The Torturer's Dilemma: Analyzing the Logic of Torture for Information

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THE TORTURER'S DILEMMA:
ANALYZING THE LOGIC OF TORTURE FOR INFORMATION

By

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This work is dedicated to my wife, Emma, mon abeille du soleil. I literally could not have done this without you.
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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ABSTRACT</strong></td>
<td></td>
<td>vii</td>
</tr>
<tr>
<td><strong>1.</strong></td>
<td>TELL ME THE TRUTH: Torture for Information</td>
<td>1</td>
</tr>
<tr>
<td>2.1.</td>
<td>Introduction</td>
<td>9</td>
</tr>
<tr>
<td>2.2.</td>
<td>A History of Torture</td>
<td>11</td>
</tr>
<tr>
<td>2.3.</td>
<td>Conceptualizing Torture</td>
<td>22</td>
</tr>
<tr>
<td>2.4.</td>
<td>A Model of Torture</td>
<td>26</td>
</tr>
<tr>
<td>2.5.</td>
<td>Evaluating the Model through Case Studies</td>
<td>31</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>THE WITCHHUNT: Slavery, Coercion and Misinformation in the Salem Witch-Trials</td>
<td>39</td>
</tr>
<tr>
<td>3.1.</td>
<td>Introduction</td>
<td>39</td>
</tr>
<tr>
<td>3.2.</td>
<td>Witch Craft in New England</td>
<td>42</td>
</tr>
<tr>
<td>3.3.</td>
<td>The Crisis in Salem</td>
<td>45</td>
</tr>
<tr>
<td>3.4.</td>
<td>The End of the Trials</td>
<td>52</td>
</tr>
<tr>
<td>3.5.</td>
<td>The Deceptive Cycle</td>
<td>56</td>
</tr>
<tr>
<td>3.6.</td>
<td>The Strategic Logic of Coercive Interrogation</td>
<td>61</td>
</tr>
<tr>
<td>3.7.</td>
<td>Torture, Tituba and Slavery</td>
<td>68</td>
</tr>
<tr>
<td>3.8.</td>
<td>Conclusion</td>
<td>71</td>
</tr>
<tr>
<td><strong>4.</strong></td>
<td>A TALE OF TWO ALGERIAS: Torture in the Casbah and the Bled</td>
<td>74</td>
</tr>
<tr>
<td>4.1.</td>
<td>Introduction</td>
<td>74</td>
</tr>
<tr>
<td>4.2.</td>
<td>Analysing Torture</td>
<td>76</td>
</tr>
<tr>
<td>4.3.</td>
<td>The Battle of Algiers</td>
<td>80</td>
</tr>
<tr>
<td>4.4.</td>
<td>Torture in the Casbah</td>
<td>84</td>
</tr>
<tr>
<td>4.5.</td>
<td>Torture in the Bled</td>
<td>93</td>
</tr>
<tr>
<td>4.6.</td>
<td>Weighing the Costs and Benefits</td>
<td>94</td>
</tr>
<tr>
<td>4.7.</td>
<td>Conclusion</td>
<td>101</td>
</tr>
<tr>
<td><strong>5.</strong></td>
<td>TORTURE AND TERRORISM: Coercive Interrogation in the War on Terror</td>
<td>104</td>
</tr>
<tr>
<td>5.1.</td>
<td>Introduction</td>
<td>104</td>
</tr>
<tr>
<td>5.2.</td>
<td>Torture at Guantanamo</td>
<td>106</td>
</tr>
<tr>
<td>5.3.</td>
<td>Torture in Iraq</td>
<td>113</td>
</tr>
<tr>
<td>5.4.</td>
<td>Torture by the CIA</td>
<td>120</td>
</tr>
<tr>
<td>5.5.</td>
<td>A Critical Case: Ibn al-Shaykh al-Libi</td>
<td>126</td>
</tr>
<tr>
<td>5.6.</td>
<td>Conclusion</td>
<td>130</td>
</tr>
</tbody>
</table>
ABSTRACT

In the aftermath of the September 11th attacks, the fear of apocalyptic terrorism has caused many Americans and academics worldwide to reexamine previously held beliefs on the morality and suitability of torture as a means of ensuring public safety. While much of the ensuing debate has focused on deontological versus teleological ethics (Kant vs. Bentham), torture can only be properly understood as an empirical system – a means of gathering information. By applying an analytical narrative framework to comparative case studies, I argue that torture must depend on certain conditions that are inherently difficult to satisfy – and that the attempts by various authorities to make use of torture have instead led them inexorably towards a deceptive cycle where bad information corrupts the system. The implication is that torture can paradoxically do more harm to the torturing state even than the enemies it hopes to combat. The cases under examination include the Salem witch trials in 17th Century New England, the Algerian Revolution both from the standpoint of the French counterinsurgency and the FLN, and the United States during the War on Terror.
Since the terror attacks of September 11th 2001, the utility of torture has once again become a subject of debate among politicians, pundits, and scholars in western countries. This debate has not been confined entirely to the world of academia – rather, it has shown up in news shows, television programs, films, and (as has become apparent since the revelations of abuse at Guantanamo Bay and Abu Ghraib) even in government policy. The consensus on torture for many years had been one of opprobrium – torture is something that autocracies do, while civilized powers understand it to be morally beyond the pale. This consensus has apparently diminished in the last decade, and the debate has shifted from questions of moral philosophy (can torture ever be justified) towards a realist paradigm centered around whether we can afford to consider morality in the face of an existential threat. This has led some observers to argue, in essence, that torture is useful, and can be harnessed by the state to find useful information (that is assumed to be unobtainable by other means) while avoiding its pitfalls. Most prominent among these observers has been the famed attorney Alan Dershowitz, whose piece in the Los Angeles Times\(^1\) argued that torture could be made part of a liberal society if it could be regularized and subject to judicial proceedings – taking the ultimate in lawless acts and subjecting it to the rule (and regularity) of law. This debate was furthered by a collection of essays on torture edited by Sanford Levinson (2004), wherein Dershowitz defends his proposal against critics on the anti-torture left (Elaine Scarry) and the right (Richard Posner).\(^2\) The hypothetical nature of this debate is perhaps best exemplified by the title of Michael Ignatieff's essay in Prospect magazine, “If Torture Works...”\(^3\)

In a sense, the debate has been centered on a clash of ethical systems: deontology – where actions are judged by how well they follow a set of normative rules – and teleology – where actions are

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judged by their effects. The deontological arguments against torture are of course highly familiar: torture is always wrong, it is a violation of human rights, etc. The teleological arguments can best be represented by the famous 'ticking bomb' scenario. In this hypothetical situation, the state holds in its custody a terrorist who alone knows where a bomb is located that in a short amount of time will go off. The bomber refuses to reveal the location of the bomb. Should the state torture the bomber, or allow the deaths of (some number of) civilians to safeguard the rights of their killer? The hit show '24', starring special agent Jack Bauer, has repeatedly used precisely this premise as a means of allowing its anti-hero to engage in torture repeatedly, and nearly always successfully – by breaking the right fingers at the right time, Bauer has saved the lives of countless extras, taking on the moral burden of torture and doing what we, the audience, worry we would not do ourselves. And given the circumstances of the episode, who could argue with him?

If torture is always wrong, then the lives of innocents are transformed into necessary costs for society to pay – a position that is hardly tenable politically since most voters would identify themselves and their loved ones with the victims and not the terrorist. If torture can be justified by its results, then torture can always be justified – simply increase the number of potential victims or the likelihood that the captive is guilty until the correct balance is achieved. The imperatives of necessity make everything licit: John Yoo, former head of George W. Bush's Office of Legal Council argued that necessity could even extend to crushing the testicles of an innocent child in order to make his father talk.4 Necessity trumps all laws, even the Constitution, according to no less a jurist than Richard Posner. (Posner, 2006)

If the debate is between deontology and teleology, between Kant and Bentham, then torture advocates have won from the start: in the absence of any social consensus on which (and whose) rules to follow, arguments that torture can never be justified are themselves unjustifiable. Torture may be wrong, but it cannot be ruled out: it may be the 'least bad thing to do.' (Elshtain, 2004) While individual cases of torture might be attacked as having failed the cost-benefit test of legitimacy, torture itself will be resurrected as a legitimate extension of state power. This choice between the Scylla of existential terror and the Charybdis of a torture-state is false, however: it assumes that torture 'works' without proving anything of the sort. Characteristically, this has meant a focus on whether or not torture has ever worked, with the assumption being that a successful instance of torture can justify a

4 Yoo made this claim during a debate in 2005 with Notre Dame Professor of Law John Cassel. The audio track is readily available online at YouTube: http://www.youtube.com/watch?v=bO2p0KHzypw&feature=related.
torture regime: the classic example of this is the oft-cited case of Abdel Karim Murad, whose torture by the Filipino police “produced self-proving thoughtful information that was necessary to prevent harm to civilians.” (Dershowitz, Understanding Terrorism: p. 137)\(^5\) Just as 'hard cases make bad law,' any justification of torture must rely not on whether torture works or has worked in an individual case, but whether torture can work as an epistemic system. That is, the proper question to ask is not 'can torture ever work?' but 'does torture as a system lead to better information?'

Let us begin by considering how we think of torture as happening. This process is often conceived in dramatic terms as a battle of wills between the interrogator and the captive over who will break first: will the captive yield up the truth which she has (presumably) kept hiding, or will the interrogator end the torture, convinced that the captive does not know anything. This drama climaxes when the captive “breaks” - when the pain become too much, and the captive's will surrenders to the interrogator. This drama of dominance, however, contains within it a curious assumption: how does the interrogator know when the captive has broken? In the drama of popular imagination, the interrogator knows all, and punishes and rewards accordingly: but if torture is geared towards yielding information that the interrogator does not already know, then the interrogator may not recognize the truth when he hears it. Sheila Cassidy was tortured by the Chilean secret police to name the individuals who had hidden her: after several days of torture, she revealed the identities of several nuns and priests. The interrogators refused to believe her, and the torture continued. (Rejali, p. 465)

In a study of lie detection in police interrogations, Vrij et al. (2007) examined how well police officers were able to distinguish truth from fiction while observing interrogations conducted according to three separate methods: accusatory (where the interviewer actively accuses the subject), information-gathering (the subject is asked open-ended questions without confrontation), and behavior analysis (the interviewer observes the subject's body language). The subjects were undergraduate students who either told the truth about a staged game against another subject, or who were given a false statement to present – they were told that if they successfully convinced the interviewer of their innocence, they would win £15. The study found that, while the information-gathering distinguished better between subjects who lied and told the truth, the police officers who observed the interviews performed no

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\(^5\) As is often the case with just-so stories regarding torture, the truth is far more complicated. While Murad was tortured for months after his arrest, during which time he revealed plots to blow up airplanes and assassinate the Pope, the vast bulk of information used to disrupt the plots came from the computer, documentation, explosives and other assorted materials seized during his arrest. Murad's confessions came months after the Pope had visited the country, months after his associates had been identified and arrested. (Lathey, 2007)
better than chance on average, no matter which style they observed. Worse, they were more likely to falsely accuse subjects under accusatory questioning, and more likely to be confident in their false accusations. Since of the three interrogation under torture is most likely to resemble the accusatory approach, this implies that torturers are more likely to believe false information offered by captives than to discount it, and are unable to self-correct due to their higher complacency.

This bias towards false accusations is doubly concerning when we consider the danger of false confessions from the captives themselves, even when the interrogation is not conducted under torture, and where the captive has much to lose from a false confession. A review of 40 overturned murder and rape cases found that 96% of suspects who had falsely confessed gave “surprisingly rich, detailed, and accurate information” that must have been fed (perhaps unknowingly) to the suspects by the interrogating officers. These false confessions were enough, in at least one case, for the jury to disregard exculpatory DNA evidence. Interrogation by police can often mimic the logic of torture as well: when asked why he had falsely confessed, one individual argued “[t]hey were trying to get me the death penalty for something I didn't do … Why should I die for something I didn't do?” (Ibid., pp.1062 – 3) It has been noted as well that a similar logic holds with plea-bargaining: individuals confess falsely in order to prevent a worse punishment under trial. (Langbein, 1978) If innocent individuals can confess falsely and seemingly sincerely – relating a story to the interrogator that, while fitting the interrogators preconceived notions, does not fit the facts – then what prevents a knowledgeable captive from lying to the interrogator, revealing a plausible although false set of information?

Torturers are unable even to rely on so-called 'lie detectors' to help them out in the torture chamber, and it is no mistake that they are not a common adjunct to the torture chamber. Lie detectors do not in fact exist: since truth and fiction are purely abstract concepts, there is simply nothing for a machine to measure. Instead, most lie detectors are at best stress-detectors and are more often a psychological ploy. In fact, lie detectors work only when the subject believes that they work: if the subject is convinced that the interrogator knows when he is lying, then he is likely to tell the truth. This effect can be reinforced by interrogators who ask questions designed to encourage the respondent to lie: a sort of 'control' question. Leonarde Keeler, the great popularizer of the device, asked subjects to pick a card from a deck, replace it, and deny each in turn was his: Keeler would then astound the subject by determining from the machine's readout which card was his. The deck was marked, of course – but it established the critical idea in the subject's mind. (Alder 2002, p. 15) Furthermore, many popular
notions about how liars 'act' – looking away, fidgeting – are unsupported by any evidence, while others are positively backwards: liars for instance blink less. (Mann et al., 2002)

Perhaps the torturer knows the captive speaks the truth because she has 'broken' – but since another's pain is ultimately unknowable, the torturer can only know a captive has broken when she tells the truth. (Scarry, 1985) Pain is a purely subjective experience, and even small children have been known to lie about how much pain they are feeling in order to get what they want. Adults, knowing this, may find it difficult to conceive of another's pain as being real and not imagined or misrepresented. A good example can be found in the story of a right-wing radio show host in the US who subjected himself to waterboarding in order to prove that it is not torture, only to find the experience unendurable.\(^6\) Moreover, pain is not a simple process of addition: a US prisoner of war reported being grateful for otherwise unendurable mosquito bites as a distraction from the pains of torture. (Rejali 2007, p. 448) The essential issue is that torturers cannot even be certain of how much pain they are actually inflicting. In other words, there is nothing in the logic of torture alone that allows this dramatic 'breaking' to occur: the captive may pretend to have broken, and the torturer can have no idea whether or not the pain really was unendurable. The very act of torture lends credence to this potential fraud, as the torturer has done everything in his power to make that suffering unendurable.

The issue is that torture can only work when the torturer can distinguish truth from lies – something he is unable to do on his own, or with the help of technology. There is nothing in the behavior of the tortured to act as a guide either. Instead, the torturer must be in a position to compare the captive's revelations to some alternative body of knowledge: either the stories of other captives, or to empirical facts. Comparing stories is problematic in its own way: the torturer may be in a position to know when two stories are not consonant, but he has no way of judging *a priori* which of the two (if either) is correct. Torture must rely on empirically known information (documents, physical evidence, time-tables etc.) in order to get around this issue – in other words, successful torture is predicated on investigation and verification. Rather than acting as a short-cut for time-pressed interrogators, torture instead presupposes exactly those forms of investigation for which it is meant as a substitute.

But verification is costly, both in terms of the intelligence apparatus necessary to separate truth

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from fiction, and also in the time necessary to do so. This is important, since it is not enough for the
state to be able to verify information – the state must credibly threaten to do so, and to condition torture
on whether or not the captive appears to have lied. If the captive expects to be tortured regardless of
what he says, then he has no reason to cooperate at all. If the state cannot credibly threaten to verify
his story, then the captive is best off revealing information consonant with the torturer's prior beliefs,
regardless of truth. But if the torturer believes that the captive has told the truth, especially when the
information is time-sensitive, then he is best off not verifying once the captive appears to have broken –
making the threat to verify incredible. This is true as well when the state rewards torturers for the
quantity – as opposed to the quality – of information they generate. Torture acts as an inversion of the
lie detector, which only works when the subject believes that it does: torture only ends when the
interrogator believes that it has worked.

In the following pages, I attempt to come to grips with the logic of interrogational torture by
examining it as a rational process and creating an informal model in order to make testable predictions
about how torture operates, when it should be likely to succeed or fail, and what success or failure will
look like. I then test these predictions against three primary cases: the Salem Witch-Trials, the contest
between the FLN (National Liberation Front) and the French army during the Algerian War for
Independence, and the War on Terror. The goal of this exercise is to lay bare the contradictions that
ensnare interrogational torture, and reveal the ways in which the information asymmetries that exists by
necessity – whether the captive knows some useful truth, what the nature of that truth is, and how much
pain the captive is actually undergoing – undermine and harm the state that makes use of it. In this
way, I hope to contribute something to the ongoing debate over whether, and under what circumstances,
torture can be justified by a state under threat: rather than argue that torture is immoral (as it certainly
is), I wish to show how it can become counterproductive. At the extreme, torture in practice stands the
drama of torture on its head: rather than forcing the captive to reveal the unvarnished truth to the eager
interrogator, torture under the wrong circumstances can become a means of transmitting misinformation from the captive to the state. Above all, torture relies on the state having access to
strong information in order to catch the captive when he lies: but this reduces at the same time the
potential for torture to teach the state anything new at all. Torture is simply subject to the logic of
coercion more broadly: the threat of punishment must be credible, and must be predicated on
misbehavior. If the subject can lie and get away with it, then no amount of torture will suffice to reveal
the truth when the subject prefers to hide it.

The next chapter of this book will examine the theory that lies behind my informal model of how torture operates, drawing on the history of torture in the West from ancient Greece to modern times, and outlines the logic necessary to make torture work. The idea is to find the conditions under which torture could work, before examining how well it has worked in the real world. This focus on logic is crucial, because of the nature of torture: the experimental approach is of course impossible, and the fact that states do not publicize their torture regimes (and generally deny their very existence) makes a statistical approach nearly impossible. I argue that torture all too easily becomes perverted, transforming from a means of generating true information for the state into a means to corrupt the state's intelligence apparatus with false information. This results of this process are best exemplified by the deceptive circle, where bad information leads to more bad information, the torture of ignorant captives leads to more ignorant captives being tortured, and the state faces costs in the form of weakened legitimacy, corrupted agents, a loss of investigative abilities, and finally a crisis that ends the cycle of torture as the costs and dangers generated become too great for elites to bear.7 Most disturbingly, this deceptive cycle is not restricted to authoritarian states that torture for purposes of social control: even liberal states engaged in a good-faith hunt for true information, whose interrogators are not sadistic and whose elites are not corrupted are at risk – and increasingly so as torture becomes institutionalized.

The next three chapters consist of case studies, each of which offers insight into how torture actually operates. The first of these case studies centers on the Salem witch trials in order to elucidate a central concept in my model: the deceptive cycle, where bad information drives out good information. It is one of my main arguments that the presence of such a cycle is clear evidence that torture has failed: if torturers cannot distinguish between truth and fiction, then the captive has no reason to ever speak the truth. The fourth chapter considers the case of torture during the Algerian Revolution by comparing torture used by the French in order to eliminate the insurgent National Liberation Front (FLN), and by the FLN in order to locate and eliminate pro-French informants in their own organization. This chapter examines how torture operates when the conspiracy being hunted is real, but

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7 Examples of such elite actions include the outlawing of torture by Phillip the Magnificent of Hesse in 1526, leading to the disappearance of witch trials for 50 years, the end of forfeiture of assets by Bamberg under pressure from the Holy Roman Emperor in 1630; and the end of forfeiture and the requirement for 'outside evidence' by the inquisitor of Spain in 1614. (Currie, p. 24) The end of torture in France similarly stemmed in large measure from pressure on lower courts instituted by the Parlement of Paris in the 1600s. (Soman, 1978)
the cases differ in how well informed the authorities were at the beginning of the torture regime. The fifth chapter examines the use of torture by the Unites State in the War on Terror, differentiating between the sub-cases of Guantanamo Bay, Abu Ghraib, and the CIA blacksites. This case allows us leverage on how the reliability of the torturers affects the outcome: whereas the French were forced to rely on conscripts to torture, the US was able to utilize National Guard, professional military, and CIA experts in its torture regime. The last chapter concludes by arguing that the failure of torture in all three cases is a result of the fundamental information asymmetry that is a necessary part of the phenomenon.
2.1. Introduction

Torture is a shadowy process, cloaked in secrecy by the states that use it. Both political reality and morality forbid the presence of the public scientist in the torture chamber, and no ethically viable experiment could be conducted that would allow us to study coercive interrogation in its fearsomeness. Likewise, the fact that states do not publicize the use of torture, much less its effectiveness in given cases of torture, means that the raw data for statistical regression simply does not exist in a usable form. Crucially, the most important variable in the process of torture, pain, is entirely subjective: even if we could know whether or not a captive was telling the truth, we could not know how much pain it had taken to force the truth from his lips. Consequently, analyzing torture is an indirect process that depends heavily on puzzling out abstractly what torture should look like, and how it should operate. By examining the logic of torture, focusing on how torture should work as a rational process, we can deduce the characteristics of successful and unsuccessful torture. Let us begin by defining torture.

Because of the inherently subjective nature of pain, torture has been a difficult phenomenon to define. Defining torture as a specific set of behaviors runs a dual risk. Firstly, since no list could be complete, any technique not listed could be declared not to be torture by the unscrupulous. Secondly, techniques that would certainly be considered torture under some conditions might not be under others – for example, the application of electric current might indicate torture, shock therapy, or sexual stimulation depending on to and by whom it is performed. Alternatively, defining torture by the amount of pain it involves is dangerous since pain is unmeasurable empirically: adjudicating torture would then become literally a case of the captive's word against the torturer's.\(^8\) Instead, I focus on an instrumental and contextual definition of torture, one that obviates the need for limitation by severity or

\(^8\) The peculiar danger of this definition of torture can be seen in the argument put forward by members of the George W. Bush administration that only pain rising to the level of "death, organ failure, or permanent damage" counted as torture – a definition that allowed such previously uncontroversial examples of torture as waterboarding to be recharacterized as merely 'abuse.' (OLC, p. 38; New York Times 03/04/2008) That waterboarding provides the captive precisely the experience of dying was no problem, since absent death there would be no way of measuring the pain produced.
characterization by method. Torture, in my definition, is the deliberate infliction of pain on an individual or set of individuals entirely at the aggressor’s mercy. There are two main parts to this definition. Firstly, torture is deliberate: if the pain is caused accidentally or unknowingly, then it may certainly count as abuse but cannot be torture. Secondly, and crucially, the victim of torture has no power to prevent herself from suffering the infliction of pain – that is, even if the captive cooperates, the decision to inflict pain resides in the hands of the authority alone. Torture can then be subdivided according to the purpose for which torture is employed: it might be used *inter alia* to enforce obedience, to generate confessions, to demonstrate the power of the state or to gather information, or simply for the sadistic exercise of power over another. This dissertation will focus on torture for information.

By defining torture in this fashion, and by specifying torture for information as the object of inquiry, we are able to obviate the question of how much pain is tantamount to torture, as well as which methods of producing said pain are counted. Pain, whether mental, physical or emotional, is treated the same by the brain and differs only in the amount. (Los Angeles Times, 04/04/2011) Because the amount of pain inflicted must be sufficient to persuade the captive to reveal information he prefers not to, that pain must by definition be unendurable – if it were endurable then the pain would be completely useless, and as such sadistic. The method chosen of producing that pain is similarly unimportant: while the quality of pain differs strongly from act to act, and the perception of pain from person to person, the only thing that matters is the incentive provided to the captive by that pain. It might be argued that torture for information is a contradiction in terms. This is in fact precisely the argument made by the Office of Legal Council (OLC), who argued in their infamous memorandum that an individual would only be guilty of torture if inflicting pain was the “specific intent” of the torturer, and not a side effect of information gathering. (pp. 36-7) The extreme weakness of this argument is obvious in that literally no form of torture that has existed historically would qualify under this definition – even purely sadistic torture is instrumental in that it aims at pleasing the sadist, with the pain inflicted as a side effect. It might also be claimed that the captive under informational torture in fact holds the power to end his torment by revealing the requisite information. This argument is stronger, but is also fatally compromised when we consider that the torturer is under no compulsion to end the torture once the captive has spoken – there is (and can exist) no contract regulating torture with the captive as a party, and even if there were, the torturer would have to believe that the captive had
spoken truly, and fully, before ending the torture. In other words, the torture does not end until the torturer decides that it does – the captive really is at the mercy of the torturer, even when they do choose to reveal the truth. This definition can be expanded to include other forms of coercive interrogation insofar as they mimic the logic of torture. In cases where a captive is given a choice between revealing information (that the authorities may or may not be able to verify) and facing some extreme punishment such as death, we can talk about the logic of torture being fulfilled.

I argue that torture can only work theoretically if several conditions are met. Firstly, the conspiracy that the state uses torture to combat is real. If the state is chasing phantoms, then it is highly likely to find them – torture would be applied only to those with no real information to give, and the end result would be that any noisy verification system would simply result in a deceptive cycle. Secondly, I argue that the authorities engaged in torture must be capable of verifying the information revealed under torture. As we saw above, there is little support for the idea that torturers can parse truth from fiction on their own, and the technological means for doing so simply do not exist. Absent such ability, the authorities cannot know when the captive has lied, and so the captive has no incentive to tell the truth. Thirdly, the authorities must be credibly able to commit to verification, otherwise the captive is best off lying and counting on the authorities to simply believe him. Lastly, the agents of authority must be reliable: if the state rewards the torturer for the quantity – and not the quality – of information educed, then the torturer will have no interest in forcing the captive to speak truthfully, and in the case of ignorant captives would have a positive incentive to force them to lie. Unless the state is capable of satisfying all four conditions, torture cannot work: and when torture fails, it may result in a deceptive cycle that undermines the state itself.

In order to make this argument, I proceed as follows. The next section of this chapter examines the history of torture in the West as a phenomenon, noting how torture was believed to operate, and how it worked in practice. I examine torture among the ancient Greeks before moving to the reintroduction judicial torture in the early Renaissance and its eventual abandonment during the Enlightenment. From there I examine the rebirth of torture during colonialism and the rise of the anti-liberal states (both fascist and communist) in the first half of the twentieth century, and conclude with the rise of the international anti-torture regime during the final years of the Cold War. As we shall see, in all cases torture was inextricably linked with intelligence gathering: torture was more likely to occur in eras and cases where empirical evidence was hard to come by or utilize – and where the ability to
gather such evidence was strong, torture has tended to fall by the wayside. The third section examines
the phenomenon of torture from both a psychological and rational standpoint, and argues that the
psychological evidence to date provides little reason to believe that torture works (undermining the
Cognitive Failure and Animal Instinct models), leaving rational choice as the necessary framework for
examining torture. The final section outlines a model of the logic of torture as a process of gathering
information, and teases out the implications. I conclude by listing the basic predictions that this model
implies, as well as the cases I examine in the following chapters: the Salem Witch-Trials of 1692, the
experience of the French army and the FLN during the Algerian War of Independence, and the use of
interrogational torture by the US military during the War on Terror. As we shall see, the result is a
model that shines a peculiar light on the 'ticking bomb.'

2.2. A History of Torture

Ancient Torture

The concept of using torture as a means of revealing the truth is not new. The practice dates
back at least to ancient Athens, where torture was inextricably intertwined with slavery. Torture and
other forms of corporal punishment were part and parcel of a slave society: because slaves do not own
property, they cannot be fined; because slaves are owned by masters who rely on them for labor,
imprisonment imposes costs on the master rather than on the slave. Consequently, only physical
coercion (frequently scarring in nature) could be used to discipline human property.9 However, torture
also had a positive place in the law – as a means of allowing slaves to participate in the legal process.
Slaves, because they were not part of the polity, could not give free testimony before the jury without
creating the unsettling possibility that a citizen might be punished on the testimony of his own slaves.
And yet, slaves (as members of a private household) were often in a position to know the facts of a
case better than most others. This conundrum was by-passed by allowing the admission of testimony
by slaves (and foreigners as well) only under torture (Bonner, 1905). A participant in a lawsuit would
ask the slave's owner for permission to put the unlucky servant through the Basanos (touchstone), a
system of regulated torture where the questions to be asked are specified in advance by both parties,
and where the owner would be compensated if the slave were to suffer permanent disability under
duress.10 That the testimony of slaves was actually privileged above that of free citizens can be seen in

9 Ruthven, 1978, p. 41
10 The very term βάσανος is itself an indication that torture and truth were seen to go hand in hand as far as slaves were
the arguments of many Athenian litigants, and this privilege was based on the idea that, whereas citizens might lie if they thought they could get away with it, slaves under torture could only tell the truth.

The theoretical underpinnings of this system are provided by Aristotle in his *Politics*, while defining what a slave is: “He is by nature a slave who is capable of belonging to another (and that is why he does so belong), and who participates in reason so far as to apprehend it but not to possess it; for the animals other than man are subservient not to reason, by apprehending it, but to feelings.”11 The juxtaposition of slave and animal is not accidental: slaves are assumed to be lacking in reason, which is why they are not free, but may be motivated to tell the truth as an animal is motivated to pull a plow, through sensation and particularly through pain. Another way of understanding this reasoning is to say that a slave, lacking reason, cannot lie while under torture – he hasn't the wit to do so (duBois, p.66). This is the view of torture described by Arrigo (2004) as the “animal instinct” model. And yet even Aristotle, no foe of slavery, recognized the possibility that torture could not guarantee truth – that the slave was not a simple mechanism to be activated by pain, but might withstand or even turn torture to his advantage.12 The essential problem lay in the porous boundary between the slave and the citizen in a non-racialized slave society, where slaves could buy their freedom and citizens (through capture in war) could become slaves. Torture was a marker of social status, the watchman on the walls separating freedom from slavery. Slaves could be tortured, citizens could not.13 The fact that torture was used explicitly as a means of finding the truth in a lawsuit does not change the fact that such a process depends on slaves finding themselves forced into truthfulness under circumstances where all agreed that free men might lie. And because the line between slave and citizen was permeable on both sides, such an assumption could not but be chimerical: if there is no essential (but only legal) difference between the free and the enslaved, then how could such an assumption hold? Here already we can see one of the main aspects of a system of torture for information: there must exist some fundamental difference between those on whom torture can be used, and those on whom it is assumed to be concerned. For more on the evolution of this term, see duBois (1991).

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13 The ambiguity reflected in the writings of Aristotle on the usefulness of tortured testimony is appropriate in a non-racialized system of slavery: any free man might be made a slave, if captured in war, while slaves might become free through manumission. In such a society, where freedom is never entirely assured, torture was a way of reifying the distinction.
ineffective. Something must prevent (or make unlikely) the possibility that the person under torture will lie to stop the pain.

**Judicial Torture**

The use of torture was a constant under Greek and Roman rule in the West until the coming of the dark ages. From the fall of Rome until around 1215, other judicial processes replaced the reliance on the Basanos, in particular compurgation (where the defendant is 'proven' innocent if he can round up enough people to swear his innocence, the number required determined by the severity of the crime) and the trials by ordeal (where the hand of God would reveal the innocent by protecting them from harm).

With the rediscovery of Roman law by the northern Italian city-states around 1070 a system of legal proofs was established that regulated when a conviction might be obtained, and on the basis of what evidence – this system would eventually supplant trials by ordeal after the promulgation of the 18th canon during the fourth Lateran Council in 1215. (Baldwin, p. 613) For capital crimes, the judge had to have a full-proof: the sworn testimony of two eye-witnesses, or a free confession from the accused. (Langbein, 1978, 2004) Because eye-witnesses were scarce (especially in cases of murder), judges came to rely more heavily on confessions, and this for the most part meant utilizing torture. This reliance on torture for confessions did not stem from any necessarily sadistic impulse on the part of the lawyers: rather it derived quite naturally from the inability to condemn a person on the basis of circumstantial evidence.

This latter point is most easily verified from the fact that the English system then in use, based not on the Roman law but on trial by jury, did allow for conviction through circumstantial evidence; and in this system torture was neither necessary nor often utilized.

Confession was seen not merely as a way of securing the truth, but also as a means of reforming the captive before execution – of getting the condemned right with God. (Ruthven, 1978) Because of this religious emphasis on the truth, this system was embedded within a constantly evolving system of regulations intended to prevent false confessions: forcing the innocent to perjure themselves would not only mean the destruction of innocent life but also the eternal damnation of the captive, who had committed the sin of lying under oath. It very quickly became apparent, however, that torture could be

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14 Ruthven, 1978
15 Langbein 1978, 2004
16 It is for this reason that Blackstone could credibly argue that the rack in England was “an engine of state, not of law.” (Blackstone “Commentaries on the Laws of England” vol. iv, p. 321). Furthermore, Lowell (1898) argues that the trial by jury strongly discouraged the use of torture on a judicial basis – a tortured man could easily renounce his confession in open court, where a jury of his neighbors would be unlikely to send him back for more, “for a jury would be very differently affected by such a scene than a body of magistrates hardened by dealing constantly with criminals.” (p.292)
used to extract confessions from anybody, regardless of guilt. In response, a complicated series of safeguards were established to prescribe exactly how, for how long, and under what conditions torture could be applied so as to minimize this unsettling possibility. Interestingly, these restrictions held out the possibility of successful resistance for the captive – if they could hold out long enough, they might establish their innocence in the eyes of the law, or at least prevent conviction. In a sense, this conception of torture still relied heavily on the old Ordeals that it had replaced: God was expected to provide the innocent with strength to hold out, while the image of eternal torment prefigured by the rack would spur the guilty to a confession that would be good for the soul, if not the body. (Welling, p. 210) Consequently, this system actually saw relatively low (and falling) rates of confession through the 17th Century (although the proportion of false confessions is indeterminable). (Silverman, p. 182; Soman, 1978)

One of many texts purporting to regularize the use of so-called judicial torture is the *Tractatus ad Defensam Inquisitorum* ... published in 1612 by Italian jurist Sebastian Guazzini.\(^7\) Torture was restricted in terms of the rank of the person under question (again, we see the use of torture as a social marker), when torture can be applied (only in the presence of *corpus delicti*, for high crimes punishable by the death penalty or maiming, or when the truth cannot be known through any alternate means), the length of questioning (“Torture cannot be repeated more than three times on the same subject”), and the days on which torture can take place (never on a feast day). Most crucially, jurists were emphatic that the judge cannot ask leading questions, or ask about crimes which have not yet been committed, or demand the names of accomplices. That jurists often went far beyond these regulations is apparent from the frequency with which they were set down: rules promulgated by Eymericus (*Directorium Inquisitorum*, late 1300s), the *Bambergensis* (1507), and the constitutions of Charles V (the *Carolina*) in 1532 and Maria Theresa (the *Theresiana*) in 1769 all reveal a similar concern with regulating and standardizing torture in order to prevent its abuse.\(^8\)

One example is particularly instructive regarding the problems of regulating torture, even where torture is not illegal. The ordinance of 1670 in France proposed to make the infliction of torture standardized throughout the nation: to this effect, an attempt was made to describe precisely which methods were to be used under which circumstances. This attempt was opposed, however, by a M. Pussort, a member of the committee, who argued that “it would be difficult to make torture uniform ...

\(^7\) As quoted and analyzed in Welling, 1892.
\(^8\) Ruthven, 1978
The description which it would be necessary to make of it would be indecent (sic) in an Ordinance...”

Even when torture is the law of the land, policing it is problematic when there might be people watching.

While torture could theoretically only be applied when there were so-called indicia (indications) of probable guilt, even this protection for the accused was liable to be entirely foregone in cases of heresy and witchcraft, and other conspiracies. Church canon in the middle ages defined heresy as the equivalent of treason. This followed from the divine right of kings, where the legitimacy of the monarch flows from notions of having been appointed by God, as evidenced by the papal blessing officially necessary to rule before the Treaty of Westphalia. A heretic was therefore not only a rebel against the Catholic Church, but against all secular authority deriving its right to rule from that Church.

Singled out for specific reprisal were the Waldensians and the Albigensians:

After further appeals to the pope had failed the heretics [Waldensians] were anathematized and excommunicated, and subjected to increasingly severe persecution. From the 1190s onward they were the objects of the first medieval legislation against heretics, subjecting them to all the penalties of traitors and outlaws, with the additional horror of death by burning. (Ruthven, p. 84-5)

In the case of the Albigensians, the threat to the medieval papacy went far deeper than mere heterodoxy. These created a whole rival priesthood, and were supported politically by one of the more powerful warlord-houses in Europe: Count Raymond VI of Toulouse and his sons. While the Inquisition which followed the Albigensian crusade focused officially on reclaiming souls for the Church and on extirpating the practices that led them astray, the Inquisition very quickly found itself relying on torture in order to produce confessions (necessary for salvation) as well as denunciations of other heretics.

This focus on confessions was the result of a more general change in how heresy was understood by the Church: whereas previously the Church had focused on the leaders of heretical movements, and had considered the laity to be sheep who had strayed and would return to the fold without leadership, by the early 13th Century the Inquisition feared that heretical beliefs by the laity would maintain heretical movements even in the absence of a heresiarch. (Arnold, 2001) But if individual beliefs were the proof of the crime of heresy, then there would be no way to identify criminals except through confession and denunciation – and torture would be the tool to extract them.

By compelling testimony about overlooked heretics, the Inquisition had created a vicious circle of

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19 Ibid, p. 60
torture, denunciation, and new torture, producing an ever-widening pool of suspects. That the noble and wealthy who confessed to heresy could be stripped of their fortunes did nothing to reign in the abuses in the system. Eventually:

[...]he introduction of torture led, within thirty years, to a new reign of terror such as Languedoc had not seen since the days of the Albigensian Crusade. Since every heretic suspect was obliged to denounce several others, eventually almost every member of the population found a place in the Inquisitors' books. (...) Since the heirs of those posthumously condemned as heretics were automatically disinherited, no moderately prosperous family in the region could feel entirely safe, however firm its orthodoxy. (p. 95)

The great Witch Hunts on the continent during the 16th and 17th Centuries similarly devolved into cycles of denunciations through torture, with similarly pernicious effects on the social fabric. Interestingly, the same year that saw the official end of Church support for the Ordeal also saw the Church explicitly deny the reality of witchcraft, viewing it as a delusion of afflicted women. (Currie, p. 9) The publication of the *Malleus Maleficarum* ("Hammer of Witches") by two German priests in the 1480s marked a turning point – the Church began to believe in the reality of witchcraft, and inquisitions were empowered to seek out and eradicate this threat to the divine order. A crucial argument made by the *Malleus* is that witches were not merely those using magic to harm their neighbors – the traditional and folk understanding of witchcraft – but were instead part of a grand conspiracy with Satan to undermine and overthrow God's Church (and the governments that Church upheld).\footnote{Witchcraft had to be a compact with the Devil in this view, since only supernatural beings could do magic, unlike humans, and such maleficient magic could not originate with God. (Malleus, p. 7) That this compact necessarily struck at the foundations of civilization flowed from the fact that the witch was obliged to do everything possible to help the Adversary – whose one and only goal was the destruction of the Church. Consequently, witchcraft was “high treason against God's majesty.” (p. 6) These references are taken from the 1928 translation of the *Malleus* by Rev. Montague Summers. The full text can be found online at [http://www.sacred-texts.com/pag/mm/](http://www.sacred-texts.com/pag/mm/).}

With the acceptance of this doctrine, it followed that all witches were part of a common organization. The impossibility of convening any great number of witches in one place at one time given the low level of transportation infrastructure was explained by the concept of the sabbath: the devil would use his powers to transport witches (either physically, or mentally) to a single meeting ground for their satanic rites. Thus, witches could be made to identify their fellow malefactors under torture, and only by doing so could they hope to avoid further torment. (Ruthven, 1978) Unsurprisingly, many confessed and fingered others and the process would be repeated until some crisis of confidence struck the witch-hunters, or the accused began to turn their accusations against the
powerful themselves. While historical records are obviously lacking, estimates of those killed in the course of the witch-hunts between 1484 (the year when Pope Innocent VIII reversed the Church's traditional stance that witch-craft per se did not exist, opening the flood gates on witch-hunting) and 1660 range from some 50,000 to half a million innocents. (Golden, p. 413; Nachman, p. 328) The witch trials in Scotland provide an excellent example of how even supposedly clean forms of torture can feed this vicious circle: in the course of some 90 years (1590-1680) around 4,400 people were consigned to flames by confessions procured not through the rack, or the thumb-screws, but by sleep deprivation. (Rejali, 2008)

What set the inquisitions against heresy and witchcraft apart from other examples of judicial torture was the fact that these were crimes whose evidence could only exist in the minds of the malefactors themselves, and where the belief in a conspiracy meant that anyone, no matter how virtuous seeming, could be guilty of the crime. Furthermore, in many cases the inquisitors and interrogators themselves possessed a financial incentive to ensure conviction, since the property of the accused was often used to pay for the expenses of the trials. Finally, in contrast to the English jury system, which relied on individuals bringing private actions against suspected witches, the inquisitions were empowered to sniff out witches at their own discretion. Consequently, the demand for witches created its own supply, as the witchcraft trials throughout the continent and in Scotland led to a widening circle of denunciations which not infrequently touched the wealthy, and even those in the elites who were too publicly against the trials, or not considered zealous enough in their prosecution. (Currie, 1968) There are two major implications regarding how the deceptive cycle of torture for information operates: firstly, the search for information that – by its very nature – could not be judged empirically provided the opportunity for the use of torture to spread virally; secondly, the incentive structure of these inquisitions made this cycle a necessity, as the confiscations that attended confessions enriched both torturers and authorities alike.

The end of judicial torture is often credited to the authors of the Enlightenment, who quite strenuously objected to torture as a medieval relic in an era when man's control over nature through science had far outstripped his previous capacities. The names of Voltaire and Beccaria in particular

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21 See Currie, 1968; Somans 1978. A similar phenomenon is reported to have occurred during the great purges in the Soviet Union: the case of the Doctor from Kharkov is modeled by Grossman (1994) as a repeated prisoner's dilemma where the game is transformed by implicating some group too large to be done without in society: in the good doctor's case, this meant naming every doctor in the city of Kharkov. When the interrogator balked at rounding up the entire medical community, the doctor wrote a letter to Comrade Stalin, denouncing the interrogator as a counter-revolutionary.
are often praised in this regard. However, as Langbein (2004) makes clear, torture did not end all at once, or even as a direct result of these fine humanists' arguments. The problems with torture identified by Beccaria in his “On Crimes and Punishments” (1764) were nothing new – jurists had spent the last 500 years attempting to grapple with just these issues through greater regulation. However, torture as a means of judicial interrogation could not be done away with until some new system could replace the old system of proofs taken from the Roman law. Interestingly, this new system was in fact a reform of the old one. By the 1700s, the power of the European state had developed enough that gathering information had become a serious possibility in criminal matters. With greater ability to identify malefactors through evidence-gathering, the state no longer needed to impose the death penalty to overawe the public, but could rely on less brutal punishments more frequently administered. With the secularization of the state, the need to punish heresy and witchcraft declined as well. Finally, the acceptance of empirical evidence, rather than a single-minded focus on confessions, as well as the ability to administer lesser punishments than the death penalty led the practice into final decline. (Langbein 1978; Silverman, 2001; Chen, Tsai & Leung, 2009) In this way, we can see how the processes of state-building identified by Foucault (1975), that is, the movement from punishment to discipline, intimately linkes the birth of surveillance to the decline of torture. By the late 1800s, scholars such as Welling (1898), Headlam (1892) and Lowell (1897) could reflect that torture was a mere relic of barbarism, destined for the ash bin of history.

**Modern Torture**

And yet torture did not disappear. With the abolition of judicial torture, physical coercion began a process of bifurcation. New techniques were invented, and older ones reclaimed, that offered the benefits of torture without the incriminating physical evidence. These so-called 'clean' techniques first became widespread, not in autocracies (who had little to fear and much to gain from a widespread public fear of the power of the state) but in democracies: in particular in France, Great Britain and the United States.\(^{22}\) These techniques were by and large taken from existing forms of torture that had been developed earlier, but their adoption by democracies points to one possible explanation for their spread across the world by the late 20\(^{th}\) Century. Democratic states recognized that official torture, as an historical mark of social inequality, had no place in a liberal society, and this gave them much to lose from a reputation for torture. And yet, torture was to continue. By adapting clean techniques (often

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\(^{22}\) Rejali (2008)
known by the misnomer 'torture-light'), states could continue to torture while preventing the scars that acted as evidence of state criminality. Rejali (2008) makes an argument that is in many ways analogous to Fearon's (1994) notion of audience costs: where the state has some reason to fear the reaction of some audience (national or international), clean torture offers the state the benefits of discrete coercion. These techniques (both new and old) should be quite familiar to the reader with a passing acquaintance of recent history. They include sleep deprivation, forced standing, near-drowning (also known as 'water boarding'), the falaka (beating on the soles of the feet), and above all electricity (whether by magneto, TASER, or cattle prod).

While these clean techniques were first adopted on a systematic scale by democracies, the creation of an international human rights regime in the 1970s led many (and currently, the vast majority) of autocratic states to cashier the older, scarring methods in favor of torture that leaves no marks. (Ron, 1997). Similarly, we can see a clear pattern regarding the decision to use scarring versus non-scarring torture: where audience costs are higher (inside of democratic polities, areas closely observed by international human rights monitors, against social elites and ethnic majorities) the use of clean techniques prevails; where the audience costs are lower (in colonial situations, areas close to war-zones, when the targets are despised social or ethnic minorities) scarring techniques become more likely. An interesting example of this process is identified by Ron (2000), who compares the use of state violence by Israel in the West Bank and in occupied Lebanon. In Lebanon, where the Israeli military had strong controls on the media, the recourse to killing and maiming was strong, while operations in the West Bank were far more restricted. In interviews with members of the Israeli Defense Force (IDF), Ron reports responses long these lines:

“In Lebanon, we would just shoot at whomever we saw walking along ravines at night,” while in the West Bank, “it was really complicated; there were long and detailed 'open-fire rules' and all kinds of orders about what you could and could not do. You can't just kill an Arab in the West Bank without being able to at least make up an excuse.” (...) “Why does everyone talk about human rights in the [occupied] territories? If I had done the same thing in Lebanon, would anyone ask questions?” (Ron, 2000 p.452)

Similarly, at the beginning of the first intifada, Israeli soldiers would use beatings and bone-breakings that were easily identified after the fact: after the scandal surrounding the incidents at Beita and Hawara, where Palestinian youths were taken out to a field, their arms and legs systematically broken, the IDF moved towards 'clean' interrogations.23

23 For more on this episode, see Conroy (2001)
The most famous examples of the use of these techniques, to the Western mind, come from the Soviet show trials during Stalin's great purge and from torture inflicted on American POWs during the Korean War by the People's Liberation Army. While Rejali makes clear that these clean techniques were far from the norm in the USSR and PRC, their use in these instances is instructive. In both cases the Communist states were interested in confessions that did not appear to have stemmed from torture: the 'Trotskyites' and 'counter-revolutionaries,' because so many of them were high level Bolsheviks with strong claims towards political legitimacy, had to be seen to be convicted on their own confession in a more-or-less open court; similarly, the seemingly spontaneous denunciations of American 'war crimes' were crucial for Maoist propaganda. Western observers, at a loss to explain these denunciations, assumed that the Communists had perfected the art of brain-washing. Had they known their history better, they might have realized that these techniques had been used in the great witch-hunts, as well as by French and US troops in Viet Nam, by American soldiers during the Philippine Insurrection, and by the UK, French and US military against their own soldiers. (Rejali, 2008)

Torture was not used in all circumstances, however. Its use was primarily restricted to those considered outside or beyond the polity: African Americans in the United States, colonial subjects in the various European empires, and political dissidents in Communist states. Secondly, torture for information tended to be used in precisely those circumstances where the state would be least able to make use of its investigative powers. The search for conspirators against socialism, whether real or imaginary, depended heavily on denunciations under torture since there was often little evidence in an individuals actions that would incriminate them – such is the nature of 'conspiracy.' The use of torture by American police forces in Chicago and other major cities in the 1920s, and among native police of the British Raj in India took place in the context of officers who had little regard for empirical gathering of evidence, and who faced organized criminal activities, or who simply lacked the desire to substitute the hard work of investigation for the quick work of “rubbing pepper dust in some poor devil's eyes.” (Rejali, p. 456) Torture in Viet Nam, Algeria, the Philippines, Palestine and other colonies took place in the context of minority rule over a potentially hostile native majority, who could not be counted on to offer up information on their own accord. The use of torture against slaves in the American South in order to discover potential insurrections fits this pattern precisely. Lastly, torture (and other forms of coercive interrogation) tend to be used in systems that valorize confessions over other forms of proof, such as in present-day Japan. (Rejali, pp. 51-5) That torture is used so often as a
substitute for intelligence gathering will be of crucial importance when we consider how torture's effectiveness can be modeled.

As we have seen from the use of torture in this brief historical survey, coerced intelligence has tended to be used where information is difficult to come by otherwise. The ancients tortured in order to find information in court cases that citizens could not be trusted to reveal on their own, because it was assumed that slaves were generally incapable of lying under torture: this assumption however was betrayed by the fact that slaves often did lie under torture, as was recognized even by Aristotle. (*Rhetoric*, Book I, Chapter 15) Judicial torture was far more alive to the possibility of false confession, and gallons of ink were spilled over the centuries trying to limit that outcome – enough that torture in general cases appears not to have led to convictions in large numbers. Where the use of torture was tied to the investigation of conspiracies, however, with their resultant lack of empirical half-proofs and need to discover unknown accomplices, these restrictions quickly went out the window, leading to widespread torture and confessions in a vicious cycle that would only end when elites called a halt to the proceedings, generally as the instability caused by large numbers of denunciations began to become unbearable. Torture was eradicated as a normal part of judicial proceedings only when the state's ability to gather empirical evidence made confessions unnecessary. In modern times, we have seen that torture has been utilized as a substitute for investigation in situations where this ability is hampered by a lack of community cooperation, a police force that places more emphasis on confessions than on empirical investigation, or where the crime under investigation is secretive to the point that empirical evidence is hard to come by.

Therefore, torture has tended to be characterized by the following dilemmas: firstly, torture relies on the guilty and/or knowledgeable victim being more likely to confess or reveal information in the face of pain than the innocent/ignorant victim, but the point of torture is to make everybody talk; secondly, torture is often used as a substitute for empirical investigation, but when the fruits of torture cannot be judged empirically the captive is free to say anything. These dilemmas strike at the heart of torture for information, and make its use not only unstable, but potentially exceedingly dangerous for the state that uses it: the state's investigative capacity alone provides the necessary leverage to make the knowledgeable victim speak the truth, and prevents the state from believing the necessary falsehoods of the ignorant. Furthermore, even in cases where the state can make use of its investigative capacity, it faces potentially insurmountable pressure not to do so – even if we assume (heroically) that
there does not exist any agent-principle conflict between the interrogator and the state whose will he carries out in the torture chamber. To support this argument, it is now necessary to consider how to think about torture, and what recent scholarship has to say on how it operates.

2.3. Conceptualizing Torture

The lack of a relevant literature examining the utility of torture directly should come as no surprise. States have little interest in publicizing the messier aspects of coercive interrogation, especially those who are signatories to the Geneva Conventions and the United Nations conventions against torture. Previous research has indicated that states, even autocracies, have changed their methods of torture from scarring towards 'clean' techniques as a means of evading detection by the international human rights monitoring regime (Ron, 1997; Rejali, 2008). Even where states are explicit in the use of coercive and abusive tactics, very rarely are these practices pronounced by the name of torture. (Levinson 2004, Ch. 1). Instead, states have used euphemisms such as 'torture light', the 'third degree', 'verschärfte Vernehmung' ('sharpened interrogation') and 'information education,' have argued about how 'severe' the suffering induced must be to count as torture; and that techniques that do not leave scars are less problematic than those that cause permanent damage.

This reluctance to be too specific is matched by the rarity with which states detail what techniques can be used: even the Third Reich, famously unconcerned with international legitimacy, provided few explicit instructions on how (scarring) torture was to be used. The 1942 directive from Gestapo head Heinrich Müller, which expanded on the licit techniques from an earlier 1937 directive, authorized only “beating, sweating, and exhaustion exercises.” (Rejali, p. 94) Given the tapestry of survivor testimony detailing the use of whips, electricity, and the extraction of fingernails, it is clear that whatever utility the Nazi regime found in the use of torture, it found no utility in detailing exactly what was to be expected from its interrogators. This reticence to be too explicit about how torture is done is not a relic of the modern age. As we have seen, describing torture, even when it is legal, “would be indecent (sic) in an Ordinance...”

Even when torture is the law of the land, policing it is problematic when there might be people watching.

24 One pivotal exception is the instructions given to French interrogators during the Battle of Algiers: “[Y]ou have a right to water and electricity.” Rejali, 2008. p. 161
25 Due to the lack of documented evidence of a state-led torture policy, the Tribunal was able to convict one single defendant of torture – Ernst Kaltenbrunner, for torture conducted in the concentration camps. (ibid.)
26 Ruthven 1978, p. 60
This lack of good data on torture takes pride of place in the Intelligence Science Board's recent report “Educing Information.” This project represents an admirable attempt to come to grips with the problems for accurately assessing how well torture performs as a means of gathering intelligence. The essays examine torture from several different perspectives, examining the behavioral, psychological and technical underpinnings of torture. Consistently, the authors report that their investigations are hampered by a lack of relevant data. Perhaps most crucially, the report notes that “although some interrogators are formally trained in the techniques, there is no evidence that those techniques actually do what they are supposed to do.” (Intelligence Science Board, p. xix) Because of this lack of direct evidence, most investigations of torture have tended to focus on indirect examination. Research has consequently focused on the question of how well interrogators are able to distinguish truth from falsehood (Hazlett 2005), on technologies for detecting falsehoods (Heckman and Happel, 2005), on the applicability of law enforcement interrogation practices (Neumann and Salinas-Serrano, 2005) and negotiation theory (Shapiro, 2006) to intelligence-gathering, and on the historical record of interrogation practices in the United States (Kleinman, 2006). Again and again, the scholars find little reason to feel secure in the effectiveness of torture, and considerable reason to distrust it. Mechanical methods of detection of lies are unreliable and atheoretical, but detection by individuals is subject to *a priori* beliefs about what liars look like that are often culturally determined, easily gamed, or simply wrong. Captives are highly likely to resist direct questioning, but coercion can easily increase their willingness to resist. Disorientation may make the captive more willing to talk, but can also impair their ability to speak the truth.

In his 2008 text entitled *Torture and Democracy*, Darius Rejali provides an interesting indirect test of torture's efficacy: he examines by which mechanisms torture techniques have spread, and derives from these his 'craft hypothesis'. He argues that torture is a craft (as opposed to a science), meaning that it is governed not by an empirical process of testing and weeding out of underperforming techniques, but whose forms are rather determined by historical memory, by which implements are to hand, and by unsubstantiated beliefs in which forms 'work'. The fact that torture techniques do not appear to have become more refined with the passing of time (except insofar as the 'newer' techniques are harder for monitors to detect) thus stands as evidence that states are less concerned with the theoretical underpinnings of coercing the truth from recalcitrant suspects than with ensuring that the
pains inflicted are sufficiently painful. If we assume that states are rational actors engaged in a search for true information, then we are hard pressed to explain the fact that these states have not apparently worked to ensure that the tortures they use actually provide truth. Torture has evolved under pressure, but not in the direction of greater effectiveness from an intelligence gathering standpoint.

If direct and indirect empirical investigations are problematic and limited (at least at this point in time), then how are we to identify how torture might work? There are two major paths towards explaining torture: the first is psychological, the second rational. Psychological approaches examine the effects of torture on mental processes – the ability of torturees to remember and reveal true information. The results have not been comforting for proponents of torture. In a review of recent findings on the effects of stress on memory and other neural functions, Shane O'Mara (2009) reports that torture (and other forms of traumatic stress) can have the affect of impairing a subject's ability to recall information from long-term memory – where the information sought by the state is most certainly kept – as well as of impairing a subject's ability to learn and of limiting the subject's ability to separate truthful memories from implanted fictions – an effect known as confabulation. In other words, torture might well give with one hand while taking with the other: the greater the pain, the greater the captive's incentive to talk, but the lesser the captive's ability to cooperate usefully. Techniques in this vein would include extended solitary confinement, truth serums, sleep deprivation, as well as 'brain washing'. Interestingly, these techniques were investigated by the Central Intelligence Agency in the aftermath of the Korean War. During this conflict, military and intelligence leaders were shocked to see American POWs confessing on camera to committing war crimes. What was so disturbing was the fact that the POWs exhibited no signs of torture, and the confessions (which were untrue) were seemingly voluntary. The truth was far more prosaic: as reported by the Wolff-Hinkel report (1953), the Chinese had simply made use of techniques “known to police systems all over the world, and many of them are still in use at the present day.” (Rejali, p. 69) Similar experiments attempting to use sensory deprivation as a means of breaking down and recreating psyches resulted in little of use for interrogators: personalities could be broken down, but could not be remade. (Rejali pp. 370-1) Research on 'regression' – whereby the subject is kept in total isolation until the mind begins to weaken, leading to an identification with authority figures, as well as a desire to please them – has

27 In this sense, we may have been mistaking the trees (torture) for the forest (pain). More on this distinction below.  
28 The relevant citations are from Kim and Diamond (2002), Ulrich-Lai and Herman (2009), Arnsten (2009), Nutt and Malizia (2004), Sauro et al. (2003), Turner et al. (2008) and Morgan et al. (2006).
found that the procedure can cause subjects to want to talk, but that this same process also degrades the ability to remember and communicate information accurately. (Kleinman 2006)

The problem, for our purposes, of making use of the psychological mechanism lies in the lack of any clear model of the mind, and how it can be expected to operate under conditions such as torture. This problem shows up most clearly in the case of regression: while we can empirically see that regression causes a desire to cooperate with the interrogator, it is far more difficult to determine whether or not compliance results in the divulgence of accurate information. Sleep deprivation stands out in this regard as well. In the witch trials in Scotland (1590 through 1680), an estimated 4,400 people confessed to witchcraft under the effects of sleep deprivation – these victims were subsequently burned at the stake. (Rejali, Ruthven 1978) What is striking in this episode is that here we have an example where many of the unknowns regarding torture are answered for us: the subjects were innocent, since there is no such thing as witchcraft, and the method used was standard. And yet, those subjected to torture were willing to invent, out of whole cloth if necessary, damning evidence that they must have known would doom them to a painful and shameful death. Clearly, if torture is to be understood as a means of gaining truth, the Scottish witch hunt must be seen as an indication that psychological procedures are capable of sowing false information.

If we are to leave aside the psychological mechanism, then how are we to understand torture as a process? We are left with a rational explanation: the captive is subjected to torture until their suffering is intense enough that it overshadows (in the utility calculations of the subject) the desire to withhold information. Wantchekon and Healy (1999) provide an example of what such an approach would look like. They examine torture as a game: a set of players choose among a set of actions, and choose those actions that make them best off given the other players' response. Their model focuses on when torture ends, and is based considerably around confession-based coercion: the torture takes place not to gain information per se, but rather to gain the captive's consent to the narrative put forward by the interrogator. The major variable they examine is the 'type' of torturer: professional (dislikes causing pain), zealot (cares nothing about inflicting pain), and the sadist (who actively enjoys the act of torture). In this model, the state is only able to benefit from torture because the captive is incapable of lying – a heroic assumption that ignores a crucial element in how torture operates in the real world. Chen, Tsai and Leung (2009) present a game theoretic treatment of judicial torture, arguing that even where torture has no ability to distinguish between the guilty and the innocent, that judges, in the
absence of an investigative apparatus, are best off torturing as doing so results in a greater number of guilty captives being punished, even if this is at the cost of tortured and imprisoned innocents. Arrigo (2004) argues that torture, however conceived, is not useful due to the unintended inputs and outputs necessary to make it work: for example, the need for trained medical personnel to prevent the captive from dying or going unconscious during questioning, or of creating a professional cadre of torturer's who must be separated from society, with all the dangers for a democratic government that his entails.

My approach differs from Wantchekon and Healy in that torture, as a process for generating information, is necessarily marked by an information asymmetry between the captive and the state: not only does the state lack knowledge of whether or not the captive is knowledgeable, it also cannot necessarily tell whether the captive's information (when he speaks) is true or false. I differ from Chen et al. in examining torture for information, and not judicial torture: the state seeks not simply a confession, but information that it intends to use, potentially in further torture proceedings. Finally, I differ from Arrigo, in holding that torture, no matter the necessary indirect costs associated with its institutionalization, cannot be considered useless unless there exists something in the torture process itself that injures the state that uses it – otherwise, apologists for torture would be able to argue that torture simply needs the correct institutional setup and safeguards in order to work correctly. For arguments against torture to succeed, it must be shown that torture fails at its appointed task – systematically gathering useful and true intelligence for the state that utilizes it.

### 2.4. A Model of Torture

Let us begin by considering torture as a rational process, as an informal game with two players: the captive and the state. The state holds in its power a captive who may or may not have intelligence that the state desires, and it is assumed that the value of the information is zero-sum for the captive and the state: whatever the value of the information the state gains, the captive loses by an equal amount. The captive is faced with a choice to either reveal information to the state, or keep silent – however, the knowledgeable captive can choose to reveal information that is either true or false. The state may then choose to either torture or imprison the captive – it is assumed that the state will never release a captive.

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29 This is the approach taken by Dershowitz (2002) when he argues for torture warrants, as well as by Guazzini et al. in the centuries before him.

30 For simplicity's sake, assume that false information has an equal and opposite value for the state and captive. The zero-sum aspect remains.
captive who has faced torture, and that the captive knows this. We can see immediately that the state will always choose to torture whenever the captive remains silent: to do otherwise would remove all incentive for knowledgeable captives to tell the truth, thus ensuring that the state would not gain from torture. The ignorant captive will then lie under all circumstances, since telling the truth would appear to the state as holding out – at worst the state will recognize the lie, and the captive will be tortured, but at best the state will mistake the lie for truth and end the torture. Similarly, the knowledgeable captive will lie under all circumstances: since the state has no means of distinguishing truth from lies in this model, telling the truth cannot make the captive any better off. The state would then be best off torturing under all circumstances – it would not accept any misinformation, but neither would it gain from torture.

Let us now assume that the state has the option to investigate the captive's story, distinguishing truth from falsehood with some probability greater than chance, but that this choice is costly: the more resources the state pays in investigation, the more likely it is to distinguish truth from fiction. These costs might be financial (investing in a professional police or intelligence gathering apparatus) or temporal (spending time on investigating rather than accepting the information directly). When the state is likely enough to catch the captive in a lie, and the torture threatened is great enough, then the ignorant captive will find revealing the truth to be optimal, while the ignorant captive will still be best off lying: if this is an equilibrium outcome, then torture will be successful: the state will be best off accepting the captive's story when it receives a signal that he has told the truth, and torturing when it appears that the captive has lied. How likely is this outcome?

Consider first that the state must choose some positive combination of costs for both threatened torture and investigation: even if the state knows with certainty when the captive has lied or told the truth, the state must still threaten the captive with pain that outweighs the disutility of revealing true information – captives who are either insensitive to pain or deeply committed to their cause are then less likely to fold under torture, even when the state's investigative capacity is perfect. Likewise, the state must investigate enough that the signal it receives is better than chance at distinguishing between truth and fiction – otherwise no amount of pain will convince the captive to tell the truth, as we saw from the prior model where the state could not investigate. Since both investigation and torture are costly to some degree, the joint costs necessary to create this equilibrium would have to be smaller than the benefit to be gained from torturing: therefore torture should be less useful, ceteris paribus, in cases
where the costs of investigation are high, such as when the information sought is highly time-sensitive, as in the 'ticking bomb' scenario. Finally, the state must believe that the captive is a priori likely enough to be knowledgeable that it is willing to imprison given a signal of 'truth' – if the captive is certain to be ignorant, and the state's investigatory signal is at all noisy, then the state is best off torturing no matter what signal it receives.

If all of these conditions are met, then the knowledgeable captive will find himself in a situation where he is best off telling the truth in order to escape torture – but only if the state's expected strategy is to play according to the signal it receives, torturing when it receives the signal that the captive has lied, and imprisoning when it appears that the captive has told the truth. If the state plays any other strategy, either imprisoning or torturing without investigating, or regardless of the signal it receives, then the necessary link between lying and torture is broken, and the captive is once again best off lying under all circumstances. How likely then is the state to play this strategy? Paradoxically, just as the state must not be too convinced that the captive is ignorant, neither can the state be too convinced that the captive is knowledgeable. If the state believes the captive to be knowledgeable with certainty, and the other conditions noted above hold, then the state cannot credibly commit to acting according to the signal it receives: if the captive is knowledgeable, and is threatened with sufficient pain with a high enough likelihood of being caught in a lie, then he will certainly tell the truth – meaning the state is best off believing the captive even when he appears to have lied! To do otherwise would be to ignore truthful information – a dead loss to the state. But if the state cannot credibly commit to playing according to the signal, then the knowledgeable captive no longer has any incentive to tell the truth since the state will believe his lies regardless – the separating equilibrium collapses. Even worse, because investigating is costly, the state may even lack the incentive to investigate in the first place, meaning that the state may never have reason to doubt that the captive has told the truth. In this case, the logic of torture would be stood on its head: rather than being a mechanism for extracting true information for the state, it would become a means for the captive to inject misinformation against the state.

In other words, successful torture depends on the state knowingly torturing ignorant captives, and on not being certain which captives are which. If the probability that the captive is ignorant rises too high, then the state is best off torturing regardless and cannot gain from torture – the rare knowledgeable captive will be tortured however he behaves: if the probability sinks too low, then the
state cannot credibly commit to playing according to the signal, and is at risk of accepting false information from both the rare ignorant captive who must lie, and from the common knowledgeable captive who prefers to. In other words, the crucial moment in torture is not the one most often seen in films and television shows, where the captive, after suffering to the limit, 'breaks' and offers the unvarnished truth – rather, the crucial moment occurs when the interrogator believes that the captive has broken. At that moment, the state loses its ability to credibly commit to investigating the captive's story – and the knowledgeable captive is presented with a perfect opportunity to lie.

The prospects for successful torture diminish as well when we consider that there is very likely to be an agent-principle dilemma between the state and its interrogators: if interrogators are rewarded by the amount of information they bring in, and not the quality of that information, then we can expect even conscientious torturers to eventually cease investigating (and throwing away good information) or be weeded out of the system as cynical torturers proliferate. Furthermore, if knowledgeable captives are able to coordinate a false story in case of capture, then each subsequent knowledgeable captive will find it easier and easier to feed misinformation to an increasingly credible state. This incentive structure derives precisely from the difficulty in judging empirically the information given under torture, and provides us with another way to judge the utility of a torture regime. Where torturers are rewarded for quantity over quality, this is an indication that the state is not in a position to distinguish between good and bad information; where this is the case, not only does the torturer have the incentive to cheat, so too does the knowledgeable captive.

If we extrapolate from an individual instance of torture to a campaign, where each previous round of torture affects the following one, then we find a further complication. If the prior round of torture has resulted in the state gaining useful information, then we can assume that the state is in a better position to investigate in the next round, while previous misinformation would negatively affect the state's investigative ability (as its priors become farther removed from reality, other forms of misinformation should appear more plausible, and true information that does not fit the (false) priors should appear less trustworthy. Thus, we would expect two evolutionary equilibria in the long term:

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31 There are in fact examples of exactly this phenomenon. Commander James Stockdale instructed his fellow PoWs during the Viet Nam War, to “resist to the point of permanent injury or loss of mental faculty, and then fall back on deceit and distortion.” (Arrigo, p. 12) This strategy was successful enough that, according to him, only 5% of his men ended up cooperating with the enemy. (p. 7) Similarly, Rejali argues that members of the FLN, when tortured by the French in Algeria, were instructed to name members of the moderate opposition (the MNA) as their confederates – leading the French to help eliminate the FLN's main rival in the Nationalist movement. (pp. 481-2)
virtuous cycle where the state is able to gain information from torture and increase the proportion of knowledgeable captives in the pool; and a vicious cycle where misinformation leads the state farther and farther afield, driving knowledgeable captives out. But only one of these equilibria should be stable: as the virtuous cycle deepens, and the probability that the state is torturing a knowledgeable captive increases, the state will eventually reach a point where it is no longer credibly able to play the necessary strategy of torturing when the captive appears to lie, and imprisoning when he appears to tell the truth – leading knowledgeable captives to lie, and the state to accept misinformation. And since the state does not know when it has accepted misinformation when it does not play according to the signal, the end result will be a rapid slide downwards into misinformation.

This model explains why we see the explosive cycle of denunciations in the continental witch-trials of the 16th and 17th Centuries, as well as the Albigensian inquisition of the 13th Century. In the case of witchcraft, the state's (or inquisition's) priors were by definition faulty – believing that witches exist, and that only torture could bring them to confess and name their confederates. Because there could be no empirical evidence of witchcraft – that is, of the covenant with Satan, the attendance at the Witches' Sabbaths, or of the use of magic – the inquisition would never find itself in a position where it would know with certainty that it had erred. In the case of heresy, the lack of any evidence other than confessions meant that the process would take in a larger and larger pool of suspects, regardless of guilt - even though the conspiracy in this case was real. The model also provides us with an explanation for why torture fails: torture depends on an investigative apparatus to separate truth from fiction – but historically torture has been most likely to be used in cases where that apparatus is either difficult or impossible to utilize. We would therefore predict that the more a situation involving torture approximates this condition, the more likely it is to devolve into a cycle of denunciations, marked by an increase in the number of captives over time. If the theory is incorrect, then torture should lead to a decreasing number of captives, as the ignorant are winnowed out, and the members of the conspiracy are wound up.

2.5. Evaluating the Model through Case Studies

Any statistical evaluation of how well torture works would be hamstrung from the start by the deliberate lack of systematic information on how states torture: states, even when they do gather such information, have no incentive to make it publicly available and even if they did they would have no
incentive not to present as favorable a picture as possible. Direct experimentation is likewise impossible for ethical considerations. Consequently, evaluating the logic of this model of informative torture must be done through the comparative method. The cases that I examine in this dissertation are therefore chosen with an eye towards holding constant several important parameters, while allowing what I argue to be the crucial ones to vary, and then noting the results of the use of 'informative' torture in each. In each case, torture is used by the authorities in good faith: that is, they intend the use of torture in order to gain valuable information of prime importance. The uses of torture for other reasons, such as public intimidation, punishment, or political purgation are therefore not considered.\textsuperscript{32} In addition, the information sought was not immediately verifiable on its face: as the model suggests, when there is no information asymmetry between the captive and the torturer (e.g., a thief tortures a man in his home until he reveals the combination of his bedroom safe), the success of failure of torture becomes completely dependent on how much pain the torturer can inflict, and how much the captive can withstand. This is not to say that verifying the information is impossible in these cases – only that verification is costly and noisy.

The cases vary according to three major theoretical criteria. Firstly, the cases vary according to the presence or absence of an actual conspiracy. This condition is important, since the potential for a deceptive cycle to occur should be much greater when the state's prior beliefs are incorrect from the beginning. Cases where the authorities used torture to root out a real conspiracy include the United States in its battle against the Iraqi insurgency, as well as against al Qaeda, and the French effort in Algeria to destroy the nationalist FLN, while the FLN's attempt to root out an actual treasonous conspiracy was mistakenly directed against those militants who were not actually in league with the French. During the witch-trials, as with the FLN, the attempt to root out a conspiracy was directed mistakenly against fundamentally innocent individuals: in Salem, however, there was no conspiracy to begin with.

Secondly, the cases vary according to the state's information environment – the ability to verify information obtained through torture. The French, with the imposition of the quadrillage system and the creation of a massive information (and informant) network, maintained the strongest capabilities in

\textsuperscript{32} Examples of these include the use of torture on slaves in the American South, judicial torture for confession alone, and the Soviet show trials under Stalin. In such cases the theater of torture as a means of legitimating authority takes precedence over generating information to be acted on, and consequently the state faces very different incentives than for informative torture.
In this area, while the FLN who faced them had their own spies penetrating much of the colonial state structure. In contrast, the United States confronted an insurgency in Iraq (as well as a coordinated terrorist movement world wide) with significant problems for gathering intelligence. In contrast to the French experience in Algeria, the United States could not make use of a loyal ethnic minority (comparable to the *Pieds Noirs*), nor was it capable of generating information through the use of a block warden system – instead it was forced to rely heavily on a reformed Iraqi army and police force that offered considerable opportunities for infiltration and cooptation by the insurgency. (Keath, 2004; Vincent, 2005) This problem was compounded by a chronic shortage of arabic-speaking analysts in the military, leaving US forces reliant on Iraqi translators who, along with the newly instituted Iraqi police force, found themselves easy targets for the insurgency. (Diamond, 2004) In Salem, there was little to no ability to ascertain facts independent of torture for more philosophical reasons: not only was witchcraft a crime which often lacked physical evidence, but the very state of science itself prevented much of the 'evidence' presented to the court from being evaluated in its proper light.33

The third condition that underlies the data concerns the reliability of the torturers: the potential for an agent-principle dilemma. The torturer's incentives will only be to generate true information when truth is what the state rewards him for generating. If the state cannot separate truth from fiction, or rewards the torturer for the sheer amount of information he generates, then the torturer is best off accepting anything the captive reveals. What this implies is that the same information asymmetry that poses an issue for torture for information between the captive and the state also exists between the state and the torturer. In Salem this was not at issue: the magistrates stood little to gain from maximizing the number of accused, as opposed to revealing the satanic conspirators.34 Similarly, the torturers of the FLN had no incentive to over-accuse: every execution meant another FLN soldier unavailable to fight the French. The United States engaged in torture during the War on Terror with varied institutional ability to reign in this agent-principle dilemma, ranging from the Central Intelligence Agency at the most reliable to the National Guard at the least institutionalized extreme. The French in Algeria, on the other hand, combated their own enemies with a conscripted army: with the exception of the elite *para*

33 Interestingly, it as precisely a scientific breakthrough that would provide much of the ammunition to end the trials: specifically, Newton's recent experiments on eye-sight would delegitimate much of the testimony on which the trials depended.

34 Unlike the witch trials on the continent, the property of the accused in Salem was not seized and distributed among the court, except to pay for their own imprisonment. European witch hunts were marked by considerable financial gains for successful judges and 'witch-finders.' (Currie, 1968)
units, those engaged in the application of torture were drawn from civilian life with minimal indoctrination. I expect that the less the incentives of the torturers reflect the institutional incentives of the authorities, the greater the potential for torture to devolve into a deceptive cycle.

The outcomes can be theoretically divided along a continuum in terms of the strength of the deceptive cycle that resulted from the use of torture. At one end of the spectrum, we can imagine a situation in which the state is able to gather good information that leads to better information over time, or at the very least does not degenerate into a 'witch hunt.' At the other, there lurks the deceptive cycle, where bad information actively drives out the good. I expect the following results. The cycle should be weakest where the state faces an actual conspiracy with reliable agents in a strong information environment – that is, one that most closely approximates the intelligence gathering capabilities of the modern state's ability to 'discipline' in the Foucaultian sense of the term. Conversely, the cycle should be strongest when a state with little ability to empirically verify information obtained through unreliable agents confronts a non-existent (or profoundly misunderstood) threat. Where only one of these conditions holds (e.g., an informed state confronts an unreal opponent), I expect the cycle to exist in a more attenuated form – i.e., the number of innocents swept up does not explode as quickly, and/or the cycle is brought more swiftly to a close.

Table 1: Relationship between Independent Variables and the Deceptive Cycle

<table>
<thead>
<tr>
<th>Independent Variables (Outcome)</th>
<th>Conspiracy Real/ State's Priors Correct</th>
<th>Conspiracy Unreal/ State's Priors Incorrect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strong Information Environment + Reliable Agents</td>
<td>USA/CIA (weakest cycle)</td>
<td>FLN in Algeria (medium cycle)</td>
</tr>
<tr>
<td>Strong Information Environment + Unreliable Agents</td>
<td>French in Algeria (weak cycle)</td>
<td>(medium cycle)</td>
</tr>
<tr>
<td>Weak Information Environment + Reliable Agents</td>
<td>USA in Iraq (weak/medium cycle)</td>
<td>Salem Witch Trials (medium/strong cycle)</td>
</tr>
</tbody>
</table>
There are several other ways in which the data could present itself, however, and both would have alternate implications for my theory. Firstly, it might be found that the variables examined appear to have little to no effect on the outcome — perhaps how informed a state is makes no difference in its ability to confront a conspiratorial threat, real or imagined: if this is the case, then something might be revealed about how well torture operated in these cases, but it would clearly falsify my theory. Alternatively, it might be found that one factor or another predominated to the exclusion of the other: perhaps an informed state will be able to prevent the cycle from occurring at all, as it carefully vets the stories told by captives, whether ignorant or knowledgeable. If this is the case, then torture is entirely unproblematic, as it would indicate that states possess both the capability of testing information, and the will to do so — a severe blow to my theory. Finally, and most intriguingly, perhaps the relationship between these two causal mechanisms is not purely additive, but interactive: it may be that an informed state unknowingly facing a false threat is actually more likely to spiral into deception than an uninformed one in the same circumstances, even if being informed trumps being uninformed when facing an actual conspiracy. If so, then states making use of torture may face an additional danger — that an informed state applying torture under false assumptions might choose to believe information gathered through torture over information gleaned through more prosaic detection methods. Where this is the case, it becomes clear that the captive's every incentive is to take advantage of the state's naïveté.

While the comparative case study method does limit the ability to derive conclusions from the data we examine, this method does offer one major compensation: the ability to perceive the presence

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Conspiracy Real/ State's Priors Correct</th>
<th>Conspiracy Unreal/ State's Priors Incorrect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weak Information</td>
<td>USA at Abu Ghraib (medium/strong cycle)</td>
<td>European Witch-Hunts (strongest cycle)</td>
</tr>
<tr>
<td>Environment +</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unreliable Agents</td>
<td></td>
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</tbody>
</table>
of causal mechanisms in a very direct manner. In this sense, the approach I am using pulls from several different methodologies. Firstly, the basic logic of torture for information was conceived of through a process similar to what Bates et al. (1998) have termed an “analytic narrative.” The goal is to make use of a more or less formal model of the process under consideration in order to derive testable hypotheses, and then to use a case or selection of cases as a means to elucidate how this logic operates in the real world. While this method provides an excellent way to make plain the causal mechanisms underlying a theory, it suffers from limitations in its applicability to cases not under direct consideration: it may be, after all, that the causal mechanism identified in the model does not truly apply outside the narrow confines of the cases chosen. In order to rectify this limitation, the comparative case study methodology outlined by Lijphart (1971) and George and Bennet (2005) can be applied. Rather than focusing on an individual case to outline how the theorized causal mechanism operates, using several cases that vary according to the independent variables that appear decisive in the model allows us to more properly test if these mechanisms are merely case specific, or if they appear in multiple situations.

The generalizability of this program is strengthened by the fact that the official unit of analysis, the torture regime, is itself comprised of multiple individual moments and instances of torture. In examining whether or not torture 'works', we are also asking how torture operates in each of these cases. And because the logic of torture is so intimately bound up in informational asymmetries, necessitating a single strategy to be employed by the state against the knowledgeable and ignorant captives between whom it is impossible to distinguish, how the state reacts to lies told by ignorant captives can inform us how it reacts in general to 'knowledgeable' lies as well. If the state can separate the necessary lies told by the ignorant, then this will give us considerable reason to believe that it is also capable of keeping knowledgeable captives from telling voluntary lies. If the state simply believes everything it hears under torture, then we can similarly be confident that knowledgeable captives will lie with impunity. In other words, the testable implications of the model are multiplied not only by choosing several cases to examine, but also by the nature of the torture regimes themselves.

The method I follow for each case is as follows. Firstly, I examine the history of each case: how the authorities came to convinced of the existence of a conspiracy, and how torture came to be used to uncover it. I then examine how well the authorities wee able to gain true information about that conspiracy, while attempting to parse out how much success was due to the use of torture. Finally, I
look for the following indications that torture had failed: the privileging of information obtained through torture over that obtained through alternative means (documentary, observational, etc.); failure to investigate information obtained under torture (or to discard information revealed to be false); and most importantly, whether or not the torture regime devolved into a deceptive cycle. The last of these in particular is crucial – a deceptive cycle can only exist when the authorities are unable to recognize and discard false information systematically. Where this is the case, there can be no incentive for the captive to tell the truth and every incentive to take advantage of the information asymmetry to spread misinformation. In other words, how the authorities behave towards the ignorant informs us of how they behave towards the knowledgeable.

In the following chapters, I examine each of these cases in order to test these implications by seeing if the causal mechanisms I identify are present. The Salem chapter examines why the trials in Salem Village in 1692 were so fundamentally different from those both in New England more broadly and in the home country, resembling instead the processes identified above as the continental model of witch-trial. I argue that the sole difference between Salem and previous witch-trials was in the use of torture (and but a single instance at that), leading the authorities to accept a version of events that caused them to unleash forces they ultimately could not control. The logic of torture was then replicated by the Court of Oyer and Terminer, as the accused were presented with the choice between confessing falsely and naming others, or murder by the authorities. The Algerian chapter examines both the role of torture by the French during the Battle of Algiers, as well as the use of torture by the leadership of the FLN itself as they attempted to locate the traitors in their midst. I argue that torture was not responsible for France's greatest successes in the Battle, and that the largest victory France was to have in that war instead arose precisely from convincing the FLN to use torture against itself: in both cases, torture on each side ended up benefiting the enemy, despite the fact that both sides were aware of the potential dangers that torture presents. Finally, the chapter on the War on Terror examines the use of torture in Guantanamo Bay, Abu Ghraib and in the CIA blacksites around the world, and attempts to determine how much useful information was gained, at significant cost to the United State's moral authority. I argue that the lack of any significant intelligence coups from torture masks a far greater failure to properly vet information obtained via torture, in one instance even leading the United States to accept misinformation that resulted in the invasion of Iraq itself.

All four cases show how states end up harming themselves through torture, even in cases where
the threats they face are real, where the state is informed, and has a collective interest in precluding the absorption of false information. Rather than finding an additive relationship between the state's information environment and the presence or absence of conspiracies, I find an apparently multiplicative one. While the informed French in Algeria were able to limit the damage done to their own side done by the cycle of denunciations (while still ultimately losing the war as a result of it), the less informed in Americans were to fall hook, line and sinker for what – in retrospect – was an obvious lie told under torture. When the threat is imaginary, the relationship appears to have been reversed. In Salem, the lack of good information outside the confessions of the accused led to an explosion of denunciations, but one which was attenuated once the pressures unleashed by this deceptive cycle lead the elites in charge to reexamine their concepts of acceptable evidence. For the FLN, however, the existence of a powerful intelligence apparatus did not prevent the colonels from giving precedence to information gleaned through force: in the end, the cycle of denunciations was brought to a halt only with the murder of the authorities themselves by their own men, and only after doing irreparable damage to the Army of National Liberation itself. Whereas a strong information environment appears to have ameliorated torture's ill effects when the threat is real, it appears also to have accelerated the acceptance of tortured information when the threat does not truly exist.

In all cases, there are indications that even informed states with an interest in verifying tortured information were susceptible to deception, most dramatically in situations where states were presented with a choice between trusting the verification process or the words of the tortured. In the most benign case, the French spent three days torturing a locksmith connected with the FLN before learning the location of the main bomb factory at Impasse de la Grénade – three days they would have saved had they bothered to translate the ream of documents captured with the locksmith that provided the location. (Rejali, p. 489) In the most extreme case, the United States allowed itself to be convinced of the existence of training camps in Iraq set up by the Hussein regime to instruct al Qa'ida on chemical warfare by the tortured testimony of Ibn al-Shaykh al-Libi despite considerable reason to distrust his report – reasons outlines extensively by the Defense Intelligence Agency in February of 2002, more than a year before the invasion of Iraq. (DITSUM #044-02) The implication is serious: while the presence of an actual threat, as well as an informed state are necessary conditions of the successful use of torture for information, they are insufficient. The state must also be willing to use its capacity to investigate, even when this is costly, and even when it contradicts the state's prior beliefs. As we have
seen, in 16th Century Massachusetts, mid 20th Century Algeria, and 21st Century America, the authorities were simply unable to credibly commit to doing so, allowing captives to delay, deceive, and ultimately damage the states who persecuted them.

The deceptive cycle that I find in each case indicates that states are simply not often in a position to credibly commit to investigating the information that captives reveal. This is not to say that torture can never work: indeed, it is entirely possible for captives to reveal true information to the state, just as it is possible for the state to reject true information because it does not fit their prior beliefs. But it is to say that torture is unlikely to work if the players involved act rationally, even under optimal conditions. And since there is no reason to believe in torture's efficacy from a psychological perspective, this leaves very little reason to believe that torture can work systematically. For torture has never been a question of 'just this once' under extreme circumstances: torture is a system of gaining information, and as such it must be evaluated as a system. And that system is least likely to work under precisely those conditions when it can most be justified: when the state lacks other investigative alternatives, when the captive is certain to be knowledgeable, and when time is of the essence. The ticking bomb scenario – far from justifying torture *in extremis* – is instead its downfall: for all the captive has to do is lie while the bomb ticks silently across town.
3.1. Introduction.

The deceptive cycle that torture for information can engender stems from two major sources. Firstly, if the state is unable or unwilling to investigate the information it receives from the captive, then the captive is in the position to lie under torture. Secondly, and relatedly, if the state's prior beliefs are antithetical enough to the truth, then the captive is best off mimicking those beliefs. A good example of this second process exists where a state confronts a fictitious conspiracy: if the authorities are convinced that they face a secret threat, and they use torture to ferret that threat out, then it is highly likely that they will eventually find what they are looking for. The logic is simple: even when the state is able and willing to investigate the stories told by the captives it tortures, as long as investigating sends a noisy signal – as long as it is possible for the state to err – then the state will eventually believe a lie. The more 'noise' the state receives, the greater is the likelihood that the lie is accepted – and the greater potential for the deceptive cycle to commence. The Salem Witch-Trials of 1692 offer an excellent example of the nightmare scenario where the authorities' prior beliefs are false, and the ability to investigate the captives' revelations independently of the logic of torture are minimal. The deceptive cycle that resulted from the trials showcases as well the dangers that torture presents for a society. As the cycle progressed the elites in charge quickly lost control of the proceedings - some would even become its victims – and the very structure of theocratic governance that underlay the Massachusetts Bay Colony would be severely weakened.

This chapter is geared towards understanding and explaining the cycle of denunciations that marked the trials in Salem village, and argues that this cycle can best be explained through the logic of informational torture. In order to make this claim, however, a few clarifications are in order. The logic of torture for information developed in the previous chapter applies to any situation where an authority threatens an individual with punishment if they do not reveal information. Thus, this logic applies to
torture as well as to plea bargaining and other forms of coerced interrogations.\textsuperscript{35} I argue that the incentives faced by the accused during the witch trials mimic this logic strongly: by the time the trials were fully characterized by a deceptive cycle, it was clear to all accused that the only chance they held of surviving lay in confessing their 'crimes' – and naming others. In validating these denunciations, the elites running the trials made use of a curious technology: 'spectral testimony' as related by the young girls whose suffering began the whole affair, known collectively as the 'afflicted.' In effect, these girls acted as a form of lie detector – sending a signal to the magistrates of the reliability of the testimony obtained through the threat of coercion. And like all lie detectors, this technology was unreliable in the extreme.\textsuperscript{36}

In Salem then, we have a case where the authorities confront an (unreal) threat through coerced interrogation, but with minimal ability to evaluate the truth value of the information coerced. While it may seem obvious in retrospect that this situation should lead to a deceptive cycle, I argue that it was only the use of coerced interrogations that made this cycle possible. In stark contrast to 1692, no other New England witch trial resulted in such a spiral of denunciations. In fact, the Salem trials do not resemble other New English trials as much as the widespread witch hunts on the European continent from the 15th through the 17th Centuries, which were marked for their direct use of torture as a means of generating information. I argue that the Salem trials differ so strongly from prior trials in New England precisely because they ended up mimicking the strategic logic of informational torture. And the cycle was itself generated by an act of unofficial torture, perpetrated on the body of the slave, Tituba.

Consequently, I argue that Salem shows us how torture degenerates into the deceptive cycle in the absence of a strong information environment, and an actual threat to be faced. Because the authorities believed they could independently verify the accusations leveled by the afflicted and the accused alike, and because these accusations fit their preconceptions, they unleashed forces they could not control. But it is in how this cycle was eventually broken that we see the importance of empirical verification in stemming (and potentially preventing) this cycle most clearly. Only when Rev. Increase Mather, first president of Harvard College, was able to disseminate the properties of eye-sight newly

\textsuperscript{35} See in particular Langbein (1978). Although his analysis centers on the commonality between torture and plea bargaining when it comes to confession, the same logic applies when the threat of pain, suffering, or imprisonment hangs over the informant.

\textsuperscript{36} 'Lie detectors' as such do not actually exist: 'truth' and 'fiction' are purely abstract concepts that cannot be measured directly. Instead, most lie detectors historically have functioned as a form of elaborate bluff: that is, they only work when the subject believes that they work. (Alder, 2002)
discovered by Sir Thomas Newton and disprove the reliability of the technology of 'spectral evidence' were the authorities willing and able to bring the proceedings to a halt. By that time, however, 24 individuals had died and the magistrates responsible found their legitimacy seriously weakened.

The value of this case also comes from how it showcases the ways in which the deceptive cycle is maintained: the magistrates, afflicted, and accused alike all found their incentives militated against challenging the accepted belief in the conspiracy. For the judges, once the fact of a witch conspiracy was accepted, the trials offered an opportunity to do battle with Satan himself, and to purge the community of those who would bring that community down (no matter where they hid, or who they appeared to be). For the afflicted the trials offered an explanation for their apparent suffering – one that placed them in a position of extreme (if unofficial and temporary) power over others. For the accused, the process of the trial itself offered a slim hope of survival if the accused could make themselves integral to the hunt by naming others – or at least an opportunity to put off the hour of execution as long as their testimony was needed by the courts. Importantly, there was always someone to be accused: in the absence of actual witches, individuals (afflicted and accused) could use their position to attack personal and factional rivals, seek revenge, or even challenge the elites themselves. In other words, the deceptive cycle can easily take on the forms of political violence identified by Kalyvas (2006), where the informant makes use of the state's lack of information to benefit themselves.

Finally, I argue that this explosion of denunciations did not result solely from deep-seated divisions in Salem society, although these divisions most certainly existed. Instead, the Salem trials offered a means for those divisions to become activated in ways that previous trials had not: once a conspiracy of witches was accepted as a fact, the pre-existing tensions between factions and families provided the raw material for a spiral of accusations and counter-accusations as local actors made use of larger macro-level issues to enact revenge against enemies, in the name of God. Furthermore, this analysis does not depend on malevolent individuals (although these did exist) or on callous authorities (although they too existed), but instead argues that they were a logical outgrowth of the beliefs of the relevant actors – the trials, while irrational in their outcomes, did not depend on individual irrationality. In the Salem trials we have an example of an authority using coercion in order to discover vital information, fully aware of the danger of false confession and accusation, nonetheless instigating a nightmare of violence and terror to its own detriment. And this ironic process not only harmed the authorities (by demonstrating that pious belief and holy intentions were no bar to doing Satan’s
bidding), but stemmed in crucial ways from the logic of torture for information.

The chapter proceeds as follows. The second section describes the history of witchcraft trials in New England and Europe, and argues that the trials in Salem village resemble the latter more than the former. The third section examines the crisis in Salem itself, locating the crucial moments in the process that led the trials to diverge from the pattern found in New England in the mid 1600s, while the fourth identifies those inflection points that brought this vicious cycle to a close. The fifth section attempts to explain how this cycle was established through the lens of Kalyvasian theory on ‘political violence’, how it was defended by the accused and accusers alike, and how the counter-narrative of possession (rather than witchcraft) allowed this cycle to be broken once and for all; the third section examines the links between the witch trials and torture for information, deriving implications for torture as a means of gaining truth, and locating the effects of misinformation on this epistemic system. I conclude with a discussion of Tituba, the West Indian slave of Rev. Samuel Parris, and her role in the proceedings, and the question of whether or not her confession was coerced: for while the choice faced by the accused in the trials quickly came to be seen as one of confess or die, it was Tituba’s confession at the outset that made possible everything that came afterwards – a confession that seemingly should have condemned her to death yet ironically saved her life.

3.2. Witchcraft in New England

The Salem witch-trials are generally understood in American culture primarily as a warning of how the pre-empirical obsessions of a Puritan society ended in the tragic execution of 19 innocents. The convulsions of the afflicted, the emphasis on spectral evidence, and the sudden and shocking empowerment of (primarily young) women have spurred countless academic, quasi-academic, and popular treatments that have attempted to explain the apparent outbreak of madness in New England as a result of Puritan attitudes towards gender (Karlson, Reed, Kamensky), psychological processes (Starkey, Harley), political instability and sub-rosa class conflict (Boyer and Nissenbaum) and even as a result of food poisoning (Caporael). These arguments, however, are all essentially limited in that they attempt to explain the case in Salem in isolation from other witch-trials in New England at that time. And in fact the Salem trials differed strongly from what had come before in the northern colonies. Previous trials had focused on small groups of accused witches, and generally led to a confession or
two, and the execution of the convicted. From 1648 (the first execution for witchcraft in New England) until 1663, witchcraft trials had led to 15 executions: from 1663 to 1688, not a single person was executed for witchcraft. (Hansen, p. 4) The Salem trials accused and killed a larger number of individuals in a far shorter amount of time – estimates of the number of accused (whether brought to trial or not) vary from a conservative 148 (Boyer and Nissenbaum) to over 200 (Hall). Why did the trials in Salem result in so many executions when prior trials had not been characterized by this cycle of denunciation and confession? For if we are to argue that the Salem trials were a result of maintaining Puritan values in an uncertain world, or efforts to keep women under social control, or mass hysteria, then we are confronted with the fact that these earlier episodes of witchcraft did not explode into mass denunciation, Puritan values and gender control notwithstanding.

In fact, the trials at Salem resembled not other outbreaks of witchcraft in New England, but the great witch trials of Scotland, Germany, and Switzerland (Golden). The 1500s had seen fears of witchcraft reawaken across the European continent. While suspected witches were persecuted in many states, the vast concentration appears to have been in France, Germany, Switzerland, and Scotland; southern and Catholic states tended to have far less interest in witchcraft as a threat to social order, and consequently there were far fewer executions in countries such as Spain, Portugal and the Italian states. All told, the European witch-trials took the lives of at least 50,000 souls. (Golden, p. 413) It is important to note that torture was an integral part of this process, and that this emphasis on forced confessions derived from the use of the Roman Law in these areas. Under this framework, capital crimes could be punishable by death only where the authorities had one of the two following proofs: two eye-witnesses, or a confession from the accused. That witchcraft involved evil acts committed through the intercession of invisible devils meant that the witnesses were rarely found – instead, in witchcraft as in other capital crimes, the authorities made frequent recourse to judicial torture as a means of generating the necessary confessions. (Langbein 1978) Torture was used not simply as a means of generating confessions, but critically to discover accomplices: witchcraft was understood not

37 Witchcraft in New England was not a religious crime, punishable by the Church, but rather a secular crime against God and the King, punishable by execution. To be a witch was to be a rebel against all authority – and so a traitor to the crown whose authority depended on divine sanction. Consequently, those confessing to witchcraft could not be reincorporated into the community, but would be certain to die, both under the 1641 Massachusetts Body of Liberties, and under English Crown law after the revocation of the that charter in 1684. (Roach, p.xxiii; Boyer & Nissenbaum, p. 6)

38 An interesting exception to this general rule is Poland: witches were persecuted in large numbers, and persecuted later than in the West: whereas the fervor for killing witches had subsided by the 1700s, in Poland the activity was reaching its height at this time.
in the folk sense of a person using black magic, but as a conspiracy of those who had pledged their souls to the Devil.

An example of this process can be found in the Scottish witch trials of the 16th and 17th Centuries (c. 1550 – 1700). There, witch-panic came in waves: 1590-91, 1597, 1628-30, 1649 and most violently from 1661-62. Estimates of the number executed range from about 1,000 (Goodare, p. 291) to about 4,400 over the course of ninety years (1590 – 1680) according to Rejali (2007). The large numbers are not a reflection of denunciation by neighbors (the most obvious means of being identified as a witch) but of the torture used to gain confession: about half of those accused of witchcraft were identified through the (tortured) testimony of other accused witches. (p. 301) Interestingly, the form of torture used tended to be sleep deprivation – a form of torture that leaves no marks, and opened the victim to hallucinations that could very easily have convinced them of the truth of the accusations, and offered them details to share with the authorities.39

In stark contrast to the great witch-hunts of Europe, the history of witch-hunting in New England is comparatively bloodless. As noted above, the number accused, and the number executed is quite low. Furthermore, people who were accused of witchcraft were more often acquitted than convicted: out of a total of 121 cases brought before the courts between 1638 and 1691, only 83 were actual witch trials, of which around 11 to 17 resulted in executions – the remaining 38 were slander suits brought by witch suspects themselves against their accusers. (Roach, p. xx) This disjunction between the experiences of witchcraft on the continent and in the English colonies can most easily be explained by the absence of judicial torture: whereas European states needed confession for conviction, the English system made use of a trial by jury. (Lowell) This allowed suspects to be sentenced even in the absence of the so-called ‘queen of proofs’, as long as the jury could be convinced (by argumentation and circumstantial evidence) that the suspect was likely to be guilty. While torture most certainly did exist in England, the reliance on the jury system meant that it tended to be “used as an engine of state, not of law.”40 Where jury trials were not in use however, such as in the case of the Court of Oyer and Terminer in Salem, the need for proofs (witnesses or confession) remained. Whether through confession or through the verdict of the jury, 15 people were executed for witchcraft in the 50

39 A similar process appears to have been activated during the Inquisition against the Albigensians in France. The widening circle of denunciations garnered through torture, combined with the fact that those convicted would have their property stripped and given to the authorities led to a general terror in which no one was safe, no matter how firm their orthodoxy. (Ruthven, p. 95)

40 This indelible phrase comes from William Blackstone’s “Commentaries on the Laws of England, vol. iv, p. 321 (1765)
years preceding the outbreak at Salem – many more were acquitted, or sued their accusers (with varying degrees of success), or had their convictions set aside by the royal governor.\footnote{For a detailed history of these cases, see Hall (1999)}

As the century progressed, however, trials for witchcraft (as opposed to slander suits brought against accusers) became less and less frequent. After a pause of about 25 years, a case of witchcraft was recorded in which Cotton Mather (an important player in the Salem trials) was involved. Goodwife Glover, an Irishwoman in Boston, was accused of inflicting spiritual harm on the four children of local mason, John Goodwin – these children, normally well-behaved, had begun to exhibit strange symptoms including “fits, beyond those that attend an epilepsy, or a catalepsy.”\footnote{Mather described the case in detail in his publication Memorable Providences, Relating to Witchcrafts and Possessions (1689).} When Goodwin brought suit against Glover, she confessed to the court that she had made a pact with Satan, but since he had not lived up to his end of the bargain, she was willing to reveal the whole matter. After being found \textit{compos mentis} by the court, she was condemned and hanged. Mather took an interest in the case, and eventually brought the oldest of the four children into his own house in order to observe, and if possible, to heal her of her affliction. That a confessed witch had been discovered in Boston (John Winthrop’s ‘City on a Hill’) was certainly disturbing, but even though Glover had mentioned the presence of other witches who would continue the affliction after her death, and named names, Mather had the sense to keep those names secret: after all, the woman worshiped the Devil, the Father of Lies, and so her statements could not be trusted. (Hansen, pp. 23-4)\footnote{This reluctance to name those mentioned by the afflicted (and the afflictors) continued through the Salem trials: when Mercy Short’s symptoms persisted after the conclusion of the trials in December of 1692, Mather not only visited her often, he also enjoined the numerous gawkers at her affliction not to spread the names of those mentioned in her fits. (Roach, p. 351, 388)}

3.3. The Crisis in Salem

The events that led up to the witch-trials are familiar enough that we may mention them but briefly. Several young girls of the village (Abigail Williams and Elizabeth (Betty) Parris, and Mary Warren, among others) began to ‘conjure’ using an egg and a sieve to find out what the future held for them in the winter of 1691.\footnote{Mather would later argue that this was part of a general trend among the youth in those uncertain times, spurred on by the political complications stemming from the Glorious Revolution in 1688, of using forbidden (although not malicious) magic. (The Life of His Excellency, Sir William Phips, Knt., Late Captain General and Governor in Chief of the Province of the Massachusetts Bay, New England. Boston, 1697).} One of the girls saw what appeared to be a coffin in a home-made crystal
ball, leaving these children (between the ages of 9 and 19) so frightened that a few of them began to suffer fits and seizures, including young Betty – the daughter of Salem village’s new minister, the Rev. Samuel Parris – as well as her cousin Abigail. These torments understandably unnerved the Reverend, who called on the assistance of William Griggs, a local physician. The doctor’s prognosis was that the malady was preternatural – the girls were under an “evil hand.” (Boyer and Nissenbaum, p. 2; Roach, p. 18) While at first the Reverend attempted to deal with the situation using the orthodox methods of prayer, self-reflection and fasting, the fits grew worse over time. (Hansen, p. 31)

It is here that the folk belief in counter-magic first enters the picture. Elite-based beliefs regarding witchcraft were founded on the conviction that humans could not make magic – that could only be performed by angels and devils – and so witches were understood as those who had made a pact with Satan in order to wield power in the visible world by serving the darkness in the invisible one. And so while the Reverend, like other educated men of his time, would have seen counter-magic as useless at best and diabolical at worst, the masses in New England tended to believe that witches could be countered through so-called ‘white’ magic: these measures included placing horseshoes on the outside walls of a house to taking a piece of the victims hair or urine and boiling/burning it – the witch would then be identified by the damage this countermeasure had caused. Mary Sibley, assisted by the Rev. Parris’ Barbadian slave Tituba, baked an oatmeal cake mixed with the afflicted childrens' urine, and then fed the result to the Parris’ family dog: by doing so, Mary Warren's aunt hoped to break the spell apparently preventing the girls from naming their tormentors.45 The counter-magic worked: the girls were still tormented, but they were now able to name their tormentors. They named three women in the village: Sarah Osbourne, Sarah Good, and Tituba herself. These three women very much fit the mold of the usual witch suspect: all three were women who were in important ways marginal to the village community: Osbourne was an older woman who had occasioned scandal by marrying a much younger man who had been her bonded servant; Good was intensely poor, married to an apparently useless husband, and had a reputation for demanding aid from her neighbors and levying curses on those who refused or came through with too little; Tituba was, of course, a slave. (Karlsen, p. 245) In other words, the community would already have been primed to believe witchcraft accusations against

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45 It was characteristic of folk belief in witchcraft that the witch could be hurt by damaging a part of the victim's body (such as urine, hair, or other safely alienable body parts). Elite belief did not accept this concept, seeing it as magic, and therefore diabolical. Rev. Parris in fact called out Sibley for her error in the matter – but this was before the nature of the witch conspiracy became clear.
these women – non-Church members, plagued by scandal and low status, not affiliated with either of the two main factions in the town who might have defended them (The Putnam and the Porter families).\footnote{For a detailed description of the factional dynamics and the network of individuals associated with each family, see Boyer and Nissenbaum, 1974 (ch. 5 and 8)}

When these women were brought for questioning before local magistrates, the questions and answers followed a similar pattern: the magistrates would ask the suspects if they were witches, and why they so afflicted the girls; Osbourne and Good would reply that they were not witches at all; the magistrates nonetheless found sufficient evidence to hold them for trial. (Roach, pp. 26-28) It should be noted that at this point there is no indication of the firestorm still to come – while the fact that these women, marginal as they were, were headed to trial might have placed them in fear of their lives (and even with New England's relatively bloodless history of witch persecutions this did remain a strong possibility), the matter would almost certainly have ended with their conviction or acquittal. But it was Tituba's turn before the magistrates on March 2\textsuperscript{nd} and 3\textsuperscript{rd} that unleashed hell. While at first Tituba also declared her innocence, as the questioning progressed and the cries of the afflicted increased, Tituba suddenly declared that she was indeed a witch – that she had made a pact with Satan to torment the girls in exchange for not being tormented herself and “many fine things” – and that furthermore she was in league with other witches, including Osbourne and Good, and with two others from Boston whose name she did not know – and that in the book that the Devil made her sign, she saw nine other signatures. (Hansen, p. 37)

While this occurred, the afflicted fell into fits: when Hale asked Tituba who was afflicting them, she replied that it was the spirit of Sarah Good – a statement that the afflicted immediately agreed with. As the torments of one afflicted girl (Elizabeth Hubbard) increased, Tituba was asked whose spirit was attacking her – Tituba replied “I am blind now, I cannot see.” Shortly thereafter, Tituba herself began to be afflicted – a condition that would continue throughout the trials. The result was the same for all three suspects: the magistrates ordered them taken to jail to stand trial for the capital offense of witchcraft. Importantly, and contrary to the assumptions of many scholars (Tucker Smith, Reis), Tituba's confession did not prevent her from facing execution – in fact, her confession, like those of so many others before her, made her eventual execution a near certainty. While the institution of public confession and reincorporation into the community was a powerful means of settling group tensions in New English society, for the crime of witchcraft there could be no pardon: confession might reconcile
the witch's soul to God, but it could not absolve her of the crime of treason that the Crown would execute her for. And yet, of the three initial suspects to be named, Tituba alone survived the trials: Osbourne would die in prison before her trial could be held in May, while Good would be tried, convicted, and executed on July 19th. (Starkey, p. 176-177)

The main effect of Tituba's confession was to convince the community that what had originally appeared to be a regular (if dramatic) case of maleficia was in fact something far more ominous: rather than isolated and individual acts of revenge against neighbors (the normal folk understanding of witchcraft), the spectral attacks were instead part of an organized plot of Devil-Worshipers, living incognito in the community among the Saints and innocents. What was more, there remained witches still at large – a fact known not only from Tituba's testimony, but also from the fact that the afflicted still suffered. And the worst part was that anyone could be a witch – a fact driven home when the afflicted named a new suspect: Martha Corey. (Hansen, p. 40) Unlike the previous suspects, Martha Corey was not a marginal member of the community by any means: not only was she possessed of a good reputation in town, but she also was a fully communing member of the village Church.\footnote{In Salem village, as in other Congregationalist communities at the time, Church membership was not automatically held by those attending services: the Calvinist understanding of the elect implied that most people could not come to God's grace, and only those who had searched themselves thoroughly for signs of God's grace (and could convince other Church member's of this grace) would be allowed to join in the covenant. (Boyer and Nissenbaum, p. 42) While every member of the community would be expected to attend services, they would be counted as a member of the congregation (not the “Church” \textit{per se}) and would be expected to provide material support to the Church – voting rights over Church matters extended only to covenanting members. That witches were thought in the elite understanding of witchcraft to have parodied this covenant with God is a telling irony: the deepest fears of the Puritan community were mirror images of their greatest hopes.}

Corey's denunciation came not from Abigail Williams or from Betty Parris (who was around this time taken away from the village under the care of Stephen Sewall – a change of scenery that would lead to her eventual recovery), but from another young girl, connected to perhaps the most powerful family in the village – Ann Putnam Jr. (Starkey, 48-49)

While the accusations had now reached into the very Church itself, the number of afflicted increased as well. Two days before Corey was questioned by the magistrates, former Salem village Rev. Deodat Lawson (who had been invited back to Salem village by Rev. Parris, both to lend his advice on the growing crisis, and because Tituba had now claimed that his first two wives' deaths had been caused by witchcraft) gave a guest sermon at the Church. (Roach, p. 32; Hansen, pp. 44-47) His sermon was interrupted by the afflicted, who had by now grown to ten in number: three young girls (Williams, Putnam Jr., and Parris), three adolescents (Mary Walcott, Mercy Lewis and Elizabeth
Hubbard) and four grown and married women: Bethshaa Pope, Sarah Bibber, Goodwife Goodall, and Ann Putnam Sr. herself. These afflicted had by now named another communing Church member: Rebecca Nurse, whose reputation was spotless, whose heart appeared to be full of grace, and whom nobody would have suspected of witchcraft before the crisis began. It is an indication of how far the community had fallen prey to paranoid fears of secret diabolism that Nurse's denunciation would have had any traction in the minds of the people – and when Nurse was informed of the charges leveled against her, her response was modest in the extreme: “Well, as to this thing I am as innocent as the child unborn; but surely what sin hath God found out in me unrepented of, that he should lay such an affliction upon me in my old age?” (Hansen, p. 51)

While Nurse's examination by Hathorne and Corwin raised significant (and as it turned out, long-lasting) doubt over the reliability of the afflicteds' testimony, another suspect questioned at the same time confessed in detail: Sarah Good's five year old daughter Dorcas. Not only did she acknowledge her mother a witch, she admitted having a familiar – a snake – that would suckle from a 'witch's tit' between her fingers. (ibid. p. 54-55) That an apparently innocent child could confess freely to witchcraft had the perverse affect of making Nurse's protestations of innocence less believable: both were held for trial.

The circle of accused continued to grow as the afflicted started naming more and more of their neighbors as witches. But the accusations were not random. Those accused tended to come from two overlapping camps: those who were related to an accused or confessed witch, and (crucially) those who had begun speaking openly against the proceedings. Sarah Cloyse had the misfortune to be both the sister of R. Nurse and a doubter of the proceedings: when Rev. Parris gave a sermon on April 3rd on the nature of the diabolical threat, Cloyse stood up and walked out of the meeting, slamming the door behind her – by the next day, she had been accused, and two village men associated with the Putnam family (Johnathan Walcott and Nathaniel Ingersoll) entered a complaint against both her and Elizabeth Proctor (whose husband John was associated with the Porter clan). Warrants were issued by the 8th, the examination held on the 11th, and by now the afflicted had grown to include John Indian – Tituba's husband. Both suspects were ordered held for trial.

48 It was Israel Porter (the patriarch of the family) and his wife Elizabeth who had informed Nurse of the accusations against her, and swore testimony to the effect that she did not appear to know about the business before they had done so – evidence that she did not have the knowledge of the future a witch would be supposed to have. Similarly, John Proctor had named Israel his “loving friend” and trustee of his estate in 1689. (Boyer & Nissenbaum, p. 184)
During the month of April, the master of one of the afflicted girls (Mary Warren) took it upon himself to break the girl of her symptoms through close supervision and threatened beatings. John Proctor did not trust the proceedings, and in fact saw the girls' actions as tantamount to murder. The harsh treatment appeared to work – by April 2\textsuperscript{nd}, Warren had posted a note on the Meeting House door, asking her neighbors to offer prayers of thanks to God for her recent deliverance from pain. The next day, after the note was read aloud by Rev. Parris before a stunned community, Warren explained to the crowd that “the afflicted persons did but dissemble.” (Roach, p. 66) And it is here that we see the true nature of the afflicted's tacit conspiracy become clear. For Warren's revelation that the seizures were not diabolical called into question the truthfulness of every other afflicted person – making them all potentially legally responsible for the murder of any accused sentenced to death.\footnote{In fact, this was no small fear. Elizabeth Kendall had been executed as a witch sometime between 1647 and 1651 for the murder of an infant: afterwards, it was discovered that the child's nurse had kept him out all night in the cold, leading the infant to sicken and die. This nurse had also been one of those giving testimony against Kendall. Later in prison for adultery, Deputy Richard Brown informed her that “it was just with God to leave her to this wickedness, as a punishment for her murdering Goody Kendall by her false witness bearing.” (Hall, p. 25) In other words, false witness would have been seen by the authorities as equivalent to murder, as well as a sin against God.} It is perhaps unsurprising that Warren was then accused of witchcraft herself about two weeks later (the warrant issued on April 18\textsuperscript{th}), in a manner that not only made clear to any wavering afflicted the wages of defection, but also mollified suspicion among the villagers that the afflicted had been lying: Warren had been afflicted for refusing to become a witch – now she was no longer afflicted – therefore, she must now be a witch. (Starkey, p. 88) When Warren was questioned the next day, she at first maintained her innocence, but under pressure from the afflicted, she began to confess before suddenly going into convulsions – the afflicted claimed to see the spirits of John and Elizabeth Proctor preventing her from confessing.

It is in April that we see the first indication that the accused might be able to use the trial proceedings themselves against their own enemies. Abigail Hobbs (14 years old) had been telling people for over a year that she had made a deal with the Devil to protect her while she had lived in Casco (in what would later become Maine). Accused by the afflicted, she openly confessed in court to witchcraft and named Sarah Good as her own tormentor – her cooperation was rewarded, as none of the afflicted were 'attacked' during her testimony. Her father, William, and step-mother, Deliverance Hobbs, were also accused, and ordered arrested on April 21\textsuperscript{st}, but not before Deliverance had accused the mother of the local constable Ephraim Wildes of tormenting her. Wildes knew his mother to be...
innocent, and recalled that when he went to arrest Goody Hobbs, “One might almost see revenge in her face.” (Roach, p. 87) While Goody Wildes' arrest would do nothing to clear either Deliverance, William, or their daughter of the charges, it is tempting to believe that her accusation was in response to Abigail's arrest: Deliverance first reported being attacked by Sarah Wildes on the night of Abigail's confession in court. Deliverance herself would confess as well in prison on the 23rd.

Also in April, the afflicted begin to extend their accusations up the social hierarchy: the list of accused now grew to include both the Salem Town merchant of the “better sort,” Philip English (his wife Mary had been arrested on the 21st), as well as the former minister of the Village, the Rev. George Burroughs, who had moved to Wells (near Casco Bay) after an embarrassing dispute with the Putnam family over a debt incurred to bury his first wife in 1683. The afflicted had been hinting at a head witch (a wizard or conjurer) who was the head of the secret witch organization, but until April 20th no one seemed to know the man's identity. The bad blood resulting from this episode may well explain why it was Ann Putnam Jr. who ended up putting a name to the face – he was accused not only of tormenting the afflicted, but also of the murder of his first two wives, “three children at the eastward,” “a great many soldiers,” and most damagingly of Rev. Deodat Lawson's wife and daughter. (Gragg, pp. 116-117) While English and his wife would later escape (they had been able to rent a room in the jailor's own house with their considerable resources), Burroughs was brought to the village and questioned, where he maintained his innocence to no avail. He also was held for trial.

By the time the new government had been in place long enough to set up a Court of Oyer and Terminer (headed up by the Lieutenant Governor William Stoughton) to deal with the witchcraft epidemic, the list of suspects in custody had grown to 62, with several more having been mentioned (but not arrested), or having fled the area. The first trials began on the 2nd of June, and would see Bridget Bishop the first to be tried and found guilty, despite claiming her innocence. (Roach, p. 156-160) She would be executed on June 10th. Despite the killing of the convicted witch, the circle of accused would continue to grow, as would the number of afflicted. Around the end of that month, a man in Andover, Thomas Swan, would begin reporting afflictions caused by various witches that only he could see: he would remain a particularly malevolent force in the process until his death in 1693.

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50 John Putnam in fact had Burroughs arrested for debt when the Reverend returned to the Village to collect his back pay – leading six village-men to pay his bail. (Roach, pp. xxx – xxxi)

51 Swan was not unrelated to the goings on in the village, however; he had been sued for paternity and rape by Elizabeth Emerson, a relative of the Carriers (Martha and her sons Richard and Andrew, all accused of witchcraft by Swan) and of the Toothakers (Roger – a local “cunning-man”, his wife Mary, and their daughter Martha, all accused as well). He was
250 miles to the south, in Connecticut, servant Katherine Branch began having seizures and making accusation her spectral tormentors – unlike in Salem, these charges would not result in any executions, and would lead both women accused (Goodies Clauson and DesBurrough) to be acquitted by 1693.

From July to September, the number of afflicted and accused would grow and the trials would proceed, leading to the conviction of around 26 suspects, of whom 18 were executed: Sarah Good, Elizabeth How(e), Susanna Martin, Sarah Wildes and Rebecca Nurse on July 19th; George Burroughs, Martha Carrier, George Jacobs Sr., John Proctor, and John Willard on August 19th; and Martha Corey, Mary Esty, Alice and Mary Parker, Ann Pudeator, Wilmot Read, Margaret Scott, and Samuel Wardwell on September 22nd. and. In addition to Sarah Osbourne, three more suspects would die in jail: Roger Toothaker, Lydia Dustin and Ann Foster. Giles Corey would be pressed to death after refusing to recognize the court on September 19th. Mary Bradbury would be tried, convicted and sentenced to death, but would escape from prison before sentence could be carried out. Elizabeth Proctor, Dorcas Hoar, Abigail Faulkner Sr., Abigail Hobbs, Mary Post and Sarah Wardwell would all be convicted and sentenced to death, but would later be reprieved once the trials began to fall apart. Of the 19 executed only one, Samuel Wardwell, had confessed – during sentencing, however, he would recant his confession. Dorcas Hoar would be reprieved for a month in September, in order to allow her to make her peace with God, while Elizabeth Proctor and Ann Faulkner would be reprieved due to pregnancy. Of those sentenced to death, only Hobbs had provided significant information to the magistrates – by the time of her sentencing in September, however, those she had named had already been tried and executed.

3.4. The End of the Trials

The turning point in the trials can be dated with some accuracy to August 19th – the day George Burroughs was hanged. The five condemned were led to the gallows, where they asked Rev. Cotton Mather (attending the executions) to lead them in prayer, which he consented to do. They prayed that God forgive their sins – as well as those of their accusers – and asked that theirs be the last innocent blood shed. By all accounts (that is, those of judge Samuel Sewall, Mather and Robert Calef), the

ordered to pay child support, but was cleared on the rape charge – Elizabeth was thought not to have been a virgin when he attacked her. (Roach, pp. 174-175)

This is in sharp contrast to Rev. Noyes, who had earlier refused to pray with Proctor since he still maintained his innocence. (Roach, p. 242)
crowd was deeply and troublingly moved by Burroughs' final moments, when he not only moved the witnesses to weeping with his words, but recited the Lord's Prayer perfectly – an act he should have been incapable of as a witch according to the folk traditions that most people held regarding witchcraft. In this case, the elite view of witchcraft actually ended up being more exacting than folk tradition – Mather had to mount his horse to calm the near riotous crowd by reminding them that the Devil can appear even as an angel of Light. (ibid. p. 243) The hangings proceeded, and the bodies were buried, but public opinion had begun to turn against the trials – with so many outwardly virtuous persons being executed without confessing, it was entirely too likely that the innocent were being condemned with the guilty.

This turn away from the trials can be seen not only in the mob's reaction to execution, but also in the Salem meeting house itself. When a vote was held on July 3rd on whether or not to excommunicate Rebecca Nurse, the motion was passed by unanimous consent – and this despite her having relatives among the congregation who would have had every reason to believe her innocence. When a similar motion to excommunicate Martha Corey was put forward on September 11th, it passed by only “general consent” - the Nurse's and Corey's and their allies in the Church had turned openly against the trial, making plain their belief that innocent people had been killed. Moreover, this opposition was not limited to the powerless. Around the 15th of that month, Justice of the Peace for Essex County (wherein Salem Village lay) Dudley Bradstreet began refusing to issue any new warrants for the arrest of suspects. Within days, both he and his wife had been named by the afflicted as witches – responsible for the deaths of nine people no less. The Bradstreets immediately fled the colony.

The final blow to the trials did not arrive until the beginning of October, however. Increase Mather, President of Harvard University and father of Cotton, had been asked to write a pamphlet on the use of spectral testimony (that is, the descriptions by the afflicted of the tormenting spirits of the accused which were, of course, invisible to the magistrates) in the courtroom. While ministers around the colony, as well as several judges, had had deep misgivings about the reliability of this evidence from the start, these doubts had been overwhelmed by the freely given confessions of the accused which not only convinced the elites of the fact of a witch conspiracy, but also matched the spectral evidence given by the accused, validating it in the eyes of the authorities. And yet spectral evidence

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53 We may take the fact that they acquiesced in this decision to be an indication of how deep the fear of being accused went at this point in time. (Roach, p. 191)

54 In actuality, of course, the confessions could hardly have done otherwise. Whenever an accused confessed, the afflicted
remained problematic: for as many pointed out over the course of the trials, if Satan could impersonate the prophet Samuel (as was thought to be the case in the reign of Saul in Israel, 1st Book of Samuel, 28:3-25) then he could impersonate anyone, including the innocent and the saved.55

Mather went on to describe several reasons why spectral testimony could not be considered valid in the courts. To the assumption that God would not permit so many good and righteous men to be in such deadly error, Mather replied that God had allowed the good to suffer before, and would do so again. Similarly, since God did not grant humans the ability to see the “Invisible World,” the knowledge of its goings on exhibited by the afflicted could only come from Satan – and Satan could not be trusted to tell the truth. Furthermore, if Satan could bring New England to execute the innocent by tormenting the afflicted, the he would be killing two birds with one stone: endangering the souls of the judges on the one hand while weakening the authority of the law on the other. The 'touch cure' favored by the judges, where the afflicted would be blindfolded, and the accused made to touch them in order to break the spell, was also fatally flawed: as folk magic it came perilously close to witchcraft itself, and allowed Satan the opportunity to 'prove' the guilt of the accused. (Roach, p. 308-309) The afflicted themselves are not spared in his argument: their evidence could not be counted in court since they were clearly not in their right minds (at least during their fits). Since Satan did not need the permission of any human to work his evil, Mather offered a powerful alternative theory to spectral attacks and witchery – the afflicted were simply possessed.

Perhaps the most interesting point raised by Mather, and one that provides an astonishing link between those dark days and our own, deals with the 'evil eye' – the folk belief that a witch's gaze could hurt a victim by shooting spiritual poison at them. Mather described recent scientific findings by Isaac Newton that showed that eyesight was not a projective, but a reflective phenomenon: rather than invisible beams that moved from the eyes out to the world, instead sight came from light beams that were reflected off of external objects into receptors in the eyes – proving that evil eye to be nothing but superstition. This interest in science was not an abnormality in the Puritan world – part of the identity of Puritanism stemmed from its rejection of Catholic 'superstition' in favor of Protestant 'reason.' And

55 While Cotton Mather knew of the potential pitfalls of spectral evidence, he nonetheless encouraged the trials for two reasons: firstly, specters would be enough to hold a person for questioning, even if it was not enough to convict, and secondly he assumed that the evidence against the condemned included much more that simple spectral testimony – an assumption that proved utterly false.
it was precisely in these terms that opponents of the trials such as Robert Calef had been arguing – that the Salem trials resembled nothing so much as the dreaded witch-hunts of Europe.  

Mather concluded his attack on the empirical foundations of the proceedings by stating in startlingly strong terms that “[i]t were better that ten suspected witches should escape, than that one innocent person should be condemned.” This statement inverted the accepted understanding of the crisis: that the whole of society was so endangered by sorcery, by the vast witch conspiracy, that only extraordinary measures could root out the infection, and to do less might be to allow the whole to sicken and die. But Mather's arguments were not new – he had merely collected, argued, and given his considerable imprimatur as the most respected minister on the continent to ideas that had circulated (both in words and in print) for months. Nonetheless, with Mather now firmly against the trials (until such time as passions could begin to cool) the authorities began to worry that they had innocent blood on their hands.

Since the court of Oyer and Terminer had been adjourned until November, the elites had time to consider how to proceed. The judges themselves were split on the issue: some, like William Stoughton, were convinced that the conspiracy was real, and that delay could only allow the Devil to strengthen his grip on the community; others, like Samuel Sewall (gripped with panic at his part in the proceedings) and Nathaniel Saltonstall (who ended up resigning, and was himself accused) were certain that something had gone horribly wrong. (Boyer and Nissenbaum, p. 32) On October 29th, the Royal Governor William Phips ordered the Court permanently adjourned – just three days before it was scheduled to reconvene. (Roach, pp. 325-326) He may have been helped in his decision by rumors that his own wife had been named a witch – and while this need not have meant an examination (much less a trial), it must have given him clear evidence that rumors of witchcraft could attach to anyone, guilty or innocent. (ibid. p. 304; Boyer and Nissenbaum, p. 32) In either case, Phips reported to the Clerk of the Privy Council in London that “The Devil hath taken upon him the name and shape of several persons who were doubtless innocent and to my certain knowledge of good reputation.” (Gragg, p. 176) When special courts were ordered to reexamine the evidence against the accused – this time without the acceptance of spectral testimony by the court – all of the remaining suspects were either acquitted or pardoned over the next several months.

56 Interestingly, the states most brutally engaged in the anti-witch project tended to be just those enlightened Protestant regimes that the Puritans sought to emulate – Spain, Portugal and the Italian statelets rarely engaged in the practice, preferring instead to hunt heretics, with remarkably similar effects. (Golden, p. 413; Reuthven)
3.5. The Deceptive Cycle

Why were the trials at Salem characterized by an explosion of denunciations, when previous witch trials were not? Why did they instead follow the patterns set by the mass executions in Europe? In other words, what was it that transformed the witch trials into witch hunts? The answer is the use of coerced interrogation. The Court of Oyer and Terminer, by forcing the accused to either confess and name others or face execution, created a strategic environment that would guarantee the commencement of a deceptive cycle. Similarly, the lack of any countervailing investigative apparatus ensured that false confessions (and accusations) would not be recognized. But how was it that the accused (and accusers) had so many names to offer? If the accused were not being chosen on the basis of witchcraft, then how were they chosen?

Many interpretations of the choice of victims have been put forward by observers in the past, including by those who witnessed the trials themselves. Robert Calef, in his scalding attack on Cotton Mather and the Court entitled “More Wonders of the Invisible World,” attributed the business to “a parcel of possessed, distracted, or lying Wenches (sic),” while the Rev. Charles Upham, in his two volume study of the trials, attributed it to power-hungry ministers. (Calef, p. 298; Upham, 1976) Others have argued that the trials' character resulted from the Puritan fear and distrust of female sexuality, the political tumult of the years following the Glorious Revolution, the collapse of theocratic governance in favor of imperial government, and the massive and long-lived tensions bubbling just below the surface of Salem village in particular. Certainly, misogyny plays a role in any process that threatens with execution four women for every man. (Hall, p. 6) The Massachusetts colony had entered a period of profound flux even before the Revolution - James II had revoked the New English charter, and had combined Massachusetts Bay, Connecticut, Plymouth Bay, and New Hampshire colonies into a single unit known as New England – and how the accession of William and Mary would affect the colonies was very much an open question. Perhaps the afflicted really did feel bewitched as a result of hallucinogenic ergot that appeared on the wheat, or from the psychological pressures inherent in a highly stratified and closed society? (Caporeal, 1976; Harley, 2006) Or perhaps the social tensions resulting from the creation of an imperial/global market simply finally boiled over into intra-communal violence? (Boyer and Nissenbaum, 1974)

Nonetheless, none of these arguments can explain why the deceptive cycle occurred, or why it
came to an end. Misogyny was all too present in Salem – it was in fact a constant – but no more so in 1692 than during any of the other witch trials that also occur in New England. The considerable political uncertainty had an ambiguous effect on the trials: the lack of a constituted authority before the arrival of the new charter meant that the Court was not convened until more than three months after the first accusations were leveled, delaying the trials but also allowing the backlog of accused to accumulate. Nor was the witchhunt a reaction to the threatened loss of theocratic power: the new charter lifted the Jamesian ban on office holding by non-conformists. The argument that the trials were a diabolical pact made between blood-thirsty young girls and unscrupulous ministers runs aground when we consider that the Court was not controlled by the religious authorities – they were instituted by a Governor whose loyalties were to himself, and certainly not to Salem Village's Church.

The argument that the trials were so destructive due to the tensions unleashed by the integration of Salem Town and Village into the Imperial trans-Atlantic economy is considerably stronger. These tensions certainly did exist, and the factions lined up on either side of the trial do appear to replicate the split between the older agrarian interests (represented by the Putnam family and their assorted faction) and the newer mercantile interests (represented by the Porter and Proctor families). Certainly the fact that Ann Putnam, Sr. played such a pivotal role as an accuser lends itself to the interpretation that she saw the fear of witchcraft as an opportunity to wrest some power back towards her own people. But the attempts to locate the witch-trials as part of a larger story about the transition from an agricultural world to one based on merchants, trade and capital tell only part of the story. That transition had already occurred – by 1665, merchants outnumbered farmers among Salem Town's selectmen by a ratio of six to one. (Boyer and Nissenbaum, p. 87) By the time of the trials, the better lands in the village, as well as the stronger links to the larger Empire through Salem harbor, resided in the hands of the Porter faction: if the witch-trials were a dying gasp of the Putnam family's agrarian domination over the village, then it was a dying gasp that came after the corpse was already cold. Doubtless, these tensions did exist, and for the reasons outlined above – but why did these tensions boil over well past the point where they could have done any good? And why would the colonial government, headed by men such as Phips (who was the Platonic ideal of the self-made man) have collaborated with economic interests

When men were accused they tended to be either 'cunning men' like Samuell Wardwell (already identified with magic and socially marginal) or relatives (fathers, sons, husbands, etc.) of those already accused. That the only person acquitted during examination was a man (Nehemiah Abbott Jr.) can hardly be seen as coincidental. (Roach, p. 90 – 1) But the Salem trials were not unique in this regard.
so vastly different from their own? For while the Putnam faction had backed Rev. Parris to the hilt, Parris did not run the trials, nor did he convince the judges to prosecute against their better judgments. These tensions might have been a necessary factor in explaining why the trials happened the way they happened, they cannot explain why the trials happened at all.

Instead, the raw material for the deceptive cycle can best be explained with reference to the theory of political violence put forward by Kalyvas (2006): all these factors merely gave shape to a process of social conflagration set in motion by the trials themselves. Once the magistrates had become convinced that a witch conspiracy actually did exist, they would be willing to consider new forms of evidence (spectral evidence in particular) provided by the afflicted – and because the afflicted were so intimately tied into those pre-existing social tensions, they could use their unique position in the minds of the judges to turn the focus of the state's coercion onto their local enemies. The two main factions in the village were organized around the two most powerful families: the Putnams (agrarian, less wealthy, strongly tied to the Church) and and the Porters (tied to mercantile interests in the town, wealthier, and far less inclined towards the Church under Parris). (Gragg, p. 33) In 1695, the tensions regarding Rev. Parris and his role in the trials had reached a boiling point – both pro and anti-Parris petitions were circulated around the town. Fully twenty-five Putnams and Putnam relations signed their names behind the Reverend, with only Joseph Putnam and his wife siding against – both of these had been profoundly against the trial from the start, and Joseph had even confronted Ann Putnam Sr. when he feared his apostasy would lead her to denounce him and his family along with the other suspects. On the Porter side, not a single relation stood behind Parris, and eleven were willing to publicly oppose the minister. (Boyer and Nissenbaum, ch. 5)

This remarkable split is no accident, for by then Parris had become inextricably tied to the horror of the trials – and the Putnam family with him. The vast majority of village accusers were either direct members of the Putnam clan, or were related by marriage: Ann Putnam Jr. had quickly taken the lead among denunciations, Ann Putnam Sr. had joined the afflicted early on (and not coincidentally just as the denunciations began to be directed against other members of the Church), and eight Putnam relations were involved in a total of forty-six witch prosecutions. Those accused were just as strongly tied to the Porter clan: seventeen of the accused were either related to Israel Porter by blood or by marriage, or were politically and socially invested in the Porter family. (ibid. p. 184) These families had competed for political and social leadership in Salem village and town for decades – but why was it
only the witch-trials that brought this conflict out into the open?

The answer is that the trials offered a means for the Putnam family, which had been on the losing end of this struggle since the mid-1600s, to revenge themselves against their more successful competitors in a way that preserved the illusion of godliness: for the accusations were not seen as a deliberate attack by one family against another (although some villagers certainly had their suspicions from the beginning), but rather as a purification of the community from an assault by the Devil himself. And indeed, this ability of the trials to transform petty local grievances into battle with the Lord of Lies was not a property of the Putnam clan alone – part of the reason why the accusations spread so far afield (to places like Ipswich, Topsfield, and above all Andover) was because of the opportunity for revenge that these accusations offered. The case of Timothy Swan offers a stark example of how a man could bring his enemies to utter ruin by claiming to have been attacked by witchcraft (for which no direct evidence was possible).

Certainly, it cannot be possible that the (very) young Abigail Williams and Ann Putnam Jr. would have chosen their victims randomly, and just so happen to have lighted upon those families and individuals that had been a problem for so long. For the girls named people they could not possibly have known about – names that would have been suggested to them as likely culprits by concerned family-members (and there is no need to doubt the sincerity of their concern). Indeed, the names suggested would have been most likely to be those of known enemies – those who would have been most likely to wish the family harm, and potentially willing to make a pact with Satan to carry that harm out. In other words, it is not necessary to assume the irrationality of the actors in this drama to explain the irrationality of that drama's conclusion: in a world in which people accepted witchcraft (whether the mass belief in black magic, or the elite belief in the Satanic conspiracy), the appearance of mass-seizures unexplainable by medical science of the time would have immediately made witchcraft a likely source of the trouble. Furthermore, the pre-existing tensions in the community would have provided the afflicted with a number of potential persecutors – it was precisely those who would have a motive who could be expected to be behind the attacks, and these were precisely the local enemies of the afflicted. And while we may suspect that several of the afflicted were engaging in deliberate deception (Mary Warren, Ann Putnam Sr. and Goody Bibber all spring to mind), the willingness of their relatives and friends to believe their accusations can be explained simply by the fact that they did appear to suffer, their enemies had the motive to make them suffer, and no one doubted that witches
could (either through their own powers, in the case of mass beliefs, or through borrowing the Devil's powers, in the case of elite beliefs) cause just such suffering. In other words, the accusers and their supporters may not only have been acting sincerely, but were rational in their sincerity.

And yet, Salem village was hardly alone in experiencing these tensions. We can see this fact most clearly by the spread of the afflictions from the Village into neighboring areas like Ipswich, Topsfield and Andover: just as the tensions in Salem made use of the opportunity provided by the witch hunt, so did local tensions in these other towns. Why were the accusations taken at face value, when previous outbreaks of witchcraft had led the judicial system to try and execute – and also acquit – suspected witches without degenerating into a spiral of denunciations? For this process to have gotten off the ground, the judges would have to have become convinced that the accusations were true, and that the conspiracy, rather than including a small number of marginal, envious, and treasonous or misguided individuals, instead reached into every part of the New English community? How could it have been that the elites leading the trials (the judges, the Justices of the Peace, the Governor himself) were willing to turn the trials against their own – including well-known and well-respected individuals in the Church and government sectors? While elite sympathies are clear in that those elite accused who escaped were not tracked down with any particular vigor, the fact remains that the accusations were believed to be credible enough that the authorities were willing to place seemingly Godly lives in danger by holding them for trial.

If the underlying social tensions in Salem village explain who was accused (at least at first), how was it that this cycle did not come to a halt until so many had been named? For the witch hunt could only continue as long as the afflicted, the magistrates and the accused acted in certain important ways. For the trials to continue, the number of accused would have to grow – the afflicted would have to keep naming names, even after the obvious local suspects had already been dealt with. Similarly, the judges would have to continue to see the evidence presented before them at trial as proof of witchcraft – they would have to remain convinced of the truthfulness of the accusations, and the reality of witchcraft. Finally, the accused would have to confess in large enough numbers to keep the public convinced of the reality of witchcraft in these cases – that is, the accused would have to be willing

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58 An excellent example of this willingness to persecute elites can be seen in the case of Captain John Alden: merchant, sea-captain, Church member, and (most strikingly) the eldest son of John Alden Sr. - the recently deceased (1687) and lest surviving signator of the Mayflower Compact. Accused by John Holten, he managed to escape after 15 weeks incarceration in Boston prison. (Roach, p. 288)
partners in their own (apparent) destruction. As we have seen, it was precisely these last two necessary (and interconnected) behaviors that eventually weakened sufficiently to bring the trials to a dramatic halt.

3.6. The Strategic Logic of Coercive Interrogation

In order for a deceptive cycle to continue, the authorities must not become aware that they are in one. The captives must lie, and the torturer (or coercive interrogator) must continue to believe them. How did this happen in Salem? Let us begin with the afflicted. The most obvious incentive for the women and men who made the accusations was to punish their enemies – either because they sincerely believed these enemies to be at the root of their suffering (and there is no doubt that at least some of the afflicted were sincere in this belief – see the case of Mercy Short of Boston, whose afflictions were long-lasting and prevented her from eating for as long as twelve days at a time), or because they were willing to cynically use the trials to attack enemies they knew to be innocent (as implied by Mary Warren's recantation before being accused herself). This incentive helps to explain the spread of the accusations, not only as the original afflicted kept naming names, but also as the number of afflicted continued to grow, with the perverse result that as the untapped potential victims in Salem village diminished (as the low-hanging fruit were snatched), new accusations around the territory (and farther afield in Connecticut) kept the process going, validating the older accusations (and the afflicted who made them).

Furthermore, as the accusations and ranks of the afflicted grew, some of these accusers began to find themselves possessed of incredible power to condemn individuals as they saw fit! Abigail Williams and Ann Putnam Jr. in particular became quite famous and influential: they were called upon by diverse members of the community from around the territory to discern with their powers the cause of others' afflictions, and those they named were very likely to find themselves arrested for suspicion of witchcraft. The influence of these very young girls in a society that valorized men and age over women and youth must have been quite disturbing to the elites in New England – and were certainly exasperating enough for Increase Mather (President of Harvard and the most influential religious man in the English colonies) to berate a fellow member of the Boston elite (a “man of no small note”) for bringing his sick child to Salem village to find the source of the child's afflictions. “When Increase

59 Short's afflictions began after visiting the accused in Boston jail around the end of May – after an altercation with Sarah Good, Short was unnerved enough to break down in convulsions which lasted off and on until 1693. (Roach, p. 126)
Mather heard of the accusation [the girls had named Elizabeth Cary and Mary Oinson], he confronted the father to demand whether the man did not think there was a God in Boston that he should go to the Devil in Salem for advice.” (Roach, p. 306)

But of course, this new-found influence could only exist as long as the trials (and accusations) continued. Even if we were to accept the sincerity of the girls' beliefs about seeing the specters of others tormenting the innocent, it would have taken a person of heroic proportions to have set aside such power in the middle of the trials. Furthermore, no individual afflicted could afford to do so, even if they were willing: as the case of Mary Warren makes clear, any attempt to undermine the legitimacy of the accusations would only open oneself up to being accused in turn. That is, the afflicted were willing to enforce cooperation and punish defection in their own ranks. This willingness to be brutal in maintaining group cohesion is also explained by the biggest danger for the afflicted: the danger of being caught in an act of premeditated murder. Lying was not only a sin against God, it was also a serious crime under English law, especially in cases of false testimony. (Hansen, p.. 35) To admit error would have been to admit the possibility that they had intentionally caused the deaths of innocents (and imperiled the souls of the magistrates) – and maintaining a united front on this point would have been a necessity. Thus, regardless of how the afflicted became involved in the trials, once they were swept up in the process, and possessed of the power of life and death over whomever they chose, there was no way for them to extract themselves until the trials had been discredited.

But it was not enough for the afflicted to keep adding to the ranks of the accused: the judges would have to continue to see these accusations as credible, and the spectral testimony offered by the afflicted as truthful. In this, the judges were helped by their prior belief that witchcraft was real – and was a necessary implication of the existence of God and Satan's war against Him. While there were those who could reconcile a belief in God with a disbelief in witchcraft (Robert Calef numbered among these), most educated men would have found this position verging too close to a disbelief in the deity, and the reality of the spiritual world. In fact, much of the judges' (and other influential elites') opinions on the court's doings were informed by a firm belief that, in such a weighty and important situation, God would not allow serious and pious men to be misled, and to seriously admit this

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60 In fact, Cotton Mather's writings on the trial – full of warnings about the danger of relying on spectral testimony that might allow Satan to mislead the minds of men – were entitled Wonders of the Invisible World; even knowing the danger, Mather had a basic assumption that this invisible world was a tangible reality. Calef's sardonic riposte was entitled More Wonders of the Invisible World: for of course Calef did not believe in the reality of such a thing at all.
possibility would be to question the wisdom of the judges themselves. A case in point is Cotton Mather: a supporter of the trials, he was nonetheless concerned by the use of spectral testimony which might allow the Devil to deceive in order to bring innocent blood onto the hands of the authorities. In his letter to John Foster (a member of the Governor's council), Mather argued: “I am suspicious that the Devil may at some time or other serve us a trick by his constancy for a long while in one way of dealing. We may find the Devil using one constant course in nineteen several actions, and yet he be too hard for us at last, if we thence make a rule to form an infallible judgment of a twentieth. It is our singular happiness that we are blessed with judges who are aware of this danger.” (Hansen, p. 142) Whatever might be our judgment of Boston's elites, we cannot argue that they were unconcerned with the possibility of false accusations.

Once the trials were underway, another perverse incentive (intimately related) was to arise. If the trials were going off the rails, then the judges would all have been guilty of the murder of innocent people, and of helping the Devil to assault the community they were trying to protect. And if this were so, then the elites would be de facto incapable of leadership – their judgment called into question, and their souls imperiled. While chief judge and Lt. Governor William Stoughton would go to his grave believing that those executed had been guilty as charged, other judges began to lose faith in the proceedings as more and more confessors began to recant, including N. Saltonstall and S. Sewall. Even Mather himself, who had been keenly aware of the dangerous undercurrent to the proceedings, nonetheless refused to believe that the crisis was imaginary: something had to have been going on, something diabolical, and even the end of the trials and the public proclamation of the innocence of the accused was not enough to deter him from his belief that so many good and cautious men could have been so disastrously wrong. Without a counter-narrative that allowed the judges to reinterpret the evidence without implicating them for their fatal gullibility, the elites in charge of the trials could not extricate themselves from the proceedings very easily. As noted above, those who did so (Bradstreet, Saltonstall) soon found themselves targeted by the afflicted.61 For the elites to recognize that the afflicted were lying would mean to have been guilty of falling victims to the machinations of prepubescent girls.

This counter-narrative would not arrive until October with Increase Mather's Cases of

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61 Saltonstall had resigned from the court around the time that the first condemned – Bridget Bishop – was executed. “As the months passed, he would remain “very dissatisfied with the proceedings.” The afflicted, moreover, would soon report seeing his specter.” (Roach, p. 166)
Conscience Concerning Evil Spirits. With Mather's impressive imprimatur, the elites could retain their authority, and bring the trials to a halt, by arguing that the afflicted were possessed – that is, their suffering was real, as was the Satanic involvement, but the specters seen by the afflicted, the evidence provided by the touch test, and the 'evil eye' that caused the girls to enter their fits were all caused by devils impersonating, and manipulating the innocent. Consequently, all involved could save face: the judges had been tricked but by the Lord of Lies (and not by little girls); the afflicted were not lying, but were similarly being lie to. The accused, meanwhile, had simply had the bad luck to be the targets of this Satanic attack on society.

For this counter-narrative to have been an acceptable replacement for the narrative of witchcraft and spectral assault, however, the judges would first have to doubt the reality of witchcraft in these cases. Here we must come to the incentives faced by the confessors: for as long as the accused were willing to prove the charges against themselves (and consign themselves to the gallows), the authorities would continue to be convinced that, whatever the shape or spectral nature of the evidence against them, witchcraft was real, and that those who had refused to confess were nonetheless guilty as charged. Why did the accused so frequently admit to witchcraft? One theory that has characterized writings on the trials has been that those who confessed could not be killed – rather, they would save themselves by renouncing their sins, and be reintegrated into the community. But this could not be the case at the outset – witchcraft was not a merely religious sin, it was rebellion against the state punishable by death.\(^\text{62}\) That confession cannot have been seen at the start of the trials as a means of avoiding the gallows can be seen by the fact that every single confessed witch in the period leading up to the trials (beginning with the first confession by Mary Johnson in 1648) had been executed: confession, far from offering salvation, merely ensured the confessors destruction. (Hall)

And yet, it is true that, of the 19 executed, only one had confessed, Samuel Wardwell.\(^\text{63}\) Moreover, it is clear that by the end of the summer, the link between refusing to confess and execution had been firmly established in the popular mind: when Mary Tyler was accused, her brother-in-law

\(^{62}\) Witchcraft cases were prosecuted as a felony, punishable by death, by the civil authorities. “The means of execution was death by hanging, and never that of being burned at the stake.” (Hall, p. 11)

\(^{63}\) Wardwell would furthermore take an active role in denouncing other witches and questioning them as sharply as the judges. (Roach, p. 270) He was nonetheless sentenced to death once his testimony had been given. The other accused had confessed at their arraignment or initial questioning – a fact intimately connected with explaining why the confessed tended to survive. While others who had confessed were also condemned, their executions were either not scheduled before the end of the trials (as in the cases of Abigail Hobbs and Dorcas Hoar), or they died in prison before sentence could be carried out (as in the case of Ann Foster).
John Bridges (whose own wife and daughters had been accused and arrested) urged her to confess for:
“God would not have let 'so many good men to be in such an error about it,' and she would surely hang
like the rest if she did not admit it.” (Roach, p. 279) Similarly, when Margaret Jacobs recanted her
confession in late August, she explained that she had confessed “to save my life and to have my
liberty.” (Gragg, p. 164) By this point the deceptive cycle has become firmly established: the accused
was presented with a choice of lying and living or telling the truth and dying, while the Court had made
clear they would not accept any story other than confession, accompanied by the naming of names.
How did this perverse incentive structure become established? Why were those who maintained their
innocence so much more likely to face death, and those who 'admitted' their pact with Satan more
likely to survive?

The answer lies in the prior beliefs of the magistrates. Unlike the previous New English trials,
in 1692 the authorities had become convinced (through the evidence presented by the afflicted, but
above all by the earlier confessions) that witches were conspiring with each other to overthrow the
government.64 This was in stark contrast to how English law had traditionally viewed witchcraft, as
primarily a crime of maleficium – that is, working evil on another – which could be punished not for
the heresy implied, but the physical harm caused by others, and which did not imply any particular
organization by the malefactors. (Gragg, p. 10; Reed, p. 228) Once the outlines of this conspiracy
became clear to the elites, the importance of the trials no longer lay in the punishment of previously
worked witchcraft, but the rooting out of this network of witches – and that meant finding the names of
other witches still hidden in the community. In other words, it was more important to the judges that
the witches be discovered than that they be executed. And trying these discovered witches would
involve gathering testimony not solely from the afflicted, but from other witches who could place them
at the witches meetings, and witnessed them acting in covenant with Satan.

Consequently, those who confessed – and named others not already proven to be witches –
made themselves necessary to the running of the trials: their testimony in court would be necessary not
only to discover witches, but also to act as witnesses of their compact with the Devil – and it was this
compact that was the crime that the authorities feared most of all. Confessors then were not excused

64 That witches were organized into a political project aimed at overthrowing the state in favor of diabolical rule was
asserted by no less an authority than Cotton Mather himself in his report on the trials in his Wonders of the Invisible
World: “Now, by these Confessions 'tis Agreed (…) that at prodigious Witch-Meetings the Wretches have proceeded so
far as to Concert and Consult the Methods of Rooting out the Christian Religion from this Country, and setting up
instead of it, perhaps a more gross Diabolism than ever the World saw before.” (excerpted in Mappen, p. 22)
from execution for their crimes, but the execution would have to be deferred until all relevant information had been brought out – and their testimony against their confederates given before the law. And it was precisely this dynamic that placed those who refused to acknowledge guilt in such mortal peril: with them, the trial had come to an end. Since they would not cooperate, their testimony had no value, and so they were the first to be tried, and consequently the first to be executed. That going to trial meant certain death can be seen most clearly in the case of Rebecca Nurse – visible Saint and respected member of the community. She was the only suspect to be acquitted during the trials themselves – but here the power of the afflicted over the proceedings nonetheless condemned her to death. The afflicted immediately cried out after her exoneration that her spirit tormented them as punishment for their testimony, leading the judges to send the jury back to reconsider their verdict. This time, they came back with the 'correct' decision: Nurse would hang like the rest.

In other words, the only way to prevent being killed was to agree with the afflicted, and send others to the noose – the magistrates would not be convinced of a person's innocence as long as they believed that the afflicted suffered, and as long as other witches were confessing. Confession alone was not enough – to buy time away from the hangman's noose meant throwing others to the galleys. Perversely, the magistrates were unknowingly enforcing the cycle of deception. By September, however, even the confessors were being brought to trial and sentenced to death. This shift in the incentives began to break the cycle. Once it became clear that hanging would follow confession anyway, with nothing but months in irons for a reward, suspects begin to recant. Previously, individuals recanting would make no headway against a Court convinced of the reality of witchcraft, as demonstrated by the case of Deliverance Hobbs. Hobbs had apparently tried to join the ranks of the afflicted around the time that her daughter, Abigail, was held for trial, and in fact had denounced Mercy Lewis (afflicted) and Sarah Wildes (the mother of constable Ephraim Wildes) before being arrested herself. Under questioning on April 22nd she at first denied the charges, but broke down under questioning (and the wails of the afflicted) and confessed, naming Wildes, Goody Osborn, and confirming the diabolical leadership of the “tall, dark man (…) wearing a high crowned hat” - the figure who would later be identified by Abigail Williams as Rev. George Burroughs. (Roach, p. 90) When Hobbs recanted she was interrogated in jail on May 3rd: her spirit, which had ceased to torment after her confession, had mysteriously begun to plague the afflicted again. When it had become clear that that judges would not accept a version of events that did not include her signing the Devil's book,
she again broke down and named several more witches. (ibid., p. 109-110) Unless a critical mass of confessors recanted, the authorities would not be forced to rethink their assumptions about the guilt of the accused.

By September, however, there were no longer suspects likely enough to name in Salem village – the prosecutions had turned more towards those being named in Andover and other surrounding towns. With the population of potential victims dwindling, the Court began trying the confessors – removing the incentive not to recant en masse. The words of Samuel Wardwell on September 13th make this conversion clear: “[H]e had lied. None of it was true. But it was all one, he said resignedly, for he knew that he would die for it now – whether he owned the confession or not.” (Roach, p. 288) Sporadic attempts at recantations began in May, and began gathering steam by mid-September – that is, just at the time that confessors Hoar, Hobbs, and Wardwell were being sentenced to death. (Gragg, p. 164) In other words, the confessions necessary to keep the judges from doubting the testimony of the afflicted could only come forward as long as the accused had reason to believe that cooperation would be met with some reward – and once this tacit arrangement broke down with the condemnation of the confessed, that cooperation would no longer be forthcoming. Once this occurred, enough doubt was planted in the minds of the masses and the elites that Mather’s *Cases of Conscience* could successfully supplant the narrative of conspiracy with the narrative of possession – effectively breaking the power of the afflicted without calling either their sincerity or the judgment of the authorities into question.

We can thus see that the incentives faced by the accused mimic in important ways those faced by people undergoing torture for information, both of whom are given the following terrible choice: either give the authorities what they want – reveal the names of those looking to damage society – or face an extreme form of punishment – torture or death.65 The actions of the judges similarly show how such use of coercion can fail to provide truth: once they were convinced of the truth of the allegations, they were increasingly unable to reevaluate their prior assumptions as each new confession seemed to validate the previous one. It is clear that this pattern, once established, becomes a perpetual motion machine: each new innocent is driven to confess falsely and name other, reinforcing the magistrates'  

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65 In fact, torture was explicitly used during the trial to generate the confessions of three of the accused – all the sons of other accused individuals: Richard and Andrew Carrier (sons of Martha Carrier), and Benjamin Proctor (son of John and Elizabeth). John Proctor wrote that neither of the Carrier brothers would confess to anything until “they tied them neck and heels till the blood was ready to come out of their noses.” (Roach, p. 209) Tying neck and heels was a form of military torture used in the English army that had made its way into occasional use by the civil authorities. (Rejali, p. 297)
belief in the reality of witchcraft on the one hand while widening the pool of suspects with the other. But how was this machine set in motion? When did the prior beliefs of the authorities become centered around not simply the presence of witchcraft but a conspiracy of witches? Where did the deceptive cycle begin? Much of the analysis so far has been based on the common incentives faced by those being tortured for information and those confessing to avoid execution, but the origins of this deceptive cycle lie in the use of torture on a single individual. And it would be her coerced testimony that would begin the cycle of accusations and denunciations.

3.7. Torture, Tituba, and Slavery

If the incentives faced by later confessors were clear – name others and at worst receive a temporary reprieve from execution, at best purchase liberty through the arrest of others – these were not in place when Tituba confessed. It was the fact that those who maintained innocence were executed (such as Sarah Good) while Tituba remained alive that convinced others that they too might be spared in exchange for cooperating with the proceedings. And it was the apparent sincerity of her confession, and the fact that this confession had not been coerced by the court, that convinced the magistrates of the reality of the conspiracy and the truthfulness of the afflicted. But when Tituba confessed, she would have to have believed that her confession would lead to her execution. Why then did Tituba admit to witchcraft? And why did she do so in the peculiar language of the elites – admitting not to maleficium for revenge, but to a covenant with Satan? What incentive did she face that made an expected death by hanging the preferable option? To understand this puzzle, we shall have to make recourse to the legal institution of slavery itself: for it was her slave status, and the power of Rev. Parris as her master over her that made her confession inevitable.

As noted above, Tituba revealed to Robert Calef around 1700 that her testimony had in fact been coerced – not by the courts, but by Parris himself. Gripped with concern over his daughter Betty (one of the first, and apparently most sincere of the afflicted afflicted), Parris was faced with the following dilemma: his daughter was being tortured severely, and had named Tituba, Good and Osbourne as her persecutors; according to his Harvard-educated beliefs regarding the nature of witchcraft, this meant that Tituba was part of a conspiracy of witches, and might know the names of other witches in the area also responsible; and yet Tituba refused to name her confederates. Furthermore, while judicial torture was not a part of the English system, it was an accepted means of
forcing the already convicted to reveal the names of accomplices – exactly the situation Parris now faced. If Parris did not torture Tituba, then we are presented with a puzzle even more disturbing than explaining Tituba's confession – for he certainly had the power and the legal authority to torture, as master of this woman, and he would have had to believe that she would only reveal the information he needed under threat of extreme coercion.

That slavery and torture are intimately linked can be seen from the written beginnings of the institution in ancient Greece. Torture and other forms of corporal punishment were part and parcel of a slave society: because slaves do not own property, and so cannot be fined, and are owned by masters who rely on them for labor, and so internment imposes costs on the master rather than on the slave alone, torture becomes the sole method of imposing discipline and inflicting punishment. That slavery and torture are intimately linked can be seen from the written beginnings of the institution in ancient Greece. Torture and other forms of corporal punishment were part and parcel of a slave society: because slaves do not own property, and so cannot be fined, and are owned by masters who rely on them for labor, and so internment imposes costs on the master rather than on the slave alone, torture becomes the sole method of imposing discipline and inflicting punishment.66 Torture was a marker of social status, the watchman on the walls separating freedom from slavery. Slaves could be tortured, citizens could not.67 This distinction between those who could be legally tortured continued into the Middle Ages with the rediscovery of the Roman Law in Europe: the aristocracy was exempt from (most form of) torture, while the peasantry would be subject to the full fury of the law. As already noted, the lack of a jury trial and the requirements for two eye-witnesses or a confession for execution led many states in Europe to focus on judicial torture in order to generate those necessary confession. (Langbein, 1798) With the reintroduction of a slave-based society in the New World, torture and corporal punishment became a *sine qua non* for maintaining control over a coerced labor force – and the forms of torture changed to reflect the new realities of a market-based economy.

Many of the forms of torture used today that do not leave scars in fact derived from the incentives faced by marketized slave holders: leaving scars on a slave would hurt their market value, since these scars would testify to potential buyers that the slave was a troublemaker. (Rejali, p. 314) To be a slave owner was *per force* to be a potential torturer – one with the (at least tacit) permission of the authorities. To keep a coerced labor force under control meant establishing the physical domination of the owner over the owned – a fact attested to by the fact that, while slave owners were not legally allowed to torture or murder their slaves in Pennsylvania, and occasionally cases arose of owners being tried for the murder of their slaves, the likelihood of being punished for exceeding an owner's authority

67 The ambiguity reflected in the writings of Aristotle on the usefulness of tortured testimony is appropriate in a non-racialized system of slavery: any free man might be made a slave, if captured in war, while slaves might become free through manumission. In such a society, where freedom is never entirely assured, torture was a way of reifying the distinction.
was extremely low. That slaves could not testify against their masters in court made it highly unlikely that such a case was likely to arise absent a public scandal. Instead, we must see the power of the owner over the owned as an example of petty sovereignty: the slave's relation to the master was similar to the subject's relation to the state.

Reverend Parris had in fact obtained ownership of Tituba during his time as owner of a small sugar plantation in Barbados – in other words, his experience as a slave owner would have been informed by the practice of slavery in the Caribbean, where the treatment of slaves was far less constrained by the law than in Puritan New England – and as the long history of slave rebellion and repression indicates, it was quite common for owners to torture slaves in order to detect slave conspiracies. Although there is no indication that Parris treated Tituba as a field-slave (for whom the most barbaric treatment was reserved), it is highly likely that Parris would have been willing to make use of the full extent of his power as master of a human being in order to find out who else was afflicting his daughter. In other words, Parris had the motive, as well as the opportunity, and even the semi-legal justification to torture Tituba for information.

But perhaps the strongest evidence that Tituba told the truth to Calef when claiming to have been beaten into confessing lies in the manner in which she confessed. Tituba's experience with magic was very much in the tradition of folk beliefs regarding witchcraft – using black and white magic to harm others or to find out who had harmed them. That it was Tituba who was contacted by Mary Sibley in the matter of the witch cake fits this pattern precisely – using magic in order to fight magic. Such beliefs were antithetical to the elite-view of witchcraft: magic could only come from the Devil – humans could not use magic on their own – and so such methods were more likely to draw the attention of devils and imperil the souls of those attempting to wield them than they were to identify witches. And yet when Tituba confessed, it was not to this sort of maleficia – consistent with the folk-beliefs regarding witchcraft – that she admitted, but to signing a pact with Satan. In other words, she confessed in court to exactly the charge that Parris was most likely to have believed. And to have done so in open court was to have declared herself an enemy of God and society – to have marked herself for death.

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68 “Both Peter Kalm and Benjamin Franklin declare that a master who killed his slave was liable to the death penalty; though Peter Kalm says that he does not know of an instance where the sentence was carried out. He observes, however, that a case having arisen, even the magistrates secretly advised the guilty master to leave the city, since if he remained he must certainly be put to death.” (Turner, p. 147)
We can thus see Tituba's confession as a parody of the ideal form of torture for information. Rather than garnering true information for Parris in his search for his daughter's tormentors, instead the pain caused information to spread in the opposite direction: Tituba learned through torture what sort of confession to make, and what the wages of non-compliance would be. While her confession in court was not brought about through torture by the judiciary, her confession depended on being tortured nonetheless – to have maintained innocence under the circumstances would not only have meant facing a trial she was likely to lose, but a master whose authority could only be imperfectly circumscribed by the law, and the safety of whose own flesh and blood depended (in his view) on forcing Tituba to reveal everything to the court. Consequently, her apparently irrational confession is in fact quite rational in retrospect: she faced a choice between certain execution and torture if she did not confess, and certain executed (but without being tortured) if she cooperated. It is only with this seemingly un-coerced confession and the need for her testimony in court against those she had named that we can explain the cycle of denunciations and confessions that followed: her confession convinced the judges that the conspiracy was real, that the testimony of the afflicted was true, and that those indications that did exist that things were not what they seemed could safely be ignored.69

3.8. Conclusion

The Salem Witch Trials differed so strongly from previous trials in New England because the authorities believed themselves to be confronting a secret and organized threat against God and government, and because they unconsciously replicated the logic of coercive interrogation. Both of these conditions were necessary for the creation of the deceptive cycle that tore through the wider colonial community. The witch trials that had occurred in New England during the first 80 years of the 17th Century were limited in scope because the crime of witchcraft was understood primarily as *maleficium* – that is, as the use of black magic to harm neighbors or gain revenge: consequently, the only goal of the authorities was to determine the suspect's innocence or guilt, with few social

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69 An example of how the judges' assumptions (apparently validated through confessions) regarding spectral testimony occurs during the trial of Sarah Good. As reported by Calef, “one of the afflicted fell in a fit, and after coming out of it she cried out of [Good's specter] for stabbing her in the breast with a knife (...) Accordingly a piece of the blade of a knife was found about her. Immediately (...) a young man (...) produced a haft and a part of the blade, which the court having viewed and compared found to be the same. And upon inquiry the young man affirmed that yesterday he happened to break that knife, and that he cast away the upper part (i.e., the blade piece found on the afflicted), this afflicted person then being present. The young man was dismissed, and she was bidden by the court not to tell lies.” The afflicted then went on to give further testimony to the court. (Hansen, p. 114)
Because of the necessity for a confession in order to convict on a capital crime like witchcraft and the fact that England (unlike other European nations) did not use judicial torture, these trials, even when they did not end in acquittal, were highly circumscribed affairs. The witch trials in Salem however were marked by a belief in a conspiracy – a secret crime that could not be investigated except through information provided (willingly or not) from those on the inside. This meant that suspects were expected to provide more than a confession: they were expected to denounce and name their confederates.

The belief in conspiracy, and the resulting centrality of denunciation in the proceedings, made the deceptive cycle possible and was the first way in which the trials mimicked coercive interrogation. The role of denunciation also provided the trials with the second condition necessary to generate this cycle: the suspects came to understand that lies would be rewarded, and the truth punished brutally. The secret nature of conspiracy ensured that the preponderance of non-spectral evidence would have to come from other witches. Because their testimony was important to the proceedings of the trial, those who confessed and denounced others would be spared as long as the trials continued, while those who did not denounce were utterly expendable. The first round of execution made clear to all suspects going forward where their incentives lay: after this, the denunciations would begin in earnest. By September, when the trials had burned through the population of the vulnerable in Salem, the cycle began to collapse under its own weight. With their testimony no longer necessary (as those they had accused began to come to trial), the confessors themselves were targeted for execution. With the reward for cooperation revoked, the confessors began to recant en masse.

The belief in conspiracy created the incentives to confess and denounce that activated the deceptive cycle. This cycle in turn fed on the pre-existing social tensions that ran through the Village, and would only end once the cycle had become too large and could no longer grow exponentially. But the belief in conspiracy did not arise in a vacuum. Instead, the magistrates became convinced of the reality of conspiracy by a confession that did not arise form the strategic environment listed above. It was Tituba's confession in court, seemingly uncoerced and made without hope of mercy, that laid the groundwork for all that came afterwards. Tituba's confession may not have stemmed from a belief that denunciations would save her from death, but they too derived from the logic of coercive interrogation. Her confessions were made under torture, conducted not by the magistrates but by her master, the Rev.
Samuell Parris.\textsuperscript{70} The strongest evidence of this is the fact that when Tituba confessed, it was not to the maleficium that made up the common understanding of witchcraft, or to the cunning-work that she had in fact performed. Instead, Tituba confessed to being a member of a Satanic Conspiracy, a view that persisted among the learned and the elites ever since the publication in the 15\textsuperscript{th} Century of the \textit{Malleus Maleficarum}.\textsuperscript{71}

The deceptive cycle that characterized the Salem witch trials arose from a false belief in conspiracy, and the strategic environment that was generated as the Court attempted to uncover this perceived threat to society. The result was an explosion of denunciations as the afflicted used the antiempirical nature of conspiracy to denounce their enemies, and the confessors denounced others to make themselves indispensable to the Court. This is the danger that torture for information contains, and only the credible threat to investigate the stories told by the tortured – to make the absence of torture contingent upon telling the truth – can prevent it from occurring. In Salem the use of spectral testimony replaced this commitment to empiricism, allowing the Court's prior beliefs to become ever-more entrenched with every confession. Newton's findings regarding the nature of eye-sight fatally undermined spectral testimony, but the Court would not be convinced to ignore afflicted visions until a critical mass of confessors began to recant – a process that could only occur once the incentive to confess and denounce had already collapsed under the weight of an ever expanding population of suspects. In the following chapters, I will examine the use of torture to uncover conspiracies that actually exist, by authorities unburdened by beliefs in unempirical forms of evidence. These authorities were in a position to verify coerced information to at least some degree: could they credibly threaten to do so? Could they prevent the deceptive cycle from occurring?

\textsuperscript{70} That the Court found no obvious marks on her body is no bar to this hypothesis. Non-scarring methods were used on slaves as a matter of course: scars signalled to prospective buyers that the slave was a trouble-maker, and so degraded the value of the human 'asset.' (Rejali 2007)

\textsuperscript{71} See Chapter 2 for a larger discussion of this text and its impact on elite understandings of witchcraft.
4.1. Introduction

In the preceding two chapters, I have examined the logic of torture for information, and used that logic to analyze the Salem Witch-Trials. That logic reveals a startling possibility: that torture can be used as a mechanism for feeding misinformation to a counter-intuitively credulous torturer. In order for torture to work, the authorities must be able to force the captive to choose between cooperation and torture – this is the basic logic of deterrence. Structuring that choice is the dilemma: the authorities must know when the captive is lying, but verification is costly both in terms of time and money. Consequently, it is not enough for the authorities to be able to verify the captive's story: they must also be in a position credibly to threaten this verification. In Salem, the magistrates of the Court of Oyer and Terminer were unsuccessful in preventing a deceptive cycle from appearing for two reasons. Firstly, the conspiracy they were attacking did not exist; secondly, the method of verification they used – the reliance on spectral testimony – was irredeemably flawed.

We turn now to two cases where these problems were less intractable. For the French forces in Algeria faced an existing conspiracy of insurgents, and the intelligence environment they were able to create over the course of the Battle of Algiers meant that they were often in a position to verify claims made by those they tortured. Similarly, the insurgent Fronte de la Libération Nationale (FLN) attempted to uncover an actual network of traitors operating in conjunction with those French forces, and were equipped with their own intelligence inroads among the French. These are conditions in which we should expect the deceptive cycle to have been far less likely to emerge: the fact that both sides were to fall victim to it provides strong evidence that the problems with torture are not the product of pre-empiricism and superstition.

Both the French and FLN experiences in the Algerian Revolution fit the scope conditions of my theory of informative torture. In both cases, the authorities (the French state on the one hand, the FLN colonels on the other) were engaged in a good-faith search for information. They were not torturing in
order to purge political dissidents *per se*, or to intimidate a larger population (although this would certainly be a potential side-benefit). Nor did either side have an incentive to use torture indiscriminately. The FLN, concerned with ferreting out traitors, could not afford to execute their own men if they were actually loyal. The French strategy developed during the course of the war, the theory of *guerre révolutionnaire*, placed the emphasis on the Algerian population and their political sympathies as the central battleground: in a battle for 'hearts and minds,' indiscriminate violence would alienate popular support, and hand the insurgents a powerful tool of propaganda. (Cradock and Smith, p. 79) The realities of war meant, of course, that misapplied violence would be a constant theme, the point is that the French had no particular interest, and considerable disincentives as a whole, against torturing those without real information to divulge. And yet both sides would eventually find themselves torturing (and killing) large numbers of innocents in the course of the war, falling into deceptive cycles that ended up harming each side's own strategic interests.

For France, the use of torture on a wide and increasingly indiscriminate scale harmed French interests on three grounds. Firstly, torture in the Casbah (the Muslim section of Algiers) alienated Muslim opinion, preventing any political solution that maintained *l'Algérie Française* without constant threat of force; secondly, political opposition to the war in France itself intensified as the radical Left and the Catholic middle joined members of the military in denouncing the conduct (if not the aims) of the war; and lastly, the torture fundamentally weakened France's stature on the world stage, encouraging the United States to support Algerian claims of independence in order to prevent the Soviet Union from gaining another potential client state. (Connelly, 2001) For the FLN, torture allowed the misinformation disseminated by French intelligence to metastasize, corroding and disrupting the guerrilla apparatus in the *bled* (countryside) through a series of ever-widening purges. The deceptive cycle unleashed degraded the organizational capacities of the FLN, ceded the strategic initiative to the French government, and only ended with the assassinations of the purge leaders by their own men. Rather than score a single intelligence coup by planting information, the hunt for traitors in the wilayas (FLN military districts) was a self-reinforcing cycle – a gift that kept on giving.

Algeria presents an interesting comparison between two cases of torture for information. The French forces in the Casbah faced an actual threat, were mindful of the political nature of *la guerre révolutionnaire*, used torture primarily as a means of gathering information (rather than as a means of social control). The FLN in the *bled* used torture to uncover a conspiracy that threatened the health of
the revolution itself, hidden among their most valuable asset: their own men. If it can be shown that French success in dismantling the FLN in Algiers was not primarily the result of torture, and that the use of torture by necessity caused the French to lose strategically what they had won tactically, then we will have a strong case to make that torture – while it may work in individual circumstances – simply does not work as a system of gathering information. In addition, the comparison provided by the use of torture by the FLN against itself allows us further evidence of torture's unsuitability for information gathering. The purge in the bled was no Stalinist attempt by the more authoritarian sections of the FLN to centralize power and do away with political opponents: while the torture began in Amirouche's Wilayah 3 (highly centralized and authoritarian), they quickly spread to the far more democratically organized Wilayah 4 under Si M'hammed. Moreover, there were traitors operating against the revolution – unlike Salem, this was no imaginary threat. And yet torture in the bled not only proved incapable of locating the source of the treason, it did more to help the French than the torture in the Casbah.

The chapter proceeds as follows. The next section outlines the scope of the investigation and outlines the analysis of torture that I use. The third section covers the history of the Algerian liberation movement, beginning in 1945 with the Sétif uprising, and extending to the Battle of Algiers itself (1957 – 1958). With the basic historical data established, the fourth section examines the role played by torture in the break up of Yacef's terror organization, and argues that torture per se was less responsible for Massu's successes than the informants who willingly (or unwillingly) revealed the names and positions of FLN activists. The fifth section then turns to the effects of the French success in infiltrating and perverting the FLN, by examining how the search for traitors unleashed another deceptive cycle. Section six considers the effects of torture on balance, weighing the ambiguous successes against the certain failures, as well as the weakening of French domestic support, and the collapse of the Fourth Republic itself. The final section concludes by considering these cases in light of the theory.

4.2. Analyzing Torture

Before beginning this project, I should first describe the scope of the investigation. We are not concerned in this chapter with the success of the French colonial project – after all, the French were forced to leave Algeria despite the crushing of the FLN's organization in Algiers. But to denounce
torture as a failure based on this fact alone would be tendentious in the extreme: it would be the equivalent of denouncing surgery as a practice because the patient eventually died. And indeed a strong case can be made that the French colonial project was doomed from the start: caught between nine million Arab and Berber Algerians (with little property and less political representation) and one million European settlers, the French were unlikely to have found any political formula that would have satisfied both a politicized majority demanding equality as French citizens and a settler community whose socio-economic position depended on preventing this majority from gaining political power. Similarly, the fact that torture had the effect of alienating Algerian sympathies and strengthening political support for the FLN cannot by itself prove torture unwise as a policy: the political effects of torture might after all have been minimized by a state careful to keep the focus of the torture regime on actual terrorists. Unless we have reason to believe that the torture of innocents (defined as non-FLN) was a direct implication of the processes of torture itself, then we should dismiss it as potentially the result of the French military's political autonomy in Algeria.

If we are to assess torture as a system of gaining information then we must confront torture on its own terms. In this chapter I examine the direct effects of torture by focusing on how well torture was able to distinguish truth from falsehood. The idea is to weigh the benefits of using torture – the true information gained from the practice – against the misinformation that may have entered the system, following the logic outlined in the second chapter. The model does not imply that torture can never work: if the captive is faced with enough prospective pain, and the state can credibly commit to verifying the information given, then the rational captive is best off telling the truth. The problem lies in generating this credible commitment to base the decision to torture on the outcome of that verification process. Without this commitment, the rational captive will lie, regardless of what he knows. While we cannot measure this credibility directly, we can proxy it by examining how the torturers dealt with those who were ignorant. If torture works as a system, then we should expect the following result: the original population of captives, composed of some ratio of knowledgeable to ignorant captives, should contract over time as the ignorant are weeded out (the state ignores their revelations) and the knowledgeable confess. An expansion in the number of captives, however, would be an indication that torture has failed to weed out the ignorant (who must lie) – and if the torturer cannot distinguish truth from lies, then we must assume that he knowledgeable captives lied as often as they were able.
It is important to distinguish between two major sources of information that allowed the Forces of Order to penetrate and dismantle the FLN organization in Algiers. One source, the torture of suspected FLN activists, has already been mentioned. The second source came from Muslim informants operating either as block wardens or direct informants for the French. These informants tended to be FLN members who had either defected or been coerced into serving the French, and the information they gathered and disseminated to the military lay at the foundations of many of General Massu's successes. While it is impossible to completely distinguish which successes and failures resulted from which source of information, it is nonetheless possible to gain a general idea by looking at the evidence that does exist: as we shall see, the use of these informants was responsible not only for the capture of Yacef's courier (whose torture led to the identification of Yacef's hideout) but for the near implosion of the FLN organization throughout the country, as French misinformation caused the leaderships of the various wilayat (rural military districts) to turn against their own men. While torture certainly played some role in revealing important information to the military, torture's very success often depended on tips from these informants – and in at least one important instance information that had previously been revealed by informants was not taken seriously until it had been 'verified' by torture.\textsuperscript{72}

As outlined in the model in the second chapter, torturers who are able to avoid the temptation to stop checking the information they hear will also be able to minimize the likelihood of starting this vicious cycle: if an ignorant captive speaks, and his testimony is checked out, then the state will have some probability of receiving the correct signal, and dismissing the captive's story. As we have seen in Salem, when the state's ability to check this information is compromised the cycle becomes an inevitability: and in Salem, as in the Witch-hunts of Europe in the 1500s, this is precisely what occurred. This factor becomes crucial when we consider that the state has no way – \textit{a priori} – of separating the ignorant from the knowledgeable captive. Whichever strategy the state chooses - whether to check information and obey the signal (torturing when it appears that the captive has lied, and imprisoning when it appears that the captive has told the truth) or to believe that torture works and fall into the temptation of accepting information uncritically simply because it has been educed under

Note that this presents a major problem for torture as an informational system: torture can only work when information obtained through coercion is checked out through alternative methods. To vet information in the other direction opens up the possibility of providing the captive with a preexisting storyline – i.e., it presents the captive with a narrative to either confirm or deny, and if this storyline is incorrect, it provides the captive with an easy means of lying and ending the torture.
torture – the state will apply it equally to both knowledgeable and ignorant captives.\(^\text{73}\)

One of the main issues with evaluating torture for information is the extreme secrecy with which states that torture treat the details: which techniques were used, how much pain was applied, what information was given up and when, and the value of that information are generally not made public record.\(^\text{74}\) This makes it incredibly difficult to test the effectiveness of torture on knowledgeable individuals. But if the state is faced with captives of unknown type, then the rational choice is to choose a single strategy or mix of strategies according to their expected utility and apply it to any captive, knowledgeable or not.\(^\text{75}\) And if this is so, then we may be able to draw conclusions about how effective torture was against the knowledgeable by examining how well it worked on the ignorant. In terms of the informational model of torture I put forward, we can make the following argument:

1. If the state can credibly commit to verifying the information it receives – *even though it has a short-term incentive to cheat* – then the state should accept more good information bad than bad on average.

2. As the state's information environment improves through the introduction of new intelligence, it should be more able to discriminate between truth and fiction.

3. Consequently, if a state can credibly commit to verification then the pool of captives should increasingly be composed of knowledgeable captives as the ignorant are weeded out.

4. If the knowledgeable are a small minority in the population of all potential captives then a large (and lopsidedly ignorant) initial pool of captives should shrink as the authorities focus their energies on the smaller number of knowledgeable captives.

5. Since the number of FLN activists during the Battle of Algiers never exceeded 6,000 (OPA and ALN membership combined) in a total population of 80,000, successful torture should have led to a smaller and smaller number of captives as the FLN organization was broken up.

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\(^{\text{73}}\) This need not imply that this strategy is applied in all cases, but that the choice of strategy applied should be only lightly correlated with ignorance or knowledge. This analysis also presumes no agent-principle issues between state and torturer. If there are, then the likely result would be to under-check the captive's story in order to maximize the amount of raw data revealed – a similar process characterized the use of 'body counts' in the Viet Nam war, as officers acted to maximize the number of 'enemy dead', leading to a gruesome form of inflation. (Mueller, 1980)

\(^{\text{74}}\) Interestingly, this is true not only for democracies: the German Geheimnisse Staatspolizei (Gestapo) in France only officially allowed a small number of 'sharpened' practices, all of which were in actuality superceded by torturers (Rejali) while Ron (1997; 2000) notes that autocracies have progressively moved towards non-scarring forms of torture as a means of limiting the fallout from discovery.

\(^{\text{75}}\) The state might very well prefer to choose different strategies for different captive types – such as not torturing ignorant captives – but this is unlikely to be possible with any degree of specificity.
6. *This did not occur:* as torture became a larger part of the information aggregating apparatus, the number of captives instead increased radically, regularly exceeding after March 1957 the total number of ALN fighters.

7. If the French could not detect when ignorant captives lied in order to end their suffering, then there is little reason to believe that they could detect the lies of the knowledgeable captives. Even with the far-reaching and effective intelligence apparatus represented by the DPU, the French state was still accepting large amounts of misinformation. In other words, having the ability to judge information gained under torture is not enough – the state must make a credible commitment to do so.

**4.3. The Battle of Algiers**

**Algerian Nationalism Divided**

The Algerian nationalist movement by the outbreak of the Revolution on November 1st, 1954 was far from a monolithic entity, and in fact it was the outbreak of the Revolution itself that would begin the process of consolidation that would leave the FLN as the only organization in a position to bargain for Independence with the French government. The nationalist movement up until that point can be characterized by three strains, engaged in cooperation and competition with each other: the *Association des Ulema*, a primarily cultural and educational religious group subscribing to a form of Islamic-nationalism, headed by Abdelhamid Ben Baddis; the liberal, reformist *Union Democratique du Manifeste Algerien* (UDMA) headed by the *evolué* Ferhat Abbas; and the radical, marxist-oriented strain centered (until the 1950s) around Messali Hadj. (Horne, p.38) In addition, there existed as well an Algerian Communist Party (PCA) that had been spun off from the PCF, and that was composed of both Muslim and *pied noir* membership. The FLN would eventually dominate all four of these groups, either through political marginalization, engaging their active support, or intimidation and violence, but not all at once, and not without considerable struggle.

While it would be beyond the scope of this investigation to determine the historical roots of Algerian nationalism (one might date the beginnings to the rebellion led by Abd el-Qadir in the aftermath of France's invasion in 1830), it is crucial to examine how the various strains of Algerian nationalism were able or unable to coordinate and cooperate with each other in order to understand the importance of the FLN's eventual triumph as the sole organ for the Revolution. The earliest moment of inter-Nationalist cooperation for our purposes is the battle over the Blum-Viollette bill in 1936. At that
time, the government in Paris was controlled by the Popular Front, and prospects for reform in order to address some of the larger injustices of colonialism seemed strong. The proposal would have allowed educated Algerian Muslim men, as well as veterans of the military (a small minority of around 25,000 out of nearly 9,000,000) to obtain French citizenship without surrendering the right to recourse to Islamic law for civil matters. (Horne, p. 37) This proposal sparked serious divisions in the nationalist movement, with the liberals (including Ferhat Abbas) siding with the reforms, and the Messalist People's Party of Algeria (PPA) denouncing the bill as a class-based means of divide and conquer. (Horne, p. 41) This optimism on the part of the Liberals would not be rewarded, however – strenuous lobbying by the settler lobby effectively delayed the bill until the collapse of Blum's government. The result was a nationalist movement that had been split along class-lines, with the liberals marginalized to a considerable degree, and increasingly convinced that “assimilation” was an impossibility.

The schism between the liberals and nationalists would be papered over during the second World War: after Charles de Gaulle's speech at Brazzaville in 1944, announcing the eventual end of colonization in black Africa and the integration of the Maghreb into a French Union that offered some hope of autonomy, both would join forces in the umbrella organization Amis du Manifeste et de la Liberté. This cooperation would be shattered however by the events of May 8th, at a victory parade in Sétif for the German surrender that same day. Attempts by the local police to confiscate nationalist banners led to violence against the settler population that left 104 pieds noir dead, and 100 wounded. The repressions that followed by the French military and settler militias killed somewhere between a low of 1,500 (according to the French military) and a high of 50,000 (according to the nationalists themselves), with “moderate” historians putting the estimate at around 8,000 – that is, a ratio of around 80 Muslims for each settler. (Talbott, p. 22) This massacre marked the final end of assimilation as a political goal in Algerian Muslim politics – from then on, autonomy would be the minimum solution for Muslim nationalists.

With the passage of the *Statut Organique* in the aftermath of Sétif, Muslims found their political aspirations once again blocked. This new framing law had created an Algerian Assembly with limited powers under the French Governor General (responsible to Paris), but had split representation into two colleges – one for the settlers, and one for Muslim men. Each would be apportioned 50% of the assembly's seats, but a motion of 25% of the members of either college could any law from being passed without a 2/3\textsuperscript{rds} super-majority – in other words, one half of the settler community – representing
a diminishing tenth of the population could effectively veto the will of the 90% Muslim majority. (Horne, p. 69) After UDMA and especially PPA victories in municipal elections, the 1948 elections for the Assembly and the National Assembly were rigged – as all elections in the second (Muslism) college would be until the end of *l’Algérie Française*. (Knight, 1958) But this apparent success by the *Pieds Noir* in keeping the Muslim population disenfranchised would have the Janus-like effect of crushing the moderate and legal nationalist movements as effective political forces, while leading radical members of the Messalist MTLD to organize for direct action. This splinter group, the *Organisation Spécial* (OS) would bring together radicals who shared a belief that only violence would force the French to respond to nationalist demands, and generally a common history of having served in the French army during World War 2. The OS would operate until its break-up by the French security forces in 1950 – an event that further split the movement, this time breaking apart the MTLD itself into pro- and anti-Messalist factions, and leading to considerable internecine warfare. This split would in turn allow for the creation of a “Third Force” that would seize the initiative with a general uprising on November 1st, 1954 – the FLN, composed of ex-OS members in conjunction with the *maquisards* led by Belkacem Krim in the Kabylia mountains. (Heggoy, p. 49-59)

Crucially, the FLN at the beginning of the Revolution lacked strong popular support, or even recognition: it would have to build this support by taking advantage of the derelict state of French administration in the *bled* (the countryside) to build their own counter-state, and by absorbing or eliminating other claimants to the nationalist mantle. Abbas was brought into the FLN through both intimidation and cooptation: his nephew had been among those killed during the massacre at Philippeville in 1955, and he was told at a meeting with Ramdane Abane a few weeks later that he needed to fold his UDMA into the Front. After a few attempts to make contact with de Gaulle, he disbanded the organization and joined the FLN in January, 1956. (Horne, p. 140-1) At the other ideological extreme, the PCA was absorbed after the failure of the independent *maquis rouge* and the death of its leader, a deserter from the French Army named Henri Maillot. While the PCA was willing to wage revolution for independence, the party preferred to maintain a separate armed organization, and the FLN would only allow communists to join the Front as individuals, and not as a group. After Maillot's death, the PCA ceased to be an effective alternative to the FLN. *(ibid.* p. 137-8) Of the various potential alternatives to the FLN, only the *Mouvement Nationale Algérienne* (MNA) – the successor to the MTLD – was to maintain its independence for any significant length of time. This was
for two reasons – first, because Messali had had decades to build up the organization, and thus had significant inherited support from the antebellum period, and second, because the MNA had considerable support among the Algerian migrant community in Paris, an area where the FLN would have to play catch up. While the FLN would kill around 15,000 settlers during the course of the Revolution, the number of Muslims killed, including MNA, *harkis*, and innocent civilians rose to between 200,000 to 300,000. (Boserup, p. 255)

In addition to these political divisions there was also a potentially lethal ethnic split between Arabs and Berbers, stemming back to the period of Ottoman rule. This ethnic cleavage could never be ignored by FLN elites, and would help ensure an organizational emphasis on collective leadership (avoiding the twin pitfalls of Messalism and ethnic rivalry). Exacerbating this cleavage would become something of a Holy Grail for the counter-insurgency.\(^\text{76}\) The class-divisions were less intense, thanks to the monopolization by the settler community of the vast majority of the arable farmland and bureaucratic jobs in the administration. Nonetheless, the distinctions between the rural and the urban populations (both classes facing exceedingly high unemployment, as well as high rates of illiteracy) and between the working class and the Arab *petite bourgeoisie* were real enough, although the latter tended to be replicated in the split between the proletarian MTLD and the bourgeois UDMA.\(^\text{77}\) Lastly, there existed also a divide between the 'interior' leadership and the 'exteriors': between those leaders operating inside Algeria, and those headquartered in Cairo, and later Tunis. This last divide would become serious enough that Ben Bella and the other 'exteriors' were excluded from the Soummam Conference (August, 1956) which reorganized the FLN and set it on the path towards urban terror and the Battle of Algiers – their interests would be 'represented' by Larbi Ben M'Hidi, interior head of the Autonomus Zone of Algiers (ZAA).\(^\text{78}\)

Consequently, the FLN was neither a monolithic expression of popular will, nor immune to cleavages in its own ranks. With access to the right information, the Forces of Order might be able to play on these divisions, which could only hinder the FLN's ability to construct its monopoly on

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\(^\text{76}\) A good example of how dangerous this ethnic cleavage could be for the FLN, consider the story of Si Chérif – an Arab FLN leader who murdered his Kabyl political officer in 1957. He then defected with 330 soldiers to fight as a *harki* for the French. (Horne, p. 223)

\(^\text{77}\) The figures for the distribution of arable land and for unemployment among the Muslim population are given by Knight (1958).

\(^\text{78}\) This dominance of Abane and the interior would have the ironic effect of making the hijacking of Ben Bella (and other exterior leaders) by the French military in Algeria redundant – and worse when we recognize that Ben Bella had been flying to Morocco to negotiate a summit calling for peace talks with France following secret negotiations with Mollet's government. (Heggoy, p. 163-4; Horne, p. 157)
Algerian nationalism. The French army was aware of this potential, as was the FLN: the search for an *interlocuteur valable* led the French not only to offer support to elements in the MNA to act as a private anti-FLN guerrilla force, but also to orders by Ben Bella in September of 1955 to “liquidate all personalities who want to play [this] role.” (Horne, p. 135) The MNA had suffered a severe blow at Guenzet in the Summer of 1955, after a *maquis* in Kabylia (eastern Algeria) led by Bellounis had been liquidated by the local FLN commander Amirouche. *(ibid)* Bellounis after this attempted to reestablish his *maquis* – this time the FLN responded with violence not only against the MNA fighters, but against the local populace who had supported them. The result was the Mélouza massacre, where 301 men and boys were rounded up and executed by the FLN for supporting Bellounis' fighters. (pp. 221-2) While the massacre did push Bellounis fully into the French camp, it also marked a serious missed opportunity for a French occupation interested in weakening the revolution.

What role did torture play in activating these cleavages? We can expect that torture had the effect of strengthening the FLN by casting the French in a highly unfavorable light among the Algerians – but was this counter-balanced by the information retrieved? As it turn out, torture had a profoundly demoralizing effect on the FLN, activating these cleavages and leading to the deaths of thousands of FLN fighters: but crucially it was not French torture but FLN torture that did the trick. As we shall see in the coming pages, the use of torture for information leaves an organization open to stove-piping misinformation, compounding error upon error. The success of the Forces of Order in cracking the FLN organization in Algiers allowed the French to inject misinformation into the FLN leadership, detailing the names of “traitors” who had sold out the Front to the French: and while traitors certainly existed, those named in the documents left on FLN corpses were not. The result was a massive purge of the interior, extending not only into Wilaya 3 (controlled by the brutal Amirouche), but also into Wilaya 4, the democratic-oriented Wilaya surrounding Algiers, leading to the execution of between 5,000 and 10,000 guerrillas. (Boserup, p. 252) Like the spiral we have already examined in Salem Village and in the European witch-hunts, the torturer found in the cries of his victims the evidence he was looking for – evidence that caused the military abilities of the interior to break down sufficiently that the lead role in the revolution once more would be played by the newly reconstituted exterior.

4.4. Torture in the Casbah
The Soummam conference in the Summer of 1956 resulted in the coming to leadership of Ramdane Abane, and a new focus on the use of terror as a means of dividing the settler and Muslim populations. In addition, the decision was made to extend the war into the cities, especially the capital of Algiers. That terror could pay dividends to the FLN had been established by the Philippeville massacre – although the FLN had killed 'only' 71 pieds noir (the rest had been moderate Muslims), the French had responded with the deaths of 1,273 Muslims, according to the government – the FLN would claim that 12,000 had been killed. (Rogers, p. 8) The result had been the destruction of the moderate/liberal position among the Muslim leadership, and growing extremism among the settlers themselves. A further casualty had been the proposed reforms announced by Resident Minister Soustelle – a double victory for the FLN, since actual reforms (as represented particularly by the SAS and the Centres Sociaux of Germaine Tillion) would have had the effect of leaching support away from the FLN and towards a more moderate solution. Focusing the FLN's activities on urban terrorism had the concurrent goal of bringing media (and in particular, international) attention on the Algerian question. Abane himself made the point quite explicitly: “Is it preferable for our cause to kill ten enemies in some riverbed in Telergma, which no one will talk about, or rather a single one in Algiers, which the American Press will report the next day? Though we are taking some risks, we must make our struggle known.”

Although the terror campaign was settled on at Soummam in 1956, the Autonomous Zone of Algiers (ZAA) had seen considerable violence going back to that June. On the 19th of that month, the French military had executed by guillotine two captured members of the FLN. In response, the military chief of the ZAA, Saadi Yacef, had been ordered to kill “any European between the ages of eighteen and fifty-four. But no women, no children, no old people.” (Horne, p. 184) The resulting collective violence was in turn answered by a settler bomb exploded at the Rue de Thèbes at a safehouse used by the FLN – along with the suspected FLN, another 70 unconnected Muslims had been killed, including women and children. On the 30th of September, the bombing campaign began in earnest, with two bombs exploded in the Mil Bar and at a local cafeteria, killing 3 and wounding 50 – a third bomb, set at the Air France terminal, failed to go off. The next several months would see a campaign of bombings and assassinations, culminating in the murder of Amédée Froger, the ultra mayor of Boufarik, by Ali la Pointe on

79 “Directive no. 9” (Fall 1956), as quoted in Connelly, p. 228.
On December 28th. At the funeral service the next day, a bomb planted at the cemetery to inflict mass casualties on the mourners went off early, preventing civilian deaths, but leading to a major *ratonnade* ('rat hunt') against the local Muslim population that killed four and injured 50. In addition to this campaign to divide the settlers from the Muslims, the FLN had planned an eight-day general strike to commence on the 28th of January to coincide with the opening of the UN session in New York. It was at this point, on January 7th, that the Resident Minister, Lacoste, had called upon Gen. Massu's 10th Paratroop Division to take control of all civil and military powers in the City. It was at this point that the 'Battle' began in earnest.

The Battle itself can be divided into three major periods: the initial application of martial law in January, leading to the widespread use of torture, and that led to the partial dismantling of the terror organization by March; the period between March and June that saw the FLN reconstitute itself under the full leadership of Yacef, while the French established their counter-terror information systems (the DPU and the DOP in particular) and the reassignment of the bulk of the 10th Division back to the bled; and the recrudescence of terror from June to September, when Yacef himself was finally captured and October, when Ali la Pointe was killed. But before we examine this saga, we should begin by noting the aims and goals of the two sides in the conflict. For the FLN, the goal was to create a no-go area in the Casbah that would allow the FLN to establish a “counter-state” resistant to French intelligence, and use their organizational capacity to raise taxes and launch attacks that would widen the gulf separating the settlers from the Muslims around them, while pressing the Algerian claim in the international community.80 For the French, the goal was primarily to identify and then dismantle the FLN organization – not to find the bombs *per se*, but to find the bombers, and the members of the political branch whose operation made them possible.81 In other words, the French were looking for information that was not necessarily time-sensitive in the 'ticking-bomb' sense: rather, they were seeking information on the FLN structure, and on the individuals who filled in that structure. This means that

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80 The importance of media attention for the FLN was deeply connected to the need to split France from her allies. By making the world aware of the Algerian claim to nationhood, and of the brutal nature of the French response, it was hoped that the US would pressure France toward the bargaining table, in order to head off the possibility of a Soviet-allied Algeria. This was what in fact occurred – no less a person than then-Senator John F. Kennedy came out in favor of a peaceful settlement. (Connelly, 2001)

81 This focus on the more-vulnerable OPA meant that nearly anyone picked up from the Casbah might know who the local OPA taxmen were, and therefore any suspect arrested could be subjected to torture, if the authorities believed them to be withholding information. “Over and over, intelligence officers put to the smallest fry a single question: ‘Who in your district collects the organization's funds?’ Disclosure of the collector's name swiftly brought his arrest and the question, 'To whom do you turn in your money?''' (Trinquier, p. 43-51, as quoted by Talbott, p. 85)

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one of the primary justifications for torture – that there is not enough time to gather that information through other means – was not operative: but at the same time, the fact that the French would have time to verify the information would also vitiate one of the primary dangers of torture – that the captive could simply hold out for long enough that the information would become worthless.

The Structure of Forces

The FLN operation in Algiers had been designed with an eye towards secrecy. In classic terrorist fashion, the organization had been constructed as a series of hierarchical and interlocking cells, with a strong degree of decentralization in order to minimize the security risks involved. (Heggoy, p. 128-9) The organization itself was split between a political arm, the OPA, and a military arm, which was in turn split along functional lines, with separate cells for building, distributing and planting bombs, and another group of cells of armed gunmen responsible for assassinations and executions of dangerous elements in the Muslim community. The main function of the OPA was organizing the populace, and above all raising taxes. It is important to recognize that the French saw no effective difference between the OPA and the military wing: the goal of the French army was to stop the FLN, not individual bombs, and so the net cast by the military would be quite broad. In total, the number of FLN was relatively limited: the political arm included some 5,000 members, while the military arm never numbered more than 1500 – including about 100 gunmen and 50 members of the various bomber cells. (Talbott, p. 80) Thus, there were about The gunmen and the bombing cells operated with different methods: in general, discriminate violence (against 'traitors', internal opponents and settler leaders) was the modus operandi of the gunmen – collective violence against settlers was practiced by the bombers. The numerical predominance of the OPA over the military wing stemmed from the necessity of covering the Casbah with agents who could be used to gather information, raise revenue, and deliver messages from one cell to another: for terror purposes, a much smaller force would be necessary.82

Upon taking full power in Algiers, Massu organized his forces to cover the city with static forces to watch potential FLN targets and to control movement across the city. This system, known as quadrillage, was intended first of all to reduce the mobility of FLN agents, and secondly, to allow masked Muslims working with the French to identify suspected FLN as they passed through. In

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82 For a breakdown of the cell structure for the FLN/ALN in the ZAA, see Pierre, p. 4-5
addition, curfews were established at night, making anyone who left their homes during the prohibited times a suspect by definition. Finally, a census was taken and identity cards distributed to the Muslim populace – this would not only allow the Forces of Order to place each individual in space, but would also allow the French to place them in terms of their family relationships. This system had the benefit of allowing the French to identify individuals who were suspected of being sympathetic to the FLN, and also played a major role in the breaking of the general strike. By cross-checking the police files against public workers (whose labor was a necessity for the running of the administration in the city), Paul Aussaresses was able to track down striking workers to their homes, where they were forcibly roused and set back to work. (Aussaresses, p. 113-7) By creating a system of collective responsibility, where each 'blue cap' (head of household) was responsible for their family members, and each group chief responsible for actions in their territory, the French were also able to educe information regarding the FLN's activities. This system was reinforced by the creation in March of the (DPU) – a system of block warden that drew from the French experience under Nazi occupation. Lt. Col. Roger Trinquier outlined the process as follows:

First, they conduct a careful census of the population. The basic leader of the organization structure will be the head of the family. He is made responsible for all the inhabitants of his apartment or house, and for keeping up to date the list established at the time of the census. During the taking of the census, we we designate at the next echelon a chief of a group of houses, who will be responsible for a certain number of heads of family, four or five at most. Finally, when the census is completed and a close relationship established with the population, chiefs of sub-districts will be designated. (Menning, p. 11)

Finally, in the course of the battle the intelligence apparatus of the Forces of Order was reorganized, creating two new groupings: the Dispositif Opérationnel de Protection (DOP) and the Groupement de Renseignement et d'Exploitation (GRE) under the command of Trinquier and Capt. Paul-Alain Léger, respectively, with both reporting to Col. Godard. These two groupings were geared towards very different methods of breaking the FLN. The DOP, described by Gen. MaFlocksmithssu as “specialists in the interrogation of suspects who wanted to say nothing,” were the primary source of the institutionalized torture used by the French to gather information; the GRE, on the other hand was an “urban fellagh” unit, made up of Muslims who, for one reason or another, had decided to switch allegiances (often because they or their family members had been victims of FLN violence). (Pierre, p. 12) These groups represent the two poles of counter-insurgency: coercion and cooptation. The role of

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83 Quoted in Horne, p. 199.
DOP in particular is instructive for our purposes: tasked with the coercive interrogation of suspects arrested by the DPU, this meant that nearly all prisoners were potentially subject to torture – suspects who were not tortured were those who talked immediately, while those who held out (or appeared to hold out) were then tortured. Far from being tightly concentrated on high-value suspects, the DOP found itself quickly overwhelmed by the large number of interrogees: thus, most military units ended up engaging in torture at one time or another. (Horne, p. 199) This was so because the French were not only interested in the high-value targets, but in the OPA structure itself. While the average resident of the Casbah would be highly unlikely to know the names and positions of the ALN cell members, they would have been in much greater contact with the OPA – tax-collectors in particular would of necessity be in greater contact with the populace than the terrorists whose activities they made possible. Thus, by degrees, the circle of suspicion was widened to include potentially every Muslim in Algiers: by the end of the battle, somewhere between 30 to 40% of the male Muslim population of Algiers (at least 24,000 individuals) would be arrested, and potentially subject to torture. (Heggoy, p. 240)

The First Battle of Algiers

With the census in place, and the police files incorporated by Col. Godard, the Forces of Order were in a strong position to act against suspected FLN members. After the failure of the general strike by early February, combined with the massive round-up of suspects during January, the FLN quickly found itself in a precarious situation. After a second major round of bombings on January 26th, a waitress at the *Coq Hardi* was able to identify the militant who had left the bomb as a young woman – and gave an accurate description of Djamila Bouazza, one of Yacef’s bomb planters. At the end of January, a locksmith was arrested with bomb-schematics and the location of an FLN hideout in papers carried on his person – after three days of torture, he revealed what he knew. While the raid on the hideout produced nothing useful for the French (the delay in getting the information had allowed Yacef to evacuate the premises, and hide the evidence), it was a clear indication that the net was closing in. On the 10th of February, bombs exploded at two stadiums killed 10 and wounded 45 – but after the military found the coat used to hide the bombs, they were able to trace it back to the bombers themselves, who were promptly arrested and tortured. (Horne, p. 193) On the 15th, the French captured

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84 Rejali (2009) notes that the focus on gaining information through torture came at the expense of basic police-work: the documents revealed everything that the locksmith was to admit under interrogation, but the French military neglected to translate these documents in time to gain an advantage.
two major FLN operatives: a mason who had been involved in the construction of the bomb factories, and the chief bomb transporter for Algiers. Under torture, the main bomb manufactory was identified at No. 5 Impasse de la Grénade – information that had been in the documents captured on the locksmith, but which had languished untranslated by those busy torturing. On the 19th, after a failed raid the previous day that allowed the FLN operatives to escape, a second raid resulted in the capture of the bulk of the FLN's explosive materials. (Rejali, p. 489)

At a meeting of the CCE (the FLN's central committee) in Algiers, the decision was taken to evacuate the city. The leadership of the FLN would decamp to Tunis (under the protection of the newly independent government of Bourghiba) after a period of 10 days, in order to set up the successor leadership in the city. Control over the ZAA was handed to Yacef in its entirety, with Ben M'Hidi following Abane and the rest abroad. Before he could effect this move, however, Ben M'Hidi was arrested at a safehouse by Bigeard's men (who had been on the trail of another FLN leader, Ben Tobbal). Taken into custody, Ben M'Hidi was not tortured, but neither did he reveal much useful information. On the 6th of March, the Forces of Order announced that Ben M'Hidi had committed suicide – in reality, he had been strangled under Aussaresses' orders at a settler-owned farm outside the city. (Aussaresses, p. 142) With the FLN leadership on the run, and one of its most charismatic and effective leaders dead, the city returned to a deceptive state of calm for the next few months. During this time, the DPU network mentioned above was instituted, and the focus shifted from military to intelligence work, with the bulk of the 10th returned to the bled. Meanwhile, the FLN organization – which had only been partially dismantled - was being reorganized by Yacef; and, after an appalling incident of slaughter by the DPU in early May (where 80 Muslims were machine-gunned at a Turkish bathhouse by French soldiers after a faulty tipoff from an informant), he would make the decision to engage in a new round of bombings – but these would be purely indiscriminate, set in public areas frequented by both settlers and Muslims.

The Second Battle of Algiers

On June 3rd, Yacef's bombers set off a round of bombs hidden inside the base of lampposts near

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85 While the vast bulk of the literature is clear on this point, Paul Aussaresses (135) claims that he in fact revealed much useful information regarding the logistical arm of the FLN. However, the lack of any detail on what this intelligence may have entailed, combined with Aussaresses necessary bias towards a victorious France betrayed by the fourth republic, make this claim difficult to take at face value.
bus stops in the city center. These bombs left two dead and over 90 injured, but the large number of Muslim victims led Yacef to plant the next bomb, on the ninth, in a purely *pied noir* environment – the Casino – killing nine and wounding 85. (Horne, p. 209-10) The resulting *ratonnade* saw five Muslims killed and over 50 injured, as well as considerable destruction of property against Arab shopkeepers, only ending after a mob of 10,000 marched to the *monument aux morts* – the symbolic center of *pied noir* consciousness – to be dispersed by Gen. Salan and Col. Trinquier. With the brittle peace that Algiers had enjoyed since March collapsing, the 10th DP was recalled to the city. This pattern of atrocity followed by atrocity was in fact part of the FLN's plan of forcing the Muslim population to choose sides by deepening the division between them and the settlers: by encouraging collective reprisals by the *pieds noir* and the military, the unaligned Muslims would find that their only safety, and only agent of vengeance, would be the FLN. But this strategy entailed the cost of a massive military presence that threatened to extinguish the organization altogether. By the end of June, Yacef was willing to try to tamp down the cycle of terror and repression through indirect negotiations with the French.

In July Yacef made contact through an intermediary with Germaine Tillion, the ethnographer and resistance member who had been in charge of the *Centres Sociaux* under Mollet's government, and who had particular connections to de Gaulle. Over the course of two meetings on July 3rd and August 9th, Tillion and Yacef outlined a proposal for a 'civil truce' wherein the FLN would cease attacks against civilians in exchange for the end of end of the guillotine for FLN prisoners (thus according them some of the rights of prisoners of war). This attempt to set ground rules on the terror campaign was to make some headway – Tillion would be told by the Bourgès-Maunoury government to continue the talks, but at her own risk, while eighteen bombs exploded on July 23rd and 25th were placed so as not to kill any civilians – but the execution of five FLN in July and another two in August made it clear that Tillion was simply not in a position to make good on her end of the bargain. (Horne, pp. 215-6) By September, events had superceded these efforts, as the French army was progressively in the position to put an effective (if potentially temporary) end to Yacef's organization. But the eventual discovery of these talks by the military – ironically through torture – would deepen a rift between soldier and state that would in 1958 tear the fourth republic down.

In the meantime, Léger's GRE had been able to recruit several FLN members who were willing

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86 Law (2009) identifies this mechanism as a primary goal of the FLN strategy. (p. 209)
to supply the French with much needed information. These sources tended to be those who had been betrayed in some way by the FLN - for example, 'Ourhia la Brune' had turned to the French after her husband, an FLN militant, left her for another woman - while others had been turned after being captured – the most crucial of these being the former chiefs of the eastern and western sections of ZAA, Hani Mohammed and Gandreche Hacene (aka 'Safy le Pûr'). (Rejali, p. 484) It was these informants who offered the Forces of Order the greatest leverage against the FLN, and their contributions to the French success in the Battle cannot be overestimated. On August 26th, thanks to information provided by the GRE, two FLN members, 'Mourad' and 'Kamel' – Yacef's bomb-squad chief and his deputy – were cornered and killed after opening fire on the surrounding paratroopers. The October 8th death of Ali la Pointe (Yacef's right-hand man) came as a result of information given by 'Safy' – although the explosion that killed Ali and his compatriots also killed 17 innocent neighbors. The GRE was also responsible for locating Yacef's final hiding place at No. 3 Rue Caton, although this information would not be acted upon until September 24th. The reason for the delay is instructive: while the GRE had informed the DPU of the hideout's location, they were also being given information from the owner of the flat, who was posing as an informant to lead them off the trail. (Horne, p. 216) In fact, the French only moved on Rue Caton after having their suspicions confirmed via torture – a dangerous indication that the information educed through torture was given equal (or greater) weight than uncoerced sources.

The apparent preference among the French for coerced over non-coerced information is particularly ironic, since in a strict sense neither should be trusted at all: both captives and allies have a similar incentive to take advantage of the information asymmetry that exists by definition to benefit themselves. But whereas the incentives of the captive are by definition opposed to the torturer, the members of the GRE had considerable reasons to aid France, even if they were certainly not motivated by a love of l'Algérie Française. Whether motivated by personal revenge, political disagreement or monetary gain, the GRE had much to lose from a French loss since this would leave them vulnerable to FLN retribution. In a sense, the GRE offers a mirror image of the tortured captive: whereas the captive under torture is presumed to be forced to tell the truth via pain, the members of the GRE were motivated to tell the truth by gain. In other words, the GRE could not be trusted, except to do what was in their own interests – which coincided considerably with the larger interests of France. In fact, this commonality of interest would lead to the greatest French intelligence success in the whole of the war -
With Yacef's days numbered as head of the ZAA, he nominated as his successor none other than 'Safy le Pûr' – leaving the GRE effectively in charge of the FLN in Algiers. Léger had Safy open up communication with the chief of Wilaya 3 – the brutal Amirouche – in order to begin reconstituting the ZAA. As the organization began to reconstruct itself, it was 'aided' by the GRE – executing victimless bombings around the city – while double-agents worked to gain as accurate a picture as possible of the Wilaya structure. At the end of January, the operation came to a close: Hani Mohammed and Safy called a meeting of the ZAA chiefs which was promptly surrounded by the French, and the chiefs taken into custody. (ibid. p. 259) But by then, the GRE had a good idea of the tensions that were threatening to tear the FLN apart – in particular, the increasing autonomy of the Wilayas against the CCE (especially after the latter's flight to Tunis), the personal rivalries that spread mistrust between the Wilayas, and the fear of 'traitors' just like those in the GRE. By planting 'evidence' of treachery on the bodies of dead FLN mujahidin and sending others to spread the word directly, the GRE was able to spark a massive series of purges in Wilayas three and four: these purges would have the double effect of drastically reducing the effectiveness of these Wilayas in the revolution, but would lead to the execution of thousands of militants at a time when the FLN could least afford it.

More importantly, the purges very quickly took on a life of their own, and the reason for this was the torture of those suspected of treason: as militants came under suspicion (through the indirect promptings of Léger's GRE), they would be tortured for information – and as in all cases of torture, many of them talked. The torture of one individual might lead to the 'revelation' of more names, especially where the ALN commanders were predisposed to fear a larger plot that they were only then becoming aware of. It is crucial to recognize that these purges were not irrational: there were after all traitors to the FLN who were engaged in aiding the French, and the colonels had every reason to suspect as much. Neither were they a sham: unlike the Great Purges under Stalin, where individuals were tortured into confessing to crimes in order to remove them for unrelated political purposes, the purges in the Wilayas were in deadly earnest. Amirouche by August 3rd 1958 would write to the other Wilaya chiefs, and to the newly established provisional government of Algeria (GPRA), of “the discovery of a vast plot woven over long months by the French secret service with the complicity of the
most diverse elements.” (Ageron, p. 17) Rather, they were the fully rational actions of military leaders
who had strong (but completely incorrect) prior beliefs fed by French misinformation, and who
believed torture to be effective at ferreting out the truth. The resulting spiral of suspicions, torture and
executions shares important similarities with the events in Salem Village: once the misinformation was
accepted by the judges, the accused (whether witches or traitors) found themselves subjected to a brutal
calculus that weighed confession against something far worse: death, for the accused witches; a process
of dying made indefinitely long for the accused traitors. The end result was the same: torture leading to
torture as the cycle continued and expanded into other Wilayas.

Amirouche implied that Wilaya four, in particular, was ridden with traitors: here the latent
generational cleavage between the FLN leadership and the students who had left Algiers during the
battle to join the FLN. It was feared in particular that the students were planning to take control of the
Wilaya, and offer terms to the French. (ibid.) At an inter-Wilaya meeting called by Amirouche on
December 3rd, 1958, the head of Wilaya four, Si M'Hamed, was convinced that the plot was far graver
and larger than he had previously believed: upon his return to the bled, he would follow in Amirouche's
footsteps, and would obtain the same results. The purge unleashed ended up liquidating the students as
a group, and then turned its fury on 'deviationists' and other internal enemies. But rather than pruning
and strengthening the FLN, the purges had the opposite effect: desertions to the French increased as it
became ever more dangerous to stay in the Wilayas, and dissension in the ranks was to hand the French
a major victory - the deaths of three of the six Wilaya chiefs. On March 28th, after his katiba had been
nearly wiped out a week prior by an inexplicably fortunate French column, Amirouche was killed along
with Si Haouès of Wilaya 6, most likely as the result of information passed on to the French by “those
of [Amirouche's] colleagues to whom Amirouche, in particular, had become an embarrassment in his
ruthless cruelty and lust for power.” (Horne, p. 324) Similarly, Si M'Hamed disappeared on an
operation in May – but whatever his fate, he was not captured or killed by the French. Even the deaths
of these commanders did not bring the spiral of denunciations to a close, as the chaos in Wilaya four
was to last until the end of 1959.

4.6. Weighing the Costs and Benefits

The capture of Ben M'Hidi and Yacef, the deaths of Kamel, Mourad and Ali la Pointe, the
dismantling of the ZAA organization in September, and above all the ghastly purges conducted in the Wilayas after the Battle had been the result not of tortured information, but of human intelligence and cooptation. The tracking down of Yacef's bombers at the stadiums had been accomplished through empirical police-work (tracking the coat to its owner). The severe reduction in mobility that the FLN faced during the battle had been the result of the quadrillage system. In this list of successes – jointly crucial to the French tactical (if not strategic) victory against the FLN – torture by the DOP simply does not seem to have a role to play. And yet torture did occur. Did these successes ultimately rely on torture? If so, was that role contingent on torture's ability to gain information, or would other negative sanctions have worked as well? What can we say about the likely benefits of torture compared to the known costs, such as the alienation of the Muslim population from France and the political controversy that unfurled in the Metropole? Before we examine the effects of the use of torture on French public opinion, let us consider the scale of the matter, and what crucial intelligence was found through it.

Torture, far from being reserved for 'ticking bombs' and high-level operatives, became incredibly widespread – as the Battle progressed the Forces of Order began to consider every non-European a potential traitor. Neither was it new: torture had been used as part of the effort to break up the OS in 1949-50, and the French presence in Algeria had relied since the 1830 invasion on methods of terror against the Muslim population, torture among them. (Heggoy, p. 34; Welch, 2003) According to statistics taken from Paul Teitgen, and reported by Branche (2001, p. 121-22), arrêtés d'assignation (orders for detention that exempted the military from the normal requirements of the judicial process, and which were the 'legal' prelude to torture for information) had surged from an average of 100 per month from about April to December 1956 to 700 a month from January through March 1957 (the initial Battle dominated by the actions of Aussaresses' exploitation group, whose success against the FLN would be incomplete and short-lived). The creation of the DPU in March, and its massive intelligence apparatus, would paradoxically see a further increase to 4,000 a month. By the time of his final resignation, Teitgen would have signed over 24,000 such instruments. Of those subject to detention, 80% of the male prisoners, and 66% of the females would undergo torture: leading to an estimated number of tortured ranging from 16,000 to 19,200 primarily from March to September. (ibid., p. 125, 144) Even Gen. Massu acknowledged in the late 1990s that 'interrogation by use of

\[87\] It should be noted that these figures are taken indirectly, through Rejali (2009): as of this point, I have not been able to get a copy of Branche (2001). However, there is little reason to doubt their authenticity – the number of 24,000 arrested is repeated throughout the literature, and is comes from the Algiers prefecture, headed by Teitgen. That a large
force' was both widespread and systematic, despite being illegal. (Short, p. 23)

The scale of the torture only becomes clear when we compare the number of captives to the larger population, and to the subset that were active members of the FLN. By the mid-1950s, the Casbah section of Algiers, where the vast majority of Muslims lived in unofficial segregation, counted about 80,000 individuals. (Talbott, p. 79) Since the vast majority of those tortured were Muslims from this sector of the city, this implies that the French had tortured by September at least 20% of the population, and as much as 25% had been arrested and at least potentially subject to torture. The numbers are of course skewed in terms of gender – Rejali (2009) estimates that the Forces of Order would arrest 30-40% of the male Muslim population, implying that 24-32% of the male population underwent torture.. (p. 482) It is important also to stress that these numbers refer only to those arrested and tortured with the approval of the Algiers prefecture – many others were arrested, tortured and murdered in other parts of Algiers, in the bled, and without the official exemptions. As well, these numbers only cover the period until September 1957 – although the use of torture would continue until the end of the French presence in Algeria. However, as a means of examining the utility of torture for information in breaking down the ZAA, these figures are adequate: by September the GRE had already brought down Yacef, his organization had been largely dismantled, and while Ali la Pointe was not killed until October, by then the GRE had also managed to infiltrate the FLN sufficiently to begin planting misinformation.

The Limits of Torture

Clearly the French were torturing far more captives than simply those involved with the FLN. If the French were indeed caught in a deceptive cycle, then how are we to explain their successes? The information network set in place by DPU played a powerful role: insofar as the cycle was more limited on the French than the FLN side, this information environment can take credit. But it is also clear that the French did not see torture as an adjunct to this information network – they saw it as a competitor, one they even appeared to have preferred in important instances. An example of this situation can be

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88 That Europeans were rarely tortured stemmed from the relative paucity of pied noir support for the FLN, although there were exceptions: Henri Alleg was tortured for over a month during the battle, and Maurice Audin (also a member of the Algerian Communist Party) would be 'disappeared' as well.
found in the literature: the revelation under torture of the location of Yacef's safehouse, a short distance from the military's headquarters. Recall that this information had been revealed months previously by informants in the GRE, but was only acted upon after the interrogation of 'Djamal' who revealed not only the hideout at Rue Caton, but also the meetings with Tillion that had been going on in July and August. The French had not acted on this information previously due to the owner's work as an informer for the DPU, but found the idea more credible after it had been confirmed under torture. In this case, the information was correct, and the French were able to capture Yacef – but if the DOP was judging their information environment by the results of torture, then they would be particularly susceptible to misinformation, as a rational captive would be better off lying, and winning both a potential end to the torture and an information coup against the French.

In addition, the FLN itself had taken certain precautions to insulate themselves from discovery – most famously by organizing themselves into decentralized cells that limited how much any individual would know about the full nature of the organization, and the number of individuals they might identify. But the FLN also adopted two other important policies that were to limit in important ways what torture might find out. Firstly, it was common policy in the FLN to change plans if a member of a cell failed to check in – the result was that FLN activists were instructed to hold out for 24 hours by revealing true – but outdated – information until the FLN had had a chance to protect itself. Secondly, it appears that the FLN was prepared with a counter-narrative to inject: FLN fighters, when asked to name others in their cells, were encouraged to name members of the opposition MNA. (Rejali, p. 483). If the apparent acceleration of torture is an indication that the French were not in a good position to distinguish truth from falsehood, then these policies provide little comfort to those who argue that torture 'works': the fact that the French do seem to have targeted the MNA directly to some degree at about that time, and certainly made little use of them as a counterweight to the FLN, indicates that the FLN was at least partially successful in preventing the French from making use of an interlocuteur valable that might have stolen (with French support) the revolution out from under them.

Reactions to the Battle

The shift towards military rule in Algiers and the use of torture on a wide scale by Aussaresses' exploitation group, and later the DOP, was not without opposition, however. On March 27th, General

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89 For instance, Bellounis was killed by the French (possibly along with 400 of his men) in mid-1958.
Jacques de Bollardière, recently posted back from Algiers, had published in *L'Express* a letter warning of “the terrible danger there would be for us to lose sight (…) of the moral values which (sic) alone have, up until now, created the grandeur of our civilization and of our army,” an offense for which he was sentenced to sixty days of ‘fortress arrest.’ (Horne, p. 203) Two days later, the chief of the Algiers prefecture, Paul Teitgen, offered his resignation on March 29th as his ability to ensure that the law (which after all forbade torture) had become a casualty of the Battle; while he agreed to stay on as a watchdog over the doings of the military, the continuance of torture, the 'disappearance' of over 3,000 suspects in military custody, and the formation of the DOP (created specifically as an interrogation unit) eventually led him to resign once more in September. Torture had also become a political issue in the metropole, despite government harassment and seizure of newspapers that dealt too directly with the subject, thanks to the publication of essays against torture, the memoirs of returning reservists who had seen (and in some cases participated in) abuses, and the accounts of those who had undergone the agonies themselves.

But while the fight over the use of torture was a major issue in the last months of the fourth republic, it was in no way determinative of government policy. The basic problem lay in the nature of the consensus on Algeria that dominated the republican elites: that Algeria must remain French, and that any methods to that end would have to be accepted as legitimate. This consensus was enforced by the fact of the fourth republic's endemic weakness: with the average government lasting six months, and the longest-serving government (under Mollet) lasting only 18, there existed a host of faultlines that might (and often did) tear down a government. The Algerian question was one of these: because governing coalitions tended to be centrist, and faced strong opposition on both sides (the Gaullists on the right, and the Communists on the left), keeping the Algerian representatives and their allies on board was a major concern, and gave the Algerian elites an effective veto on policies they did not approve of. In addition to securing a 500,000 man army to control the colony, this veto also allowed them to gut the provisions of each attempt by the metropole to reform and moderate colonialism.

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90 This newspaper would be a major voice in the anti-torture movement under the editorship of Jean-Jacques Servan Scheiber, whose semi-autobiographical novel, “Lieutenant in Algeria,” (1958) recounted his recent service in Algeria.

91 Needless to say, the 'disappeared' were in reality summarily executed by the military, usually through the method known as the *corvée de bois* – the 'wood gathering party' – where captives were taken to the rural areas and shot 'while trying to escape.' (Talbott, p. 92)

92 As an example of the latter, Henri Alleg, the editor of the Communist newspaper *Alger Républicain*, recounted his month-long torture at the hands of the 10th DP in *La Question* (1958). His book has the distinction of being 'the first book banned in France since the eighteenth century.' (Le Seuer, p. xiv in the preface to Alleg, 1958)

93 For a discussion of this consensus, see Smith (1978)
In fact, the use of torture did have one major political impact – it began to leech away support for fighting the war, as the massive costs and the impossibility of a quick victory began to sink in. With support for the war decreasing, the inability of the Mollet government to hang onto power launched a period of deep instability in which it became clear that the settlers were no longer in a position to prevent the coming to power of a government willing to consider an independent Algeria. Once this occurred, a group of extremist settlers, in coordination with elements of the colonial military and the Gaullist faction, sparked a march on May 8th at the Monument to the Dead that led to the creation of a 'Committee of Public Safety' under Gen. Massu himself. Through adroit politicking, and with the threat of an invasion of Paris to back him up, the fourth republic was dissolved and de Gaulle gained power once more. Thus, while we might say that the opposition to torture played a role in bringing down the fourth republic, it did so primarily as part of a turn against the war itself: If torture had been meant as a tool to break the will of the enemy, then it worked to precisely the opposite effect.

**Were the French Torturing for Information?**

While the successes of the Forces of Order in Algiers (at least those that we know of) appear to have been the result of the DPU, *quadrillage* and the GRE, torture appears to have brought in a large number of false positives, leading to a spiral of denunciations among the ignorant that was counterbalanced by some elements true information and some amount of misinformation among the knowledgeable. But what if the large number of ignorant captives was actually the result of a policy of intimidation and terror on the part of the French? (Lazreg, 2001) In this case, the expected benefits of torture would derive from making the threat of pain known among the denizens of the Casbah. But if this were so, then we would expect the French to have used scarring methods that would make the bodies of the tortured advertisements for state power: the techniques used by the French tended to be relatively non-scarring. The most common forms of torture used were stress positions, water torture, and electricity (generated by field telephone batteries – aka 'magnetos') – techniques that are chosen when the state fears discovery. But the fear of discovery – at least at the time of the Battle of Algiers – was not a major problem for the French. The campaign of press intimidation and flat denials conducted under the last several governments of the fourth Republic had made allegations of torture safely cordoned off in the leftist press. (Talbott, ch. 5) Even when the anti-torture campaign was at its greatest strength, it was unable to influence the course of politics significantly: instead, it would be the settlers,
the generals, and above all du Gaulle, who would steer French politics and policy after the collapse of
the fourth republic.

More likely, the danger that intimidation would alienate the population population rather than
gain their loyalties – possibly creating new FLN adherents – lay at the very heart of the French
understanding of the revolt as a *guerre révolutionnaire*. This conception, which emphasized the political
nature of the war, and the necessity of winning over the hearts and minds of the populace, would in
practice be undermined by the need to restore order before engaging the reforms that alone could offer
a political solution: it nonetheless lay at the center of the strategy put forward by the officers who had
served (and developed their theories about revolutionary war) in Indochina. Among the 'revolutionary
war' theorists who held high positions in the Forces of Order were Col. Yves Godard (Massu's second
in command), Aussaresses, Trinquier and Col. Michel Bigeard – all attached to the 10th DP. (Cradock
and Smith, p. 73) While the vast bulk of the theory was geared towards rural guerrilla warfare, its
understanding of the goal of urban terror is instructive: urban terror (in the eyes of the theorists) was
meant to shake the population's faith in the authorities, by showing it to be unable to stop the violence,
as well as to provoke the authorities into an overreaction that would further alienate the people's
sympathies. In terms of the use of torture, then, the more the French would be able to restrict torture to
those that knew something useful – and thus to those who were tightly linked to the terrorist networks –
the less blowback it would receive. But if torture were to become widespread an indiscriminate, then
the intelligence received would be less reliable, and come at the cost of alienation. The focus on
popular support (denying it to the enemy and gathering it for oneself) was central to the theory – so
much so that the prime mark of revolutionary war was that control of territory was fully supplanted as a
goal by control of population. (*ibid.*, p. 76) Torture as an indiscriminate means of intimidation would
fail because the FLN could present itself as an alternative to French rule. (Herreros, 2006; Kalyvas,
2004)

The explosion of torture victims is consequently the strongest evidence that the French were not
in a position to discriminate between ignorant and knowledgeable captives. Their incentives were
clearly understood to militate towards restricting torture only to those who withheld important
information: and yet the French tortured on a large scale enough to ensure that innocents were being
swept up in explosively large numbers. Even if the torture needed to be widespread at first (in order to
penetrate the OPA/FLN structure through the population's knowledge of and contact with the taxmen,
e.g.), by March (when the DPU had been set up, and the ZAA partially dismantled), the French should have begun to focus in on the top-level FLN activists. That the number of arrested instead skyrocketed implies that misinformation was entering the system somewhere, leading the French to widen, rather than constrict, the net. The French were extracting misinformation from two sources: ignorants who would say anything to be spared pain, and knowledgeable captives who would take advantage of the information asymmetry inherent to torture to plant misleading narratives.

4.7. Conclusion

That France tortured in Algiers is undisputed – that the torture was both widespread and systematic is an accepted fact in the literature. While we remain limited in our understanding of exactly how well torture operated, we can nonetheless derive some conclusions. Firstly, torture does not appear to have been a crucial source of important intelligence: the largest victories came from the GRE and the DPU. Secondly, the costs of torturing were massive: the spread of torture to include a broad swath of the Muslim population handed the FLN a powerful tool of propaganda, and further alienated the residents of the Casbah (and Algeria more broadly) from France; furthermore, French public opinion was turned against the war at least in part due to the use of torture; finally, the ability of France to make use of the MNA as a counterweight and interlocuteur valable was undercut by the FLN policy of naming Messalists when asked who their cell-members were – killing two birds with one stone. Thus torture does not appear to have created a system of gathering information that could find what other methods could not: instead, the logic of torture transformed the process of interrogation into a means of stove-piping misinformation precisely because it was believed that torture 'works'. For the knowledgeable captive, holding out until the information was no longer useful and attempting to sow misinformation became potentially useful strategies that made torture's utility (even discounting the negative side-effects that followed) highly debatable. For the ignorant captive, the only means of ending the torture lay in spreading misinformation, for they had none other to give. The result was a spiral of false information (counteracted somewhat by the successes of the GRE and DPU) that saw the number of captives tortured rise dramatically even as the French made greater and greater progress in dismantling the ZAA.

In this chapter I have attempted to analyze the use of torture during the Battle of Algiers by

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94 This is due in large part to the opening up of the French archives in the early part of the 2000s, following the controversy surrounding the publication of Aussaresses’ “Battle of the Casbah.” (2001)
examining it through the lens of rational choice. The terrible cycle of purges unleashed by Amirouche and others in the *bled* followed the same pattern identified in Salem Village: where the torturer's preconceptions (based on spectral evidence, or GRE false-flags) are incorrect, the use of torture leads to a cycle of denunciations with a profoundly dangerous effect on the group that hopes to benefit from coerced interrogation. For the French in the Battle of Algiers, torture does not appear to have gained the French much intelligence, but it did lead to a widening and systematic violence perpetrated on the Muslim population that would severely damage France's ability to find a political solution to the Algeria question. The failure of torture cannot be measured in terms of the information given by the knowledgeable – rather, it can be inferred by necessity from the fact that the French were not able systematically to weed out misinformation given by ignorant captives. The spread of torture also affected the willingness of the French populace to pay the costs considered necessary to keep Algeria French. And this result came about despite the fact that the leaders of the French forces were particularly alive to the political nature of revolutionary war – despite the fact that they knew the danger in torturing large numbers of ignorant.

By examining torture in the Casbah and the *bled*, we can compare two cases that are similar in important ways. Not only did the two cases occur at the same time, and largely in the same place, they were also geared towards combating an actual conspiracy, by authorities whose interests militated against indiscriminate coercion, and where both were able to operate in an information environment that offered the potential for verifying the information educed. The major difference between them was in their prior beliefs about the nature of that conspiracy: whereas the French were generally well informed about the nature of their opposition, the FLN colonels were convinced to focus their torture regime on those who were outside of, and ignorant of, the real conspiracy. Nonetheless, both cases ended in a deceptive cycle that caused irreparable harm to each side. For the FLN, the costs were paralysis, the decimation of the dynamic political cadres of Wilaya 4, and the loss of two of their most effective leaders, Amirouche and Si M'Hammed, at the hands of their own men. For the French, the costs were, if anything, worse. Not only was any political solution ultimately precluded by the terror inflicted on innocent Muslims, the torture regime bred an alliance between the military and the *colons* that brought down the Fourth Republic itself. The torture of ignorant and innocent captives on both sides was not the result of negligence or irrationality: rather it was the necessary outcome of using torture as a means of gathering information, and its result was the sparking of a cycle of deception.
Paul Teitgen appears to have been correct in his assessment of the use of torture: “All right, Massu won the Battle of Algiers; but that meant losing the War.” (Horne, p. 207)

In the following chapter, I extend the analysis by examining the role of torture by the United States during the War on Terror. There are several reasons to believe that the US was in a better position to make use of torture than either France or the FLN. Firstly, the United States benefits from a far more stable political system than France did under the Fourth Republic: the Presidential system and fixed terms ensure continuity of policy over four to eight years, while the average life span of a government in France was around six months. In addition, the US military is more firmly under the control of the civilian government than was the ex-colonial military of France in the mid-twentieth century. Lastly, the preponderance of power held by the United States, both militarily and technologically, allows us to examine whether France's failure to torture successfully was the result of institutional factors, or if the problem lies with torture more broadly.
5.1. Introduction

In the preceding chapters, I have examined the role of coercive interrogation in the Salem Witch Trials and in the Algerian revolution and analyzed them according to how well they support my theory of torture for information. Salem offered us a picture of how the primary danger that underlies informative torture operates – the deceptive cycle that becomes established when the authorities are unable to verify the information they elicit through force, leading to a circle of misinformation leading to misinformation. In Algiers, we saw how the authorities are in danger of this cycle even when they face an actually existing threat, and have the means of potentially verifying this information. It is not enough for this ability to verify to exist: the state must be in a position credibly to threaten to do so. In turning to the War on Terror, we are presented with the strongest test yet of the theory's viability. The United States faced existing threats from a transnational terrorist organization globally as well as from a well-equipped nationalist insurgency in Iraq. The United States provides an important test for my theory: in contrast to France in Algeria, the United States faced this threat without the benefit of a local and loyal settler population in Iraq; unlike the FLN, the US was correct in its general understanding of the threat it faced; and unlike the magistrates in Salem, the US was in a position to verify the information it gathered under torture.

While the cases of the United States and France have considerable similarities – both are highly developed and industrialized states facing a conspiracy in a semi-colonial situation – they differ quite profoundly on the issue of how strongly we can expect the agent-principle issue to be. This is so because the United States wields a professional army, in contrast to the conscripted army France made use of in Algeria. The structure of the armed forces is important for two reasons. Firstly, the political costs involved with torture were strong for France in large part due to the widespread participation by conscripts in interrogations: this ensured that elements of the French military drawn from the anti-war segment of the population would be in a position to disseminate information on the torture regime to
Secondly, the conscripted nature of the French army meant that those soldiers involved in interrogations would have been less likely to reflect the institutional incentives of the French state – acting like 'sadists' or 'professionals' as opposed to 'zealots', in the Crelinstein and Schmid (1995) sense of these terms. The greater the professionalism of the military, the more individual soldiers can be assumed to have been trained to reflect these institutional incentives.

Consequently, a comparison of the US and the French cases allows us to gain traction on the final major question involved in my theory: was the failure by the French military to make positive use of torture the result of the inherent nature of torture, or did the use of a conscripted (and therefore less reliable) soldiery allow an agent-principle dilemma to appear? The US case is particularly useful in this regard because there are really three cases of US torture for information. Firstly there is the use of torture at Guantanamo Bay, Cuba by members of the regular US armed forces. These are professional soldiers who can be assumed to more or less reflect the incentives of their superiors, and the government above them. Secondly, the US also used torture at Abu Ghraib, a prison in Iraq. While the interrogations were conducted by military intelligence, along with Other government Agency representatives (a phrase referring to the CIA), the abuse itself was carried out by members of the National Guard – non-professional soldiers whose role is most analogous to the conscripts of the French army in Algeria. Finally, the US also made use of torture in the so-called CIA 'blacksites' – secret prisons run throughout the world where torture could be carried out by highly professionalized agents. In this last case, the torturers are most likely to have been 'zealots' – identifying themselves with the state they serve, and neither activated by sadism nor inhibited by empathy.

So far, we have seen that torture is a difficult process to control. The magistrates in Salem were unable to prevent themselves from accepting misinformation in a deceptive cycle because the threat they faced was imaginary, and the means they had for verification non-existent. The FLN were much better placed to verify information, but the rotten foundation laid by French misinformation led them into deception as well. The French army in Algiers faced a real threat, and were armed with an intelligence apparatus that should have allowed them to verify any misinformation to enter the system: the result was a deceptive cycle that lost strategically what little it gained tactically. By examining the

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95 The primary example of how this process operates is the story of Jean-Jacques Servan-Schreiber, the editor of the antiwar newspaper *L'Express* who was called up to serve in the conflict. While Servan-Schreiber's experiences were atypically publicized, the large number of conscripts who served and then returned home to share their experiences in letters to editors and the antiwar movement increased the political costs of both torture, and the war more broadly.
use of torture by the US at Guantanamo, Abu Ghraib, and at the CIA blacksites, we will be able to see whether or not these failures could have been prevented institutionally.

In this chapter the predominant form of source is journalistic. This is so due to the very recent nature of the events examined, as well as the relative lack of academic work on the topic. This facet of the research brings its on problems: journalism, as history's first draft, is subject to revision in a way that academic work is not (or at least, is less so than journalism). In addition, where questions of national security are involved, governmental sources (on whom journalists often rely) have strong incentives to massage and obscure the truth. This was made especially clear during the time-period dealt with in this chapter: the revelations of collusion between media and government during this era (the Valerie Plame affair, the Judith Miller scandal, and the practice of 'embedding' reporters during the war) all militate against taking the news media as a neutral arbiter of the truth. However, the benefits of using media sources are nonetheless strong: news articles can give an indication about what knowledge was public at what time, and if government sources were able to shift coverage in their own favor, then news that did not fit the narrative takes on an extra weight. Finally, media sources are quite simply better than nothing – and the time that has passed has helped to sift the story by revealing which news articles were misguided or inaccurate. Every effort has been taken to ensure that the media articles sourced in this chapter represent the most accurate understanding of events, as we know them as of this writing.

The rest of this chapter is divided up as follows. The second section focuses on torture committed at US military base at Guantanamo Bay, Cuba. Here the captives were individuals who had been captured on the battlefield in Afghanistan and elsewhere and had been classified as 'enemy combatants' – allowing the government to side-step the criminal justice system and its restrictions on self-incrimination. The third section considers the use of torture at Abu Ghraib prison near Baghdad. Those captives exposed to torture tended to be those considered linked to the insurgency then involved in widespread attacks on US troops. While the interrogations were overseen by military intelligence and CIA agents, they were premised on 'softening up' conducted by National Guard soldiers that was clearly directed at forcing prisoners to break. The fourth section examines torture at its most refined: at the CIA blacksites reserved for those suspected of high-level membership in al Qaeda. These interrogations were conducted by CIA personnel directly, and represent the most strenuous conditions for torture. Finally, I examine one case of torture in particular as a critical case: where all of the
conditions theoretically necessary for successful torture were in place. Ibn al-Shaykh al-Libi was in charge of an Islamist training camp in Afghanistan when he was picked up and remanded to CIA custody. His torture in Morocco under CIA direction revealed crucial information that the Bush administration used in order to marshal support for an invasion of Iraq – information that was entirely fabricated, and may even have been deliberately geared to draw the US into a costly war in order to benefit al Qaeda. I conclude that torture failed to work for the United States, and evidence is abundant that the US accepted misinformation as the result of torture. The implication is that – even though it might be attenuated through better verification and reliability of agents – states that torture cannot prevent themselves from falling into the deceptive cycle that characterizes torture at its worst. To torture is to be misinformed.

5.2. Torture at Guantanamo

A review of the documentation surrounding the approval of interrogation methods by Donald Rumsfeld, then Secretary of Defense, makes clear that there was a concern with broadening as far as possible the techniques available to military interrogators at GTMO. A memo from Rumsfeld to the Chairman of the Joint Chiefs of Staff dated January 19th, 2002 announced the executive's determination that the Geneva conventions did not apply to captured members of al-Qaeda or the Taliban, although they were to be treated “humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with” those conventions. (emphasis mine) The importance of this qualification becomes clear from an October 11th memorandum of the same year from the Joint Task Force on Guantanamo Bay (hereafter JTF-170 or JTF-GTMO) requesting that the head of the US Southern Command approve the use of several more aggressive techniques, including stress positions, nudity, 'forced grooming' (Category II) as well as more dire techniques (Category III) such as induced hypothermia, waterboarding, and threats “to convince the detainee that death or severely painful consequences are imminent for him and/or his family.” (JTF-170 CG 11/10/2002, JTF-170 J2 11/10/2002 p. 2) The accompanying legal brief by LTC Beaver, Staff Judge Advocate, USA, appears to originate many of the arguments underpinning the April 4th Final JTF-170 report outlined above: as long as the torture is used for the purposes of gathering information, it is not torture at all.

While these techniques were initially approved for use at the discretion of USSouthCom by Rumsfeld on December 2nd, he later rescinded that approval in a memo dated January 15th, 2003,
pending review. On April 14\textsuperscript{th}, 2003, Rumsfeld issued an updated list of approved techniques, restricted primarily to those methods included in Category II. However, these were only techniques that could be used at the discretion of U.S. SouthCom; other techniques (not specified) could be applied with the permission of Rumsfeld himself. (DoD, 04/04/2003) That Category III techniques were not necessarily ruled out for use in the War on Terror can be seen from the brief by John Yoo at the Office of Legal Council dated 14\textsuperscript{th} of March, 2003, and on which the JTF-170 review was based. Here the highly expansive nature of the administration's claim to be unbounded by either domestic or international law is on full display. According to Yoo “federal criminal laws of general applicability do not apply to properly authorized interrogations of enemy combatants, undertaken by military personnel in the course of an armed conflict. Such criminal statutes, if they were misconstrued to apply to the interrogation of enemy combatants, would conflict with the Constitution’s grant of of the Commander in Chief power solely to the President.” (OLC, 2003; 1) In other words, there is no law that Congress can pass limiting the President's actions in the conduct of a war.

The first batch of 20 detainees arrived at GTMO in mid-January of 2002. They were being flown in from the Afghani theater, and were reputed to be members of the Taliban and al-Qaeda. (St. Petersburg Times, 11/01/2002) By the 24\textsuperscript{th} the prison held an approximate 158 detainees, and Secretary Rumsfeld was already having to parry allegations of torture and mistreatment, stemming primarily from pictures of detainees being unloaded from planes hooded and shackled. (Washington Post, 24/01/2002; Houston Chronicle, 23/01/2002) By May 7\textsuperscript{th}, the prison population had swelled to 384. (Reuters, 07/05/2002) In the next several months as the prison complex was expanded, more prisoners continued to flow in. According to information provided by the Department of Defense, between January 2002 and May 2006, the camp at Guantanamo held 759 detainees, although not all at one time: of those 517 would be transferred to the custody of another country, or released outright by the 6\textsuperscript{th} of October, 2008. Five others would die in the camp, four of them classified as suicides. (DoD, 'Consolidated …', 'List of Individuals …')

Beginning in 2004, the military began a process for determining how to classify detainees called the Combatant Status Review Tribunal (CSRT). These tribunals did not involve the judiciary, and although detainees were allowed to contest their imprisonment before the tribunal, they were not permitted access to lawyers, nor to secret evidence alleged by the government. (National Journal, 04/02/2006: 6) The government's part in the tribunals was to submit summaries of evidence, outlining
the reasons for holding the detainees at GTMO. These summaries included the following statement: “the United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that (...),” indicating that the summaries were not allegations but conclusions previously arrived at. A detailed examination of these summaries by Denbeaux and Denbeaux (2006) finds disturbing trends regarding the nature of this information. Among the 517 detainees held as enemy combatants, and whose summaries were examined, fully 55% were not accused of having any hostile acts against the US, but were rather held on the basis of being connected in some degree to al Qaeda, the Taliban, or other groups considered by the US to be hostile in some fashion.96 While 60% were categorized as belonging to 'al Qaeda' (32%) or 'al Qaeda and Taliban' (28%), the vast majority of these were considered only to be 'associated with' these groups (57% of 'al Qaeda' and 78% of 'al Qaeda and Taliban'), with a large minority categorized as 'members' (34% and 19%, respectively). A very small minority were given the strongest classification of 'fighter for' (9% and 3% respectively). Only among those classified as 'Taliban' (22% of the total) do 'members' make up a plurality (48%), but 'fighters' still represented a small minority (16%). Among all detainees, the breakdown for 'fighters', 'members' and 'associates' is as follows: 8%, 30% and 60%, respectively, with 2% having no alleged connection to any group at all. (pp. 9, 10)

Detainees were also categorized by the authorities that had captured them. This information is particularly important, since it gives some idea of the provenance of the allegations made against them. It turns out that only 5% of the detainees held at GTMO as enemy combatants had been captured by US forces: 36% had been captured by the Pakistani government, and 11% by the Northern Alliance, the anti-Taliban coalition. A full 44% had been captured by unidentified persons. This last category is highly problematic, in that these detainees were captured at a time when the US government was offering bounties for members of al Qaeda and the Taliban, raising the possibility that some portion of them were taken by bounty hunters and sold regardless of actual ties to either group. (p. 15) Lt. Col. Anthony Christino, senior watch officer for the joint Intelligence Task Force – Combating Terrorism in 2003, has alleged that “most of the approximately 600 detainees at Guantanamo (…) at worst had supported the Taliban in the civil war it had been fighting against the Northern Alliance before the September 11th attacks, but had had no contact with Osama bin Laden or al-Qaeda.” (Observer, 96 It should be noted, however, that many of those other groups were not necessarily viewed as dangerous by all sections of the US government: several enemy combatants were held for being associated with groups whose members ‘would be allowed into the United States by the Department of Homeland Security.’ (Denbeaux and Denbeaux, p. 17)
03/10/2004)

Moreover, the character of the evidence presented varies widely in quality: in addition to the 11 individuals who were charged with having personally met Osama bin Laden, others were identified as enemy combatants for possessing rifles or a Casio watch, wearing olive drab clothing, sleeping at a guest house used in the past by al Qaeda, and having been conscripted into the Taliban's armed forces. One detainee was declared an enemy combatant on the following evidence:

- Detainee is associated with the Taliban.
- The detainee indicates he was conscripted into the Taliban.
- Detainee engaged in hostilities against the US or its coalition partners.
- The detainee admits he was a cook's assistant for Taliban forces in Narim, Afghanistan under command of Haji Mullah Baki.
- Detainee fled from Narim to Kabul during the Northern Alliance attack and surrendered to the Northern Alliance.⁹⁷

Problematically, the apparent assumption that those fighting with the Taliban, including those conscripted by force, could be classified as dead-enders, or as 'the worst of the worst' in the words of Donald Rumsfeld is somewhat attenuated by the recent finding that over 90% of southern Afghans (i.e., those most likely to support or have been under the control of the Taliban) were unaware of the link between the 9/11 attacks and the invasion of Afghanistan, even almost nine years after the fact. (ICOS, p. 28)

The limited nature of the allegations against most detainees, as well as the fact that some of the evidence alleged stemmed from (potentially coerced) denunciations by other detainees must make us question how much intelligence these individuals would be able to provide. This suspicion is strengthened when we consider that the highest value detainees, high ranking members of al Qaeda and the Taliban, were not sent to GTMO until September 2006. Until then, these individuals had been held by the CIA in so-called 'black sites,' and had been hidden from the Red Cross. (ICRC, 2007) Nonetheless, interrogations did proceed against detainees, and there are several indications that these interrogations were essentially coercive. On January 5th, 2005, the American Civil Liberties Union (ACLU) released a group of emails from FBI agents at GTMO complaining of abusive methods used

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⁹⁷ From the summary of evidence for an unidentified detainee, quoted in Denbeaux and Denbeaux, p. 17.
by military interrogators. (Washington Post, 06/01/2005) A second group of 54 FBI emails dating between 2002 and 2004 was released in February 2006, wherein the FBI agents “tried to get the military interrogators to follow a less coercive approach and warned that harsh methods could hinder criminal prosecutions of terrorists because information gained illegally is inadmissible in court.” (Monterey County Herald, 24/02/2006) In addition, many of those subsequently released from GTMO have claimed to have suffered torture and by members of the US military, including as a means of extracting confessions and intelligence, including protracted interrogations, sleep deprivation, induced hypothermia, stress positions and the injection of unknown pharmaceuticals. (New York Times, 07/07/2009; Washington Post, 14/05/2004, 22/04/2008; Observer, 03/10/2004)

While the US military has consistently denied these allegations, the standard operating procedure manual for Camp Delta (one of the major camps in GTMO) prepared after Gen. Geoffrey Miller took charge as commanding officer was careful to include a categorization of detainees according to how much access the ICRC should be given. These categories were: 'Unrestricted,' where the ICRC was given full access to detainees; 'Restricted,' where the ICRC could only inquire about a detainee's health and welfare; 'Visual,' where the ICRC could was allowed to see, but not speak to, a detainee; and 'No Access,' where the ICRC would be kept completely ignorant of the detainees conditions. (JTF-GTMO-CG, 28/03/2003, p. 17.1) One potential rationale for this policy may have been the decision to encourage military guards to act as adjuncts to the interrogation proceedings by 'softening up' detainees: a policy that was replicated at Abu Ghraib after Gen. Miller was brought in at the end of August 2003 in order to reform interrogation practices. (Taguba Report, p. 8) This policy should be understood as a means of tying the general conditions of detainees to their cooperation with their interrogators: in other words, the torture was no longer confined to the interrogation room itself, but could be expected to continue even when questioning was not underway. In fact, the ICRC has referred to GTMO as “principally a centre of interrogation rather than detention.” (Steyn, p. 7, 8) As the ICRC put it in a confidential report to the US government in 2004, GTMO procedure had been set up to break the will of detainees, making them dependent on their interrogators through “humiliating acts, solitary confinement, temperature extremes, [and] use of forced positions. (…) The construction of such a system whose stated purpose is the production of intelligence, cannot be considered other than (…) a form of torture.” (as quoted in the New York Times, 30/11/2004)

The US government has repeatedly claimed that the Guantanamo site has been a crucial
intelligence gathering operation that has benefited the War on Terror, even as it has denied any systematic abuse has occurred. The Department of Defense website in fact offers a release by JTF-GTMO dated March 4th, 2005, listing the information derived from interrogations at GTMO.98 At that time, approximately 550 detainees were being held at GTMO, the vast majority of whom would later be transferred or released outright. Examples include identifying operatives, giving insights into the logistics and structure of al Qaeda, and “locations of training compounds and safe houses, terrain features, travel patterns and routes used for smuggling people and equipment, as well as (...) identifying potential supporters and opponents.” (p. 1) However, this release also asserts that “[d]etainees were either actively involved in operational planning for terrorist attacks or had already participated in attacks in Europe, the United States, and/or central Asia at the time of detention,” an argument that seems hard to square with the large number of subsequent releases. (p. 2) At no point is it argued that interrogations at GTMO had resulted in the disruption of imminent terrorist plots. Indeed, while many former administration officials have argued that the use of coercive interrogations has saved lives, their arguments have tended to be vague in the extreme.

Perhaps most disturbingly, the methods developed for use by interrogators at GTMO in fact had been derived from an unlikely source: Communist China. While researching more aggressive tactics that might be used in the War on Terror, the CIA had decided to make use of the expertise of the US military's Survival, Evasion, Resistance, Escape course (SERE), a special training program created in the aftermath of the Korean War to prepare US soldiers for abuse at the hands of enemy governments. (CIA-OIG, pp. 13, 14) During that conflict, the US government had been shocked by videos of captured US airmen confessing to a variety of war crimes on camera, without apparently having been tortured. While the CIA had come to the conclusion at the time that the Chinese government had perfected the art of brainwashing, subsequently spending millions of dollars attempting to learn the trick themselves, the truth was far more prosaic: the airmen had been tortured into confessing falsely, but using methods that did not leave marks. (Rejali, pp. 86-7; 368-9) The techniques used against US airmen had been repurposed in order to inoculate soldiers against torture: now they were being repurposed again, but this time to inflict pain once more.

Crucially, the CIA then lent its newly acquired expertise back to the military, through training courses at GTMO, completing the circle. One chart used during this training of interrogators had in

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fact come verbatim from a 1957 journal article explaining the very ordinariness of the Chinese tactics: the only alteration was that its title, “Chart 1 – Communist Coercive Methods for Eliciting Individual Compliance,” was edited out. (New York Times, 02/07/2008) These tactics are now quite familiar to Americans who have followed the GTMO and Abu Ghraib scandals: isolation, sleep deprivation, prolonged interrogation and constraint, over exertion, threats against family, and degradation. (Biderman, p.619) But these techniques had not been developed for the purposes of gathering intelligence: they were means of generating compliance, a crucial distinction. Whether a detainee complies with an order to confess falsely is immediately knowable to his malefactor: whether a detainee has given truthful information is unknowable absent an intelligence apparatus to investigate his claims. By forgetting the origin of these tactics, the interrogators at Guantanamo were also forgetting the very real limits on their effectiveness, even for compliance: of the 78 airmen tortured by the Chinese, over half refused to confess at all: many of the remaining confessed only partially. (Rejali, p. 86)

If torture relies then on investigation in order to make the detainee's choice as clear as possible – cooperate or suffer – then the biggest indication that torture is unlikely to have worked systematically can be found in the large number of detainees with few connections to al Qaeda, and the many who were later released outright: if the intelligence gathering capabilities of the US in gathering detainees in the first place was as compromised as it appears to have been, then we must question the effectiveness of the military in making certain that the information collected was truthful. Worse, there are claims that the administration ignored cautions from a senior CIA analysts, invited to GTMO to figure out why the interrogators there were gaining so little intelligence from the estimated 600 detainees, that “a full third of the camp's detainees were there by mistake,” a view shared by the Commanding General, Michael Dunlavey.99 The indications that confessions obtained under torture were then used to interrogate others raises the possibility that torture may have convinced the US of false information that was subsequently reinforced by other coerced revelations. And the tactics used at GTMO were not to stay there: after the invasion of Iraq and the establishment of the detention center at Abu Ghraib, they would be transferred along with Major General Miller, leading to the imprisonment and interrogation not of hundreds but of thousands of individuals, as well as to the infamous pictures of military police acting out their own fantasies of power and domination over the subject bodies of Iraqis.

5.3. **Torture in Iraq**

Abu Ghraib had been notorious under Saddam Hussein as an internment center for political prisoners, and had been the site of a massacre of about 2,000 captives, many of them Marsh Arabs from the south arrested for anti-regime activities, in 1998. (Observer, 03/12/2000) The prison was associated strongly enough with his rule that on October 20th, 2002, during the run up to the Iraq invasion, Hussein ordered all prisoners, not including those accused of spying for Israel or the United States, to be released, officially as a reward for his unanimous reelection the week before. (National Post, 21/10/2002) After the invasion, the Coalition Provisional Authority rehabilitated the building, as their main prison complex, giving the complex a face-lift, repairing damage caused by looters after the amnesty the previous year, and renaming it the Baghdad Central Confinement Facility (BCCF). (Hersh, p. 1; Taguba Report, p. 6) While the cells were being renovated, detainees were held outside in the prison yards in tens, exposing them to the nearly continuous mortar fire that the complex received. (Independent, 17/09/2003) While the renovations presented were intended as a symbol of the end of Saddam's regime, the choice of Abu Ghraib was an unfortunate one. By the time the abuse scandal hit the US news services, the irony was clear: rather than liberator, the US had instead cemented its image in the eyes of many Iraqis as Saddam's successor.

According to the Fay-Jones report (2004), Abu Ghraib had been chosen as one among a planned dozen detention centers for PoWs during the invasion. However, due to the collapse of the Iraqi state, by the time the invasion was over in May of 2003 the total number of detainees was only 600, a figure that includes both PoWs and criminal detainees: by the fall that figure had increased to between 4 and 5 thousand. (pp. 9,10) These new detainees were not Iraqi army regulars, being held until the end of hostilities, but were instead suspected members of the burgeoning insurgency. The insurgency meant not only an increased number of detainees to guard, but also an increased need for intelligence to be extracted from these detainees. Gen. Miller's mission to Abu Ghraib at this point was intended to revamp this interrogation mechanism: specifically, he was tasked with reviewing procedures at Abu Ghraib and making recommendations on “intelligence integration, synchronization and fusion; interrogation operations; and detention operations. MG Miller's team used JTF-GTMO procedures and interrogation authorities as baselines.” (Taguba, p. 7) Practically speaking, this meant erasing the line between guarding and interrogating prisoners: Miller recommended that the guards themselves play a
role in the acquisition of intelligence. Rather than merely “provid[ing] a safe, secure and humane environment (…) it is essential that the guard force be actively engaged in setting the conditions for successful exploitation of the internees.” (Id. p. 8) This recommendation was itself quite controversial, contradicting Army Regulation 190-8 that “military police ’do not participate in military intelligence supervised interrogation sessions.’” (Id. p. 9)

Interestingly, although no specific order was given to the 800th Brigade to play this adjunct role in the interrogation process, there is considerable evidence that this was the unofficial policy adopted by the guards of the 372nd MP Company (800th MP Brigade) and their superiors:

3. Spc. Sabrina Harman, one of the guards indicted for her role in the abuse or detainees, stated the following: “MI [military Intelligence] wanted to get [the detainees] to talk. It is [Cpl. Charles] Grainer and [Sgt. Ivan] Frederick’s job to do things for MI and OGA [Other Government Agency, reportedly a term of art for CIA] to get these people to talk.” (p.18)

4. Regarding the abusive conditions in Wing 1A, where detainees were held for questioning by MI, Sgt. Javal Davis stated: “I never saw a set of rules or SOP for that section, just word of mouth. The soldier in charge of 1A was Corporal Grainer. He stated that Agents and MI soldiers would ask him to do things, but nothing was ever in writing he would complain. (…) [I]t appeared MI personnel approved of the abuse.” He reported that MI soldiers would issue only vague requests such as: “’Loosen this guy up for us.’ ’Make sure he has a bad night.’ Make sure he gets the treatment.’”

5. Abusive techniques appear to have bled over into non-insurgency related areas of information extraction. When several detainees had been accused of rape, according to Adel Nakhla (a civilian contractor working as a translator) “the inmates were ordered by Sgt. (sic) Grainer and Sgt. Frederick ordered the guys while questioning them to admit what they did. They made them do strange exercises (...) jump up and down, throw water on them,” among other acts, including shackling the detainees and throwing them in a pile together while naked.

Even though the guards were not present during the interrogations, their actions were still clearly part and parcel of the interrogation process. (Id. pp. 18, 19; ICRC 2004:13) As at Guantanamo, maltreatment from the guards was part of the coercion being leveraged against detainees suspected of withholding intelligence. And in both cases, there were striking similarities in the techniques used: the abuses were not the inventions of low-level guards looking for fun, but had been adopted from their use
in Cuba. (White, 2005)

Moreover, the abuse was not limited to the Abu Ghraib prison itself. Testimony from other detention centers makes clear that abusive conditions were not simply a case of a few bad apples, or even of generalized poor conditions. Instead, detainees were abused in concert with the needs and desires of intelligence officers, both inside the military and in the CIA. Individuals captured in night raids or otherwise by US forces would be held initially at forward operating bases for approximately three days before being transferred to Abu Ghraib. Detainees would be interrogated for tactical information – that is, for information of immediate and time-sensitive value.¹⁰⁰ According to anonymous testimony from three US soldiers working at Forward Operating Base (FOB) Mercury, violence against captives was not only pervasive but had become normalized. “The torture (…) had become a means of stress-relief for soldiers. Soldiers said they felt welcome to come to the PUC [Persons Under Control – a term replacing POW: HRW, p. 4] tent on their off hours to 'Fuck a PUC' or 'Smoke a PUC.' To 'Fuck a PUC' referred to beating a detainee, while 'Smoking a PUC' referred to forced physical coercion sometime to the point of unconsciousness.” Any resulting broken bones would generally be categorized as injuries sustained while being arrested, with a physician's assistant signing off on the falsehood. (p. 5) However, the violence was also geared towards producing intelligence: “Officers and NCOs from the Military Intelligence unit would direct guards to 'smoke' the detainees prior to an interrogation, and would direct that certain detainees were not to receive sleep, water, or food beyond crackers. Directed 'smoking' would last for 12-24 hours prior to an interrogation.” (Id.)

The ICRC similarly found widespread use of violence against detainees during capture in areas throughout the country, including Baghdad, Basra, Ramadi and Tikrit, but found that coercive interrogations were reserved for “persons arrested in connection with suspected security offenses or deemed to have an 'intelligence' value.” (ICRC, 2004, p. 3) The restrictiveness of this reservation is hard to parse however: the Red Cross also found widespread evidence of abuse of authority by members of the Iraqi police force, specifically blackmailing individuals with being handed over to the Coalition Forces and making false accusations against those who did not or could not pay. In other words, even if the Coalition restricted the use of interrogational coercion (up to and including torture)

¹⁰⁰ This is in distinction from the 'strategic' information sought by interrogators at Abu Ghraib. In terms of the ticking bomb, none of the interrogations at Abu Ghraib (or indeed at GTMO) would qualify, since any time-sensitive information would have to be extracted as quickly as possible, at the point of capture, or immediately thereafter. (Schlesinger Report, p. 58)
to those believed to have information, it may be that some percentage of those were held under false pretenses. (Id. p. 4) This of course raises the disturbing possibility of ignorant individuals being tortured by Coalition forces, and 'revealing' information they do not know, because they fell afoul of the Iraqi security forces. Those who would not (or could not cooperate) faced, inter alia, hooding, the use of plasticuffs sometimes leading to nerve damage in the hands, beatings with blunt instruments, threats against their persons and/or families, isolation, sleep deprivation, positional tortures/stress positions, extreme temperatures, and induced hypothermia. (p. 12)

As mentioned above, in order for torture to work the state must leverage the detainee's preference to withhold information against her desire not to be tortured: in other words, torture must be made contingent on withholding information. But the state is confronted by a double informational asymmetry: not only does the state not know what the detainee does, the state does not even know if the detainee knows anything at all. Ignorant captives and knowledgeable captives therefore are difficult to tell apart, and even when the detainee reveals truthful information the state can never be certain that everything has been revealed. Consequently, the primary danger for the state in torturing is not that that captive will say nothing, but that the captive will say too much, leading the state to accept false information. Even when the state investigates everything the captive relates, as long as the investigative process does not perfectly reveal the value of the information there remains the potential for misinformation to be accepted. In Guantanamo, we saw that the vast majority of detainees had marginal links to al Qaeda at best, raising the question of how much misinformation the US accepted there. How does Abu Ghraib compare on this metric?

While it is difficult to get specific numbers on the how many detainees were held for interrogation, versus as members of the larger criminal population, what information we do have is not reassuring. The US army detention and interrogation processes were ridden with bureaucratic failures. The Fay-Jones report acknowledges that “[a]t first, at Abu Ghraib and elsewhere in Iraq, the handling of detainees, appropriately documenting their capture, and identifying and accounting for them, were all dysfunctional processes.” (p. 21) This conclusion was echoed by Gen. Taguba, who noted that “[d]aily processing, accountability and detainee care appears (sic) to have been made up as the operations developed with reliance on, and guidance from, junior members of the unit who had civilian corrections experience.” (p. 24) These problems were in large part caused by a severe lack of resources, such that the detainee to guard ratio (about 1:1 at GTMO) was inflated to 75:1 at Abu
Ghraib. (Schlesinger, p.60) The bureaucratic paralysis also meant that prisoners were difficult to track, leading to multiple escapes, including by high Value Detainees, and that detainees were rarely released, even after having been cleared of any charges. (Taguba, p. 25) This bureaucratic morass becomes even more troubling when we consider that an estimated “70 to 90 percent of the persons deprived of their liberty in Iraq had been arrested by mistake.” (ICRC 2004:8)

A good indication of the ability of the intelligence forces at Abu Ghraib to adequately investigate the information given to them under interrogation can be found in how prisoners whom it had been determined were not a threat to the Coalition were treated. If MI officers had high confidence in these assessments, deciding that the detainee was ignorant or had told all he knew, then we would expect the detainee to be released, not least in order to free up much needed space at the over crowded prison. In reality, however, this rarely occurred: detainees were often held for months after being cleared for release. In fact, 60% of the total detainee population was categorized as those who had committed “Crimes against the Coalition” but who had no intelligence value and no longer posed a significant threat: the “Detainee Releasing Authority,” Maj General Barbara Fast “routinely denied the board's recommendations to release detainees in this category who (…) clearly met the requirement for release.” (Taguba, p. 25) The authorities could not be certain that the detainees had told all they knew, or that apparently innocent detainees were not actually combatants. (Schlesinger, p. 61) This uncertainty was to influence the decisions of bureaucrats and interrogators at Guantanamo, Afghanistan and Iraq alike: “In talking to some of the officers at Kandahar and Bagram … they all talk about how there was this great fear among them, those who were going to be putting their signatures to the release of prisoners,great fear that they were somehow going to manage to release somebody who would later turn out to be the 20th hijacker.”

There is reason to believe that the use of interrogations applied to a very large swath of the detainee population, regardless of participation in the insurgency. As related by Col. Larry Wilkinson, chief of Staff to Secretary of State Colin Powell during the first George W. Bush administration, military intelligence and the CIA had begun to develop “an ad hoc intelligence philosophy” that would be used to justify the holding and continued interrogation of those detainees known to be innocent of any ties to terrorism, both in Afghanistan and Iraq, known as the “mosaic philosophy” - the military.

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name for metanetwork analysis.\textsuperscript{102} This analytical framework is geared to use large amounts of information to build a map of how terror networks operate, with an eye towards identifying crucial individuals and informational nodes whose decommissioning will significantly disrupt the network as a whole. (Casey, forthcoming) This mode of analysis has engendered considerable media interest, and has been described as “Terrorist Facebook.” (Independent, 19/08/2009) The idea is that any piece of information that might be collected, though unimportant in itself, may end up revealing something crucial once compared against other pieces of information already collected: the appearance of this piece of the mosaic brings the larger picture into focus. Practically speaking, according to Wilkerson, this has meant the assumption on the part of interrogators in Afghanistan, Iraq and Abu Ghraib that everybody under interrogation must know something, even if they do not know that they know it:

Simply stated, this philosophy held that it did not matter if a detainee were innocent. Indeed, because he lived in Afghanistan and was captured on or near the battle area, he must know something of importance (this general philosophy, in an even cruder form, prevailed in Iraq as well, helping to produce the nightmare at Abu Ghraib). All that was necessary was to extract everything possible from him and others like him, assemble it all in a computer program, and then look for cross-connections and serendipitous incidentals – in short to have sufficient information about a village, a region, or a group of individuals, that dots could be connected and terrorists or their plots could be identified. (Wilkerson, “Some Truths about Guantanamo Bay.”)

If this is the case, then interrogations were not reserved for those suspected of terrorist attacks alone, but could be applied to anyone swept up in night raids, taken prisoner at roadblocks, or detained near the site of an attack. Those who claimed to know nothing would not be believed, and interrogators might easily interpret this as holding out. Those under interrogation would have to reveal something – leading the interrogators to accept false and misleading information by necessity whenever the captive was ignorant, and allowing informed detainees the potential to offer up misinformation as well.

All of the problems with interrogational torture identified at Guantanamo Bay were also present, but in a more malignant form, in the interrogations of detainees in Iraq. Large numbers of detainees with little to reveal, the use of force as a standard part of interrogations, a screening process

\textsuperscript{102} Wilkinson's revelations stem from a piece he authored at the “Washington Note” opinion website, run by Steven Clemons, on 17/03/2009. “Some Truths about Guantanamo Bay.”  
with deep seated flaws, and detainees brought in through the agency of questionable allies (bounty hunters, the Iraqi police) all point towards the strong possibility that ignorant detainees were tortured. But where interrogations at Guantanamo Bay could take place in relative isolation and a highly controlled (at least in theory) environment, interrogations in Iraq were essentially being conducted in potentially hostile areas. The lack of standardized operating procedures also meant that merely keeping track of prisoners, even High Value Detainees, was an Herculean effort subject to frequent mistakes. The time lost due to errors and incompetence also meant a loss of time-sensitive information, as detainees might go up to 90 days in Abu Ghraib before being interrogated. (Schlesinger, p. 67) But the distinctions between Abu Ghraib and Guantanamo should not overshadow the similarities: in both cases guards were either ordered or encouraged to abuse detainees as part of the interrogation process, and both cases saw large numbers of almost certainly ignorant detainees under question. In both cases detainees were interrogated and kept confined even where the authorities believed or suspected that they had little intelligence value. Whatever the value of the information extracted under these conditions, unless the interrogators were well positioned to investigate that information by checking it against other sources (empirical as well as from other detainees), then the interrogations were almost certain to have extracted bad information with the good.

5.4. Torture by the CIA

If the use of torture for information at Guantanamo and Abu Ghraib was reliant on, and undermined by, the cooperation of prison guards in the interrogation process, then the CIA detainee program represent US torture at its most refined. It was in this program that the most severe techniques were used, and in which the US government could interrogate captives with a complete lack of oversight. At least 14 individuals were held by the CIA in so-called black-sites throughout the world between 2002 and September 2006: during this time the Red Cross was kept completely ignorant of their whereabouts, conditions, identities, and even existence. (ICRC, 2007; 3) The detainees, unlike those held at Guantanamo or Abu Ghraib, were generally high-level members of al Qaeda whose interrogation could be expected to reveal significant information. In stark contrast to the situation in Cuba and Iraq, the techniques used tended to be outlined explicitly by the Agency, rather than adopted unofficially by lower level guards with the encouragement (but not in writing) of their superiors.\footnote{See in particular the testimony of Sgt. Javal Davis and Spc. Jason Kennel in the Taguba report, pp. 18-9}
other words, the CIA High Value Detainee (HVD) program should offer us torture at its most precise: if we find similar issues involved with torture by the CIA as we found in Cuba and Iraq, then we can conclude with some confidence that these are issues endemic to torture itself.

The rules developed by the CIA for the use of torture are considerably more specific than those adopted by the Department of Defense under Donald Rumsfeld. Whereas officially the torture methods used in GTMO and Abu Ghraib were not allowed, even if they were encouraged and their practitioners shielded from the law by the OLC memo, the CIA developed a strict list of techniques, and the conditions under which they could be employed. According to CIA documents, detainees could be subjected to extended periods of sleep deprivation caused by 24 hour fluorescent lighting and near damage-causing levels of noise as well as induced hypothermia in 41° F water for up to 20 minutes, containment in cramped boxes for extended periods of time, as well as stress positions for weeks at a time. (New York Times, 26/08/2009) In all cases, however, the torture was to be accompanied by careful observation by trained medical and psychological professionals – the purpose of which was of course not to protect the detainee but to allow the interrogators to push them to the breaking point without killing their bodies or destroying their minds.104 The list of techniques appears to have been developed during the interrogation of the first detainee to fall into the regime, Abu Zubaydah – his statements to the ICRC imply that the interrogators were still deciding on the limits of what they could do to him, and applying those lessons to the interrogations to follow. Of the 14 detainee's whose interrogations are examined by the ICRC, Abu Zubaydah is the only detainee subjected to all of the techniques listed. (ICRC, 2007; 9)

Information on the HVD program became public after the release in 2008 of a 2004 report by the CIA's Office of the Inspector General (OIG). Allowable techniques are divided into two categories: standard techniques, usable at the discretion of CIA agents in the field where getting advance approval from CIA headquarters is not “feasible”; and “Enhanced Interrogation Techniques” (EITs), usable only with advance approval. However, non-permissible techniques could be approved by CIA headquarters. (OIG, p. 29-30) Standard techniques went far beyond the non-coercive techniques, and included sleep deprivation and the use of diapers “not to exceed 72 hours), isolation and reduced caloric intake (1500

104 The use of medical professionals for torture is a grave breach of both the Geneva Conventions as well as the Nuremberg Code of 1947 barring experimentation without subject consent. (Guardian, 03/09/2009; New York Times, 07/06/2010) In addition, the American Medical Association's rules prohibit doctors from acting as health monitors during interrogation “so that torture may begin or continue.” (Washington Post, 18/04/2009)
EITs included: slamming the detainee wearing a plastic neck collar to prevent whiplash against a “false wall;” confinement of two hours in the “small box” and 18 hours in the “large” one, with or without harmless insects; stress positions; sleep deprivation up to 11 days; and finally waterboarding. (p. 15) Waterboarding was itself subject to limitations on use, although these tended to be essentially advisory: “[i]f more than 3 sessions of 5 or more applications are envisioned within a 24 hour period, a careful medical assessment must be made before each later session.” (OIG, annex F; 10)

In practice, these techniques would be used in conjunction with each other: standard procedure according to detainee testimony was to combine stress positions with sleep deprivation, induce hypothermia before waterboarding, and so on.

How well, then, did this torture work? According to the CIA itself, the HVD program was highly successful. In memos and press releases from 2004 and 2005, the CIA points to the apparent cooperation of Khalid Shaykh Muhammed (KSM) after being waterboarded, leading to the disruption of terrorist plots and the saving of American lives. A careful examination of these claims, however, reveals a more ambiguous picture. In a brief report entitled “Khalid Shaykh Muhammed: Preeminent Source on Al-Qa'ida,” the CIA lists the information that KSM has revealed, the vast majority of which appears to be historical in nature or, where intelligence breakthroughs occurred leading to the arrest of suspected terrorists, the result of KSM mistakenly revealing information he believed already to be common knowledge. (CIA, “KSM”) KSM revealed information regarding the structure of al Qaeda, as well as how al Qaeda “might conduct surveillance of targets” in the US, and “how it might select targets,” as well as details on plots that had already been broken up (such as the “Library Tower” plot and the Heathrow plot), but no indication is given that intelligence provided by KSM broke up any extant plots.

KSM apparently did provide information leading, at least indirectly, to the capture of several terrorists including Iyman Faris, Jose Padilla, Hambali (Riduan Isamuddin) as well as a cell of 14 members of the Indonesian jihadist group Jemaah Islamiyah (JI) in Pakistan. (“KSM, pp. 1-3) However, in none of these cases was KSM's role particularly crucial: Iyman Faris was already under suspicion by the FBI, and had agreed to act as a double agent after being confronted by them; Jose Padilla had been under suspicion by the FBI, and had agreed to act as a double agent after being confronted by them; Hambali had been under suspicion by the FBI, and had agreed to act as a double agent after being confronted by them; 105

105 The Library Tower plot had been broken up in early 2002, nearly a year before KSM's arrest in March of 2003. Likewise, the Heathrow plot had been revealed to the British government in February of 2003. (Guardian, 10/11/2010) President Bush would nonetheless claim that KSM's torture had in fact revealed both plots in speeches as well as in his memoirs – a falsehood that would find repeated life among conservative commentators, news services, and bloggers. See, for example, the writings of Marc A. Thiessen, former speech writer to George W. Bush, in his column at the Washington Post as well as his recent book, “Courting Disaster” (Regnery). The OIG report itself “did not uncover any evidence that these plots [or others identified through torture] were imminent.” (p.88)
Padilla was accused by KSM of plotting to blow up apartments in an unidentified city – a far cry from the 'dirty bomb' plot for which has was arrested; and the information leading to the capture of Hambali and his JI crew came primarily from the interrogation of Majid Khan, who was already in custody.

Finally, there is reason to believe that a good portion of the information revealed by KSM was in fact false, or at least exaggerated. Iyman Faris was accused by KSM of plotting to cut down the Brooklyn Bridge with a blowtorch, a physical impossibility. While Faris would initially plea guilty to providing material support to al Qaeda, he would claim he had done so in order to avoid a life sentence or being declared an enemy combatant, and to secure a book deal. (New York Times, 29/10/2003) While this is certainly a self-serving claim on Faris' part, it does fit well with his willingness to cooperate with the FBI. Furthermore, while the capture of Hambali and his crew certainly had a beneficial effect in preventing potential future terror attacks, the plot for which they were captured had been disrupted the previous year (the Heathrow plot). Before the use of the most severe tortures, the information given by KSM had tended to be “outdated, inaccurate, or incomplete.” (OIG, p. 91) Once the Agency began torturing in earnest, however, the number of intelligence reports he provided increased greatly, but the intelligence value of what he revealed is disputed. “Some intelligence officers say that many of Mr. Mohammed's statements proved exaggerated or false.” (New York Times, 04/10/2007) KSM himself claimed to the Red Cross that the information he revealed while being waterboarded was deliberately false, and “wasted a lot of their time and led to several false red-alerts being placed in the US.” (ICRC, 2007:37)

The chronology of the torture also provides some important clues as to how coercive interrogation functions. Defenders of the use of torture have argued that KSM only began cooperating after a month of being tortured, and in particular after the use of the waterboard. (Washington Post, 29/08/2009) Other sources inside the intelligence community however have argued that “the CIA's initial interrogators were not experts on Mr. Mohammed's background or al Qaeda, and it took about a month to get such an expert to the secret prison.” (New York Times, 04/10/2007) Both of these accounts state that KSM's cooperation began at about the same time, but they are based on two very different causal arguments: the former arguing that the accumulated pain of 183 applications of the waterboard, in addition to sleep deprivation and stress positions inter alia are what led KSM eventually to begin cooperation; the latter argues that it was the presence of expert interrogators who would be able to identify when KSM was providing misinformation that did the trick. The former argument is
severely undercut by the CIA's own assessment of how such tortures work: according to the OIG report of 2004, the use of the waterboard was unlikely to rise to the level of 'severity' described by the OLC to constitute torture, since “repetition will not be substantial because the techniques generally lose their effectiveness after several repetitions.” (OIG, annex C: 18) In other words, it makes no sense from the CIA's own understanding of how waterboarding works to argue that KSM, after holding out for 182 applications of the waterboard, suddenly gave way on the 183rd. Similarly, it makes no sense to argue that KSM cooperated before the that 183rd application: a detainee who expects to be tortured whether he cooperates or not has no incentive to cooperate.

The interrogation of Abu Zubaydah provides an even starker example of how a reliance on torture can lead to problems for the state that uses it. When Zubaydah was initially captured on March 28th 2003 in Afghanistan, the CIA believed him to be the “third or fourth man in al Qaeda,” and he was described in press accounts at the time as “chief of operations for al Qaeda.” (CIA, “Psychological Assessment of Abu Zubaydah” [OIG]:1; New York Times, 01/04/2003) At first, Zubaydah was interrogated by the FBI using non-coercive methods, but his interrogation was soon taken over by the CIA after he was flown to a black site in Thailand where he then became the first captive to be subjected to the new HVD program. (New York Times, 18/04/2009) From the beginning of his interrogation by the CIA he claims to have been subjected to sleep deprivation for about three weeks in Afghanistan, as well as a liquid diet and forced nudity in a cold room (but not cold enough to induce hypothermia). (ICRC 2007: 28-9) During this period, according to one of his FBI interrogators, he revealed that KSM had been the “mastermind” behind the September 11th attacks, and that Jose Padilla was plotting to explode a so-called “dirty bomb” in the US. (Soufan, “Tortured Decision”) However, CIA headquarters apparently became convinced that Zubaydah was holding out: about 10 to 12 weeks after interrogations began, and after 4 weeks without any questioning, the CIA moved towards using their sharpest methods, including “close confinement,” beatings, walling, and waterboarding, *inter alia*. (ICRC 2007: 29-30) During this time Zubaydah apparently revealed a far larger amount of information, much of which was used as evidence by the administration that coercive methods were working properly.

In actuality, the use of enhanced interrogation on Zubaydah had worked very differently. Despite the reported belief of the intelligence community that Abu Zubaydah was a highly-placed man in the al Qaeda framework, this was apparently far from the truth. Zubaydah was a jihadist, certainly,
and an enemy of the United States, but of course the purpose of torture was never to punish political opponents: the essential problem was that Zubaydah did not have the information the US government believed him to have. Zubaydah, far from being a lieutenant of Osama bin Laden, was in fact a “fixer” for jihadist groups in general – the man to talk to about travel arrangements into and out of Afghanistan and Pakistan for the jihadi movement.  

(Washington Post, 29/03/2009) Because of his knowledge of the jihadi movement and personal contacts, he was able to inform the CIA of the names of many low-level operatives, as well as their plans after fleeing the US led invasion, but this information was divulged in the days (not weeks) following his arrest: in other words, in the period well before the application of the most brutal methods used by the CIA. The political need for greater intelligence, combined with the belief at CIA headquarters that Zubaydah was holding out, is what prompted the CIA to turn towards torture, and to continue the use of EITs even after interrogators themselves judged Zubaydah to be compliant. (New York Times, 18/04/2009; OIG, 2004: 84-5) Under torture Zubaydah became much more forthcoming, revealing information on planned attacks, and apparently greatly increasing the number of intelligence reports derived from his statements. (OIG, 2004: 90) “In the end though, not a single significant plot was foiled as a result of Abu Zubaydah's tortured confessions, according to former senior government officials (…) [n]early all the leads attained through the harsh measures quickly evaporated.” (Washington Post, 29/03/2009)

While the OIG report does state that “[i]t is not possible to say definitively that the waterboard is the reason for Abu Zubaydah's increased productivity,” rather than how long he had been incarcerated, what is interesting to note is that “productivity” is the only metric mentioned to judge how effective torture had been. This is all the more disturbing when we consider the OIG’s warning that “[t]he Agency lacked adequate linguistics or subject matter experts and had very little hard knowledge of what particular al-Qa’ida leaders (…) knew. This lack of knowledge led analysts to speculate about what a detainee 'should know,' vice (sic) information the analyst could objectively demonstrate the detainee did know.” In cases where a detainee claimed not to possess information, “the assumption at Headquarters was that the detainee was holding back and knew more.” (OIG 2004:

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106 It was precisely his public role as fixer that – ironically – had led the US to focus on him as a major figure in the conspiratorial al Qaeda: the fact that he was not a secret operative meant that his name appeared frequently in al Qaeda correspondence, leading metanetwork analysts to identify him as a crucial figure based on the weight of his links. (Washington Post, 29/03/2009) This is an excellent example of how the “mosaic theory” can backfire in practice.

107 According to unidentified CIA agents, most of these leads resulted in no breakthroughs, as the plots were “idle discussion or preliminary brainstorming.” (New York Times, 18/04/2009)
The memos make clear that it was common practice to judge the validity of a detainee's statements against those of other detainees, and this was understood as a precaution against believing misinformation. (CIA, 2005; OIG 2004) But it was also common to use revelations made by low-level detainees to question those farther up the chain, leading to the possibility that misinformation revealed by those at the bottom would be used during the torture of high-value detainees, whose only rational response could be to confirm its value. In this case, the higher-level detainee would not have to think of a lie to reveal to his interrogators: the interrogators would be supplying the lie themselves. The lack of knowledgeable interrogators makes this problem particularly damaging, since the less knowledge the interrogator has at the beginning, the more able the detainee is to lie and get away with it – leaving the interrogator less (but believing himself to be more) informed.

The emphasis on “productivity” had a far more pernicious effect on interrogation than even this last possibility: it led the CIA to side-line those interrogators who had such area knowledge when they refused to engage in torture. Former FBI agent Ali Soufan, who had been part of the non-coercive team at the start of Zubaydah's interrogation, notes that “the expert interrogators whose skills were deemed unnecessary to the new methods were forced out.” (Soufan, “What Torture...”) This assertion makes sense when we consider the following. First, the CIA was not in a position to tell what it was a captive knew – and so could not tell when a captive had already revealed all they could, or were holding out. (OIG, 2004: 83) Second, political pressure existed for greater productivity all else being equal – easily translated into preferment for those whose productivity numbers were higher. Thirdly, the training course for torturers lasted for only two weeks – enough time to learn how to waterboard, but certainly not enough to gain any expertise on al Qaeda or the jihadi movement in general. (Id. 31) Lastly, even if we assume that expert interrogators are willing to torture as much as non-experts, we can assume that non-experts will, on average, derive greater 'productivity' than experts, simply because experts will discount some information as being false – leading the non-experts to outperform the experts on the productivity metric almost by definition. Under those circumstances experts who refuse to use torture should lose out (in terms of preferment and rewards) to those who will, who will in turn find themselves at a disadvantage against their non-expert counterparts. The end result would be either a field dominated by non-experts who torture as experts are driven out, or experts who act like non-experts – accepting all information regardless of its apparent truth value - in an attempt to increase productivity as much as possible. And in fact, exactly this pattern has been described (albeit through an
alternative mechanism) by Darius Rejali (2007), who argues that torture leads even skilled policemen (and police systems) to increasingly rely on coercion to the exclusion of empirical evidence: a process he dubs “de-skilling.” A policeman in the British Raj in 1872 described the logic thusly: “[i]t is far pleasanter to sit comfortably in the shade rubbing pepper into a poor devil's eyes than go about in the sun hunting up evidence.” (Rejali, p. 456) He might well have added that it was far better for career advancement too.

5.5. A Critical Case: Ibn al-Shaykh al-Libi

In the prior three sections I have examined how torture has been used by both the US military and the Central Intelligence Agency in the War on Terror, and have pointed out several reasons why we should not be quick to assume that torture worked particularly well, and many reasons to fear that it has led the US to accept misinformation on a systematic basis. As mentioned in the second chapter, torture does not replace the need for strong intelligence and empirical investigation – it presupposes it. But even the best intelligence apparatus fails when it is not used. If those engaging in torture do not investigate the information they receive from detainees then the detainee is best off lying, and the interrogator will not find out until it is (at least potentially) too late. In order to choose a critical case for torture, we must therefore find a case where the US government was most likely to have tortured 'correctly' – that is, to have investigated the captive's story to ensure it was not false. The state is most likely to have done this when the consequences for accepting misinformation are most dire – where the credibility of the government is at stake, as well as the political future of elected leaders. In addition, the agents engaged in torture should be reliable, to ensure that they are concerned with the quality (and not merely the quantity) of the information. The detainee in question should be knowledgeable, and not tortured under false pretenses. Finally, the state should have the capacity to investigate the captive's story correctly, whether it chooses to or not. In such a case, there would be nothing theoretically preventing the state from torturing in a such a manner as to derive good intelligence: as long as the state can credibly commit to actually investigating, the captive is better off telling the truth.

The case which best approximates these conditions, and about which we know the most, is the case of Ali Mohammed al Fakheri, alias Ibn al-Shaykh al-Libi. Al-Libi, unlike Zubaydah, was indeed a highly placed member of al Qaeda, and unlike KSM had been a part of the group for a considerable length of time. Al-Libi in fact was a major player in the infrastructure of al Qaeda: he had been in
charge of paramilitary training at the Khalden training camp, training among others Zacarias Moussaoui, the so-called 20th hijacker, as well as Ahmed Ressam, the terrorist behind the LAX plot in 1999, Richard Reid, the “Shoe Bomber;” and Mohammed Atta, the ringleader of the September 11th attacks. (Washington Post, 05/01/2002; BBC 16/11/2006) Al-Libi was picked up by the Pakistani security services after September 11th, and was transferred to US holdings shortly thereafter. He was, at that time, the highest profile al Qaeda member to be questioned by the US. (New York Times, 06/01/2002) As a highly placed member of al Qaeda, al-Libi was in a position to reveal a potentially large amount of information regarding the sorts of training that al Qaeda's members were receiving, as well as information on membership in the group and the location and identity of al Qaeda leaders. For his interrogation, however, he was sent to Egypt – at that time, the CIA had yet to receive authorization for its High Value Detainee program, and so to have tortured him then would have been to break the law without even the fig leaf of an OLC memo. (New York Times, 09/12/2005) Before he was rendered into Egyptian custody, however, al-Libi had already begun to make references to links between al Qaeda and Iraq – under torture in Egypt, he fleshed these references out, stating that Iraq had trained al Qaeda fighters in the use of “bomb-making, poisons and deadly gasses.” (New York Times, 08/10/2002)

This intelligence almost immediately became a major talking point for the administration during the build up to the Iraq invasion. It was repeated not only by low-level press officials, but by the President himself during a major speech in Cincinnati on October 7th 2002 where he made the case for a preemptive invasion of Iraq. It was also repeated by then Secretary of State Colin Powell during his speech before the United Nations Security Council on February 5th 2003 as part of a campaign to gain international support for the attack. In every conceivable way, the intelligence that came from al-Libi under Egyptian torture was publicly disseminated by the administration, placing on the line the prestige and reputation of not only the US, but also those, like Colin Powell, who had personally vouched for its authenticity. But this intelligence turned out to have been false: shortly after the invasion of Iraq, al-Libi recanted his story, leading the CIA to withdraw its support from the intelligence by March 2004. (New York Times, 31/07/2004) By relying on the tortured words of al-Libi, the administration had presented false information not only to the American public, but also to the global community. (New

108 The full transcript of Powell's speech before the UNSC can be found at the following website: http://www.foxnews.com/story/0,2933,77675,00.html. Powell refers to al-Libi as a “senior Al Qaeda terrorist (…) responsible for one of Al Qaeda's training camps in Afghanistan.”
Insofar as this intelligence made the administration more convinced of the wisdom of the war against Iraq, it also bears some responsibility for the massive costs, reputational, human and fiscal, of that invasion, as well as the surge in anti-American sentiment in the Middle East and around the world, and the subsequent recruiting boon for al Qaeda itself. \(^{109}\)

If the costs of having accepted this information were so dire, then how can we explain the administration's apparently unquestioning acceptance of it? Why did the administration take the word of a man under torture? It might be argued that the administration had no interest in the truth, but was merely searching for a rationale for a war it was already committed to – thus the story's veracity had no importance. This seems unlikely on balance: if the administration were interested in fabricating evidence of the Iraq regime's links with al Qaeda for domestic purposes, it could easily have done so via a member of the Iraqi exile community like Ahmed Chalabi without bringing in the controversial element of torture. Moreover, the administration did not need this intelligence to gain UN backing for the war for the simple reason that it did not particularly need that backing: the administration had already claimed authority to invade Iraq under UN Resolution 1441, and was perfectly willing to go to war even without the UN's blessing, as indeed it eventually did. \(^{110}\)

Using a deliberately false story gained through torture that – once revealed – risked international and domestic support for the war in Iraq and the President's own reelection unnecessarily and for little gain would have been deeply irrational. It is far likelier that the administration felt that the information must have been true – and had it been, it would have strongly justified the use of armed force.

And yet there was considerable controversy over al-Libi's veracity even before the invasion began: an analysis of al-Libi's statements by the Defense Intelligence Agency argued, for several reasons, that the story of Iraqi WMD support to al Qaeda was deeply problematic – al-Libi left important holes in his story, seemed not to know important names and dates that would have corroborated his account, which ignored the severe unlikelihood of Saddam's secular regime arming an Islamic revolutionary movement “it cannot control.” (DITSUM 044-02) Moreover, this analysis also argued that there was good reason to think that al-Libi was “intentionally misleading the debriefers:”

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\(^{109}\) The war in Iraq has been estimated to have cost the US approximately $751 billion by 2010 in direct appropriations, according to the Congressional Research Service (Belasco, p.2), and over $3 trillion by 2008 (as a “conservative estimate”) in economic costs, according to economists Joseph Stiglitz and Linda J. Bilmes. (Washington Post, 09/03/2008) On the war's effect on al Qaeda's recruitment, see IISS, 2003.

\(^{110}\) See the news conference by Pres. Bush (USA), Prime Minister Blair (UK), Prime Minister Aznar (Spain) and Prime Minister Durao Barroso (Portugal) on March 16th 2003. (New York Times, 17/03/2003)
that is, deliberately taking advantage of the administration's *a priori* beliefs. (*Id.*) A motive for this deception is not hard to find. Firstly, by telling the interrogators what their bosses wanted to hear, al-Libi might be able to gain freedom from torture, at least for some time. But it is also possible that al-Libi saw manipulating the US into a war with Iraq as a means of benefiting al Qaeda, in a sense replicating the jihadi movement's greatest victory in Afghanistan against the Soviet Union by bleeding the US in an endless (and expensive) war of occupation. In fact, a former jihadist who claims to have been a mole for MI5, MI6, and the French intelligence service (GDS E) argues that this was precisely the case. “Omar Nasiri” trained at Khalden under al-Libi where he received training in bombings, assassinations, withstanding torture and lying under interrogation. He claims that, when asked by another jihadist where the “best country to fight the jihad,” al-Libi replied “Iraq,” because it was the “weakest” Muslim country. (Standard, 23/11/2006) Furthermore, Hussein's regime was a secular dictatorship – exactly the sort of corrupted state that al Qaeda sought to replace with an Islamic Republic: al-Libi “knew what his interrogators wanted, and was happy to give it to them. He wanted to see Saddam toppled even more than the Americans did.”

111 If the administration's goal was simply to invade Iraq, and saw torture as a means to generate false confessions that it did not need, then this would imply a commonality of interests between the US and al Qaeda – the simpler explanation is that al-Libi's story fit the administration's prior beliefs sufficiently well that even analysis that recognized the canard was ignored.

The case of al-Libi is critical for understanding how torture operates in the real world, for several reasons. Firstly, the detainee in question did in fact have intelligence crucial to the conduct of the War on Terror: other detainees, like Abu Zubaydah, had no intelligence, and thus guaranteeing that the interrogator (when it accepted their story) would be accepting misinformation. So torture could have worked in al-Libi's case. Secondly, the US was in a position to have investigated the detainee's claims – and in fact had done so, as we saw in the DIA analysis (DITSUM 044-02). Thirdly, the interrogators were conducted by Egyptians, whose state has a long history of using torture during interrogations: it is therefore exceedingly unlikely that the torture was not painful enough.  

112 While we do not know exactly how al-Libi was tortured in Egypt, there are many stories regarding the nature of Egyptian interrogation. The State Department noted in a 2002 report that Egyptian detainees faced being “stripped and
these interrogations were conducted under CIA oversight: the US government was not in a position of having to rely on the Egyptian authorities to determine the value of the educed information. Lastly, the nature of the intelligence, and the way in which it was used by the administration, placed a major emphasis on getting it right: with so much individual and institutional prestige on the line over intelligence that, while helpful, was not strictly necessary in order to go to war against Iraq, it is highly unlikely that the administration had no interest in finding out the truth. In other words, in the case of al-Libi, we have a situation where we can assume that the state was torturing 'in good faith' (actually looking for true information and not simply false confessions), where where the state had strong intelligence capacity (it could separate truth from fiction), where the pain inflicted was severe, those directing the torture reliable, and where the US was able to distinguish truth from fiction with a high degree of certainty. The outcome was an intelligence catastrophe.

5.6. Conclusion

As we have seen in this chapter, torture in the real world does not approximate torture in the movies, or on TV. While it is theoretically possible for the state to gain good information through the use of torture, the causal mechanism underlying claims of torture's effectiveness does not seem to work. The problem comes down to the information asymmetry between the captive and the state: the state does not know what the captive does and does not know. Because of this, the state is in a position of having to check the information that is revealed under torture: if it cannot credibly commit to doing so, then the captive has literally no incentive to cooperate, because the state will not be able to identify defection when it occurs. The sad truth about torture is that it is no different from any other method of interrogation: it relies on an intelligence apparatus that can investigate claims and identify lies. When the state can credibly commit to investigating, the rational captive will cooperate when the state threatens to waterboard them – but would do so as well if threatened with execution, or life imprisonment, or offered time off, or sufficiently nicer prison accommodations, or a financial reward, or any other offer that the detainee values more than the information they have to give. If the state cannot credibly commit to investigating the claims made, or if the state cannot commit not to torture

blindfolded; suspended from a ceiling or doorframe with feet just touching the floor; beaten with fists, whips, metal rods, or other objects; subjected to electrical shocks; and doused with cold water and sexually assaulted.” (“Country Report on Human Rights Practices 2003,” US Department of State. Available at http://www.state.gov/g/drl/rls/hrrpt/2003/27926.htm . )
once cooperation begins, then no amount of pain will convince the rational captive to cooperate.

What makes the War on Terror such an interesting case is that the preconditions for successful torture all appear to have been in place to one degree or another. While the information environment in which the US operated was less well developed than for the French in Algeria (lacking, as they did, a loyal ethnic minority or a block-warden system of quadrillage) the differences are not dramatic enough to explain failure on their own. In addition, the US relied not on conscripted soldiers but on professionals for much of the torture that occurred, considerably lessening the danger of an agent-principle problem arising. Lastly, the conspiracy the US was attempting to use torture to combat did exist, and was not fundamentally misapprehended, at least before the torture began. In stark contrast to the FLN, the misapprehensions that corrupted the system stemmed from the use of torture itself, and not from a planed campaign of infiltration and subterfuge. Torture did not fail because the torturers did not care about verification, or because the US could not have verified what it heard under torture, or because there was no truth to have found. Instead, torture failed for the most fundamental reason of all: the authorities began to believe that torture simply worked. And once this occurs, the state can no longer credibly commit to verification – and the captive is free to lie.

The types of torture techniques used in all three of these areas, developed through the SERE program by way of the People's Liberation Army, also give us pause: these techniques were explicitly designed for the gathering of false confessions by US airmen, under circumstances where it was immediately obvious if the airmen had cooperated or not – and even then not all airmen confessed. Moreover, most of the techniques used depend on prolonged torture over the course of days, if not weeks: stress positions, sleep deprivation, and humiliation are cumulative tortures. In other words, they are simply not geared towards stopping imminent plots, and there is little reason to believe that more humane methods would have taken longer to produce cooperation. Even those methods that are geared towards immediate pain and suffering, such as the waterboard, do not appear to have been effective in the short run: Abu Zubaydah was waterboarded 83 times during the worst of his interrogation, while Khalid Shaykh Mohammed was apparently able to hold out for 100 more applications than that. As noted by the CIA, the severe lack of area experts available for interrogations meant that interrogators were at the mercy of civilian contractors and translators, who were blamed for some of the worst abuses at Guantanamo and Abu Ghraib.

In all cases, the information retrieved appears not to have been particularly time-sensitive: how
al-Qaeda is structured, names of individuals, techniques and tactics that al Qaeda might use. What stands out is how little this information approximates the 'ticking bomb' scenario inevitably used to justify torture ethically. The US apparently never found itself in the position of having the terrorist in hand, knowing that he knew where the bomb was located, knowing that he would not talk unless tortured, and then using torture to extract that information. But perhaps this is not surprising when we consider that the 'ticking bomb' scenario is one where torture would be least likely to work because the time-sensitive nature of the information makes it increasingly difficult for the state to take the time to tell truth from fiction. From the point of view of the bomber, misinformation is a dominant strategy: even if the state is eventually able to figure out that the location given is a lie, it has bought time for the real bomb to go off. In other words, the more ethically justifiable torture is, the less likely it is to work. Finally, if the state places any irrational faith in the efficacy of torture – if the state believes that torture works – then threats to investigate cease to be credible. Even where such a state does investigate, as occurred under al-Libi's torture, the state that believes in torture may discount evidence against the confession, since doing otherwise would be throwing away information that must be right. This is especially possible when the tortured confession matches the state's prior beliefs.

The case of al-Libi is particularly useful in this sense: because it is the situation where torture should have been most likely to work – and in which torture failed with disastrous consequences for the United States – it sheds light on how torture has been conducted across the War on Terror. As seen in the HVD program, at Abu Ghraib and in Guantanamo, there is little evidence that the US torture more effectively, and considerable evidence that torture failed on balance to benefit the US. Interestingly, al-Libi revealed one more interesting bit of information to his Egyptian (and potentially CIA) interrogators: pressed for the names of other al Qaeda members, he reveals the name and location of Abu Zubaydah – an individual with almost no real information value for the US. Abu Zubaydah's capture and interrogation results in a mass of information being unveiled – nearly all of it false, and the rest of it useless. But because the US believed al-Libi, it believed Abu Zubaydah. The US would spend millions of dollars and months of work tracking down false leads and phantom threats, diverting attention and resources from actual terrorists and their actual plans.

While it is not impossible for torture to work in individual cases, there does not appear to be any evidence that torture works systematically – that the state that relies on torture for information will find itself better off on average than the state that refrains. There is, however, considerable reason to
believe that torture provides clever detainees with a means of passing misinformation to the state in a way that some states and interrogators will find uniquely believable. Even where the state tortures purely in good faith, it may find itself at the mercy of too-credible interrogators – and this is especially true where, as in the CIA’s HVD program, success is measured primarily via ‘productivity.’ For these uncertain and intensely dangerous rewards, the state must pay significant costs: loss of reputation, loss of moral authority, and the certain radicalization of whatever underlying population finds itself subject to the threat of torture. The question should no longer be “should we torture?” Rather, it must become “can we afford to?”
CHAPTER 6

CONCLUSION: The Misleading Theater of Torture

In the preceding chapters, we have seen how torture has corrupted and led astray those states that have made use of it. A single instance of torture, conducted by master against slave, converted a simple Witch-Trial in Massachusetts, such as had come and gone with little fanfare or bloodshed over the previous decades, into a spiral of denunciations and executions, as the logic of the traditional witch-trial was reversed: whereas in the past confession meant death, in Salem in 1692 confession and naming others held out the only opportunity to survive as one by those who held out were put to death. In Algeria, the use of torture led the FLN commanders in the countryside to conduct a painful purge that severely weakened their ability to confront the French – ironically, their situation was saved only by the French army's own use of torture, which so alienated Algerian opinion, and so demoralized French society, that the military would openly revolt against the constitutional order, first bringing Charles de Gaulle to power, and then attempting on several occasions to assassinate him once it became clear that he was not prepared to sacrifice France as a whole for the benefit of the Pieds Noirs as a group. In the War on Terror, the United States' use of torture has led not only the a severe loss of moral authority and global leadership, and given support to Islamist claims of the US as a force for evil in the world, but also led in large part to the declaration of war against Iraq – a war which has cost trillions of dollars, uncounted thousands of lives, and contributed in no small part to the collapse of the American economy.

In all of these cases, we have seen how torture leads to cycles of denunciations which do not end of their own accord, but only when acted upon by an outside force. In Salem, elites increasingly found themselves in danger of being named by an unofficial junta of pubescent girls: only when Increase Mather, the foremost scholar and most respected minister in New England stepped in to the debate, armed with the latest in scientific research, was the process brought to an irrevocable halt. In Algeria, French torture was brought to an end only when de Gaulle ended the war to retain Algeria, while FLN torture ended only when the leadership of the purges were purged in their turn. The US reliance on an increasing number of tortured captives led to the creation of a theory to legitimate the
practice – the 'mosaic theory.' Torture was only ended (if indeed it has ended) by the public outcry after the revelation of torture by US soldiers, as well as the leaking of the Red Cross reports to the media, made the costs to elites too high to bear. Coercive interrogation is not a self-correcting mechanism.

Furthermore, we have seen that torture was in all of these cases used when the authorities were not in a position easily to distinguish truth from falsehood, although they differed strongly in how serious a problem this was. All three cases were geared towards discovering conspiracies, whether imagined (witchcraft) or real (French penetration of the FLN, FLN terror networks in Algiers, a global jihadist movement and a national insurgency directed against the United States). Because conspiracies are based on secrecy, and conspiratorial organizations are often based on a cell-structure in order to limit the knowledge any individual can know and reveal to the enemy, these authorities often found themselves reinforcing false beliefs and accepting misinformation that would ultimately harm them. The authorities that had the ability to verify found little safety, as the belief that torture 'works' came to dominate a focus on empirical intelligence: an example of the deskilling hypothesis put forward by Rejali (2007). The deceptive cycle occurred even though all three authorities were concerned with finding out truthful information – none of the examples revolve around Soviet-style purges, nor were they geared towards obtaining politically useful confessions, such as during the Korean War. And it occurred even though all three authorities were keenly aware of the dangers of false confessions.

All three cases also saw large numbers of innocent and/or ignorant captives subjected to torture, with the ratio of knowledgeable to ignorant captives low in all cases. This is disturbing for several reasons, not least because of the clear injustice implied. The large number of ignorant captives means that security services were wasting time interrogating those with little or nothing to reveal. More crucially, however, ignorant captives have only one strategy to play – to confess falsely to everything. As one survivor of the Khmer Rouge's torture camps in Cambodia put it, “walking through a low door means you have to be able to bow.”

In so far as states that torture do so in conjunction with empirical investigation, then this represents little more than an economic waste and a moral calamity: in so far as states believe that torture 'works', each ignorant captive represents the threat of misinformation, leading the state to capture other ignorant captives, widen the pool of suspects, drown the security services in false data, and weaken their support with the underlying population. The torture or large numbers of those who had no information to give was not intentional, and was almost certainly regarded as a

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problem by the authorities – and yet the Court of Oyer and Terminer, the FLN, the French Army, and the CIA all managed to pollute their pool of suspects in just this fashion.

Most strikingly, the ability to investigate does not appear to have played much role in insulating the state from these pernicious effects. While we can understand the Villagers and Jurists at Salem for not understanding the properties of human sight, and the dangerous nature of spectral evidence, the highly modern and sophisticated armies of France in the 1950s, and the deeply intelligence oriented US military in the 2000s both fell victim to the same pitfalls of misinformation and the vicious circles of denunciation. One potential argument in favor of torture for information yet remains to consider. What if the problems found in these cases were not the fault of torture per se, but rather the result of ruthless torturers attempting to gain advancement by inflating the amount of 'information' they extracted? What if this is simply a question of finding better, or more professional agents? This argument is strong – but it is based on precisely the information dilemma I identify as the reason why interrogational torture is likely to fail. If the state cannot distinguish between the true information that the torturer extracts from the misinformation he throws in to pad his reports, then there can be no hope for torture as a system of gathering intelligence: the cynical torturer will always win over the careful and conscientious one. In the case of the United States, the greater professionalism of CIA torturers did not prevent misinformation from corrupting the system anymore than at Abu Ghraib.

Can Torture be Made to Work?

The ethical case for informational torture, exemplified by the ticking-bomb scenario, fails utterly once we consider the logic of torture itself. The less time the authorities have to make use of the information gleaned from coercion, the less incentive they have to investigate its veracity, and the less incentive the captive has to tell the truth. The less time-sensitive the information required, the less torture can be supported ethically – since the prime reason to torture has traditionally been assumed to be its ability to gather information more quickly than more empirical methods. Likewise, the assumption that torture can operate as a substitute for investigation is untrue: without the ability to vet tortured information sufficiently costlessly, the authority cannot credibly commit to doing so, allowing the captive to take advantage of the information asymmetry to plant misinformation. But while these qualifications force us to reexamine how we think about torture, don't they also provide us with a potential path towards “correct” torture? Would it be possible to design a torture system that took these
important factors into account - one that restricted its use to discovering time-insensitive information, and then only in the context of a well-developed information network to vet the captives’ revelations? In other words, would Dershowitz's prescription for a system of torture warrants allow torture and liberal society to coexist?

Ethically, torture could only be justified as a means of generating information that could not be found (usefully) in any other fashion. If torture is most likely to back-fire when the situation is time-sensitive, then perhaps torture might be justified in case where the information sought – while time-insensitive – is nonetheless important enough to the captive that they will not divulge the information without the threat of severe pain. Such information is likely to be strategic in nature, rather than tactical – how is the cell structured, rather than who leads it, for example.\textsuperscript{114} Assuming there is information that satisfies these conditions – time-insensitivity, deep value for the captive, strategic importance for the authorities – then restricted torture could very well work, or rather success would not be ruled out. For torture to operate successfully, however, the authorities must be able to credibly commit to investigation, and this is a far harder condition to satisfy. The information sought would have to be both valuable and empirically verifiable, but also inaccessible except through torture. Torture could not be used as a substitute for investigation, but rather as a compliment. Let us now consider whether the history of torture provides any clues as to whether or not this is likely to occur.

Let us consider the evolution of torture. If torture and investigation act as compliments, then the greater the authority's investigative capabilities (technological and human sources of intelligence, organizational capacity, informational technologies) the more successful and useful torture should become. Where these investigative capabilities are not well developed, torture should more often back-fire, resulting in informational corruption. Consequently, we should expect to see more torture as the state's ability to monitor and investigate increases. But historically we see exactly the opposite relationship: the use of judicial torture disappeared precisely with the birth of the state's ability to organize information came into being.\textsuperscript{115} In modern times, those states that have made use of informational torture have done so in situations where precisely this capacity is attenuated: in colonial

\textsuperscript{114} It is important to note that the ultimate targets of a torture regime – an insurgency, conspiracy, or network – is unlikely to be passive in the face of an informational threat. That is, they have every incentive to create as time-sensitive a horizon for information possessed by their operatives in order to minimize their vulnerability. A good example of this process is the practice of having a cell disband within 48 hours of an operative failing to check in, or of otherwise altering plans and organizational structures in response to potential discovery.

\textsuperscript{115} This is a major implication of Foucault (1973).
situations (France in Algeria and Viet Nam, the US in Viet Nam, the British in Kenya), in cities where the underlying populace is distrustful of the police and unwilling to supply information voluntarily, and against targets such as insurgencies and conspiracies whose very organization is predicated on secrecy. The failure to use torture against civilians generally cannot be explained solely by the political costs that torture provides: non-scarring torture has been adopted nearly universally precisely because it attenuates these costs for states that use them. If torture works, then it should work best when the authorities have a strong information environment – but it is precisely these environments where torture is not used.

The evolution of the use of torture provides further clues into how torture works. It is not enough to argue that torture must work, otherwise states would cease to have used it. Institutions can continue in existence indefinitely, even when they are suboptimal or actively harmful, as long as there is no evolutionary pressure for their replacement.\(^\text{116}\) The use of torture may not be useful for society at large – and may even be positively harmful – but it is not society at large that places pressure on institutions. Social and governmental decision-makers may benefit from an institution that undermines society at large, and maintain it even in the face of considerable evidence of its toxic effects – the elites of the American South preferred the maintenance of slavery (and later sharecropping) to free-labor and industrialization, even as that choice allowed the Northern and Western sections of the US to overshoot the South in terms of wealth and population (and thus political influence). For this reason, it is instructive to notice which evolutionary pressures have affected the institution of torture. As noted above, torture has not evolved in the direction of greater scientific effectiveness – methods of torture are not adopted according to their proven track-record, but rather according to historical memory, taste, and even fashion.\(^\text{117}\) And yet torture has evolved – the shift from scarring to non-scarring methods of torture came in response to the political imperatives of the Cold War, and the rise in the 1970s of an international human rights regime which was able to leverage significant costs against leaders and states seen to be engaged in torture. Torture is not immune to evolutionary pressures, and the ways in which an institution evolves provides insight into which purposes it serves to the elites whose choices allow it to persist. That torture has evolved swiftly in the face of pressures towards non-scarification

\(^{116}\) An excellent example of this evolutionary survival in the world of anatomy is the human appendix: it long ago ceased to serve any purpose, but can easily threaten a person's life once it becomes inflamed.

\(^{117}\) This is Rejali’s craft hypothesis – torture methods are equivalent to styles of furniture, where the shape of a chair may differ from city to city or from era to era, but all serve the same essential purpose of providing somewhere to sit.
but not towards effectiveness or even some set of proven techniques provides strong evidence that the effectiveness of torture is not those elites' primary concern.

But if torture can only work under conditions where it is not used, and if there is no evidence that torture has become any more effective over the many years and iterations of its use, then why do states torture at all? There are several possibilities here. First off, it may be that elites are convinced that torture works for atheoretical reasons, and so discount evidence that it has failed. The shadowy nature of torture makes this quite possible – the elites who decide whether or not to institute a torture regime are likely to rely on the torturers themselves for indications of how well the process is working – and the torturers would have considerable incentive to portray the workings of torture in the most successful light. That misinformation is difficult to separate from truth adds to this concern: unless the authorities become aware of the misinformation they are accepting, they are likely to believe that every confession or revelation they get is a success – resulting in greater and greater confidence in a system the further it goes off the rails. Another possibility is that torture is not in fact used for information after all – perhaps elites use torture for other means, such as intimidation or punishment – using the informational motive as a smoke-screen. Alternatively, perhaps elites use the decision to engage in torture as a signal to their supporters of being “tough” and unsentimental against a powerful threat, in order to paint their domestic opponents as weak or even “on the other side” when they oppose its use.

The essential fact is that, while torture may be ineffective or even toxic for the society that uses it to gather information, there appears to be few necessarily negative effects for the elites who choose to use it – at least as long as the process does not spiral out of control.

Finally, it cannot be discounted that the elites may derive their beliefs about how torture works not from science or history, but from the larger culture. An excellent example of precisely this mechanism can be found in one of the stranger moments of the War on Terror. The television show '24', starring Kiefer Sutherland, was noted for its near constant portrayals of successful torture used to locate information – by one estimate by the Parents Television Council, torture was employed on an average of once every two hours in screen time. (Lithwick, July 31st, 2008) In 2007, a round table was held between producers of the show and the dean of the US Military Academy (West Point) and other high ranking military officers. At this meeting, the producers were encouraged to ease of their positive representations of torture because they were impairing the training of interrogators who were putting into practice the images they'd seen on TV. (Moritz, February 10th, 2007) Furthermore, the fictional
Jack Bauer was used as justification for torture by highly placed members of the US government: '24' was used as an inspiration by officials such as Diane Beaver, John Yoo and Homeland Security chief Michael Chertoff. No less a personage than US Supreme Court Justice Antonin Scalia argued at a public venue that “Jack Bauer saved Los Angeles … he has saved hundreds of thousands of lives (…) are you going to convict Jack Bauer?” (Lithwick) If even elites themselves are vulnerable to mistaking fantasy for reality when it comes to torture, then it should be no surprise that torture should persist even if it fails in real life.

As noted by Rejali (2007), torture has been subject to evolutionary constraints: as democracy has spread, and the international anti-torture regime has gained moral suasion during the last half of the twentieth century, torture increasingly took on a non-scarring form, leading even authoritarian governments to prefer methods like electricity, water and stress positions to boiling and butchery. But torture has not evolved in any more effective or painful direction – methods do not spread according to how well they work but according to taste, tradition and historical memory. Neither has science pierced the veil that separates the experience of pain from one body to the next. In fact, torture remains what it always has been – pain – and resembles nothing so much as the false promise that 'will', however conceived, can triumph over petty reality. Ultimately, if the state cannot or will not pay the cost of distinguishing truth from fiction, then there is no reason ever to tell the truth under torture – and any pain inflicted is simply more suffering added to a world that already has seen more than enough.
<table>
<thead>
<tr>
<th>Author</th>
<th>Title</th>
<th>Publication Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alleg, Henri</td>
<td><strong>La Question</strong>. John Calder, trans. Lincoln: University of Nebraska Press, 2006</td>
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<tr>
<td>Author(s)</td>
<td>Title/Tema</td>
<td>Source/Details</td>
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<tr>
<td>Bonner, Robert J.</td>
<td>Evidence in Athenian Courts</td>
<td>Chicago: University of Chicago Press, 1905</td>
</tr>
<tr>
<td>Bright, Martin</td>
<td>“Guantanamo Has 'Failed to Prevent Terror Attacks.’”</td>
<td><em>Observer</em>. Oct. 3, 2004: p. 1</td>
</tr>
<tr>
<td>British Broadcast Corporation (BBC)</td>
<td>“UK 'Ignored Spy's Al Qaeda Fear’”</td>
<td><a href="http://news.bbc.co.uk/1/hi/6155902.stm">Available online at http://news.bbc.co.uk/1/hi/6155902.stm</a></td>
</tr>
<tr>
<td>Author</td>
<td>Title/Details</td>
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<tr>
<td>Craddock, Christopher and MLR Smith</td>
<td>“No Fixed Values: A Reinterpretation of the Influence of the Theory of Guerre Révolutionnaire and the Battle of Algiers.”</td>
<td></td>
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</table>


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<thead>
<tr>
<th>Author(s) and Title</th>
<th>Source and Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Golden, Richard M.</td>
<td>“American Perspectives on the European Witch-Hunts.” <em>The</em> 147</td>
</tr>
<tr>
<td>Author</td>
<td>Title</td>
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<tr>
<td>Hansen, Chadwick</td>
<td>Witchcraft at Salem.</td>
</tr>
</tbody>
</table>

148


International Council on Security and Development


International Institute for Strategic Studies


Jehl, Douglas


Johnston, David & Scott Shane


Johnston, David and Mark Mazzetti


Kalyvas, Stathis N.


The Logic of Violence in Civil War. Cambridge: Cambridge University Press, 2006

Kamensky, Jane

Karlsen, Carol  

Keath, Lee  

Kim, J.J. & Diamond, D.M.  

Kleinman, Steven M  

Knight, M. M.  

Landler, Mark & Souad Mekhennet  

Langbein, John H.  


Lathey, Stephanie  

Lazreg, Marnia  

Levinson, Sanford. (ed.)  
*Torture.* Oxford: Oxford University Press, 2004


<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Title/Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pierre, Hervé (Maj.)</td>
<td>“Gathering of Human Intelligence in Counter-Insurgency Warfare: The French Experience During the Battle of Algiers.” Paper submitted to the USMC Command and Staff College. (2009)</td>
</tr>
<tr>
<td>Reis, Elizabeth</td>
<td>“Confess or Deny: What’s a Witch to Do?” Organization of 154</td>
</tr>
</tbody>
</table>


155


Thiessen, Mark A.  Courting Disaster: How the CIA Kept America Safe and How
Barack Obama is Inviting the Next Attack. Washington, DC: Regnery Publishing, 2010

Thür, Gerhard

Tucker Smith, Vera

Turner, Edward Raymond.

Turner, M.S. et alia.

Twining, W. & Barrie Paskins.

Ulrich-Lai, Y.M. & Herman, J.P.

United States, Central Intelligence Agency

United States, Central Intelligence Agency – Office of the Inspector General (OIG)

United States, Defense Intelligence Agency


<table>
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<tr>
<th>Source</th>
<th>Document Title</th>
<th>Date</th>
<th>Available Online</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States, Department of Justice, Office of Legal Council</td>
<td>“Subject: Counter-Resistance Techniques in the War on Terrorism.”</td>
<td>Apr. 16, 2003</td>
<td>Available online at <a href="http://www.dod.gov/pubs/foi/detainees/additional_detainee_documents/07-F-2406%20doc%205.pdf">http://www.dod.gov/pubs/foi/detainees/additional_detainee_documents/07-F-2406%20doc%205.pdf</a></td>
</tr>
</tbody>
</table>

160
Vrij, Aldert, Samantha Mann, Susanne Kristen and Ronald P. Fisher


Wantchekon, Leonard & Andrew Healy


Warrick, Joby


Warrick, Joby & Peter Finn


Warrick, Joby, Peter Finn & Julie Tate


Welling, James C.


White, Josh


Whitlock, Craig

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Patrick Armshaw graduated from New College of Florida with a Bachelor's degree in Literature and Theater in 2001, and spent the next three years as a professional actor. He entered the Florida State University doctoral program in Political Science in 2004. He received his Master's degree in 2006, and began preliminary work on this dissertation the following year. His research interests include formal modeling, political economy, and human rights.