Political Institutions, Plausible Deniability, and the Use of Stealth Torture*

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Abstract

Although the majority of governments engage in torture, torture *techniques* vary widely, especially in the extent to which they leave scars on the victim's body. Why do some states engage in torture that scars the body, while others do not? Relative to scarring torture, Rejali (2007) argues that stealth techniques provide states with increased plausible deniability. In this paper, we investigate the extent to which liberal democratic institutions are associated with greater/lesser scarring and stealth torture. We test our hypotheses using new data from the Ill-Treatment and Torture (ITT) Data Collection Project that distinguish between AI allegations of scarring and stealth torture. With regard to domestic political institutions, only courts seem to incentivize states to use stealth techniques: We find that elections and legislative veto points increase scarring and decrease stealth torture, while increasing judicial effectiveness lowers scarring and heightens the incidence of stealth techniques.

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1   Introduction

Although the majority of governments engage in torture and ill-treatment,[1] torture *techniques* vary widely, especially in the extent to which they leave scars on the victim's body (Rejali, 2007; Ron, 1997). In January 2012, for example, security and military forces in Libya were accused of leaving visible marks on pro-Gaddafi loyalists, including open wounds on the head and limbs. The scars from torture left by the Libyan military stand in stark contrast to Amnesty International (AI) allegations of torture against the United States that focus on water boarding, sleep deprivation, loud music, and exposure to cold temperatures (Amnesty International 2011). Why do some some states engage in torture that scars the body, while others do not? Do domestic political institutions influence the techniques government agents use when they violate the United Nations Convention Against Torture (CAT)?

Because stealth torture techniques do not leave marks on the victim's body, they provide states with plausible deniability relative to scarring torture (Ron, 1997). First developed in the police departments of the United States, France, and the United Kingdom (Rejali, 2007, 69-78), stealth torture has since spread across the globe, first to other democracies, where domestic institutions are more likely to hold executives accountable for violations (Rejali, 2007). Soon thereafter, non-democracies began to increase the use of stealth torture, as international nongovernmental organizations (INGOs) like Amnesty International (AI) launched monitoring campaigns less inhibited by state borders (Rejali, 2007).[2]

We build on Davenport, Moore and Armstrong (2007) and Conrad and Moore (2010*b*) to evaluate whether liberal democratic institutions incentivize governments to change their use of

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[1]Amnesty International (AI), an international nongovernmental organization (INGO) working for the protection of human rights, documented allegations of torture against 98 countries in 2011 (Amnesty International 2011).

[2]Rejali (2007, 13) calls the turn to stealth in response to AI as the Universal Monitoring Hypothesis.

scarring and/or stealth torture techniques, and further, whether those institutions have a different impact among the subset of autocratic states. We find that both elections and legislative veto points are associated positively with scarring torture and negatively with stealth techniques, while judicial effectiveness *decreases* scarring torture and *increases* stealth torture. With regard to domestic political institutions, then, only effective courts cause states to turn to repressive tactics that provide them with plausible deniability.

Standard practice in the quantitative study of human rights abuse is to use content analytic data from human rights annual reports as a measure of states' performance with respect to their obligations under international treaties. To the extent that human rights INGOs are able to observe the practice of states, this is sound. Unfortunately, states (and their agents) sometimes have incentives to hide abuse, and INGOs face budgetary incentives that may make it tempting to issue allegations about which it is less than confident (Hill, Moore and Mukherjee, 2012). Leaving aside organizational incentives, the quality of AI's information is unlikely to be randomly distributed across countries. Thus, researchers drawing inferences about human rights are typically interested in a latent concept measured using (1) a biased observable indicator produced by (2) a strategic actor.

To address these challenges, we use new data from the Ill-Treatment and Torture (ITT) Data Collection Project that distinguish between AI allegations of scarring and stealth torture. The ITT specific allegation (SA) data quantify allegations of CAT violations published by Amnesty International from 1995 through 2005 (Conrad and Moore, 2011*b*). In order to draw inferences about *violations* from data of AI *allegations*, we use a zero inflated negative binomial model to estimates the impact of both organizational incentives and informational variation upon the likelihood that

AI fails to issue an allegation against a given country in a given year.[3] Doing so improves our ability to treat estimates of the impact of covariates upon AI allegations as estimates of the impact of those covariates upon states' actual practices.

2   Monitoring and Government Torture

We adopt the United Nations Convention Against Torture (CAT) definition of torture,[4] which describes both scarring and stealth torture as illegal under international law:

> torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official...

In any given year most states violate the CAT: According to the ITT country year data, AI alleged that violations occurred *throughout the country* in 71% of country-years from 1995 to 2005 (Conrad, Haglund and Moore, 2012, 11).[5] In the wake of the Bush administration's euphemistically named "enhanced interrogation program," the popularity of the American television show "24," and scandals including Abu Ghraib, torture is often believed to be the domain of national security

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[3]Readers: We explain below the distinction between *violations* (latent) and AI *allegations* (observed), and the need to model the latter to draw inferences about the impact of covariates upon the former. We are especially interested in reactions to that argument as well as the solution we employ here.

[4]Other definitions of torture are similar to the one used by the United Nations: Rejali (2007, 35) defines torture as the "systematic infliction of physical torment on detained individuals by state officials for police purposes, for confession, information, or intimidation."

[5]We demonstrate this visually in a brief movie available at: `http://www.politicalscience.uncc.edu/cconra16/UNCC/Video.html`.

officials. But a variety of state agencies are responsible for detaining human beings, and AI torture allegations demonstrate that CAT violations occur across those state agencies.[6] Further, as noted in the definition above, state agents engage in torture for a variety of reasons against a heterogeneous group of victims.[7]

Although dictatorships torture more frequently and more violently than democracies (Davenport, Moore and Armstrong, 2007), democracies were the first to develop methods of stealth or clean torture that leave few (or no) marks on the body of the victim (Rejali, 2007, 69-78; see also Ron, 1997). Unlike scarring torture, which leaves lesions and/or scars on the victim's body,[8] stealth torture is purposefully and carefully executed so as not to leave visible marks.[9] Stealth techniques originated in the early 20th Century in the police departments of the United States, France, and the UK as a response to judges' increasing willingness to challenge confessions when the accused were injured. Bruises and scars corroborated the defense that their confession had been coerced (Rejali, 2007, 69-78).[10] By creating a regime of interrogation techniques that did not mark the body, police officers could elicit confessions via abuse—and avoid having those confessions ignored in a court of law.

Stealth torture was developed—and continues to find use today—because it is difficult to detect with certainty. Rejali (2007, 2) argues that victims and advocates are "less likely to complain

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[6]Although the ITT data permit inquiry into the agency responsible for a given alleged abuse, we do not distinguish among police, prisons, military, intelligence, nor immigration agencies in this paper. We plan to do so in the future.

[7]The ITT data also provide information on the type of victim (e.g., criminal, dissident, marginalized individual, state agent) alleged to have been tortured in a given event.

[8]Scarring torture includes (but is not limited to) burning, beating, cutting, whipping, boiling, sexual abuse (to include rape), abuse using animals (e.g., allowing dog bites), maiming, and disfiguring.

[9]Clean/stealth torture includes (but is not limited to) electrotorture, beating with instruments, beating on body parts so as not to leave marks, water torture, dry choking, climatized air, exhaustion exercises, positional torture and devices, restraints, irritants, sleep deprivation, noise, sensory deprivation, purposefully withholding food/water/medication, isolation from all human beings, forced feeding. For more information, please refer to Conrad and Moore (2010a).

[10]Readers unfamiliar with the central role of scarring torture in Western judicial systems should consult Rejali (2007, 49-55), or for more detailed treatments, Evans and Morgan (1998) and Einolf (2007).

about violence committed by stealth...that may or may not leave traces, violence that we can hardly be sure took place at all." When confronted with an allegation of torture, scarring techniques are difficult for the state to deny. When a victim bears the physical legacy of torture, advocates, judges, etc. are better able to confirm that a violation of human rights has occurred. Stealth torture, on the other hand, allows the state to violate rights with less obvious recourse, creating a "he said, she said" game in which the victim's story is more difficult to corroborate.[11] In short, clean techniques give offending state agent(s) plausible deniability in the face of torture allegations.

States turn to clean torture when they are worried about being caught—and potentially punished—for violations of human rights. Monitoring of state behavior is thus central: Rejali (2007, 8) argues, "Public monitoring leads institutions that favor painful coercion to use and combine clean torture techniques to evade detection..." In short, states engage in stealth torture when someone—churches, the press, the public, INGOs, or international organization (IOs)—is watching and can potentially hold them accountable for violations of human rights: "When we watch interrogators," (Rejali, 2007, 9) argues, "interrogators get sneaky."

When they face international or domestic monitoring of their behavior, both "states" and their agents have incentives to turn to stealth torture. First, when they are monitored, executives and other high ranking politicians may encourage stealth torture over scarring techniques on a national level. In the United States, for example, "enhanced interrogation" methods were debated and defined at the highest levels of national government. Second, if interrogators are told to acquire information from a victim and not given explicit constraints on their behavior,[12] they turn to torture with near certainty (Wantchekon and Healy, 1999). Indeed, Walzer (1973) argues that

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[11]Worse yet, when victims of stealth torture fail to have their stories corroborated, other victims are less likely to come forward and claim that their rights have been violated by the state.

[12]For information on the relationship between the state and delegation to repressive agents, see Conrad and Moore (2010*b*).

in democracies voters expect executives to torture in the national interest, but to hide that fact from public view.[13] When governments do not fear being caught or wish to demonstrate power (Foucault, 1979), they are likely to torture using the easiest, most straightforward techniques— scarring torture. When they expect to be monitored, but nonetheless find torture to be a useful policy, repressive agents are more likely to engage in stealth techniques. Thus, even without a top down national policy to engage in stealth torture, non-scarring techniques become more pervasive as agents of the state are increasingly monitored by domestic and/or international actors.

Where, then, should we see stealth torture? Rejali argues that democracies are more likely than their dictatorial counterparts to engage in stealth tactics.[14]

> . . . to the extent that public monitoring is not only greater in democracies, but that public monitoring of human rights is a core value in modern democracies, it is the case that where we find democracies torturing today we will also be more likely to find stealthy torture (Rejali, 2007, 8).

Although Rejali argues that democracies should substitute scarring torture with stealth techniques, he does not specify the mechanisms by which democratic institutions incentivize repressive agents to seek plausible deniability. In the next section, we follow recent literature on government coercion (e.g., Bueno de Mesquita et al., 2005; Davenport, 2007; Davenport and Armstrong, 2004) and disaggregate the institutions of democracy believed to constrain the state—and potentially also lead to stealth torture.

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[13]Mitchell (2012) documents a number of cases in which leaders in democracies behave precisely as predicted by Walzer across a wide array of human rights violations.

[14]Rejali (2007, 13) further proposes a Universal Monitoring Hypothesis, arguing that with its 1975 campaign against torture, Amnesty International launched what has become an international monitoring regime that has, in turn, set in motion the spread of stealth techniques throughout the world. This hypothesis does not undermine his expectation that we should be more likely to find stealth torture in democracies because they face both international and domestic monitoring.

3 Democratic Political Institutions as Monitors

A wealth of literature—both structuralist and rationalist—argues that democratic institutions decrease state repression (e.g., Arendt, 1970; Dallin and Breslauer, 1970; Davenport, 2007; Gartner and Regan, 1996; Gurr, 1986; Lichbach, 1987; Walter, 1969). Davenport, Moore and Armstrong (2007) and Conrad and Moore (2010b) build on Davenport's (2007) work on the domestic democratic peace and argue that domestic institutions have distinct impacts upon people's incentive and ability to monitor and sanction the state for violations of human rights. Although the majority of previous work on state repression focuses on how liberal democratic institutions limit and/or stop human rights violations, we are interested in the extent to which such institutions enhance non-state actors' ability to monitor the state's abuse of rights. When institutions reduce the cost of monitoring state activities, and/or enhance non-executive actors motivation and ability to sanction the executive, we expect state agents to be less willing to engage in scarring torture, and potentially more willing to use stealth techniques. Liberal democratic institutions—elections, judicial effectiveness, veto players, and freedom of speech—allow non-executive actors opportunities to monitor repression and sanction the executive. In what follows, we discuss the extent to which these institutions can potentially monitor state violations of human rights.

With regard to elections, we are interested in the extent to which the executive and his repressive agents are monitored and sanctioned by voters at the ballot box. Contested elections provide citizens with the ability to choose their leaders, thus giving them the ability to monitor—and punish—elected leaders that engage in repression. By responding collectively via elections, voters have the opportunity to sanction violators of human rights. Faced with this threat, elected officials face incentives to (1) end human rights violations, or (2) continue to abuse human rights, but to do so in a way to avoid potential electoral costs. Walzer (1973) argues that voters hold

elected leaders responsible for national security, and thus expect leaders to (1) "dirty their hands" to protect the body politic, but (2) hide such abuse from public scrutiny. Consider further *Publius'* concern in *Federalist #10* about majority abuse of minority interests (Hamilton, Madison and Jay, 2009). As a result, elections may spur, rather than constrain, the use of torture against minorities who do not vote in effective blocks (e.g., criminals, dissidents, and marginalized groups) in society. Those three types of people are precisely the ones that Rejali (2007) identifies as at risk to abuse in his juridical, national security, and social control models of torture.

Based on the discussion above, we expect elections to produce demand for torture to protect the body politic. Yet because Walzer (1973) contends that voters punish executives who are caught with "dirty hands," we expect executives facing elections to hide this behavior from public view and engage in stealth torture. In other words, Walzer (1973) believes that voters are hypocrites who demand that politicians "dirty their hands" and then lie about it. This discussion results in an argument that links elections to stealth torture.

Hypothesis 1. *As compared to states without competitive elections, states with competitive elections exhibit (1) greater stealth torture, (2) less scarring torture, and (3) a lower proportion of scarring to total torture.*

Legislative veto concerns the extent to which elected legislators can inhibit executive authority (Tsebelis, 2002). Unlike Conrad and Moore (2010*b*), we distinguish between legislative veto points and other separation of power, such as courts.[15] Partisans in an elected body that are from a party different from that of the executive have an electoral incentive to point out the executive's "dirty hands," thereby creating a public outcry that will give them an opportunity to take back the executive in an election. The executive, of course, recognizes the electoral incentive of opposi-

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[15]We discuss the effect of domestic judicial effectiveness on torture techniques below.

tion party members and decreases her reliance upon scarring torture in response to the size of the opposition in the legislature, turning instead to stealth techniques. Our argument here thus differs from the more conventional use of veto points as institutions that privilege the status quo.[16]

Hypothesis 2. *Legislative veto points are associated with (1) greater stealth torture, (2) lower scarring torture, and (3) a lower proportion of scarring to total torture.*

Although elections provide a mechanism by which the public can sanction the executive, such a mechanism might be weak both because the modal citizen may not threaten to vote repressors out of office and because elections occur only sporadically. Freedom of expression, on the other hand, may serve as a better monitor of state repression both because people who care about human rights protections can potentially affect change absent a majority and because the expression of such views can happen outside the electoral process. By freedom of expression, we mean the extent to which individuals and groups can express alternative viewpoints without being sanctioned by the state. This includes both freedom of the press/media, and the right of the population to engage in dissent against the regime without state censor. Perhaps more than other actors, the press has an incentive to act as a monitor of state violations of human rights, calling out repression when it occurs. As such, we expect states that allow freedom of the press to seek plausible deniability about violations of human rights whenever possible. When considering torture techniques, states with increased freedom of expression will prefer non-scarring techniques over those that marks the body.

Hypothesis 3. *Higher levels of freedom of expression are associated with (1) greater stealth torture, (2) lower scarring torture, and (3) a lower proportion of scarring to total torture.*

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[16]Veto points are associated with a longer duration of torture spells (Conrad and Moore, 2010*b*). The process we are theorizing about here, however, is different due to our unique research question. In this project, we are not considering whether torture spells will end, but rather, what techniques will be used during those spells.

A wealth of literature highlights the link between domestic judicial effectiveness and increased respect for human rights (e.g., Blasi and Cingranelli, 1996; Cross, 1999; Keith, 2002; Keith, Tate and Poe, 2009; Powell and Staton, 2009).[17] Domestic courts are more effective when citizens believe the judiciary constrains the behavior of other domestic actors (e.g., Powell and Staton, 2009).[18] If a court's decisions are not translated into policy, it will not persuade citizens that the state protects property rights (North and Weingast, 1989) or physical and civil rights (Moustafa, 2007). When courts are ineffective, repressive agents are unlikely to expect the domestic judiciary to sanction them for two important reasons.

First, the likelihood that people bring cases against the state in court depends upon their belief that adjudication will produce a positive outcome. Executives that are faced with an ineffective court know that fewer cases will be brought against the state. Second, the risk of the court ruling against the executive declines as courts become ineffective. Thus, even allegations of human rights abuse that make it to the court are less likely to be seen as threatening to the state's ability to repress. Executives that face an effective judiciary, on the other hand, recognize that people are more likely to file cases of human rights violations, and that the court can, and may, impose costs on them. In expectation, then, these executives face incentives to reduce their use of torture, and to the extent that they use it at all, to shift toward torture techniques that afford them plausible deniability.

Hypothesis 4. *Judicial effectiveness is associated with (1) greater stealth torture, (2) lower scarring torture, and (3) a lower proportion of scarring to total torture.*

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[17]For a review of definitions (and measures) of judicial independence, see Ríos-Figueroa and Staton (2008*a*).

[18]Domestic courts gain effectiveness endogenously as they interact with other domestic institutional actors and the general public (e.g., Ginsburg, 2003; Staton, 2006; Vanberg, 2005; Weingast, 1997).

4   Empirical Analysis

Although a growing body of scholarship focuses on the effect of institutions on state torture (e.g., Conrad and Moore, 2010b; Hathaway, 2002; Powell and Staton, 2009; Rejali, 2007; Vreeland, 2008), researchers have yet to quantitatively examine the effect of political institutions on government torture techniques. This is in large part because the structure of most cross-national data on state torture does not distinguish among types of torture and ill-treatment (e.g., Cingranelli and Richards, 2010; Hathaway, 2002). Using new event data on government torture allegations from the ITT Data Collection Project (Conrad and Moore, 2011b), we are able to test our hypotheses about the effect of domestic political institutions on the government decision to engage in scarring and/or stealth torture. In what follows, we discuss the structure of our dependent variable and our consequent empirical model, followed by a discussion of the operationalization of our key independent variables.

4.1   Operationalizing Torture Allegations

Based on content analysis of AI reports, the ITT Data Collection Project codes data on Amnesty International (AI) allegations of government torture and ill-treatment for 157 countries from 1995 to 2005.[19] The ITT specific allegation (SA) data are available at the allegation event unit of observation and distinguish between four types of allegations against the state: scarring torture, stealth torture, unknown torture, and ill-treatment. In this paper, we focus exclusively on the distinction between scarring and stealth torture.[20] Scarring and stealth torture differ in the extent

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[19]The ITT Project codes information from Amnesty International (AI) Action Alerts, Press Briefings, and Annual Reports. An allegation is a(n) (set of) English sentence(s) that makes the claim that a state has detained a person(s) and violated the human right to the integrity of the person delineated in the CAT (Conrad and Moore, 2010a).

[20]Although ITT codes allegations of ill-treatment and unstated (type of) torture, we cannot know whether these allegations constitute scarring or stealth violations of human rights law. In some instances, however, AI may face incentives to generate allegations of unknown torture rather than specify the type of torture.

to which they leave visible marks on the human body (Rejali, 2007).[21] Although it can take many forms, scarring torture leaves obvious lesions on the victim(s) of abuse. Conversely, stealth torture is carefully executed in such a manner to avoid leaving such marks and/or scars (Conrad and Moore, 2010a).[22]

Because the majority of our institutional data is coded at the country-year unit of analysis, we aggregate ITT allegations of scarring and stealth torture to the country-year unit of observation. To do so, we calculate the raw sum of allegations of each scarring and stealth torture within each country-year in our data.[23] Because we are also interested in the extent to which states trade off across these repressive policies, we also create a variable that is the proportion of stealth torture allegations to total torture allegations.[24]

4.2 Distinguishing Between Torture Allegations and Violations

Studying the impact of political institutions on state respect for rights turns out to be unexpectedly challenging. The rise of strategic theorizing about political processes has illuminated the importance of off the equilibrium path behavior, information asymmetry, and other processes that generate unobservable values important to testing theories. This awareness has helped make researchers more sensitive to both censored data and latent (i.e., unobservable) concepts, and to begin to engage (or develop) statistical models that permit inferences using censored data (e.g., Svolik, 2008) or latent concepts (e.g., Fariss and Schnakenberg, 2011; Linzer and Staton, 2011; Treier and

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[21]These values are not mutually exclusive in the ITT data, as a given victim can experience both types of abuse in the course of a given allegation. Please see Conrad and Moore (2010a) for additional information on the coding rules used to distinguish between allegations of scarring and stealth torture.

[22]In some cases, torture begins as stealth and becomes so prolonged that it leads to scarring of the body. ITT considers these allegations as scarring torture.

[23]Although ITT codes information on the number of victims involved in a given allegation, we do not make use of that information here. In instances in which an allegation of torture is reported to have begun in year, t, and ended in year, t+N, we code all years as having experienced an event.

[24]Because there are only two types of torture allegations in the denominator of this proportion, we do not also calculate the proportion of scarring torture allegations to total torture allegations.

Jackman, 2008).

With regard to the measurement of repression, we do not believe that it is plausible to expect that anything approaching a census of rights violations is observable, even for a single country, much less for all countries of the world. Instead, we wish to distinguish between actual human rights *violations* and the *allegations* of human rights violations published by INGOs. Unlike previous data on state torture, the ITT Project explicitly assumes that the actual level of state torture in a given year is unobservable. In its content analysis of AI documents, ITT codes information about torture allegations of violations rather than information about violations directly.

AI documents are useful sources for content analysis because the organization has an extensive quality control procedure that includes research teams composed of both subject and area experts as well as approval by veto players.[25] Although allegations in AI documents are credible, however, there has been little academic discussion about whether they are representative of the actual level of state torture in a given country in a given year. We do not believe that AI allegations of torture constitute an unbiased record of state human rights violations. Otherwise put, the reports do not contain a representative sample of true violations that occur in a given country. This is so for two reasons.

First, allegations of torture are necessarily an undercount of state violations of the CAT. By their very nature, human rights violations are typically hidden from public view. Indeed, many instances of rights violations are even hidden from superiors: the "state" does not have a complete catalog of all of its employees' violations of human rights. Further, information about abuses of

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[25]This information is drawn from an interview with Amnesty International personnel conducted by Moore on 12 November 2008. Different types of AI documents have distinct vetting procedures. The *Annual Report* has the most extensive process, but all documents require at least two independent sources of information prior to publishing. Furthermore, AI is argued to produce reliable reports (e.g., Clark, 2000; Cmiel, 1999), and their reports have been used as a source for content analysis that has produced widely used data such as the Political Terror Scale (Gibney and Dalton, 1996), the CIRI project (Cingranelli and Richards, 2010), and data coded by Ron, Ramos and Rodgers (2005).

human rights, including torture, is not equally available across countries and over time. AI staffers form relationships with activists, government officials, NGO personnel, and reporters and rely on these networks to provide information about allegations. The information available to AI staffers varies across countries and over time, and this fact influences the number of allegations AI produces for a given country in a given year.

Second, AI is a strategic organization that must balance two goals often in tension with one another: (1) the need for accurate reporting so as to maintain credibility, and (2) the need to raise donations of cash and volunteer labor.[26] AI does not necessarily invest resources in documenting all cases that come to light. Because AI faces incentives to invest its resources strategically,[27] it is unlikely to report allegations with equal probability across all countries and across time, and not all cases that AI staff document are reported in AI documents. Drafts of AI reports undergo a considerable vetting process, and many cases that might otherwise have made it to publication are pruned due to inadequate sources.

4.3   Generating an Empirical Model of Torture Violations

Because the ITT Project provides data on AI *allegations* of state torture, we have the population of AI allegations against a given state. But the population (total) allegations are not a random draw from the underlying distribution of actual cases of torture. We can describe this process more explicitly with three equations. Letting γ represent parameters and υ represent random error, the process by which actual cases of state torture become AI allegations can be described as follows:

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[26]Interest in the impact of these cross-pressuring incentives upon the activities of INGOs is growing (e.g., Berkovitch and Gordon, 2008; Gourevitch and Lake, 2011; Hendrix and Wong, 2010; Hill, Moore and Mukherjee, 2012; Lake and Wong, 2009).

[27]Hill, Moore and Mukherjee (2012) explore the extent to which AI succumbs to organizational incentives, thus compromising its claim to be an honest broker and publish only accurate allegations.

$$(1) \; Total \; Allegations \equiv Accurate \; Allegations \; + \; False \; Accusations;$$

and

$$(2) \; (Accurate \; Allegations \; + \; False \; Accusations) =$$
$$\gamma_1 \; Cases \; of \; Torture \; + \; \gamma_2 \; Violence \; + \; \gamma_3 \; Civil \; Society \; + \; v_i;$$

therefore,

$$(3) \; Total \; Allegations = \gamma_1 \; Cases \; of \; Torture \; + \; \gamma_2 \; Violence \; + \; \gamma_3 \; Civil \; Society \; + \; v_i,$$

where $\gamma_1 > 0$, $\gamma_2 < 0$, and $\gamma_3 < 0$. Total allegations originate from a variety of sources; AI seeks

to screen false allegations and report accurate allegations that it believes will increase government

compliance with the CAT. Thus, the process that produces allegations that appear in AI documents,

AI Allegations, can be represented by the following equation:

$$(4) \; AI \; Allegations = \gamma_4 \; Accurate \; Allegations \; + \; \gamma_5 \; False \; Allegations \; + \; v_j$$

In a social scientist's ideal world, $\gamma_4 = 1$, $\gamma_5 = 0$, and v_j is normally distributed with a mean

of zero and a small variance. Were this so, a variable produced by an unbiased content analysis

instrument coding *AI Allegations* (as reported in AI documents) would be an unbiased measure

of *Accurate Allegations*. Yet, the discussion above suggests that $\gamma_4 < 1$, $\gamma_5 > 0$ (though rather

close to zero), and the expected value of v_j may not be zero: any variable produced by coding *AI*

Allegations is thus a biased undercount of *Accurate Allegations*, which is the concept we want to

measure.

There are two reasons that this bias does not scuttle our ability to draw inferences about

actual state torture. First, we know what the problem is: under-reporting bias. This form of

bias is well known to human rights researchers and is a problem for all data measuring either the allegation of human rights violations or the violations themselves (Bollen, 1986, 579–82; Spirer, 1990; Cingranelli and Richards, 2001; Goodman and Jinks, 2003, 175–6; Hathaway and Ho, 2004). Second, statistical models exist that permit one to model this type of bias in the data generating process—if one has theoretically grounded expectations about the variables associated with the bias. We do. First, AI has organizational incentives to issue allegations when a country becomes the focus of international attention and tends to focus upon the most egregious violations rather than reporting all violations. Second, the level of violence, the strength of civil society, and whether AI has an office in a country should influence the quality of information available to AI. Both of these factors influence the likelihood that AI fails to issue an allegation despite the fact that at least one took place. Finally, like all bureaucratic organizations, standard operating procedures are likely to develop, and thus AI's past reporting of allegations is likely to influence its current reporting.

In order to use ITT data to draw inferences about the effect of political institutions on state torture, then, we must model the aforementioned data generating process by which AI generates *allegations* of state torture. For our scarring and stealth torture count dependent variables, we use a zero inflated negative binomial (ZINB) model.[28] When we turn to the proportion of stealth the total torture as our dependent variable, we use a Heckman selection model. In the first inflation or selection stage of each model, we estimate the probability that AI generates at least one allegation of torture for a given country–year. In the second outcome stage of each model, we then estimate (1) the number of AI allegations of scarring and stealth torture (using the ZINB model), and (2)

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[28]The negative binomial model adds a parameter to account for overdispersion and reduces to the Poisson when this parameter is equal to zero (Long and Freese, 2001). Readers: Do you find these to be compelling statistical models to estimate the DGP we are interested in? How would you go about it?

the proportion of scarring torture to total torture occurring in a given country-year (using the Heckman selection model).

4.4 Operationalization of Independent Variables

We specify both our ZINB and Heckman selection models using the arguments and model specification in Hill, Moore and Mukherjee (2012). In what follows, we discuss the independent variables included in our outcome equation—measures of the institutional concepts we argue affect torture techniques and various controls—and the independent variables included in our selection equation—measures of the concepts that we argue affect the likelihood of AI generating an allegation of torture in a given country-year.

4.4.1 Estimating the Outcome Equation: Violations of Torture

To test our hypotheses about the impact of political institutions upon states' use of scarring and stealth torture we require measures of several liberal democratic institutions—contested elections, institutional veto, freedom of expression, and judicial effectiveness—as well as measures of institutional legislative variation in non-democracies. We use a dichotomous measure of contested elections from Cheibub, Gandhi and Vreeland (2010).[29] To measure legislative veto points, we use the PolConIII indicator from the Political Constraints Project (Henisz, 2002). Based on a spatial model and ranging from 0 to 1, PolConIII captures the extent to which policy can be changed. It includes information on the number of branches of government with veto power, the partisan affiliations of control with those branches, and the extent of legislative fractionalization. We use data from

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[29]See also, Alvarez et al. (1996); Cheibub and Gandhi (2004). In order for a country to be coded as a democracy, (1) the executive and the legislature must be selected through popular election, (2) there must be ex ante uncertainty about who will win, (3) the winner must take office following the election, and (4) elections must occur at regular intervals. All countries that do not meet these criteria are coded as non-democracies.

Cingranelli and Richards (2010) on government censorship and free speech to measure freedom of expression. We reverse the trichotomous scale such that 2 indicates no restrictions, 1 indicates some restrictions, and 0 indicates severe restrictions on free speech and ownership of the media. We understand judicial effectiveness to have three components: 1) whether judges are permitted to rule without interference (Staton and Moore, 2011), 2) whether judges rulings are translated into policy (Cameron, 2002), and 3) whether the domestic population believes the court is effective and is thus inclined to use it (Powell and Staton, 2009). A number of indicators for one or more of these dimensions have been proposed, but none of them capture all three dimensions.[30] Linzer and Staton (2011) use a Bayesian heteroskedastic graded response item response theory (IRT) model and to develop a measure of judicial effectiveness from eight existing indicators.[31] The IRT model produces a continuous measure that ranges from 0 to 1, for which higher values represent greater levels of domestic judicial effectiveness.

We include several additional measures in our outcome equations to control for spurious inferences. First, torture techniques are often used in conjunction with one another, both as part of broad state policy and against individual victims. In the ITT SA data, an individual event can include allegations of up to three types of torture: scarring, stealth, and unstated.[32] As such, we include count measures of unstated torture in our models of scarring and stealth torture; we also include a covariate for stealth torture in our empirical model of scarring torture, and vice versa. Second, violations of the CAT are more common when states face violent dissent (Davenport, Moore and Armstrong, 2007), and torture spells rarely end when dissidents engage in at least one act of violence per year (Conrad and Moore, 2010b). We account for violent dissident–state interactions

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[30]For a discussion of the pros and cons of empirical indicators of judicial effectiveness, please see Rìos-Figueroa and Staton (2008b).

[31]The data Linzer and Staton (2011, 14) use includes measures from Cingranelli and Richards (2010); Clague et al. (1999); Howard and Carey (2004); Marshall and Jaggers (2009); Tate and Keith (2009).

[32]ITT codes unstated when AI fails to specify the type of torture occurring in an individual allegation.

in our outcome equations using the Uppsala Conflict Data Program's (UCDP) 25 deaths per year threshold measure of civil war (Themnér and Wallensteen, 2011). Finally, we control for country population (in tens of thousands) and country wealth using data from the Penn World Tables.

4.4.2 Estimating the Inflation/Selection Equation: Pr(AI Torture Allegation)

To draw inferences about the conditions under which states turn to stealth torture using ITT data on allegations, we must include covariates in the selection stage to predict the likelihood of AI allegation generation. As noted above, Hill, Moore and Mukherjee (2012) study the extent to which AI allegations of torture, measured using the CIRI data, are biased. To motivate our specification of the selection equation we adopt their argument, which can be divided into two parts: organizational incentives and quality of information.

The organizational incentives argument comes from AI dependence upon volunteer labor and financial donations. Appealing to the journalism maxim "if it bleeds, it leads," Hill, Moore and Mukherjee (2012) note that AI can ill afford to remain silent when a country garners considerable news attention due to state violence. The rub is that quality of information—the other category of variables discussed below—declines in conflict zones. NGOs and the press are less able/willing to work as violence rises. As a result, AI's ability to vet allegations declines, and its incentive to report rises. To measure the organizational incentive to report on a country we included a lagged value of the CIRI project's Physical Integrity index, which is a summary measure of a country's respect for physical integrity rights (Cingranelli and Richards, 2010).[33] The variable is a discrete, ordered measure that ranges from zero through eight, with higher values representing greater respect for

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[33]Readers: We could use the (lagged) # of news articles that mention human rights; the (lagged) value of UN Commission on Human Rights naming and shaming of the country; and the (lagged) value of AI Action Alerts in addition to/instead of the CIRI PhysInt variable. We might also consider an IRT measurement model. Setting aside the labor considerations, what would you find most compelling? NB: *All of the above* is not an acceptable answer.

the rights to the physical integrity of the person.[34]

Based on interviews with staff at Amnesty International conducted in 2011 and 2012, we also learned that the organization prioritizes "worse" human rights abuses when issuing allegations. A given state may engage in torture, but not be shamed for such, if it also engages in extrajudicial killing and disappearances. Including the CIRI Physical Integrity index in the first stage of our empirical models helps us address this issue as states that engage in extrajudicial killing or disappearances have lower scores on the index.

Turning to quality of information, first, the extent to which AI is able to generate allegations of human rights violations is dependent on its ability to work within a given country. Although AI maintains local offices in many countries, some governments prevent NGOs from operating within their borders.[35] In these cases, it is more difficult for AI to have access to victims, as well as local advocates, and thus more difficult for them to make allegations—even when violations occur. Thus, one might anticipate that reduced access will be associated with fewer allegations, yet that implication ignores the impact that such information would have on AI's beliefs. Restricted access, as has recently occurred in Syria (Human Rights Watch, 2011), signals that the state is abusing rights, and thus we argue that it will *increase* the likelihood that AI issues at least one scarring or stealth allegation in a given year. The chances that the allegation is inaccurate should rise, but AI will, on average, determine that the risk of needing to run a retraction is outweighed by the need to attract donations and volunteer labor and err on the side of speaking out (Hill, Moore and

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[34]Hill, Moore and Mukherjee (2012) also argue that INGOs like AI develop beliefs about about a state's respect for human rights, and that those beliefs influence, ceteris paribus, the likelihood that AI issues an allegation. They leverage the selectorate theory advanced by Bueno de Mesquita et al. (2003) and use the W/S ratio as a measure that will influence those beliefs. Because W/S is so highly correlated with the liberal democratic institutions we are studying in this paper we do not include W/S in the selection equation, and instead propose that the lagged value of the Physical Integrity index, which is partly based upon AI's Annual Reports, is also a useful measure of AI's beliefs about the state's respect for rights.

[35]Krüger (2008) codes whether AI had a national office in a country, though her data cover 1961-2003. Though doing so trimmed two years from our sample, we also estimated equations in which we included her measure of a national AI office in the selection equation. Doing so did not appreciably impact the other variables in the model.

Mukherjee, 2012).

To account for such biases in the production of allegations, we include a variable from the ITT country-year (CY) data (Conrad and Moore, 2011a). Restricted access is a binary measure that captures whether or not AI published a statement that it, or another INGO, had difficulty gaining access to detainees during a given country-year (Conrad and Moore, 2011a). Lastly, another advantage of including the restricted access variable is that it helps us identify the model: while states that are torturing have an incentive to restrict access, it is not the case that states that restrict access, ceteris paribus, have an incentive to torture.

Finally, we require a measure of bureaucratic process and turn again to the ITT CY data. Unlike the CIRI (Cingranelli and Richards, 2010) and Hathaway (2002) data, the ITT Project codes in separate data sets: (1) countrywide allegations of torture and (2) allegations of torture that are limited in time or space. Although here we employ the SA data, which are limited in space and/or time (Conrad and Moore, 2011b), as our dependent variables, the ITT CY data contain information about about the alleged level of torture throughout the country and the year (Conrad and Moore, 2011a). We include the lagged value of the Level of Torture (LoT) variable from the ITT CY data. This variable records the highest level of alleged violations that occurred in a given year, over a scale from zero through five.

Why is the lagged value of LoT a useful measure of bureaucratic process, particularly in comparison with a lagged value of the dependent variable and given our inclusion of the current year's CIRI Physical Integrity scale? First, the lagged value is an event count, and those variables tend not to be terribly stable over time. LoT, which has a smaller range of values, is considerably more stable over time. Second, LoT has surprisingly moderate correlations with CIRI's respect for freedom from torture measure, -0.42, and Hathaway's torture scale, 0.46 (Conrad, Haglund and

Moore, 2012).[36] As such, we are able to include it as a measure of bureaucratic process and use the CIRI Physical Integrity index as our measure of the demand to report other allegations and ignore torture.

5   Results and Discussion

We argue that democratic institutions potentially allow non-state actors to better monitor and/or sanction the executive and his agents with regard to human rights. As such, we hypothesized that four democratic institutions—elections, veto points, freedom of expression, and courts—could decrease the incidence of scarring torture and increase the incidence of stealth techniques. We begin with our analysis of the extent to which liberal democratic institutions influence states' use of stealth and scarring torture, then turn to the effect of democratic institutions on torture techniques in dictatorships.

Table 1 reports coefficient estimates and standard errors from zero inflated negative binomial models (ZINB) where the dependent variable is scarring torture (Column 2) and stealth torture (Column 3). Column 4 reports coefficient estimates and standard errors using a Heckman selection model where the dependent variable is the proportion of scarring torture to total (scarring + stealth) torture. Outcome equation estimates are listed in the top half of Table 1; inflation or selection stage outcomes are provided in the lower half of each table.

The coefficient estimates in the outcome equations in Table 1 represent the impact of a one unit increase in the independent variable upon allegations of scarring or stealth torture in the first two columns, and in the third column, the impact upon the proportion of scarring allegations to

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[36]We believe that this moderate correlation is due to the fact that neither the CIRI nor the Hathaway projects distinguish between country–year and specific allegations.

Table 1: Liberal Democratic Institutions & Torture Type

	Scarring	**Stealth**	**Proportion**
Outcome Equation:			
Elections:	0.249	-0.404	0.083
	(0.095)	(0.111)	(0.024)
Judicial Effectiveness:	-0.467	0.467	-0.229
	(0.199)	(0.221)	(0.051)
Legislative Veto:	0.584	0.006	0.032
	(213)	(0.243)	(0.054)
Freedom of Expression:	-0.063	-0.149	0.043
	(0.323)	(0.071)	(0.016)
Civil War:	0.201	-0.406	0.082
	(0.136)	(0.160)	(0.039)
Population:	-1.22e-07	5.32e-09	-3.32e-09
	(2.40e-07)	(2.49e-07)	(6.02e-08)
Country Wealth:	0.065	1.80e-13	-2.72e-14
	(3.88e-14)	(3.15e-14)	(8.13e-15)
Stealth Torture:	0.065	—	—
	(0.009)		
Scarring Torture:	—	0.059	—
	(0.006)	(0.006)	
Unstated Torture:	0.033	0.023	-0.002
	(0.005)	(0.005)	(0.001)
Constant:	-1.352	0.269	0.746
	(0.077)	(0.102)	(0.020)
Selection Equation:			
Physical Integrity$_{t-1}$:	0.859	0.526	-0.205
	(0.117)	(0.120)	(0.020)
CY Allegations$_{t-1}$:	-0.001	-0.011	0.001
	(0.003)	(0.004)	(0.001)
Restricted Access:	-3.353	-18.645	1.064
	(3.671)	(3568.366)	(0.209)
Constant:	-6.468	-4.437	1.529
	(0.840)	(0.845)	(0.114)
N:	1231	1231	1303

NOTES: Coefficients and (standard errors) are reported. Statistically significant (p < 0.05) coefficients are blue.

scarring and stealth allegations.[37] In stark contrast to our first hypothesis, elections are associated with an increase (28%) in scarring torture and the proportion of scarring torture to total torture. Elections also have a significant negative effect on stealth torture, decreasing the expected count by 33%. Given that human rights are generally anti-majoritarian and competitive elections are majoritarian institutions it may well be that competitive elections do not constrain repressive leaders. Walzer (1973) argues that publics demand that elected leaders "dirty their hands" to protect society, but that they hide their behavior from public scrutiny. If that is so, we might expect scarring torture to take place largely in Immigration & Detention centers and against Marginalized Populations in countries with competitive elections. Our next step will be to examine the impact of elections across government agencies (e.g., Police, Prisons, Military, Immigration & Detention) and victim types (e.g., Criminals, Dissidents, Marginalized Populations).

Our second hypothesis involves legislative veto, the impact of opposition party representation in the legislature. Legislative veto is positively and significantly associated with scarring torture (increasing the expected count by 79%), but has no effect on stealth torture of the proportion of scarring to total torture. Further, there is no corresponding increase in stealth torture (or a change in the proportion of scarring to total torture). This result is inconsistent with our expectation that executives anticipate the incentive of opposition legislators to hold hearings or otherwise make public information about torture and respond with efforts to discourage torture that produces scars. As above, we plan to explore whether these results hold or vary across different Agencies of Control and different Types of Victims.[38]

Freedom of speech is negatively associated with stealth torture, decreasing the expected count by 14%, and positively associated with the proportion of scarring to total torture. These

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[37]We plan to generate more information about substantive effects in future versions of this paper.

[38]We look specifically at the effect of legislative institutions in dictatorships below.

results suggest that the press does not serve as a monitor that inventivizes the executive to move toward stealth torture techniques. This is an unexpected finding. Perhaps freedom of expression incentivizes dissent, which makes states less likely to be motivated to hide repression. Such a story suggests, however, that scarring torture should also increase as freedom of expression heightens, and we do not find that to be the case.

Judicial Effectiveness is the only liberal democratic institution that appears to serve as a monitor, encouraging states to switch to less visible torture techniques. Judicial effectiveness is negatively associated with scarring torture, decreasing the expected count by 37%, and negatively associated with the proportion of scarring to total torture. Furthermore, judicial effectiveness is positively associated with stealth torture, decreasing the expected count of clean violations by 60%. These results are consistent with our fourth hypothesis, as well as with a broad set of findings that domestic courts constrain human rights violations more generally (e.g., Keith, Tate and Poe, 2009; Powell and Staton, 2009; Staton and Moore, 2011).

Regarding our control variables in the outcome equation, civil war is negatively associated with stealth torture and leads to an increase in the proportion of scarring to total torture. Country wealth, on the other hand, is positively associated with stealth torture. Furthermore, stealth torture and scarring torture are positively and highly significantly associated with one another, as well as with allegations of unknown torture. This suggests that torture techniques are complements, rather than substitutes; increases in one technique typically lead to increases in other types of torture.

We turn now to the covariates in the inflation/selection stage of Table 1. The lagged value of CIRI's Physical Integrity index is the only measure to impact the likelihood that a given country-year is in the censored sample across scarring torture, stealth torture, and the proportion. We use the Physical Integrity index as a measure of organizational incentives—both AI's budget-induced

pressure to comment and its concern about burning out membership by crying wolf (i.e., the focus on publishing more egregious violations rather than less egregious ones). The sign is positive in the count models: the greater the protections of physical integrity rights in a given country-year, the less likely AI is to generate at least one allegation of scarring or stealth torture. In the Heckman selection model, however, the coefficient is negative and significant, indicating that increasing respect for physical integrity rights decreases the proportion of scarring torture to total torture allegations. The CY Torture Allegations and Restricted Access variables have limited impacts. AI's allegations about the highest level of torture in the preceding country–year is positively associated with the likelihood of observing one or more stealth allegations the following year, but has no impact on scarring nor the proportion of scarring. Thus the higher the level of alleged torture the year prior, the more likely AI is to find some stealth torture. AI's report of Restricted Access has no impact upon scarring nor stealth, but positively influences the likelihood of reporting a greater proportion of scarring.

6   Conclusion

Do political institutions influence the extent to which governments violate their agreement under the Convention Against Torture? We suspect that the modal response to this question is that executives in countries with democratic institutions avoid torture. Ron (1997) and Rejali (2007) explain why democracies have played the leading role in developing stealth torture techniques that are difficult to detect; Rejali (2007) argues that stealth techniques have also been adopted in non-democratic countries in response to the CAT and the monitoring and shaming of human rights INGOs. That work does not explore the impact of specific liberal democratic institutions on these processes, nor has it examined whether dictators who adopt democratic institutions change their

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practices. This study explores those topics.

Liberal democratic institutions reduce the costs of monitoring government agents and can incentivize actors to make allegations of human rights violations (Conrad and Moore, 2010b; Davenport, 2007; Davenport, Moore and Armstrong, 2007). Elections are majoritarian, and echoing *Publius* in *Federalist 10* (Hamilton, Madison and Jay, 2009), they only constrain state abuse of people who are part of that majority. As Walzer (1973) argues, elected executives have an incentive to violate the rights of those they identify as threatening (e.g., criminals, dissidents, and marginalized groups) and to hide that they do so. Ron (1997) and Rejali (2007) document the development of stealth torture techniques in democracies that hold free and fair elections, and Mitchell (2012) provides further empirical support for Walzer (1973) beyond violations of the CAT. Using the ITT Specific Allegation data, we find both elections and legislatures to be positively associated with scarring, and negatively associated with stealth, torture techniques. Although one might argue that legislative checks veto points incentivize elected executives to tread cautiously lest their misdeeds be exposed, criminals, dissidents, and marginalized groups are not well represented in legislatures regardless of the number of opposition seats there. Our results are consistent with that observation.

Human rights are, of course, anti-majoritarian: they place constraints on state behavior and policies *regardless of the level of popular support for such behavior or policy* (e.g., Donnelly, 2003). Unlike elections, effective courts are anti-majoritarian. Further, because human rights are enshrined in both domestic and international law, courts are the institution responsible for upholding them. By demonstrating that effective courts are the liberal democratic institution that serves to motivate the use of stealth torture techniques and reduce the reliance upon scarring methods our results extend those reported in Davenport, Moore and Armstrong (2007); Keith, Tate and Poe (2009) and Powell and Staton (2009). Neither Ron (1997) nor Rejali (2007), whose

work documented the development and spread of stealth torture methods, explored the impact of different liberal democratic institutions upon stealth torture. That work neither engages Walzer's (1973) important claims, nor those of *Publius*. We further expect that most political scientists, who appear to reflexively think of democratic institutions as producing positive outputs, would not anticipate the argument and findings that elections, and even opposition–dominant legislatures, are positively associated with scarring torture and negatively associated with stealth methods. Our study brings these arguments and findings to light and also explains why effective courts are the liberal democratic institution responsible for the shift documented by Ron (1997) nor Rejali (2007).

We close with two considerations for future research. First, in this study we did not take advantage of the ITT data's coding of the Agency of Control responsible for a give abuse *or* the Victim Type abused in a given event. Haschke (2011, 2012) puts that data to interesting use to explore the extent to which the patterns of CAT violation are distinct within democracies, and Conrad, Haglund and Moore (2012) report descriptives that document some suggestive differences across regime type and victim type. We intend to explore that further in future work. Second, while the use of a zero–inflated model is a step in the right direction toward drawing inferences about the impact of variables upon latent torture, it is not a fully satisfying solution. We plan to develop superior models in future research.

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