

# **Theorizing about Torture**

Nick Cheesman



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# Theorizing about Torture

## Abstract

What are the possibilities for theorizing torture independently from the question of whether or not it “works”? This question has to be posed because to ask whether or not torture works is to narrow our focus to its instrumentalities; to tolerate largely irrelevant debate, based on unrealistic assumptions, about acceptable circumstances for torture’s use. It is to give rise to theorizing aimed not at understanding torture but at justifying it, by contriving to have us view the practice from the standpoint of a hypothetical torturer. To theorize *about torture* would seem to call for a different kind of question, one concerned with what work torture does. A question of this sort would invite us to attend to the relation of the torture situation—in which a totally dominated person is subjected to torment inflicted in the name of a public authority, for a function or functions that remains to be determined—to the state idea. Beyond torture’s instrumentality, its epistemology of pain, and debates about human dignity, it is the special structure of domination, the arbitrariness of interference, and its relationship to public authority that make torture distinctive, and politically significant.

## Theory trouble

Anyone who has sat through one of the many shows that are now themselves the subject of a burgeoning literature on how torture is depicted in popular culture will be familiar with a stylized performance of torture that in its rudiments contains what I will here refer to broadly as the “theory of the torturer.” The staged interrogation involves, Stephanie Athey writes, “a one-on-one encounter between the subject of questioning and a skilled, goal-oriented professional who inflicts calculated amounts of pain” so as to get information.<sup>1</sup> It is highly dramatized, and certainly unrealistic. Yet in discussions about torture in real life, the question comes up, informed in part by the tenacity of sweaty Hollywood action men, but doesn’t torture sometimes work?

The question “Does torture work?” sounds reasonable. If violence is instrumental, then why not ask if it achieves its goals or not? The answer to the question would also seem to invite further inquiry into what to do next—whether to rule out the practice, or to examine the permissible or necessary circumstances for its use. But the question’s apparent reasonableness is misleading. It presents not an opening, but an obstacle in the way of productive inquiry about torture. It generates irrelevant debate, based on unrealistic assumptions.<sup>2</sup> It distorts our understanding of the problem by contributing to the “fiction of power” that is at the heart of the myth of instrumental rationality concealing what Elaine

Scarry rightly calls the savagery and stupidity inherent to the actual practice of torture.<sup>3</sup> In short, it is a question that itself does not work.

Confronted with such a question, one has three basic alternatives: not to answer; to answer on the question's terms as best as possible; or, to question the question. The first option is a good one where the questioning is transient. I have tried it. But this question persists. Some scholars have taken option two, considering the various ways in which torture might be understood to "work," by and large concluding, based on the available evidence, that it does not.<sup>4</sup> They have succeeded in dispelling many of the question's illusions, exposing the wrongness of its underlying assumptions. But the onus is placed on the empiricist to show again and again that the answer to the question is No; and, that the question's assumptions are wrongheaded. By this route, we do not extricate ourselves from difficulty. Instead, we get entangled in inquiry without denouement, forever untying somebody else's knots.

My interest here is in problematizing the question itself, so as to ask a different kind of question, with which to come at the topic by some other route. Therefore, I have chosen the third option. I propose to set aside the question of whether or not torture works, and rearrange it as, "What work does torture do?" Accordingly, this paper has two obverse parts. The first critiques those strands of the existing literature that in one way or another respond to the orthodox question of whether or not torture works; here drawn together under the rubric of the theory of the torturer. This theory, as I have labeled it, is not the be-all and end-all of theoretical work on torture. I do not, for instance, speak to the substantial literature theorizing torture in human rights and international law, which works on another set of assumptions. Instead, I concentrate on this particular body of work because it has had pernicious effects on thinking about torture both inside and outside of the academy.

The second, longer part of the paper is taken up with the possibility of theorizing *about* torture in response to the rearranged question, by attending to how it relates to the idea and practice of the state. It identifies four characteristics that taken together illuminate features of torture, without precisely defining it. These characteristics are innovative rather than explanatory in orientation, aimed at inquiry that is plausible rather than necessary in its findings. Obviously, these characteristics are indicative of certain empirical knowledge, theoretical interests, research objectives and epistemological and methodological commitments of my own. I close with some additional reflections on these.

### **Against the theory of the torturer**

I begin, for the reason that so many others have, in the last decade-and-a-half, done likewise, with Michael Walzer's seminal article on political action.<sup>5</sup> This article has, by one account, become "one of *the* most important terms of reference in contemporary academic scholarship on the issue of torture."<sup>6</sup> It also has become an important term of reference for non-academic work. The scenario that the problem of political action informs has been refracted through the legal opinions of governments, particularly in the United States and Israel.<sup>7</sup> It has been carried over into a sea of policy debates about what a decision-maker can

and should be allowed to authorize when confronted with certain exigencies, in which scholarly distinctions over right and wrong, permissible and impermissible, dissolve in the waters of *realpolitik*.

Walzer's article is not primarily concerned with questions about torture at all. Nowhere in it does he ask whether or not torture works. His questions are about the risks entailed in political leadership. Nevertheless, in a couple of paragraphs he presents, by way of an illustration of the dilemmas faced by leaders, a ticking time bomb scenario. Although his particular version has become well known, he was not the first to devise a scenario of this sort.<sup>8</sup> His is essentially a variation of a so-called trolley problem: a contrived situation involving an out-of-control device in which a person is asked to decide between inaction that will result in injury to many, or action resulting in injury to one.<sup>9</sup> In one common formulation, a tram or trolley driver hurtling towards a number of workmen on a track can do nothing and collide with them, or steer into another track and collide with just one.<sup>10</sup> There are by now many permutations. For the purposes of this paper, the point is that in the basic scenario one's intuition is to avoid colliding with many people and accept responsibility for hitting one.<sup>11</sup>

In the version that Walzer presents, a politician is forced by circumstances to authorize the torture of a colonial subject so as to obtain valuable information that will prevent the loss of life to countless innocents. He approves of action that he finds morally repugnant, rationalizing that ultimately it will save lives. The politician is convinced that he must order the prisoner tortured "for the sake of the people who might otherwise die."<sup>12</sup> In other words, the scenario as Walzer conceives it presupposes the answer to the question "Does torture work?" Yes, sometimes it does.<sup>13</sup> And although Walzer's problem really comes into play after the politician has already made his decision, with the question of how we should view what he has done, it is in relation to the decision to torture and its presupposed answer to the question of whether or not torture works that the scenario has attracted so much scholarly interest since 9/11.<sup>14</sup>

As an exercise to challenge people's moral intuitions and help them to think about how to evaluate political leaders' speech and actions, the scenario would seem unobjectionable.<sup>15</sup> If the ticking time bomb were merely just "a more dramatic example" of a trolley problem, designed to make us see and think about things in a different way than we might otherwise have done, then it would appear to be pretty innocuous.<sup>16</sup> The ticking time bomb of the hypothetical scenario nowhere actually explodes, no matter how dramatic the example. But the problem is that through the alchemy of the American marketplace of ideas, the bomb has, precisely because of the scenario's superficial plausibility, been transmuted from symbolic representation of an imminent threat posing a moral dilemma for a (male) politician whose actions we will subsequently judge, to literally being a bomb, planted by a (Muslim) terrorist, who police or intelligence agencies have detained. They are confident that torture can uncover the bomb's whereabouts. The only issue that remains is to determine the acceptable circumstances for its use.

Although this account of torture lacks any basis in reality, its proponents, academic and non-academic alike, insist otherwise. Alan Dershowitz, a leading advocate for legalizing

torture, writes of how he would present the scenario to his Harvard law students as an instance of what he calls a “real-life” choice between undesirable alternatives.<sup>17</sup> Oren Gross argues that because catastrophic cases can happen, the ticking time bomb scenario has real-life consequences.<sup>18</sup> In his response to an official inquiry, a former U.S. assistant attorney general cited a case in support of this view.<sup>19</sup> On television, Bill Clinton said that “every one of us” can imagine something like the scenario happening, in which case interrogators would have both the “right and responsibility” to use torture.<sup>20</sup> Fritz Allhoff concurs that the scenario is conceivable, and therefore has a bearing on real life: but to insist that it be scrutinized against actual cases, he says, is “folly.”<sup>21</sup>

I do not think it is folly to ask that a theoretical scenario’s “real-life” plausibility, if that is what its proponents insist upon, be considered with reference to actual cases.<sup>22</sup> To claim that the scenario has some kind of real-life pertinence is to claim to know something, even imperfectly, about how torture works in real life. In contradistinction to the classic hypothetical trolley—regarding which no such claim is made—an insistence on plausibility invites scrutiny, and opposition with empirical data.<sup>23</sup> Folly lies in insisting on plausibility but then refusing to accept that the scenario, when exposed to the glare of real life, is implausible. Torture does not work as imagined in the scenario. On this point, I could write at length, but will be brief. I know of no actual case of torture in the countries where I have worked, Myanmar and Thailand, resembling it. Here I speak in part to cases I documented while researching courts and police throughout the 2000s, in which people were tortured to confess to crimes that often enough the torturers knew they had not committed.<sup>24</sup> Other studies from Southeast and South Asia identify the use of torture under a range of circumstances and for a host of reasons, none of them resembling the ticking time bomb scenario: to extract money and resources from the poor and vulnerable; to be looked upon favorably by superiors; to terrorize a population or as a generalized counterinsurgency strategy; to exact revenge or punish wrongdoers.<sup>25</sup> Even in settings where it might seem reasonable to expect that torture would be used to obtain information in the manner that the scenario conceives, studies of actual cases suggest otherwise. A 2016 report on counterinsurgency in the far south of Thailand, for instance, found that soldiers and paramilitaries tortured people to confess to bombings and arson attacks already committed.<sup>26</sup> A few cases involved searches for caches of weapons, but not in the face of imminent, life threatening attacks. What’s more, detainees were taken up in sweeps. Their torturers had no idea if they had information or not.

Writers who have researched actual cases elsewhere have reached similar findings. Marnia Lazreg supposes that Walzer had her research site of French-occupied Algeria in mind when he set his dirty hands problem in a colony struggling for independence.<sup>27</sup> That being so, she says, the scenario would have been made more realistic by situating torture as the *best* means of achieving ends, not as a last resort: the captured Algerian would have been tortured anyway. The notion that torture is exceptional, a practice reserved for circumstances under which nothing else will do, is unsustainable when confronted with the facticity of its ordinariness under such conditions. And in the most comprehensive study of torture published in the last decade, Rejali shows that even in actual cases that superficially



resemble the scenario, facts are misrepresented or omitted so as to have real life approximate the fantasyland of the ticking time bomb, as does Al McCoy in his work on torture by the United States after 9/11.<sup>28</sup>

It could not be otherwise. The scenario's persuasiveness depends on the elimination of contingencies operative in real life. It is emptied of context. The torturer alone has all the facts necessary for a determination. He is an enlightened superman, who knows that the detainee has information that torture will get, even though, as he does not practice torture routinely, he has no sound empirical basis for this knowledge. The scenario must delete the negative features of real-life torture, and add positive ones that do not exist in reality, in order to convince us that torture "works."<sup>29</sup>

Moreover, the characterization of the ticking time bomb scenario as offering a "real-life" choice is not just implausible when confronted with actual cases to which it lacks a resemblance. It is also intellectually dishonest, because in the move from thought experiment to empirical claim it conflates justification with explanation.<sup>30</sup> Torture, we are told, persists because sometimes it works, and because sometimes it is necessary. And because sometimes it is necessary and sometimes it works, therefore we ought, where necessary, consider the pros and cons of using torture. A weakly inferred causal claim, a spurious correlation between the fact of torture and the imputed reason for torture, is folded into reasons that we ought to consider using it. The theory sets us up not to obtain knowledge about torture, but to work towards its possibility.

How so? Well, to begin with it operates on an assumption that torture is used to obtain information upon which to act in an exigency. The question is with whether or not torture sometimes "works" for this purpose. The assumption does not hold, but if you're pressed to answer you'll find yourself being wedged into a position of being forced to admit that torture might sometimes conceivably "work."<sup>31</sup> The respondent once pushed into the rhetorical corner is then asked to consider the circumstances under which, if torture does work, it might be used. If we can agree that it sometimes works, then surely we should consider its practical application. At this point, the respondent might loiter for a while with questions of whether or not, even if torture does work, it is morally permissible, but the scenario has arithmetic on its side. The person who refuses to concede ultimately risks being labeled "fanatical."<sup>32</sup> How many possible casualties before you torture? Ten? A thousand? Ten thousand? Perhaps the ticking bomb is nuclear and will cause incalculable damage.<sup>33</sup> And we can also imagine qualitatively different catastrophic outcomes of inaction. The danger posed might threaten the existence of an entire political order, or cultural or linguistic community, for instance.<sup>34</sup> Why not? The point of the scenario is not really to produce knowledge *about* torture, but to do something else: to show that when it comes down to it, even someone firmly opposed to torture would have to concede to its use under some circumstances; either because the seemingly inevitable costs of not torturing so grossly outweigh the benefits of doing so as to make it necessary, or because of a moral duty to act so as to prevent a foreseeable disaster where inaction would be blameworthy. One way or another, torture is a wrong in need of justification for its use. The scenario is structured to provide it.

It does so because you're actually still in a trolley problem: a contrived predicament in which the onus is placed on you as an autonomous, moral, and rational individual, isolated from the complexities of real life, to decide between two undesirable alternatives when confronted with the question: what would *you* do? And there lies the rub. If the question that lurks behind "Does torture work?" is "What would *you* do?" then the theory with which we are asking these questions is unable to do the work that we need of it to produce meaningful knowledge *about* torture. It is not just that in treating torture as episodic rather than recurrent and socially embedded, as Rebecca Gordon argues, it misses the point—although she is right that this mode of thinking is certainly part of the problem.<sup>35</sup> Nor is it merely the case that it casts the torturer in a different, more generous light than he would otherwise enjoy.<sup>36</sup> The ticking time bomb as trolley problem does something more fundamental than that. It puts *you* in the imaginary driver's seat.

Against this mode of inquiry, I agree with Paul Kahn that arguments about torture's definition, procedures, usefulness, and morality are largely irrelevant: what is needed instead is to "uncover the political dynamic of violent degradation" inherent to torture.<sup>37</sup> The question of whether or not torture "works," and those that follow from it, offer no resources with which to do that, because it is premised, as in earlier times, on what Lisa Silverman has called an epistemology of pain.<sup>38</sup> Its theory of knowledge is not concerned with torture itself but with how knowledge might be obtained through the method of torture. But to think about torture as a "method" that has a specific outcome, Rosalind Morris has pointed out, is to occlude its larger significance.<sup>39</sup> In the same way that an instrumental conception of law disregards or misapprehends its bigger constitutive role, a naive instrumentalist manner of speaking about torture distracts us from what it might represent more generally.

In other words, to ask about whether or not torture "works" is to assume that it is a kind of practice of which the question as posed can make sense. It is to be deluded by torture's mythology of instrumentality and rationality. The production of knowledge *about* torture would seem to require different kinds of questions: questions that go beyond torture's observable manifest functions to its latent ones, including about how knowledge of torture is generated, spread and used, by and through which institutions, and according to what rules; questions that set aside the fantasy of time bomb scenarios and their analogues, to inquire instead about its latent functions, and to how torture relates to the state idea.

### **Towards theorizing about torture**

Rather than ask, "Does torture work?" I propose to ask, "What work does torture do?" This question, while modestly rearranging the parts of speech, significantly rearranges the parts of the problem. Instead of viewing torture as an instrument for some end or ends, it invites its study without prior agreement to acknowledge it on terms laid down in the interests of the torturers; without presuming to know already what torture is for, or the circumstances of its use.

To ask, “What work does torture do?” is to seek to refract some light not only onto the specific features of torture, but also to open up the practice for interpretive inquiry from its obscured and off-centered sites.<sup>40</sup> It is to do away with the “archetypal dyad” of torturer-tortured that closes torture’s bureaucracy off from inquiry.<sup>41</sup> This is not to elide the torturers, without whom there is no torture, but rather to start from recognition that the “torture situation... is *not* summed up”—as Lazreg has put it—“by a torturer and his victim thrown together in a room with a few instruments.”<sup>42</sup> It is to recognize that the torture situation is a special type of encounter, one operating according to rules that are established and ratified by some participants against the interests of one or more others.

Study of the torture situation requires attention to torture both as a practice, as a conscious and deliberate human activity, and also as a distinctive analytical category.<sup>43</sup> The difficulty that immediately arises is how to address the question of what work torture does without having research objectives policed and compromised by a general definition of torture, but also without saying that, whatever torture is, we’ll know it when we see it. Torture might be studied ethnographically; however, it cannot be inductively defined in the same manner as a formal public institution like a police department or prison, even where it is constituted through such institutions.<sup>44</sup> It requires some kind of preliminary formulation to identify, document, and interpret.

One way not to proceed is to go hither and thither in search of events of which to ask in each instance, “Is it torture?” That method leads to the same kinds of intellectual pitfalls contained in the question of whether or not torture “works”: back to hairsplitting about what does or does not constitute torture in a given case; to questions of what combination of techniques or what duration of time or what threshold of pain are necessary for torture—as if torture consists only of an assemblage of techniques, torture time is the same thing as linear time, or we are all equal before the phenomenon of pain.<sup>45</sup> Not only do these questions fail to produce knowledge about the torture situation, but they also invite us to revisit questions about what forms of torture might be permitted, once known by some other name. They do not keep the hypothetical torturer out; they reopen the door to him, and close off doors to inquiry through which knowledge of the subject matter might be genuinely increased.

Having just emancipated inquiry from the hypothetical torturer, to insist on a general and precise definition, in my view, would be to make the mistake of welcoming him back in. So while closing one door on the theory of the torturer, my concern is to open an alternative route for more productive theorizing, not by adopting general definitions for the practice but by identifying some elements of the inquiry; elements that are coherent but not hegemonic, that contain within themselves “the possibility for negation, resistance, reinterpretation, the play of metaphoric invention and imagination.”<sup>46</sup> That they allow for this possibility is not just a methodological convenience, or affectation. Precisely because torture emerges, as Claudia Card has written, out of “the cumulative impact of coordinated procedures” under a range of different circumstances on people of different physical and psychological conditions, it is a complex and structured activity.<sup>47</sup> To get at it, an inquiry needs to consider, for instance, how “waiting, apprehension, isolation, deprivation, and

humiliation are as integral as physical abuse” to torture.<sup>48</sup> To attempt to make sense of such conditions requires an attitude of fallibility, a regard for contingency, a tolerance for ambiguity of a sort that a general definition does not permit.

So rather than taking as a point of departure an established definition, as Card does, I want to try to proceed with a preliminary statement on torture of my own fashioning. The statement’s purpose is to identify some common characteristics of torture useful for further inquiry, some of them distinguishing it from other practices, others bringing it into proximity with symmetrical ones.

Let us suppose, then, that torture denotes the infliction of torment on a totally dominated person in the name of public authority, having function X (to be determined). This statement contains four elements, in two parts. The first and second—that torture consists of torment inflicted on a totally dominated person (or persons)—are internal to the act itself. The other two—that it is done in the name of a public authority, having a function or functions yet to be determined—go to the institutional arrangements that make torture’s work possible. Together they gesture towards the immediate features of the act of torture, and to its imbrication with the state idea.

For some people this statement will immediately be too restrictive—why only in the name of a public authority? For others, it will be too capacious: it would appear to open up “torture” potentially to a range of cruelties—solitary confinement or rape, for instance—since none of the characteristics seems to be peculiar to the torture situation. For now, let me simply reiterate that the statement is an attempt at identifying common characteristics of torture for interpretive, empirically grounded inquiry into its political significance. It is not a statement of general validity for testing each instance in response to the question “Is it torture?”

The statement gives primacy to the political relations contained in the torture situation. Unlike the theory of the torturer, which is anchored in an epistemology of pain, addressing questions about the distinctive relationship between the torment caused by torture and its ostensible purpose, between the specific characteristics of torment and its outcomes, to theorize *about* torture is to attend to the arrangements that enable its possibility. This is not to impute reasons for torture or suppose that existing typologies that class it by purpose or justification, or models of torture purporting to explain its use by regime type are adequate, or even relevant. The vulnerability of the tortured person or persons to arbitrary anatomical or physiological interference by others standing for a public authority captures the degrading character and the political structure of this type of brutality.

That the relation of domination is total refers to how the tortured lacks security against arbitrary interference inflicted upon his or her person, insofar as he or she cannot prevent the torturers from having access to his or her body, or impose constraints against the border violation of himself or herself by the other.<sup>49</sup> Its realization depends upon a profound asymmetry in the relations between torturers and tortured.<sup>50</sup> The one has freedom of action; the other has none. Torturers always take advantage of these relations to inflict torment, but what it means to take advantage of them can only be answered in each case. Clearly, the situation does not merely involve “a harsh set of options for the victim to

rationally navigate.”<sup>51</sup> Cruelty is not incidental to torture; it is essential. Nor is it consensual. It is structured to cause some kind of involuntary compliance, to torment the person tortured without regard to his or her welfare or desires.

The crucial point is that torture is structured so as to expose the body to the possibility of arbitrary interference in order to alter the will of a person, or that of a third person or persons, whether a family member, friend, observer or observers who experience the torture vicariously. Foremost, it is the inability of the person tortured to defend herself, Lazreg writes, and “her absolute vulnerability to the torturer that captures the specific character of torture.”<sup>52</sup> Torturers make the person cognizant of this characteristic through assertions of power such as that “if you die, it will be no problem for us.”<sup>53</sup> This is not to imply that the tortured person may not try to find some way to resist. The point is that the situation is structured to close off opportunities for resistance or flight of the sorts that exist in most other violent situations. Its performance depends on this possibility.

In common parlance a private actor can torture another, and a person can torture a non-human animal. Nevertheless, the domination with which the statement is concerned is in the name of a public authority. This part of the statement goes to the relationship of torture to the state. Here the statement is basically consistent with international human rights law, where torture 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.”<sup>54</sup>

That such definitions privilege violence by the state over other egregious practices has been critiqued as alienating of women, myopic in attending to types of violence predominantly against men, and neglectful of state complicity in brutality within the household.<sup>55</sup> The critique goes to the credibility and relevance of the international human rights regime for the lives of billions whose experience of routinized brutality is “obscure only because of its pervasiveness,” as Catharine MacKinnon has put it.<sup>56</sup> It is also significant for research on torture in that it brings torture’s masculinized and sexualized characteristics, and their relationship to institutional arrangements for the use of violence, to the foreground.<sup>57</sup>

As a strategy for effecting change in international law, it might be useful to examine the “intimate terror” of domestic violence through a lens of torture.<sup>58</sup> Assaults on women and children in the home have symmetries with the practice. But they also deserve different analytical treatment. The refusal of public authorities to intervene in the violence of one person against another, or their enabling of conditions for such brutality, is different from where state officers torture a detainee themselves. Of course, as the definition in international law acknowledges, the boundaries here are porous. Torturers might be uniformed or non-uniformed authority figures, or people organized and supplied by authorities. They could be state officers or members of state-like organizations. The former are typically police, wardens, or soldiers, but may also be civilian administrators, medical or educational personnel, or similar. State-like organizations might be formal or informal groups using torture in parallel with or on behalf of the state, or alternatively, organizations that express violence and regulate human actions according to a state-like logic, which

impersonate the state: say, secessionist armies and their political wings that control territory and population in which they are able to operate autonomously and in a state-like manner.<sup>59</sup>

While we might speak of such practices as torture subtypes, as “state torture” or “parastate torture,” torture as a systematic practice is a prerogative of the state, or its effective mimics.<sup>60</sup> State institutions and their proxies have the personnel, facilities, and knowhow to realize and replicate torture to an extent that is difficult for other institutions to duplicate. They are in some ways custom built to arrange and experiment, update, iterate, and transmit knowledge about torture, even when it is formally prohibited.<sup>61</sup> Their public character means that torture also reverberates beyond the location of torture in a different way than in the case of, say, domestic violence. After the person who survives torture is freed, the torturers reappear in the physical and symbolic presence of public institutions, in their arrangements for public order with which torture has a relationship. Denials and counterclaims in reply to torture allegations become a special responsibility of these institutions, both administrative and juridical. For these reasons too, a theory about torture has to come to terms with its bureaucracy.<sup>62</sup> How is torture organized and regulated? How is it normalized and managed? How do bureaucratic agencies work to reinforce the fiction of its rationality and instrumentality?

Whereas the statement associates torture with public institutions, against definitions that count “severe pain” among the characteristics of torture, especially those with a medico-legal imperative, it contains no thesis on severity.<sup>63</sup> The word “torment” is silent on pain, even if in a “paradigm case of torture” pain might be acute.<sup>64</sup> The reasons are twofold. On the one side, torture as total domination is not characterized by severity of pain but by conditions in which the person is unable to make torment stop. Torture denies the behavioral response to pain, or life-threatening brutality such as suffocation with plastic bags or simulated drowning. It is the loss of control associated with torment that is significant. On the other, the methodological obstacles to doing anything empirically sensible with severity are manifest.<sup>65</sup> The legal and political risks that lie in drawing a line between severe and non-severe practices have in recent years been obvious, too.<sup>66</sup> They entail not the elimination of torture but in its stead purportedly scientific torture, and with it, negotiation about how far torture can permissibly go—perhaps to anything short of organ failure or “serious impairment of bodily functions.”<sup>67</sup> And of course, they motivate the search for euphemisms with which to impede our ability to communicate about things that matter, driven by the desire to overlay torture with a patina of bureaucratic rationality through the expedient of unintelligibility.

The obvious problem with the severity thesis is that it works on a mechanistic logic that pain is incremental, like turns of the screw or gradations on a dial. Whereas Scarry writes about torture aspiring to pain in its totality, of having a telos of absolute pain, severity is descriptive, and relative.<sup>68</sup> It is rank-ordered and objectified through measurement at intervals. Somebody who has not experienced the pain claims to be able to grasp it from the outside. This claim is not conducive to theorizing about torture, but it is consistent with the theory of the torturer, in that it is a claim to know pain in the manner that torturers claim to know it.<sup>69</sup> Perversely, while the severity thesis entails claims of this sort, the

testimonies of torture survivors as to pain endured are increasingly discredited.<sup>70</sup> The body rather than the testimony now stands as evidence of severity, even though the practice of torture in our time aims at not leaving lasting scars; or no more scars than are incidental to torture and not so easily attributable to it.<sup>71</sup>

Torture does not require ingenious devices or special sites. The vast majority of techniques used in the world, Rejali observes, presently “involve everyday instruments that people commonly have at hand for other purposes”—candles, gravel, bamboo, PVC pipes, plastic bags, blocks of ice, pencils.<sup>72</sup> These items can be picked up anywhere. Similarly, contrary to the images found on the jackets of many books on the topic, torture need not occur in a space assigned for the purpose of isolating the detainee and torturers: a dark, windowless vault at the end of a damp cellar-like corridor. Today the image of the torture chamber might be just as soon replaced with one of a modern army barracks in a metropolis;<sup>73</sup> a “safe house” in a forested area on city limits;<sup>74</sup> or, the toilets in a provincial police station.<sup>75</sup> It might not be a room at all, but an army truck for prisoner transport;<sup>76</sup> or the compound of a village crematorium;<sup>77</sup> or a hole in the ground.<sup>78</sup> In torture, we find the state not constructing spaces and allocating equipment for exclusive use, as in the prison or officially designated camp, but adapting what already exists. Torture space is improvised rather than designed. In a truck, a toilet, or a hole in the ground, domination can still be established through a range of simple practices to make the person feel isolated and helpless: hooding and blindfolding, forced nudity, burying alive, culturally denigrating techniques, and repeated statements that the detainee’s life is worthless and nobody will know or care if they die.

In these ways, a place of torture is more akin to a crime scene than a prison cell. While the carceral condition depends upon the permanent arrangement of walls and barriers to be realized, the torture situation consists of a heterogeneous admixture of material and spatial arrangements that temporarily demarcate it from its surroundings. The manner of confinement seems to differ too. Whereas in general terms the incarcerated prisoner is denied freedom through enclosure, and sometimes through restraints, the tortured person is denied the right to control his or her own body. This is different from the imposition and multiplication of various privations and punishments to torment the prisoner, although a prisoner might also be tortured. But the two are surely distinct. At the most basic level, prison constrains; torture manipulates. Prison immobilizes; torture interferes. The prisoner is disabled by virtue of being in custody; the tortured is pressed to lose control of him or herself through inducement and deceit.<sup>79</sup> Torture requires its subject to act out the demands of the other, sometimes by performing what are actual real-life torture scenarios: riding an imaginary motorcycle;<sup>80</sup> simulating sex with another detainee;<sup>81</sup> reenacting a crime for the benefit of assembled journalists.<sup>82</sup> And torture aims to have the person surrender control not only over the body but also over words, to “speak the language sought by the torturer,” whether by giving the names of alleged insurgents, confessing before a judge to murder, or recanting a political position.<sup>83</sup> In each case, the person tortured must collude with the torturers to participate involuntarily in a performance structured for his or her degradation; to articulate or act out his or her loss of will.

On the other hand, torture and imprisonment would appear to have in common a design to dominate people whose place in the body politic is tenuous, who are in the margins or on the frontiers of the political community, already humiliated in disproportion to other groups. The “torturable class” comprises people who are not authentic members of the body politic, either by birth or by virtue of something that they are accused of having done.<sup>84</sup> The former category might include migrant workers, or members of linguistic and cultural minorities;<sup>85</sup> and the latter, small time drug dealers or petty crooks, serving or former convicts, or political dissidents.<sup>86</sup> In each case, a person is by virtue of his or her lack of standing exposed to the possibility of an arbitrary, destructive attack by someone else.<sup>87</sup> This real-life vulnerability of the tortured contrasts with the neurotic vulnerability of the state to the threats that these others ostensibly represent: the threat of economic migration, of multiculturalism, of crime, of sedition, and so on.

One element of the statement that remains to be considered is the function of torture, which is designated by X, to be determined, after Pierre Bourdieu’s rewriting of Max Weber’s famous formulation of the state, as a human community as “the institution of this X we call the state.”<sup>88</sup> As in that reformulation, the X here casts doubt on the denial of possibilities that definitions of torture tend to impose, by attending to its “purposes” in response to the question “Does torture work?” The question “What work does torture do?” instead invites theoretically fruitful inquiry into torture’s latent functions: including those which might not be intended or recognized as consequential to torture by its participants.<sup>89</sup> Torture is always about something more than just getting information, or confession, or bribe. Under some circumstances, such as counterrevolutionary war, torture might have a manifest general function, serving to subdue a hostile population. In others it may be a latent characteristic of an unequal political order. But nowhere is it happenstance. Torture is not stumbled into by accident, any more than wars are started or empires forged in a fit of absentmindedness. Each presupposes certain institutional arrangements, themselves hinging on ideas about the state and its part in human relations. And in every given case, the outcome of torture realizes and saturates arrangements for the practice’s conceivable persistence: gratuity, for instance, torture’s political economy; information, its fiction of power; confession, its re-audited violence.<sup>90</sup>

Function X keeps the door open to possibilities, but it does not admit every painful or humiliating experience. Other elements in the statement together give it more shape than the designation X may at first suggest, even though none of them is peculiar to the torture situation. Torture is not just about control over a detained person. It is about a particular arrangement in which somebody asserting public authority totally dominates somebody else, denying the possibility to flee or fight present in most other violent situations. It would also seem, on the face of it, to have to exclude some other practices that might be comparably harmful and dominating, but that deserve to be distinguished in order to speak of each sensibly, such as—in general terms—solitary confinement and rape. Of course, in practice, solitary confinement may be used in a regime of torturous practices, and the manner in which the person confined is over time forced into a condition of self-betrayal has parallels with torture.<sup>91</sup> Rape may be like torture in its effects, and may also be a method of torture,



particularly in settings where its targets are cast as enemies.<sup>92</sup> To theorize about torture is to attend to such symmetries, while also attempting to keep some breathing space between torture as an analytical category and its others.

### Theorizing with humility

In this paper I have proposed that we ask questions towards theorizing *about* torture. Rearranging the question “Does torture work?” as “What work does torture do?” I set out some common characteristics of torture that might enable illuminative research into its situation, in which a totally dominated person is subjected to arbitrary interference in the form of torment having a function or functions yet to be determined, in the name of a public authority. These characteristics are indicative of torture situations, but they do not impose assumptions about what purposes torture serves. They give primacy to political relations from which plausible interpretations of torture might be offered, without presuming to know about the types of conditions in which we are more or less likely to find it. By emphasizing the vulnerability of the tortured person or persons to arbitrary anatomical or physiological interference by others standing for a public authority, I have sought to capture both the degrading character and the political structure of this type of brutality, as against formulations that adopt a narrowly instrumentalist viewpoint or privilege the severity of pain caused.

Almost four decades ago, William Twining called for collective effort towards a “rounded theory of torture”: a collaborative undertaking of historians, psychologists, lawyers, social scientists, and even philosophers.<sup>93</sup> In the years since, a number of significant and sophisticated studies of the topic notwithstanding, the theory of the torturer has continued to have debilitating effects, obstructing efforts at productive and collaborative theorizing on the topic. Perhaps a rounded theory of torture the likes of which Twining envisaged is neither possible nor even desirable. But given the persistence of torture worldwide, its reemergence in the American empire over the last decade or so, and the failure of the theory of the torturer to contribute anything useful to our understanding of the practice, we would do well to recollect his call as we think about how to proceed.

However one chooses to proceed, to aspire to produce knowledge about torture requires, I think, a mode of inquiry, to borrow from Sheldon Wolin, which is mindful of the “incoherence and contradictoriness of experience,” and distrustful of those attempts to reduce its subject to terse hypotheses.<sup>94</sup> I see no other way to study, let alone discuss, a practice which defies modes of inquiry that insist on precision and determinacy of a sort that yield grand generalizations and sweeping observations. But humility should not be misunderstood as understating research significance. As the best studies of recent years have shown, theorizing about torture from its specifics yields knowledge not only about the practice of torture but also gives access to new understandings of that maddening thing which we call “the state.” It might yet give rise to new findings relevant to questions about the constitution of political order more generally.

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## ENDNOTES

1. Stephanie Athey, "The Torture Device: Debate and Archetype," in *Torture: Power, Democracy, and the Human Body*, ed. Shampa Biswas and Zahi Zalloua (Seattle, WA: University of Washington Press, 2011), 137. See further, Alex Adams, *Political Torture in Popular Culture: The Role of Representations in the Post-9/11 Torture Debate* (London & New York: Routledge, 2016); Michael Flynn and Fabiola F. Salek, eds., *Screening Torture: Media Representations of State Terror and Political Domination* (New York: Columbia University Press, 2012), ch. 3.
2. As discussed by Darius Rejali, "Review Essays: 'American Torture Debates,'" *Human Rights Review* 9, no. 3 (2008).
3. Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford: Oxford University Press, 1985), 57, 51. See also Allen Feldman, *Formations of Violence: The Narrative of the Body and Political Terror in Northern Ireland* (Chicago & London: University of Chicago Press, 1991), 114-15.
4. See in particular, Darius Rejali, *Torture and Democracy* (Princeton: Princeton University Press, 2007), ch. 21; Lisa Hajjar, "Does Torture Work? A Sociolegal Assessment of the Practice in Historical and Global Perspective," *Annual Review of Law and Social Science* 5 (2009).
5. Michael Walzer, "Political Action: The Problem of Dirty Hands," *Philosophy and Public Affairs* 2, no. 2 (1973).
6. Moran Yemini, "Conflictual Moralities, Ethical Torture: Revisiting the Problem of 'Dirty Hands,'" *Ethical Theory and Moral Practice* 17, no. 1 (2014): 163.
7. See Yuval Ginbar, *Why Not Torture Terrorists? Moral, Practical, and Legal Aspects of the 'Ticking Bomb' Justification for Torture* (New York: Oxford University Press, 2010); Robert M. Pallitto, ed. *Torture and State Violence in the United States: A Short Documentary History* (Baltimore: Johns Hopkins University Press, 2011), 210, 14.
8. It was not in an academic work at all but in *Les Centurions*, a 1960 prize-winning bestseller by a former French paratrooper, that torture in a ticking time bomb scenario was first represented—not so as to test a thought experiment, Darius Rejali points out, but as an expression of masculine heroism. See *Torture and Democracy*, 545-46. On the "discovery" of the ticking bomb by the French in Algeria, see Michelle Farrell, *The Prohibition of Torture in Exceptional Circumstances* (Cambridge: Cambridge University Press, 2013), 96-102.
9. For other variations going back to Jeremy Bentham, see Fritz Allhoff, *Terrorism, Ticking Time-Bombs, and Torture: A Philosophical Analysis* (Chicago: University of Chicago Press, 2012), 88-92.
10. Philippa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," *Oxford Review* 5 (1967).

11. See further, David Edmonds, *Would You Kill the Fat Man? The Trolley Problem and What Your Answer Tells Us About Right and Wrong* (Princeton: Princeton University Press, 2014); Frances Myrna Kamm, *The Trolley Problem Mysteries* (New York: Oxford University Press, 2016).
12. Walzer, "Political Action," 167.
13. Rejali notes that the tacit assumption of the scenario that a politician under such circumstances believes torture to "work" is itself groundless, since an officeholder may torture or order torture knowing that it does not work but having other reasons to order it—such as fear of public opprobrium for inaction. *Torture and Democracy*, 533-535.
14. For example, Alex J. Bellamy, "Dirty Hands and Lesser Evils in the War on Terror," *British Journal of Politics and International Relations* 9, no. 3 (2007); Bob Brecher, *Torture and the Ticking Bomb* (Malden, MA: Blackwell Publishing, 2007); Howard J Curzer, "Admirable Immorality, Dirty Hands, Ticking Bombs, and Torturing Innocents," *Southern Journal of Philosophy* 44, no. 1 (2006); Paul Lauritzen, "Torture Warrants and Democratic States: Dirty Hands in an Age of Terror," *Journal of Religious Ethics* 38, no. 1 (2010); J. Jeremy Wisniewski, *Understanding Torture* (Edinburgh: Edinburgh University Press, 2010), ch. 5, 6. For a longer but by no means exhaustive list see Matthew H. Kramer, *Torture and Moral Integrity: A Philosophical Enquiry* (Oxford: Oxford University Press, 2014), 59, fn. 18.
15. "Seems," because unlike the conventional trolley problem the ticking time bomb scenario contains cultural elements that change its character and serve to make it more persuasive than it would otherwise be. See Darius Rejali, "Is There Truth in Pain?" *Representations* 142 (2018) (forthcoming); *Torture and Democracy*, 548-549.
16. Walzer, "Political Action," 166.
17. Alan M. Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (New Haven & London: Yale University Press, 2002), 132.
18. Oren Gross, "The Prohibition on Torture and the Limits of Law," in *Torture*, ed. Sanford Levinson (Oxford and New York: Oxford University Press, 2004).
19. Senate Select Committee on Intelligence, "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program," (Washington D.C. 2014), 181.
20. In Alfred W. McCoy, *Torture and Impunity: The US Doctrine of Coercive Interrogation* (Madison, WI & London: University of Wisconsin Press, 2012), 179.
21. Allhoff, *Terrorism, Ticking Time-Bombs, and Torture*, 162.
22. See also, Richard Matthews, "An Empirical Critique of 'Interrogational' Torture," *Journal of Social Philosophy* 43, no. 4 (2012).
23. Foot writes that in real life "it would hardly ever be certain" that her trolley scenario would play out as imagined. "The Problem of Abortion and the Doctrine of the Double Effect," 3.
24. Nick Cheesman, *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order* (Cambridge: Cambridge University Press, 2015), ch. 5; ALRC, "Institutionalised Torture, Extrajudicial Killings & Uneven Application of Law in Thailand," *Article 24*, no. 2 (2005).

25. For example, Jacqueline Baker, "The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia" (PhD diss., London School of Economics and Political Science, 2012), ch. 5; Danielle D. Celermajer and Jack Saul, "Preventing Torture in Nepal: A Public Health and Human Rights Intervention," *Bioethical Inquiry* 13, no. 2 (2016); Basil Fernando and Shymali Puvimanasinghe, eds., *An X-Ray of the Sri Lankan Policing System & Torture of the Poor* (Hong Kong: Asian Human Rights Commission, 2005); Bijo Francis, "Every Mother in This Place Will Have a Similar Story to Tell': Illegal Arrest, Arbitrary Detention and Torture in Manipur," *Article 2* 5, no. 6 (2006); Yohanes Budi Hernawan, "From the Theatre of Torture to the Theatre of Peace: The Politics of Torture and Re-Imagining Peacebuilding in Papua, Indonesia" (PhD diss., Australian National University, 2013); Dhana Hughes, *Violence, Torture and Memory in Sri Lanka: Life after Terror* (London & New York: Routledge, 2013); Lokaneeta, *Transnational Torture*; Annie Pohlman, "An Ongoing Legacy of Atrocity: Torture and the Indonesian State," in *Genocide and Mass Atrocities in Asia: Legacies and Prevention*, ed. Annie Pohlman and Deborah Mayersen (London: Taylor and Francis, 2013); M. Rafiqul and S.M. Solaiman, "Torture under Police Remand in Bangladesh: A Culture of Impunity for Gross Violations of Human Rights," *Asia-Pacific Journal on Human Rights and the Law* 4, no. 2 (2003); Danilo Reyes, "Torture in Indonesia and the Philippines: A *Jus Cogens* Right with or without Remedy?" (LLM diss., University of Hong Kong, 2013); Elizabeth Stanley, *Torture, Truth and Justice: The Case of Timor-Leste* (London & New York: Routledge, 2009); Rachel Wahl, "Justice, Context, and Violence: Law Enforcement Officers on Why They Torture," *Law and Society Review* 48, no. 4 (2014).
26. Cross Cultural Foundation, Duayjai, and Patani Human Rights Organisation, "Torture and Ill-Treatment in Thailand's Deep South," *Article 2* 15, no. 2 (2016).
27. Marnia Lazreg, *Torture and the Twilight of Empire: From Algiers to Baghdad* (Princeton & Oxford: Princeton University Press, 2008), ch. 10.
28. Rejali, *Torture and Democracy*, ch. 22; McCoy, *Torture and Impunity*, 163-66.
29. J. M. Bernstein, *Torture and Dignity: An Essay on Moral Injury* (Chicago & London: University of Chicago Press, 2015), 319; Henry Shue, "Torture in Dreamland: Disposing of the Ticking Bomb," *Case Western Reserve Journal of International Law* 37, no. 2/3 (2006).
30. See Lazreg, *Torture and the Twilight of Empire*, 242-43.
31. Kim Lane Scheppele, "Hypothetical Torture in the 'War on Terrorism'," *Journal of National Security Law and Policy* 1, no. 2 (2005): 286; see also David Luban, "Liberalism, Torture, and the Ticking Bomb," *Virginia Law Review* 91, no. 6 (2005): 1440.
32. Richard A. Posner and Adrian Vermeule, "Should Coercive Interrogation Be Legal?" *Michigan Law Review* 104, no. 4 (2006): 676.
33. As in Stephen De Wijze, "Tragic-Remorse: The Anguish of Dirty Hands," *Ethical Theory and Moral Practice* 7, no. 5 (2004).
34. See Adil Ahmad Haque, "Torture, Terror, and the Inversion of Moral Principle," *New Criminal Law Review* 10, no. 4 (2007).

35. Rebecca Gordon, *Mainstreaming Torture: Ethical Approaches in the Post-9/11 United States* (New York: Oxford University Press, 2014), 7.
36. Luban, "Liberalism, Torture, and the Ticking Bomb," 1441.
37. Paul Kahn, *Sacred Violence: Torture, Terror, and Sovereignty* (Ann Arbor: University of Michigan Press, 2008), 11.
38. Lisa Silverman, *Tortured Subjects: Pain, Truth, and the Body in Early Modern France* (Chicago: University of Chicago Press, 2001). Also see Rejali, "Is There Truth in Pain?"
39. Rosalind C. Morris, "The War Drive: Image Files Corrupted," *Social Text* 25, no. 2 (2007): 104.
40. Christopher Krupa and David Nugent, "Off-Centered States: Rethinking State Theory through an Andean Lens," in *State Theory and Andean Politics: New Approaches to the Study of Rule*, ed. Christopher Krupa and David Nugent (Philadelphia: University of Pennsylvania Press, 2015).
41. Athey, "The Torture Device," 140.
42. Lazreg, *Torture and the Twilight of Empire*, 6. Lazreg writes in a footnote that she draws the idea from Marcel Mauss's work on social situations in *The Gift* (New York: Norton, 1967).
43. Lazreg, *Torture and the Twilight of Empire*, 3. See Pierre Bourdieu, "Rethinking the State: Genesis and Structure of the Bureaucratic Field," in *State/Culture: State-Formation after the Cultural Turn*, ed. George Steinmetz (Ithaca & London: Cornell University Press, 1999), 53.
44. See Didier Fassin, "Can States Be Moral?" in *At the Heart of the State: The Moral World of Institutions*, ed. Didier Fassin (London: Pluto Press, 2015).
45. From René Leriche, in Jean Améry, "Torture," in *At the Mind's Limits: Contemplations by a Survivor on Auschwitz and Its Realities* (Bloomington: Indiana University Press, 1980), 37.
46. Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *American Historical Review* 91, no. 5 (1986): 1067.
47. Claudia Card, *Confronting Evils: Terrorism, Torture, Genocide* (Cambridge: Cambridge University Press, 2010), 206.
48. Michael Davis, "Torture and the Inhumane," *Criminal Justice Ethics* 26, no. 2 (2007): 33.
49. See Philip Pettit, "The Domination Complaint," in *Political Exclusion and Domination*, ed. Melissa S. Williams and Stephen Macedo, *Nomos* (New York & London: New York University Press, 2005), 94; Améry, "Torture," 33. See also Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford & New York: Oxford University Press, 1997).
50. See for instance, Otto Doerr-Zegers et al., "Torture: Psychiatric Sequelae and Phenomenology," *Psychiatry* 55, no. 2 (1992); Paul Kenny, "The Meaning of Torture," *Polity* 42, no. 2 (2010): 152-54; Richard Matthews, *The Absolute Violation: Why Torture Must Be Prohibited* (Montreal & Kingston: McGill-Queen's University Press, 2008), 44-46.
51. David Sussman, "What's Wrong with Torture?" *Philosophy and Public Affairs* 33, no. 1 (2005): 10. See also, Davis, "Torture and the Inhumane."

52. Lazreg, *Torture and the Twilight of Empire*, 6.
53. Special Branch police officer, Myanmar Police Force, cited in Nick Cheesman, "Reading Hobbes's Sovereign into a Burmese Narrative of Police Torture," *Asia-Pacific Journal on Human Rights and the Law* 17, no. 2 (2016): 204. The assertion should not be read literally. The point, rather, is that the assertion contributes to the arrangements for domination of the tortured person by the torturers.
54. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1. For some discussion, see Card, *Confronting Evils*, ch. 8; Rejali, *Torture and Democracy*, ch. 1. For an argument to define torture without reference to the state, see Kenny, "The Meaning of Torture."
55. For discussions, Hilary Charlesworth and Christine Chinkin, "The Gender of *Jus Cogens*," *Human Rights Quarterly* 15, no. 1 (1993); Karen Engle, "After the Collapse of the Public/Private Distinction: Strategizing Women's Rights," *Studies in Transnational Legal Policy* 25 (1993); Celina Romany, "State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law," in *Human Rights of Women: National and International Perspectives*, ed. Rebecca J. Cook (Philadelphia: University of Pennsylvania Press, 1994).
56. Catharine A. MacKinnon, "On Torture," in *Are Women Human? And Other International Dialogues* (Cambridge, MA & London: Belknap Press, 2006), 27.
57. See Martha K. Huggins, Mika Haritos-Fatouros, and Philip G. Zimbardo, *Violence Workers: Police Torturers and Murderers Reconstruct Brazilian Atrocities* (Berkeley, Los Angeles & London: University of California Press, 2002), ch. 6-8.
58. See Rhonda Copelon, "Intimate Terror: Understanding Domestic Violence as Torture," in *Human Rights of Women: National and International Perspectives*, ed. Rebecca J. Cook (Philadelphia: University of Pennsylvania Press, 1994); Card, *Confronting Evils*, 226-28.
59. Rejali, *Torture and Democracy*, 37-38.
60. See Darius Rejali, *Torture and Modernity: Self, Society and State in Modern Iran* (Boulder, CO: Westview, 1994), 167.
61. See Rejali, *Torture and Democracy*.
62. William Twining, "Torture and Philosophy," *Proceedings of the Aristotelian Society, Supplementary Volumes* 52 (1978).
63. See in particular, article 1 of the UN Convention against Torture ("severe pain or suffering"). Among those authors whose works are already cited here, see also, Bernstein, *Torture and Dignity*; Gordon, *Mainstreaming Torture*; Kenny, "The Meaning of Torture"; Twining, "Torture and Philosophy." Lazreg writes of "various degrees of pain" (*Torture and the Twilight of Empire*, 6). I follow Rejali (*Torture and Democracy*) in referring to "torment."
64. Twining, "Torture and Philosophy," 157.
65. See for instance Loran F. Nordgren, Mary-Hunter Morris McDonnell, and George Loewenstein, "What Constitutes Torture? Psychological Impediments to an Objective Evaluation of Enhanced Interrogation Tactics," *Psychological Science* 22, no. 5 (2011).

66. See Ginbar, *Why Not Torture Terrorists?*; Jeremy Waldron, "Torture and Positive Law: Jurisprudence for the White House," *Columbia Law Review* 105, no. 6 (2005).
67. Legal memorandum by Jay Bybee cited in Pallitto, *Torture and State Violence in the United States*, 188.
68. Scarry, *The Body in Pain*, 55. See Kenny, "The Meaning of Torture," 150-52.
69. Scarry, *The Body in Pain*, 52.
70. See Didier Fassin, *Humanitarian Reason: A Moral History of the Present* (Berkeley and Los Angeles: University of California Press, 2012), ch. 4; Tobias Kelly, *This Side of Silence: Human Rights, Torture, and the Recognition of Cruelty* (Philadelphia: University of Pennsylvania Press, 2012), ch. 3.
71. Rejali, *Torture and Democracy*.
72. Rejali, *Torture and Democracy*.
73. As described by one torture survivor in: Thai Voice Media, "คลิปสัมภาษณ์ เป็ด กริชสุดา คุณะแสน เนื่องหลังความเลวร้ายของทหารไทยที่ทำกับประชาชนผู้หญิงคนนี้ [Interview with Kritsuda Khunasen on the Inside Story of the Wickedness of Thai Soldiers to Her]," Safe House, <http://www.youtube.com/watch?v=4Fdm7xeGH2I>.
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89. See Robert K. Merton, *Social Theory and Social Structure* (New York: Free Press, 1968), ch. 3.
90. Feldman, *Formations of Violence*, 136.
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