likely to result in permanent and serious physical damage in the absence of immediate medical treatment. Such damage must rise to the level of death, organ failure, or the permanent impairment of a significant body function. These statutes suggest that “severe pain,” as used in Section 2340, must rise to a similarly high level—the level that would ordinarily be associated with a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of body functions—in order to constitute torture.³

C. “Severe mental pain or suffering”

Section 2340 gives further guidance as to the meaning of “severe mental pain or suffering,” as distinguished from severe physical pain and suffering. The statute defines “severe mental pain or suffering” as:

- the prolonged mental harm caused by or resulting from—
- (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
 - (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
 - (C) the threat of imminent death; or

³ One might argue that because the statute uses “or” rather than “and” in the phrase “pain or suffering” that “severe physical suffering” is a concept distinct from “severe physical pain.” We believe the better view of the statutory text is, however, that they are not distinct concepts. The statute does not define “severe mental pain” and “severe mental suffering” separately. Instead, it gives the phrase “severe mental pain or suffering” a single definition. Because “pain or suffering” is single concept for the purposes of “severe mental pain or suffering,” it should likewise be read as a single concept for the purposes of severe physical pain or suffering. Moreover, dictionaries define the words “pain” and “suffering” in terms of each other. *Compare, e.g.* Webster’s Third New International Dictionary 2284 (1993) (defining suffering as “the endurance of . . . pain” or “a pain endured”); Webster’s Third New International Dictionary 2284 (1986) (same); XVII The Oxford English Dictionary 125 (2d ed. 1989) (defining suffering as “the bearing or undergoing of pain”); *with, e.g.*, Random House Webster’s Unabridged Dictionary 1394 (2d ed. 1999) (defining “pain” as “physical suffering”); The American Heritage Dictionary of the English Language 942 (College ed. 1976) (defining pain as “suffering or distress”). Further, even if we were to read the infliction of severe physical suffering as distinct from severe physical pain, it is difficult to conceive of such suffering that would not involve severe physical pain. Accordingly, we conclude that “pain or suffering” is a single concept within the definition of Section 2340.

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

18 U.S.C. § 2340(2). In order to prove “severe mental pain or suffering,” the statute requires proof of “prolonged mental harm” that was caused by or resulted from one of four enumerated acts. We consider each of these elements.

1. “Prolonged Mental Harm”

As an initial matter, Section 2340(2) requires that the severe mental pain must be evidenced by “prolonged mental harm.” To prolong is to “lengthen in time” or to “extend the duration of, to draw out.” Webster’s Third New International Dictionary 1815 (1988); Webster’s New International Dictionary 1980 (2d ed. 1935). Accordingly, “prolong” adds a temporal dimension to the harm to the individual, namely, that the harm must be one that is endured over some period of time. Put another way, the acts giving rise to the harm must cause some lasting, though not necessarily permanent, damage. For example, the mental strain experienced by an individual during a lengthy and intense interrogation—such as one that state or local police might conduct upon a criminal suspect—would not violate Section 2340(2). On the other hand, the development of a mental disorder such as posttraumatic stress disorder, which can last months or even years, or even chronic depression, which also can last for a considerable period of time if untreated, might satisfy the prolonged harm requirement. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 426, 439–45 (4th ed. 1994) (“DSM-IV”). See also Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. Rev. L. & Soc. Change 477, 509 (1997) (noting that posttraumatic stress disorder is frequently found in torture victims); cf. Sana Loue, *Immigration Law and Health* § 10:46 (2001) (recommending evaluating for post-traumatic stress disorder immigrant-client who has experienced torture).⁴ By contrast to “severe pain,” the phrase “prolonged mental harm” appears nowhere else in the U.S. Code nor does it appear in relevant medical literature or international human rights reports.

⁴ The DSM-IV explains that posttraumatic disorder (“PTSD”) is brought on by exposure to traumatic events, such as serious physical injury or witnessing the deaths of others and during those events the individual felt “intense fear” or “horror.” *Id.* at 424. Those suffering from this disorder reexperience the trauma through, *inter alia*, “recurrent and intrusive distressing recollections of the event,” “recurrent distressing dreams of the event,” or “intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.” *Id.* at 428. Additionally, a person with PTSD “[p]ersistent[ly]” avoids stimuli associated with the trauma, including avoiding conversations about the trauma, places that stimulate recollections about the trauma; and they experience a numbing of general responsiveness, such as a “restricted range of affect (e.g., unable to have loving feelings),” and “the feeling of detachment or estrangement from others.” *Ibid.* Finally, an individual with PTSD has “[p]ersistent symptoms of increased arousal,” as evidenced by “irritability or outbursts of anger,” “hypervigilance,” “exaggerated startle response,” and difficulty sleeping or concentrating. *Ibid.*

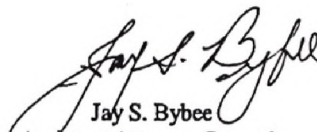
As we have made clear in other opinions involving the war against al Qaeda, the nation's right to self-defense has been triggered by the events of September 11. If a government defendant were to harm an enemy combatant during an interrogation in a manner that might arguably violate Section 2340A, he would be doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network. In that case, we believe that he could argue that his actions were justified by the executive branch's constitutional authority to protect the nation from attack. This national and international version of the right to self-defense could supplement and bolster the government defendant's individual right.

Conclusion

For the foregoing reasons, we conclude that torture as defined in and proscribed by Sections 2340-2340A, covers only extreme acts. Severe pain is generally of the kind difficult for the victim to endure. Where the pain is physical, it must be of an intensity akin to that which accompanies serious physical injury such as death or organ failure. Severe mental pain requires suffering not just at the moment of infliction but it also requires lasting psychological harm, such as seen in mental disorders like posttraumatic stress disorder. Additionally, such severe mental pain can arise only from the predicate acts listed in Section 2340. Because the acts inflicting torture are extreme, there is significant range of acts that though they might constitute cruel, inhuman, or degrading treatment or punishment fail to rise to the level of torture.

Further, we conclude that under the circumstances of the current war against al Qaeda and its allies, application of Section 2340A to interrogations undertaken pursuant to the President's Commander-in-Chief powers may be unconstitutional. Finally, even if an interrogation method might violate Section 2340A, necessity or self-defense could provide justifications that would eliminate any criminal liability.

Please let us know if we can be of further assistance.


Jay S. Bybee
Assistant Attorney General

as recognized by the charter of the United Nations." This right of self-defense is a right to effective self-defense. In other words, the victim state has the right to use force against the aggressor who has initiated an "armed attack" until the threat has abated. The United States, through its military and intelligence personnel, has a right recognized by Article 51 to continue using force until such time as the threat posed by al Qaeda and other terrorist groups connected to the September 11th attacks is completely ended." Other treaties re-affirm the right of the United States to use force in its self-defense. See, e.g., Inter-American Treaty of Reciprocal Assistance, art. 3, Sept. 2, 1947, T.I.A.S. No. 1838, 21 U.N.T.S. 77 (Rio Treaty); North Atlantic Treaty, art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

Appendix C: Selected Torture Victim Statements

ARGENTINE DIRTY WAR

Statement of Doctor Norberto Liwsky (file No. 7397)

Abducted from his home in Buenos Aires 5 April 1978

As I was inserting the key in the lock I realized what was happening, because the door was pulled inwards violently and I stumbled forward.

I jumped back, trying to escape. Two shots (one in each leg) stopped me. However, I still put up a struggle, and for several minutes resisted, being handcuffed and hooded, as best I could. At the same time, I was shouting at the top of my lungs that I was being kidnapped, begging my neighbours to tell my family, and to try to stop them taking me away.

Finally, exhausted and blindfolded, I was told by the person who apparently was in command that my wife and two daughters had already been captured and 'disappeared.'

They had to drag me out, since I couldn't walk because of the wounds in my legs. As we were leaving the building, I saw a car with a flashing red light in the street. By the sounds of the voices and commands, and the slamming of car doors, interspersed with shouts from my neighbours, I presumed that this was a police car.

After several minutes of heated argument, the police car left. The others then took me out of the building and threw me on to the floor of a car, possibly a Ford Falcon, and set off.

They hauled me out of the car in the same way, carrying me between four of them. We crossed four or five metres of what by the sound of it was a graveled yard, then they threw me on to a table. They tied me by my hands and feet to its four corners.

The first voice I heard after being tied up was of someone who said he was a doctor. He told me the wounds on my legs were bleeding badly, so I should not try to resist in any way.

Then I heard another voice. This one said he was the 'Colonel.' He told me they knew I was not involved with terrorism or the guerrillas, but that they were going to torture me because I opposed the regime, because: 'I hadn't understood that in Argentina there was no room for any opposition to the Process of National Reorganization.' He then added: 'You're going to pay dearly for it... the poor won't have any goody-goodyies to look after them any more!'

Everything happened very quickly. From the moment they took me out of the car to the beginning of the first electric shock session took less time than I am taking to tell it. For days they applied electric shocks to my gums, nipples, genitals, abdomen and ears. Unintentionally, I managed to annoy them, because, I don't know why, although the shocks made me scream, jerk and shudder, they could not make me pass out.

They then began to beat me systematically and rhythmically with wooden sticks on my back, the backs of my thighs, my calves and the soles of my feet. At first the pain was dreadful. Then it became unbearable. Eventually I lost all feeling in the part of my body being beaten. The agonizing pain returned a short while after they finished hitting me. It was made still worse when they tore off my shirt, which had stuck to the wounds, in order to take me off for a fresh electric shock session. This continued for several days, alternating the two tortures. Sometimes they did both at the same time.

Such a combination of tortures can be fatal because, whereas electric shock produces muscular contractions, beating causes the muscle to relax (as a form of protection). Sometimes this can bring on heart failure.

In between torture sessions they left me hanging by my arms from hooks fixed in the wall of the cell where they had thrown me.

Sometimes they put me on the torture table and stretched me out, tying my hands and feet to a machine which I can't describe since I never saw it, but which gave me the feeling that they were going to tear part of my body off.

At one point when I was face-down on the torture table, they lifted my head then removed my blindfold to show me a blood-stained rag. They asked me if I recognized it and, without waiting for a reply – impossible anyway because it was unrecognizable, and my eyesight was very badly affected – they told me it was a pair of my wife's knickers. No other explanation was given, so that I would suffer all the more... then they blindfolded me again and carried on with their beating.

Ten days after I entered this 'pit,' they brought my wife, Hilda Nora Ereñu, to my cell. I could scarcely see her, but she seemed in a pitiful state. They only left us together for two or three minutes, with one of the torturers present. When they took her away again, I thought (I later learned that both of us had thought the same) that this would be the last time we saw each other. That it was the end of both of us. Despite the fact that I was told she had been set free with some other people, the next news I had of her was after I had been put into official custody at the Geregario de Laferrère police station, and she came at the first visiting time with my daughters.

On two or three occasions they also burnt me with a metal instrument. I didn't see this either, but I had the impression that they were pressing something hard into me. Not like a cigarette, which gets squashed, but something more like a red-hot nail.

One day they put me face-down on the torture table, tied me up (as always), and calmly began to strip the skin from the soles of my feet. I imagine, though I didn't see it because I was blindfolded, that they were doing it with a razor blade or a scalpel. I could feel them pulling as if they were trying to separate the skin at the edge of the wound with a pair of pincers. I passed out. From then on, strangely enough, I was able to faint very easily. As for example on the occasion when, showing me more bloodstained rags, they said these were my daughters' knickers, and asked me whether I wanted them to be tortured with me or separately.

I began to feel that I was living alongside death. When I wasn't being tortured I had hallucinations about death – sometimes when I was awake, at other times while sleeping.

When they came to fetch me for a torture session, they would kick the door open and shout at me, flailing out at everything in their way. That is how I knew what was going to happen even before they reached me. I lived in a state of suspense waiting for the moment when they would come to fetch me.

The most vivid and terrifying memory I have of all that time was of always living with death. I felt it was impossible to think. I desperately tried to summon up a thought in order to convince myself I wasn't dead. That I wasn't mad. At the same time, I wished with all my heart that they would kill me as soon as possible.

There was a constant struggle in my mind. On the one hand: 'I must remain lucid and get my ideas straight again;' on the other: 'Let them finish me off once and for all.' I had the sensation of sliding towards nothingness down a huge slippery tube where I could get no grip. I felt that just one clear thought would be something solid for me to hold on to and prevent my fall into the void. My memory of that time is at once so concrete and so personal and private that the image I have of it is of an intestine existing both inside and outside my own body.

In the midst of all this terror, I'm not sure when, they took me off to the 'operating theatre.' There they tied me up and began to torture my testicles. I don't know if they did this by hand or with a machine. I'd never experienced such pain. It was as though they were pulling out all my insides from my throat and brain downwards. As though my throat, brain, stomach, and testicles were linked by a nylon thread which they were pulling on, while at the same time crushing everything. My only wish was for them

to succeed in pulling all my insides out so that I would be completely empty. Then I passed out.

Without knowing how or when, I regained consciousness and they were tugging at me again. I fainted a second time.

At that moment, fifteen or eighteen days after my abduction, I began to have kidney problems, difficulties with passing water. Three-and-a-half months later, when I was a prisoners in Villa Devota prison, the doctors from the International Red Cross diagnosed acute renal failure of a traumatic origin, which could be traced to the beatings I had undergone.

After being held for twenty-five days in complete isolation, I was thrown into a cell with another person. This was a friend of mine, a colleague from the dispensary, Dr. Francisco García Fernández.

I was in very bad shape. It was Fernández who gave me the first minimal medical attention, because in all that time I had been unable to think of cleaning or looking after myself.

It was only several days later that, by moving the blindfold slightly, I could see all they had done to me. Before that it had been impossible, not because I didn't try to remove the blindfold, but because my eyesight had been so poor.

It was then for the first time that I saw the state of my testicles... I remembered that as a medical student I saw, in the famous Houssay textbook, a photograph of a man who, because of the enormous size of his testicles, wheeled them along in a wheelbarrow! Mine were of similar dimensions, and were coloured a deep black and blue.

Another day they took me out of my cell and, despite my swollen testicles, placed me face-down again. They tied me up and raped me slowly and deliberately by introducing a metal object into my anus. They then passed an electric current through the object. I cannot describe how everything inside me felt as though it were on fire.

After that, the torture eased. They only gave me beatings two or three times a week. Now they used their hands and feet rather than metal or wooden instruments.

Thanks to this new, relatively mild policy, I began to recover physically. I had lost more than 25 kilos and was suffering from the kidney complaint I've already mentioned.

Two months prior to my abduction in February 1978, I had suffered a recurrence of typhoid fever. Somewhere between 20 and 25 May, in other words forty-

five or fifty days after my capture I fell ill again with typhoid owing to my physical exhaustion.

SOURCE: Argentine National Commission on the Disappeared. Nunca Más. New York: Farrar Straus Giroux, 1986: 21-24

U.S. GLOBAL WAR ON TERROR

Statement of Ameen Sa'eed Al-Sheikh (file No. 0003-04-CID149-83130), 16 Jan 2004
Baghdad Correctional Facility, Abu Ghraib, Iraq

I, Ameen Sa'eed Al-Sheikh, want to make the following Statement under oath: I am Ameen Sa'eed Al-Sheikh. I was arrested on the 7 Oct 2003. They brought me over to Abu Ghraib Prison they put me in a tent for one night. During this night the guards every one or two hours and threaten me with torture and punishment. The second day they transferred me to the hard site. Before I got in, a soldier put a sand bag over my head. I didn't see anything after that. They took me inside the building and started to scream at me. They stripped me naked, they asked me, "Do you pray to Allah?" I said, "yes." They said, "Fuck you" and "Fuck him." One of them said, "you are not getting out of here health, you are getting out of here handicap." And he said to me, "Are you married?" I said, "Yes." They said, "If your wife saw you like this she will be disappointed." One of them said, "But if I saw her now, she would not be disappointed now because I would rape her." Then one of them took me to the shower, removed the sand bag, and I saw him; a black man, he told me to take a shower and he said he would come inside and rape me and I was very scared. Then they put the sand bag over my head and took me to cell #5. And for the next five days I didn't sleep because they use to come to my cell, asking me to stand up for hours and hours. And this black soldier took me once more to the showers, stood there staring at my body. And he threaten he was going to rape me again. After that, they started to interrogate me. I lied to them so they threaten me with hard punishment. Then other interrogators came over and told me, "If you tell the truth, we will let you go as soon as possible before Ramadan," so I confessed and said the truth. Four days after that, they took me to the camp and I didn't see those interrogators anymore. New interrogators came and reinterrogated me. After I told them the truth they accused me of being lying to them. after 18 days in the camp, they sent me to the hard site. I asked the interrogators why? They said they did not know. Two days before Ied (End of Ramadan), an interrogator came to me with a women and an interpreter. He said I'm one step away from being in prison forever. He started the interrogation with this statement and end it with this statement. The first day of Ied, the incident of "Firing" happened, I got shot with several bullets in my body and got transferred to the hospital. and there, the interrogator "Steve" came to me and threaten me with the hardest torture when I got back to the prison. I said to him "I'm sorry about what happened." He said to me, "Don't be sorry now, because you will be sorry later." After several days he came back and said to me, "If I put you under torture, do you think this would be fair?" I said to him, "Why?" He said he needed more information from me. I told him, "I already told you everything I know." He said, "We'll see when you come back to the prison." After 17 or 18 days, I was released from the hospital, went back to Abu Ghraib, he took me somewhere and the guard put a pistol to my head. He said, "I wish I can kill you right

now.” I spend the night at this place and next morning they took me to the hard site. They received me there with screaming, shoving, pushing and pulling. They forced me to talk from the main gate to my cell. Otherwise they would beat my broken leg. I was in a very bad shape. When I went to the cell, they took my crutches and I didn’t see it since. Inside the cell, they asked me to strip naked; they didn’t give me blanket or clothes or anything. Every hour or two, soldiers came, threatening me they were going to kill me and torture me and I’m going to be in prison forever and they might transfer me to Guantanamo Bay. One of them came and told me that he failed to shoot me the first time, but he will make sure he will succeed next time. And he said to me they were going to throw a pistol or a knife in my cell, then shoot me. Sometime they said, “We will make you wish to die and it will not happen.” The night guard came over, his name is Graner, open the cell door, came in with a number of soldiers. They forced me to eat pork and they put liquor in my mouth. They put this substance on my nose and forehead and it was very hot. They guards started to hit me on my broken leg several times with a solid plastic stick. He told me he got shot in his leg and he showed me the scare and he would retaliate from me for this. They stripped me naked. One of them told me he would rape me. He drew a picture of a woman to my back and makes me stand in shameful position holding my buttocks. Someone else asked me, “Do you believe in anything?” I said to him, “I believe in Allah.” So he said, “But I believe in torture and I will torture you. When I go home to my country, I will ask whoever comes after me to torture you.” Then they handcuffed me and hung me to the bed. They ordered me to curse Islam and because they started to hit my broken leg, I cursed my religion. They ordered me to thank Jesus that I’m alive. And I did what they ordered me. This is against my belief. They left me hang from the bed and after a little while I lost consciousness. When I woke up, I found myself still hang between the bed and the floor. Until now, I lost feeling in three fingers in my right hand. I sat on the bed, one of them stood by the door and pee’d on me. And he said, “Graner, your prisoner pee’d on himself.” And then Graner came and laughed. After several hours Graner came and uncuffed me, then I slept. In the morning until now, people I don’t know come over and humiliate me and threaten that they will torture me. The second night, Graner came hand hung me to the cell door. I told him, “I have a broken shoulder; I’m afraid it will break again, cause the doctor told me ‘don’t put your arms behind your back.’” He said, “I don’t care.” Then he hung me to the door for more than eight hours. I was screaming from pain the whole night. Graner and others use to come and ask me, “does it hurt.” I said, “Yes.” They said, “Good.” And they smack me on the back of the head. After that, a soldier came and uncuffed me. My right shoulder and my wrist was in bad shape and great pain. (When I was hung to the door, I lost consciousness several times) Then I slept. In the morning I told the doctor that I think my shoulder is broken because I can’t my hand. I feel sever pain. He checked my shoulder and told me, “I will bring another doctor to see you tomorrow.” The next day, the other doctor checked my shoulder and said to me, he’s taking me to the hospital the next day for X-rays. And the next day he took me

to the hospital and X-rayed my shoulder and the doctor told me, "Your shoulder is not broke, but your shoulder is badly hurt." Then they took me back to the hard site. Every time I leave and come back. I have to crawl back to my cell because I can't walk. The next day, other soldiers came at night and took photos of me while I'm naked. They humiliated me and made of me and threaten me. After that, the interrogators came over and identify the person who gave me the pistols between some pictures. And this guy wasn't in the pictures. When I told them that, they said they will torture me and they will come every single night to ask me the same question accompanied with soldiers having weapons and they point a weapon to my head and threaten that they will kill me, sometime with dogs and they hang me to the door allowing the dogs to try to bite me. This happened for a full week or more.

Statement of [name blacked out] (Detainee #[number blacked out]) 21 Jan 2004
Baghdad Correctional Facility, Abu Ghraib, Iraq

I am the person named above. I entered Abu Ghraib prison on 10 Jul 2003, that was after they brought me from Baghdad area. They put me in the tent area and then they brought me to Hard Site. The first day they put me in a dark room and started hitting me in the head and stomach and legs.

They made me raise my hands and sit on my knees. I was like that for four hours. Then the Interrogator came and he was looking at me while they were beating me. Then I stayed in the room for 5 days, naked with no clothes. They then took me to another cell on the upper floor. On 15 Oct 2003 they replaced the Army with the Iraqi Police and after that time they started punishing me in all sorts of ways. And the first punishment was bringing me to Room #1, and they put handcuffs on my hand and they cuffed me high for 7 or 8 hours. And that caused a rupture to my right hand and I had a cut that was bleeding and had pus coming from it. They kept me this way on 24, 25 and 26 October. And in the following days, they also put a bag over my head, and of course, this whole time I was without clothes and without anything to sleep on. And one day in November, they started different type of punishment, where an American Police came in my room and put the bag over my head and cuffed my hands and he took me out of the room into the hallway. He started beating me, him, and 5 other American Police. I could see their feet only, from under the bag. A couple of those police they were female because I heard their voices and I saw two of the police that were hitting me before they put the bag over my head. One of them was wearing glasses. I couldn't read his name because he put tape over his name. Some of the things they did was make me sit down like a dog, and they would hold the string from the bag and they made me bark like a dog and they were laughing at me. And that policeman was a tan color, because he hit my head to the wall. When he did that, the bag came off my head and one of the police was telling me to crawl in Arabic, so I crawled on my stomach and the police were spitting on me when I was crawling and hitting me on my back, my head and my feet. It kept going on until their shift ended at 4 o'clock in the morning. The same thing would happen in the following days.

And I remember also one of the police hit me on my ear, before the usual beating, cuffing, bagging, dog position and crawling until 6 people gathered. And one of them was an Iraqi translator named Shaheen, he is a tan color, he has a moustache. Then the police started beating me on my kidneys and then they hit me on my right ear and it started bleeding and I lost consciousness. Then the Iraqi translator picked me up and told me, 'You are going to sleep.' Then when I went into the room, I woke up again. I was unconscious for about two minutes. The policeman dragged me into the room where he washed my ear and called the doctor. The Iraqi doctor came and told me he couldn't take

me to the clinic, so he fixed me in the hallway. When I woke up, I saw 6 of the American police.

A few days before they hit me on my ear, the American police, the guy who wears glasses, he put red woman's underwear over my head. And then he tied me to the window that is in the cell with my hands behind my back until I lost consciousness. And also when I was in Room #1 they told me to lay down on my stomach and they were jumping from the bed onto my back and my legs. And the other two were spitting on me and calling me names, and they held my hands and legs. After the guy with the glasses got tired, two of the American soldiers brought me to the ground and tied my hands to the door while laying down on my stomach. One of the police was pissing on me and laughing on me. He then released my hands and I went and washed, and then the soldier came back into the room, and the soldier and his friend told me in a loud voice to lie down, so I did that. And then the policeman was opening my legs, with a bag over my head, and he sat down between my legs on his knees and I was looking at him from under the bag and they wanted to do me because I saw him and he was opening his pants, so I started screaming loudly and the other police started hitting me with his feet on my neck and he put his feet on my head so I couldn't scream. Then they left and the guy with the glasses comes back with another person and he took me out of the room and they put me inside the dark room again and they started beating me with the broom that was there. And then they put the loudspeaker inside the room and they closed the door and he was yelling in the microphone. Then they broke the glowing finger and spread it on me until I was glowing and they were laughing. They took me to the room and they signaled me to get on the floor. And one of the police he put a part of his stick that he always carries inside my ass and I felt it going inside me about 2 centimeters, approximately. And I started screaming, and he pulled it out and he washed it with water inside the room. And the two American girls that were there when they were beating me, they were hitting me with a ball made of sponge on my dick. And when I was tied up in my room, one of the girls, with blonde hair, she is white, she was playing with my dick. I saw inside this facility a lot of punishment just like what they did to me and more. And they were taking pictures of me during all these instances.

SOURCE: Danner, Mark. *Torture and Truth: America, Abu Ghraib, and the War on Terror*. New York: New York Review of Books, 2004: 226-229.