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## Indirect Violence and Legitimation: Torture, Surrogacy, and the U.S. War on Terror

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### **Abstract**

This paper contributes to the sociological study of legitimation, specifically focusing on the state legitimation of torture and other forms of violence that violate international normative standards. While sociologists have identified important discursive techniques of legitimation, this paper suggests that researchers should also look at state practices where concerns regarding legitimacy are “built in” to the very practice of certain forms of violence. Specifically, the paper focuses on surrogacy, through which powerful states may direct or benefit from the violence carried out by client states or other armed groups while at the same time attempting to appear separate from and blameless regarding any resulting human rights violations. The utility of this concept is demonstrated in case studies of torture in the U.S. “War on Terror,” examining the policy of extraordinary rendition and U.S. policy regarding Iraqi-state torture during its occupation of that nation. The case studies are developed from analyses of human rights reports, leaked military documents from U.S. soldiers in the Iraq War, and U.S. newspaper and television coverage.

### **Keywords**

Legitimation; Torture; State Violence; Human Rights; War on Terror; Iraq

The vast majority of the world’s states have formally committed to the norm regarding the inviolability of the human person; that no person, in the words of the Universal Declaration of Human Rights (1948), should be “subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This norm is further expressed in the Geneva Conventions (1950) and again prohibited by the UN Convention Against Torture (1975), which bans any state acts that cause “severe pain or suffering, whether physical or mental” for the purpose of obtaining information, a confession, or for punishment. While the overwhelming majority of nations of the world have committed to this norm, torture remains a widespread and frequently-used state practice (Hafner-Burton and Ron 2009; Hafner-

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Burton and Tsutsui 2007; Rejali 2007). The United States is hardly an exception; U.S. officials instituted policies that directly used or relied upon torture during its “War on Terror,” despite longstanding U.S. commitments to treaties that prohibit and criminalize such practice (Hooks and Mosher 2005; McCoy 2006).<sup>1</sup> This contradiction therefore presents an important research puzzle: how is it that the U.S. has been able to both affirm the human rights of the individual not to suffer torture, but has simultaneously used or relied on torture as a means of accomplishing state goals?

Social scientists have begun to answer this question by identifying legitimating mechanisms U.S. officials have used to manage this contradiction between normative commitments and actual state practices. Most notably, researchers have pointed to rhetorical techniques, by which U.S. officials have sought to portray incidents of torture and abuse as “isolated incidents” committed by a few, low-ranking “bad apples,” that were in no way related to or caused by policies implemented at the highest levels of government (Hooks and Mosher 2005; Del Rosso 2011). This research paper adds to these accounts, and aims to contribute to a more general understanding of legitimation, by focusing on physical, or non-discursive, tactics. This paper identifies one such legitimating tactic, *surrogacy*, by which U.S. policy-makers may benefit from a client state’s use of torture, while still maintaining distance from such acts and creating a more plausible deniability that the U.S. is responsible for any resulting violations of international norms. In this way, physical practices of legitimation do not exist separately from discursive techniques, rather they are often used in tandem with the rhetorical methods of legitimation more traditionally studied by sociologists. In the following paper, I will make this argument through an examination of U.S. torture in the “War on Terror,” first taking a brief look at the U.S. policy of “extraordinary rendition” and then moving on to a more thorough investigation of Iraqi governmental torture during the U.S. occupation (through the years of 2004-2010). I will conclude by making an argument that surrogacy is frequently used by powerful actors who would like to both benefit from violent force while at the same time appear to be respecting international humanitarian norms. For this reason, the concept may be of more general use to other researchers studying violence and human rights.

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## LEGITIMATION, EGREGIOUS VIOLENCE, AND TORTURE IN THE “WAR ON TERROR”

It is useful to begin a discussion regarding torture and state violence with a few definitions. In this paper I use the term “legitimate” to describe a state policy that does not appear to contravene widely shared values, norms, and ideals (Johnson, Dowd, and Ridgeway 2006). Legitimation, on the other hand, is the cultural work and the particular strategies that state officials may utilize in order to (1) make state policies seem legitimate or (2) to prevent a public from gaining awareness of such contraventions (Freudenburg and Alario 2007). Of particular concern here, states must do legitimation work for what might be called egregious acts of violence, or state policies that violate universal humanitarian norms, as identified by major international human rights treaties, such as those outlawing the targeting of civilian populations in war, fighting “wars of aggression” for territory or resources, the use of prohibited forms of violence such as chemical weapons, or the use of torture.

Like most sociological work studying legitimation in general, the study of state tactics to legitimate egregious violence has typically focused on rhetorical strategies. For instance, scholars have sought to understand how states may promote militaristic patriotism in order to justify military adventurism. According to Bacevich (2005), for instance, members of the U.S. political elite promoted the idea, in the wake of the Vietnam War, that U.S. military power could be used to reshape the world—making it more free, democratic, and prosperous—regardless of the fact that the actual use of military force toward such ends results in mass civilian deaths and other humanitarian harms. Similarly, Bricmont (2006) warns that Western states are increasingly using human rights as a means to legitimate war. For instance, the U.S. war in Afghanistan has been legitimated as being fought to liberate the Afghani people—particularly women—from the reprehensible human rights practices of the Taliban, regardless of the fact that many U.S. allies in Afghanistan have equally poor human rights records (Bricmont 2006).

Also in this vein of research, sociologists examine other discursive strategies of legitimation by pointing to state attempts to use mass media to cultivate fear within their domestic citizenships as a means of justifying wars. For example, Altheid and Grimes (2003)

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show how the U.S. government used the threat of terrorism to legitimate its 2003 invasion of Iraq. And sociologists further study how states may attempt to promote racist thinking to legitimate state violence, by for instance promoting notions that “enemies” are barbarous, inferior, or otherwise less than human and are therefore not deserving of the rights and protections that might otherwise be granted (Dower 1993; Hooks and Mosher 2005; Horseman 1983; Steuter and Wills 2008).

Other social scientists have paid more attention to rhetorical strategies of denial as a means by which egregious acts of violence may be legitimated. Most important of these is the tactic of “interpretive denial,” as identified by Cohen (2001), by which state officials may acknowledge certain instances of violence but attempt to define or classify them in such a way that they cannot be considered breeches of widely accepted normative codes. Typically, this is done when officials use euphemisms and technical jargon to refer to the death and destruction caused by war, a technique Bourke (2006:29) aptly describes as the use of “the language of civility employed in the art of killing.” A prime example is the term “collateral damage,” used to refer to civilian deaths in bombing campaigns. The goal here, according to Arendt’s (1963/1994) analysis of Nazi “language rules”—whereby mass murder was called the “final solution,” “evacuation,” and “special treatment”—is not so much to deny the reality of events, so much as to prevent their association with traditional normative prohibitions against murder. When it works as a legitimating tactic, then, interpretive denial achieves a disassociation that stifles public awareness that certain forms of state violence may be interpreted as violating universal humanitarian norms and values, even if members of the public are in some way or another cognizant of the state’s use of such violence and its outcomes.

Like sociological studies of egregious violence more generally, most who have studied the legitimation of U.S. torture policies in the “War on Terror” are primarily concerned with rhetorical and discursive techniques. Hooks and Mosher (2005), for instance, explain that one tactic U.S. officials used in attempts to legitimate torture at the Abu Ghraib prison in Iraq was to insist—successfully, it should be said—that the press not refer to it as “torture” at all, but to instead call it “abuse.” Moreover, U.S. officials also used rhetorical

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legitimizing techniques by insisting that the acts of torture depicted in photos from the U.S. run Abu Ghraib prison in Iraq were committed by a few, low-ranking, “bad apples,” and were not the necessary result of policies initiated at the highest level of government (Hooks and Mosher 2005). Similarly, Del Rosso (2011) points to U.S. officials’ processes of ignoring and neglecting reports of widespread torture and abuse in Iraq and Afghanistan so that the torture exposed at the Abu Ghraib prison in Iraq could be constructed as an “isolated incident.”

These studies make important contributions to the understanding of the legitimation of torture and other forms of egregious state violence. But it is important to note that by focusing on discourse alone, the studies may overlook the full context of legitimation, especially the ways acts may be legitimated through their very practice, and the ways that such practices may work in tandem with rhetorical strategies. In one important exception, Rejali (2007) documents the rise of what he calls “clean torture” or “stealth torture,” such as the use of stress positions, sensory deprivation, electrocution, and other means of torture that do not leave lasting physical evidence on the bodies of victims. Such techniques can be used, according to Rejali (2007:3) to “beat a suspect senseless without leaving a mark,” making them doubly effective because they allow states to more easily evade the attention and criticism of human rights organizations and other groups that threaten to impose democratic accountability. Moreover, they may make subsequent governmental attempts at interpretive denial more plausible and potentially more effective, as when, for instance, U.S. officials named their own program of clean torture in the “War on Terror” policies of “enhanced interrogation.”

This paper attempts to contribute to the study of the legitimation of U.S. torture, and egregious acts of state violence more generally, by focusing on another physical tactic: that of surrogacy. Through this legitimating tactic, I propose that officials are able to direct, or rely upon, a client state or an armed group to carry out egregious acts of violence that accomplish shared goals. In regard to the legitimation of U.S. acts of egregious violence, surrogacy may be used for three primary reasons. First, because violence is carried out by another party rather than U.S. soldiers, it may be less noticed and

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less likely to be constructed as a social problem by members of the U.S. public. Evading attention and suppressing public awareness is, to Freudenberg and Alario (2007:147), the “dark side of legitimation,” and surrogacy may be one useful tool toward its achievement. Second, and in a related way, surrogacy can be used to limit public awareness of the details and/or the extent of such violence, as it is directly undertaken by armed groups or states that act in secrecy and typically refuse to share information that might otherwise be forthcoming by a state in a more democratic society like the U.S. Finally, surrogacy may be useful because it can provide U.S. officials the capacity to more plausibly deny responsibility for any violations of international standards committed by its adjuncts, even if such violence furthers the geopolitical strategy of the United States. The use of surrogacy as a method of legitimation-in-practice is evident in the U.S. policy of “extraordinary rendition.”

#### TORTURE, SURROGACY, AND EXTRAORDINARY RENDITION

An obvious place to begin an examination of the legitimating tactic of surrogacy during the U.S. “War on Terror” is the government’s policy of “extraordinary rendition,” by which U.S. officials have abducted terrorist suspects in foreign countries and transferred them to third-party states known for their use of torture (see Amnesty International 2006; Grey 2005; Mayer 2008).<sup>2</sup> “Rendition” first became U.S. policy in the Reagan era, in which it was used on a very limited basis to capture suspects in foreign countries and transport them to another country with an outstanding arrest warrant (Mayer 2008). Though more overtly used in the 1990s, rendition was strictly controlled and primarily used to disrupt terrorist networks and bring suspected terrorists to justice (Grey 2007). After the terrorist attacks committed against the U.S. on September 11<sup>th</sup>, 2001, however, these controls were relaxed and the tactic was much more broadly employed (McCoy 2006). This new “extraordinary rendition,” however, was not used to bring suspects to trial, but in order to “render suspects outside the reach of the law” (Mayer 2008: 108). The Bush Administration officials that made the decision to expand the use of rendition were, at the time, arguing more broadly that the U.S. was “fighting a new kind of war,” in which a “high

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premium” should be placed “on the ability to quickly obtain information from terrorists and their sponsors in order to prevent further atrocities against Americans” (Gonzalez 2002:2). Evidently in pursuit of this goal, suspects in ensuing years were transferred by U.S. officials to Syria, Egypt, Jordan, Saudi Arabia, Morocco, Libya, and Yemen, all of whom have faced international criticism for torture and abuse (Amnesty International 2006; Grey 2005).

It can reasonably be assumed that once a suspect who is presumed to possess high-value intelligence is transferred into the custody of another government with a reputation for routine torture, he or she will become subject to such violence as well (Amnesty International 2005). We certainly know that individuals who were transferred from U.S. custody to third-party nations through extraordinary rendition, but have since been released, have reported that they were tortured, including being beaten, electrocuted, subjected to psychological torture, and being held for long periods in grave-like isolation cells (Amnesty International 2006; Mayer 2008; Perlez, Bonner, and Massood 2009).<sup>3</sup> Based on these persons’ accounts, it can safely be presumed that all—or at least most—individuals captured and delivered via extraordinary rendition have been tortured as well. Of course, the exact details of what these “rendered” persons have experienced once they were handed over by the U.S. to other governments that practice torture can rarely be determined, which is presumably one of the reasons why such persons were transferred into their custody in the first place.

Taking all this together, during the “War on Terror” U.S. officials may have used extraordinary rendition as a legitimating tactic in order to transfer detainees to countries where they would face interrogation methods that would be illegal in the United States while (1) preventing the American public from becoming broadly aware of the outcomes of such policies, (2) protecting U.S. intelligence agencies from judicial oversight, and (3) providing officials an increased ability to deny that the U.S. is responsible for any resulting contraventions of humanitarian norms that may eventually come to light. In terms of secrecy, the U.S. government refuses to disclose exactly how many people have been subject to extraordinary rendition (Amnesty International 2006). Moreover, the states where persons have been transferred via extraordinary rendition, according to Amnesty

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International (2005), practice torture in secrecy while also systematically denying its use and making other misrepresentations about its practice. Consequently, surrogacy may be used as a legitimating tool because it shrouds U.S. policies in darkness, preventing civil society organizations and the public as a whole from becoming more fully aware of their consequences.

Additionally, officials have invoked “state-secrets privileges” as a means of blocking lawsuits from former detainees that were subjected to extraordinary rendition and, more generally, as a means of preventing judicial oversight of the program (Savage 2009).<sup>4</sup> In so doing, the U.S. government claims that all such trials must be dismissed because they would divulge intelligence-gathering methods or otherwise harm national security. U.S. federal courts have accepted these arguments, and as a consequence no victims of torture and extraordinary rendition have had a day in a U.S. court (ACLU 2011a; New York Times 2011). By invoking a “state-secrets” defense, the U.S. government has not only acted to protect officials from criminal and civil penalties, but in order to legitimate its interrogation and torture program by suppressing information and keeping the issue from becoming a matter of greater public concern.

Finally, extraordinary rendition may work as a legitimating tactic because it can allow state officials the capacity to subject suspects to abusive forms of interrogation, while also allowing them to more plausibly deny responsibility for any resulting breaches of international norms. In this way, a discursive tactic of legitimation (denial), is closely coupled with the physical practice of transferring prisoners. For this reason, the U.S. government claims it obtained “diplomatic assurances” from the countries co-operating with its extraordinary rendition policies that no detainee will be tortured or mistreated (New York Times 2007). While such assurances may be useful discursive means for dodging responsibility, they likely provide very few actual human rights protections when they come from countries (1) with well-known policies of torture, (2) that are known to give false statements regarding their treatment of prisoners, and (3) when such assurances do not accompany any meaningful oversight by civil society organizations (Amnesty International 2005).

Through this brief exploration, it becomes clear that the U.S. has utilized more than discursive strategies in order to legitimate its

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policies of the treatment of suspects in the “War on Terror.” Rather, the U.S. government has recently used the practice of “extraordinary rendition” as a means to subject prisoners to harsh treatment that often matches international definitions of torture, while at the same time shrouding this treatment of suspects with secrecy to limit public awareness and prevent judicial oversight. The tactic may also be beneficial because it can be closely coupled with rhetorical strategies of legitimation by allowing officials to more plausibly deny that they are responsible for any resulting torture because such acts were not directly committed by U.S. agents. Rights advocacy organizations estimate that hundreds of people have been subjected to extraordinary rendition by the U.S. government (ACLU 2005; Amnesty International 2006a). The next section examines another form of surrogacy used to legitimate torture in recent years, this one affecting far more people.

#### TORTURE, SURROGACY, AND THE U.S. OCCUPATION OF IRAQ

The United States launched an invasion of Iraq in March of 2003 in order to depose its ruling regime and, through occupation, reorder the Iraqi government to more favorably suit U.S. economic and geopolitical interests (Chandrasekaran 2006, Muttit 2011; Schwartz 2011). During its occupation, officially over in 2011, the U.S. worked to suppress an insurgency and sectarian conflict through its own military power and through the military power of the Iraqi army and security forces, which the U.S. built-up and armed (Metz 2007). It is now widely known, thanks to the work of international human rights organizations and the leak of U.S. military reports from the war, that the fledgling Iraqi government frequently practiced torture. In this section, I will provide an overview of the extent of this torture. Next, I will consider the extent to which the U.S. government was responsible for, or derived benefit from, the systematic abuse of Iraqi prisoners. The answer to this question is directly related to the tactic of surrogacy and the argument at hand regarding physical techniques of legitimation.

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*The Extent and Nature of Iraqi Torture During the U.S. Occupation*

By 2005, it became public knowledge that the Iraqi government, including both its military and police forces, were routinely practicing torture. Human Rights Watch, for instance, reported that it had interviewed ninety current or former Iraqi detainees, seventy-two of whom alleged that they had been tortured (Human Rights Watch 2005). Later in 2005, U.S. military forces closed down two Iraqi-run secret prison, in which detainees were being starved and were subjected to other forms of torture (Wong 2005).<sup>5</sup> In 2006, Amnesty International (2006b:2) issued another warning, stating that, “Iraqi authorities are systematically violating the rights of detainees in breach of guarantees contained both in Iraqi legislation and in international law and standards—including the right not to be tortured and to be promptly brought before a judge.” Despite these warnings, the United States continued to build-up, assist, and closely co-operate with Iraqi military forces. Throughout this period, the U.S. maintained an implicit policy tolerating this abuse, which was—according to human rights reports and leaked military documents—unrelenting. As recently as 2010, Amnesty International (2010:32) reported that detainees, particularly those who are government critics and suspected insurgents, face such torture as,

Rape or the threat of rape. Beating with cables and hosepipes. Prolonged suspension by the limbs. Electric shocks to sensitive parts of the body. Breaking of limbs. Removal of toenails with pliers. Asphyxiation using a plastic bag over the head. Piercing the body with drills. Being forced to sit on sharp objects such as broken bottles.

An analysis of hundreds of thousands of leaked military documents, known as the “Iraq War Logs,” shows the extent of the torture that was taking place in Iraq, while also showing U.S. troops’ familiarity with its practice.

The Iraq War Logs, released by the organization known as *Wikileaks*, is a large database of more than 390,000 “significant actions” reported by U.S. soldiers stationed in Iraq between January 1, 2004 to December 31, 2009 (Wikileaks 2010). “Significant actions”

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reported by U.S. troops may include firefights with enemies, the discovery of corpses or wounded persons, raids made on suspected insurgents, arrests and detentions, and instances of the observed or alleged abuse of detainees. I conducted a search in this database using the term “detainee abuse,” which produced 786 results that were spread fairly evenly throughout the five-year period.<sup>6</sup>

It is possible that the number of abuse reports, at 786, is higher than the actual incidence of *reported* abuse because there may be duplicates, or multiple reports that refer to one single incident of torture or abuse.<sup>7</sup> And many of the reports are very terse and vague, providing no details, so it is impossible to know if it refers to another incident reported elsewhere in the logs. For these reasons, it is impossible to determine an exact number of incidents of reported abuse. However, a reading of these logs indicates that there are undisputedly several hundred unique incidents of reported torture or mistreatment.<sup>8</sup> Despite these cautions, the reports of abuse in the Iraqi War Logs likely severely underestimate the total number of incidents observed by U.S. troops in Iraq. For instance, because abuse of prisoners was regularly practiced by at least some Iraqi security forces, it likely became normalized to at least some U.S. soldiers, who therefore may have deemed such acts undeserving of being reported as “significant events.” Furthermore, reporting these incidents involves work that some U.S. service members simply may not have carried out, especially in light of the many other responsibilities they had and traumas they may have experienced in wartime. Finally, it is possible that some service members may have felt that suspected insurgents deserved abuse, and/or were in fact complicit in the abuse of Iraqi prisoners, and so would not have taken action to report incidents of mistreatment.

So, while the Iraqi War Logs are incomplete and imperfect, their records do establish, taken alongside the human rights NGO reports, that Iraqi security forces regularly practiced torture throughout the 2004-2009 period of the U.S. occupation of Iraq, and that, furthermore, U.S. military officials were well aware of this torture. Most of the reports issued about the abuse are extremely terse and tell us little about its nature. The vast majority of reports from 2008 say, for instance,

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Reported an allegation of detainee abuse involving security force. Details of the alleged abuse have been sent via separate correspondence. Allegation has been forwarded to the appropriate command for initiation of inquiry/investigation (4/8/2008, Log # 346432).

Many reports do, however, include some descriptions and provide a limited understanding of Iraqi security forces torture and mistreatment of detainees. Typical incidents of abuse committed by Iraq security forces, as described by U.S. soldiers in the Logs, involve beatings, kickings, and stress positions, as the below reports indicate:<sup>9</sup>

- Evidence of prior torture/abuse on 3 local nationals that had been captured... Examinations of the detainees showed lacerations on wrists from handcuffs, bruising on the back and thighs, bruising on face. Detainees allege that they were beaten by police with cables on the back, chest and face; hung by the wrists and forced to confess to terrorist acts (5/29/05 Log#87757).
- Detainee claims that Iraq Police placed him in a stress position (left arm curled behind back, right arm curled over shoulder) and locked him in the station bathroom. Iraq Police beat the detainee in the bathroom. At some point, they also took him upstairs... to another room, where they beat him some more. The detainee's body showed extensive bruising on the face, detainee back shows what appears to be a boot print, outlined in bruised tissue (5/27/2006, Log #153717).
- Detainee alleges three [Iraq security officials] came to his house and beat him... Patient has marked signs of trauma, had bleeding from a laceration in the left eardrum, bilateral bruising and swelling around the face and eyes and a laceration on the forehead (5/27/2007, Log #250942).

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- [Detainee] claimed that he was beaten by Iraqi Police... The detainee stated that he was punched, kicked and struck with a wire. A physical examination of the detainee revealed bruising on his left ear, neck and back (10/8/2008, Log #374668).
- [Detainees claim] they were beaten with cables and had their feet stomped on by the Iraqi Police. [Medical personal] evaluated the detainees and determined that their wounds were consistent with their story of the abuse (5/16/2009 Log #2055).

The above reports show, year-by-year, typical incidents of abuse committed by Iraqi security forces, as recorded by U.S. soldiers in the Iraq War Logs. According to the Logs, Iraqi forces sometimes combined these beatings with electrical shock, burns from cigarettes or cigars, and other brutal acts.

#### *Iraqi State Torture and the U.S. Occupation*

Iraqi security forces were committing widespread torture from 2004 to 2009. This torture, according to the Iraq War Logs and human rights organization reports, showed no sign of diminishment over the years. All of this torture occurred in a context in which the United States was an occupying power that had created and supported the Iraqi government, closely coordinating its own military actions with that of its new client state. In this section of the paper, I seek to understand the extent to which this torture and abuse can be considered surrogate U.S. violence. In order to do so, I explore two further questions: (1) to what extent did the U.S. attempt to stop this torture? and (2) to what extent might the U.S. have benefited from it?

One way to begin answering the question about U.S. culpability is to examine what efforts the U.S. made to confront and end Iraqi state torture, and to consider the extent that it was tolerated. In doing so, it is important to differentiate between the actions of individual U.S. soldiers and U.S. policy as a whole. There is evidence in the Logs, after all, that individual U.S. officers and soldiers sought to intervene when they suspected abuse or torture, and that they otherwise tried to act in the interest of protecting detainees' human

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rights, as the following experts indicate:

- There is evidence of torture in a holding cell at [an] Iraqi Police station... Large amounts of blood on the cell floor, a wire used for electrical shock and a rubber hose were located in the holding cell... Team is conducting visits to the Iraq Police [Station] and the detention cells have been checked during every subsequent visit... The detention cell officers have been counseled on the severe negative ramifications to relations with the coalition forces if human rights are not respected (6/26/2006, Log #160351).
- Discovered multiple detainees who appeared to have been abused by Iraqi Police personnel. The detainees had severe XXX to lower extremities and were in need of medical attention. Some detainees were handcuffed in offices, others beaten and confined to locked rooms and left in a XXX state with no fluids provided. The unit also discovered the suspected instruments used to conduct the abuse in the office of the Iraqi Police Station Chief. These suspected tools of torture had blood marks and were retained by the unit... When the Iraqi Police Chief was confronted about the suspected detainee abuse at his station he responded he was aware of the [torture] and supported it as a method of conducting investigations (5/22/09 Log #838).

In other examples, individual soldiers acted to protect the human rights of Iraqi detainees:

- Iraq Army soldiers apparently struck detainees. A US Marine instructed the [interpreter] to tell the Iraq Army members not to [hit] the detainees (3/19/2006, Log #138802).
- At an Iraqi Checkpoint, the subject detainee assaulted a soldier from Iraqi Army and fled. Iraqi Army personnel

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chased the detainee, and when Iraqi Army [soldiers] caught him, they began striking the detainee. [U.S.] Marines intervened and took the detainee to their emergency medical provider. While being treated... an Iraqi Army soldier unexpectedly entered the emergency medical provider and kicked the detainee in the back. Again the Marines intervened and they removed the Iraq Army soldier... (8/16/2006, 1725758).

When U.S. officers and soldiers acted to stop the abuse of Iraqi prisoners, they were acting in accordance with public statements made by U.S. commanders who insisted that the U.S. would not tolerate the practice of torture in Iraq (DoD 2005).

Perhaps the biggest intervention made by U.S. forces in the interest of human rights occurred in December of 2005, when the Army's Major General John Gardner proclaimed, after torture committed at Iraqi secret prisons came to light, that "we will not pass on facilities or detainees [to the Iraqi security forces] until they meet the standards we define and that we are using today" (quoted in Schmitt and Shanker 2005). Such a policy constituted a real intervention on behalf of human rights, but was, unfortunately, short-lived. Only a few months later the U.S. government announced plans to turn over U.S.-run prisons to the Iraqi state, including the notorious Abu Ghraib detention facility (Worth 2006), despite little improvement in the human rights practices of the Iraqi security forces.<sup>10</sup>

The Iraq War Logs show, in fact, that while some individual U.S. officers and soldiers did intervene on behalf of the human rights of detained Iraqis, they more typically took no action to halt abuse and torture. The Logs show many instances, for instance, when soldiers reported that prisoners would remain in Iraqi custody despite evidence they were being tortured:

- 32 detainees were dropped off by Iraqi Army to the Diyala Provincial Jail. While the detainees were waiting outside to be processed, members of [U.S. Armed Forces] noticed that 10 detainees showed signs of bruising and scarring. Several of the victims stated that

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they were abused by the Iraqi Army while being detained... 5 detainees showed signs of significant abuse... (multiple XXX, bruises, and broken bones)... Are currently in Iraqi Police Custody at Diyala Provincial Jail (10/4/2006, Log #187753).

- Inspected the Major Crimes Detention Center at the Fallujah District Iraq Police Station and discovered instance of detainee abuse... A physical screening of the detainee revealed severe bruising on his back and either a dislocated or severely sprained wrist. The detainee stated that his hands were tied behind his back and he was hung from the ceiling. He also states that while he was hanging, Iraqi Police Captain hit him numerous times on his back with a ruler... The detainee's wrist was splinted... and he was returned to the [Iraqi Police run] Major Crimes Detention Center (4/29/2008, Log #350633).

In other instances, records indicate that U.S. troops actually interrogated Iraqis after they were beaten by Iraqi soldiers or other security officers:

- Detainee was arrested at his home. The Iraqi Army soldiers asked for the location of his brother. He told them that he [did not] know and was placed in the trunk of a [car]. While being put in the trunk he was struck with a baton several times in the XXX, right leg, right wrist, and buttocks. Detainee shows swelling on his XXX, bruising on his right arm, leg, and buttocks. There are indications of abuse. Detainee has been medically cleared for interrogation (5/13/2009, Log #1792).
- Upon medical screening the detainee revealed... he was struck several times after capture. The detainee [said] that he was kicked and punched in the right shoulder by... Iraqi Forces... There was bruising and limited range of motion in his right shoulder. The detainee appears to be in overall good health and has been deemed fit for

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interrogation (7/23/2006, Log # 166927).

A great many reports of abuse in the Iraq War Logs simply state “no further investigation necessary.” This is consistent with two military orders issued by U.S. commanders, which were revealed with the release of the Iraq War Logs. “Fragmentary Order 242,” issued in April of 2005, instructed troops that, “provided the initial report confirms US forces were not involved in the detainee abuse, no further investigation will be conducted unless directed by headquarters” (quoted in Stickler and Woods 2010, see also Davies 2010).<sup>11</sup> Fragmentary Order 039, issued in April 2005, modified Fragmentary Order 242 by requiring that “reports of Iraqi on Iraqi abuse be reported through operational channels,” but still stipulated that “provided the initial report confirms the U.S. forces were not involved in the detainee abuse, no further investigation will be conducted unless directed” (quoted in Stickler and Woods 2010, but see also Iraq Log #90847).

These orders indicate a contradictory U.S. human rights policy, in which U.S. commanders required soldiers to inform them of instances of Iraqi abuse, but simultaneously ordered soldiers not to investigate the abuse or take further action unless specifically told to do so. This discrepancy is an outcome of the broader contradiction in U.S. policy regarding torture and abuse in Iraq. On the one hand there is the publically stated policy of insisting that the Iraqi state respect human rights and not practice torture, along with the provision of human rights training programs and other forms of instruction to Iraqi security forces. On the other hand, U.S. officials throughout the 2004-2009 period knew very well about torture and mistreatment committed by Iraqi forces but nonetheless worked closely to build them up, to support them—cooperating on a daily basis—and to eventually give them control of the entire territory. So while the U.S. government publically insisted that the Iraqi government respect international human rights law, in practice it tacitly condoned torture. It must now be asked to what extent the U.S. benefited from Iraqi torture.

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*Iraqi Torture as Surrogate U.S. Violence*

When the Bush Administration invaded Iraq in 2003, it had little expectation that it would face insurgent violence that would so effectively challenge U.S. rule, and was consequently ill-prepared to respond (Chandrasekaran 2006; Metz 2007). The insurgency and sectarian conflict that erupted in the aftermath of the U.S. invasion proved to be too much for U.S. military forces to suppress alone in Iraq, at least not without straining and/or sacrificing other global military commitments (Metz 2007). The Bush Administration responded with a counterinsurgency strategy that aimed to create large and effective Iraqi security forces, utilizing them to defeat the insurgency and maintain control over the territory (National Security Council 2005; Metz 2007). A 2005 U.S. National Security Council (2005) report describes the implementation of this strategy:

In August 2004, there were five Iraqi army battalions in the fight; now more than 120 Iraqi army and police battalions are in the fight... In June 2004, no Iraqi Security Force unit controlled territory. The Coalition provided most of the security in Iraq. Today, much of Baghdad Province is under the control of Iraqi forces, the cities of Najaf and Karbala are controlled by Iraqi forces, and other Iraqi battalions and brigades control hundreds of square miles of territory in other Iraqi provinces.

According to a U.S. Army Strategic Studies Institute analysis, “by the autumn of 2005, U.S. strategy increasingly left neutralization of home-grown insurgents to Iraqi security forces” (Metz 2007: 53).

It is for this reason that the United States is, to some degree, responsible for the torture committed by the Iraqi state. U.S. military strategy depended upon Iraqi forces to defeat the country’s insurgency and sectarian conflict in order to achieve broader U.S. geopolitical goals. In its counterinsurgency and sectarian war, the Iraqi state found it necessary—or at least advantageous—to use torture.<sup>12</sup> This torture then was committed by the Iraqi state to secure its own interests along with those of the United States.<sup>13</sup> The U.S., in other words, cannot

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easily separate itself from the torture committed by its adjunct.

U.S. officials would nonetheless try to distance themselves from this torture and otherwise deny that the United States shared any responsibility. This is to say that, by denying responsibility for their client state's use of a contested form of violence, even though it was used to secure key U.S. interests, these officials were practicing the legitimating technique of surrogacy. In this respect, the practice of surrogacy is often some combination of physical and rhetorical techniques. Rather than ending its close cooperation with a government that regularly practiced torture, and upon whom the U.S. was dependent, U.S. officials continued building up the Iraqi government's military capacities while—at the same time—insisting that they were not responsible for any of its egregious violence, even if committed to achieve shared goals between the two governments. For instance, a U.S. “senior military official” told a *New York Times* reporter, in regard to Iraqi state torture, that “in the end, this is an Iraqi war, and the Iraqis will fight it in their own way” (quoted in Burns 2005), never mind that the U.S. began the war with its invasion and took a stake in it by building up one side of a sectarian conflict. Similarly, in a 2005 response to a press inquiry regarding Iraqi detainee abuse, Secretary of Defense Rumsfeld told a reporter that Iraq is a sovereign nation and that,

The United States does not have a responsibility when a sovereign country engages in something that they disapprove of; however, we do have a responsibility to say so and to make sure that the training is proper and to work with the sovereign officials (DoD 2005).

More recently, in an attempt to deflect U.S. responsibility from the Iraqi torture documented in the Iraq War Logs, President Obama's spokesperson told reporters, “If there needs to be an accounting, first and foremost there needs to be an accounting by the Iraqi government itself, and how it has treated its own citizens” (quoted in al Jazeera 2010).

In summary, the Iraqi security force's systematic torture of prisoners occurred in a context where the United States government

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was training and equipping the Iraqi state; was closely cooperating with it to conduct military operations; and was increasingly dependent upon it to prevail over insurgents and sectarian fighters to achieve U.S. foreign-policy goals. Nevertheless, through the legitimating technique of surrogacy, the U.S. has sought to distance itself from these acts of violence that violate international humanitarian standards. But does surrogacy work? This question will be explored in the next section, which compares U.S. media coverage of “torture events” during the U.S. occupation of Iraq.

*Torture, Surrogacy, and U.S. News Media Coverage*

Contrary to conventional understandings, torture was widely practiced in Iraq, well beyond the singular incident of Abu Ghraib, which grabbed extensive news headlines around the world. Beyond Abu Ghraib, torture was widely practiced by U.S. forces (Del Rosso 2011; Hooks and Mosher 2005) and—as human rights reports and the Iraq War Logs show—by the Iraqi government itself. While U.S. forces began taking public measures to stop the kinds of torture and abuse that took place at Abu Ghraib and other U.S.-run prisons, Iraqi torture continued unabated throughout the occupation. This torture, however, was not well publicized, preventing Iraqi torture from being broadly constructed as a social problem in the U.S. This is significant because, without strong public pressure, the U.S. government had much less an incentive to intervene in a meaningful way to put an end to it.

This point can be demonstrated in a comparison between three “torture events” in U.S.-occupied Iraq: the discovery of torture and abuse committed by U.S. soldiers at the Abu Ghraib prison; the discovery of two separate Iraqi-run torture prisons in November and December of 2005; and the release of the Iraq War Logs, which included records, as shown in this paper, of systematic torture practiced by the Iraqi government. All of these events provided evidence of similarly cruel and shocking acts of violence committed against prisoners. And all three show evidence that the torture was widespread and impacted large numbers of persons. Despite these similarities, only the torture at Abu Ghraib received extensive coverage in the U.S., as Table One shows.

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**Table 1**  
U.S. Media Coverage of Torture Events During U.S. Occupation of Iraq

	Abu Ghraib, April 28-May 28, 2004	Iraqi Torture Prisons, Nov 15–Dec 15, 2005	Iraq War Logs, Oct 22–Nov 22, 2010
Newspaper Coverage*	378 stories	15 stories	5 stories
Television Coverage**	97 stories	8 stories	2 stories

Television news coverage of less than one minute was not counted as a distinct story. Mention of search terms in U.S. politicians' speeches was not counted as a story, unless torture was a major focus of speech. News coverage of one relevant political speech was counted as one story, even if carried by more than one network.

\* Newspapers searched include *USA Today*, *The New York Times*, *The Washington Post*, and *The Los Angeles Times*.

\*\* Search of major U.S. television networks from the *Vanderbilt Television Archive*.

Based on an analysis of news coverage from major U.S. newspapers and major U.S. television networks, the discovery of systematic torture at Abu Ghraib—in which U.S. soldiers were depicted in photographs committing a range of psychological and physical methods of torture—received vastly more attention than the other torture “events” in Iraq.<sup>14</sup> Like the photos from Abu Ghraib, the discovery of two Iraqi-run torture prisons also revealed very brutal and systematic torture against Iraqis; where prisoners were reportedly being starved, severely beaten, burned, mutilated, and killed (see Knickmeyer 2005; Knickmeyer and Fekeiki 2005; Wilson 2005). These incidents, however, received dramatically less media attention than the torture at Abu Ghraib. Likewise, while the Iraq War Logs gave evidence of torture just as brutal, and more extensive, than that depicted in the Abu Ghraib photos, it received even less attention from mainstream news organizations than the revelations about the secret Iraqi torture prisons.

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Of course, some of the extreme difference in coverage is due to the fact that the evidence of the Abu Ghraib torture was in photographic form, which made it particularly shocking and newsworthy in the U.S. Textual descriptions of equally atrocious acts may not, after all, have the same impact as photos. However, there are likely other important factors that combined to produce such extremely disproportionate news coverage. First, the United States news organizations likely found the torture directly committed by U.S. soldiers more newsworthy than that committed by their Iraqi counterparts, even if all such torture was committed to achieve shared U.S.-Iraqi state goals. Second, the torture committed by U.S. forces also received much more attention because it triggered multiple hearings and investigations, which continued to generate media attention in subsequent weeks and months. Revelations of Iraqi torture did not, however, receive nearly the same official investigative attention, which translated to much less media attention. Finally, the torture committed by U.S. soldiers could not be shrouded in nearly the same secrecy as that committed by Iraqi forces. Many specific details of the torture committed by the Iraqi government have been much more difficult for members of the Western media to uncover, and consequently remain largely unknown and unreported, at least in the U.S.

The consequence is that Iraqi torture during the U.S. occupation became a kind of surrogate violence used to achieve shared political goals. But because this torture was not committed directly by U.S. soldiers, it received little media attention in the U.S. and, consequently, it remained of little concern to most Americans. For this reason, surrogacy is not only a means through which violence is applied, but also a legitimating mechanism that reduces the likelihood that state acts of egregious violence will be vigorously opposed by domestic publics. Before closing, it is important to point out that, with the U.S. war in Iraq over, these are not merely historical concerns. On the contrary, a recent United Nations report documenting the systematic torture of suspected insurgents and members of the Taliban by the national government created and installed by the United States in Afghanistan means that issues of torture and surrogacy remain an ongoing concern (UN 2011).<sup>15</sup>

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#### DISCUSSION: SURROGACY AND EGREGIOUS VIOLENCE

This paper aims to help explain what might be called the human rights/torture paradox: while states commit to normative conventions that outlaw torture, they nonetheless continue to regularly use this universally condemned form of violence (Hafner-Burton and Ron 2009; Hafner-Burton and Tsutsui 2007). Sociologists have mostly sought to solve this problem by focusing on discursive technics of legitimation, by which officials may seek to justify, deny, minimize, or distance themselves from egregious acts of violence. Along with examining these important rhetorical techniques, I argue social scientists should also attend to the ways that legitimating tactics may be “built into the act” of certain forms of egregious violence themselves. For this reason, I argue that social scientists should consider surrogacy as a type of legitimating mechanism, by which powerful states may direct and/or benefit from acts of egregious violence carried out by client states or armed groups. To the extent that surrogacy can work as a legitimating tactic, it may: (1) prevent domestic publics from becoming aware of, or associating a beneficiary-government with, acts of egregious violence; (2) limit judicial oversight and investigations from other governmental bodies, and/or (3) make a beneficiary-government’s rhetorical strategies of denial more effective because it can remove itself, even if only in a very superficial way, from the actual conduct of such violence.

I made this case through an examination of torture in the U.S. “War on Terror,” during which U.S. officials used methods of violence that fall outside international normative conventions, while, at the same time, they also sought to cultivate an appearance that the government’s use of violence was conducted in a way that respects international norms; in a word then, they sought to ensure that it would be broadly deemed legitimate. Juggling these two conflicting desires—that for the use of unmitigated violence and that for legitimacy—presents a real dilemma for U.S. officials. One way that they have sought to negotiate it, I have argued, is through the tactic of surrogacy.

The concept of surrogacy, as a legitimating mechanism, is likely applicable outside the “War on Terror.” It may be of use to understand powerful nations’ use of proxy violence more generally.

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And the concept may be of use in understanding large corporation's relationships with police and other armed groups, which may utilize violent force to promote corporate interests, just as the corporation itself seeks to appear blameless and altogether distant from any resulting human rights violations (see Downey, Bonds, and Clark 2010). Only time will tell if other investigators will find this concept and perspective useful in their research. Regardless, time will certainly show that many governments—including the United States—and other powerful actors will continue to negotiate their desire to both utilize coercive force and to maintain legitimacy by outsourcing violence to third parties, all the while claiming—if such claims-making is necessary—that they are in no way responsible for any resulting acts that shock the conscience of global and domestic publics.

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### **Endnotes**

1. Specifically, the United States ratified the United Nations Convention Against Torture in 1994, by which the Senate made the treaty legally binding in the U.S. In implementing the treaty, the Senate specified that “whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both...” (see 18 USC § 2340A).

2. Importantly, many have argued that such transfers are in violation of both international and Federal law. The United Nations Convention Against Torture (1975) specifically states that “No State Party shall expel, return, or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” U.S. Federal Law (18 USC § 2340A) not only criminalizes torture, but also conspiracy to commit torture.

3. Binyam Mohamed, for instance, is an Ethiopian citizen and legal resident of the UK. He was arrested in Pakistan, where he was transferred to CIA custody and again transferred to Morocco—where he was subjected to torture—and then taken again into U.S. custody, after which he was finally released back to the UK (Savage 2010). Likewise, Mamdouh Habib is an Australian citizen who was abducted by U.S. officials in Pakistan and then flown to Egypt—where he was beaten, burned with cigarettes, and electrocuted—before being transferred again into U.S. custody and eventually released (Bonner 2005). Muhammad Saad Iqbal is a Pakistani citizen who was arrested in Indonesia, transferred by the CIA to Egypt—where he too was tortured—and then transferred again to U.S. custody and eventually returned back to Pakistan (Perlez et al. 2009). Maher Arar is a Canadian citizen whose family moved from Syria when he was 17. He was arrested at the John F. Kennedy Airport and taken to Syria, via Jordan, where he was beaten, tortured, and held for almost a year in a very small solitary confinement prison cell (CCR 2007).

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4. For instance, Khaled El-Masri is a German citizen with no connection to terrorist groups, but was abducted from Macedonia by CIA personal and flown to Afghanistan, where he was transferred to an Afghani jail where he was interrogated and tortured. He was eventually flown to Albania by the U.S. government, where he was released. In 2006, his lawsuit against the U.S. government was dismissed after it invoked a “state-secret” defense (ACLU 2011b). Likewise, a case seeking civil penalties from a Boeing affiliated company for allegedly transporting prisoners to countries known for torture, on behest of the CIA, was dismissed in 2007 when the U.S. government intervened by invoking “state-secret privileges” (ACLU 2011a).
5. High-ranking Bush Administration officials were clearly aware of this torture, as they were asked to comment on it by reporters at press conferences (see DoD 2005).
6. The public interest research organization, *Bureau of Investigative Journalism*, conducted its own survey of this data, using other search terms, and identified more than 1,300 incidences of detainee abuse reported in the Iraq War Logs (Stickler and Woods 2010).
7. Furthermore, one incidence of abuse may sound very much like another.
8. Though as another cautionary note, it must be pointed out that some of these reports were documenting detainee’s allegations that they were abused, even when U.S. service members found no specific evidence of abuse.
9. I have made some changes to these excerpts to make them more readable by, for instance, using entire words instead of military acronyms and filling in a blank space or redacted portion of the report, indicated by brackets [...]. Three Xs (XXX) indicate a blank or redacted word or phrase I did not fill in for fear of inaccuracy.

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10. Some of the prisoners initially tortured by Iraqi officials at a secret prison, who were removed by U.S. soldiers, were returned to Iraqi custody during the transfer of Abu Ghraib, where international observers feared they would again be subject to torture (Sabir and Chamberlain 2006), and where the Iraqi government quickly began conducting mass executions (Poole 2006).

11. The Iraq War Logs file I used for this research has been redacted, such that these individual order numbers were removed. Journalists with files of the Iraq War Logs that have not been redacted identified fragmentary numbers 242 and 039 (see Davies 2010; Stickler and Woods 2010).

12. Governments may practice torture for three main reasons: (1) as an attempt to extract information or confessions from individual detainees, (2) to impose order in understaffed prison systems, or (3) to shock and terrify insurgent or potentially insurgent populations (see Rejali 2007). A reading of the Iraq War Logs and relevant human rights NGO reports indicates that the Iraqi government was practicing torture to achieve all three of these goals.

13. This is different than other historical situations in which the United States intentionally sought to benefit from the terrorizing violence committed by client states during the Cold War era, for instance through the torture and assassination program called Operation Phoenix in the Vietnam War (Valentine 1990) or through U.S. counter-insurgency efforts in Central America during the 1970s and 1980s (Chomsky 1985; Harbury 2005; McCoy 2006).

14. This analysis is based on LexisNexis Academic databases of four major American Newspapers as well as the Vanderbilt Television Archive—using the following search terms: “Iraq and torture” and “Iraq and abuse”—for month-long periods after each event.

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15. The UN (2001) investigation included interviews of 273 persons detained by Afghanistan's National Directorate of Security and found nearly half had been subjected to torture, used as a means to extract information and confessions. Some of these detainees were transferred into Afghani custody by international military forces. According to the report, "Detainees described experiencing torture in the form of suspension... and beatings... Electric shock, twisting and wrenching of detainees' genitals, stress positions including forced standing, removal of toenails and threatened sexual abuse were among other forms of torture that detainees reported. Routine blindfolding and hooding and denial of access to medical care in some facilities were also reported" (UN 2011: 3).

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