Securing the Homeland: Torture, Preparedness, and the Right to Let Die

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MODERN SECURITY REGIMES ARE DEFINED BY EXTREMES. PRACTICES OF SPYING, torture, indefinite detention, and preemptive war represent favored responses by the United States to the threats of insecurity introduced by terrorism. But insecurity as a unifying concept has expanded virally since September 11, spreading into domains of public health and disaster management, among others. Interestingly, whether for the mitigation of potential terrorist threats, avian flu pandemics, or hurricanes, executive privilege and individual responsibility prevail as dominant framing mechanisms for necessary response. In addition, responses to insecurity are increasingly technologized and militarized, whether in the form of technological surveillance, command-and-control organizational structures, or pervasive cultures of secrecy. These are not simply discrete actions played out on the level of nation-state policy. Instead, the field for social practice and conceptions of appropriate governance are transforming rapidly in this climate of absolute threats. It is appropriate and necessary, therefore, to assess the implications of security regimes upon public institutions, modes of governance, and forms of life. This article begins this project by analyzing the discourses surrounding torture and disaster preparedness in the United States.

Logics of Torture

In the U.S.'s protracted "war on terror," politicians and the media have mobilized fear of devastating, indiscriminate attack upon civilian populations to justify extreme police actions and security operations, both within and beyond the country's borders. The suspension of law—or technically the movement of ethically ambiguous or morally reprehensible activities to zones outside legal jurisdiction—enables a false semblance of social order predicated upon universal rights, which still exist in principle, while obliterated in practice.

The most disturbing incarnations of such extralegal zones are seen in the (almost invisible) practices of extraordinary rendition, or transfer of "enemy combatants" to prisons in countries where they are tortured in "black sites" (Cole, 2005). These

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are concentration "camps" in the deepest sense of the word: they strip away rights, knowledge, and humanity, reducing people to a state of "bare life" (Agamben, 1998), whereupon language, consciousness, and civilization cease to exist (Scarry, 1985). This should not be altogether surprising given the more-or-less visible legal and military strategies leading to such camps.

The discourses surrounding the treatment of enemies in the "war on terror" reveal a great deal about the contemporary culture of control. The questions facing policymakers and security personnel include the messy particulars of sordid exceptions: What kinds of torture techniques are permissible, when, where, and applied to whom? Under what circumstances can we assassinate enemies, even if they are not in combat zones? Under what conditions can we detain individuals, perhaps indefinitely, without due process? These are some dominant questions in what Pierre Bourdieu (1977) would call the "universe of discourse." Such questions beg a set of meta-questions, however, that lie outside public debate: What does it mean that these are seen as the questions of today? What do they say about our values, the state of democracy, or our system of governance? What do they indicate about how we perceive and valuate others? How do they serve to rationalize historical and ongoing complicity in terrorist practices by nation-states? Unfortunately, root questions of this sort remain on the periphery of the universe of discourse when policymakers instead concern themselves with rationalizations for torture.

The contours of the policy problems concerning the treatment of enemies in the "war on terror" are well defined in policy reports like *Protecting Liberty in an Age of Terror* (Heymann and Kayyem, 2005). The content for this policy report was cultivated through "closed-door" conversations with notable advisors under the aegis of Harvard University's "Long-Term Legal Strategy Project for Preserving Security and Democratic Freedoms in the War on Terror." The forum giving rise to the report included 17 U.S. advisors, such as Robert McNamara, Michael Chertoff, and Rand Beers, along with half-a-dozen "observers" from the United Kingdom. This report is completely unlike secret documents such as the now infamous "torture memos" constructed by John Yoo, Alberto Gonzales, and others to legally justify executive powers to detain and interrogate subjects without due process or adherence to the Geneva Convention. Because the Harvard report aims to preserve democratic practice, the conclusions it reaches about acceptable interrogation techniques are all the more revealing and disturbing.

The goal of *Protecting Liberty in an Age of Terror* is to establish clear guidelines for executive powers and their oversight. To this end, it advocates for various methods of accountability, transparency, and "accurate reassessments," by which it means that sunset provisions and periodic evaluations should be instituted because "broad new executive powers should not be allowed to survive any longer than the extraordinary danger that justifies them" (Heymann and Kayyem, 2005: 7). Most of the recommendations of the report seem to be reasonable, serious, and well thought out. Examples include: "Without exception, the United States shall abide

by its statutory and treaty obligations that prohibit torture"; "Any U.S. person and any person within the United States who is seized or arrested outside a zone of active combat shall be detained only on criminal charges"; "Any requirement that a nonjudicial demand, such as a National Security Letter, be kept secret shall be valid for only sixty days"; and so on.

On the surface, such recommendations appear to prioritize the protection of civil liberties over the predilections of the executive branch (or the military and intelligence apparatuses). Curiously, however, the recommendations are quickly qualified in their explanatory text, providing for all kinds of exceptions. The most often used mechanism for qualification is to change the terms of the practices being discussed. For instance, although there should not be any exceptions to the proscription of "torture," "highly coercive interrogation" (HCI) techniques may be completely justifiable and legal. HCI techniques could include things like "putting on smelly hoods or goggles, wall standing for long periods of time, subjection to noise, deprivation of sleep, deprivation of food and drink, deprivation of medical treatment" (*Ibid*.: 175–176), and so on. Because these techniques, even in combination, do not necessarily "shock the conscience" or inflict direct physical wounds, according to the report, they do not technically count as "torture."

Similarly, the terms used within other recommendations are wide open to interpretation and exception. What counts as a "zone of active combat" or an "unlawful combatant?" In most cases, the answer given is that the president shall decide (with some additional mechanisms of oversight to assess the legality or necessity of the decisions). These are not simply matters of semantics, however, when indefinite detention, cruel or degrading punishment, suspension of due process, or death may be the outcomes of their subjective interpretation. In my estimation, the "war on terror" is more ontological than geographical; its extralegal operations occur upon bodies within states of exception that are quickly becoming the rule. So, while the devil is in the details, the details of mainstream policy reports will probably not challenge most existing state practices or power structures.

An underlying argument behind the generation of policy guidelines for interrogation is that abuses occur because policymakers and state agents lack clear, unambiguous guidelines:

> Rules proscribing the use of torture and other cruel and inhuman treatment by the United States provide little guidance as to the legitimacy of specific interrogation techniques and when they can be used.... In this context of uncertainty, the use of particular coercive techniques remains and has been subject to serious abuse. On the other hand, the controversy surrounding interrogation tactics in Iraq and elsewhere, and the resulting criminal charges against military personnel, has resulted in a dramatic swing of the pendulum that may discourage legitimate interrogation tactics (*Ibid*.: 31).

In other words, not only is abuse catalyzed by ambiguous policies, but the public and legal backlash that occurs when abuses come to light also causes an overcorrection that may detrimentally impinge upon the effectiveness of state agents. Within this explanatory framework, policy reports aim to curb abuses and simultaneously enhance the effectiveness of counterterrorism activities.

Unfortunately, this logic is undermined by the fact that in the "war on terror," clear policies and laws are violated right and left, often with impunity. As Thomas Lue (2005: 162–163) writes, "one glaring exception [to U.S. interrogation methods not qualifying as 'torture'] may be the treatment of prisoners at the Abu Ghraib prison in Baghdad, where the beating and sodomizing of detainees, the unleashing of dogs, and the pouring of phosphoric liquid almost certainly qualify as acts of torture." Although manifested in a completely different geographic and discursive realm, President Bush's authorization of National Security Agency (NSA) surveillance of U.S. citizens is in clear violation of the Foreign Intelligence Surveillance Act (FISA). Unambiguous guidelines may be essential, but they alone cannot prevent abuses of power.

Current practices of counterterrorism and interrogation are ad hoc, particularistic, and wide open to abuse. As with much governance in the post-September 11 context, these practices are shrouded in secrecy and whistleblowers are punished instead of praised. Complex rationalizations concerning necessary interventions and the semantics of torture may be politically expedient, but, more important, they signal an effort to enroll citizens as active supporters of the "war on terror." The next section explores the refashioning of this relationship between citizens and the state through the lens of disaster preparedness.

Enlisting the Individual

A new kind of citizen is being constructed by the reigning discourses of homeland security. Increasingly, public programs are being reduced or restructured to place responsibility for the provision of social services in the hands of individuals, private corporations, or nongovernmental organizations (Monahan, 2006a; Katz, 2001). This neoliberal trend in governance predates the "war on terror," of course, and is grounded in the "reinventing government" movement of the Clinton presidency (Osborne and Gaebler, 1992). What has changed since September 11 is the militarization of government agencies and the active enlisting of individuals as the first line of defense in securing the homeland. In other words, the very concept of the public sphere is being militarized. Even if breeches in security are seen as the fault of the government, the responsibility to correct related conditions of human suffering or inequality are placed firmly on the shoulders of individuals, either to pull themselves out of their problems or to assist others who cannot do so on their own.

While public programs such as education, health care, and welfare face radical cuts and privatization, the state entrenches even further in instituting and elaborately

funding security operations abroad and at home. In the U.S., a host of agencies that previously did not have "security" as their primary mandate were absorbed into the Department of Homeland Security (DHS) in 2003, where they have been restructured and reoriented to prioritize security functions above all others. Three telling examples of this are the U.S. Coast Guard, the Federal Emergency Management Agency (FEMA), and the agency formerly known as Immigration and Naturalization Service (INS). The Coast Guard's previous mandate was to ensure safety around costal areas, which also included rescuing refugees and intercepting drugs; it has now been recast as a security agency guarding the nation from potential terrorist infiltration or attack by sea (Lutterbeck, 2004; Kerwin, 2005). FEMA originated in the 1970s as an "all-hazards planning" agency, which emphasized responding to natural disasters when under Democratic leadership and meeting the needs of civil defense when under Republican leadership (Lakoff, 2006). It was absorbed into DHS after September 11 and restructured to prioritize response to security threats. As evinced by the catastrophe of Hurricane Katrina, the current security orientation of FEMA makes it ill-equipped to handle emergency needs of people (*Ibid.*). Finally, INS has been distributed into two divisions since it became part of DHS: Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). Whereas the previous functions of INS did include raids and deportations, the name and mission of INS stressed managing migrant workers and guiding individuals through the process of immigration and citizenship (Andreas, 2003), which were "services" the agency provided. The DHS incarnation of INS now prioritizes antiterrorism, including the militarization of the border through high-tech systems and the detaining and deporting of illegal residents without any of the symbolic overtones of governmental service.

Corresponding with the restructuring of government, individuals have been enlisted as security agents in a variety of ways. The first rather awkward innovation was to cultivate citizen spies. Immediately following the September 11 attacks, the Justice Department developed a program called "Terrorism Information and Prevention System" (TIPS), which would require postal carriers and private-sector service providers, such as cable repair persons, to carefully monitor the houses they serviced, watch for anything that might appear suspicious, and report their findings to law enforcement authorities. There was a major backlash against this program, once it became public, both by the potential service-sector spies and by the general public, so it was shelved. Similarly, under DHS's "Highway Watch" program, interstate truck drivers are recruited and trained to keep on the lookout for anyone suspicious on U.S. highways or rest stops and to phone the tip line should they spot anyone or anything unusual. Many truck drivers have joined this loose network of citizen spies, but they tend to reproduce the general culture of racial profiling post-September 11 and have not yielded useful tips. The final example in this vein was to grant the Federal Bureau of Investigation (FBI) access to library databases to spy on the browsing habits of patrons, while preventing librarians or

others from notifying those being spied upon. What legislators did not properly appreciate in advance was that librarians and archivists are incredibly well organized professional groups dedicated to freedom of information. The American Library Association waged an influential campaign to oppose these provisions of the USA PATRIOT Act, and many individual librarians refused outright to participate in the program. Along with public opposition, the effect was a partial rollback of library spying with the reauthorization of the USA PATRIOT Act in 2006. The changes included allowances for limited disclosure and access to attorneys, and an obligation for the FBI to demonstrate "reasonable grounds" to suspect that the information is pertinent to an investigation prior to a search of library records.

The cultivating of citizen spies may not have been all that effective a strategy by the U.S. government, but some citizens have responded enthusiastically to the perceived need of assisting the state with security matters. One such example is the Minuteman Project, where U.S. citizens—often well armed—have taken to monitoring the U.S.-Mexico border for the illegal entry of immigrants. A more common mode of citizen participation, however, can be seen with individuals who attempt to pick up the slack left by the state's retreat from social programs. Whereas most people perceive "national security," or the protection of the nation from attack, as the domain of the government, "human security," or the freedom from fear or want, has been carefully constructed as the domain and the responsibility of the public. Thus, philanthropic donations pour in to assist those suffering from disasters, whether caused by terrorist attacks or natural disasters. The state responds tepidly at best, usually by giving away lucrative contracts of questionable social value to private companies (Davis, 2006), and seemingly only when lambasted by the public for not doing enough. Absent from this arena of intervention are any serious attempts to address the social inequalities and inadequate public infrastructures that enable disasters such as the one caused by Hurricane Katrina to become catastrophes. Instead, perhaps based on the model of organically generated individual aid for victims of Hurricane Katrina, the state has embraced a preparedness strategy of outsourcing management of future disasters to compassionate individuals, communities, and philanthropic organizations.

The state intentionally cedes responsibility for the provision of human security to concerned citizens or philanthropic organizations. It actively constructs the public as accountable for the well-being of the populace. Take, for example, the media-publicized quotation from a 2006 report by the Department of Homeland Security on how to contend with the (purported) threats introduced by avian flu:

> Institutions in danger of becoming overwhelmed will rely on the voluntarism and sense of civic and humanitarian duty of ordinary Americans. The talents and skills of individuals will prove crucial in our Nation's response to a pandemic (Homeland Security Council, 2006: 116).

This is a remarkable statement given that the state and media are thoroughly

invested in fostering a "moral panic" around avian flu. It is as if the state is saying, "Be very afraid, but don't count on us to help you out." Effective public health programs and infrastructures that might serve a dual function of treating people even without the occurrence of a pandemic are not funded. Instead, "national security" takes priority and is funded at a record rate —$563 billion has been budgeted for defense in 2007, not counting the wars in Iraq and Afghanistan (Cox, 2006). In perfect harmony with contemporary neoliberal ideology, an amazing exception to this rule has been afforded for the Department of Defense to stockpile vaccines at a public cost (and private industry profit) of eight billion dollars (Hulse, 2005). This exception is especially troubling given that experts agree that the flu will likely mutate, rendering today's stockpiled vaccines totally useless in the years to come (Harris, 2006).

Perhaps the most interesting articulations of enlisting the public in security operations are those that call for preparedness. The first stage of this discourse invokes the fear of grave—and seemingly inevitable—threats. For instance, a 2006 government report on "Pandemic Influenza Planning" describes the severe mortality rates of the three influenza pandemics that occurred in the last century. One pandemic from 1918 to 1919 killed 50 million people worldwide; one from 1957 to 1958 killed two million people; and one from 1968 to 1969 killed 700,000 people (U.S. Department of Health and Human Services, 2006: 4). By historicizing the threat of avian flu in this way, the report *could* draw attention to the positive trajectory of how mortality rates have decreased for each subsequent pandemic because of the rise in global public health infrastructures. Instead, the stress is placed upon the unavoidability of another pandemic, which will be potentially much more severe than previous ones because of today's global nature of air travel. It should be noted that projections of massive deaths caused by avian flu conveniently neglect to compare this threat to that of the SARS coronavirus, which was not all that infectious in spite of global travel. Indeed, funding for avian flu vaccines and preparedness infrastructures should be put into perspective: to date, the flu has caused 114 deaths in nine years; meanwhile, malaria "kills more than 1 million people a year; tuberculosis, more than 2 million; and HIV/AIDS, more than 3 million" (Siegel, 2006).

The second stage in the discourse on preparedness is to individualize responses and localize responsibility for contending with threats. This argument is captured in quotes by officials and in the many reports and pamphlets on preparedness that are readily disseminated by media outlets. In commenting on the need to prepare for an avian flu pandemic, for instance, President Bush says: "addressing the challenge will require active participation by individual citizens in each community across our Nation" (U.S. Department of Health and Human Services, 2006: 2). Previous Secretary of Homeland Security, Tom Ridge (2004), communicates a similar message when speaking about terrorist threats: "to defeat an enemy that lurks in the shadows and seeks relentlessly for some small crack through which to

slip their evil designs—such a victory requires the vigilance of every American, the diligent preparation of every community, and the collective will of our entire nation." Finally, in the context of preparing for future hurricanes, the current Secretary of Homeland Security, Michael Chertoff (2006), says that preparedness by citizens is "part of the responsibility we owe to our families, and it's also part of a responsibility we owe to our communities."

Just what are citizens advised to do to be prepared? First, they are given numerous checklists for things to buy: duct tape, bottled water, tissues, medical supplies, prescriptions, plastic sheets, canned food, flashlights, batteries, etc. Second, they are encouraged to volunteer in community preparedness programs or to initiate such programs themselves: "Volunteer with local groups to prepare and assist with emergency response," or "Get involved in your community as it works to prepare for an influenza pandemic" (U.S. Department of Health and Human Services, 2006: 14). Third, they are given detailed instructions on how to alter their current behavior to be more flexible in their work, education, and consumption patterns. To continue to be a productive member of the workforce, for example, the Pandemic Influenza Planning report advises: "Ask your employer how business will continue during a pandemic. Discuss staggered shifts or working at home with your employer. Discuss telecommuting possibilities and needs, accessing remote networks, and using portable computers." And to maintain the education of children without schools, the report suggests "continuing courses by TV or the internet." The "facts" of such official messages are that threats to the populace are absolute and inevitable and that the government will not be able to contend with them for its citizenry.

These many checklists and instructions construct an ideal type of a new kind of citizen-subject. The new citizen is afraid, but can effectively sublimate these fears by engaging in preparedness activities. The new citizen does not depend on the government for anything, least of all for safeguarding human security in the face of disaster. The new citizen employs the power of consumption as a shield against threats. And the new citizen internalizes flexible production and consumption models for work, education, and leisure, so that she or he can adapt to any instabilities without drawing upon the resources of the public or private sectors. These are simultaneously the rules that individuals need to internalize to be good citizens and the mechanisms by which individuals are to enlist as citizen soldiers. One implication is that those who cannot meet these expectations—because of economic vulnerability, for instance—not only fail as citizens, but in so doing also compromise the security infrastructure upon which the nation depends.

This construction of citizen-subjects occurs through discursive power operations. Whereas Michel Foucault is often cited for his treatment of disciplinary power, which operates on the level of the body, he also stressed a corresponding biopolitical power that functions on the level of populations. Biopower's mechanisms are those of measurement and regulation of reproduction, morbidity, epidemics, etc. As Andrew Lakoff (2006) has pointed out, these technologies of regulation fit neatly

with the discourse of preparedness, which mandates detailed risk assessment on the part of the state rather than active correction of the root causes of population vulnerability. The plight of the victims of Hurricane Katrina clearly demonstrates the exclusionary logics of biopower, which allow for the individualization of problems as a mechanism of population regulation.

The nature of biopower, therefore, does not rest in the state's power to kill or let live, as sovereign power did, but instead to allow certain populations to fall through the cracks, to let them die. Unlike the national security "cracks" that Secretary Ridge warned people that terrorists might be hiding in, and which the state directs its attention to with surveillance and counterterrorism programs, the fissures in social welfare are deepened by the diversion of state funding elsewhere. In his lectures titled "Society Must Be Defended," Foucault (2003: 247) said: "Sovereignty took life and let live. And now we have the emergence of a power that I would call the power of regularization, and it, in contrast, consists in making live and letting die." The current manifestation of population regulation naturalizes the "letting die" of those who are inadequately prepared. Biopower absolves the state (and others) from blame for their death through the codification of institutional racism. Foucault continues:

> In a normalizing society, race or racism is the precondition that makes killing acceptable.... Once the State functions in the biopower mode, racism alone can justify the murderous function of the State.... When I say "killing," I obviously do not mean simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on (*Ibid.*: 256).

The construction of citizen-subjects as defenders of security, therefore, indicates new relationships among states and populations. Individuals are conscripted and blamed, in advance, for failures in social infrastructure. The demise of social services and programs, in turn, normalizes the fact that the "right to let die," as a form of governance, infects the state with the pathogens of racism. The vulnerable are made more vulnerable in the pursuit of preparedness.

Conclusion

Despite efforts by the U.S. to achieve national security, and perhaps because of these efforts, conditions of vast human insecurity persist. Torture practices, restrictions of due process, and government spying introduce new layers of insecurity, while the militarization of government agencies, costly wars, and privatized security forces deplete resources sorely needed for public programs. All the while, moral panics about "not being prepared" for any sort of looming disaster are cultivated by and answered with disaster preparedness plans. Such plans construct an ideal

type of a citizen-soldier in the ongoing battle of securing the homeland. This citizen is constantly terrified, but bravely embraces responsibility for contending with all known and unknown threats, leaving the government to deal with national security matters elsewhere, as it sees fit. The resulting macro-power structure can be seen as one of "fragmented centralization" (Monahan, 2005), meaning that decision-making is highly centralized (and secretive in this instance), while the burden of those decisions falls squarely upon the most vulnerable populations in society, populations whose only recourse lies in individualized efforts to absorb the asymmetrical "responsibility" and "accountability" meted out to them. Interwoven with the various extremes of modern insecurities is the emergence of a new mode of governance predicated on the right to let others die. The imperative for social justice is to mitigate that modality in every way possible.

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