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Who Should We Blame? And Where Was the ‘Torture-Snowden’?

When it comes to holding people to account for the atrocities detailed in the *Senate Torture Report* (STR), it is clear that those in the interrogation room carrying out the torture should face a significant amount of blame for the harm caused.¹ What is less clear, however, is how far up the chain of command the blame should stretch. Who knew; should they have known; and what role did they have in instigating or perpetuating the harm?

Upon reading the STR it can be strongly argued that while those at CIA Headquarters might have been distanced from the harmful acts, they were not only aware of the type of interrogation techniques used but also actively fostered and escalated a torture culture itself.² Indeed, the STR details how senior CIA officials created an environment for the successful deployment of torture by isolating themselves and their activities from external oversight;³ encouraged an elite, inward looking mentality that distorted the pressures involved that resulted in the normalising, vindicating and even lionising of the abuse carried out;⁴ developed a training program on how to administer enhanced interrogation;⁵ and smothered internal criticism from on-site interrogators who claimed that individuals were ‘compliant and cooperative’, but were still ordered by CIA Headquarters ‘to continue using the CIA’s enhanced interrogation techniques’ – escalating and protracting the abuse.⁶

In comparison, the role of the political elite is less clear. On the one hand it could be argued that they had no knowledge of the harm being caused and so cannot be blamed as a result. For example, CIA records state that prior to the use of the enhanced interrogation techniques on Abu Zubaydah in 2002, ‘the CIA did not brief Secretary of State Colin Powell or Secretary of Defense Donald Rumsfeld’.⁷ Also, anticipating that presidential approval might be needed for the enhanced interrogation techniques the CIA significantly revised their presentation to reduce the harm reported and ‘eliminate references to the waterboard’.⁸

At this stage it could be that there was limited awareness by the political branches as to what was occurring and so their blame is muted. A simple lack of knowledge, however, is not sufficient. Those in positions of power should be held personally liable when they fail in

¹ US Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* December 3 2014 Available at http://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf Accessed 1 February 2015 (Hereafter *Senate Torture Report*) p.43-44

² *Senate Torture Report*, p.26

³ *Senate Torture Report*, p.54, 119, 123

⁴ *Senate Torture Report*, p.438

⁵ *Senate Torture Report*, p.58

⁶ *Senate Torture Report*, p.78, 43, 66

⁷ *Senate Torture Report*, p.38

⁸ *Senate Torture Report*, p.38

their responsibility to have all the relevant information they would need to make a full and rational decision.⁹ Those in a position of authority or responsibility are bound with the obligation to be informed on the actions of those within their care or jurisdiction. Such members of the executive and legislature are not laypeople, but individuals who actively sought a job with a position of authority and are thus charged with an extra-special expectation to collect information and act. Moreover, while it could be argued that they were never explicitly asked for authorisation, or the details were obfuscated, there were indications of abuse that should have prompted an explicit and personal review. For example in September 2002 when Chairman of the Senate Select Committee on Intelligence Bob Graham made multiple and specific requests for additional information and the CIA officials simply did not respond,¹⁰ given that he had concerns means he is still obligated to investigate further, report his concerns upwards to his superiors and pass them on to his successor, without which a significant degree of blame is placed on him for the harm that then followed.

Equally, when DCI Tenet and CIA General Counsel Muller met with Vice President Cheney and National Security Advisor Rice on July 29 2003 to seek policy reaffirmation, even if they were not aware of the magnitude of the abuse, they were presented with a list of enhanced interrogation techniques including the use of waterboarding demonstrating that they were now aware that something far greater than is normally allowed was occurring. They are, therefore, at this stage guilty for the harm caused by not investigating further, informing their superiors and for giving their authorisation.¹¹ Although the report indicates that Rice had originally advised against informing other members of the National Security council, she subsequently decided that Secretary of State Colin Powell and Secretary of Defence Donald Rumsfeld should be briefed, which happened for the first time in a 25-minute briefing on 16 September 2003.¹² This widens the circle of blame rather than diminishing its individual power. Moreover, they are also negligent in their failure to inform the president as their superior. In doing so they also make the president negligent for not inquiring further, which becomes especially problematic on the behalf of G. W. Bush given the International Committee of the Red Cross's two reports on 18 November 2004 and 18 April 2006 that raised concerns over the treatment of individuals that 'amounted to torture and/or cruel,

⁹ Bradley, M and Schipani, C. A. 'The Relevance of the Duty of Care Standard in Corporate Governance' *Iowa Law Review* Vol.75 No.1 (1989) p.19

¹⁰ *Senate Torture Report*, p.48-49

¹¹ *Senate Torture Report*, p.117-118

¹² *Senate Torture Report*, p.119

inhuman or degrading treatment’ and the media attention it received over the years.¹³ Any report of such horrendous treatment should have propelled those at the highest level to investigate, and failing to do so makes them blameworthy.

What this amounts to is that all individuals at all levels of this tragedy are guilty of not acting; of not blowing the whistle. Torture represents one of the most egregious attacks on the individual, destroying them on a physical, psychological and emotional level. All those involved had failed in their universal duty to ‘do a Snowden’ and blow the whistle. Even though the legality of whistleblowing is often contested and unclear, the moral argument in this instance is not. Regardless of what was seen as the benefit – for which there was none¹⁴ – all those who knew had a moral obligation to act to their fullest capacity to stop the harm and inform the public as the most likely avenue for achieving this. This failure leaves them all equally blameworthy for the abuse caused and as such should be tried for their criminal activities.

¹³ *International Committee of the Red Cross ‘ICRC Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody’* February 2007

<http://www.nybooks.com/media/doc/2010/04/22/icrc-report.pdf> Accessed 1 February 2015, p.4

¹⁴ *Senate Torture Report*, p.17, 124, 167, 179