Why the Torture Taboo Matters

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Declaration

I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary education institution.

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Abstract

Torture is one of the most prohibited practices in international society and has become a symbol of cruel and unnecessary suffering. Despite this absolute prohibition, torture is widely practiced by states around the world. This disparity between the prohibition of torture and the practice of states raises fundamental questions about the role and power of moral norms in world politics. Does the torture taboo matter? Or are political realists correct in arguing that power politics rules?

This thesis makes the paradoxical argument that despite its widespread violation, not only does the torture taboo matter, but that its strength can be found by studying its violation. The torture taboo constitutes state identities and interests and shapes state actions. Even during times of security crisis, the torture taboo is not forgotten. States hide, deny, and re-define their torture, outsource it to other states, or use techniques that do not leave marks on the body. The fact states go to such great lengths to hide their use of torture demonstrates not the weakness of the taboo, but rather its strength.

In order to demonstrate the power of the torture taboo, and explain why states deny their use of torture, I trace a genealogy of the taboo from the eighteenth century to the twenty first century. I show how international society came to understand torture the way it does today. I show also that the taboo has not developed in a linear fashion, but has become more robust over time due to a series of fortuitous events, and, most surprisingly, in response to widespread inhumanity. By showing that the history of the
torture taboo is also a story about what it means to be human, I seek to show that the taboo contains normative values immanent in the present that are integral to experiencing the good life.
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Introduction

Torture is one of the most condemned practices in world politics and is absolutely prohibited in international society. No country would dare openly torture. Nor would a country dare have a policy advocating torture. “No society on earth,” says Hajjar (2008, 235), “advances the claim that torture, as legally defined, is a valued or integral part of its cultural heritage or political culture.” The UN High Commissioner for Human Rights, Navi Pillay, stated in 2009, “[t]orture is a barbaric act. I believe no state whose regime conducts or condones torture can consider itself civilized” (Human Rights Watch 2010, 1). This condemnation stands in stark contrast to the widespread violation of the torture taboo. In an Amnesty International (2000) report released in 2000, it found that 150 countries engaged in torture or ill-treatment.

The above paragraph raises three heavily intertwined issues. The first is the concern to abolish unnecessary harm and violence in world politics. The second concerns the progress that has been made in achieving those goals. And the third concerns how we have come to understand ourselves as “civilized” human beings. All three issues relate to how the torture taboo has shaped our behaviour, the types of obligations we have toward one another, and the limits imposed upon states to hurt individuals. The attempt to ameliorate harm and restrict what Linklater (2011) has called the state’s “power to hurt” has been a prominent theme in international relations theory. Yet for something that is deemed so important, a study of the torture taboo has been heavily neglected in international relations scholarship. What role does the torture
taboo play in world politics? Given its widespread violation, does the torture taboo matter? Have we kept pace with the state’s power to hurt? (Linklater 2011, 258).

To suggest that a cosmopolitan norm such as the torture taboo matters in world politics would be treated with scepticism by some. The realist would respond by telling us to stop being so naïve. Can’t you see that violence has characterised international politics for centuries! To succumb to idealism is dangerous and ignores the fact that one cannot engage in politics without getting their hands “dirty”! States are in intense competition with one another and the primary concern of the state is its security and survival. Concerns about transgressing universal moral principles are overshadowed by the realities of the logic of anarchy and the hegemonic influence of material interests.

Such a position represents a form of pessimism that I seek to challenge in this thesis. I show that despite widespread violations of the taboo in international society, states hide, deny, re-define and outsource their torture. Just because states may at times violate the taboo does not mean the taboo ceases to matter. Humanitarian pressures continue to operate on states even during times of necessity. This can provide hope of escaping the realist logic of power politics by capturing these humanitarian norms to bring about normative change in world politics. Violations do not demonstrate the weakness of the taboo, as realism would suggest, but offer a valuable site in which to examine its strength.

Yet this thesis also explores how torture came to have the meanings it does, and how these historically contingent meanings have influenced identities, interests and actions in world politics. Why is torture taboo? Why does it have the meaning that it has? What factors have resulted in this prohibition? And do our understandings of the torture taboo continue to change over time? Despite an absolute prohibition on torture, other forms of violence and harm do not receive the same level of prohibition. We continue to go to war with one another, leave open the opportunity to use nuclear
weapons in stringent circumstances (see Tannenwald 2007), and allow exceptions to the taboo against murder. What separates torture apart from these other forms of violence that can inflict the same, if not more, physical harm on the human body?

Nietzsche (2003, 1) famously declared, “We are unknown, we knowers, ourselves to ourselves: this has its own good reason. We have never searched for ourselves – how should it then come to pass, that we should ever find ourselves?”

Recent studies on torture have focused on the use of torture in the recent “war on terror” (Dunne 2007; Foot 2006; Roberts 2007), whether torture should be used against “ticking-bomb” terrorists (Allhoff 2003; Bagaric and Clarke 2005; Bellamy 2006; Dershowitz 2002; Ignatieff 2005; Levinson 2004; Shue 2006; Walzer 1973), the characteristics that make torture immoral (Scarry 1985, 139-157; Shue 1978; Sussman 2005), and how new forms of torture techniques have emerged (McCoy 2007; Rejali 2007). But a study that examines how we have come to understand torture the way we do, and what influence the torture taboo has in world politics has been sorely neglected. This thesis makes a contribution to the expanding constructivist literature by examining the role morality plays in shaping identities, interests and actions in international society. My goal is to examine the origins and development of the torture taboo from the eighteenth to the twenty-first century to understand how we have come to understand torture and the possibilities immanent in the present that can help abolish torture in world politics. Building upon the work of Asad (1997, 2003), what I seek to show is that a history of the torture taboo is both a story of prohibiting unnecessary harm and understanding what it means to be human.
The Problem of Torture in World Politics

How am I to proceed in showing that the torture taboo matters? The dissonance between the torture prohibition and its violation in practice raises fundamental questions about the nature of international politics and the ability of norms, rules and institutions in international society to prohibit unnecessary harm. The torture prohibition is a *jus cogens* international norm,¹ and is embedded in major humanitarian and international human rights laws.² The apparent disregard for the torture taboo initially lends support to the realist understanding that power and competition dominate the state system. Thucydides (1972, 402) in the Melian Dialogue demonstrated the consequences of the inequality of power amongst states whereby “the strong do what they have the power to do and the weak accept what they have to accept.” While, centuries later, Machiavelli (2003) had little time for the importance of morality, arguing the exercise of cruelty can help hold on to political power.

Although modern realists do not take such positions regarding the use of cruelty for political purposes, they do continue to offer a pessimistic view as to the role moral norms, such as the torture taboo, play in international politics (Gilpin 1984, 290; Mearsheimer 1994-1995, 10). For structural (neo) realists, the international anarchical system conditions states to preference their self-interest and survival ahead of moral principles. Because there is no global leviathan to prevent states hurting one another,

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¹ Also known as a peremptory international norm. Article 53 of the Vienna Convention of the Law of Treaties (1969) defines a peremptory norm as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character” (see also Malanczuk [1970] 1997, 57).

² See Article 5 of the Universal Declaration of Human Rights; Article 99 of the Third Geneva Convention and Common Article 3 of the Fourth Geneva Convention of 1949; Article 7 of the 1966 International Covenant on Civil and Political Rights; Article 2(2) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 5(2) of the American Convention on Human Rights; Article 5 of the Inter-American Convention to Prevent and Punish Torture; Article 5 of the African Charter on Human and People’s Rights; and Article 7, 8 and 55 of the Rome Statute of the International Criminal Court.
the constant possibility of force means states exist “in the brooding shadow of violence” (Waltz 1979, 102). The freedom of states generates insecurity and mistrust as the “self-help” system leads to a constant struggle for power and domination among states (Mearsheimer 1994-1995, 10-12; Waltz 1979, 105,112). The torture taboo has failed to effectively restrain states because the material conditions of anarchy force states to preference material and security interests over moral values (Mearsheimer 1994-1995, 10; Williams 2005, 109). Moral norms, if they are talked about at all, are cheap talk that are acknowledged in public but dismissed in private (Desch 2003, 417).

Classical realists, seen most prominently in the work of Morgenthau, provide more of a role for morality in world politics, but continue to remain doubtful as to the ability of morality to weaken the struggle for power. Differing themselves from structural realism by focusing on the state’s will to power (Mearsheimer 1994-1995, 9 fn20), classical realism sees morality as acting as an exogenous restraint on state action (Morgenthau 1993, 224-249). Both Morgenthau (1993, 225) and Carr (2001, 92) argued that one must focus on both power and morality in world politics to see that states cannot actually do as much as they would like to do. A state, for example, does not use mass extermination to defeat its enemy’s population; not because it is not strategically effective, but because it is wrong (Morgenthau 1993, 226-228).

During peacetime, morality has provided a constraint on the use of force and a realist may argue that the torture taboo has been effective here. However, it is when the taboo clashes with state interests and necessities that the “perennial forces” (Morgenthau 1993, 12) inherent in politics make it difficult to be both politically successful and uphold the torture prohibition. Morgenthau (1945b, 11-12) argued that we face an imperfect world that imposes conflicting moral and ethical demands upon us, both in relation to the self, and to others. This tension means that when we act in the world we cannot help but violate some moral principles in order to adhere to others.
(Morgenthau 1945b, 11). By simply acting in the world, it corrupts our good intentions and destroys our integrity (Morgenthau 1945b, 11).

This tragedy is exacerbated in the political sphere. The human being is an \textit{animus dominandi} that is either being dominated or seeking power to dominate others (Morgenthau 1945b, 5, 13-14). This makes the art of political ethics a practice in doing evil: “To the degree in which the essence and aim of politics is power over man, politics is evil; for it is to this degree that it degrades man to a means for other men” (Morgenthau 1945b, 14). However, acting in an immoral world does not give the statesman free reign to do what one likes. To act morally in the political sphere one must not chase moral abstracts but act according to the political reality of the time and carry out the lesser evil of the acts available (Morgenthau 1945b, 13; Murray 1996, 104-105).

For the statesman, who has obligations and duties to protect the state’s interests, the pursuit of the national interest is the highest moral act. To act morally is to pursue power and conduct one’s affairs according to state interests and necessity. As Kissinger (1994, 61) argued, “states do not receive credit in any world for doing what is right; they are only rewarded for being strong enough to do what is necessary.” States are in constant competition and promoting human rights at the expense of the national interest can harm state interests (Loriaux 1992, 415; Morgenthau 1993, 245-249). One must not be surprised then, argues the realist, when states have to compromise on upholding human rights when security concerns come to the fore (Desch 2003, 417-418; Linklater 2011, 122-127; Loriaux 1992, 415-416; Morgenthau 1993, 245-249; Walt 2001-2002). One can better hope to limit unnecessary harm by practicing prudence through self-restraint, respecting the interests of others, and recognising limits of power (Linklater 2011, 123; Lang 2007; Hulsman and Lievan 2005). For Gilpin (1984, 304), “this moral scepticism joined to a hope that reason may
one day gain greater control over passions constitutes the essence of realism and unites realists of every generation.”

Realism provides a powerful means to understand the current problem of torture in world politics. It helps explain why repeated attempts at prohibiting torture have failed because such efforts do not take into account the weakness of norms and law or the incessant struggle for power among states. Moreover, it makes valuable contributions in showing how morality can act as a constraint on behaviour and how the conflict between different moral obligations and duties can contribute to violations. In addition, the realist argument is strongly supported by the fact that empirically, not many examples have been provided to demonstrate that moral norms have trumped material interests or power (Desch 2003, 418-419).

However, without leaving realism behind, this narrative does not adequately explain the influence humanitarian pressures have on states, especially during norm violations. As Linklater (2011, 127) argues, it is unwise to ignore realist warnings that “necessity” will often trump concerns about moral norms but equally unwise to ignore normative developments that have helped constrain the ability to harm in world politics. States hide, deny, re-define and outsource their use of torture to hide the fact they have violated the torture taboo. Moreover, states have increasingly adopted no-touch torture techniques to further hide evidence torture has taken place (Rejali 2007). This behaviour goes beyond material interests and demonstrates the pressure of a constitutive normative framework in action (Frost 2008, 142-147). States know what they are doing is wrong and seek to hide their torture to avoid the stigma and public outrage that come with the violation of norms. To better understand these humanitarian pressures and how they offer hope of escape from the realist logic of anarchy, I would now like to show how constructivism can offer a more fruitful understanding of the power of the torture taboo.
Torture, International Society and the Study of Violations

States are not just guided by the interests of gaining power and necessity; they are part of a socially constructed international society that shapes states through norms, rules and institutions (Bull 1995; Dunne 1995). Hedley Bull (1995, 8-19) argued there are common interests and values among states that help maintain international order. It is an international society that, “although precarious and imperfect” (Bull 1995, 50), helps to maintain order by seeking (among other things) to limit violence and war (see Bull 1995, 16-19).

Yet, there are also common values and norms among humankind as a whole, which Bull called world international society (Bull 1995, 36-38). World international society concerns the common values and interests reflective of Kantian principles of human solidarity and universalism (Bull 1995, 36-37). For Bull, world order is morally prior to international order because world order is based on “human beings, which are permanent and indestructible” (Bull 1995, 21). It is these values, such as human rights, or the humanitarian laws of war, that are integral to understanding why states torture in secret and why the torture taboo matters in world politics. As will become apparent throughout this thesis, the reason this is so is because these norms help to discipline and constitute actor identities and interests and provide legitimacy for their actions (see Clark 2005, 2007; Hurd 1999; Wheeler 2000).

The torture taboo still matters during violations because conditions of necessity are not void of these humanitarian principles and norms. Important work has been carried out in the last several decades that show that conditions of war do not absolve the environment of moral content (Katzenstein 1996a; Walzer 1978). Walzer (1978) in particular has shown to great effect that war is a moral domain that involves judgements about good and bad, right and wrong, and moral dilemmas of how one
ought to act in particular circumstances. This thesis draws upon this work to show that humanitarian pressures from the taboo continue to operate on states, even when they violate the norm. Although it is generally acknowledged that violations of a norm do not necessarily invalidate it (Kratochwil and Ruggie 1986, 766-769; Kowert and Legro 1996, 484-5; Sandholtz 2008, 108-109), studies have neglected whether one can find the strength of a norm by examining its violation. How, then, can studying violations offer a means to study the strength of the torture taboo?

Norm violations are a site of justification for behaviour and such justifications can demonstrate the evidence of a norm. One may interpret the hypocrisy of states regarding the torture taboo as evidence of the weakness of the taboo and evidence that moral norms represent hot air in world politics. In its 1973 global Report on Torture, Amnesty International (1973, 17) wrote, “It is significant that torture is the one form of violence today that a state will always deny and never justify. The state may justify mass murder and glorify those that kill as killers, but it never justifies torture nor glorifies those that torture as torturers.” Yet these “communicative trails” of lying and denying are not just fig leaves but evidence of a norm (Finnemore and Sikkink 1998, 892). As Finnemore (1996a, 159) notes, this discourse is “literally an attempt to connect one’s actions to standards of justice, or, perhaps more generically, to standards of appropriate and acceptable behaviour.”

The normative framework of the taboo places limits upon state behaviour. Although the norm is still violated, states cannot do as much as would be possible if no norm existed at all. It is this counter-factual that helps understand the power of the taboo. The hiding and denying of torture is explained not just by the constraining function of the taboo, but also by its constitutive function (see Frost 2008, 142-147). The taboo constitutes one’s identity as a “civilized” state. Actors who violate the taboo

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3 A notable exception is Price (1997, 134-163).
realise torture is inappropriate behaviour and that openly challenging the taboo is to call into question one’s identity as a “civilized” state. Torture is denied and secret because it is not something “we” do. This can impact on some of the most brutal and powerful states. For example, as I show in Chapter 2, the Nazis and the Soviet Union refused to admit to torture or openly challenge the taboo because they feared the impact it would have on their legitimacy and international reputation.

To violate the taboo has serious consequences for both a state’s identity and its policies. The political blowback that can come from violating valued moral principles can harm state strategies and bring about norm conformity. In Chapter 4 I show how France employed torture in French Algeria to defeat the FLN independence movement. This provoked moral outrage in segments of the French population who feared France was facing degeneration into a barbarous state. The domestic pressure in conjunction with international outrage contributed to the decision for France to withdraw from Algeria, despite significant military victories.

The most powerful states are not immune from the consequences of norm violations. Although one may argue that the US violated the torture taboo during the “war on terror” with minimum impunity, this ignores the fact that the US suffered severe damage to its international reputation (Roberts 2007, 200). The Abu Ghraib scandal and revelations of torture in Guantanamo Bay undermined the moral credibility of the US in the Middle East (Guardian 8 May 2004). Military strategists were continuing to claim that even by 2009, five years after Abu Ghraib broke news headlines, the US were still struggling to gain the confidence of the population in Iraq (Haaretz 29 Aug. 2009). International politics is not a situation whereby the strong do what they like while the weak do what they must; even the strongest face limits and negative consequences from violating moral principles in international society.

Finally, widespread violations of the taboo do not necessarily challenge the
norm; in fact, violations can offer an environment in which to strengthen the norm. I do not deny that violations can signify the emergence of new norms whereby the violated norms are no longer deemed in need of protection. But norm violations can also provide environments that facilitate condemnation, disputes and arguments that can assist in normative development (Checkel 2001; Risse 2000a; Sandholtz 2008).

The strength of the taboo can be seen by the fact that its most profound reconstructions in the twentieth century have been in response to large-scale inhumanity. The Nazi atrocities of World War II did not weaken the stigma of the torture taboo but strengthened it. Torture was condemned absolutely in the Nuremberg Trials and prohibited under the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions. Moreover, the debates that ensued in the immediate post-war period further strengthened the normative stigma of the taboo by associating torture with “crimes against humanity,” which pose a threat to international peace and security. As I show in Chapter 3, the protection of the taboo was integral not only for international peace, but for individuals to experience the good life.

Similar events occurred when Amnesty International (1973, 1984) exposed the global violation of the torture taboo during the 1970s and 1980s. As a result of Amnesty International’s campaigns, the UN Convention against Torture was adopted in 1984, which established universal jurisdiction and the principle of non-refoulement. Despite widespread violations, the absolute prohibition against torture continued to remain standing. As I show in Chapters 3 and 4, these periods of violations forced a period of self-reflection upon actors in international society that demonstrated more effort needed to be taken to abolish cruel and unnecessary harm in world politics.
Challenging the Realist Logic of Anarchy

How does this argument help escape the realist logic of anarchy? The norm is still being violated, individuals are still being harmed, and one could argue this does not adequately challenge the realist logic that international politics is a struggle for power and security. So far I have argued the strength of the taboo can be seen by studying its violation. But what do I mean by strength? To understand strength as simply the ability of the norm to constrain actors would fall short in understanding the complex workings of the torture taboo. To help understand the taboo’s strength, I make a distinction between the constraining function of a norm and the legitimacy of a norm. Legitimacy helps to determine who a rightful member of international society is, and the appropriate way in which they are to behave (Clark 2005). It is the powerful legitimising role the taboo has in constituting rightful conduct and “civilized” identities that gives the taboo its strength. Despite the fact states have violated the torture taboo, the strength of the taboo’s legitimacy can still be seen by the measures states take to deny and hide norm violations, the public outcry that can be generated when torture is exposed, and the inability of states to openly challenge the taboo.

Although I do not deny that a violation of the taboo harms its constraining function, violations do not necessarily show the weakness of a norm. Simply focusing on the struggle for power ignores the ability for the taboo to moderate violence and act as a moral resource for actors to challenge the most powerful states. Power and material interests are not the only pressures placed on states during times of necessity. Studying violations to demonstrate the power of the taboo takes on the realist logic of anarchy in two ways. First, it highlights the strength of the torture taboo at the very site at which the realist argues it demonstrates its weakness. And second, it takes on the strong realist criticism that international relations scholarship on norms has only been
able to provide a few examples of where norms have constrained states. This is indeed a weakness of the constructivist literature and it is something I wish to ameliorate by showing that the normative framework can still influence and constrain states during norm violations.

Yet, this thesis also takes the position that the realist understanding of international relations is not a reflection of reality, but a socially constructed understanding of reality. Therefore, if we created this world, we can also change it. Constructivists examine the reflexive relationship between the social construction of reality and knowledge and the role power plays in linking the two (Guzzini 2000). The material and social world does not have any intrinsic meaning that human beings have access to; rather we create meaning through the co-constitution between agents and the social structure. The co-constitution of international society breaks away from the realist argument that anarchy is a battleground of violence. As Wendt (1992) argues, “anarchy is what states make of it.” This means that the structure is never out of the control of agents as such, but it does place constraints on the ability for change (Giddens 1984, 1-37).

These ontological and epistemological assumptions are combined with a third element of constructivism that argues identities and interests are constituted by the international normative and legal framework (Adler 1997; Price and Reus-Smit 1998; Reus-Smit 2004). Even though there are different types of constructivism, they all share these philosophical assumptions. By showing that norms constitute one’s identity it becomes easier to understand why norm conformity is not just generated by self-interest or coercion. Norm conformity can also be because of the norm’s legitimacy or because it is what an actor ought to do (Checkel 2001; Hurd 1999; March and Olsen

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4 For Habermasian communicative theory, see Risse (2000a); for Bourdieu based theory, see Guzzini (2000); for Giddens structuration theory, see Wendt (1992) and Towns (2010); and for work that draws upon Nietzsche and Foucault, see Bartelson (1995) and Price (1997).
This thesis also builds upon the constructivist literature that has examined the role of prohibition norms in international politics (Nadelmann 1990; Price 1997, 1998; Tannenwald 2007), how norms evolve (Barkin 1998; Finnemore and Sikkink 1998), how they spread and are “taught” as part of a “world culture” (see Boli and Thomas 1997; Boyle, McMorris and Gomez 2002; Finnemore 1993, 1996b; Meyer et al 1997a, 1997b; Ramirez and Boli 1987) and how norms can be used to entrap and constrain states (Florini 2000; Klotz 1995; Lynch 2008). Moreover, I have drawn upon the work of those who have examined the constitutive, constraining and facilitating effects of legitimacy in world politics (Clark 2005, 2007; Hurd 1999; Wheeler 2000). States hide and deny their use of torture because torture violates important international norms and undermines one’s legitimacy in international society.

In addition, I have drawn upon the constructivist literature concerning norm contestation (Krook and True 2012; Sandholtz 2008; Van Kersbergen and Verbeek 2007; Wiener 2004, 2009) to show that internalised norms can become contested in practice. As I show in Chapters 5 and 6, adherence to internalised norms is not automatic, as Finnemore and Sikkink (1998, 904) have suggested. Rather, a new battle occurs as states implement the norm. In this case, I show that as the normative framework of the torture taboo has become more robust over time, the site over its contestation has narrowed. States no longer openly contest whether there are exceptions to the prohibition, but contest what practices constitute torture. As I show in Chapters 5 and 6, this battle actually demonstrates the robustness of the taboo rather than its weakness.

By challenging the idea that international relations is just a repetition of violence, or that qualities of the international system are beyond the reach of agents, it opens up the possibility of change. As Wendt (1995, 80) states, if change “is possible,
then it would be irresponsible to pursue policies that perpetrate destructive old orders, especially if we care about the well-being of future generations.”

The torture taboo represents a symbol of the efforts taken by international society to abolish cruel and unnecessary suffering in world politics. Unlike the realist that would argue the widespread violation of the taboo is evidence of a lack of a society, the continuing strength of the taboo during violations demonstrates the evidence of an international society. Torture is hidden, denied and re-defined because torture cannot be justified in the national interest. The laws and norms of international society recognise that the torture taboo cannot be violated under any circumstance. The fact that the taboo is still taken into account and influences state actions, interests and identities during violations shows how these forces can be harnessed to help bring about change and offer hope of a new, more humane world order.

This thesis offers a novel account of how to see the strength of prohibition norms. Other accounts of norms have shown how the strength of a particular norm can be seen by the fact it was not violated even though it would have been in one’s material interests to do so (Price 1997; Tannenwald 2007). However, the history of the torture taboo has not been a result of a tradition of non-use; rather, it has become more robust in the face of violations. But what makes torture “taboo”? How and why has torture come to be considered so immoral? And how has it developed?

**The Torture Taboo**

What makes torture “taboo”? How does a taboo differ from a norm? I define norms as referring to standards and expectations of appropriate behaviour (Katzenstein 1996b, 5; Makinda 2003, 43). Taboos are norms, but not all norms are taboos. Taboos identify and classify transgressions that are concerned with “the sociology of danger” (Douglas

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2002; Steiner 1999; Tannenwald 2007, 10). That is, taboos are concerned with crossing boundaries that result in untold danger (Steiner 1999, 189; Tannenwald 2007, 11). To violate a taboo, according to the anthropological literature, is to bring about a social contagion effect that affects not only the violator but the wider community. Therefore, for Steiner (1999, 147), taboos localise danger “both by the specification of the dangerous and by the protection of society from endangered, and hence dangerous, persons” (Steiner 1999, 147). In localising and protecting individuals and the community from danger, taboos uphold “a vision of the good community” (Douglas 2002, xx).

Seeing the torture taboo in terms of “the sociology of danger” provides a more nuanced understanding of torture and why it is prohibited. Torture is condemned not just because it is immoral but because it is dangerous. Torture is embedded in a network of classifications and categories of pain and suffering that help make the identification of a transgression (and hence danger behaviour) possible. It is not the infliction of pain and suffering per se that is deemed to be dangerous, but whether it is an excess and unnecessary infliction of pain.

It was the excess of pain that led the *philosophes* in the eighteenth century to see torture as dangerous to the social order. Torture undermined justice in the social contract by taking away too much liberty from citizens than was necessary to maintain order. Yet cruel and unnecessary punishments also transformed citizens into callous brutes and generated fears that one’s society would regress to a more barbarous age. By the twentieth century this danger was exacerbated as torture was condemned as a “crime against humanity” that posed a threat to international peace and security. One can see here the localisation of danger. The infliction of pain and suffering during warfare is deemed legitimate if carried out according to the laws of war; however, transgress these principles and one faces unforeseen danger.
The danger behaviour from transgressing the taboo is phenomenological: “The people can believe because they collectively want to believe” (Douglas 2002, xiii). The danger from a violation of the taboo is based on historically contingent inter-subjective beliefs and metaphors that help us interact with one another. Taboos tell us what is prohibited, thereby shaping our actions by indirectly telling us what is permitted. But what is so dangerous about torture? Why do we allow exceptions to using nuclear weapons or to the killing of other human beings but continue to condemn torture absolutely?

Since the eighteenth century the torture taboo has become a symbol that represents a set of values deemed in need of absolute protection for individuals to lead a fulfilling life. The taboo represents the Kantian principle that the individual must be treated as an end and never as a means (Kant 2005, 105). The taboo is therefore integral to world justice understood as those ideas linked to “the world common good” (Bull 1995, 81). Torture represents a particularly cruel form of pain and suffering that attacks the defenceless (Shue 1978) and violates the consent of the victim (Scarry 1985). In Chapters 3 and 4, I show that the torture taboo became concerned with protecting the potential and capacity for individuals to enjoy the good life. Torture targets the personality and dignity of the individual, which are intertwined and constitute one another. In doing so, it seeks to destroy that part of the human being which is unique to each and every one of us, yet at the same time, are elements that we all share and which separate us from the rest of the animal kingdom. To torture, then, is not just to destroy a particular human being, but to destroy those elements common to all of us and of which we call humanity.

The torture taboo contains cosmopolitan values and principles that have several effects on states in world politics. As already discussed, the taboo seeks to constrain and discipline states by prohibiting torture absolutely. This is represented in extensive
prohibitions in international human rights law and humanitarian laws. Secondly, the taboo constitutes identities and interests of states and other actors in international society. To document a case of torture is an accusation against that state in which torture has occurred and poses a risk to that state’s identity. Since torture’s prohibition, torture has become a marker that has helped to distinguish “civilized” states, which have an absence of torture, from “barbarous” ones which do torture.

This leads to the third effect of the taboo. To violate the torture taboo is to breach these normative expectations and open up the opportunity to rank states as “barbaric” or “uncivilized.” I draw upon Dahrendorf (1968, 167-176) and Towns (2010) to show that wherever there exists norms that have attached an evaluative element relating to normative expectations in society, the sanction and reward behaviour used by society to maintain conformity and order has the by-product of ranking. This distinction between civilized and barbaric continues to operate today, and can be seen in the “extraordinary rendition” network whereby civilized states send detainees off to uncivilized countries for torture.

Giddens also draws attention to how social relations position people in relation to “categories and ties” that specify the “rights and obligations relevant to persons having a particular social identity” (Giddens 1984, 89). The torture taboo imposes positive and negative obligations on states. Under the UN Convention against Torture, states have the obligation to refrain from torturing or to send detainees off to countries where they are at risk of torture. But the Convention also imposes duties on states to take measures to prevent torture and punish torturers. The Convention recognises universal jurisdiction over the act of torture, meaning a state must either punish an individual suspected of torture or send them to a state that will. One cannot remain neutral regarding the use of torture.

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5 See footnote 2.
Norms, then, both constrain and facilitate behaviour. In Chapter 2, I show how the obligations and duties of civilized states to prohibit torture in the non-European world legitimised and facilitated interventions in so-called barbarous societies to civilize backward peoples. To fail to fulfil both negative and positive obligations would have brought the legitimacy of the colonial “civilizing mission” into crisis. Yet it would have also damaged the colonial power’s identity as a civilized and responsible state. To help understand how the torture taboo developed these obligations and its stigma over time, I have employed a genealogical method of inquiry, something to which I now turn.

**Genealogical Method**

I stated above that the torture taboo represents Kant’s principle of always treating individuals as an end and never as a means. But how did the torture taboo come to be understood in this way? What factors led to torture’s stigma and how has its danger behaviour developed over time? I have used a genealogical study to help understand how torture came to appear as “naturally” barbaric. Genealogical studies challenge the idea that norms have a transcendent origin or authority. A genealogy examines how norms develop due to fortuitous events, historical accidents and contingencies we have all but forgotten (Bartelson 1995; Foucault 1991; Nietzsche 2003; Price 1997). This means that the meaning of the torture taboo is not found in its origins, but in particular historical moments that highlight changing epistemologies, metaphors and interpretations (Nietzsche 2003, 77-8).

A genealogy is first and foremost a history of the present. That is, it seeks to show how the present was formed (Bartelson 1995, 73-78). It moves away from presentism, which sees history develop to some sort of ideal, and also moves away...
from finalism, which projects an image of the present onto the past (Bartelson 1995, 54-55). A genealogy is an open ended inquiry and is intended to show “we are historical beings all the way down” (Bartelson 1995, 75, 78).

This methodology has important implications for the study of the torture taboo. A genealogy of the torture taboo helps trace the changing meaning of torture over time and destabilise the apparent fixed categories of unnecessary and cruel pain and suffering. My argument in this thesis is that there is no definitive definition of torture; nor is our aversion to torture “natural.” Rather I show that the meaning of torture, and hence the torture taboo, is an on-going social construction. For example, Elaine Scarry (1985) argues that the infliction of pain through torture represents a negation that destroys the human being. However, this has not always been the case. Up until the eighteenth century torture had been deemed a legitimate judicial practice. In fact, as I show in Chapter 1, during the ancien régime torture was deemed a way to gain the truth and offer the sinner salvation and redemption. It has only been recently (over the last two centuries) that torture has been understood as a negation of humanity.

A genealogical method is also useful to help understand how the taboo has become more robust in the face of its widespread violations. It has been fortuitous events and historical accidents that have helped the taboo become more robust over time. These include revolutions in the European criminal justice system and changing epistemologies of pain, developments in international law, European colonial policies and large-scale inhumanity. The torture taboo has also been constructed over centuries by a wide array of actors, including individuals, states, courts and international institutions. Human rights activists have played an important role in putting the torture taboo on the international agenda, documenting rights violations and pressuring states into norm conformity (see Finnemore 2009; Keck and Sikkink 1999; Lynch 2008; Risse 2000b, 203-204).
In order to trace the development of the torture taboo, I have used what Price (1997, 9) has identified as “two of the genealogist’s analytical tools: discourses and power.” By discourses I refer to both language and practices (Foucault 2002; Gee 2001). In terms of power, I draw upon the social constructivist understanding of power as the reflexive link between the social construction of reality and knowledge (Ashley 1984, 259; Guzzini 2000). For Hopf (1998, 179) discourse has the “power to produce inter-subjective meaning within a social structure.” Discourses help to differentiate, classify and categorise meanings; that is, they make the world by organising perception and the social world itself (Bourdieu 1989, 22). Because power is about counter-factuals, the ability to legitimise a particular interpretation of reality is an element of power (Guzzini 2000, 171-172).

By showing that the meaning of norms form part of an inter-subjective framework worked on by many actors, we can break away from the realist understanding that norms and international institutions reflect the interests of the powerful (Mearsheimer 1994-1995, 7). One can see this realist understanding of norms in E.H. Carr’s (2001, 75-81) analysis of the “harmony of interests” or Carl Schmitt’s (2007, 54) notion that those who act in the name of humanity wish to cheat. The realist framework ignores the fact that the production of knowledge often has autonomy from powerful states (Barnett and Finnemore 1999), inhibiting the ability for states to define norms however they like.

How are materially weak actors able to pressure the most powerful states into conforming to the taboo? As Foucault (2002, 55-56) notes, discourses are bound up with “sites” that legitimise discourse. These sites not only provide the speaker with a prestige to speak on a topic (such as a doctor on health), but also provide an assurance to the audience that what this authority is saying is true. For human rights groups such as Amnesty International, their authority relies heavily on their reputation as objective
and accurate (Scarry 1985, 9). This reputation is reinforced when international institutions such as the United Nations or the European Court of Human Rights rely on human rights reports to make their own decisions relating to torture (see Forowicz 2010, 217-228; Kelly 2009). Courts draw upon legal expertise and the appearance of politically neutral discourse for their authority. Courts have the ability to determine whether torture has taken place under the law, how torture is to be distinguished from other practices, and the ability to legitimise an interpretation of the law upon society that can set standards for future conduct (see Bourdieu 1986-1987). Medical physicians gain their authority through knowledge of the body and the ability to recognise and document cases of torture, their ability to engage in differential diagnoses and their ability to associate bodily symptoms and scars with particular methods of torture (Istanbul Protocol 1999, 33-34). It is this authority that provides these actors with the ability to exercise social power, and in doing so, challenge the most powerful states into conforming to the taboo.

The reflexive relationship between the construction of reality and knowledge and the linkage of power is integral in understanding the normative developments of the taboo, how it has become distinguished from other forms of pain and suffering, and how torture has developed its strong stigma over time. However, in engaging in a genealogical analysis that removes transcendent origins of the taboo, does one lose the ability to approve or disapprove of torture in international society? Undertaking a genealogy does not necessarily mean that one has to reject what is being studied (Guess 2002, 212). To suggest there is no such thing as transcendent norms does not mean that “anything goes” or that morality is no longer binding. In fact, Nietzsche (2006, 159) condemned such arguments as “childish follies.” Genealogy is not a neutral endeavour but a value laden one that is directed toward enlightenment and emancipation (Owen 2002). It seeks to show how the taboo has helped constitute who
we are today, and how the taboo shapes and regulates our actions in world politics. The history of the torture taboo is a political struggle between different actors that has vital importance for the recognition of a violation of human dignity.

To show that the torture taboo developed because of fortuitous events is not the same as arguing that it is has no value in international society. Nor is it to suggest that agency plays no role in creating the taboo’s history. The case studies throughout this thesis show how states and non-state actors have played a powerful role in reconstructing and strengthening the taboo. What a genealogy shows is that our actions often have unintended consequences that can shape the international system in profound ways.

I have chosen several case studies to trace the torture taboo. However, I do not pretend that this is a complete history of the taboo. There are many examples of torture around the world and therefore I had to limit the case studies to the one’s most relevant to the task at hand. I have provided three reasons for choosing the case studies in this thesis. First, I have analysed cases that have offered the opportunity for discussion about the meaning of torture and how international society should deal with it. Chapters 1 and 2 focus on absolutist Europe and the expansion of nineteenth century European international society to show how torture came to be prohibited and how its stigma as a barbarous practice was worked on through colonial practices. Chapters 3 and 4 also focus on important moments in the reconstruction of the taboo by focusing on the Nuremberg Trials, the drafting of the Universal Declaration of Human Rights and the 1984 UN Convention against Torture. These case studies helped to strengthen the categorisation of torture as immoral and dangerous behaviour as well as strengthen the taboo under international law.

Second, these case studies offer the opportunity to analyse the different strategies states have used to hide their torture. These strategies include secrecy,
denial, re-defining, outsourcing and using no-touch techniques that do not leave marks on the body. Focusing on these strategies is intended to show how the taboo has become more robust over time. Chapter 2 shows how the Soviet Union and the Nazis had to deny their use of torture to prevent damage to their international standing. Although hiding and denying of torture continues to occur today, there has also been the emergence of re-defining torture under international law so that states no longer have to take measures to hide it. As I show in Chapters 5 and 6, Israel and the United States sought to re-define torture. But in doing so, they legitimised the torture taboo by reaffirming that torture was absolutely prohibited. This has now led to a situation where the torture taboo has become internalised in international society but contested in practice.

Thirdly, I have focused on cases that have resulted in public condemnation of torture to show the negative blowback effects torture has on states that use it. In Chapter 4, I show how the use of torture by France in Algeria generated domestic and international criticism. This undermined France’s legitimacy to rule Algeria and contributed to French withdrawal. In Chapters 5 and 6, the public condemnation from re-defining torture forced both Israel and the United States to drop their controversial interrogation programs. For the US, the Abu Ghraib scandal had profound implications on their military strategy and legitimacy in the Middle East.

To support my argument, I have drawn upon a vast set of primary and secondary materials in this thesis. This includes newspapers, government memorandums, United Nations documents, court trials, human rights reports, government commissioned reports on torture, memoirs, as well as international relations literature, philosophy, and anthropology. I have relied as much as possible on primary sources to help understand how actors understood torture in particular
historical moments and how this understanding has shaped actor’s actions, interests and identities in international society.

Chapter Outline

The outline of this thesis is as follows. Chapter 1 focuses on the abolition of torture. It analyses the use of torture in the ancien régime when it was a legitimate judicial practice and the factors that eventually led to its prohibition. Chapter 2 shows how the torture taboo became more robust in relation to developments under international law and European colonialism during the nineteenth century. I then turn to an analysis of the torture taboo in the Soviet Union and Nazi Germany to show that despite its violation, the torture taboo still mattered. Chapter 3 details how the taboo actually became more robust after Nazi atrocities during World War II through the Nuremburg Trials and the Universal Declaration of Human Rights. The fourth Chapter turns to the use of torture by France in Algeria between 1954 and 1962 to demonstrate how the taboo influenced the outcome of the war. The second half of the chapter focuses on the 1984 UN Convention against Torture, showing again that the taboo managed to strengthen in the face of widespread violations. Chapters 5 and 6 analyse the use of torture by Israel and the United States to show how both states manipulated international law to better define torture to reflect their interests. I also examine the use of “extraordinary renditions” by the US (Chapter 6), which has helped establish a hierarchy in international society between the “civilized” states that send detainees off to “uncivilized” countries for torture.

All these chapters link up to tell a story of how the taboo has developed and the role it plays in world politics. I show how torture has transformed from a legitimate practice to a prohibited one; how the strategies states have used to hide their torture
have become more sophisticated; and the developments under international law that have helped make the taboo. The Conclusion examines what implications this thesis has for theory and practice, the measures that can be taken to further strengthen the taboo into the future and the normative visions immanent in the present that can be harnessed to create a more humane social order.