

**Water Torture and the United States:  
Comparing Debates From the Past with the Present**

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Since President Obama authorized the release of memos to the public regarding waterboarding on April 16, 2009, the front pages of newspapers have been permeated with pieces on the water torture debate. With few attempts to conceal indignation over the practice, these articles and editorials have compared waterboarding to practices used during the Spanish Inquisition, by Pol Pot in Vietnam, and by Japanese soldiers in World War II (for which the U.S. convicted Japanese soldiers of war crimes in the Tokyo Trials).<sup>1</sup> Covering the U.S.'s own history with waterboarding in these debates, journalists Scott Shane and Mark Manzotti of the *New York Times* traced the history of waterboarding to a training program employed by the C.I.A. to prepare operatives to withstand torture. Their investigation traced waterboarding back to the C.I.A.'s response to experiences of U.S. captives of the Chinese during the Korean War implementing a program to prepare them for the treatment. Then, they report the C.I.A. later flipped this training from a defensive strategy to an implemented offensive strategy for prisoners designated as "detainees" or "enemy combatants."

These comparisons cast a net over the history of water torture and recent U.S. history that is simultaneously too short in the historical scope of the U.S. and too wide in

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<sup>1</sup> Frank Rich. April 25, 2009 "The Banality of the Bush White House Evil." *New York Times*. Slotkin, Richard. 1992. *Gunfighter Nation: The Myth of the Frontier in Twentieth-Century America*. New York: Atheneum.

national context to illuminate how these practices were legitimated. However, they are right to look to historical comparisons. Not only have public debates over torture in the U.S. happened before, they happened in the context of an indeterminate war with ambiguously classified enemies during the Philippine-American War with fighting that lasted from 1899-1913.

The indeterminate character of the Philippine-American War has been thoroughly documented and argued in Paul Kramer's (2006) *The Blood of Government: Race, Empire, the United States, & the Philippines*. His work details how U.S. colonial officials' and politicians argued for self-rule in the Philippines to be based on an unknown timeframe (sometime in the future), based on the time it would take to "properly" educate Filipinos on the ways of freedom and democracy. It was an argument of "necessity." Colonial officials and U.S. politicians held the power to determine this necessity.

These arguments were based on racialized conceptions, often ambiguous and contradictory, of nonwhite people rooted in social Darwinist theories of race and notions of the march of "civilization" (e.g. "the White Man's Burden"). These ideas were pervasive at the turn of the 20<sup>th</sup> century (Hofstadter 1992). During the war for occupation of the Philippines, Filipinos resisters were often called "injuns" or "indians" by military officers and "niggers," and/or "googoes" by soldiers in their letters home (Slotkin 1992).<sup>2</sup> Filipinos fighters were more officially referred to "insurgents," "insurrectos," or "ladrones" by the military, politicians, and journalists (Miller 1982). The choice of this language stemmed from the refusal of the U.S. government to recognize Filipino sovereignty, putting Filipino rights as prisoners in question.

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<sup>2</sup> *Soldier's Letters: Being Materials for the History of a War of Criminal Aggression*. Box 1. Anti-Imperialist League Papers. Swarthmore Peace Collection, Swarthmore College.

The lack of knowledge about the first debates over water torture is surprising given our contemporary moment. Apparently, even for C.I.A. officials teaching waterboarding and other techniques of "harsh interrogations" or "torture," they were unaware of the C.I.A.'s own history of involvement with torture as victims of the Chinese during the Korean War.<sup>3</sup> This lack of awareness of C.I.A. officials parallels a lack of awareness on the part of the U.S. public, and points to an historical denial of U.S. empire (Mann 2008).

However, a comparative analysis juxtaposing past and present debates that have obvious and substantive similarities is not necessarily the best method for understanding the present or the past cases. Each historical case has its own contingencies and peculiarities that tend to defy ahistorical classifications of "stages" or teleological explanations, for example (Sewell 2005). Further complicating this analysis, the cases I propose to compare have genealogical relations in addition to the important differences of historicity.

Therefore, I employ a comparative analysis that is primarily a work of historical sociology. I argue these cases are important because of the light they shed on the process of limiting rights, theoretically interesting because of their curious reliance on ambiguity, and methodologically unique given their inescapable genealogical relations and equally as important, their historical contingencies. I focus on the broader issue of U.S. debates over torture and violence against racialized subjects with ambiguous rights, the Philippine "insurrectos," "insurgents," and/or "ladrones" during the indeterminate U.S. colonization

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<sup>3</sup> Scott Shane April 22, 2009. "In Adopting Harsh Tactics, No Inquiry Into Past Use." *New York Times*.

of the Philippines and Muslim "detainees" and/or "enemy combatants" in the U.S.'s indeterminate War against Terror.

Both scandals constitute historical "events" (Sewell 2005) that awakened the nationalist impulses of much of the U.S. public. Although it incited a firestorm of debate, albeit a brief one, the history of the water cure has been forgotten. This amnesia enabled the "moral shock" (Jasper 1998) over "waterboarding"--as if this is the first time these practices have been employed by the U.S.--rather than a more sober recognition of historical reverberations. In both instances, U.S. citizens presented a vocal opposition to using these practices, either as practices to elicit information from prisoners or as punishment to prisoners. During the Philippine-American War, these efforts were spearheaded by the Anti-Imperialist League (AIL) and the broader anti-imperialist movement. During the War Against Terror, these efforts were spearheaded by the American Civil Liberties Union (ACLU) and the broader peace movement.

Making this comparison highlights an analogous process of developing *categorical ambiguity*, or the employment of ambiguous categorizations of a particular group of people and their political treatment, with relation to the law and to values espoused in the Declaration of Independence. How these ambiguities were deployed depended on what was defined as "necessary" as well as who defined "necessary" (Agamben 2005).

Inherently hierarchical categorizations of "race" are a hallmark of the social sciences and the state during the Progressive Era (the zenith of "civilization" discourse). Jung and Almaguer (2004b) show how the state has produced racial categories by acting as an "equilibrator" of societal ambiguities through establishing racial categories as

"common sense," even if historically contingent. However, they state, "[o]f course, common sense is never natural or permanent but only appears to be so, projecting the present normatively onto the past and future" (Jung and Almaguer 2004, p. 10). Something not clearly categorized is more easily forgotten especially if it goes against the "common sense" of official knowledge—there is nothing to "stick to," so to speak.

However, in this era the state also produced a categorically ambiguous relationship between racialized subjects and rights of citizenship. For example, while they were included within the control of U.S. sovereignty, they were excluded from the guarantee of rights of citizenship. This relationship of no consistent state rights guaranteed or recognized, formally and/or informally, is exemplified in the suspension of the writ of habeas corpus and the insular cases with regard to the Philippine-American War (Murphy 2009) and the legal designation of "enemy combatants" or "detainees" specifically off of U.S. soil and in Guantanamo Bay with regard to the War on Terror.

In the case of the Philippine-American War, categorical ambiguity contributed to the conditions that enabled forgetting and produced a diffuse opposition able to act only when clear grievances, such as the "water cure," were presented. However, these grievances were only briefly in the public debate. This was a result of the Roosevelt administration successfully ending the official senate investigations into the Philippines earlier than anti-imperialists had planned. Then, Roosevelt followed up by officially declaring the war in the Philippines over on July 4, 1902, although fighting continued in some parts of the Philippines through 1913.

The ambiguous legal status of contemporary "enemies of the state" presents an analogous case to the previous debates on water torture. Attempts to make this debate

brief are also evident in the "waterboarding" debates today with the Obama administration stating C.I.A. officials cannot be prosecuted who were involved during the Bush era, although the question of whether the writers of the law can be prosecuted is still under debate. Whether high-ranking officials will be made accountable, remains to be seen. If high-ranking officials are investigated, this would be a stark difference between the two cases.

### **Water Torture's Historical Reverberations**

Waterboarding is not the only means of torture challenged in contemporary debates. Detainees being shackled to walls, put in stress positions, and confined in a box with a loose insect round out the list. Pictures of mistreatment of prisoners at Abu Ghraib in 2003 and 2004 first enraged the U.S. public, who were already losing confidence in the War in Iraq. However, waterboarding has most captured the public's attention, even though official pictures of the practice have not been released.<sup>4</sup>

At the turn of the twentieth century, the U.S. public's attention was also captured by the water cure despite the use of the garrote (a vice around a prisoners neck used to strangle him) and reports of hanging men by their thumbs as well as what they called other "atrocities." Political cartoons played a significant role in the visual culture of the period. Additionally, camera technology became available to amateurs. Therefore, this war presented some of the first pictures of the practice and aftermath of war including

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<sup>4</sup> President Obama's promise to release pictures of the mistreatment and torture of prisoners, an outcome of an ACLU case, has angered many who support the resort to torture. These proponents believe the release of pictures would pose a threat to national security and elicit more anti-American sympathies. Their critics, in turn, point out it is not the pictures themselves, but what it depicted in the pictures, that present the problem. Obama has since decided not to release more photographs.

pictures of dead bodies in trenches, the water cure, and the garrote. However, these pictures were not summarily determined as evidence of U.S. savagery, but rather depending on the viewers, were often interpreted as racist evidence of survival of the fittest.

To make a comparative analysis of these two cases of water torture,<sup>5</sup> I present a summary of the important points of contemporary debates over waterboarding including the use (and absence) of historical references as well as the pertinent history of the U.S. with the water cure. Since 2002, the debate has been centered on whether waterboarding is torture and whether the outcome was worth the reprehensible nature of the practice—the distastefulness has gone without question. The question of torture, also known as "enhanced interrogation methods," is one of necessity for proponents, basing their arguments in terms of national security. Opponents of waterboarding range from political conservatives to political progressives. Opposition often stems from contradictory reasons based in patriotism, guarantees of human rights, and, again, interests of national security.

As mentioned, the War in Iraq produced the infamous pictures of Lynndie England and Charles Graner from Abu Ghraib prison that shocked the public, pictures of waterboarding in Guantánamo have not yet surfaced. Rather, it was the previous experiences of waterboarding, such as during Vietnam, that made the mention of the practice a public image that strobed across the internet, on late night comedy shows, and proliferated pictures simulating the procedure.

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<sup>5</sup> I use the term torture as it has been legally determined by the current Attorney General Eric Holder.



Demonstrator Maboud Ebrahimzadeh is held down during a simulation of waterboarding outside the Justice Department in Washington November 5, 2007. The assertion by the White House that waterboarding is a legal tactic stunned critics and revives debate over the widely condemned interrogation technique. (REUTERS/Kevin Lamarque)

Image 1. This photo depicts a mock waterboarding incident made in protest in 2007.

During the Vietnam War, a picture circulated in the U.S. in early 1968 showing U.S. soldiers administering water torture on a prisoner. This picture was published on the front page of the *Washington Post*. Accompanying the picture was an article entitled, "Interrogation" that described the experience of simulated drowning, which elicited one page of letters to the editor. However, this instance was a comparatively limited response in light of numerically larger "atrocities" being opposed by the anti-war movement, like using Agent Orange. At the same time, Pol Pot was vilified for the use of these tactics on U.S. soldiers. Again, during the Korean War, U.S. prisoners were "waterboarded" by their Chinese captors, which is when the Central Intelligence Agency began to develop

the training for operatives in case they were tortured. And earlier, after World War II, Japanese soldiers had been sentenced in the Tokyo Trials for conducting these practices on their captives.

QuickTime™ and a  
decompressor  
are needed to see this picture.

Image 2. Soldiers in Vietnam use the waterboarding technique on an uncooperative enemy suspect near Da Nang in 1968 to try to obtain information from him. Original photo was printed in the *Washington Post* on the front page January 21, 1968 along with the article "Interrogation" in which it states, "those who practice it say it has the advantage of being unpleasant enough to make people talk while still not causing permanent injury."

Photo Credit: United Press International Photo

However, it was during the Philippine-American War that the U.S. took its first foray into employing water torture techniques. Soon thereafter, debates ensued over the legality and the morality of the U.S. military's use of the water cure. These debates peaked briefly during the Senate Investigation on Affairs in the Philippines (SIAP), which began in early 1902.

The first public account<sup>6</sup> of this history that I have seen came from historian Paul Kramer's February 28, 2008 article in *The New Yorker*.<sup>7</sup> Kramer also included this piece in a March 4, 2008 article in the online journal *The Asia-Pacific Journal* with a new introduction in which he states: "When, during Michael Mukasey's confirmation hearings in the fall of 2007, the status of 'water-boarding' was widely discussed, I felt an eerie sense of familiarity. The following essay, which was prompted by those exchanges, does not attempt to argue that recent events are identical to those of the early 20th century, or that the history described here led to the present crisis. Rather, my effort was to haunt the present with this particular, largely unknown past" (Kramer 2008). Kramer notes some key differences in the added introduction between the present debate and that of the past, including the fact that it did not appear that high-ranking officials organized the use of the water cure.

To water cure a prisoner, U.S. soldiers or Macabebe Scouts commissioned by the U.S. military would hold down a Filipino and fill him with water until he was bloated, push the water back out of him by pressing on his stomach, and then repeat the procedure

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<sup>6</sup> Editorialist William Safire mentioned the opposition to the "water cure" citing anti-imperialist Mark Twain in his editorial, "Waterboarding" March 9, 2008. *The New York Times* and covers the historical changes in terming versions of water torture in the U.S. across the eras.

<sup>7</sup> Paul A. Kramer. "The Water Cure. Debating torture and counter-insurgency—a century ago." *The New Yorker*.

until he would talk, or die. When anti-imperialists learned of these practices, they concentrated their resources on informing the public about these "atrocities." They wrote petitions, lengthy position papers called "broadsides," and wrote to newspapers and their representatives in Congress. In short, they created a public debate, which gave way to the SIAP,<sup>8</sup> headed by pro-imperialist Senator Henry Cabot Lodge. The committee in charge of the investigation, also known as the "Lodge Committee," included Henry Cabot Lodge, a conservative Republican Senator from Massachusetts, the other pro-imperialist members of the committee were Senators William Allison, Eugene Hale, Redfield Proctor, Albert Beveridge, Julius Burrows, Charles Dietrich, Joseph Rawlins, with the anti-imperialist members including Charles Culberson, Fred Dubois, Edward Carmack, Thomas Patterson, and George Hoar.

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<sup>8</sup> Evidence from this investigation comes from the committee's official report that is over 3,000 pages long.

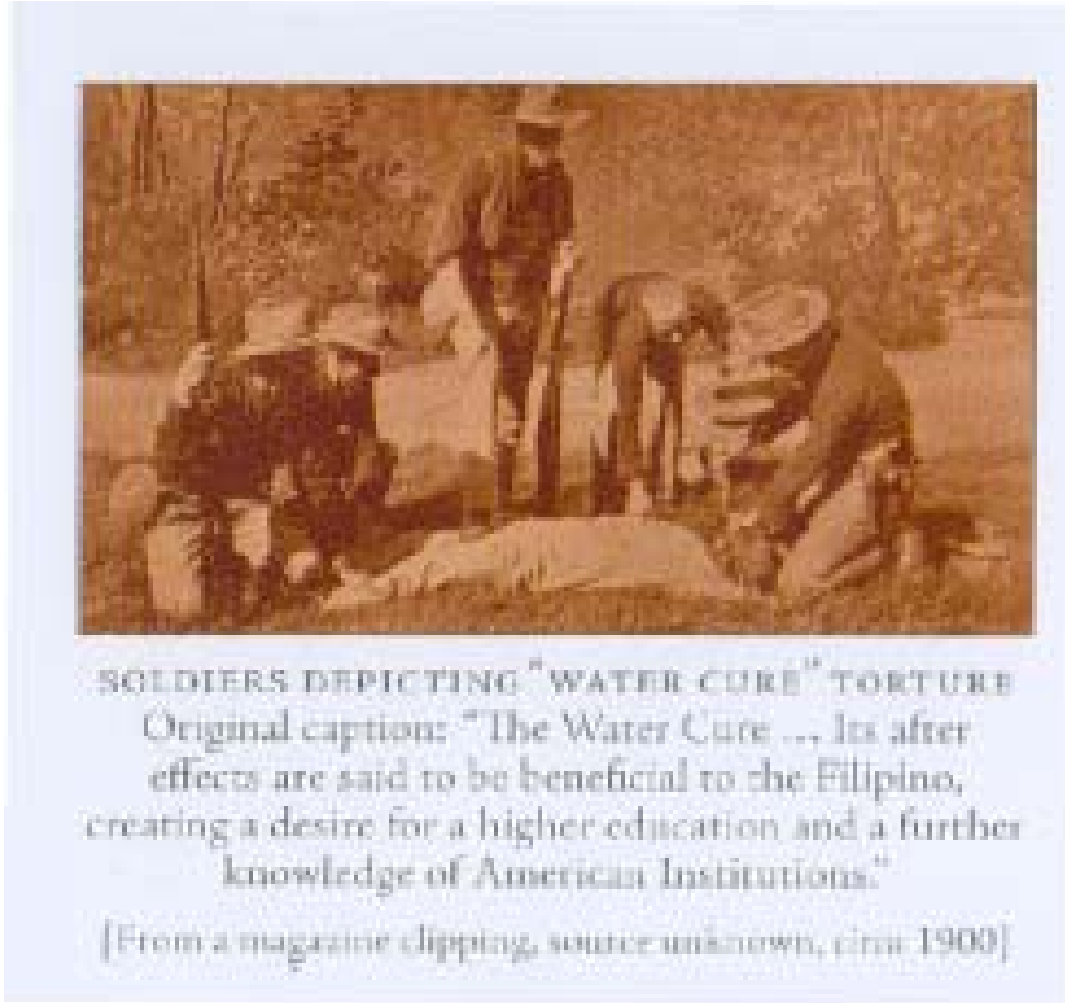


Image 3. "Soldiers Depicting the 'water cure' Torture." *The Forbidden Book*. (2004). Anti-imperialists used images to strengthen their position as evidence of the atrocities in the Philippines.

### *The "Water Cure" and the Philippine-American War*

The fact of historical reverberations coupled with the ignorance of their existence requires an historical account of the water cure. The water cure was used in the Philippine-American War by U.S. soldiers and their contractors (or mercenaries), Macabebe Scouts. The "water cure," as it was called, was used to extract information,

usually about the location of cache of guns.<sup>9</sup> Leon Wolff (1961) described the water cure as "A blend (in the words of an observer) of Castilian cruelty and American ingenuity, it consisted of forcing four or five gallons of water down the throat of the captive, whose 'body becomes an object frightful to contemplate,' and then squeezing it out by kneeling on his stomach. The process was repeated until the *amigo* talked or died" (p. 253).

Anti-imperialists first learned of the water cure in letters soldiers wrote home to friends and family. Anti-imperialist Herbert Welsh painstakingly collected these letters by soldiers published in small town newspapers, collecting them as evidence that was not reported by journalists, who were largely censored by the military in the Philippines. Basing their investigations on reports of soldiers, anti-imperialists began contacting soldiers to see if they would testify to witnessing the practice for congressional inquiry. In this way, anti-imperialists lined up a significant number of soldiers to testify.

However, the soldiers that were chosen to testify by Lodge were thought to be loyal to the government, skipping the soldiers gathered by anti-imperialists. No matter their political allegiances, the soldiers testified to what they saw. The narrative of soldiers was that the water cure was learned from the Macabebe Scouts (aka Gordon Scouts) under Lieutenant Conger and Captain Glenn, who was later court-martialed. It was said that Filipinos used the method on the Macabebes and that it was originally learned from the Spanish. From there, U.S. soldiers learned the method from other companies, and so the practice for obtaining information spread.<sup>10</sup> Seiward J. Morton testified in front of the SIAP describing his experience in conducting the water cure:

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<sup>9</sup> One soldier, Sergt. Januarius Manning, also testified that his company employed the "water cure" to obtain confessions for the murder of a Private O'Hearn as well. p. 2255.

<sup>10</sup> Ibid. e.g. testimony of Januarius Manning.

I was on guard and acting corporal of the scouts. A man named Bender, who belonged to Company I, I think, of the Eighteenth Infantry came up and told me he wanted me to help ‘water cure’ this native. I told him that I had no particular objection. [...] We were directed there to throw the native or take him down, and we picked the native up and laid him down. He was a small man, and he didn’t make much resistance. One man had hold of his leg, and I had hold of his leg, and another man had hold of a leg, and we laid him on his back. Another man had hold of an arm, each arm. Then Bender took the water with a cup, dipped it out of a pail, and first they took a stick about 2 inches wide and placed it between the native’s teeth like this [indicating]. The stick was probably about a quarter of an inch thick. When they did that they twisted the stick around so that it forced the native’s mouth open the width of the stick. Then Bender dipped the water from the pail and poured it in the native’s mouth, and finally the native stiffened; that is, he appeared--I thought he was going to die then. I had never seen it done before then. I refused to have anything more to do with it, and Bender and I had a slight altercation there; I don’t remember the exact nature of it, but I told him I would have nothing more to do with it. My connection with the affair ended there.<sup>11</sup>

News of the water cure inspired Chicago anti-imperialist poet Bertrand Shadwell to write “Death of a Filipino Under Torture,” which he gave to anti-imperialist leader Herbert

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<sup>11</sup> Ibid pp. 2897-2898. Other soldiers testified that they saw the “water cure” administered, but often by the Macabebe mercenaries. Macabebes scouts were treated as a Filipino ethnic group with antagonism toward the Filipino’s responsible for the revolution, mainly Tagalog and mestizo Filipinos.

Welsh for publication "free of charge."<sup>12</sup> Shadwell also wrote "Imperialism in the Philippines" regarding killing guides who refused to lead the U.S. military to "insurrectos."<sup>13</sup> However, Paul Kramer (2006) documents the practice also inspired Albert Gardner, in Troop B of the First U.S. Cavalry, to author a comic in 1902 satirizing the torture as a cure for a disease called "insurrectos" as well as a song titled "The Water Cure in the P.I." inviting soldiers to

"Get the good old syringe boys and fill it to the brim  
We've caught another nigger and we'll operate on him  
Let someone take the handle who can work it with a vim  
Shouting the battle cry of freedom" (p. 141).

Before any soldiers were called to testify, Governor Taft gave his assessment of the situation. When Senator Patterson asked Taft about the "so-called water cure," Senator Beveridge, of Indiana, interrupted and asked him to address the issue of "irreconcilables" sent to Guam, such as revolutionary and Filipino national hero Apolinario Mabini.<sup>14</sup> Taft recalled 25 were sent to Guam to quiet the insurgency in the Philippines.<sup>15</sup> Following Taft, General Robert Hughes testified. When asked about the

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<sup>12</sup> "Death of a Filipino Under Torture," by Bertrand Shadwell, J.R. Hayden Papers, Bentley Historical Society, University of Michigan, Ann Arbor; Bertrand Shadwell also authored the poem "Aguinaldo," written after Emilio Aguinaldo surrendered to the U.S. forces in the Philippines.

<sup>13</sup> "Imperialism in the Philippines," by Bertrand Shadwell, Herbert Welsh Papers, Hatcher Graduate Library, University of Michigan, Ann Arbor.

<sup>14</sup> Mabini had been the first Prime Minister of the Filipino government, while Emilio Aguinaldo had been the first President. He was sent to Guam in 1901, under the U.S. accusations that he was inciting insurgency. Mabini wrote some of the foundational texts of the government. During and after the Filipino revolution, he suffered from paraplegia having survived a disease with the lasting effects of paralysis. Therefore, the threat he posed to the U.S. empire was from his pen.

<sup>15</sup> SIAP

water cure, he flatly denied having ever heard of it, but then also asserted that the water cure could mean many different things. All in all, he admitted to having heard of it used once by American police and that they would not use it again.<sup>16</sup>

The equivocations of officials over admitting to understanding what the "water cure" was and over admitting to military personnel's administration of it in the Philippines evidences a chasm between racial structures buttressing "civilization." On the one hand, believing in whites' racial and, therefore moral, superiority should have granted U.S. military officers the justification to implement whatever practices they deemed necessary, especially if Macabebes were the persons directly implementing the torture. On the other hand, as the race at the highest point of civilization, whites were to be above barbarism and savagery, and perform force only under the most just circumstances. The fact that General Rules 100<sup>17</sup> prohibited the use of violence to extract information also presented a potential legal predicament for these structures of white dominion that inclined toward "white is right" and social Darwinism that inclined toward "white is moral."

Along this line, General Funston denied charges of any white men resorting to the use of the water cure claiming soldiers reporting such events were trying to get attention and were examples of "braggadacio."<sup>18</sup> Granting Funston that some men may have written home stories of the water cure and other violent practices to flaunt, it raises the issue as to what they were proving about themselves. Whatever self-conscious ideas they had about what their behavior said about them as U.S. soldiers, these letters convey

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<sup>16</sup> Ibid, pp. 654-655.

<sup>17</sup> General Rules 100 were the guidelines for the military in the field regarding rules of war. They were implemented by President Lincoln.

<sup>18</sup> SIAP, p. 951.

the necessary racialized symbolic violence that legitimates physical violence (Jung 2004a). It shows the "racial grammar" (Knowles 2003) that inundated racial practices that simultaneously constituted the racial project of incorporating the Philippines into the racial U.S. state.<sup>19</sup>

Sgt. Charles Riley from Northampton, Massachusetts testified that he had witnessed the "water cure" performed on the mayor of Igaras twice and that it was facilitated and witnessed by officers in the regular army. Private William Lewis Smith testified to the same incident. Macabebes were also there aiding the American forces against insurgent forces under the command of Lieutenant Conger and the aid of a Dr. Lyons, contracted by the military. Riley testified that this incident was witnessed by about 80 soldiers, many of whom stated they had seen many more instances of the "treatment."<sup>20</sup> Senator Beveridge disputed this point on hearsay, invoking the law as a resource to prevent the admission of evidence that contradicted his agenda.

Officers frequently argued that the Filipino insurgents did not participate in civilized warfare nor adhere to the rules of war as stated in General Rule 100. These comments were made to demonstrate the uncivilized ways of Filipinos and justify the slips into uncivilized warfare of U.S. troops. Senator Culberson and Senator Burrows questioned officers and soldiers to ascertain whether those who were victims of the water cure were the same insurgents committing treacherous acts of war, such as raising white flags only to surprise attack American forces. The answer was consistently "no" that the water cure was not revenge against particular Filipinos for egregious acts of violence.

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<sup>19</sup> I am purposefully redundant here.

<sup>20</sup> SIAP, pp. 1527-1531.

Rather, the purpose of using the water cure on Filipinos was specifically to extract information. This argument was also to justify the practice of burning villages.

These testimonies, and others, led to the court-martial trials of Lieut. Arthur L. Conger and Major Edwin F. Glenn, then Captain Glenn, as well as Capt. and Asst. Surg. Palmer Lyon, then a contract surgeon--all of whom were in charge of the Macabebe Scouts. Macabebe Scouts were officially deemed the main administrators of the "water cure."<sup>21</sup>

Court-martials performed and "rearticulated" (Sewell 1992) the racial supremacy of whites by re-establishing their place at the highest level of "civilization." Court-martials provided a degree of separation between the Macabebes, who were uncivilized to begin with, and the U.S. military by extension the federal government. They also emphasized the *individual* white military personnel, who descended into the uncivilized practices of nonwhites, rather than the system or policies these practices sprang from. The debates on the water cure show how an imperialist racial state rooted in "schemas," or sets of cultural meanings, (Sewell 1992) of white moral superiority and exceptional rationality maintained claims to higher civilization while also utilizing what it deemed as "savagery".

As to whether soldiers conducted the water cure on their own volition, rather than at the request of their commanding officers, Seiward J. Morton, whose description of the water cure opened this section, stated "I do not know of any instance where a native was 'water cured,' under the orders of a soldier alone, and I do not think a soldier would assume that responsibility. Whenever an act is executed by a soldier and an officer is

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<sup>21</sup> General Smith was also put on trial for court-martial for his orders to kill and burn everything over 10.

present the inference can safely be drawn that that officer gave the order and that the soldier was obeying it.” Senator Beveridge responded, “you should do as the Senator from Texas suggests, simply give the facts, and the committee is competent to draw inferences.”<sup>22</sup> One such officer, Captain Fred McDonald, testified that he did not know of any officer that gave orders for the water cure. Rather, he said, officers simply acquiesced in it happening.<sup>23</sup>

A few court-martials did come from these investigations. In this way, the water cure was blamed on a few "bad apples," individuals whose behavior tainted the otherwise respectable behavior of other U.S. soldiers. Anti-imperialists viewed this outcome as a dismal failure. They believed the officers at the top new these practices were being used, but were denying its existence at home, while allowing it to occur in the Philippines. Anti-imperialists wanted higher officers to be held responsible. To make the bad publicity go away, President Roosevelt declared the war in the Philippines over on July 4, 1902.

### *Waterboarding and the War Against Terror*

Before the Obama administration took office, the more recent debate centered around whether or not "enhanced interrogation tactics" like waterboarding, were torture (every administration, including the George W. Bush, Theodore Roosevelt, and William McKinley administrations, have denied the U.S. engages in torture) and whether or not these measures were justifiable if they obtained timely and actionable information to protect U.S. security interests. The Bush administration argued "enhanced interrogation

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<sup>22</sup> Ibid, pp. 2898-2899.

<sup>23</sup> Ibid, p. 2784.

tactics" were justifiable in that they were more likely to produce timely and actionable information, according to Vice President Richard Cheney. Widely known, Cheney is one of the most vocal proponents of having "enhanced interrogation tactics" as a legal option.

Obama's administration has been consistent in stating waterboarding is torture and illegal. Attorney General Eric Holder stated as such in his confirmation hearings.

Mukasey before him stated at his confirmation hearings that the U.S. does not torture.

The most recent memos released were requested by the ACLU, and this request had escalated into a lawsuit citing the Freedom of Information Act. The memos confirmed what the public already knew, waterboarding was used after September 11, 2001 and before 2005. However, it confirmed a surprising frequency and creativity in implementing what the Bush administration called "enhanced interrogation tactics," a legal phrase and category implemented by legal advisors to the Bush administration.

Today the debate is whether high-ranking legal advisors to the Bush administration, including Federal Judge Jay Bybee, Stanford Law Professor and columnist John Yoo, as well as Attorney Steven Bradbury should be investigated for their role in the torture debacle and, if so, how they should be investigated, such as whether there should be a special prosecutor or a special commission. These events are still unfolding as I write this paper.

### **Categorical Ambiguity**

What can be compared from the events as they have unfolded so far, is the use of categorical ambiguity in both instances. The onset of the Philippine-American War in

1899 presented a transformative event (Sewell 2005)<sup>24</sup> in U.S. history in that it was a significant rupture from previous territorial expansions (Sparrow 2006). This break led to a transformation in the way the U.S. government used law based on a democratic system and a societal order of white supremacy. What followed the conjunction of events was a "racial state of exception" characterized by significant ambiguity and indifference to the law as it pertained to Filipino prisoners and subjects from thenceforward. It changed the way the bio-political issues, like violence on nonwhite and sometimes non-Christian (read uncivilized) bodies, came to be legitimated in U.S. law through necessity determined by "civilized" white leaders.

Therefore, ambiguity was utilized as a racialized cultural practice in the Progressive era, alongside the developing practices of producing expert knowledge through categorizations, often of nonwhite people. In the Progressive era, ambiguity was designed in the meta-schema of "civilization" that simultaneously justified white supremacy *and* democracy as political systems, which have inherently contradictory logics for organizing society when taken to their philosophical core. "Moreover, when confronted with the need for action, people might well act ambiguously, trying out more than one form of semantic reference at once, hoping to be guided further by the future behavior of the anomalous phenomenon itself" (Sewell 2005: 213). Not committing to, and therefore preventing, clear categorizations allowed the flexibility of expert justifications as demonstrated in the government use of anthropologists in advising colonial officials (Stoler 2006).

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<sup>24</sup> See Sewell (2005) for a theoretical discussion of what constitutes transformative events.

Ambiguity enables exceptional practice that yields "states of exception" (Agamben 2005) to the most basic of material relationships that to one's own body, for example in the suspension or denial of the writ of habeas corpus. I agree with Agamben (2005) when he states, "The essential task of a theory of the state exception is not simply to clarify whether it has a juridical nature or not, *but to define the meaning, place, and modes of its relation to the law*" (p. 51, my emphasis). Ambiguous practices create exceptions to what are purportedly rules, usually of law but, perhaps more importantly, also of societal order.

I propose ambiguity lends itself to creating a state of exception that is characterized by a set of practices that include: 1) Obvious omissions, 2) Sanitized rhetoric, 3) Legalese, or employing purposefully confusing and garbled legal rationale, 4) Intermediaries used to conduct the practice, 5) Scapegoats in the form of low-ranking individuals for the sake of expediency, 6) Invoking a transcendent to justify the practice in question and that puts distance from any personal responsibility. These practices are unwieldy and hard to relate to each other, as they unfold from various parts of the state apparatus. And together, they serve to conceal practices of violence from the public.

I agree with Agamben (2005) where he states, "Only if the veil covering this ambiguous zone is lifted will we be able to approach an understanding of the stakes involved in the difference--or the supposed difference--between the political and the juridical, and between law and the living being" (p. 2). The question of the exception is less about the law and more about *who defines the necessity* of making an exception, in short, who has the power of the sovereign, which in a democracy is purportedly "the people." The necessity of a situation is determined based on what interests are to be

supreme. Therefore, "[n]ecessity is not the source of law, nor does it properly suspend the law; it merely releases a particular case from the literal application of the norm..."

(Agamben 2005: 25). Ambiguity as a means is, perhaps, neutral. It is rather the intention of using ambiguity for particular ends that are value-laden.

"The modern state of exception is instead an attempt to include the exception itself within the juridical order by creating a *zone of indistinction* in which fact and law coincide." (Agamben 2005: 26, my emphasis). In the case of the Philippine-American War, Kramer (2006) argues forcefully with ample supporting documentation, that the U.S. achieved an inclusionary exclusion of Filipinos through acts of "derecognition" and that Filipino politicians, therefore, navigated a "politics of recognition" in dealing with U.S. leaders and colonial officials.

What this meant for the water cure debate in the U.S., however, was the denial of using the water cure to the U.S. public coupled with the simultaneous complacency over using it in the Philippines. Nevertheless, anti-imperialists used the water cure and as a point with which to enrage the public rather than the more mundane, but more common, extraordinary number of Filipinos killed.

## **Conclusion**

**[yet to be written]**

Kramer (2008) notes the similarities in the use of "exceptional" language to argue justifications for using torture and, most disturbingly, the fact that "Where Americans actively defend torture, or sanction it through their silence, it is their willingness to

assimilate the pain of others into their senses of safety, prosperity and power that stretches the darkest thread between past and present."

The outcome of contemporary debates are yet to be determined. Will it again be explained away as a brief exception to the rule? Will the prosecution and/or court-martials of low-ranking "bad apples" again mark the end of the events? Or, will high-ranking officials, law-writers, be made accountable for using the law as a tool to legalize a "categorical ambiguity"—and make a distinct departure from the past?

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