

**Our Own Abu Ghraib? Native Americans and Torture of
“the Other” in the United States***

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Abstract

This paper attempts to explain how torture by U.S. soldiers of prisoners in Iraq, Afghanistan, and other overseas locations is not the work of “bad apples” but rather an extension of domestic policies used with some incarcerated populations. The author uses a case study of U.S. relations with Native peoples to explore the values that lead a culture to torture. These include U.S. exceptionalism and defining of non-white populations as “the other.” Modern conditions for incarcerated Native Americans are also examined.

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“[T]he only exceptional aspect of the abuse at Abu Ghraib
may have been that it was photographed”
(Brody 2005, p. 113).

Introduction

As word broke about the atrocities being committed by U.S. soldiers against prisoners and detainees at Abu Ghraib in spring 2004, people were horrified. Having believed the nation to be the preeminent leader in human rights, many were shocked to believe the U.S. could be involved in such horrific incidents. In the U.S., these incidents were at first said to be the heinous acts of a “few rogue soldiers.” Leading the claims that “bad apples” perpetrated the abuse were high-ranking members of the U.S. government, most notably Secretary of Defense Donald Rumsfeld and Vice President Dick Cheney. These statements were widely reported in the national media. The subsequent national debate about the use of torture and the numerous allegations of abuse at locations additional to Abu Ghraib seem to have convinced the public that cruel, degrading and inhuman treatment and torture are indeed occurring. A CNN/USA Today/Gallup poll in November 2005 found 74 percent of the 515 people polled thought that U.S. troops or government officials have tortured prisoners in Iraq or other countries (Princeton Survey Research Association 2005). Still, many believe the abuses are extreme cases and that such treatment may be justified in the war on terror.

Throughout the national debate, the Bush administration force-fed the public the argument that the war on terror is unique and that it required unique strategies. On November 8, 2005, Democratic Congressman Jim McDermott went so far as to claim to the House of Representatives, "America has never had a question about its moral integrity, until now" (Klein 2005, p. 2). Even torture opponent Senator John McCain furthered what Garry Wills called the "original sinless" argument; that is, that the U.S. was using torture on prisoners and detainees overseas for the first time (Klein 2005). Until September 11, 2001, the argument goes, the U.S. treated enemies with fairness and humanity (Klein 2005).

The Bush administration agreed to some additional prohibitions against torture and cruel, inhuman, and degrading treatment regarding detainees, yet at no point have they admitted that they ever authorized this treatment of detainees. The administration maintained that what they authorized falls short of violating any international law. President Bush, when asked about torture in November 2005, said, "Any activity we conduct is within the law. We do not torture" (Lewis 2005, p. 2). Similarly, CIA Chief Porter Goss called his agency's interrogation techniques "unique," but has said, "This agency does not do torture. Torture does not work" (Herald Wire Services 2005). Whatever they authorized or permitted was, by their definition, right, necessary, and lawful. By taking this stance, they continued to absolve themselves from responsibility for prior abusive actions such as those at Abu Ghraib.

Moreover, incidents of torture and mistreatment domestically are simply not on the radar.

The Bush administration seemed to convince a large portion of the public to buy their rhetoric. No longer in denial that torture occurs or that it is the exclusive domain of maladjusted, overzealous soldiers, the logic now holds that such abuse is acceptable because it “keeps us safe.” A number of polls taken since the publication of the Abu Ghraib photographs demonstrate that Americans feel torture, as well as cruel, inhuman, and degrading treatment, is acceptable under certain circumstances. A *Newsweek* poll found 44 percent of 1002 adults believe it is justifiable to use torture sometimes or often in order to gain information. If torture of a detainee can prevent another major terrorist attack, 58 percent approve it (Princeton Survey Research Association 2005).

Some, however, have always contended that the treatment of prisoners at Abu Ghraib is not one of bad soldiers but of bad policy in regards to those who have been incarcerated or detained (Watt 2005). Further, the abuses at Guantanamo, Abu Ghraib, and other sites are not “one-time” unique cases of actions needed to “win” the war on terror. Policy here refers to “formal strategies to shape some dimension of social life” (Macionis 2005, p. 18). Policy is more than just laws; it can involve inaction as well as action. Policy always stems from attitudes and beliefs about social issues (Macionis 2005). Policies sanctioning torture and cruel, inhumane, and degrading treatment pre-date the Bush administration, but were clearly been continued and

perhaps in some ways escalated by them. The scandals at Abu Ghraib and other foreign detention centers demonstrate the way fear can be manipulated to justify heinous treatment, especially of “the enemy” or “the other.”

The United States has a long and sordid history of advocating brutal treatment of “the other” (Poupart 2003), in dramatic contrast to its anti-torture rhetoric and, more recently, in violation of international and human rights legislation. Physical and mental atrocities have been sanctioned against those with whom the country is at war. Yet poor treatment is not exclusive to those with whom we are *literally* fighting; those who *might* be a threat in one way or another may face similar brutal conditions. Most notably, this involves those who have been incarcerated, as will be demonstrated later. Since policy is derived from values, several values held by policymakers and much of the public in the U.S. emerge as critical in fostering torture and maltreatment. As with the war on terror, fear of the “other” minimizes or even justifies the maltreatment. On the home front, the U.S. has generally reserved its most horrific treatment for those without white skin. In addition, Americans have long demonstrated a powerful ability to justify certain actions because of the perceived “exceptional” nature of the U.S.

One group that has long suffered maltreatment in the U.S. is Native Americans. Native Americans have suffered in all U.S. institutions. Many contend that the way Native Americans have been treated in the U.S. is a form of genocide, a systematic effort to eliminate, either physically

or culturally, an entire group (see for example Churchill 1994; Finley 2003; Poupart 2003; Smith 2005). According to Power (2002), Americans falsely use the Holocaust as the bar from which to measure genocide, and thus do not see the treatment doled out to indigenous peoples as an example of either genocide or torture. Yet scholars of Native American history recognize the many similarities between the Nazi Holocaust and U.S. destruction of indigenous peoples. In both cases the enemy was defined in purely racial terms, and both governments understood war as a form of progress and for material gain. Both governments also thought of themselves as superior beings entitled to that which their "enemies" possessed (Jaimes 1991). Clearly, torture and cruel, inhuman, and degrading treatment do not always lead to physical genocide, but it seems safe to assert they are generally connected, in particular to forms of genocide that do not include literal extermination.

Some maintain that, even if genocide was committed or torture and mistreatment of Native Americans were once sanctioned, this is no longer true. Such an opinion ignores the many examples of cruel, inhuman and degrading treatment Native Americans face currently. Certainly many of the U.S. policies concerning Native Americans are cruel and inhumane. Economic policies (see Churchill 2001, 1997 and 1994; Smith 2005), drug policies (see Finley 2003), environmental policies (see Brook 1998; LaDuke 2000), and others are modern forms of cultural genocide. Nowhere is mistreatment more evident than in the total institution of prison.

Recently, an investigation lead by Earl Devaney, Interior Department Inspector General, revealed horrific conditions at Bureau of Indian Affairs (BIA) prisons in the U.S. Devaney and his team visited 27 BIA prisons and spoke to 150 tribal and BIA leaders. They concluded that BIA prisons were comparable to “the third world,” prompting Devaney to testify to the Senate seeking change and additional funding (Martin 2004).

Unlike Abu Ghraib and Guantanamo Bay, few Americans are aware of this investigation and of the conditions it revealed. In fact, the treatment of Native Americans and of other minorities in the criminal justice system is not well known, nor is the lengthy history of torture in the U.S. As Harjo (2000) explained, the hegemonic media has generally presented the history of U.S.—Native relations as one of good versus evil. This paper attempts to make it clear, using Native Americans as a case study, that torture is not merely the domain of mentally disturbed soldiers, but is sanctioned as acceptable policy, in particular against those who do not share the majority’s skin color. This has held true throughout the country’s history, but has escalated as the political climate has become more conservative and as more people fall under the umbrella as potential threats to the status quo. Quite simply, it has become even easier to mistreat the “other.”

The paper begins by describing the various prohibitions against torture and cruel, inhuman and degrading treatment of prisoners and detainees. It then provides a brief description of the United States’ history of

using torture on incarcerated populations. The paper also attempts to describe the values in the U.S. that provide for torture and cruel, inhuman, and degrading treatment of those in detention. Drawing on the work of Goldhagen (1997), these values include the U.S. as exceptional and that mistreatment of the “other” is acceptable, in fact, required. Next, the paper presents a brief and selected history of U.S. policy regarding Native Americans in order to demonstrate how the values of exceptionality and inferiority of “the other” have given rise to torture and cruel, inhuman, and degrading treatment that is governmentally sanctioned. Finally, the current status of incarcerated Native Americans will be examined, revealing that the overseas allegations are not aberrations but a foreign extension of domestic practices regarding incarcerated “others.”

Defining Torture and Humane Treatment of Prisoners and Detainees

Significant International Treaties and Declarations

The earliest effort to define and prohibit torture was the 1948 Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations and approved by the U.S. It specified that no one be subjected to torture or cruel, inhuman or degrading treatment or punishment (United Nations General Assembly 1948). More precision of rights was added in two later covenants—the ICCPR of 1966, which entered force 10 years later, and the International

Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, also enforced 10 years later (McEntee 1996). Together these are called the International Bill of Human Rights. In 1975, the United Nations defined torture as,

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed, or intimidating him or other persons...Torture constitutes an aggravated and deliberate form of cruelty, inhuman or degrading treatment or punishment (Conroy 2000, p. 37).

This definition was part of the Declaration on the Protection of All Persons from Being Subjected to Torture, which was passed without dissent. The definition was clarified in 1984 to include actions taken by *anyone* acting in an official capacity (United Nations General Assembly 1975). The U.S. ratified the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) in 1994, which utilizes this definition. The CAT also prohibits any form of cruel, inhuman or degrading treatment. It further specifies that torture is not justified by a state of war or public emergency and prohibits sending a person to a third country where torture might occur. In addition, an

order from a superior officer or a public authority may not be invoked as a justification for torture. Article 2 of the CAT requires member nations take effective legislative, administrative, judicial or other measures to prevent torture (United Nations General Assembly 1984).

All parties to the CAT, according to Article 4, are required to make torture a violation of their state's criminal laws and are mandated to train and provide information about the conventions specifics to relevant personnel. Historically, however, the U.S. government has said existing state and federal laws already include torture (Amnesty International 2000).

Article 10 of the CAT requires member nations to ensure education and information regarding prohibition of torture is fully included in training of law enforcement, civil or military, medical personnel, public officials, and other persons who may be involved in custody, interrogation or treatment of an individual subjected to any form of arrest, detention, or imprisonment. This information must be included in rules and instructions in regard to duties and functions of such persons (United Nations General Assembly 1984).

Article 11 mandates that member nations keep under systemic review interrogation rules, instructions, methods and practices as well as arrangements for custody and treatment of persons arrested, detained, or imprisoned in any territory under its jurisdiction (United Nations General Assembly 1984).

Signees to CAT are also obligated to take actions to prevent other actions that are cruel, inhuman, or degrading but fall short of this definition of torture. Importantly, the CAT established that there are no exceptions to the prohibition against torture, including, “a state of war, terrorist threats, or any other public emergency” (United Nations General Assembly 1984).

Defining Torture

International bodies to date have identified certain acts that decidedly constitute torture. The Human Rights Committee has declared beatings, forcing inmates to stand for long periods of time, and holding persons incommunicado to be torture (Watt 2005). The U.N. Committee Against Torture specified in May 1997 the following practices constitute torture: restraint in very painful positions; hooding under special conditions; sounding of loud music for prolonged periods; sleep deprivation for prolonged periods; threats, including death threats; violent shaking; and using cold air to chill (Harbury 2005). In addition, torture experts recognize that application of what might individually not constitute torture might well be considered torture when used together and against particular cultural groups (Rose 2004).

Jempson (2000, p. 123) argued that senior law enforcement officers and members of the judiciary, as well as doctors and medical staff who do not intervene when they become aware of torture and abusive treatment “...provide

silent endorsement and so contribute to the blanket of immunity necessary for the torturer to have confidence in his task." Above these people is the hierarchy of supervisors who issue orders or allow subordinates to do what they please; those who devise the strategies of control and supervise training; and members of the government, who determine policy and devise legislation. All these people are also responsible when torture and cruel, inhumane, and degrading treatment occur (Jempsen 2000).

There have been attempts internationally to articulate the role of non-military and non-government personnel regarding treatment of prisoners. A Code of Conduct for Law Enforcement officials was adopted by the U.N. General Assembly in 1979 and prohibits the infliction, instigation, or toleration of any act of torture or other cruel, inhuman, or degrading treatment or punishment. The 1975 Declaration of Tokyo of the World Medical Association covers actions by medical personnel. This Declaration specifies that doctors shall not countenance, condone, or participate in the practice of torture or other forms of cruel, inhuman, or degrading treatment. Also, the Principles of Medical Ethics, adopted by the UN General Assembly in 1982, considers torture, and cruel, inhuman, and degrading treatment a gross violation of medical ethics (McEntee 2000).

United States Laws

The U.S. made violations of the Geneva Conventions (prohibiting mistreatment of civilians, captured combatants,

prisoners, detainees, and even “enemy combatants”) by any member of the U.S. armed forces or any national of the U.S. punishable by lengthy jail sentences, or even death, under the War Crimes Act (Ratner 2005). Federal law defines torture, specifying it as any act committed by an official with the intent to inflict severe physical or mental pain or suffering on a person within his or her custody or care. Mental pain and suffering includes the prolonged pain from the following: the infliction of or threatened infliction of severe physical pain; the administration or threatened administration of mind-altering substances or procedures designed to profoundly disrupt the senses or personality; the threat of imminent death; and the threat to imminently torture, either mentally or physically, or kill, another person (Harbury 2005). The U.S. has even gone farther than other countries in denouncing the use of torture, passing in 1991 the Torture Victim Protection Act, which holds those perpetrating torture on others civilly liable (Watt 2005).

Concerns About U.S. Policies Regarding Torture and Cruel, Inhuman and Degrading Treatment

The U.S. established early on that it would only cooperate with international efforts to ban torture and cruel, inhumane, and degrading treatment to a degree. The U.S. made a number of reservations to the CAT that no other country made. One reservation was to the Article 16 prohibition of cruel, inhuman or degrading treatment. Government officials maintained the nation was bound only

to those things prohibited by the U.S. constitution. The U.S. also demanded that reservation with the same provision of Article 7 of the ICCPR. Further, the U.S. specified torture must be **intended** to inflict severe physical or mental pain or suffering and it only apply to acts directed against persons in the offender's custody or physical control. This is a narrower definition than the one held by other member nations (Amnesty International 2000).

Amnesty International (AI), the widely known human rights monitor, contended these reservations were made specifically to allow continuance of the death penalty, as the U.S. acknowledged in a report to the committee that some may consider capital punishment cruel and inhuman (Amnesty International 2004). Churchill (2004a; 2004b) maintained the U.S. reservations to the 1948 conventions were based on fear that a variety of race-related laws and policies would be construed as genocidal. This, he explained, is precisely the case with treatment of Native Americans, in which the U.S. is in violation of every one of the convention's second article.

Since the U.S. ratified the CAT in 1994, AI has continued to express concern about the nation's use of torture and cruel, inhuman and degrading treatment, especially in prisons (Amnesty International 2000). AI has noted a lack of effective, independent oversight bodies to monitor police and detention centers, as well as inadequate sanctions against police and prison officials. Although Articles 2, 11, and 16 of the CAT require member nations to take effective legislative, administrative, and judicial steps to

prevent torture and ill-treatment and to keep systemic review of interrogation rules, practices, and arrangements for custody and treatment of detainees, the U.S. has not wholeheartedly complied. The U.S. government reported to the Committee against Torture that abuses do happen, but stated that torture only occurs as an aberration, never as policy. AI is concerned the U.S. has no binding national standards or training on situations that may lead to abuses, such as use of restraints and stun guns. Further, AI has concern over laws and practices in the U.S. that directly contradict international standards or facilitate torture and ill treatment. AI has grave concerns about brutality and inhumane conditions in jails and prisons. AI includes the use of supermax prisons, which are designed for intense deprivation, and electroshock and other cruel restraint methods. While some of the violations occur at the state and local levels, the federal government offers support by failing to intervene and by providing federal funds, according to AI. Further, the federal government has a supermax prison and electro-shock stun belts are also used in federal prisons (Amnesty International 2000). Confinement in long-term or indefinite isolation in deprived conditions (i.e, supermax) is incompatible with human rights, according to the United Nations Human Right Committee. Chains and irons should be prohibited as restraints, but are used in some prisons. Several jurisdictions have reintroduced chain gangs, which AI has called cruel, inhuman and degrading. AI is also concerned about the use of restraint chairs—metal framed chairs where prisoners are immobilized with four-point

restraints on arms, legs, and across the chest. There is a record of prisoners being restrained for minor acts of noncompliance and tortured and hooded, as well as being stripped naked, left for hours in their own wastes, and being shocked with stun guns or pepper sprayed in chairs (Amnesty International 2000).

AI has also expressed concern over the lack of national data on police use of force, including during custody. The 1994 Crime Control Act required the U.S. Attorney General to collect data and to write an annual report about police use of force, yet Congress did not fund the measure (Amnesty International 2000).

More recently, in May 2005, Amnesty International blasted the Bush Administration for condoning atrocious human rights violations, including the events at Abu Ghraib, at Guantanamo Bay, and the use of rendition (to be discussed later). Irene Khan, Amnesty International's Secretary General, said the U.S., "thumbs its nose at the rule of law and human rights" (Cowell 2005, p. 36A).

*The U.S., Torture, and Cruel, Inhuman, and Degrading
Treatment of Prisoners and Detainees*

"Torture as an American dilemma has never been accorded its 15 minutes of fame" (Chinyelu 2003, p. 5). Contrary to popular opinion, the U.S. has used torture for all its history. Many people associate the use of torture with despotic or psychotic political regimes. Yet reports document that Colonial America was every bit as barbaric as

Europe at the time. Branding and piercing of those deemed criminals were commonplace. Slaves were often tortured, sometimes for various indiscretions, but frequently to “keep them in line” (Conroy 2000). As Conroy (2000) explained, torture is initially used for the most dangerous criminals. Cultures that use torture, however, tend to expand the actions they approve as well as who is included in the “torturable class” (Cole 2004; Conroy 2004). In the U.S., as in most countries that use torture, the torturable class most often includes non-whites. Amnesty International’s 2000 report on torture acknowledged the link between racism and torture (Amnesty International 2000).

U.S. prisons are the place where torture has been most frequent. Bonnie Kerness, coordinator of the American Friends Service Committee’s Prison Watch program, maintained, “The U.S. has a history of violating human rights in prison before and after signing international treaties barring the use of torture” (Washington 2005). In 1931, the National Commission on Law Observance and Enforcement (better known as the Wickersham Commission) reported to the president that the infliction of physical and mental pain was commonplace in U.S. prisons. Their formal report documented deprivation of food and sleep, confinement in dark, airless cells, severe overcrowding in cells, inmates forced to remain standing for lengthy times, beating of inmates with a plethora of tools, use of electric shock devices, exposure to tear gas, grabbing male inmates by the testicles, and other acts (Conroy 2000). Prisons in Arkansas in the 1960s, and in New Orleans, New York, Los Angeles,

and Chicago in the 1980s, used torture against inmates, typically men of color (Conroy 2000). Evidence demonstrates that, like Abu Ghraib, police in Los Angeles allowed their K-9s to bite more than 900 suspects (Conroy 2000). The Massachusetts juvenile correctional system regularly

punished their charges by forcing them to drink from toilets, to kneel on a stone floor with pencils under their knees, to remain naked for days in dark concrete cells, and to submit to falanga—a form of torture in which the soles of the feet are beaten (Conroy 2000, p. 33).

Some of the worst allegations have come from Chicago's Area Two. Between 1972 and 1991, 85 to 90 cases of torture have been identified in this jurisdiction (Chinyelu 2003). One inmate, Aaron Patterson, claimed to have been tortured until he confessed to the double murder that landed him thirteen years on death row. He was exonerated and released as part of former Illinois governor Ryan's vacating of the state's death row. The torture at Area Two involved psychological and physical abuse. Some reports even included officers playing Russian roulette with detainees (Chinyelu 2003).

According to Adrian Lomax (2005), author of *The Celling of America: An Inside Look at the U.S. Prison Industry* and former inmate in Wisconsin, torture takes many forms but is ever present in U.S. prisons. Butterfield (2004)

documented that inmates are regularly asked to strip in front of others simply because they are being moved to a different location and that male inmates in an Arizona prison are forced to wear pink female's underwear to humiliate them. Texas prisons when President Bush was governor were some of the worst and were under a federal consent decree because guards were allowing gang leaders to buy and sell other inmates for sex.

One common form of torture is the denial of medical attention. When guards are aware of an inmate's need for medical attention but ignore it, they are rarely punished. Guards are sometimes responsible for the need for medical attention. In 1990, guards at Waupun Correctional Institution in Wisconsin restrained inmate Donald Woods, using several belts to strap him to the steel-frame bed in his cell. Wisconsin law requires that a nurse check on inmates immobilized in this fashion every thirty minutes due to the potential for health problems. Nurse Beth Dittman did check on Woods, even finding him non-responsive several times, but she never offered any form of medical attention or sought help. Woods died of asphyxiation the next day, but rather than be fired, Dittman was promoted (Lomax 2004). As Lomax (2004) explained,

Beth Dittman is no less a criminal than Lynndie England, the Army private who earlier this year pled guilty to abusing detainees at Abu Ghraib prison in Iraq. Yet because Dittman works in a prison inside the

U.S. rather than in an American military prison in Iraq, her abuse of the human rights of inmates is treated in a manner strikingly different than the fate meted out to England.

Similar to the Bush administration's approach, the usual response to these allegations has been to deny that they are actually tortured. In the case of Abner Louima, for instance, the Haitian immigrant who police officers sodomized in 1997, then-New York Mayor Rudy Guilani and the New York City Police Department both decried the attack as depraved, but claimed it was the work of a handful of rogue cops (Vann 2000). Jorge Martinez, a spokesman for the Justice Department, said, "None of these cases rise to the level of being torture" (Chinyelu 2003, p. 6). Yet these are all clearly acts perpetrated by a public official, and the actual allegations most certainly are covered by the torture definitions described earlier in this paper.

In addition to the actions described above, the United States has been complicit in the torture of hundreds of thousands of others. The Clinton administration even admitted in 1996 that U.S. based training materials condoned, "execution of guerillas, extortion, physical abuse, coercion and false imprisonment" (Klein 2005, p.1). Training schools stateside have taught many students to use torture, including some of the same actions taken at Abu Ghraib. The U.S. Army Schools in San Diego and Maine in the 1960s and 1970s taught students a variety of torture and survival techniques. Students reported being forced to masturbate in

front of guards and being made to engage in sex with an instructor (Rothschild 2004). The School of Americas, located in Georgia, taught students to use false imprisonment, blackmail, beatings, torture, and assassination (Rothschild 2004). Renamed the Western Hemispheric Institute for Security Cooperation (WHINSEC), the changes, according to late Senator Paul Coverdale (R), who represents the area of Georgia where SOA/WHINSEC is located, are largely cosmetic (Ireland 2004). Many others have described the U.S. policy of rendition, whereby prisoners are sent to other countries with a known history of mistreatment and torture (See Hersch 2004; Rose, 2004; Watt 2005).

U.S. Attitude and Policy with Native Americans: A Case Study in how Torture becomes Sanctioned

Research has demonstrated that there is no “breed” of torturers (see Conroy 2000). Students of the social sciences are probably familiar with both the Milgram and Zimbardo experiments, both of which demonstrate that most humans have the potential to resort to inhumane treatment under certain circumstances. Similarly, Goldhagen’s (1996; 1997; 1998) work on the Nazi Holocaust demonstrates that so-called “ordinary” people can do horrific things to those they are taught to hate. It is possible, however, to discern cultural characteristics that make inhumane treatment more likely. These include attitudes and beliefs and structures as well as the policies built on those attitudes and beliefs. A look at history is necessary to understand how torture and cruel,

inhumane, and degrading treatment have been espoused in the U.S. and have been built into a number of policies. Two key beliefs seem to underlie the use of torture in the U.S. First is the attitude that the U.S. is exceptional, and, consequently, that exceptionality allows the country to feel justified in doing whatever they do. Second is the belief that the “other” should be treated differently than the mainstream population. Similar to Goldhagen’s (1996; 1997; 1998) thesis, it is argued that a nation, by viewing themselves as exceptional and defining a group as “other,” justifies torture and cruel, inhuman and degrading treatment.

American Exceptionalism

One reason that torture and cruel, inhumane, and degrading treatment are viewed as acceptable policy comes from the historical belief that the U.S. is exceptional. According to Professor Harold Hongju Koh (2003), Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale Law School and former Assistant Secretary for Democracy, Human Rights and Labor, the U.S. often proposes that different rules apply to itself than to the rest of the world. For example, he cited the U.S. excluding itself from the International Criminal Court and the Kyoto Protocols. The reservations made by the U.S. to the various torture bans described earlier in this paper would also be examples of exceptionalism.

Alexis de Toqueville was perhaps the first to observe American exceptionalism in the 19th century (Bordewich 1996). He observed that Americans feel as though they have unique virtue, strength, and success. Lifton (2003) maintained that exceptionalism can be a double-edged sword by which Americans may be seen as moralists who seek to “eliminate evil” and indoctrinate others to our ways. Robert Lifton (2003) called modern American exceptionalism the “superpower syndrome.” Lifton defines the superpower syndrome as “a national mindset—put forward strongly by a tight-knit leadership group—that takes on a sense of omnipotence, of unique standing in the world that grants it the right to hold sway over all other nations” (p. 3). The superpower attitude allows us to believe our weapons are good but theirs are bad; ours only hurt bad people while theirs hurt good people for no good cause (Lifton 2003). By extension, our policies are necessary and right simply because we made them. As Conroy (2000) explained, “torture has long been employed by well-meaning, even reasonable people armed with the sincere belief that they are preserving civilization as they know it” (p. 27).

Like earlier times, evangelical Christianity feeds America’s current exceptionalism. Bush’s own conversion and his use of advisors like Billy Graham are examples. Bush claimed, “I’m in the Lord’s hands” (Lifton 2003, p. 119). His intense religiosity impacted his view of things and the policies he oversaw. Bush envisioned the war on terror as a vehicle for our own salvation, much like the Puritans did with Indians in seventeenth century (Lifton 2003).

The exceptionalist attitude was perfectly in sync with the Bush administration's insistence that the "evildoers" who attacked the U.S. on September 11 did so because they hate the freedoms we have and they hate the U.S. because it is a Christian nation (Rose 2004). Historian Walter Russell Mead has asserted the Bush administration followed the Jacksonian tradition of politics, in that they believed the normal rules of warfare can and should be suspended when dealing with those they dub, "dishonorable enemies," as Andrew Jackson did during the Indian wars (Zakaria 2005).

Attitudes Toward the Other

The U.S. has a long history of stratifying populations based on the binary oppositions of "good" and "evil." Once a group is defined as inferior, it becomes easy to see them as "defective or substandard in various ways" (Miller 2003, p. 112). It is then justified to do whatever it takes to show those labeled evil the "right way." Who better to do this than the "exceptional?"

The selected history provided below is intended to illustrate the way Native Americans have been defined as "other," and how this definition has led to policy advocating torture and cruel, inhuman, and degrading treatment. It is by no means exhaustive; other scholars have clearly documented torture and mistreatment of Native Americans during the Indian wars (see Wilshire 2005), and through forced sterilization (see Johansen 1998; Smith 2005; Stillman 1987), for instance.

Christopher Columbus Sets the Stage

Christopher Columbus initiated the notion that the Indian was savage for what would become the United States. While neither Columbus nor any other explorer ever found the terrible Caribs of whom he spoke, the image shaped both attitudes and policy (Bordewich 1996). The view that the Natives were unworthy formed the justification for torture and mistreatment. Spanish missionary Bartolome de las Casas documented the actions of Columbus and his men, which included routine mass murder and torture. Las Casas reported that Spaniards grew increasingly conceited, and eventually refused to walk at all. Rather, they rode the backs of Indians or made Indians carry them in hammocks (Zinn 1995). On one day, las Casas recorded the Spaniards dismembering, beheading, or raping 3,000 people. They cut the legs of children who ran from them, killed people by pouring boiling soap down their throats, and bet about who could cut a person in half with just one sweep of his sword. Much like the abusive soldiers did at Abu Ghraib, they let dogs loose to attack (Lopez 1990). Soldiers were also said to have fed nursing infants to the dogs (Lopez 1990). Enslaved native peoples were chained together at the neck, and those who were too slow were simply decapitated. Soldiers sliced off women's breasts for entertainment (Stannard 1992, "Genocide in the Americas").

According to Montague (1999), "Columbus established a pattern that held for five centuries" (p. 469). The labeling of Native Americans as inferior has justified the

policies of Norman Yoke and Manifest Destiny. Norman Yoke presented the notion that it was Christians' God-given right to take the land of the "savage beast," as he was unable to make good use of it. Similarly, the U.S. policy of Manifest Destiny asserts that the country is righteous in its pursuit of progress and expansion. Friedberg (2000) compared Manifest Destiny to Hitler's final solution. "In each instance, the extermination of 'inferior races' is justified in the interest of making way for a 'superior race' of peoples" (p. 360).

Early American Colonists

It is clear the attitude held by Columbus passed on to colonists. A Virginia poet in 1622 described Indians as "Rooted in Evill, and opposed in Good; errors of nature, of inhumane Birth, The very dregs, garbage and span of Earth" (Bordewich 1996, p. 35). Indians were regularly compared to animals. These views allowed puritanical Christians to justify killing Indians as a means of cleansing, seeing it as an act of God's will and nothing more than the extermination of a wild beast. According to Zinn (1995), Puritans interpreted Romans 13:2 to justify their use of force to take native land. Stannard (1992) explained the colonists' desire that the Indians be "rooted out from being longer a people upon the face of the earth" (p. 106). George Washington called them wolves, or "beasts of prey," and demanded their extermination (Stannard 1992, "Genocide in the Americas"). More than just civilian attitudes, these beliefs shaped policy in colonial America. The early Massachusetts settlers made it

a crime to shoot a gun when unnecessary, unless at some type of game, a wolf, or an Indian. A prominent religious leader of the time (think Pat Robertson today) pushed the Governor of Massachusetts to train large packs of dogs with the purpose of exterminating the remaining Indians. Since Indians were wolves, they were to be dealt with as wolves, he argued (Stannard 1992, "Genocide in the Americas").

Jacksonian Era and Beyond

The superior attitude of the U.S. government continued to shape policy regarding Native Americans in later decades. Future president Andrew Jackson supervised the massacre of more than 800 Cree Indians in 1814, cutting off the noses of the dead and slicing strips of flesh from their bodies to turn into bridle reins (Churchill 1997). Stannard (1992, "Genocide in the Americas") said Jackson was, "Fond of calling native peoples 'savage dogs' and boasting that 'I have on all occasions preserved the scalps of my killed'" (p. 432).

By the mid-19th century, U.S. policymakers and military commanders were stating—openly, frequently and in plain English—that their objective was no less than the 'complete extermination' of any native people who resisted being dispossessed of their lands, subordinated to federal authority, and assimilated into the colonizing culture

(Stiffarm & Lane 1991, p. 35).

In 1851, the Governor of California called for the outright extermination of Indians in his state (Stannard 1992). In 1862, while the Civil War continued, the Dakota Sioux rebelled and attacked a group of white settlers. The general sent by President Lincoln to crush the revolt described his mission: "It is my purpose to utterly exterminate the Sioux...They are to be treated as maniacs or wild beasts, and by no means as people with whom treaties or compromise can be made" (Rose 2004, p. 141). Friedberg (2000) documented the attitude of the notorious Indian-killer H.L. Hall, who felt the murder of Native infants was justified because, "nits make lice" (p. 363). For over a decade, California law allowed whites to indenture Indians for up to sixteen years for a \$2 fee. Up to 10,000 Indians were likely enslaved prior to 1863's Emancipation Proclamation (Bordewich 1996). At the time, it was not seen as a sin or crime to exterminate a population that was suffering from lack of food; in fact, many even considered it the "moral" choice, as these were subordinate peoples anyway (Bordewich 1996).

"The only good Indian is a dead Indian," is a phrase attributed to General Phillip Sheridan. He was hardly the only one holding the attitude, though. Congressman James M. Cavanaugh reportedly said something similar in a House of Representatives debate of 1868 (Baggs 1997). Even President Teddy Roosevelt reportedly said, "I don't go so far as to think that the only good Indians are dead Indians, but I

believe nine out of every ten are, and I shouldn't like to inquire too closely into the case of the tenth" (Baggs 1997). More than just verbiage, these statements by the leaders of the country clearly shaped their policies regarding Native Americans.

Boarding Schools

In the 1870s, boarding schools were used to remove Native children from Native homes and place them in state-sponsored facilities. About half of all Native North American children at one point were in a boarding school. Captain Richard Henry Pratt, who was chosen to supervise the schools in 1879, described the goal of the boarding schools. He publicly announced in 1895 his mission to, "kill the Indian, save the man" in every pupil. Often the transfer of children involved overt violence, which was government sanctioned. In 1893, the legislation allowed the BIA to withhold rations, clothing and other annuities from parents or guardian who resisted the removal of their children. In 1891 and in 1893, Congress authorized the use of police, troops and other forms of force to get and keep Native children in boarding schools (Churchill 2001). When Shoshones and Bannocks rebelled against those who came to forcibly remove their children, the 4th Cavalry Regiment was dispatched to "kill and scalp" anyone found resisting (Churchill 2004b).

Torture was clearly used in boarding schools to discipline Native American children. Guidelines in 1890

allowed the infliction of corporal punishment of those using profane language, displaying lewd conduct, stubborn insubordination, lying, fighting, destruction of property, theft, or similar misbehavior. Kids were beaten with fists, rubber hoses, and baseball bats. Children as young as eight were shackled to posts with ball and chain tied to their ankles (Churchill 2004a). Children found speaking their native language were beaten and forced to brush their teeth with harsh soaps. Children who wasted food were forced to eat their own vomit (Churchill 2004b). Brave Bird (2001) told how her grandmother was left for a week in a five by ten foot cubicle with boarded windows and only bread and water because she was playing jacks instead of praying. She also described her own and her sister's experiences being beaten with a leather strap. Disciplinary methods she recalled include being forced to sit in a walk-in freezer for an hour or longer, and being forced to hit a brick wall twenty to thirty times (Ross 2001). Catherine (Cedar Woman) compared the boarding school entrance process to that of the prison classification system (Ross 2001).

Former Commissioner of Indian Affairs Carl Schurz expressed that the Indians must either be civilized or exterminated, and he preferred "civilization" because he calculated it would be cheaper. While it might cost a million to kill an Indian in warfare, it cost a mere \$1,200 to educate an Indian child for eight years in a boarding school. Similarly, Secretary of the Interior Henry Teller determined it would cost \$22 million to wage a ten-year war against the Indians, but less than one-quarter that amount to school

30,000 Indian children for a year (Smith 2004). Consequently, administrators attempted to school the children at the boarding schools as cheaply as possible. In an effort to cut corners, children were regularly denied food and medical care and were housed in unsanitary conditions (Smith 2004). Sexual abuse of children was commonplace but was largely unacknowledged (Smith 2004).

Smith (2004) maintained that boarding school policies violated a number of human rights standards, including the ICCPR, the Draft Declaration of the Rights of Indigenous Peoples, the Universal Declaration of Human rights, The Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention on the Rights of the Child. Mary Brave Bird (Crow Dog) asserted that Native children explaining life in boarding schools was, "like the victims of Nazi concentration camps trying to tell average, middle-class Americans what their experience had been like" (p. 255).

Modern Times

The superior attitude did not die with the Indian wars. As Churchill (1994) stated, "While it is arguable that the worst of genocidal programs directed against Native Americans had ended by the twentieth century, it seems undeniable that several continue into the present" (38-9). Brook (1998) concurred, stating, "Genocide against Native Americans continues in modern times with modern techniques" (105). In support of the case that genocide has

and continues to be committed against people within our own country, Jonahsson & Bjornson (1998) stated that,

what seems to be new in the twentieth century is that most wars as well as most genocides are now directed at 'enemies' inside the perpetrators society. In an age of nation-states that are extremely jealous of their rights to sovereignty, the persecution of groups inside the perpetrator society is relatively easy and free of risks (33).

Native peoples have become one example of those "enemies inside."

Torture and Mistreatment of Native Americans in Prisons

There are 74 Bureau of Indian Affairs prisons in the United States, although less than \$1 million annually is devoted to running them (Newman 2004). Things are so bad that Department of the Interior Inspector General Devaney released his report a month early in hopes it would speed up reform (Brand 2004). For four years, Ed Naranjo, recently retired as the BIA's agent in charge of law enforcement, tried to get his bosses at the Interior Department to address the rotting detention centers in Indian country, to no avail (Johnson 2004). Native Americans are being housed in overcrowded facilities with no running water, no heat, and often with broken plumbing ("Investigations launched...")

n.d.). At one facility in north central Montana, raw sewage floods the men's cellblock whenever a toilet in the women's section is flushed (Johnson 2004). In June 2001, BIA prisons were operating at 126 percent capacity (Minton 2002). Nearly half of the inmate population in 2001 was being held in ten facilities (Minton 2002). For instance, Pine Ridge Correctional Facility held 168 inmates in 2001, over seven times greater than its capacity (Minton 2002). Frustrated by the lack of attention, Naranjo videotaped several facilities. While absolute torture of inmates was not captured on the tapes, they did demonstrate the horrible conditions under which Native American prisoners are held, many of which could be considered to violate international guidelines prohibiting cruel, inhuman and degrading treatment. In many cases, the facilities had received no maintenance in 25 years (Johnson 2004).

Most of the inmates in BIA prisons are being held for minor crimes and are serving far lengthier sentences than they should. One-sixth of the prisoners in BIA facilities have been held two times longer than the recommended maximum sentence (Hellpin 2004). According to the 2001 Survey of Jails in Indian Country (SJIC), 91 percent of the inmates were being held for misdemeanors, with 10 percent of those for DWI/DUI (Minton 2002).

Juveniles are frequently held with adults in Indian Country jails and prisons. The 2001 SJIC report found juveniles were 16 percent of the inmate population (Minton 2002). According to Donelan (1999), over half of the juveniles adjudicated in federal court are Native Americans. Reports

indicate rape and assaults are commonplace (Heilpin2004). Catherine (Cedar Woman) detailed the seven rapes she endured from jailers during her three and a half month incarceration. After the rape, one jailer laughed, cleaned up, and then forced her to perform oral sex. She was told she better not tell because no one would believe her anyway (Ross 2001).

Access to and quality of medical treatment for incarcerated Native Americans is a significant problem. One 16-year-old, Cindy Gilbert Sohappy of Warm Springs, Oregon, was sent to a BIA jail for under-age drinking. She died of alcohol poisoning when no one checked on her (Brand 2004). Catherine (Cedar Woman) said she witnessed an excessive amount of hysterectomies performed on women between 1988 and 1992, a problem documented by Ross (1996).

Misty Ford, a 27-year-old, was less than two months into a six-month sentence in the BIA's Spokane jail for DUI and eluding an officer when she died of hypertension. Ford had complained of chest pains the day before, and relatives had begged jail personnel to give her medical attention, but none was provided (Tirado 2005). A wheelchair-bound inmate in a Montana prison was moved to an inaccessible block. The inmate was also diabetic, but because of his difficulty accessing meals at regular times, his sugar was dangerously erratic. For two years, another Montana inmate was denied treatment despite a potentially fatal brain disorder. In addition, facilities housing Native Americans have woefully inadequate suicide prevention. An inmate at

one New Mexico facility attempted suicide seven times with clothes and towels left in his cell (Newhouse 2003). Lenoard Peltier, a Lakota serving two life terms for allegedly murdering two FBI agents, has often been denied appropriate medical attention. Rather than being in a hospital for his serious jaw injury and other health problems, Peltier served much of his time at Springfield prison in a segregated cell crawling with ants, lice, and cockroaches (Peltier 2000). Chief Iron Thunderhorse, an elderly and legally blind inmate, was attacked in a Texas prison by guards on his way to the chow hall. He had been denied food because he refused to cut his hair, although a federal court had determined this was in violation of his civil rights. The correctional officers knocked off his glasses and UV shields, sprayed pepper spray in his eyes and all over his body, kicked him, and wrenched his arm behind his back. Officers refused to allow a nurse to properly examine Iron Thunderhorse. She was not allowed to decontaminate him from the pepper spray, as officers said, "Let him burn." These officers were well aware that Iron Thunderhorse suffered from rhinitis and seborrheic dermatitis, both on the precautions list for use of pepper spray (Big Warrior 2006). Justin Wing, a Lakota/Sioux, died July 8, 2004 in a Montana State Prison. Wing sought medical attention for three years for Hepatitis C and a stomach hernia, but was denied (Thianakis 2004).

There have been more than twelve suspicious deaths in BIA prisons in recent years. The BIA was forced to investigate the suicide of a Yakama Tribal Detention Center

inmate in 2004. Ricky Owens Sampson was left hanging for at least five hours because only one guard was on staff the night he hanged himself (Martin 2004). The Yakama tribal jail was recently closed after repeated citations for broken equipment, a non-operational fire prevention system, and a host of other problems (“Yakama tribal jail...,” 2005). During the first three years of President Bush’s first term, 1236 Native American inmates attempted suicide and 632 tried to escape (Heilpin 2004). In 2002, a dozen Native American inmates died in South Dakota prisons alone, with five deemed suicides or homicides (Bonner 2002). Tina Newman, a member of the Tonawanda Band of the Seneca/Cherokee from Tuscaloosa, Alabama, summed it up: “Americans can’t believe the deplorable conditions in Third World countries. Well, wake up! You have Third World reservations all over the USA.”

The failure at the policy level to track the mistreatment at BIA and other prisons described above is in clear violation of Article 11 of the CAT. Further, there seems to be no formal training for officers or medical professionals working in these prisons, which could be in violation of Article 2 of the CAT requiring preventive efforts, as well as Article 4 and Article 10 requiring that human rights training and information be provided to relevant personnel. The use of restraints might also constitute torture, especially when combined with the other forms of mistreatment, as Rose (2004) explained. In addition, the abusive treatment by law enforcement, as well as the inadequate medical attention, is in obvious violation of the respective codes of conduct

described earlier in this paper. Since the mistreatment described in prisons is clearly being conducted by or with the knowledge of prison officials, and in many cases statements made by guards indicate the intent to do harm, these behaviors would seem to violate U.S. law as well.

In the same way that Bush administration and military officials have trivialized the abuses of foreign prisoners and detainees, the Head of the Bureau of Indian Affairs prisons responded to Devaney's findings by saying, "In any prison environment you are going to have a certain amount of improprieties" ("Investigations launched on harsh prison conditions," n.d.).

Why Torture and Cruel, Inhumane and Degrading Treatment Persists

Cultural Amnesia

Despite the well-documented history of torture and inhumane treatment, Americans seem to have some form of cultural amnesia. The American public generally refuses to believe that torture is a systemic problem, despite the evidence that it is. Veronica de Negri, a Chilean who was detained in 1976, said, "Americans are 'very naïve. They don't want to see' the involvement of the United States in torture over the years" (Rothschild 2004, p. 24). According to Rothschild (2004), "memory is a prerequisite for morality" (p.5). Denial of mistreatment contributes to false consciousness with dire consequence, according to Churchill

(2004a). There is no confrontation, no reflection, and thus no dramatic change in policy. As Klein (2005) put it, "Every time Americans repeat the fairy tale about their pre-Cheney innocence, these already hazy memories fade even further....inside U.S. collective memory, the disappeared are being disappeared all over again" (p. 2). Jones referred to this as "democrisy," which he defined as, "the stain of hypocrisy that attaches to regimes that are avowedly democratic in character, that allow comparative freedom and immunity from naked state violence domestically, but that initiate or participate in atrocious actions beyond their borders" (Jones 2004, p. 9). The idea is that,

democratic states '*wouldn't* do' something atrocious; therefore they '*don't*.' Any suggestion that they regularly have done it, and continue to do it, is viewed as intemperate or ungrateful at best, dangerous or extremist at worst. The result is an effective 'culture of impunity' in which the atrocities committed by Western states and their allies are systematically ignored, explained away, defined out of existence, or openly celebrated—anything to preserve them from serious and objective criticism. (Jones 2004, p. 11).

The Need For "Proof"

In regard to the atrocities committed at Abu Ghraib, Niman (2004) remarked, "it's interesting to note that the current scandal would probably never have surfaced if it weren't for the photographic evidence" (p. 4). In this mediated society, "proof" is only credible when it is visible. Hence, "Police brutality...only becomes worthy of public attention when complainants can provide Rodney King-style visual documentation. Such photographs and videos are seldom available since their producers often fall victim to the very police attacks they attempt to document" (Niman 2004, p. 4). Anthony Lewis (2005) of *The Nation* concurred, asserting that the public has not reacted with similar outrage to the disclosure of worse actions, even murder, in prisons and detention centers when it has been without pictures. Sadly, the torture being committed stateside has hardly been visually documented, and remains under the radar for most of the public (Niman 2004).

In sum, the U.S. pays a lot of lip service to human rights and spends a lot of time verbally condemning torture and mistreatment. The reality, however, is the U.S. is a racist culture that treats "undesirables" horribly (Robeson 2004). Sadly, the list of "undesirables" continues to grow, and continued use of inhumane and degrading treatment may have terrific consequences, both domestically and abroad. Victims of torture suffer from a multiplicity of effects, including higher rates of depression, higher suicide rates, and increased rates of substance abuse and family violence

(Braveheart & DeBruyn 1996; Harbury 2005; Poupart 2005; Smith 2005). The continued use of torture and cruel, inhuman and degrading treatment further sullies the world image of the U.S. It may also make it more likely that other countries will use torture against U.S. soldiers (Harbury 2005; Rose 2004; Watt 2005).

Although discussions about Abu Ghraib and torture overseas, as well as legal proceedings against those involved, are a good start in addressing the United States' endorsement of torture, more is needed. An examination of the cultural values that underlie our policies regarding prisoners and detainees specifically and of racial minorities generally is long overdue.

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