Strengthening the Norm Against Torture:

An alternative look at the implications of US norm violation

by

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Abstract

This paper addresses how the domestic violation of the anti-torture norm within the United States during the Bush administration and the War on Terror has affected the international norm against torture. The United States’ evident and contemporary violation of a norm assumed to be internalized by the vast majority of countries has led various scholars to question the robustness of the anti-torture norm. I seek to contribute to the underdeveloped perspective that norms strengthen through contestation by arguing that US domestic violation has not regressed the norm, but rather has strengthened the international anti-torture norm. This paper attempts to take advantage of the increasing prevalence of credible accounts of torture by employing Bayesian Process Tracing as a means of increasing the transparency of empirical findings that counter the argument that the norm against torture is in regress and support the claim that the norm against torture has been strengthened through US violation.
Preface

This thesis is an original intellectual product of the author, E. Good.

Evidence in Chapter 5 and 6 is partially based on data produced by CIRI Human Rights Data Project, reporting by Amnesty International and Human Rights Watch, and opinion polls by Amnesty International, Gallup, Pew Research, and Reuters.
# Table of Contents

Abstract ................................................................................. ii  
Preface .................................................................................... iii  
Table of Contents ................................................................ iv  
List of Figures ........................................................................ vii  
Acknowledgements ................................................................ viii  
Dedication ................................................................................ ix  
Chapter 1: Introduction ................................................................. 1  
Chapter 2: Literature Review .......................................................... 4  
Chapter 3: The Strengthening of the Anti-Torture Norm – A Theoretical Approach .......... 8  
Chapter 4: Methodology ................................................................. 9  
  4.1 Observable Implications of Norm Regress ................................. 10  
  4.1.1 Previous Norm Violation .................................................... 10  
  4.1.2 Increasing Use of Torture Worldwide ................................. 11  
  4.1.3 International Condemnation of US Violation ....................... 12  
  4.2 Observable Implications of Norm Strengthening ....................... 14  
  4.2.1 Condemnation by the International Community ................ 14  
  4.2.2 Declining Use of Torture in the US .................................... 15  
  4.2.3 Applicatory Contestation .................................................. 19  
Chapter 5: The Norm is Not in Regress – Empirical Evidence of the Stability of the  
International Anti-Torture Norm ................................................... 22  
  5.1 Evidence of Norm Violation Pre-9/11 ...................................... 22
Chapter 6: Empirical Evidence of Norm Strengthening .................................................. 31
  6.1 Evidence of Declining Use of Torture in the US .............................................. 31
  6.2 Evidence of the Refusal to Accept US Applicatory Contestation ....................... 37

Chapter 7: Conclusion .................................................................................................... 39

Bibliography ..................................................................................................................... 41

Appendix A: Evidence of Previous norm violation ....................................................... 46
  A.1 Primary Theory (H₁) ........................................................................................ 46
  A.2 Alternative Theory (H₂) .................................................................................... 46

Appendix B: Evidence of Increasing Use of Torture Worldwide .................................. 47
  B.1 Primary Theory (H₁) ........................................................................................ 47
  B.2 Alternative Theory (H₂) .................................................................................... 47

Appendix C: Evidence of International Condemnation of US Violation ....................... 48
  C.1 Primary Theory (H₁) ........................................................................................ 48
  C.2 Alternative Theory (H₂) .................................................................................... 48

Appendix D: Evidence of International Condemnation .................................................. 49
  D.1 Primary Theory (H₃) ........................................................................................ 49
  D.2 Alternative Theory (H₄) .................................................................................... 49

Appendix E: Evidence of Declining Use of Torture in the US: ...................................... 50
  E.1 Prison Closures .................................................................................................. 50
  E.2 Polling Data ........................................................................................................ 50
E.3  Condemning Trump’s Remarks ................................................................. 51

Appendix F: Evidence of Applicatory Contestation ............................................. 52
  F.1  Primary Theory (H₃) .................................................................................. 52
  F.2  Alternative Theory (H₄) ............................................................................ 52

Appendix G: Evidence of Norm Violation Pre-9/11 ............................................. 53
  G.1  Torture in Spain (1981-2011) .................................................................. 53
  G.2  Torture in the United Kingdom (1981-2011) ......................................... 53

Appendix H: Evidence of Rates of Torture Worldwide .................................. 54

Appendix I: Evidence of Declining Use of Torture in the US ....................... 55
List of Figures

Figure 1: Causal Logic of Norm Strengthening Through Contestation ....................................................... 8

Figure 2: Evidence of the use of torture in the US prior to the War in Afghanistan and Iraq .............. 24

Figure 3: Evidence of systematic use of torture pre-dating the War on Terror and post-dating the UN Convention Against Torture .................................................................................................................. 25

Figure 4: Average Torture Scores of States actively participating with the US’ use of torture ........ 26

Figure 5: Donald Trump’s Favourable Rating June 2015 – June 2016 ..................................................... 35

Figure 6: CIRI Torture Score: Spain, 1981 – 2011. Evidence of the Use of Torture Pre-9/11 ....... 53

Figure 7: CIRI Torture Score: United Kingdom, 1981 -2011. Evidence of the Use of Torture Pre-9/11 ........................................................................................................................................... 53


Figure 9: Gallup public opinion poll on torture, 2005 ........................................................................... 55
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For Max and Marion
Chapter 1: Introduction

“No President has ever done more for human rights than I have.”

– George W. Bush¹

By 2003 the International Committee of Red Cross had documented more than 250 allegations of prisoner abuse at the hands of US soldiers² and journalists had reported the kidnapping of 100 individuals by the Central Intelligence Agency (CIA) for interrogation.³ However, it wasn’t until the release of photos depicting prisoner abuse at the Iraqi prison, Abu Ghraib, in April 2004 that the world began to understand the severity of the United States’ actions. Individuals had undoubtedly been tortured at the hands of the US military and CIA. While President George W. Bush attempted to dismiss the photos capturing “torture, abuse, rape, and every indecency”⁴ as the “disgraceful conduct by a few,”⁵ evidence soon confirmed human rights abuse during the ‘War on Terror’ was systematic. By April 2006, Human Rights Watch had documented over 330 cases of prisoner abuse, involving 460 “Prisoners Under Control” (PUC) and 600 military and civilian personnel,⁶ only 89 of whom have been convicted at courts-martial.⁷ Although many of the 1,325 photos and 93 videos documenting repulsive and degrading crimes committed by the CIA and US Army officials have never been released

¹ Overheard by Ken Auletta, Annals if Communications Column, New Yorker, (January 11, 2004)
publicly, there is overwhelming evidence that the US government condoned human rights abuse and used torture extensively during the War on Terror under the Bush administration.

Despite consistent reports of torture worldwide, the anti-torture norm was considered internalized by the international community due to widespread ratification of the UN Convention Against Torture (1984). According to Tim Dunne, an International Relations scholar, “by almost all accounts, the norm against torture is one of the most robust norms in the human rights regime.”

However, torture occurs in secret and as a result, incidences of torture are not generally known quickly or precisely. The United States’ evident and contemporary violation of a norm assumed to be internalized by the vast majority of states has led various scholars to question the robustness of the anti-torture norm. This paper addresses how the domestic violation of the anti-torture norm within the United States during the War on Terror has affected the international norm against torture. I seek to contribute to the underdeveloped perspective that norms strengthen through contestation by arguing that US domestic violation has not regressed the norm, but rather has strengthened the international anti-torture norm.

This paper begins by providing a brief overview of literature addressing US violation of the anti-torture norm and norm regress in general, and focuses on two academic works in particular: “Norm Regress: US Revisionism and the Slow Death of the Torture Norm” by Ryder McKeown (2009), and “Is the Norm Against Torture Dying?” by Averell Schmidt and Kathryn Sikkink.

Sikkink (2015). Section three draws heavily on Christina Badescu and Thomas Weiss’ (2010) theory of an alternative spiral of norm internalization and provides a theoretical analysis of how the anti-torture norm has been strengthened internationally through US domestic violation.

Section four provides a brief description of the methodology employed to test diverging theories, outlines the various hypotheses analyzed throughout this paper, and lists observable implications – evidence that should be seen if a theory is operating. Additionally, Bayesian process tracing is conducted in section four as a means of increasing the transparency of findings. Observable implications that provide inference for the argument that the norm against torture is not in regress and the argument that the norm has been strengthened internationally by US violation are empirically tested in section five and six respectively. Section seven concludes with areas of further research and implications of findings.
Chapter 2: Literature Review

Prior to the discovery of the United States’ systematic use of torture during the War on Terror, torture was discussed almost exclusively by Non-Governmental Organizations and largely focused on autocratic states known to abuse human rights.\textsuperscript{11} It wasn’t until indisputable evidence of the US’ methodical use of torture emerged that academics began analyzing systematic torture by liberal democracies. The United States’ use of torture led academics and journalists to question how a liberal democracy with congressional checks and balances was able to torture individuals in secret for years before being contested.\textsuperscript{12} Additionally, scholars have questioned why the US resorted to torture and how it was publically justified.\textsuperscript{13} These questions have generally resulted in framing torture as a means of countering terrorism. The implications of this framing has incentivised scholars to examine the possibility that torture generates more terrorists than it counters.\textsuperscript{14} While scholars have analyzed the normative repercussions of US norm violation,\textsuperscript{15} this question necessitates further exploration for reasons I will develop below.

\textsuperscript{15} McKeown, Norm Regress; Bashir, Has the efforts…; Schmidt and Sikkink, Is the torture norm dying?
Norm creation and internalization has been explored in depth.\(^\text{16}\) Conversely, norm regress is a burgeoning topic. Although the concept of norm regress has been addressed by a handful of academics,\(^\text{17}\) this paper analyzes “Norm Regress: US Revisionism and the Slow Death of the Torture Norm” by Ryder McKeown (2009) and “Is the Norm Against Torture Dying?” by Kathryn Sikkink and Averell Schmidt (2015) in detail due to the relevancy of the United States’ use of torture.

McKeown builds on Finnemore and Sikkink’s spiral model of norm internalization\(^\text{18}\) and develops a ‘norm death series’ as a means of explaining how a previously internalized norm can lose salience. According to McKeown, expiration of a norm occurs when the public accepts a revisionist’s challenge to an internalized norm, which results in a domestic crisis of legitimacy. The domestic violation in one country decreases the normative stigma of violating the internalized norm elsewhere and may result in other leaders emulating the state that originally violated the norm. Consequently, there is an international crisis of legitimacy and the subsequent expiration of a previously internalized norm. McKeown argues that the norm against torture has regressed within the United States and, at the time of writing in 2009, was at risk of international regress and consequent death.


\(^{18}\) Finnemore and Sikkink. *International norm dynamics and political change.*
While similar to McKeown’s argument, Schmidt and Sikkink argue that the norm against torture has been weakened by the justificatory contestation of the norm by the United States. According to Schmidt and Sikkink, the United States’ framed the violation of the norm against torture as applicatory contestation (creating an exception to a norm), however this challenged the “content, specificity, and authoritativeness” of the norm,19 which resulted in justificatory contestation (defying or rejecting the norm). Justificatory contestation has the ability to weaken a norm. This causal logic is particularly relevant for the norm against torture since the UN Convention Against Torture (1984) stipulates that “no exceptional circumstances whatsoever whether a state of war or a threat of war, internal political stability or any other public emergency, may be invoked as a justification of torture.” Therefore, the US’ attempt to employ applicatory contestation by claiming that the use of torture is legitimate “against certain kinds of people (terrorists) in certain situations of extreme urgency”20 fundamentally violates the anti-torture norm, breaks International Humanitarian Law, and weakens the anti-torture norm.

Although both McKeown and Schmidt and Sikkink develop convincing causal logics and provide persuasive evidence, the literature to date has failed to explore the counter-intuitive proposition of how domestic norm violation by the US has potentially strengthened the international norm against torture. This paper applies Badescu and Weiss’ theory of an ‘alternative spiral’ to the international anti-torture norm. Badescu and Weiss argue that misuses or violations of norms can actually advance norms “through contestation and conceptual clarification.”21 Contestation prompts “debates, denial, and tactical concessions of the norm in

19 Schmidt and Sikkink, Is the Torture Norm Dying? pg. 9
20 Schmidt and Sikkink, Is the Torture Norm Dying? pg. 2
21 Badescu and Weiss. Misrepresenting R2P and Advancing Norms pg. 254
question,22 which subsequently defines the norm and signals the international community’s commitment to the norm. In other words, contestation can actually strengthen a norm rather than weaken it when the contestation of a norm by a particular state is rejected by the international community. Badescu and Weiss apply the theory of an alternative spiral to the misuse of the Right to Protect Doctrine (RtoP), and argue that misapplications of the norm has clarified RtoP and strengthened the norm within the international system. Although the UN Convention Against Torture differs from RtoP based on the widespread application and clear definition of the anti-torture norm, Badescu and Weiss’ theory of strengthening a norm as a result of contestation is applicable to the US’ violation of the internalized norm. I argue the alternative spiral theory provides a different explanation of how the domestic violation of the anti-torture norm within the United States has affected the international norm against torture.

22 Badescu and Weiss. Misrepresenting R2P and Advancing Norms pg. 254
Chapter 3: The Strengthening of the Anti-Torture Norm – A Theoretical Approach

Regardless of the robustness of a norm, almost every norm is violated to some extent at one point or another. The norm against torture is no exception. Although there is clear evidence of norm violation pre-dating 9/11,23 the US’ overt violation during the War on Terror was seen as a major regress of the anti-torture norm. However, this violation should be viewed no differently than previous overt violation of the torture norm in other countries around the world. This despite the intuitive presumption that US violation may be considered a “hard test” due to the United States’ hegemonic position and past role in advocating for human rights.

The argument that the international anti-torture norm has remained robust despite US contestation providing an opportunity for international norm regress can be better explained through a clear causal logic (fig. 1). US contestation effectively decreased the normative stigma of violating the anti-torture norm due to the United States’ hegemonic status within the international system. The lower cost of norm violation generated an opportunity for states around the world to torture. However, the international community defended the norm against torture, subsequently reinvigorating, if not strengthening, the norm through condemnation and conceptual clarification.

\[
\text{US contestation} \rightarrow \text{Decrease normative stigma of violation} \\
\quad \rightarrow \text{Increased Opportunity to torture} \rightarrow \text{International defense of norm} \\
\quad \rightarrow \text{Violation does not increase worldwide} \rightarrow \text{Strengthening of norm}
\]

Figure 1: Causal Logic of Norm Strengthening Through Contestation

Chapter 4: Methodology

The secrecy of torture forces those who study the subject to rely to some extent on speculation rather than direct observation.\textsuperscript{24} While observable evidence is limited due to confidentiality, credible reports on torture have nonetheless become increasingly available over the past few decades and investigative reporting on torture increased dramatically after the publication of photos of prisoner abuse at Abu Ghraib prison in 2004. This paper attempts to take advantage of the increasing prevalence of credible accounts of torture by employing Bayesian Process Tracing as a means of empirically countering arguments made by McKeown and Schmidt and Sikkink. This paper does not attempt to counter theoretical claims about the mechanisms of norm development and regress made by McKeown and Schmidt and Sikkink, but rather argues against the empirical assessment that the international anti-torture norm is in regress. Additionally, credible evidence discovered through process tracing tests the validity of an alternative hypothesis, which states that the international anti-torture norm has strengthened as a result of US violation.

Although McKeown and Schmidt and Sikkink use different causal logics, both argue that the norm against torture has domestically regressed within the United States and as a result, the international anti-torture norm has been,\textsuperscript{25} or is at risk of being\textsuperscript{26} weakened. The claim that the international norm against torture has regressed is notated as the primary theory (H\textsubscript{1}) and will be tested against an alternative hypothesis (H\textsubscript{2}), which states the norm against torture is not in regress. I provide three observable implications (evidence we should see if a hypothesis is

\textsuperscript{25} Schmidt and Sikkink, Is the Torture Norm Dying?
\textsuperscript{26} McKeown, Norm Regress.
correct) to test the primary theory against the alternative theory before delving into causal process observations (evidence we do see) to support or refute the theory in section five.

\[ H_1: \text{The international norm against torture has regressed due to US norm violation} \]
\[ H_2: \text{The international norm against torture has not regressed due to US norm violation} \]

Additionally, I test the theory that the international norm against torture has strengthened as a result of US norm violation (H₃) against an alternative theory that the norm has not been strengthened (H₄). I outline the observable implications prior to providing empirical evidence in section five.

\[ H_3: \text{The international norm against torture has been strengthened through US violation} \]
\[ H_4: \text{The international norm against torture has not been strengthened through US violation} \]

4.1 Observable Implications of Norm Regress

While this paper acknowledges the various theoretical means by which norms regress, including the belief that it is important to look at how norm violations are justified and interpreted,²⁷ this paper assumes that behavioral violation regresses a norm.

4.1.1 Previous Norm Violation

Primary theory (H₁) assumes the norm against torture was previously internalized. This assumption is fundamental to the claim that regress of the norm is a result of US violation during the War on Terror. Therefore, if norm violation contradicts internalization, we should not observe previous documentation of norm violation under H₁. In particular, the likelihood of observing reports documenting liberal democracies violating the norm against torture under H₁ is very low. However, the likelihood of observing this evidence if it did occur is very high due to

the public nature of reports documenting torture.\textsuperscript{28} Note that this observable implication does not refer to liberal democracies directly torturing individuals since this would be much harder to observe, but rather refers to observing documentation of liberal democracies torturing pre 9/11. Due to the low probability of this evidence occurring and the high likelihood of observing this evidence if it did occur, the prospect of observing this evidence if $H_1$ is true is very low.\textsuperscript{29}

Conversely, evidence of liberal democracies violating the norm against torture prior to the US invasion of Afghanistan and Iraq would support an alternative argument ($H_2$), which claims the norm is not in regress due to US violation. The likelihood of observing reports documenting liberal democracies violating the norm against torture under $H_3$ is moderately high. This is because it is not necessary to see this evidence in order to prove that the theory is not in regress, however $H_2$ is strongly supported if this evidence is present. Since the likelihood of observing this evidence if it did occur is very high, there is a moderate probability of observing documented evidence of liberal democracies violating the anti-torture norm before 9/11 if $H_2$ is true.\textsuperscript{30} The moderate probability of observing this evidence under $H_2$ and the very low probability of observing this evidence under $H_1$ generates a smoking gun test for $H_2$ due to the uniqueness but uncertainly of the observation.

\textbf{4.1.2 Increasing Use of Torture Worldwide}

If the international anti-torture norm is in regress ($H_1$), we should observe an increasing frequency of torture worldwide that temporally aligns with US domestic violation post 9/11, assuming that behavioral violation regresses a norm. In other words, the anti-torture norm should

\textsuperscript{28} Amnesty International (1973); Amnesty International (1975); Amnesty International (1984); Amnesty International (1998); Cingranelli, and Richards. \textit{CIRI human rights data project}; Human Rights Watch, etc.
\textsuperscript{29} See Appendix A for Bayesian Process Tracing in depth (A1)
\textsuperscript{30} See Appendix A for Bayesian Process Tracing (A2)
be increasingly violated after the discovery of the use of torture by the United States in 2003/2004. The likelihood of this evidence occurring under $H_1$ is very high since the increasing use of torture is fundamental to McKeown and Schmidt and Sikkink’s claims of norm regress. However, due to the secrecy of norm violation, it is less certain that we will be able to observe an escalation in torture. That being said, reporting has increased drastically over the past several decades, increasing the likelihood of observing indisputable evidence of torture. Therefore, it is moderately likely that we will observe evidence of torture by various states if it is occurring. Consequently, there is a moderate probability that we would observe an escalated use of torture worldwide if $H_1$ is operating.$^{31}$

On the other hand, the likelihood of an increasing use of torture worldwide under $H_2$ would be highly unlikely, as this would contradict the theory’s central claim that the international anti-torture norm is not in regress. Since the likelihood of observing this evidence is moderate due to reasons mentioned above, the probability of observing this evidence if theory $H_2$ is true is very low.$^{32}$ As a result of the moderate probability of observing this evidence under $H_1$ and very low probability of observing this evidence under $H_2$, this observable implication provides a smoking gun test for $H_1$ due to the low certainty and high uniqueness of the evidence.

4.1.3 International Condemnation of US Violation

While it may be difficult to directly observe the use of torture worldwide, it is much easier to observe states and organizations condemning the United States’ use of torture. Observing states, intergovernmental organizations, and the public condemning the US supports the same inference as low or steady rates of torture worldwide; high rates of condemnation are

$^{31}$ See Appendix B for Bayesian Process Tracing (B1)
$^{32}$ See Appendix for Bayesian Process Tracing (B2)
likely to be associated with norm internalization, while low rates of condemnation can be associated with high rates of norm regress.\(^3^3\) This is because states condemning the acts of the US are unlikely to be engaging in torture, whereas a lack of recognition from states regarding the use of torture by the US would suggest these states may be engaging in similar acts of torture, subsequently inferring there is a regress of the international norm. There is an important distinction between condemning the United States for torturing and condemning the US for hypocrisy. States that are known to violate the anti-torture norm are unlikely to condemn the use of torture by the US, but they can certainly condemn the US for naming and shaming their state’s human rights abuses while the United States themselves are violating International Humanitarian Law. Therefore, this observation explicitly refers to condemnation of the United State’s use of torture.

There is a very low likelihood that widespread condemnation of US actions will occur under \(H_1\). This is because widespread condemnation contradicts the idea that the stigma of violation has decreased internationally since overt violation by the US, and refutes the concept that other states are emulating the United States’ norm violation. Both of these concepts are integral to McKeown and Schmidt and Sikkink’s causal logics. The reason this particular observable implication is so valuable is the very high likelihood of observing this evidence if it is occurring. This is because the primary function of condemning something is making the statement public. Due to the very low probability of this evidence occurring under \(H_1\) and the

very high likelihood of observing this evidence if it is occurring, the probability of observing this
evidence if H₁ is true is very low.³⁴

Conversely, observing international condemnation under H₂ is highly likely since the
denouncement of US actions by the international community supports the argument that the
norm against torture is not in regress and emphasizes the argument that the majority of states
have internalized the anti-torture norm. There is a high probability of observing this evidence if
H₂ is true since it is highly likely that this evidence will occur under H₂ and there is a very high
probability of observing the evidence if it does occur.³⁵ As a result of the low probability of
observing this evidence under H₁ and the high probability of observing this evidence under H₂,
this observable implication results in a doubly decisive test for H₃ due to high uniqueness and
high certainty of the evidence.

4.2 Observable Implications of Norm Strengthening

4.2.1 Condemnation by the International Community

Similar to the observable implication that tests if the norm against torture is in regress,
international condemnation of the US’ use of torture would be highly likely to occur under H₃.
According to Badescu and Weiss (2010), norm violation that generates condemnation by others
reinforces and strengthens the norm in question.³⁶ Additionally, observing this evidence if it is
occurring is highly likely due to the public nature of condemnation. Therefore, it is highly
probable that this evidence will be observed if H₃ is true.³⁷

³⁴ See Appendix C for Bayesian Process Tracing (C1)
³⁵ See Appendix C for Bayesian Process Tracing (C2)
³⁶ Badescu and Weiss. Misrepresenting R2P and Advancing norms. pg. 254.
³⁷ See Appendix D for Bayesian Process Tracing (D1)
On the other hand, condemnation would undermine $H_4$ since condemnation infers the international systems’ resolve to abide by the norm and increases the stigma associated with violating the anti-torture norm. Therefore, it is highly unlikely this evidence would occur under $H_4$. Due to the high likelihood we would observe this evidence if it is occurring and the low probability of this evidence taking place under $H_4$, there is a very low probability that we should see this evidence if $H_4$ is true.$^{38}$

The combination of a high probability of observing condemnation under $H_3$ and the very low likelihood of observing condemnation under $H_4$ results in a doubly decisive test for theory $H_3$ due to the high certainty and high uniqueness of the evidence. Therefore, seeing this evidence increases our confidence in theory $H_3$, while not seeing it increases our confidence in $H_4$.

### 4.2.2 Declining Use of Torture in the US

Regression of a norm within the United States does not necessarily result in norm erosion internationally, and could even strengthen an international norm, as explained above. However, the strengthening of the norm against torture within the United States would signal an overall strengthening of the norm. Maintaining the assumption that regression occurs through norm violation while abidance strengthens a norm, the norm against torture would be strengthened if the US stopped torturing. While a declining use of torture within the US is not necessary for the strengthening of the norm against torture due to the international community’s ability to strengthen a norm independently, decreasing torture within the US is significant.

It is difficult to counter the argument that the norm against torture domestically regressed in the United States under the Bush administration due to the staggering amount of evidence

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$^{38}$ See Appendix D for Bayesian Process Tracing (D2)
confirming the systematic use of torture. However, it is important to analyze the claim of domestic regress under the Obama administration. Schmidt and Sikkink point to President Obama’s failure to hold individuals who tortured under the Bush administration accountable as evidence of continued norm regress within the United States. This analysis discounts the current policy on torture. It is essential to address the use of torture within the United States under the Obama administration rather than solely focus on how the sitting President has dealt with actions taken by past administrations. This is because the willingness of a Present to prosecute a former President, CIA officials, and military personnel is heavily implicated by public opinion, a Present’s desire to be re-elected, potential consequences on future legislature due to the opinions of Senate and Congress members, and the fact that the United States continues to have troops in Iraq and Afghanistan. Conversely, looking at the willingness of a new administration to torture provides richer evidence of the state of the anti-torture norm within the US.

Present Obama was exposed to the same threats to national security generated by the War on Terror as President Bush. This provides a unique opportunity to observe whether the anti-torture norm has been eroded within the United States in general, or whether the norm simply regressed under a particular Present. If the United States continued to torture under the Obama administration, the norm against torture continues to regress within the US (H1) and has certainly not been strengthened (H4). However, if the US has stopped torturing, potentially as a result of condemnation by the international system, the norm has been strengthened through increasing adherence (H3).

It is difficult to directly observe the rate at which the United States uses torture due to the secrecy involved. However, if the United States continued to actively torture individuals and violate the norm against torture, notorious prisons like Guantanamo Bay detention camp and Abu
Ghraib prison in Iraq would likely remain open. Unlike the rates of US torture, the closure of prisons can be observed directly.

Although the domestic violation by the US may not regress the norm internationally, the strengthening of the norm against torture requires increased adherence to the norm and reinforced boundaries. Similar to observable implications above, this claim assumes that behavioral violation regresses a norm, while adherence strengthens a norm. Therefore, it is highly likely that we would observe prison closures under H3. This is because the anti-torture norm cannot be strengthened within the US if the US continues to blatantly torture individuals. Additionally, it is highly likely that we will observe prison closures if they take place. The closure of prisons generates positive press amongst human rights advocates, making it likely that the Obama administration would want the closures to be a public event. However, even if this isn’t the case, prison closures require the transport of detainees around the world, subsequently involving numerous states. Therefore, it would be very difficult to keep the closure of prisons secret. The high likelihood of this evidence occurring under H3 and the high probability of observing this evidence if it is occurring results in a high chance of witnessing this observation if H3 is true.

Conversely, observing prison closures would only be moderately likely under H4. This is because prison closures are not necessary for H4 to be true since prisons are not the only place where torture can occur. However, the closure of prisons reasonably signals that the United States has stopped, or at the very least reduced the extent to which torture is practiced from the Bush administration. This consequently counters H4. Since observing this evidence is likely if it

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39 Badescu and Weiss. *Misrepresenting R2P and Advancing norms*. Pg. 254
40 See Appendix E for Bayesian Process Tracing (E1)
is occurring, there is a moderate probability that the closure of prisons will be observed if $H_4$ is true.\textsuperscript{41} The high likelihood of observing prison foreclosures under $H_3$ and the moderate probability of observing this evidence under $H_4$ results in a hoop test for $H_3$ due to the high certainty of observing this evidence and low uniqueness.

While it is important to analyze norm regress under the Obama administration, it is similarly pertinent to assess the state of the norm against torture in the United States during the 2016 Presidential election. This paper focuses on statements advocating torture during the Republican party presidential primary by Donald Trump.\textsuperscript{42} The very fact that Republican nominees have endorsed the use of waterboarding specifically and Donald Trump has approved torture more broadly signals that the norm has continued to regress in America. However, the inconsistent and unpredictable nature of Donald Trump’s campaign\textsuperscript{43} makes Trump’s support for torture a difficult proxy for the state of the norm against torture within the United States more generally. Therefore, if the norm against torture has not been strengthened ($H_4$) the approval ratings for nominees would increase after nominees advocated torture. Conversely, if the norm against torture has strengthened ($H_3$), public approval ratings for nominees proposing torture would decrease. While there is a very high likelihood of observing this evidence if it were to occur due to the public nature of polling data, there is only a moderate likelihood of approval ratings rising if $H_4$ is true. Poll data is often subjected to bias based on the questions asked and

\textsuperscript{41} ibid
the forum of the poll (i.e. an online poll on FOX News’ website is likely to reach a very different audience than an online poll on the New York Time’s website). Additionally, approval ratings are affected by various other aspects of the nominee’s campaign, making it is difficult to isolate the public’s support based on one particular issue. The moderate probability of approval ratings increasing after a nominee advocates torture if $H_4$ is true and the low likelihood of this occurring if $H_3$ is true creates a smoking gun test for $H_4$.\(^{44}\)

A more useful observation to determine the state of the norm against torture within the United States is the domestic response to Trump’s statements endorsing torture. If $H_3$ is correct and the norm against torture is strengthening, the Presidential candidate’s support of torture should be met with condemnation and public outrage. Conversely, if $H_4$ is correct, statements supporting torture will be met with agreement. Due to the public nature of this observation, it is highly likely we will observe condemnation of Trump’s endorsement of torture if it occurs. The very low likelihood of the observation under theory $H_4$ and the high probability of observing condemnation under $H_3$ generates a doubly decisive test due to high likelihood and high uniqueness.\(^{45}\)

### 4.2.3 Applicative Contestation

The United States attempted to challenge the anti-torture norm by narrowing the definition, alternatively known as applicatory contestation. The US viewed the terrorist attacks on 9/11 as acts of war. However due to the unconventional opponent – a terrorist organization rather than a uniformed military group – the US ruled that the Geneva Conventions did not

\[^{44}\text{See Appendix E for Bayesian Process Tracing (E2)}\]

\[^{45}\text{See Appendix E for Bayesian Process Tracing (E3)}\]
apply. If other states follow the United States and define Prisoners of War (POW) as Prisoners Under Control (PUC), or simply “detainees” as a means to “legally” torture, the definition of the anti-torture norm has been weakened, since the formal prohibition allows no such derogation. Conversely, if states do not attempt to circumnavigate the Geneva Convention, the definition of the norm has been strengthened by the international community confirming the rigorous definition of the anti-torture norm as written in the UN Convention Against Torture.

It is very unlikely that other states will claim POW as PUC under H₃. This is because a weakened definition of the anti-torture norm would weaken the norm itself, consequently countering H₃. Additionally, it is highly likely we would observe this evidence, as declarations are public by nature. Due to the low probability of this evidence occurring under H₃ and the high probability of observing this evidence if it were to occur, it is very unlikely we will observe this evidence if H₃ is occurring.47

It is moderately likely that we will observe states defining POW as PUC under H₄. This is because applicatory contestation is not necessary to prove H₄ but it is sufficient. Narrowing the definition of torture by claiming that captured terrorists are not Prisoners of War and are therefore not protected by the Geneva Conventions would constitute applicatory justification and weaken the norm, potentially to the point of regress (H₁).48 Due to the moderate likelihood of this evidence occurring under H₄ and the high likelihood of observing this evidence if it were to happen, there is a moderate probability of observing other states claiming POW as PUC if H₄ is true.49 The very low probability of observing this evidence under H₃ and the moderate

46 Pyle, Getting Away with Torture. pg. 21
47 See Appendix F for Bayesian Process Tracing (F1)
48 Schmidt and Sikkink, Is the Torture Norm Dying? pg. 2
49 See Appendix F for Bayesian Process Tracing (F2)
probability of observing this evidence under $H_4$ results in a smoking gun test for $H_4$ due to the uncertainty but high uniqueness of the evidence.
Chapter 5: The Norm is Not in Regress – Empirical Evidence of the Stability of the International Anti-Torture Norm

Despite the fact that torture generally occurs behind closed doors, it is possible to draw inference through empirical evidence that aligns with the observable implications outlined above. It is based on these observable implications that I analyze the pervasiveness of norm violation pre-dating 9/11, the rate of torture worldwide on a temporal scale, and condemnation of US actions by the international community as a means of empirically supporting the claim that the international norm against torture is not in regress (H$_2$).

5.1 Evidence of Norm Violation Pre-9/11

The medieval torture devices in the Tower of London give the illusion that torture is a historical relic. However, torture continues to be a pervasive act inflicting the psychological and physical wellbeing of individuals around the globe. There is a long history of torture worldwide – a history that does not omit liberal democracies. CIRI data collects information on 16 internationally-recognized human rights for almost every country in the world since 1981. The CIRI dataset on torture ranks each country from 0 to 2. The coding scheme is as follows:

(0) Torture is practiced frequently/is systematic. 50 or more cases have been reported.
(1) Torture is practiced occasionally. 1 to 49 cases of torture have been reported.
(2) Torture is not practiced or has gone unreported. 0 cases have been reported.

Although CIRI data is the best available dataset due to their global approach over several decades, there is a distinct difference between one or two cases of torture annually and forty-nine cases reported over a year. The former is likely a result of rouge individuals, while the latter can arguably be defined as systematic. Despite the difference, both instances are coded as (1) and

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50 Cingranelli, and Richards. *CIRI human rights data project.*
there is no means of differentiating between these two circumstances. With this limitation in mind, torture is not a new phenomenon according to CIRI data. This finding is supported by Amnesty International reports dating back to the early 1970s.\textsuperscript{51}

There have been consistent reports of torture in the United States since 1991 (fig.1) and sporadic cases since 1983 when a US Soldier was court-martialed for using waterboarding in Texas.\textsuperscript{52} Additionally, research conducted by Amnesty International includes several cases documenting police brutality and ill-treatment within prisons during the 1970s.\textsuperscript{53} This clear evidence of consecutive norm violation undermines the idea that the torture norm was truly internalized prior to the War on Terror. It is worth noting that the UN Convention Against Torture did not come into effect until 1987, the United States did not sign until 1988, and did not ratify until 1994. Additionally, US ratification was conditioned on 19 understandings that protected the use of “stress positions, sensory deprivation, and sexual humiliation.”\textsuperscript{54} Therefore, the terrorist attacks on 9/11 and the subsequent War on Terror was arguably the first test the United States faced regarding the use of torture. Consequently, to claim that “no other practice except slavery is so universally and unanimously condemned in law and human convention”\textsuperscript{55} may have been premature. The finding of consistent torture pre-9/11 supports the alternative hypothesis (H\textsubscript{2}), which claims that the international norm against torture has not regressed as a result of US norm violation. Furthermore, it raises the question of why norm violation during the War on Terror elicited such a large response from the academic community, while previous norm violations went unnoticed. Additionally, framing the use of torture during the War on

\textsuperscript{52} Pyle. \textit{Getting Away with Torture: Secrete Government}. pg. 77
\textsuperscript{54} Pyle. \textit{Getting Away with Torture: Secrete Government}. pg. 91
Terror as a first test for the norm against torture draws a comparison to the norm against chemical weapons and the norm against land mines, both of which were contested upon their conception but become internalized through condemning state violation (H3).

Figure 2: Evidence of the use of torture in the US prior to the War in Afghanistan and Iraq

It is important to note that the US violation of the norm against torture throughout the 1990s is not an outlier. France used torture systematically between 1998–2000 and has used torture occasionally since (fig. 2). Similar trends of inconsistent use of torture pre-dating the War on Terror and post the UN Convention Against Torture can be found amongst a large majority of states, including liberal democracies, such as Spain\(^56\) and the United Kingdom.\(^57\) The pervasive nature of torture prior to the US’ overt use of torture during the War on Terror supports the theory that it is not the US’ use of torture that weakened the anti-torture norm, but rather that the norm against torture was simply not as strong as much of the human rights community was led to believe.

\(^{56}\) See Appendix G.1, fig. 6. CIRI Torture Score: Spain 1981 – 2011.

\(^{57}\) See Appendix G.2, fig. 7. CIRI Torture Score: UK 1981 – 2011.
5.2 Rates of Torture Worldwide

If McKeown and Schmidt and Sikkink’s argument that the international norm against torture has been, or is at risk of being weakened due to US domestic violation is true, there would be a sudden increase in the use of torture worldwide. Schmidt and Sikkink address this observation and note that the overall worldwide average of torture has not increased since 2003 when US actions became public according to CIRI data. However, they do find that the use of torture by states “actively participating” with the US’ “extraordinary rendition and secret prisons program” increased steadily since 2003. Actively participating states are defined as states that contributed to torture and captured people for the US. This differs from countries that simply allowed the US to use their airspace to transport prisoners, which are defined as “participating” states. While Schmidt and Sikkink’s data shows a striking difference in the use of torture between participating and non participating states following 2001, Schmidt and Sikkink

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58 Schmidt and Sikkink, *Is the Torture Norm Dying?* pg. 20
59 Schmidt and Sikkink, *Is the Torture Norm Dying?* pg. 18
fail to account for rates of torture in actively participating countries prior to 2001. Rather, Schmidt and Sikkink show an average of all states’ torture rankings that diverges into rates of actively participating, participating, and non-participating states in 2001 (fig. 11: appendix). Looking at the average torture scores of just the actively participating countries pre-dating 9/11 (fig. 3), there is no sudden increase in the use of torture starting in 2001 that Schmidt and Sikkink’s figure insinuates. While there is a gradual increasing trend in the use of torture – likely due to increased reporting – this can hardly be attributed to US norm violation. Consequently, there is no evidence of increasing use of torture worldwide as a result of the US’ use of torture during the War on Terror. This finding supports the argument that the international norm against torture has not regressed due to US domestic norm violation (H2).

![CIRI Torture Score by States "Active Participating" in US Policies, 1981-2011](image)

**Figure 4: Average torture scores of states that actively participated with the US’ use of torture.**

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5.3 International Condemnation of US Violation

Schmidt and Sikkink point to remarks made by China, Iran, North Korea, Syria, and Cuba that condemn the US’ actions as hypocritical, claiming that the US had “no standing to speak on [human rights violations within their countries] because of its own human rights violations.”61 While this evidence points to the US’ inability to champion human rights, the strong international response to US norm-violation has been analyzed to a lesser degree.

International pressure does not guarantee that the US will alter its actions, particularly due to the state’s hegemonic status and its subsequent capacity to overcome naming and shaming.62 Regardless, condemnation of US actions does suggest the anti-torture norm remains powerful amongst the international community and infers that other states continue to support the norm. This support provides evidence for the continued validity of the norm, if not a direct test for the prevalence of the norm within the international community. The number of states condemning the US’ use of torture is staggering. While the media in Austria, Colombia, Cuba, Ecuador, Egypt, France, Germany, Iran, Mexico, Poland, Spain, and the UK condemned the US, numerous state officials took to the press or twitter. German Chancellor Angela Merkel stressed the necessity of “upholding legal and democratic values” while UK Prime Minister David Cameron states that “many post-9/11 actions, including torture, were wrong.”63 Similarly, Iran’s Supreme Leader, Ayatollah Khamenei, condemned the US over twitter, while Yemen’s legal advisor Nazeeh Alemad told the New York Times that “allegations of US torture had long been

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61 Schmidt and Sikkink, Is the Torture Norm Dying? pg. 26; (07USUNNEWYORK1019); (06USUNNEWYORK538)
62 Bashir, Has the efforts of the United States...: Risse, Thomas, Stephen Ropp, and Kathryn Sikkink. From Commitment to Compliance pg. 15-21.
accepted as fact” and Egyptian politician, Mohamed ElBaradei, claimed the report confirming US torture was a “blow” to US values.\(^6^4\) Similarly, Ben Emmerson, UN special rapporteur on counter-terrorism and human rights, argued that individuals responsible for torture within the US “must be brought to justice, and must face criminal penalties commensurate with the gravity of their crimes.”\(^6^5\) Additionally, the US faced strong condemnation by Finland, Ireland, the Netherlands, Norway, and Switzerland, while Australia, Canada, Denmark, the Netherlands, and the UK went so far as to circumvent involvement with the US during military operations to avoid being complicit in torture.\(^6^6\) This strong reaction by media, state officials, and international organizations infers that the validity of the anti-torture norm remains strong, which subsequently counters the argument that the norm is in regress due to US violations (H\(_1\)).

Not only did state officials condemn the United States’ actions, but international public opinion polls suggest that the general public in states around the world disapprove of torture. A global survey conducted by Amnesty International in 21 countries, spanning every continent, between December 2013 and April 2014 found that 36% of respondents believe that torture can be justified in some cases to protect the public, while 85% of individuals believe there should be clear laws against torture.\(^6^7\) These findings were reflected in a similar poll conducted by the Global Attitudes Survey in the spring of 2015, which found that several of the United States’

\(^{64}\) Steers, *International Response to Torture Report*
\(^{66}\) Schmidt and Sikkink, *Is the Torture Norm Dying?*
European allies strongly oppose torture, including Germany, Spain, the UK, and France. However, a global opinion poll conducted by Pew Research across 38 nations found that only 45% of respondents “did not believe use of torture by their governments against suspected terrorists to try to gain information about possible attacks in their country could be justified” and 40% believed torture could be justified. While these findings contradict the hypothesis that norms have been strengthened internationally (H₃), the 40% justifying torture is heavily inflated by the 55% of individuals in sub-Saharan Africa that believed torture can be justified, while only 25% of respondents in Latin America believed torture can be justified. Unfortunately, norm regress or strengthening cannot be measured by comparing international public opinion on the justification of torture pre-dating 9/11 to opinions post 9/11 due to the absence of public opinion polls on the justification of torture pre-dating 2001. However, the very fact that no international public opinion poll on the justification of torture exists infers that the norm was generally accepted by the international community prior to US violation.

International condemnation of US violation does not refute H₁ and support H₂ by reducing the number of norm violations, but rather suggests that the international community continues to adhere to the norm against torture, and reinforces that the actions of the United States does not equate to an outright rejection of the norm on an international level. In other words, although the norm against torture may have been weakened domestically within the

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United States during the Bush administration, the norm remains strong internationally. Furthermore, evidence of international condemnation supports the theory that the norm against torture has actually been strengthened ($H_3$).

Evidence of states, intergovernmental organizations, and the general public condemning the US’ use of torture illustrate the international community’s firm stance and continued support of the anti-torture norm. This support insinuates the strength of the norm against torture since violation by the US provided a clear opportunity for other states to follow suit and begin torturing individuals, particularly for those in a state of war. This evidence corresponds to Badescu and Weiss’ argument that the misuses or contestation of a norm can be rejected by the international community, which strengthens a norm and confirms the international community’s commitment to the norm in question. Overall, the persistence of the anti-torture norm, even under a hard test like the one generated by US domestic violation, supports the hypothesis that the anti-torture norm has been strengthened.

### 5.4 Section Summary

The empirical evidence suggests torture was pervasive prior to 9/11, the rate of torture has not increased worldwide since US domestic violation became well-known in 2003, and the international community is willing to condemn the US’ actions. All of these observations refute the claim that the international norm against torture is in regress ($H_1$) and supports the alternative hypothesis that the international anti-torture norm is stable ($H_2$). However, the argument that the international anti-torture norm has been strengthened as a result of US domestic violation ($H_3$) requires support beyond international condemnation.
Chapter 6: Empirical Evidence of Norm Strengthening

Empirical evidence is derived from reports on torture, investigatory journal articles, and primary documents issued by state leaders and the United Nations. Although evidence of contestation by the international community has been explored above, the idea that the anti-torture norm has been strengthened is further supported by evidence of a decline in torture under the Obama administration and conceptually clarifying the norm by contesting applicatory justification proposed by the US.

6.1 Evidence of Declining Use of Torture in the US

Senator Barack Obama’s presidential campaign in 2008 took a firm stance on the Bush administration’s counter-terrorism policies and promised effective “change.” Some of the first executive orders made by President Obama upon taking office in 2009 were attempts to rectify the damage done to human rights throughout the War on Terror. President Obama instructed all detention facilities to be closed as soon as possible, stating that Guantanamo Bay would be closed within one year, and prohibited any similar operations in the future. 70 A Task Force was established to monitor compliance with international law with respect to the “apprehension, detention, trial, transfer [and] release” of detainees. 71 Lastly, Obama ordered to “stop the practices of torture, secrete detention, extraordinary rendition, and similar abuses.” 72 President Obama’s willingness to admit that “we tortured some folks” 73 was seen as a signal of the United

71 E.O. 13,491, supra note 4.
72 E.O. 13,491, supra note 4.
States’ willingness to acknowledge their dark past despite the fact that the use of the term ‘torture’ has political, diplomatic, and legal implications. Additionally, Obama’s executive orders were considered to be a legitimate commitment to abiding by International Humanitarian Law (IHL), even during the ongoing Wars in Iraq and Afghanistan.\textsuperscript{74}

Statements made by state officials are easily observed, however it is difficult to discern whether such statements have any effect. In other words, it is difficult to know for certain if the US stopped torturing individuals, despite Obama’s rhetoric. However, it is possible to observe the closure of infamous detention centers. The US placed Abu Ghraib prison under Iraqi government control in 2006 and the prison was permanently closed in 2014. Although this particular closure was beyond the Obama administrations’ control, Obama’s promise to close the detention facility at Guantanamo Bay (GTMO) was met with approval by human right activist. Obama’s executive orders and campaign promises were soon complicated by logistics and a need to adhere to IHL. The detention facility in Guantanamo held 780 prisoners, over 500 of which were released during the Bush Presidency.\textsuperscript{75} 242 detainees remained in GTMO at the beginning of Obama’s presidency and 80 remain almost 8 years later\textsuperscript{76} due to the difficulty of finding states where there is no risk of detainees being tortured (in order to abide by IHL) and that are willing to take prisoners.\textsuperscript{77} The inability to close GTMO has generated serious criticism from human

\textsuperscript{75} Human Rights First. “Guantanamo by the Numbers” (April 16\textsuperscript{th}, 2016). Available at: https://www.humanrightsfirst.org/sites/default/files/gtmo-by-the-numbers.pdf (accessed April 18th, 2016). Originally published at http://www.timesonline.co.uk/tol/news/world/us_and_americas/article5425956.ece
\textsuperscript{77} Nowak, Birk, and, Crittin. \textit{Obama Administration and Obligations under the Convention against Torture}.
rights activists and the political left. Similarly, Obama’s failure to prosecute those responsible for torture under the Bush administration has led academics to claim the norm against torture remains to be in regress within the United States. However, the clear commitment to IHL under the Obama administration and the lack of evidence confirming or suggesting torture since 2009 infers that the US has been complying with the anti-torture norm since 2008. Although it is difficult to prove that this adherence is a result of international pressure, it does suggest that the norm has been strengthened in the US since the Bush administration. Thus, a commitment to IHL and the subsequent inability to close detention facility under the Obama administration supports the hypothesis that the norm against torture has been strengthened domestically (H3).

However, the strengthening of the norm against torture within the United States appears to be refuted by Donald Trump, the Republican presidential nominee. Trump has stated on numerous occasions that “we should go for waterboarding and we should go tougher than waterboarding” as a means of combating terrorism. Originally Trump discredited claims that the military may refuse orders to torture as torture constitutes a war crime by stating, “they won’t refuse. They’re not going to refuse me. If I say do it, they’re going to do it.” However, Trump quickly altered his argument days later saying, "We're going to stay within the laws. But you know what we're going to do? We're going to have those laws broadened…” and, “If we

78 Schmidt and Sikkink. *Is the Torture Norm Dying?*


change the laws or have the laws, waterboarding would be fine.” While these statements depict further norm regress within the United States through applicatory and justificatory contestation respectively, the domestic response to these claims is more telling.

Trump suffered a drop in the polls mid February to mid April (fig. 4), which temporally aligns with Trump’s statements endorsing torture, the apogee of which occurred during a Republican primary debate on March 3rd, 2016. While this drop in favourability could be a result of any number of things, it does depict that a majority of American votes were not won by vowing to combat terrorism with torture – a notable difference from the Bush administration. This observation contradicts the claim that the norm against torture has further regressed within the United States since the Bush administration and suggests that the American public is less convinced that torture can combat terrorism, subsequently supporting the causal logic of H3.

Furthermore, the domestic response to Trump’s advocacy for torture are unanimously negative by former cabinet members, lawmakers, and intelligence and military officials, including Rep. Adam Schiff, the top Democrat on the House Intelligence Committee, who called Trump’s statements “quite simply, appalling and dangerous to our national security.” Trump’s statements on torture prompted 121 leaders in the Republican national security community to write an open letter condemning Trump and pledging to oppose his presidential candidacy. Arguably most telling are statements made by retired Army Major Gen. James Marks and former CIA director Gen. Michael Hayden, who claimed “if [Mr. Trump] were to order [torture] once in...

* depicting a drop in favorability and an increase in unfavorability between mid-February to mid-April temporally aligns with Trump’s statements endorsing torture. Huffpost’s poll chart tracks 173 polls from 28 pollsters at time of access.


government, the American armed forces would refuse to act.\textsuperscript{86} Although similar sentiments were voiced by political officials and media correspondents, it’s monumental that former CIA and military personal are willing to make political statements despite the potential ramifications of appearing to politicize the military. Additionally, the CIA and military would be the ones to carry out an executive order to torture and their refusal to do so suggests that the norm against torture has strengthened within the US since the Bush administration, subsequently supporting H\textsubscript{3}.

Despite condemnation by numerous intelligence, military, and public officials, Trump’s claims are not completely misaligned with the general US public. According to a 2014 Amnesty International public opinion poll, about 45\% of Americans support torture.\textsuperscript{87} Similarly, a 2016 online poll by Reuters found that roughly 25\% of the American public said torture is “often” justified, and 38\% claimed torture is “sometimes” justified, while only 15\% stated that torture should “never be used.”\textsuperscript{88} However, like all polling data, there are large inconsistencies between public opinion polls on torture. In a 2005 Gallup poll 56\% of Americans were “not willing” to have “the U.S. government torture suspected terrorists if they may know details about future terrorist attacks against the US” and the majority of poll participants believed specific torture tactics were “wrong” (see fig. 9 in Appendix I for detailed polling questions).\textsuperscript{89} While this contradiction within the United States presents an inconclusive stance on the state of the norm

\textsuperscript{86} Browne, Ryan and Nicole Gaouette. *Donald Trump reverses position on torture, killing terrorists’ families.*

\textsuperscript{87} Amnesty International. *Attitudes to Torture.*


against torture within the US, international opinion polls consistently frame the United States’ (albeit inconsistent) support of torture as an outlier within the international system, as analyzed above in Section 5.3.

6.2 Evidence of the Refusal to Accept US Applicatory Contestation

Terrorist attacks have become increasingly common around the world: 130 people died in Paris during a mass shooting in November, 2015; 28 died in Ankara from a suicide car bombing in February, 2016; 32 died in an airport bombing in Brussels in March 2016; and 28 passed away in a suicide car bombing in Kabul on April 19th, 2016. Although there appears to be an increasing frequency of terrorism, state governments are not attempting to override the Geneva Conventions despite the persistent narrative that these attacks are acts of war. It is possible that states are torturing individuals suspected of committing acts of terror. However, the fact that no state affected by terrorism has mimicked the United States’ attempt to overcome the Geneva Conventions by identifying suspects as “Prisoners Under Control” supports the claim that the definition of torture has been strengthened despite the opportunity to narrow the UN Convention of Torture following US violation.

According to Badescu and Weiss, norms are partially strengthened through contestation since misuse provides an opportunity to conceptually clarify the norm. While the norm against torture was clarified prior to US violation, the refusal to narrow the definition since 9/11 has strengthened the norm. Schmidt and Sikkink convincingly argue that the United State’s applicatory contestation of the anti-torture norm (the attempt to create an exception to the UN Convention Against Torture) is actually justificatory contestation due to the clear definition of International Humanitarian Law pertaining to torture. Had other states reiterated the narrow
definition of torture employed by the Bush administration, the hypothesis that the norm against
torture has been strengthened as a result of US violation (H₃) would be weakened substantially.
The sustained support of a norm that stipulates “no exceptional circumstances whatsoever”\(^9\) clarifies the rigorous definition of the anti-torture norm, subsequently strengthening the norm by passing the “hard test” proposed by the United States.

Chapter 7: Conclusion

This paper addressed how the domestic violation of the anti-torture norm within the United States during the Bush administration has affected the international norm against torture. While the claims made by McKeown\textsuperscript{91} and Schmidt and Sikkink\textsuperscript{92} contribute to the theoretical concept of norm regress, their empirical argument that the anti-torture norm is dying is refuted. This paper employed Bayesian Process Tracing as a means of increasing transparency of empirical findings, all of which support the hypothesis that the international norm against torture has not regressed. This support is found in the perverseness of torture pre-dating the terrorist attacks on 9/11, the relatively consistent rate of torture worldwide post 2001, and the willingness of the international community to condemn the United States’ actions.

This paper contributes a unique perspective to the analysis of domestic US norm violation by arguing that the international norm against torture was actually strengthened as a result of US violation. The theory of an alternative spiral by Badescu and Weiss\textsuperscript{93} theoretically supports this claim, while the evidence derived from Bayesian Process Tracing increases the confidence in this hypothesis. The findings of international condemnation, abidance to International Law under the Obama administration, the public response to torture domestically and internationally, and the refusal of the international community to accept the applicatory justification employed by the US under the Bush administration, supports the argument that the international norm against torture has been strengthened through contestation.

\textsuperscript{91} McKeown, \textit{Norm Regress}.
\textsuperscript{92} Schmidt and Sikkink, \textit{Is the Torture Norm Dying}?
\textsuperscript{93} Badescu and Weiss. \textit{Misrepresenting R2P and Advancing Norms}
While these findings contribute to questions of norm robustness and internalization, they also infer that the relative power of states violating or advocating norms does not necessarily dictate the outcome. Rather, it is important to consider the strength of the norm independent of states. Therefore, the concept that norms are created and controlled by the powerful\textsuperscript{94} has been brought into question as a result of the United States’ inability to alter the international norm against torture. Although this inference demands further research, the findings of this paper generate an interesting platform from which this claim can be addressed.

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Overheard by Ken Auletta, Annals if Communications Column, New Yorker, January 11, 2004


Appendix A: Evidence of Previous norm violation

A.1 Primary Theory (H₁)
\[ P(q|H₁) = \text{Very low} \]
\[ P(E_q|q) = \text{Very high} \]
\[ P(E|H₁) = P(q|H₁) \times P(E_q|q) \]
\[ = 0.05 \times 0.9 \]
\[ = 0.45 \]
\[ = (\text{very low probability we should observe this CPO if theory 1 is operating}) \]

A.2 Alternative Theory (H₂)
\[ P(q|H₂) = \text{moderate} \]
\[ P(E_q|q) = \text{very high} \]
\[ P(E|H₂) = P(q|H₂) \times P(E_q|q) \]
\[ = 0.5 \times 0.9 \]
\[ = 0.45 \]
\[ = (\text{moderate probability we should observe this CPO if theory 2 is operating}) \]
Appendix B: Evidence of Increasing Use of Torture Worldwide

B.1 Primary Theory ($H_1$)

$P(q|H_1) = \text{Very high}$
$P(E_q|q) = \text{Moderate}$

$P(E|H_1) = P(q|H_1) \times P(E_q|q) = 0.9 \times 0.4 = 0.36$

= (moderate probability we should observe this CPO if theory 1 is operating)

B.2 Alternative Theory ($H_2$)

$P(q|H_2) = \text{very low}$
$P(E_q|q) = \text{moderate}$

$P(E|H_2) = P(q|H_2) \times P(E_q|q) = 0.05 \times 0.4 = 0.02$

= (very low probability we should observe this CPO if theory 2 is operating)
Appendix C: Evidence of International Condemnation of US Violation

C.1 Primary Theory (H₁)
P(q|H₁) = Very low
P(Eₐ|q) = Very High
P(E|H₁) = P(q|H₁) * P(Eₐ|q)
= 0.05 * 0.9
= 0.045
= (very low probability we should observe this CPO if theory 1 is operating)

C.2 Alternative Theory (H₂)
P(q|H₂) = very high
P(Eₐ|q) = very high
P(E|H₂) = P(q|H₂) * P(Eₐ|q)
= 0.9 * 0.9
= 0.81
= (very high probability we should observe this CPO if theory 2 is operating)
Appendix D: Evidence of International Condemnation

D.1 Primary Theory ($H_3$)
- $P(q|H_3) = \text{Very High}$
- $P(E_{q|q}) = \text{Very High}$
- $P(E|H_3) = P(q|H_3) \times P(E_{q|q})$
  $= 0.9 \times 0.9$
  $= 0.81$
  $= \text{(very high probability we should observe this CPO if theory 3 is operating)}$

D.2 Alternative Theory ($H_4$)
- $P(q|H_4) = \text{very low}$
- $P(E_{q|q}) = \text{very high}$
- $P(E|H_4) = P(q|H_4) \times P(E_{q|q})$
  $= 0.2 \times 0.9$
  $= 0.18$
  $= \text{(very low probability we should observe this CPO if theory 4 is operating)}$
Appendix E: Evidence of Declining Use of Torture in the US:

E.1 Prison Closures

Primary Theory ($H_3$)
- $P(q|H_3) = $ Very High
- $P(E_q|q) = $ Very High
- $P(E|H_3) = P(q|H_3) * P(E_q|q) = 0.9 * 0.9 = 0.81$
  - (very high probability we should observe this CPO if theory 3 is operating)

Alternative Theory ($H_4$)
- $P(q|H_4) = $ moderate
- $P(E_q|q) = $ very high
- $P(E|H_4) = P(q|H_4) * P(E_q|q) = 0.5 * 0.9 = 0.45$
  - (moderate probability we should observe this CPO if theory 4 is operating)

E.2 Polling Data

Primary Theory ($H_3$)
- $P(q|H_1) = $ moderately high
- $P(E_q|q) = $ very high
- $P(E|H_1) = P(q|H_1) * P(E_q|q) = 0.6 * 0.9 = 0.57$
  - (moderate probability we should observe this CPO if theory 1 or 4 is operating)

Alternative Theory ($H_4$)
- $P(q|H_2) = $ moderately low
- $P(E_q|q) = $ very high
- $P(E|H_4) = P(q|H_4) * P(E_q|q) = 0.4 * 0.9 = 0.36$
  - (low probability we should observe this CPO if theory 2 or 3 is operating)
E.3 Condemning Trump’s Remarks

Primary Theory ($H_3$)

\[ P(q|H_1) = \text{low} \]
\[ P(E_q|q) = \text{very high} \]
\[ P(E|H_1) = P(q|H_3) \times P(E_q|q) \]
\[ = 0.05 \times 0.9 \]
\[ = 0.18 \]
\[ = (\text{very low probability we should observe this CPO if theory 1 is operating}) \]

Alternative Theory ($H_4$)

\[ P(q|H_4) = \text{high} \]
\[ P(E_q|q) = \text{very high} \]
\[ P(E|H_4) = P(q|H_4) \times P(E_q|q) \]
\[ = 0.8 \times 0.9 \]
\[ = 0.72 \]
\[ = (\text{high probability we should observe this CPO if theory 4 is operating}) \]
Appendix F: Evidence of Applicatory Contestation

F.1 Primary Theory (H₃)

P(q|H₃) = Very Low
P(Eₚ|q) = Very High
P(E|H₃) = P(q|H₃) * P(Eₚ|q)
= 0.05 * 0.9
= 0.045
= (very low probability we should observe this CPO if theory 3 is operating)

F.2 Alternative Theory (H₄)

P(q|H₄) = moderate
P(Eₚ|q) = very high
P(E|H₄) = P(q|H₄) * P(Eₚ|q)
= 0.6 * 0.9
= 0.54
= (moderately probability we should observe this CPO if theory 4 is operating)
Appendix G: Evidence of Norm Violation Pre-9/11

G.1 Torture in Spain (1981-2011)

Figure 6: CIRI Torture Score: Spain, 1981 – 2011. Evidence of the Use of Torture Pre-9/11

G.2 Torture in the United Kingdom (1981-2011)

Figure 7: CIRI Torture Score: United Kingdom, 1981 -2011. Evidence of the Use of Torture Pre-9/11.
Appendix H: Evidence of Rates of Torture Worldwide

![CIRI Torture Score by State Participation in US policies, 1981-2011](image)

Appendix I: Evidence of Declining Use of Torture in the US

Here is a list of possible interrogation techniques that can be used on prisoners. Do you think it is right or wrong for the U.S. government to use them on prisoners suspected of having information about possible terrorist attacks against the United States. How about --

<table>
<thead>
<tr>
<th>Technique</th>
<th>% Right</th>
<th>% Wrong</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depriving prisoners of sleep for several days</td>
<td>49</td>
<td>48</td>
</tr>
<tr>
<td>Threatening to transfer prisoners to a country known for using torture</td>
<td>35</td>
<td>62</td>
</tr>
<tr>
<td>Threatening prisoners with dogs</td>
<td>29</td>
<td>69</td>
</tr>
<tr>
<td>Forcing prisoners to remain naked and chained in uncomfortable positions in cold rooms for several hours</td>
<td>18</td>
<td>79</td>
</tr>
<tr>
<td>Strapping prisoners on boards and forcing their heads underwater until they think they are drowning</td>
<td>16</td>
<td>82</td>
</tr>
<tr>
<td>Having female interrogators make physical contact with Muslim men during religious observances that prohibit such contact</td>
<td>12</td>
<td>85</td>
</tr>
</tbody>
</table>

Jan. 7-9, 2005

Gallup

Figure 9: Gallup public opinion poll on torture, 2005.