When Democracies Torture –
The Nexus between Torture and Terror in the Algerian War

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Abstract: During the Algerian War of Independence (1954-1962), torture was systematically practiced by various parties to the conflict. This paper examines the dynamics of the widespread use of torture by the French police and military in order to understand what conditions favor the practice of torture by democratic regimes. The Algerian case is a valuable example as France's use of torture in the conflict has influenced other regimes' responses to terrorism. Common narratives and arguments used to justify torture, most notably the ticking bomb scenario, date from this period.

The paper explores the systematic use of torture by the French police and military in the Algerian War in order to examine the social and political conditions conducive to the practice of torture by democratic regimes. It focuses on and extends the nexus between torture and terror that Gershon Shafir (2007) examines in an essay on the use of torture by Israel. I argue that the relationship and dynamic between the two works both ways: the use of terror makes torture more likely, but also torture can lead to terror or intensify the use of terror. Furthermore, torture can be terroristic and understood as terror. This paper identifies and explores the conditions that favor the use of torture, terror, or both.

Introduction[2]

> The struggle against terrorism makes it necessary to resort to certain questioning techniques as the only way of saving human life and avoiding new attacks.

> (Lema 2005)

> I am perfectly well aware that *there may have been some unfortunate incidents and these must be brought to an end*, but in general terms, in the main, our soldiers and their commanders have done what they had to do.

> [emphasis in original](Charles de Gaulle cited after Vidal-Naquet 1963, 92-93).

The above assertions might be found in a book or article on the practice of torture in the US 'War on Terror'. Both make the claim that the threat of terrorism suspends the established rules of interrogation and requires 'enhanced interrogation techniques'. This argument is used especially in reference to so-called 'ticking bomb' scenarios. In such instances, innocent lives are threatened and a coercive interrogation of a terrorist suspect is framed as the "only way of saving human life". Moreover, the use of euphemistic rhetoric like "some unfortunate incidents" closely resembles the Bush administration's 'few bad apples' approach to the Abu Ghraib atrocities, where it was

argued that torture and ill-treatment were the work of a few rather than a systematic problem
(Times 2004).

The quotes, however, refer to the French practice of torture during the Algerian War of In-
dependence (1954-1962), in which torture was practiced by various parties to the conflict and
became a central element of the French counterinsurgency war strategy. Published in a 1960
report, the first quotation is a statement made by a French police colonel to delegates of the In-
ternational Committee of the Red Cross. It employs the logic of the ticking bomb where torture is
a last resort to save innocent lives from an imminent threat. The second quote is from Charles de
Gaulle, then Prime Minister of the French Republic. This recurrent rhetoric justifying the prac-
tice of torture, which has been euphemistically referred to as "certain questioning techniques";
as "moderate physical pressure" in the Israeli context; or as "enhanced interrogation techniques"
during the War on Terror shows why Algeria is a suitable example to study the dynamics of the
use of torture by democratic regimes. The history of torture in the conflict has influenced other
regimes' responses to terrorism. "In America, in Israel, in Northern Ireland, as well as the rest
of Europe, [...] and a host of other countries, the new terrorism has become brutally real and the
new war on terrorism has many of its roots in places like Algeria" (Miller 2002, ix; see also Robin
2004, 51; Shafir 2007, 94).

Therefore, this paper explores the dynamics surrounding the widespread and systematic use
of torture by the French police and military in the Algerian War to identify and explore the
social and political conditions that foster the practice of torture by democratic regimes. I aim to
contribute to the existing discourse and to extend the nexus between torture and terror explored
by Gershon Shafir (2007) regarding Israel's use of torture by presenting an analysis of France's
use of torture during the Algerian War. I argue that the relationship and the dynamic between
terror and torture works both ways. Terror makes torture more likely, but torture can lead to
terror or intensify the use of terror. Moreover, torture can be terroristic and understood as terror.
There are social and political background conditions that favor the use of one or the other, or
both, that need to be identified.

Furthermore, I draw on the work of historians as well as the experience, assessment and le-
gitimation of torture by contemporary witnesses to explore the social and political conditions in
Algeria and the reasons for the use of torture. Some of these witnesses held key military positions
and were thus in charge of the practice of torture. The strategies employed by the actors involved
to legitimate torture may help to understand why torture was considered both legitimate and
necessary, and consequently practiced systematically and with impunity.

The paper first focuses on the historical background and early development of the conflict and
the use of both torture and terror in it. Through a preliminary and necessarily incomplete sketch
of the developments during the war, I outline the spiral of violence, including terror and torture,
that developed during the conflict. I examine the political and social conditions at work in the
nexus between torture and terror in Algeria. Torture was not an effective means of combating
terrorism. Rather, torture and terror were mutually reinforcing. Finally, I demonstrate that the
French military used torture as a terrorist tactic. In the following section, I briefly outline the
historical context at the beginning of the war.

Algeria under French Colonial Rule: Torture and the Struggle for Independence

The Algerian War must be understood within the wider context of the decolonization wars that followed the Second World War, particularly within the French colonies. In Indochina, the war had recently ended in French defeat. Morocco and Tunisia, both neighboring states of Algeria, were on their way to independence from France (Miller 2002, v-vi). However, Algeria was unique among French colonies due to the large-scale settlement of French and European colonists in Algeria. As a result, at the outbreak of the war, around one million Europeans and nine million indigenous Algerians were living in Algeria, with a higher proportion of non-native Algerians in the major cities (Rieff 2002, 107). Accordingly, Algeria was considered part of France with the three coastal provinces holding the legal status of French departments. This governance structure allowed for the war to be referred to as "'police operations' aimed at 'maintaining order' on French territory", or as "the struggle against terrorism" (Branche 2004, 135).

Moreover, Algeria was poorly administered, especially in the countryside. The police were underorganized and over-equipped with powers. The use of torture by the French police is an example of this; the police had tortured criminal suspects with impunity even before the war. Although torture was illegal, the victims rarely complained because it would have made their situation worse; the police controlled the prisons in which they were held. Members of the police were not convicted by the courts (Nidal Naquet 1963, 18, 22-23, 31, 37; see also Shafir 2007, 110).

On 1 November 1954, the National Liberation Front (FLN) proclaimed its goal of national self-determination and independence from France and called on all Algerians to support this effort. At the time, the FLN was largely unknown to the Algerian population. Its military arm, the National Liberation Army (ALN), had fewer than 1,000 men and few weapons. The FLN strategy included political negotiations and a series of violent attacks, such as assassinations and bombings throughout the Algerian territory, as well as acts of sabotage. The FLN also made its efforts an international cause (Vince 2020, 65-66, 69-73). It thus operated from the local-rural level up to the international stage.

As the war proceeded, a spiral of violence developed within which the practice of torture and terror became mutually reinforcing. After briefly outlining the conditions under which the conflict turned into a war, I focus on the French practice of torture as the war unfolded.

The Dynamics of Torture and Terror in the Algerian War

The FLN viewed French and European settlers as the enemy and oppressors who had stolen their land. Consequently, they targeted not only the French police and military but also European civilians and Algerians who cooperated with the French (Shafir 2007, 102). They used asymmetric or guerilla warfare tactics and needed the support of the local population to obtain information, hiding places and supplies (Vince 2020, 69).

The French government's response was two-fold. On one hand, it introduced social and political reforms and built infrastructure to improve the living conditions and prospects of the Algerian majority and thus win their support. On the other hand, it doubled the number of soldiers stationed in Algeria by June 1955 to implement its counterrevolutionary strategy. The aim was

to turn the Algerian population against the FLN, to cut off its supply lines and to reduce its ability to hide among the local population. In addition to conventional methods of warfare, these tactics included collective punishment, such as the burning of villages, the destruction of food and livestock, forced displacement, as well as extrajudicial killings and torture. In some regions, the French government declared a state of emergency. This was extended to cover the whole of Algeria in August 1955. However, instead of winning the support of the Algerian population, these measures antagonized it (Vince 2020, 69-72).

Early in the conflict, reports of torture in Algeria drew public criticism in France; the practice of torture was connected to the German Nazi regime and not considered something that France would do. The government sent a civil servant, Roger Wuillaume, to investigate the torture allegations. In his report, Wuillaume made clear that torture was undoubtedly practiced, but also argued that it was a necessary tactic for the police in Algeria, "because, especially in present circumstances, Algeria must have a more than ordinarily efficient police force" (Wuillaume 1955, 177), referring to the FLN's activities. Wuillaume advised the government to not press charges against police officers who had used torture. He also recommended that the police be authorized to "use special methods which should be laid down in detail" and employed with the authorization of a superior and in the presence of another police officer (Wuillaume 1955, 178). Even though the Wuillaume Report was one of many reports on the systematic use of torture in Algeria, the French government continued to deny its practice and made no effort to stop or punish it. Where it could not be outright denied, torture was played down as a rare occurrence (Vidal-Naquet 1963, 67, 70-72).

Meanwhile, the government demanded special powers to deal with the Algerian crisis. In March 1956, the French parliament granted the government the "powers to take any exceptional measures necessary to re-establish order, to protect persons and goods, and to safeguard the territory" (Vidal-Naquet 1963, 65). The executive thus gained "absolute power with regard to all matters concerning Algeria" (Branche 2004, 135-136). The limits on executive power in Algeria were thus not only extended, but abolished.

In Algeria, torture "started as a police method of interrogation, developed into a military method of operation, and then ultimately turned into a clandestine State institution" (Vidal-Naquet 1963, 15). Torture had been used by the Algerian police before, but its practice evolved and escalated during the war.

> Torture was used indiscriminately in the towns and in the mountains; in active operations or back in billets; against military prisoners or against civilians. Some prisoners were tortured immediately after their arrest, while others – or the same ones – languished in captivity for a period before more extreme measures were applied

> (Branche 2004, 139).

The dynamics of terror and torture within the spiral of violence escalated during the so-called 'Battle of Algiers'. In 1956, the FLN launched a bombing campaign in the capital, which resulted in many civilian casualties. On June 19, two FLN members were executed. The FLN responded with indiscriminate attacks on Europeans. In August, a European terrorist group bombed an apartment block in the Casbah, a quarter of Algiers predominantly inhabited by Algerians. The perpetrators boasted of the crime but no charges were pressed against them. The FLN intensified

its attacks (Vidal-Naquet 1963, 48), as did Europeans against Algerians (Vince 2020, 91).

By early 1957, the police's inability to manage the situation in Algiers resulted in the transfer of its powers to the military, which was given "absolute authority to carry out the war as they saw fit, without judicial or political interference" (Robin 2005, 48). Under the command of General Jacques Massu, the French launched its counterinsurgency campaign. The strategy was to "identify and disable anyone who was even remotely associated with the FLN" (Rejali 2004). Torture was a central tactic of the military's strategy alongside random arrests, mass detention in concentration camps and disappearances (Vidal-Naquet 1963, 50, 53-54). Overall, more than 20,000 official detention orders were issued. About 80 per cent of the men and 60 per cent of the women arrested were tortured. Many were killed. By the end of the 'Battle of Algiers', more than 3,000 people had been disappeared. These figures do not include extrajudicial cases, but Rejali estimates that the FLN had around 1,400 operatives in Algiers in 1956, suggesting that the number of innocent victims was massive (Rejali 2007, 482-483).

A system of torture was established based on the special powers granted by the French government to the police and the military, which in effect led to the establishment of a parallel legal system to the common law system. Algiers was divided into subsectors, each with its sorting- and torture centers. Torture was conducted by specialized units (Vidal-Naquet 1963, 51). The practice of torture was based on oral orders and instructions, without written or official government authorization. Although illegal, it was tolerated and promoted (Branche 2007, 547; Vidal-Naquet 1967, 15-16, 111).

General Paul Aussaresses, who served and tortured in Algiers, describes the 'standard procedure' in his memoirs: "First, a beating, which in most cases was enough; then other means, such as electric shocks [...], and finally, water" (Aussaresses 2002, 19). Methods of torture also included burnings, rape, confinement in cold cells, sensory deprivation, threats against relatives, water deprivation and the administration of salt water and drugs (Alleg 1958). In 1957, the torture system was expanded with the creation of the Centre de Coordination Inter-Armeés. It operated as a central intelligence organization throughout Algeria. One of these centers was Améziane Farm. Within four years, 108,175 Algerians were detained there; thousands of whom were tortured with at least 1,000 being murdered (Vidal-Naquet 1963, 55-56, 95-97).

Massu regained French authority in Algiers in October 1957. The Battle of Algiers was won through the use of extreme force in terms of intensity and numbers in a relatively small space – Algiers and especially the Casbah. This tactic was successful in Algiers, but not in the countryside (Rejali 2004). The FLN began its campaign with a relatively small number of members and supporters within the Algerian population. The French response, which included torture, collective punishment and other human rights violations, strengthened, rather than weakened, the support for the FLN among the local population. More terrorist attacks followed and France responded by delegating more powers to the police and military in Algeria and increasing the practice of torture and other human rights violations, culminating in a routine of arbitrary arrests and detentions, torture and disappearances. The nexus between terror and torture is now explored on the basis of the above. Building on Shafir's work on the Israeli model, I focus on the political and social conditions that make torture more likely in a democracy.

The nexus between terror and torture

Shafir identifies four conditions that increase the likelihood that terror suspects will be tortured: 1. military conflict or war; 2. military occupation; 3. colonialism; and 4. colonization (Shafir 2007, 101). By the start of the war, the Algerian case fulfilled all of them: Algeria was not only a colony, but also colonialized by French and European settlers. Colonial rule established the hierarchical social and legal framework in which a dominant group, with a sense of its own superiority, controlled and oppressed the other group(s) (Shafir 2007, 101). The FLN's goal was to end French superiority and the European settler presence in Algeria (Rieff 2002, 107; Shafir 2007, 102).

Other conditions that make torture more likely can be deduced from Shafir's article, which I elaborate on below, namely: 1) a hierarchical society; 2) an illegitimate grave threat to the state; and 3) the confrontation with unconventional methods of warfare, including terrorist tactics. Adding to these, 4) a dysfunctional political and legal structure; as well as 5) emergency powers can be identified as relevant factors in the Algerian case. These conditions are intertwined and linked to the four introduced above. They also affect the nexus between torture and terror; both share characteristics and/or one increases the likelihood and intensity of the other.

Shafir identifies a hierarchical society as an element that makes torture in democracies more likely. More generally, "the more clearly it is possible to divide terrorist suspects and their victims into distinct categories, whether ethnic, national or religious, the lower the ethical standards are likely to be during their confrontation" (Shafir 2007, 98); and since "torture is a process of dehumanization […], it is most easily applied to those already dehumanized through social exclusion and racism" (Shafir 2007, 98). Along the hierarchical social and political divisions, groups formed through the above categorizations are placed in different legal frameworks. This legal differentiation allows for torture to be used against one group but not the other. Shafir locates the origin of this practice in Roman law, where it was acceptable to torture those deemed as 'barbarians', but not Roman citizens. Similarly, in case of Israel, a legal dualism allows for the torture of Palestinians to defend Israel and its democracy, but not of Israeli Jews. In a colonial context, the colonial power and its members control the colonized population with a sense of superiority over them (Shafir 2007, 98-100).

In the Algerian case, the opposing groups could generally be divided along these categories: The European, mostly Christian, white minority on the one hand, and the Algerian, mostly Muslim Arab majority on the other. The term 'Algerians' was strategically appropriated to refer to the European settlers in Algeria, whereas the indigenous population was referred to as 'the indigenous' or 'Muslims'. France framed its colonial power over Algeria (and other colonies) as a civilization mission. The indigenous Algerians were portrayed as infantile, irrational and barbaric, and therefore uncivilized in comparison to the French. Discrimination against them was a central part of the colonial regime (Vince 2020, 5-8).

The ascription of these characteristics to the indigenous Algerian population can be understood as 'othering', as a process by which a dominant group – in this case, the French as a colonial power – attributes negative characteristics to a subordinate group that it perceives as inferior or a threat. Tariq Modood and Simon Thompson stress the importance of religion, race, ethnicity or other characteristics as bases for othering. These markers and stereotypes are applied to the members of the subordinate group (2022, 782, 786-787). As a result, the "othered group could have its opportunities curtailed, its rights restricted, its political voice diminished or its membership threatened" (ibid., 787). Experimental research suggests that "individuals exhibit less sympathy

towards persons of different racial, ethnic and cultural backgrounds" (Conrad et al. 2017, 769). Hence, a perceived threat leads to a diminished public tolerance of culturally different outgroups (ibid.). When we connect the process of othering to the condition of a hierarchical society, it is easier to torture the 'other', the inferior and subordinate. Different cultural backgrounds and customs were used as an argument to deny the subordinated Algerians political rights. French citizenship became an important tool for withholding rights to the indigenous colonized population. While 'indigenous Muslim' men were obligated to serve in the French military, they could only become full French citizens, including the right to vote, if they renounced their 'Muslim personal status' and gave up on customs connected to it. As this was incompatible with their religious beliefs, most Algerians remained second-class citizens. They were 'French nationals' or 'French Muslims', but not full French citizens (Vince 2020, 7-8, 42; Vince 2010, 449-450).

However, the lines between the parties to the conflict did not rigidly divide the groups. This is evident by the fact that the FLN not only attacked and assassinated French state officials and Europeans or their property but also Algerians who cooperated with the French (Shafir 2007, 102). Additionally, parts of the French and European populations in Algeria and France supported Algerian independence and/or opposed the counterinsurgency tactics. They were especially critical of the torture and internment camps because of their association with Nazi Germany, which some had experienced during the Second World War. Other sections of the French, including politicians and military officers, considered French citizens who supported Algerian self-determination to be traitors and enemies. This included intellectuals in France and Algeria who criticized the government and the military and drew public attention in France and beyond to the atrocities being committed in Algeria. Siding with the enemy made them part of the enemy (Agee 1990, 135-136).

Nevertheless, these cases were rare. Among the most prominent cases were that of Maurice Audin, a French mathematician teaching at the University of Algiers, and the journalist Henri Alleg, both sympathetic to Algerian independence and both arrested during the Battle of Algiers. Alleg was tortured for about a month and reported seeing the tortured Audin in custody before Audin was disappeared (Alleg 1958, 23, 96-97). In prison, Alleg wrote an account of what had happened to him, which was published in 1958, and shortly afterwards banned in France. The censorship of Alleg's report increased awareness and support among French intellectuals. Colleagues discussed Audin's disappearance and organized public protests in France (Vidal-Naquet 1963, 78-79, 142-143).

Public criticism was not limited to the torture of French citizens. Other examples are the trials of Djamila Bouhired and Djamila Bouazza, both members of the ALN. In 1957, their lawyers in court argued that both had been tortured while in French custody. Ultimately, the death sentences against them were not executed due to international pressure. These cases reduced support for the Algerian war in France and increased international criticism and condemnation of the French atrocities in Algeria (Vince 2020, 96-97).

Moreover, the Algerian case shows that political convictions and actions could also increase the likelihood of being tortured and leave Algerians but also Europeans without effective legal protection. Concurrently, public awareness, criticism and condemnation of torture, both in France and abroad, could provide for some protection. For example, Alleg was not disappeared but imprisoned; and in the case of the FLN members, the death sentences were not carried out. However, instead of reducing or even stopping the practice of torture, negative public opinion led to those responsible taking measures to hide the practice. This was achieved by creating special

places and teams for torture, by keeping the cases out of the courts, and instead murdering and/or
disappearing the victims of torture.

Another element that feeds into and supports the torture-terror nexus is a national security
discourse, in which one or both parties to the conflict portray the other as both illegitimate
and a grave threat to the state, its national security, territorial integrity and the security of its
population (Shafir 2007, 99, 101). The "depiction of the enemy as illegitimate, or as one not
following the rules, plays a crucial role in justifying torture as much as it does in justifying terror,
binding the two phenomena into a single nexus" (ibid., 98). As a result, terrorists and torturers
abandon warfare regulations, including the distinction between civilians and combatants (ibid.,
111). Both sides utilized this discourse to legitimate their actions. For the FLN, the French
were an illegitimate colonial power that oppressed the Algerians in their own country and de-
nied them independence. For the French, Algeria was a part of France that had to be defended
against terrorists. Each side considered the other's claim to be illegitimate and did not play by
the rules in countering the other's illegitimate claims and tactics. Both sides utilized terrorist
tactics, including torture, to achieve their ends. Furthermore, the French police and military did
not prosecute terrorist attacks committed by Europeans against the Algerian population. This
contributes to the understanding that there were different legal frameworks in place for Europeans
and indigenous Algerians.

In the Algerian War, torture was framed as a tool to be used against a new kind of enemy
that had to be fought using new methods of warfare. Within this context, torture was "not a
way of interrogating individual suspects but the paradigmatic act of waging war against both ter-
rorism and resistance. Torture is the military strategy of counterterror and conveys the warring,
occupying, colonizing power's thinking about the illegality of its enemy" (Shafir 2007, 111). In
the latter, it is linked to the illegitimacy of the claim and the illegality of the means of pursuing it.

Many of the French soldiers sent to Algeria had fought in the resistance during the Second
World War and in the Indochina War. The soldiers were experienced in traditional warfare, which
had proved of little use against the guerrilla tactics of the Viet Minh in Indochina. They saw
similarities between the insurgents in Indochina and those in Algeria: The enemy did not fight in
uniform, hid among the civilian population, also attacked civilian targets and did not respect the
laws of war (Robin 2005, 45-49).

Contemporary witnesses, such as Wuillaume, Massu or Aussaresses, considered torture as a
necessary means of fighting such an enemy. Tzvetan Todorov summarizes the military leaders'
logic for the use of torture as follows:

> torture was the only way to win the war. The Algerian war was not a traditional war
> […]; the enemy did not engage them on a mutually recognized battlefield […]. This
> was a civil war and the army did not know who its enemy was. The French were
> being ambushed and violently attacked, but by whom? And who was giving aid and
> comfort to these invisible adversaries? The army needed to know, and for this they
> needed information; if no one was offering it voluntarily or for a price, then it had to
> be coerced - through torture, if it came down to that.

> (Todorov 2007, 19)

In this 'new' type of war, torture was framed as an indispensable population control tool. It
was also positioned as necessary to obtain information needed to identify the enemy, his hideouts

and supply lines, and thus to avert the existential threat to France's territorial integrity and its national security.

The practice of torture was directly linked to the FLN as retaliation to the group's terrorist tactics. In the introduction to the translation of Roger Trinquier's (the architect of the Battle of Algiers' counterinsurgency plan) Modern Warfare, Bernard Fall describes Trinquier's rationale for the use of torture as follows: "torture is the particular bane of the terrorist, just as antiaircraft artillery is that of the airman or machine-gun fire that to the foot soldier" (Fall 1964, xv). Torture was considered to be an inevitable part of the war effort and justified against an enemy that played by no rules (Aussaresses 2002, 17). From this perspective, torture can be seen as a necessary element of a counterterrorism strategy. However, in terms of obtaining accurate and timely information, the cases from Algeria suggest that interrogation without torture was more successful. While torture did produce accurate information in some cases, it also produced many false positives. Massu himself stated in 2000 that torture was not a necessary, indispensable tool in wartime and regretted its use in Algeria (Rejali 2007, 490-491).

The case of Algeria revealed an important lesson about torture: as a terrorism deterrent and suppressant, torture often creates a backlash and that can benefit terrorist groups by radicalizing its tactics and motivating further terror attacks. Reports of torture can motivate sympathizers to support or even join a terrorist effort. On the other hand, torture practices can alienate members of the targeted group or even the wider population, making them less likely to cooperate, provided that the use of torture is known by the respective groups (Daxecker 2017, 1262-1266). In the Algerian War, allegations of torture were public knowledge in Algeria and France – which informed Wuillaume's report – as well as beyond. The French counterinsurgency strategy "forced a politics of extremes" (Rejali 2004). It alienated groups that were willing to cooperate with France and weakened less extremist groups seeking independence (ibid.). Institutionalized torture and other means of repression alienated not only the Algerian population but also parts of the French and the international community. It is difficult to assess the impact of torture specifically in relation to the other human rights violations and means of repression used by the French.

Returning to Shafir's framework, another factor that increases the likelihood of systematic state torture in democracies is a dysfunctional political and legal system. This dysfunction disrupts the rule of law and the separation of powers in a system of checks and balances. This is evident in the Algerian case where, even before the conflict, the police practiced torture with impunity and with judicial complicity. During the conflict, the French government was aware of this illegal practice. However, instead of taking action to restore the balance of power in Algeria, it gave special powers to the police and military. As a result, the victims of torture had little legal protection and the torturers were sure of their impunity; both conditions favored torture and its expansion in numbers and cruelty. Paul Teitgen, then General Secretary of the Police of Algiers, who resigned, wrote in March 1957 that:

> we have entered not merely upon a phase of disrespect of the law, [...] but in a faceless phase in which no one is responsible; this can only end in war crimes. I would never make a statement like this had I not, during recent visits to the internment camps [...] seen [...] clear marks of the same cruelties and tortures which I myself suffered [...] in the Gestapo cellars in Nancy.

(cited after Vidal-Naquet 1963, 63)

The pre-war practice of torture with impunity was part of the dysfunctional political and legal system, as torture was legally prohibited before and during the war. Although there was no official legalization or authorization of torture, none of the political branches took action to stop and prosecute its undeniable practice. This leads historian Raphaëlle Branche to conclude that torture was "both prohibited and authorized" (Branche 2004, 143). Torture occurred in conjunction with arbitrary arrest and detention, summary executions and disappearances and, for its detainees, the prisons and internment centers were lawless spaces where they were deprived of all rights. The lack of legal protection for victims of torture and its pre-conflict practice with impunity is intertwined with the first of Shafir's factors: Algerians did not enjoy the same legal protection as full French or European citizens because of the hierarchical structure of society, in which they were the 'other', and their legal and social status within it.

In addition, a state of emergency, with its expansion of executive power is another factor that increases the likelihood of torture. In the Algerian context, the state of emergency gave the executive even more power over the Algerian population, while reducing the control by the other branches. The last two aspects are not limited to the Algerian case. "Research suggests that an expansion of executive power in response to terrorism is common" (Daxecker 2017, 1264). That state of emergency powers, combined with a reduction in democratic checks and balances, make the use of torture more likely is substantiated by the use of torture in the United States War on Terror. Executive power had been expanded – for example, through the President's declaration of a state of emergency, or through Congress's Authorization for the Use of Military Force, which allowed the president "to use all necessary and appropriate force […] in order to prevent any future acts of international terrorism against the United States" (AUMF 2001). Whereas torture in Algeria took place in a French colony, the US government chose Guantánamo, Cuban territory under US-American control. For Guantánamo, the legal status of the 'unlawful enemy combatant' was created to withdraw legal protections granted by the US Constitution as well as international law (Förster 2018, 537-543).

Continuous to this, Conrad et al. (2017) argue that a foreign or external terrorist threat makes torture more likely to be used as part of a democracy's counterterrorism strategy. These conditions justify the involvement of the military whose task it is to counter such threats. Among the factors that explain their findings, they argue that torture can be used quickly and cheaply to obtain information and, compared to the police, the military has more institutional autonomy, meaning "greater delegated decision-making power, greater tolerance of secrecy, and less external oversight" (Conrad et al. 2017, 767). This is augmented in times of crisis. This autonomy can lead officers "to conclude that they would escape punishment for violating the law by engaging in torture" (ibid., 767). Information gathering is linked to deterrence: torture can provide information and deter terrorists from future attacks (ibid., 766). The police in Algeria enjoyed greater institutional autonomy than in metropolitan France and torture was practiced with impunity before the war. Its use was extended and systematized by the military, which was given autonomy in the choice of its means. These findings support the fourth and fifth aspects of this framework, namely that a dysfunctional legal system marked by a lack of institutional oversight, ineffective rule of law principles and emergency powers increases the likelihood of torture.

Overall, several indicators that increase the likelihood that democracies will systematically use torture have been explored: military conflict or war; military occupation; colonialism and colonization; a hierarchical society characterized by judicial discrimination with different legal frameworks for different groups; a dysfunctional political and legal system; and a serious and illegitimate threat to the state from a new type of enemy using unconventional methods of warfare,

especially terrorism. These elements were elaborated based on Shafir's findings about the Israeli model. Meaningful parallels with the practice of torture in the US War on Terror have also been drawn. In the following section, I explore the question of whether torture itself can be considered as terror in the Algerian case.

Torture as State Terror

In what sense was torture a means of state terror in the Algerian case? 'Terror' can broadly be defined as the use of violence by a person, group or government to influence a government's and/or public's position on a political issue (Daxecker 2017, 1264). The term 'terror' originally referred to state terror, particularly to the Jacobin terror regime in France at the end of the 18th century. State terror was used to reshape society by "suppressing all enemies of the revolutionary government", "actual or potential, proven or suspected", aiming "to strike terror in the hearts of all who lacked civic virtue" (Primoratz 2022). Hence, state terror is a means of controlling a society. It is characterized by powerful executive institutions exercising (arbitrary) violence against a (defenseless) population in whole or in part, but focuses on the members or sympathizers of the (supposed) opposition or enemy. The inherent arbitrariness of state terror influences the unpredictability of the choice of victims, who may even be chosen at random from the group in question. Additionally, state terror can be a method of warfare. The bombings of German and Japanese cities during the Second World War, for example, are sometimes referred to as 'terror bombings' (ibid.).

Attempts to characterize different types of torture distinguish, inter alia, between interrogational and terroristic torture (e.g. Shue 1978, 132-133; Wisnewsky 2010, 7-8). Whereas interrogational torture aims to obtain information and ends when this information is obtained, terroristic torture uses the suffering of its victim to intimidate, frighten and terrorize others – members of certain groups, such as dissidents, or entire populations, to deter future action. Terroristic torture can be limitless in the selection of its victims (which can be arbitrary among the target group), as well as in the means of torture and the suffering inflicted by said means, which could be fatal.

The use of torture as a counterinsurgency strategy is not limited to victims who are members of a terrorist organization. Targets can include anyone who is perceived as having information valuable to counter an insurgency or, in other cases, it can be arbitrary. As indicated earlier, torture was practiced arbitrarily in the Algerian War and continued "long after viable information could be retrieved" (Rejali 2004). Accordingly, torture was not only used to obtain information; it was used for other objectives, including as a means to terrorize. While the FLN's terror tactics were aimed at destroying the existing political and social structure, achieving self-determination and expelling the European population, French state terror was aimed at suppressing the Algerian population. As such, the colonial power held the collective responsible for the actions of individuals or small groups. From the early stages of the conflict, the French responded to FLN terrorist attacks by retaliating against the civilian population with which the FLN blended. Torture was practiced as a 'reason of state' and used indiscriminately, against FLN members, suspects and random civilians. The French used state terror to undermine civilian support for the FLN and other groups that promoted Algerian independence. Along with other atrocities, it was a central element of the French military's war strategy in Algeria, particularly during the Battle of Algiers.

Daniel Bogner argues that Aussaresses and his team attempted a systematic and effective use of 'counterterror' (2004, 85-87). During the Battle of Algiers, the inhabitants of the Casbah lived

in constant fear of arrest, torture and disappearance; a situation of constant terror. Algerians were regarded as FLN accomplices; they were intimidated, humiliated and terrorized in order to demonstrate French military dominance. Torture was a central element for the French army to achieve this goal (Rejali 2007, 487-488). The effect was therefore not limited to those who became victims, but was aimed at the whole group. The system of detainment camps throughout the country where torture took place, were building blocks of a system of repression, "a strait-jacket designed to keep the Algerian revolution within bounds by terror" (Vidal-Naquet 1963, 97-98).

In summary, the French military used torture not only to obtain information, but also to retaliate, to terrorize and to undermine public support for the FLN and Algerian independence. Its use was systematic and included the establishment of torture centers and units. Although torture was never formally legalized, it was authorized, justified by state agents within the civil and military service, and practiced systematically and with impunity.

Conclusion

This paper aimed to understand the dynamics of the systematic use of torture by democracies, including the practice itself as well as the social and political conditions that foster and justify it. The practice of torture by the French police and military during the Algerian War was used as a case study to this end. I have focused on the nexus between torture and terror and the background conditions that favor the use of one, the other or both.

Colonialism and colonialization, military occupation and military conflict are the four characteristics that Shafir identifies. This paper demonstrated that the Algerian case meets these conditions. They are linked to other factors, such as a hierarchical society, in which Algerians were 'the other', a subordinate group, and dominated by the French and European settlers. Algerians were politically, economically, legally and socially disadvantaged as part of the structure of the colonial regime. This structure left Algerians with little legal protection and made them vulnerable to torture prior to and, even more so, during the war. This hierarchical sociopolitical system was also one of the reasons for the Algerian struggle for independence from France.

Moreover, this paper showed that torture becomes more likely when a grave or even existential and illegitimate threat to the state is perceived, even more so when that threat includes terror attacks. An enemy who does not abide by the rules of law and of war and does not fight according to conventional standards should not be protected by those rules or standards. In addition, an enemy using guerilla tactics cannot be fought effectively with conventional warfare strategies. Information is needed, as well as the control over the population. Torture is seen as a means of obtaining this information, as well as a means of oppressing and terrorizing (potentially) opposing sections of the population. The preexisting hierarchical structure and dysfunctional political and legal system made this practice possible. The judiciary did not investigate allegations of torture, even though torture was officially prohibited before and during the war. The government and parliament also failed to take decisive action to stop atrocities during the war. The expansion of executive power under the state of emergency and the special powers granted by parliament are further factors that increase the likelihood of torture.

This paper then focused on the nexus between torture and terror. Both were used by the two main parties to the conflict to force their opponents to cooperate or change their policies. Both were directed against an enemy perceived as illegitimate. The use of torture did not begin with the FLN's terrorist attacks. However, its use increased throughout the war. The terrorist attacks triggered an escalating cycle of violence perpetrated by the parties to the conflict. This violence was not limited to torture, which highlights another important observation: Torture is often accompanied by multiple human rights violations, such as arbitrary arrest and detention, the denial of legal protections, murder and enforced disappearance. These are interrelated: Victims of torture were disappeared so that there was no evidence that torture took place, no body exhibiting signs of torture, and no person to report it.

Finally, the paper found that torture is not only a tactic in the fight against terrorism, it is also a terrorist tactic and was used as such in the Algerian War. Instead of being effective in countering terrorism, torture and terror reinforced each other. Torture is not a necessary means to win a war on terror, but contributes to losing it: A growing section of the Algerian population supported the FLN's campaign for independence, which strengthened the FLN rather than defeating it. Reports of torture led to international pressure against the French counter-insurgency strategies and shifted opinion in favor of Algerian independence.

This paper also observed that the use of torture in Algeria bears some similarities to the US 'War on Terror', thereby reinforcing the findings of this paper. These similarities include terrorist attacks by an organization hiding among civilians, special powers granted by parliament, the establishment of camps where detainees were not treated as prisoners of war or as criminals by a functioning legal system, and the practice of torture. Additionally, parallels with the Israeli case are drawn by Shafir. Returning to the introductory quotations, similar justifications are used to defend a practice that is simultaneously denied.

The question may arise: Can a political system in which there are differentiated legal frameworks for different groups, lawless spaces in which the executive can do as it pleases without legislative or judicial oversight and impunity regarding the establishment of practices and structures that disregard the law still be considered as a democracy? This question cannot be addressed here. Still, it highlights that the practice of torture contradicts several norms that are fundamental to the modern idea of democracy, such as equal fundamental rights, the separation of powers and the rule of law. Vidal-Naquet writes that, "it must always be remembered that there is not a single country, not even the most liberal in the world, which is safe from the infection whose symptoms I am about to describe" (1963, 18). Torture is not an infection that enters a democracy from the outside; it is also not a necessary response to a terrorist attack. The characteristics that increase the likelihood of the practice of torture – such as a hierarchical society or dysfunctional mechanisms related to the separation of powers and the rule of law – are mostly found within a democracy and are embedded within the political, legal and social structures of society.

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Notes

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