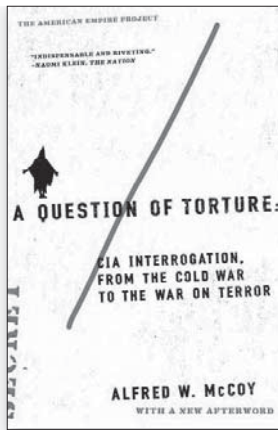


A Question of Torture:

CIA Interrogation, from the Cold War to the War on Terror

Alfred W McCoy | Metropolitan Books, 2006



On 28 June 1914 Gavrilo Princip shot dead the Archduke Franz Ferdinand and his wife Sophie. Princip was almost certainly a member of the Black Hand, a terrorist group run by the chief of the Intelligence Department of the Serbian Army. Its political aim was the independence of Bosnia-Herzegovina from the Austro-Hungarian Empire. Princip and his allies were probably not acting at the direction of the Serbian State.

The killings were terrorist acts to advance the ambitions of the Black Hand. Of themselves the assassinations were not state-destroying nor did they have that potential. As with almost all terrorist activity the murders were symbolic.

The events that followed were from decisions of states purportedly in response to these killings. No one really suggests that the terrorist Princip caused the First World War. The lunatic chain of events triggered it.

My point is this: that historically the worst effects of terrorism have been caused by the response of the state to it.

Since 11 September 2001 there have been elements in the response of some Western governments, including Australia, which reflect this phenomenon. We now have laws which permit detention without suspicion, charge or trial, and trials where neither the accused nor his/her counsel are permitted to know the evidence led against them.

In the years following the Second World War Western leaders, no doubt scarified by the recent horrors, proclaimed treaties and declarations starting importantly with the Universal Declaration of Human Rights 1948. The preamble says in part:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Article 5 reads:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 8 reads:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 10 reads:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

A year later the Geneva Convention III relating to the treatment of prisoners of war was ratified by the United States. It banned, inter alia, corporal punishment, imprisonment in premises without daylight, and in general any form of torture or cruelty. (Article 87).

In 1966 the International Covenant on Civil and Political Rights was passed.

Article 7 reads in part:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

In 1984 the Convention Against Torture was adopted.

Now we have the timely appearance of Professor Alfred McCoy's book *A Question of Torture: CIA Interrogation from the Cold War to the War on Terror*, 2006, Metropolitan Books, New York.

I do not suppose it should really surprise us that the covert instrumentalities of the major Western power now the world's only superpower should have been steadily working on interrogation techniques.

McCoy's book explores the history and development effectively from the exotically named *Kubark Counter Intelligence Interrogation Manual* in 1963 (digesting and codifying the techniques of psychological torture) tracking its refinement allied to increasing physical barbarity in Vietnam and now Iraq and Afghanistan, Guantanamo and the various places to which the CIA has rendered its 'high value' detainees.

The book is, of course, principally concerned with the United States. Of Western countries one should not ignore the contributions to torture including France in Algeria in the 1950s and Britain in Northern Ireland in the 1970s. (No, I do not ignore the barbarity of others, such as China, but the book concerns the 'West' and the affront that torture is to our values).

Perhaps the most sinister practice in use is rendition. This is the contracting out of torture. It allows for the transportation of persons to countries who torture with little if any restraint (the grand hypocrisy is that one of the countries used by the United States is Syria) and permits plausible deniability - at least until it all unravels.

The Syrian technique (acknowledged by the United States State Department) includes: 'electrical shocks; pulling out fingernails; the forced insertion of objects into the rectum; beatings.'

It is not well known that the practice of 'extraordinary rendition' was initiated during the Clinton administration where the CIA kidnapped terror suspects in Bosnia from where they were taken to Cairo for interrogation under torture.

It was probably done because the CIA may have been a little out of practice since the end of US involvement in Vietnam.

After 11 September they quickly made up time. Immediately after those events there was support for torture (and extreme forms of it) in certain circumstances from some surprising quarters: Professor Dershowitz from Harvard and Justice Richard Posner.

In Australia Professor Bagaric of Deakin Law School in Western Australia in an article for *The Age* on 17 May 2005 equated killing by police of a potentially murderous hostage taker with justifiable torture. The example he gave was:

Will a real-life situation actually occur where the only option is between torturing a wrongdoer or saving an innocent person? Perhaps not. However, a minor alteration to the Douglas Wood situation illustrates that the issue is far from moot. If Western forces in Iraq arrested one of Mr Wood's captors, it would be a perverse ethic that required us to respect the physical integrity of the captor, and not torture him to ascertain Mr Wood's whereabouts, in preference to taking all possible steps to save Mr Wood.'

True enough, there were some ballistic responses to the piece. Alexander Downer told ABC Radio: 'I don't think we want to encourage a world in which torture is justified.'

McCoy has graphically described the confused and morally debilitating legal gymnastics arrayed by the Bush Administration to employ the use of torture. In August 2002 Assistant Attorney General Bybee wrote a 55-page memorandum to the then White House Counsel Gonzales (now US attorney-general).

To quote McCoy (quoting and paraphrasing Bybee at 121): -

To constitute torture under US statute, the physical pain must, he said ' be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.'

One asks: 'What's left?'

It is rather difficult to read this statement compatibly with the convention and covenant principles.

This document generated directives which resulted in the application of 'brutal methods by both CIA and military interrogators'

In the next few years of the war on terror, the toll from President Bush's orders, as conveyed in these memos and others still secret, would be chilling - some 14,000 Iraqi 'security detainees' subjected to harsh interrogation, often with torture; 1,100 'high-value' prisoners interrogated, with systematic torture, at Guantanamo and Bagram; 150 extraordinary, extralegal renditions of terror suspects to nations notorious for brutality; 68 detainees dead under suspicious circumstances; some 36 top Al Qaeda detainees held for years of sustained CIA torture; and 26 detainees murdered under questioning, at least four of them by the CIA. Adding to the causalities from this covert war, Bush hinted at torture and extrajudicial execution during this State of the Union address in January 2003, when he spoke about '3,000 suspected terrorists ... arrested in many countries. Any many others have met a different fate. They are no longer a problem for the United States.' (McCoy pages 124-125)

And yet exposure of the techniques at Abu Ghraib was depicted as the aberrant work of a few low ranking, over enthusiastic personnel and said not to represent US policy or practice.

As McCoy notes many of those who were authors of or sanctioned the Bybee memorandum were promoted or remained in office.

Bybee himself has been appointed to the Ninth Circuit, Gonzales is attorney-general, Wolfowitz now heads the World Bank and Rumsfeld remained secretary of defense until last month.

After the 2004 presidential elections there was substantial congressional inquiry and criticism into and of Abu Ghraib, and as McCoy notes, a retreat from Bybee's

memorandum by a new directive from Justice on 30 December 2004 which began: 'Torture is abhorrent both to American law and values and to international norms.'

At page 168 McCoy reports:

In its first official tally, the army reported that 27 detainees had been killed in US custody in Afghanistan and Iraq, and that 21 soldiers faced charges in connection with those deaths. Another 17 soldiers, the army said, would not face trial, for want of evidence. Adding the three detainee deaths investigated by the navy and four more involving the CIA would bring the official toll for deaths in custody to well over 30. Of this total, there was only one death at Abu Ghraib.

...

Despite these disturbing numbers every senior officer investigated to date, save one, has been exculpated.'

Nobody above the rank of sergeant has gone to gaol.

At Guantanamo Bay many of the prisoners are graduates from rendition. The president has recently stated that rendition is at an end. There is reasonable doubt about such a statement.

The techniques of interrogation used at Guantanamo are those denied over many years. They are torture and clearly violate the conventions.

Guantanamo remains.

Prisoners are indefinitely detained. The military tribunals as a source of justice is flawed to the cusp of farce.

In the end, as McCoy states, the efficacy of torture is dubious not merely as being morally reprehensible but because in a practical sense it produces questionable outcomes.

As McCoy demonstrates torture - whether it be brutally physical, relentlessly psychological or a combination of the two - produces unreliable information and dubious confessions. That conclusion is demonstrated beyond doubt. As this is so, it is militarily, politically and legally dangerous to rely on such material.

Secondly, it essentially destroys the forensic worth of such material.

Even though the Australian attorney-general doubts this proposition it seems to this lawyer indisputable (see Article 14 of the Convention Against Torture).

Recently Chief Justice Gleeson¹ said:

Many laws, whether made by a parliament or judge-made, represent an accommodation between competing rights or interests. Often, the accommodation that is reached is inconvenient for some; sometimes it is inconvenient for the government. The rule against the admissibility of involuntary confessions is no doubt an inconvenience for those who enforce the

criminal law. It is an inconvenience they are obliged to accept. The alternative, that is to say, receiving evidence of forced confessions, is a price we are not willing to pay in order to secure convictions. Laws regulating official surveillance, or search and seizure, are carefully structured to reflect what parliament regards as a just compromise between the rights of individuals and the public rights and interests protected by the criminal law. People may disagree about whether an appropriate balance has been struck, but some form of balance is necessary. Very few public policies are pursued at all costs.

Professor McCoy's book demonstrates the profound dangers of unfettered power

disguised as legitimate action.

Powerfully McCoy quotes an FBI Agent Dan Coleman. The FBI rejects torture: 'Brutalization doesn't work...We know that. Besides, you lose your soul.' (page 203)

These acts of state are said to be part of the war on terror. The acts themselves challenge the core value of a liberal democratic state - the rule of law.

Our institutions are jeopardised not by the acts of terrorism but by the response of the state to them.

Reviewed by Robert Toner SC

¹ 'A Core Value' Speech at Judicial Conference of Australia Annual Colloquium, Canberra, 6 October 2006.

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