A Thesis

entitled

The Role of Bureaucracy During the War on Terror

by

Susan D. Brace

Submitted to the Graduate Faculty as partial fulfillment of the requirements for the

Master of Arts Degree in Political Science

Dr. Sam Nelson, Committee Chair

Dr. Renee Heberle, Committee Member

Dr. Jami Taylor, Committee Member

Dr. Patricia R. Komuniecki, Dean
College of Graduate Studies

The University of Toledo

May 2011
An Abstract of

The Role of Bureaucracy During the War on Terror

by

Susan D. Brace

As partial fulfillment of the requirements for the Master of Arts Degree in Political Science

The University of Toledo
May 2011

The basic structure of a bureaucracy has been defined and debated by many scholars. Bureaucracies are designed in a specific way in order to work efficiently and to track accountability within the hierarchical system. In this thesis I argue that during the war on terror top administrative officials affected the stability of the U.S. military bureaucracy by removing and altering two significant characteristics: hierarchy and routine. Instead of only one official occupying the top of the hierarchical apex there was a college of leaders. This group then questioned and removed the legitimacy of two of the military’s guiding documents; the Uniform Code of Military Justice as well as the Geneva Conventions. Without these documents, soldiers are vulnerable and are forced to act without precedent or specific procedures. These two elements of the bureaucracy alter the institution in such a way that it leaves soldiers vulnerable to legal consequences while the ‘group’ of leaders at the top are protected by a diluted center of responsibility.
Acknowledgments

The process of writing this thesis was more time consuming and difficult than I expected. Without the support of my friends and family I doubt I ever could have finished on time. My parents have supported me throughout all of my major life decisions and graduate school was no exception. They never question my direction but instead ask how they can help and I am hopeful that one day I can return the favor exponentially. My sister and her family have opened up their home to me and I am forever grateful! My sisters and brother are always in my corner cheering me on and they are a truly priceless presence in my life. I would also like to thank my fiancé. He gets ignored because I am writing and has listened to me complain on countless occasions, but regardless he has supported me immensely throughout this entire process.

My thesis advisor and committee have gone out of their way to make my graduation possible. Their criticism, advice and support have made my research better than I ever thought possible. I am indebted to them and am forever grateful for their support.
Contents

Abstract iii
Acknowledgements iv
Contents v
Preface vi

1 Weber, Wilson and Sher 1
   1.1 Bureaucracy .................................................................................................1
   1.2 Responsibility .................................................................................................7
   1.3 Conclusion .......................................................................................................13

2 War on Terror 14
   2.1 Bureaucracy before 9/11 ..............................................................................14
   2.2 Innovation and Change ..................................................................................17
   2.3 Conclusion .......................................................................................................28

3 Narratives 30
   3.1 Khalid Sheik Mohammed ............................................................................30
   3.2 Abu Ghraib .....................................................................................................33
   3.3 Rendition .........................................................................................................35
   3.4 Narrative Conclusion .....................................................................................36

4 Thesis Conclusion 42
References 46
Preface

The events of September 11, 2001 (9/11) catapulted the United States into an all-out war against terror. This war on terror is hard to define because terrorists do not wear a uniform, nor are they all citizens of a specific country. Entering into a war against terror is similar to entering into a war against drugs. The goal of a war on drugs would obviously be to eliminate drug use; but the peripheral issues such as drug dealers, peer pressure and black markets would have to be targeted as well. In the war on terror, the U.S. is specifically targeting the terrorist organization involved with the 9/11 attacks. However, at the same time the U.S. is also fighting a much more broad and expansive enemy. Terrorists span a wide array of religions, ideologies, and international borders. Terrorist organizations are a new enemy in American history and conventional methods of warfare will not suffice. Successfully fighting a new enemy requires access to new methods and innovations of warfare. The war on terror, considered a type of asymmetric warfare (similar to Guerilla and other non-traditional forms of war), created a demand for new methods of gaining actionable intelligence.¹

This thesis seeks to explain how these wartime innovations were implemented, and in what ways they have contributed to the controversies surrounding the war on terror. Specifically, I will argue that the Office of Legal Council (OLC) memos along

with bureaucratic alterations made events such as the abuse of prisoners at Abu Ghraib, waterboarding and indefinite detention without trial, more likely to occur than if the bureaucratic changes had not been made and the memos had never been authored. Furthermore, these changes diluted authority among many actors. This division caused military personnel to be accountable for policies initiated by top appointed officials and politicians. This thesis is important because it explores the potential of a bureaucracy to be used as a tool for purposes for which it was never meant. If the war on terror is any indication of subsequent wars the United States will face, it is essential to understand the risks and consequences that are involved in creating and adapting to these types of changes. In this paper I link the actions of the Bush administration and other top officials directly to controversial events that have occurred throughout the war on terror. It is not my intention to take part in the ethical or moral debates surrounding the events. Rather, I argue that these events were made possible by specific actions by top government officials, at the expense of those at the bottom.

There are three sections to the thesis. The first deals with understanding, in general terms, the make-up and functions of bureaucracies. These general characteristics will then be compared with the modern military bureaucracy prior to 9/11. Additionally, it will cover what happened to the bureaucracy after 9/11 and explores reasons that the changes were made. The next chapter explores the concept of responsibility. It begins with a general discussion of responsibility and then focuses on how to specifically apply it to those involved in the war on terror. The last section presents three different scenarios from the war on terror. These narratives show how Bush administration decisions were
interpreted at the lowest levels of the military bureaucracy. These three examples illustrate the theoretical argument and its implications in the actual practice of war.
Chapter 1

Weber, Wilson, and Sher

1.1 Bureaucracy

My thesis centers on the relationship between bureaucracy (administration) and politics. I focus on the dynamic of this relationship because it has been the subject of scholars since at least the 19th century. I use Weber’s characteristics of an ideal bureaucracy to give the reader an understanding of what early scholars envisioned. From here it is possible to explore how this ideal bureaucracy is meant to coincide with politics, since they inevitably collide. For instance, every presidential term, new appointees are placed in positions at the top of administrative offices. Furthermore, it is the bureaucrats that are responsible for the administration of policies set forth by politicians. These examples, of the inevitable overlapping of these two institutions, are the cause of much debate. Scholars, as I will present below, believe that one or both of these institutions are inherently corrupt. Rather than have them work closely, and risk both becoming corrupt, they opt for a more independent working atmosphere. This separation allows for a better understanding of the placement of both authority and responsibility.

This section of my paper has three main points that are necessary for understanding the subsequent chapters. First, bureaucracies are meant to be stable and...
organized. They are not structured to facilitate hasty changes. Secondly, both the political and administrative apparatuses have been considered by scholars to hold the potential for corruption. The way that politics and administration interact is an essential aspect of this corruptive potential. Third, the tension between politics and administration leads directly to the fixed placement of authority as well as responsibility. These three points are invariably linked. Alterations made within the bureaucracy or to the balance of power between administration and politics leads to a confusion of not only authority but also responsibility.

I have yet to come across an absolute and universal definition of ‘bureaucracy’. Instead, I rely on the characteristics described by a handful of scholars. Woodrow Wilson’s 19th century essays, along with Max Weber’s 20th century work, comprise the foundation of my definition. Their work is used as a base for understanding the major debates that have formed in response to the study of bureaucracy. The formal academic study of public administration, including bureaucracy, is relatively new. Wilson and Weber wrote their most influential work on the subject in 1887 and 1922, respectively. The ‘newness’ of the field reinforces that a complete understanding of bureaucracy, along with its vulnerabilities and possible affects on society, have yet to be fully realized.

Bureaucracy can be thought of as an organizational tool utilized within the context of public administration (implementing government policies). Woodrow Wilson wrote, “It is the object of administrative study to discover, first, what government can properly and successfully do, and secondly, how it can do these proper things with the
utmost possible efficiency and at the least possible cost either of money or of energy.”

Wilson linked administrative study with the efficiency and organization of government and civil service. But it was the sociologist Max Weber that authored specific guidelines for carrying out the government organization described by Wilson. In an essay entitled “Bureaucracy” Weber listed specific bureaucratic characteristics such as fixed jurisdiction, office hierarchy, trained management, and stable and exhaustive rules.

These characteristics are the backbone of an ideal bureaucracy. Weber’s list makes Woodrow Wilson’s call for government organization a reality. To carry a job out successfully, it must be presented to workers as official duties (jurisdiction). Office hierarchy dictates who is able to delegate duties and to whom they are delegated. This hierarchy helps avoid disagreements and, “such a system offers the governed the possibility of appealing the decision of a lower office to its higher authority, in a definitely regulated manner.” Because the jobs given them are very specific, an employee within a bureaucracy should be expertly trained in the area they will be working. In addition, the management of the office should also be bound by rules that are stable and that can be learned by the employees. Officials should be hired based on merit, with life-long tenure and a salary. They should be set for a career in the office with a chance for promotion. The job, in all aspects, should adhere to consistency and merit. Weber, like Wilson, clearly sought organization and structure as the way forward.

Both of these scholars recognized that the modern, rational state had to function more uniformly than others had in the past.

---

2 Woodrow Wilson, “The Study of Administration,” *Political Science Quarterly* 2, no. 2 (June 1887): 197.
Permanent and public office authority, with fixed jurisdiction, is not the historical rule but rather the exception… In all these [historical] cases, the ruler executes the most important measures through personal trustees… Their commissions and authority are not precisely delimited and are temporarily called into being for each case.

According to these authors, it is necessary for acts of government to be carried out by officials qualified to do so. Therefore, government employees should be appointed based on merit rather than party affiliation or any other non-merit based method of appointment. However, within government bureaucracies, there is always an elected official and his/her non-merit based appointments that preside at the top echelon of the hierarchy. The way that these two entities interact is known as the political-administrative dichotomy and is the basis of much debate within public administration.

That particular debate is significant to the war on terror because it encompasses a larger set of issues. Authors such as Weber and Wilson recognized and wrote with regard to the tension between politics and administration. However, understanding how the tension within this relationship can be applied today is an ongoing debate. For several decades after the founders of public administration and bureaucracy had written their seminal work within these fields, other scholars began to interpret it. They perceived the founders’ understanding of the relationship between politicians and administrators to be that of a dichotomy. While some still consider the two as mutually exclusive, more recently, some scholars understand it to be more of a complementary relationship.

Contemporary scholars, such as Robert Denhardt, now recognize that original interpretations of the political-administrative dichotomy need to be re-examined. “While

---

acknowledging that a certain separation of policy and administration is implicit in [Leonard White’s] definition of public administration, White also recognizes the interaction between the two spheres.”6 In addition to re-interpreting the dichotomy within White’s work, he also revisits the work of scholars such as Frank J. Goodnow and William F. Willoughby. He concludes that these authors are “preoccupied with the relationship between politics and administration, but they are not preoccupied with the distinction between politics and administration.”7 I use this modern interpretation of the administrative debate, as a guide to understand how it can be applied to the circumstances regarding the war on terror.

Weber and Wilson also focused on the relationship and/or distinction between politics and administration. The basis for this distinction was they believed that one or both of these elements was vulnerable to corruption. They explained that the two entities should work separately from one another so that one could oversee and somehow control the other. They all, in some way, agreed that an element of immorality was involved with one of the groups. However, they did not agree, between them, whether it was bureaucrats or politicians that held this potential.

Wilson, in his work, pleads for the scientific study of administrative organization to be implemented within the United States. He continually pushes for civil service reform because the systems already in place, he stated, were highly corrupt. To describe U.S. politics and administration during his time he used the following descriptions, “The poisonous atmosphere of city government, the crooked secrets of state administration, the

7 Ibid., 49.
confusion, sinecurism, and corruption ever and again discovered in the bureaux at Washington.”

He argued that if the administrative half of government were to become a studied science, it could then work independently of politicians. I do not interpret that he believed there would be a complete detachment between the two. Rather, he believed that raising the standards of civil service would give the federal bureaucracy the legitimacy to work separate from elected officials. “Administration lies outside the proper sphere of politics. Administrative questions are not political questions. Although politics sets the tasks for administration, it should not be suffered to manipulate its offices.”

Wilson made biting remarks regarding the condition of the U.S. government in the late 19th century. His solution, already mentioned, was the study of administrative organization. He hailed it as a way to, “straighten the paths of government, to make its business less unbusinesslike, to strengthen and purify its organization, and to crown its dutifulness.” He presents politics as a depraved and incorrigible institution and offers an organized and businesslike model of administration as a move towards reform. He tells his readers that administrative organization, although removed from politics, “is directly connected with the lasting maxims of political wisdom, the permanent truths of political progress.” Wilson’s essay exemplifies the basis for the political-administrative dichotomy. He believed the two had to be somewhat removed from one another because one of them, in his case politics, was inherently corrupt.

Max Weber also distinguished between politics and ‘officialdom’, and explored how the two can co-exist. However, his reservations do not concern politics but rather the

---

8 Wilson, “The Study of Administration,” 201.
9 Ibid., 210.
10 Ibid., 201.
11 Ibid., 210.
bureaucracy. “Without this sense [of the modern bureaucrats’ status honor] the danger of an awful corruption and a vulgar Philistinism threatens fatally. And without such integrity, even the purely technical functions of the state apparatus would be endangered.”\(^{12}\) Furthermore, because of the innate qualities of the bureaucracy, Weber also suggests that the two bodies of government should operate separately. An official should not “engage in politics… Rather, he should engage in impartial ‘administration’.”\(^{13}\)

It is clear that the political-administrative dichotomy stemmed from the arguments given by both Wilson and Weber, in addition to others. Both emphasize a potential for corruption as a basis for division between politics and administration. But it remains to be seen why separating the two would be beneficial. The answer given by both, albeit from different perspectives, lies in the placement of authority and responsibility. What these early writers were conveying, which is relevant to the war on terror, is that the balance between administration and politics is fragile. Therefore, when either entity makes strides to become more powerful within the other, there lies a potential for misuse as well as a flawed ability to hold proper actors accountable.

1.2 Responsibility

“If the state is to exist, the dominated must obey the authority claimed by the powers at be.”\(^{14}\) Weber followed this statement with a simple question, “When and why


\(^{13}\) Ibid., 95.

\(^{14}\) Ibid., 78.
do men obey?‖ He gave three reasons: ‘traditional’ domination, charismatic leadership and legality. Max Weber emphasized that legality was the most important reason to obey within a bureaucracy because it applies to “servants of the state…. Domination by virtue of ‘legality,’ by virtue of the belief in the validity of legal statute and functional ‘competence’ based on rationally created rules.” Additionally, Weber argued that the civil servant is responsible for carrying out the orders of superiors, no matter how much he may disagree with them. Whereas, he allocates personal responsibility for what has been carried out by those civil servants to the politician. He stresses that a political leader holds “a responsibility he cannot and must not reject or transfer.” Weber states that these spheres of responsibility are a fundamental principle, without which, “in the highest sense, the whole apparatus would fall to pieces.”

Woodrow Wilson also emphasized that distributing authority in a way that does not obscure responsibility is paramount to the constitutional questions of administrative study. The most efficient way of handling this issue is holding a single executive responsible through a distinct system of hierarchy. According to Denhardt, early American leaders such as Alexander Hamilton also defended a central authority as well as a primary figure of responsibility. Woodrow Wilson contended that the division of responsibility within a bureaucracy actually leads to less democratic outcomes than if power were attributed to a sole figure. He argued that by placing power in the hands of

---

16 Ibid. 79.
17 Ibid. 95.
18 Ibid.
the few, that they will be watched and held accountable for their actions. They can defer responsibility to no one but themselves. For these reasons, Wilson considered power that can be traced to be a responsible and democratic type of power. Whereas, it is when power is diluted and becomes impossible to detect that it should be considered irresponsible.

Woodrow Wilson did not see “unhampered discretion”\(^{21}\) as a concern as long as it was centralized within an unrivaled authority. His defense was that scrutiny from the public as well as subordinates would constrain the abuse of such power. Weber also contended that a single point of authority that rested with a politician was a favorable balance of power. As was mentioned earlier, Weber claimed that the principle of responsibility vested in the civil servant is opposite from that of the politician. Civil servants are responsible for carrying out the policies set forth by superiors. However, the politician is burdened with a personal responsibility for the consequences of those policies. He allocated the politician’s principle of responsibility into two categories: “an ‘ethic of ultimate ends’ or an ‘ethic of responsibility’.\(^{22}\)

“There is an abysmal contrast between … an ethic of ultimate ends – that is, in religious terms, ‘The Christian does rightly and leaves the results with the Lord’—and… an ethic of responsibility, in which case one has to give an account of the foreseeable results of one’s action.”\(^{23}\) Weber realized that a good leader would have to embrace both of these ethics in order to be truly effective. According to Weber, sometimes reaching a ‘good’ end requires morally deficient and dangerous means. For this reason, he believed


\(^{23}\)Ibid., 120.
every politician that goes into the field should be aware that they will probably face a similar circumstance. Additionally, if the politician is willing to use those means, they should also, using an ethic of responsibility, be held accountable for them. Weber holds that any decent or senior politician should know that “it is not true that good can follow only from good and evil only from evil, but that often the opposite is true.” Although intentions may be ‘pure’, the means used to reach that intent may not be. Therefore, it is essential to understand that a politician may be forced to confront an ethic of absolute ends, but that does not prevent him from admitting, in an ethic of responsibility: “Here I stand, I can do no other.”

An explanation by Michael Walzer describes the main difference between Weber’s two ethics. “The defenses we normally offer are not simply justifications; they are also excuses… they can appear side by side in the same sentence – but they are conceptually distinct… an excuse is typically an admission of fault; a justification is typically a denial of fault and an assertion of innocence.” Weber’s ‘ethic of ultimate ends’ uses the ends as a justification and a denial of fault for implementing the means. While a politician with an ‘ethic of responsibility’ would use the excuse (admission of fault) that he had no other choice. Walzer argues that we want politicians in office not because they are willing to make tough decisions but because they make the decision even though they know it is wrong. “It is important to stress that we don’t want just anyone to make the deal; we want him to make it, precisely because he has scruples about it. We know his is doing right when he makes the deal because he knows he is doing

24 Weber, “Politics as a Vocation,”123.
25 Ibid., 127.
wrong… If he is the good mad I am imagining him to be, he will feel guilty, that is, he will believe himself to be guilty. That is what it means to have dirty hands.”^27 It is practically essential for a politician to have ‘dirty hands,’ which is recognized in Weber’s writing when a politician has to adopt an ‘ethic of ultimate ends’ in addition to an ‘ethic of responsibility.’ Politicians are forced to make incredibly tough decisions (using questionable means) and it is essential that he feels guilty and responsible for what he decides. This is what defines a moral politician. “[I]t is by his dirty hands that we know him. If he were a moral man and nothing else, his hands would not be dirty; if he were a politician and nothing else, he would pretend that they were clean.”^28 Both Weber and Walzer place a high premium on a politician’s willingness to accept responsibility for his actions and decisions. They do not claim that he should never make immoral decisions; simply that he should responsibility for it.

Weber’s ethic of responsibility represents a commonly held understanding that a person can only be held accountable for the “foreseeable” results of his/her actions. However, it is unclear exactly what is meant by the term “foreseeable.” Philosopher, George Sher offers insight into what one can reasonably claim as being a foreseeable outcome. He labels a strict understanding of Weber’s ethic of responsibility as the “searchlight view”.^29 According to the searchlight view, “an agent’s responsibility extends only as far as his awareness of what he is doing. He is responsible only for those acts he consciously chooses to perform… omissions he consciously chooses to allow, and

---

^27 Walzer, “Dirty Hands,” 64.
^28 Ibid., 65.
… outcomes he consciously chooses to bring about.” However, because the searchlight view fails to consider what knowledge an actor is privy to prior to the decision, Sher considers it an inadequate understanding of responsibility. He offers an alternative to this searchlight view perspective. He suggests that, in certain circumstances, a person is responsible for the consequences of his actions, even the consequences he did not originally intend to create. An actor should know that his actions have the potential to reach further into the peripheral than the intended results were ever meant. Sher presents his argument as the full epistemic condition (FEC) of responsibility. The excerpt below is an abbreviated version of Sher’s FEC. However, the elimination of other parts of his argument does not diminish his meaning. It simply highlights the aspects of Sher’s reasoning that are relevant to this thesis.

FEC: A person “is responsible for his act’s morally or prudentially relevant feature if, but only if, he either is consciously aware that the act has that feature… when he performs it; or else is unaware that the act is wrong or foolish despite having evidence for its wrongness or foolishness his failure to recognize which (a) falls below some applicable standard, and (b) is caused by the interaction of some combination of his constitutive attitudes, dispositions, and traits.”

Sher’s alternative to the searchlight view is complex. However, it offers a more complete understanding of responsibility, which is in itself a complex issue. The FEC allows the allocation of responsibility to be differentiated. For instance, consider the situation of a toddler and an adult both firing what they thought was an empty gun but end up shooting another person. Depending on the circumstances, it is possible to hold the adult responsible, but not the toddler. This is because it is reasonable to assume that an adult is aware of all the possible outcomes derived from pulling the trigger. If this same situation

---

31 Ibid., 143.
were to be looked at under the searchlight view, then neither actor would be at fault. The flashlight view places responsibility on intended outcomes, not on those that are accidental or unexpected. So under the searchlight view, even though the adult pointed the gun and pulled the trigger at another person, he still would not be considered responsible for the outcome.

I use Sher’s study of responsibility as a way to hold politicians accountable even when they do not claim an ethic of responsibility. Politicians might not want to accept the negative outcomes of their decisions. However, Sher alleges that we can hold that person accountable anyways, given there is reasonable evidence that the actor should have known the outcomes.

1.3 Conclusion

In conclusion, Weber and Wilson accentuated three elements that are basic to my thesis: the principle traits of an ideal bureaucracy, the relationship between bureaucracy and politics and third, how that relationship affects the placement of authority as well as responsibility. Considering these, I argue that any attempt to alter the structure of the bureaucracy or its hierarchical structure of authority, will also affect the political-administrative relationship as well as the ability to hold the proper actors accountable. Responsibility can be affected if it is divided and diluted but it can also be affected if a politician fails to uphold an ethic of responsibility. Sher offers an alternate understanding of responsibility, for cases involving unconsidered or indirect consequences. In the following chapters, these are the arguments that I employ to support my thesis.
Chapter 2

War on Terror

Bureaucracies, such as the military, are characterized by habitual behavior and an inability to make hasty changes and innovations. One exception to this rule is the adaptations and innovation of military bureaucracies during periods of war and conflict. This has also been the case in contemporary warfare. The next section lists how the military was set up prior to 9/11. In the following sections, I explain why it was necessary for the U.S. military to innovate during the war on terror. Furthermore, I connect these adaptations to the effect the changes had on the military bureaucracy. The last portion of the chapter argues how these changes directly affected which actors could be held accountable.

2.1 Bureaucracy before 9/11

The United States military, prior to 9/11, consisted of several of the elements of an ideal bureaucracy that Weber and Wilson both described. The military was hierarchical, starting with foot soldiers, officers, the Pentagon, Secretary of Defense and finally the president. The bureaucracy was structured, rigid and monocratic, with the

---

32 Max Weber, “Bureaucracy”
president presiding at the apex of the military chain of command. Soldiers were trained for their positions and bound by strict rules regarding confidentiality and top-secret information. Members of the military have the option to continue a life-long career in the military. This career offers the possibility of promotion and a pension. As long as the bureaucracy is implemented properly, every person at every step in the hierarchy should be able to describe their duties, limits, goals and expectations. This type of jurisdictional awareness was evident in the U.S. military prior to 9/11.

U.S. intelligence agencies are not normally considered to be a part of the U.S. military bureaucracy. However, their close proximity with ground troops and military police (MPs) throughout the war on terror requires that they be understood as affecting the military bureaucracy. I use the term ‘military bureaucracy’ to refer to the way that ground troops and other personnel, including CIA operatives, interact and respond to their superiors. Throughout the war on terror, interaction between intelligence agencies and the military was evident. As a result, intelligence agencies can be understood, within the context of this paper, as interacting with and becoming part of the bureaucratic structure of the U.S. military.

The proper balance between the way politics and administration (bureaucracy) interact is a contemporary debate. Prior to 9/11, safeguards existed to maintain the harmony between these two institutions. As it was noted previously, the proper balance between these two entities is still not fully understood. Some believe the two are a dichotomy; while others believe the two have a complementary relationship. However, neither proposes that one entity should completely control or dominate the other. This is a

33 Svara, “Complementarity of Politics and Administration”
34 Ibid.
notable omission on both sides of the argument; no entity should become so powerful as to overtake the other. In response to the significance of this balance between politics and administration, systems have been put into place to prevent the bureaucracy and/or politics from becoming too powerful within the context of this relationship.

One way to protect the relationship between politics and administration is to create standards that neither entity can alter. The military has its own judicial structure, but it is bound by rules specified in the Uniform Code of Military Justice (UCMJ). The UCMJ enumerates the jurisdiction of the military courts. In order to be brought to trial in a court-martial, military personnel would have had to act outside the bounds of military law. These legal bounds are described in several documents including the UCMJ, Geneva Conventions, U.S. Army Field Manual, and also the U.S. Military Code of Conduct. Not only do these documents outline the rules for ground-troops they also set the limits for their superiors. Military personnel are trained to obey the guidelines set forth by these documents yet they are also trained to follow orders. If a soldier is questioning the legality of his actions, the guidelines in these documents take precedence. Therefore, these documents act as a buffer between politics and the military bureaucracy. With them in place, no soldier has to follow orders that would force him to be tried in a court-martial.

Both Weber’s and Wilson’s perspectives of the political-administrative relationship were reflected in the tension between following orders and predetermined guidelines. Weber would be satisfied that the military bureaucracy is overseen by political figures such as the President and his appointed Secretary of Defense, and also to
some degree, the U.S. Congress.\textsuperscript{35} This political supervision is essential in order to prevent the destructive capabilities that are inherent to bureaucracies. Weber wrote that personal responsibility is left to the politician while administrative officials are responsible for carrying out policy.\textsuperscript{36} Because politicians are personally responsible, they should oversee the actions of the military. However, Wilson’s skepticism of \textit{politics} is also addressed within this relationship. Although politics does influence the military, the everyday goings-on of the military are for the most part autonomous from the political sphere. In addition, the documents that have been put into place prevent military personnel from having to obey unlawful orders given to them from politicians. Therefore, we can conclude that the U.S. military bureaucracy not only met the basic characteristics of a bureaucracy, it also accounted for the political-administrative relationship that scholars note as significant in regards to responsibility.

\section*{2.2 Innovation and Change}

Contemporary warfare is the result of hundreds of years of military innovations. Throughout all of its wars the U.S. had to innovate in order to create both defensive and offensive strategies in the face of an ever-changing enemy. These adaptations were either technological or strategic in nature. For instance, the militaries involved in WWI had to adapt to the modern and increased use of trench warfare, machine guns and submarines. During WWII, militaries became highly mobile and relied on planes and tanks to fight the war. Throughout these wars militaries focused on economic as well as military goals.

\textsuperscript{35} Weber, “Politics as a Vocation”
\textsuperscript{36} Ibid.
They attempted to include a nation’s economy in the list of wartime casualties. This was illustrated by the sinking of merchant ships during WWI and the bombing of major industrial factories during WWII. Vietnam was also innovative. The U.S. refined the use of helicopters to drop soldiers into remote and dangerous locations. The U.S. also implemented chemical weapons such as the napalm and herbicides such as Agent Orange. Both methods were used to clear vast areas of jungle in order to make the Viet Cong fighters more visible.  

Each war and conflict that the U.S. military has been involved in has required innovative changes to their military strategy. The war on terror is characterized by its longevity, the concentration of special operations forces, and a lack of conventional Western “battles.” Deputy Defense Secretary William J. Lynn III, in a 2010 address to the members of the World Affairs Council, discussed the issue of modernizing military strategy to meet and overcome ever-changing military threats. “Terrorist organizations and rogue states seek weapons of mass destruction, insurgents are armed with (improvised explosive devices) that can penetrate even our most sophisticated armored vehicles. We even see criminals who have world-class cyber capabilities.” These asymmetrical threats are commonplace in guerrilla warfare and conflicts with insurgents. During the Bush administration, Defense Secretary Rumsfeld fought to counter these sorts of asymmetric tactics using small, specialized and highly mobile operations units that are capable of judging and adapting to situations as they occur, “by integrating battlefield intelligence, communications, tactics and weapons so that everyone from

---

37 Lansford, “America’s War on Terror,” 169-206.
commanders to the field soldiers has complete tactical awareness.” 39 The war on terror created the need for innovation and change similar to every military conflict before it. In this case, the need for battlefield intelligence was the impetus for change. But what exactly did these changes consist of and what is the overall effect of those changes?

In order to gain intelligence quickly, it was thought that enhanced interrogation techniques were vital. Finding the legal avenues necessary to officially utilize these techniques was a major aspect of the need for change. Remember that according to Weber legality was one of three reasons for people to obey a leader. Weber also pointed out that legality was the most relevant of his three reasons for explaining the obedience of bureaucratic officials. 40 Legal arguments supporting the use of enhanced interrogation techniques were one major change during the war on terror. During this process, the Justice Department’s Office of Legal Counsel (OLC) wrote several memorandums. These memos questioned military documents and definitions that have acted as a legal and moral guide to U.S. soldiers since WWII.

This was a war, but a different kind of war, and we had to think through how the sets of rules that had been developed for big mechanized warfare between nation-states had to be adapted and changed to fit fighting a much different kind of enemy, a non-state actor that doesn't wear uniforms, blends into civilian populations and conducts surprise attacks against civilians. 41

These newly developed legal opinions altered two significant aspects of the military bureaucracy during the war on terror: the strict monocratic hierarchy and documents concerning order, discipline and conduct. Both of these changes emanated from the OLC memos authored over the course of the war on terror.

39 US Department of Defense (2005) as quoted in “America’s War on Terror.”
40 Weber, “Politics as a Vocation,” 78.
The war on terror was a new kind of war and in order to keep up the U.S. had to adapt and innovate. The innovations that were suggested revolved around the legality of methods used to access intelligence. As the Assistant Attorney General John Yoo stated, “I think this is why the Geneva Conventions don't really work for fighting a non-state terrorist organization. The primary commodity, the primary weapon in this war with such an elusive enemy is information.”

According to Yoo the White House approached the Justice Department and said, “This is what we want to be able to do… What do we need to have the law say in order to be able to reach that objective?”

The Justice Department wrote that neither Al Qaeda nor the Taliban were covered by the Geneva Conventions. In 2002, chief counsel to President Bush, Alberto Gonzalez and John Yoo argued that Al Qaeda was not covered because it was a non-state actor and not a signatory of the Geneva Conventions. Therefore, it should not be privy to its benefits. However, arguing that the Taliban was not covered was more difficult because Afghanistan is a signatory of the Geneva Conventions. However, in these 2002 memos, they contended that Afghanistan was not protected because it was a “failed state” and had no acting government.

Based on these legal opinions, President Bush announced his decision regarding the status of Al Qaeda and Taliban detainees on February 7, 2002. He concluded that Geneva does not apply to conflicts with Al Qaeda nor does he have to apply it to the conflict in Afghanistan. However, he decided that he would apply it to Afghanistan even though he was not required. Relying on the Justice Department, he determined that neither Al Qaeda nor Taliban detainees qualified as Prisoners of War. Furthermore, he required, “that the detainees be treated humanely and, to the extent appropriate and

42 Yoo, “The Torture Question”
43 Ibid.
consistent with military necessity, in a manner consistent with Geneva.”\(^{44}\) This statement created a very large loophole. He essentially said that detainees should be treated according to Geneva, except when the military needs to do otherwise.

The reach of the Justice Department memos did not stop at the classification of detainees. The Office of Legal Counsel also wrote extensive documents defining terms such as “torture” and phrases such as “severe physical pain and suffering.”

Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury such as organ failure, impairment of bodily function, or even death…For purely mental pain or suffering to amount to torture… it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.\(^{45}\)

“Section 2340A [of the U.S. code] makes it a criminal offense for any person ‘outside the United States [to] commit or attempt to commit torture.”\(^{46}\) However, Bybee’s findings state that “necessity or self defense” could justify interrogations even if they violate Section 2340A. A few months later in December of 2002, the Department of Defense (DoD) released a memo regarding interrogation methods for Afghanistan detainees. Staff Judge Advocate Diane Beaver approved the methods. However, she recommended that the methods be approved and interrogators be properly trained. She also recommended that type II and III methods “undergo a legal, medical, behavioral science and Intelligence review prior to their commencement.”\(^{47}\) In March of 2003 a Defense Department legal team declared that the president was not bound by either international or domestic anti-terror laws. A month later Secretary of Defense Donald Rumsfeld

\(^{44}\) George Bush Memo Feb 7, 2002  
\(^{45}\) Jay S. Bybee, “August 1, 2002 Memo”, pg 1  
\(^{46}\) Ibid.  
\(^{47}\) Haynes, “December 2, 2002 Memo”
“outlined 24 permitted interrogation techniques, 4 of which were considered stressful enough to require Mr. Rumsfeld’s explicit approval.”

These timelines indicate that once the legal precedence was set, the interrogation policies were drafted. Interrogators of detainees were handled by several entities across several theatres of war. The CIA, FBI, Military Police and Military Intelligence were caught in a battle over who had the authority to interrogate detainees. In some cases, a fourth player, private contractors, were responsible for interrogations. Yet each entity is accountable to a different set of rules and authority. So what some could legally do, others could not. For instance, the armed forces are bound by the Uniform Code of Military Justice, whereas the CIA has no such governing document to adhere to. Meanwhile, top government officials were drafting the Justice Department memos and new DoD interrogation methods. These documents led to two changes in the military bureaucracy.

The first significant change was the transformation into a non-monocratic hierarchy. Instead of the Secretary of Defense or the President presiding at the top of the military hierarchy, the apex began to resemble a college of leaders. This decentralization of authority is exemplified by the President’s 2002 memo. He based his authority to make war-time decisions according to the Justice Department’s legal opinions. He relied heavily on their authority as well as facts given to him by the DoD. All of the memos released were authored by various entities including the DoD, OLC, The White House and the Secretary of State. They all had various and conflicting opinions and not even the president’s final decision was clear and decisive. This led to various standards for

interrogations. For example, the FBI adopted more rapport-building interrogation
techniques as opposed to the harsher methods implemented by the CIA.\(^{49}\) None of the
organizations with clearance to detain or interrogate prisoners were following a cohesive
plan. Each organization was governed by different laws and yet had shared jurisdiction
within several prisons. There was not a clear concept of what agency had complete
authority and therefore no understanding of what laws they were governed by. Top
government officials were not sure either. During an April 10, 2006 forum at John
Hopkins University, President Bush was asked, “The Uniform Code of Military Justice
does not apply to these [third party] contractors in Iraq. I asked your Secretary of Defense
what law governs their actions.” The student went on to say that Secretary Rumsfeld
assumed they were governed by Iraq’s domestic laws. However, as she pointed out, Iraq
was not really capable of enforcing domestic laws and certainly not capable of governing
American-hired contractors. She then asked him what his plan was to bring private
contractors “under a system of law.” He replied, “I’ll pick up the phone and say Mr.
Secretary I got an interesting question, this is what delegation is, I don’t mean to be
dodging your question, although its kind of convenient in this case.”\(^{50}\)

The first change to the bureaucracy was a decentralization of authority at the top
of the military hierarchy. The second alteration created by these memos was the fact that
they undermined the routine and structure of the U.S. military. Military documents, such
as those listed earlier, are a basic element of a soldier’s training. They had clear
boundaries for treatment of prisoners as well as provisions preventing torture. However,

\(^{50}\) George W. Bush, interview at School for Advanced International Studies, John
Hopkins University, April 10, 2006.
the OLC memos along with top government officials questioned the legitimacy of those documents. The pressure for intelligence increased as documents governing the armed forces were being dismissed. The Geneva Conventions and Uniform Code of Military Justice are clear, instructive documents that the soldiers are trained to know, understand, and follow. The memorandums that undermined these documents also undermined the bureaucratic process.

The soldiers involved in detaining and interrogating terrorists were given a task that defined their understanding of torture. It gave them the authority to go outside the law that they were trained to obey in order to follow newly defined laws. It allowed for coercive and enhanced interrogation techniques to be used to obtain actionable intelligence. The soldiers were being hounded to obtain the actionable intelligence and at the same time being reinforced with grandiose rhetoric to help them work through any moral hesitations. Freedom, 9/11, protecting America, non-state actors, illegitimacy, preventing future terrorist attacks; these are just some of the phrases being repeated to these soldiers everyday to support the continued use of enhanced interrogation techniques. These techniques conflicted with military training; yet they were the tools that the government had chosen as necessary to protect freedom. Jane Mayer described a situation in *The Dark Side* where high-ranking military officers met with President Obama in his first days in office. They relayed to him the importance of his role as commander-in-chief. “They warned him that every word he uttered would be taken as an order by everyone from the highest-ranking officers down to the lowliest private.”

conversation is an example of how much significance the words of a president have within the military bureaucracy.

In an interview with Sky News reporter, Adam Boultan, President Bush was asked about his freedom rhetoric and how it pertained to detainees of the war on terror.

Adam Boultan: You’ve talked a lot about freedom. I’ve heard you talk about freedom, I think, every time I’ve seen you.

President Bush: Yes

Adam Boultan: And yet there are those who would say, look, lets take Guantanamo Bay and Abu Ghraib and rendition and all those things, and to them that is the, you know, the complete opposite of freedom

President Bush: Of course if you want to slander America you can look at it one way.\(^{52}\)

Bush’s use of the word slander is significant in terms of the freedom of speech for the troops serving under him. A reporter brought up the concept of freedom for the detainees and the President referred to it as slander of the United States. If this is the response to a reporter’s skepticism, it does not give much credibility towards the freedom of U.S. soldiers to publicly announce their own skepticism of the methods being used against detainees.

Language, like legality, can be used as a means of enlisting obedience from the masses. Bureaucrats are likely to obey as long as the acts they are carrying out are deemed legal. However, legal actions are not necessarily moral actions. Creating technical language to make a task’s more unattractive elements is a way to buffer an official from an immoral act. “In cases of moral inversion, language can prevent us from connecting our actions with our normal, moral categories of right and wrong, of good and

\(^{52}\) President Bush, Sky News Interview with Adam Boultan
Using language that dehumanizes a group can also enable officials to treat others poorly or commit immoral acts. “If one does something cruel or violent to a fellow human being, it may well be morally disturbing, but if that person is part of a group of people who are (that is, have been redefined as) not “normal,” not like the majority, or not good Americans, such action becomes easier.” The Bush administration adopted both technical and dehumanizing language throughout the war on terror. Those captured were considered non-state actors and enemy combatants rather than prisoners of war. This distinction enabled the U.S. to detain suspected terrorists indefinitely and deny them the privileges of the Geneva Conventions. Additionally, technical language was used. For instance, implementing the use of harsh and abusive interrogation techniques was referred to as “enhanced interrogation.” The affect of using this specific language was two-fold. Language made it possible to carry out acts previously considered illegal and immoral.

What one needs to consider, in regards to this paper, is how the academic accounts of bureaucracy relate to the Bush administration’s actions and language during the war on terror. In this instance, it is essential to focus on the administration’s interpretation of the Geneva Conventions. The President announced publicly that suspected terrorists, detained throughout the war on terror, were not covered under the Geneva Conventions. What I argue in this paper is not whether or not that statement is accurate but rather that it directly affected the troops that had been trained to abide by the governing rules of that document. The Geneva Conventions, along with the Uniform

Code of Military Justice and the U.S. Military Code of Conduct are all guides for the behavior and conduct of U.S. troops. President Bush created policies that deviated from these documents. Therefore, it is essential to consider how his statements affected the military bureaucracy. It is also important to analyze how these statements made it difficult to hold individuals responsible.

Therefore, the placement of responsibility needs to be analyzed. Woodrow Wilson suggested that public administration should be organized scientifically. Authority should be allocated within a strict hierarchy, with full responsibility located within a single authority. He stated that if public officials that have studied the profession are able to control the placement of authority that it will be done with precision. Accountability cannot be questioned. During the war on terror, it was the president and other top officials that rearranged authority. The President relied on the Office of Legal Counsel memos as his authority for his military decisions. Therefore, it was the president re-allocating power instead of public administrators. This makes it difficult to decipher the accountability of the authors that wrote the memos from the accountability of the president that gave the memos legitimacy. The President accepted the legal arguments of certain people and used their reasoning as a means for his authority. However, he also ignored the advice of others including Secretary of State Colin Powell and the State Department’s legal adviser William H. Taft IV.\(^{55}\) The President based the authority of his decisions directly from the legal advice of the Justice Department. But as Yoo stated in his interview with Frontline, a legal opinion is not policy. He wrote a legal opinion and it was up to the president to create policy. Because the president tied his authority to the

Justice Department, he diluted it. As Wilson noted, decentralized authority leads to diminished responsibility.

Max Weber also discussed the balance of politics and administration and the effect it has on responsibility. Weber was concerned with whether or not a politician embraced an ‘ethic or ultimate ends’ as well as an ‘ethic of responsibility.’ He felt that it was the duty of the politician to accept personal responsibility for the consequences of his actions. However, during the war on terror an “ethic of responsibility” was never adopted. It was stated that enhanced interrogation had been deemed legal. It was claimed that the steps taken by the government were necessary for freedom and for justice. These are the words of a politician using an ‘ethic of ultimate ends.’ Instead of accepting responsibility for the consequences of enhanced interrogation, top officials left low-level military personnel to be held accountable.

2.3 Conclusion

The bureaucracy the United States military once resembled ceased to exist. The key to the war on terror was always described as being actionable intelligence. By altering the bureaucracy, various avenues opened up in regards to gaining that intelligence. However, these bureaucratic alterations also affected the balance between politics and administration. Politicians were altering the most basic foundations of the military. And finally, by changing the power structure between these entities, responsibility was diminished. This is evident in the fact that besides some public pressure, no one in the Bush administration was ever held accountable in court. Not a single top official has been held accountable for any of the multiple cases of prisoner
abuse associated with the war on terror. This is in spite of the fact that the techniques used in these cases had been legalized by the Justice Department and thus became the standard operating procedure of the DoD. Low-level troops and officers were the ones tried and convicted of crimes. However, officials that bureaucratized and legalized the abusive techniques have remained safe from prosecution.
Chapter 3

Narratives

The following three narratives highlight various abuses that occurred during the war on terror. Sections 3.1 through 3.3 outline each instance of abuse by describing the facts surrounding each case. The conclusion to chapter 3 examines each narrative’s relevance to my thesis. To illustrate this I analyze three aspects of each narrative in the concluding section. First I link abuses occurring in the war on terror to bureaucratic alterations initiated by the Bush administration. Second, I use insights from Weber (1946) and Wilson (1887) to analyze how these changes altered the tension between administration and politics. I focus on this tension because of the way these scholars linked it to their understanding of responsibility. A shift in the relationship between administration and politics can also lead to a shift in authority and responsibility. In the conclusion, I present who was held accountable for each instance of abuse and why top officials are not among those claiming responsibility.

3.1 Khalid Sheik Mohammed

Khalid Sheik Mohammed (KSM) was taken into custody in March of 2003. He was flown to Afghanistan and then Poland by a process referred to as extraordinary
rendition. During his captivity, KSM was waterboarded more than 180 times. The process of waterboarding makes the victim feel as if they are drowning. This sensation occurs when water is poured onto a cloth that covers the victim’s nose and mouth. The exact guidelines for waterboarding were described in the May 10, 2005 memo from Assistant Attorney General, Steven Bradbury.

The waterboard may be approved for use with a given detainee only during, at most, one single 30-day period, the waterboard technique may be used on no more than five days… In any 24-hour period, interrogators may use no more than two ‘sessions’ of the waterboard on a subject – with a ‘session’ defined to mean the time that the detainee is strapped to the waterboard – and that no session may last more than two hours…during any session, the number of individual applications of water lasting 10 seconds or longer may not exceed six… the maximum length of any application of water is 40 seconds… the total cumulative time of all applications of whatever length in a 24-hour period may not exceed 12 minutes.\(^{56}\)

During interrogations involving waterboarding, KSM admitted to several terrorist plots. The DoD’s terrorist profile mentions several of the confessions made by KSM. He admitted to masterminding the 9/11 attacks, beheading the American Journalist Daniel Pearl, and organizing several embassy bombings worldwide. The information acquired during interrogations was essential evidence in several government documents such as the 9/11 Report. However, KSM admitted to so many terrorist attacks, some interrogators believed he was admitting guilt to plans that he was never a part of. Various confessions were considered unreliable and interrogators were forced to determine the validity of his claims by questioning other detainees.\(^{57}\) Members of the Bush administration heralded KSM’s capture and confessions as a success despite warnings he was making false

\(^{56}\) Steven Bradbury, May 10, 2005 memorandum
confessions. “Of all the terrorist takedowns, none was more important or memorable than the capture in Pakistan of Khalid Sheikh Mohammed… No person other than perhaps Usama Bin Laden was more responsible for the attacks of 9/11… {or} more deserved to be brought to justice.”

In his memoirs, George Bush admitted he sanctioned the use of waterboarding in the case of KSM. He defended his decision because it was legal and brought about confessions containing actionable intelligence.

My view is… that the techniques were necessary and are necessary to be used on a rare occasion to get information necessary to protect the American people. One such person who gave us information was Khalid Sheikh Mohammed… I am told that we have captured Khalid Sheikh Mohammed and the professionals believe he has information necessary to secure the country. So I ask what tools are available for us to find information from him and they gave me a list of tools, and I said are these tools deemed to be legal? And so we got legal opinions before any decision was made… people will see we got good information from Khalid Sheikh Mohammed in order to protect our country.

KSM has been detained for over 8 years with no trial or criminal conviction. His treatment during interrogations makes it possible for courts to rule that his confessions were ‘coerced.’ Recently it has been decided that KSM will not be tried in a U.S. federal court instead he will be tried by a military commission. To date there have been no charges against any top U.S. officials for sanctioning the use of waterboarding (widely considered a type of torture).

58 Tenet as quoted in Mayer, The Dark Side, 270
59 Interview with Brit Hume, 2009
60 Peter Finn, P. Khalid Sheik Mohammed to be tried by military commission (Washington Post April 4, 2011)
3.2 Abu Ghraib

In April of 2004, photos from the military prison in Abu Ghraib were leaked to the press and showed prisoners being abused and mistreated. Less than a month later the Yoo/Bybee memos were leaked. These memos contained legal opinions denying Prisoner of War status and other Geneva Convention privileges to detainees. These memos also had legal opinions that stated the President was not bound to any domestic or international anti-torture laws.

The pictures from Abu Ghraib prison showed detainees standing in stress positions, bleeding from wall hits (prisoners’ heads being hit against a wall), showed weaknesses being exploited (i.e. religious beliefs were confronted through the sexuality of female interrogators and internal fears were confronted with the use of dogs) and even showed prisoners naked in sexual positions.\(^{61}\) However, as can be seen by the memos released from the DoD and OLC, Bush administration officials had previously made legal arguments approving everything on the list. They even continued to approve the methods after the photos were leaked.

The media and public backlash from these photos was immense. The Justice Department lawyers and the Bush administration were highly scrutinized for the interrogation techniques and detainee abuse-gone-wild that was portrayed in the photos. The Bush administration held that this was an isolated incident that was carried out by a particular group of night shift soldiers. Donald Rumsfeld informed Congress that the day the photos came out was probably the worst day of his career. “What we believe in … is making sure when wrongdoing or scandal occur that they are not covered up, but

exposed, investigated and publicly disclosed – and the guilty brought to justice”.  

Eleven soldiers were convicted of crimes such as dereliction of duty, maltreatment of detainees and aggravated assault. These soldiers faced discharge, demotion, community service, and even prison terms. However, “[d]espite such calls for accountability, not a single administration investigation had questioned the top policy-makers in the war on terror.”

According to the definitions of the OLC memos, the interrogation methods being utilized by these soldiers were legal. The administration publicly denied these photos as part of the official bureaucratic process of interrogation, while secretly creating the legal basis for every situation contained in the photos. After they were made public twelve investigations were performed. Former Secretary of Defense James Schlesinger concluded that the abuses at Abu Ghraib were the result of confusing policies. “The changes in DoD interrogation policies between December 2, 2002 and April 6, 2003 were an element contributing to uncertainties in the field as to which techniques were authorized.”

Clearly abuses occurred at the prison at Abu Ghraib. There is no single, simple explanation for why this abuse at Abu Ghraib happened. The primary causes are misconduct (ranging from inhumane to sadistic) by a small group of morally corrupt soldiers and civilians, a lack of discipline on the part of the leaders and Soldiers of the 205th MI BDE and a failure or lack of leadership by multiple echelons within CJTF-7. Contributing factors can be traced to issues affecting Command and Control, Doctrine, Training, and the experience of the Soldiers we asked to perform this vital mission.

---

63 Mayer, *The Dark Side*, 306
3.3 Rendition

Extraordinary rendition is a program that involuntarily removes suspected terrorists from one country and detains them in another. When people disappeared during this process they were often taken to Egypt, Syria or Jordan; all countries designated by the State Department as practicing torture. During rendition, suspects are shackled, hooded, put into private, unmarked planes and throughout the process are given little detail of where they are going or why.⁶⁶

One victim of extraordinary rendition was Canadian citizen Maher Arar. He was arrested during a layover in New York and was kept there for several days before being put on a plane to Syria. According to Mayer, the Geneva Conventions require countries to identify detainees as soon as possible, but the U.S. did not comply because of the claim that the Geneva Conventions do not apply to the suspected terrorists. Because of the unwillingness of the U.S. government to comply with these rules, the exact names and numbers of high value detainees that were hidden by rendition are unknown.⁶⁷

Maher Arar arrived in Canada as a teenager and went on to become an engineer. He was still working and residing with his family in Canada when he was captured. He was kept in custody for about a year, until the Canadian government documented evidence to prove to the United States that he had no links with Al-Qaeda. Arar claims to have been kept in a very small enclosure that he described as a grave. He also stated that the Syrians tortured him and coerced false confessions. Arar’s description of his torture includes being beaten with a thick cable, a method Darius Rejali describes as ‘clean

---

⁶⁷ Mayer, The Dark Side
whipping.’ Thin whips leave cuts and scars where as larger cables only bruise, leaving no evidence of the abuse. The Canadian government put pressure on the United States to release Arar and even though he was brought back to his family, he was never given an explanation or reparations for the torture and years spent away from his family. 

Currently no victim of the rendition process has been able to file a suit against the U.S. government. Both the Bush and Obama Administrations have denied lawsuits claiming they would expose confidential government information. Furthermore, they claim that these state secrets are vital to national security and to U.S. success in the war on terror.

3.4 Narrative Conclusion

Chapter two presents the various ways that the military bureaucracy was altered during the war on terror. This chapter highlights how those changes altered normal means of identifying responsibility. KSM was waterboarded 183 times and detained for over 8 years without being tried. Top officials confirmed that they approved waterboarding as a legal interrogation method in the case of KSM. None of these officials has been charged for sanctioning the use of abuse or torture. President Bush has shielded himself from responsibility by claiming that legal opinions legitimized his decisions. He also relied on an ‘ethic of ultimate ends’ by focusing attention on the intelligence that was acquired rather than the means used to gain the confessions. His reliance on others for legitimacy decentralized authority and diminished the ability to hold a single top official accountable.

---

for the abuse. The military personnel convicted of crimes relating to the abuse at Abu Ghraib were called ‘sadistic’ by members of the Bush administration. However, every ‘sadistic’ scene that was photographed had previously been deemed legal or approved in the various memos being written between 2002 and 2005. Investigations that were initiated after the release of the photos revealed that Abu Ghraib, as well as other prisons, were poorly equipped and contained ill trained interrogators.70 Soldiers were confused by conflicting information. Bush administration officials had questioned the status of detainees as well as the documents that were meant to protect the status of prisoners of war. At the same time they were sanctioning the use of enhanced interrogation techniques and pressuring interrogations for intelligence. Just like the case of KSM, the Bush administration had created the tools for the abuse at Abu Ghraib to take place but denied any form of accountability. They blamed a few bad apples for what was caught on camera. The administration’s policies created a fine line between professional interrogations and abuse. Their decentralized authority enabled officials to simply blame one another. John Yoo stated that, “it [legal opinions] didn't tell you what standards to adopt. And the policy choice to the president could have been ‘I’m going to follow the Geneva Convention anyway if I want, even though I don't have to.’ That's really the real decision. But for some reason, because there are these written documents out there, people focus more on that than the actual decision.”71 People focus on the documents because that is exactly what the president focused on. He prefaced all of his statements regarding the Geneva Conventions with the legal advice he received from the OLC. Bush

71 Yoo, “The Torture Question”
depended on legality as the basis for his decisions. However, John Yoo argued that just because something is legal does not make it policy. The President and his appointees divided authority and in doing so allowed themselves to deny responsibility. Yoo contends that he was simply writing interpretations of the law and Bush argues that those legal opinions gave him authority to authorize techniques such as waterboarding. Officials below the president were in turn able to support their actions by the legality established by the OLC and the authority given from the President.

The rendition case is unique among the three because in this instance no top officials can be held accountable through the courts. Both the Bush and the Obama Administrations have blocked rendition victims such as Maher Arar from suing the U.S. government. Both administrations claim that lawsuits put confidential information at risk of becoming public. Blocking lawsuits based on national security is known as the state-secrets doctrine. This is a judicially created doctrine that empowers the executive arm of government. The use of the state-secrets privilege has increased recently and was implemented to dismiss lawsuits by rendition victims such as Maher Arar.\footnote{New York Times, “State Secrets Privilege,” January 19, 2011.}

Rendition became more frequent during the war on terror. This was possible because the president did not recognize Geneva protections for suspected terrorists. The cases that have become public claim the U.S. rendered suspected terrorists to countries known to implement torture. The president’s decision to suspend the Geneva protections allowed the extraordinary rendition program to flourish during the war on terror.\footnote{see generally Mayer, The Dark Side}

However, no official will ever be held accountable for wrongfully rendering suspects to other countries because they protected themselves from the possibility of lawsuits.
Alan Dershowitz makes the claim that in order to move torture out of the shadows and into the realm of accountability, a process such as torture warrants should be imposed. The United States Government has not adopted Dershowitz’s proposal but it has in an alternate sense, been utilized. Although not in the way that Dershowitz originally proposed. Dershowitz states that he opposes torture, but even more so he opposes the fact that it is utilized in countries that have vowed not to torture.\(^7\) His essay is a response to the fact that the government denies accountability for torture yet unofficially sanctions it in extreme circumstances. “Let us continue to reaffirm not only our opposition to torture but our opposition to the kind of hypocrisy that loudly denounces torture while discreetly closing our eyes to its increasing use.”\(^7\) He argues that opening torture cases up for judicial review prior to interrogation would prevent abuses of torture. Additionally, it would impose accountability on government officials. He concluded that this process would decrease the frequency of torture and abuse while increasing accountability for those approving the methods.

If these horrible practices continue to operate below the radar screen of accountability, there is no legitimation, but here is continuing and ever expanding sub rosa employment of the practice. If we try to control the practice by demanding some kind of accountability, then we add a degree of legitimation to it while perhaps reducing its frequency and severity.\(^6\)

Although his proposed model is controversial, it also seems to be a practical alternative to what actually occurred.

What was realized during the war on terror can also be compared to Dershowitz’s argument. The narratives illustrate that government documents provided broad legal

---


\(^7\) Dershowitz, *Torture: A Collection*, 276

\(^6\) Ibid., 267.
authority sanctioning the use of a variety of enhanced interrogation techniques and indefinite detention. However, at the same time top officials decreased their own accountability for any subsequent usage of those techniques. “When the message is sent in this way – by a wink and nod – no lines are drawn, no guidelines issued, and no accountability accepted. The result was massive abuses by those on the ground, coupled with deniability by those at the top.”\textsuperscript{77} Although Dershowitz’s model promotes the sanctioning of torture, it does so with a clear basis for responsibility. Dershowitz proposes that any extraordinary means should be individually approved, whereas in the war on terror subtle and contradictory approval was given for enhanced interrogation. Dershowitz’s method requires strict accountability; the methods implemented by the Bush administration require none. The persons responsible for decisions leading to “sadism” in the war on terror have still not been held accountable for their actions. Furthermore, the way in which politics over-powered the military bureaucracy suggests that they never will. As Wilson and Weber both stressed, a key element to the tension between politics and administration is the placement of responsibility.

Extraordinary rendition, indefinite detention and even torture during interrogations are not new to the United States’ intelligence agencies, which is where these acts are most likely to have occurred in the past. Agencies such as the CIA are not subject to the same codes as the military and this is not a bureaucratic oversight. Intelligence agencies have always been permitted to operate outside of the military norm. So occasionally these organizations truly did operate within the “shadows.” However, their use of enhanced interrogation and rendition occurred very rarely and with no

\textsuperscript{77} Dershowitz, \textit{Torture: A Collection}, 276.
“official” authority to do so. Whether one agrees or disagrees with it morally, this was the reality prior to 9/11. What has happened since, takes the unimaginable and places it into the realm of something worse: legality. Before 9/11 the CIA operated outside of domestic laws on rare occasions and had no official authority to do so. After 9/11 the CIA operated within the law and was able to use extraordinary means on a regular basis. Before 9/11 they were given unofficial authority but afterward they were abiding by law and procedure. Both situations involved abuse but neither involved accountability. Even when abuses were deemed legal no responsibility filtered to the top officials that wrote and approved the legal opinions.

These narratives offer vital evidence about the state of the modern U.S. bureaucracy. With actionable intelligence as the driving force of change, the Bush administration made swift alterations to the military. President Bush publicly denounced the Geneva Convention protections as they pertain to Afghan detainees and altered the military bureaucracy’s chain of command. These alterations created an imbalance of power between politics and the military. Very few people have been held accountable for the abuses that took place throughout the war on terror and none were top U.S. officials.
Chapter 4

Thesis Conclusion

An ideal bureaucracy according to Weber and Wilson is an organization that is efficient, has a clear chain of command and is successful by use of routine, secrecy, and clear expectations. The United States military resembles an ideal type of bureaucracy. However, as I have shown, although the bureaucracy generally functions to keep the organization running smoothly, it can also be manipulated in order to confuse those at the bottom to act outside the norms of their everyday functions and purpose. This paper illustrates how the actions of the Bush administration, in an attempt to innovate new procedures for attaining actionable intelligence, manipulated the bureaucracy in order to facilitate this innovation and change. The Bush administration confused the military hierarchy. Defense Secretary Rumsfeld pushed for actionable intelligence, lawyers in the Justice department attempted to make it legal and President Bush approved it all.

George Sher suggests that an agent can be held responsible for his actions beyond what he assumed would happen. Responsibility is based on whether an actor should know that the effects of his actions reach further into the peripheral than he intended. Sher’s book on responsibility suggests that a person’s level of responsibility is affected by how knowledgeable one is in that particular field. Former President Bush, Vice-President
Cheney and Defense secretary Rumsfeld were in positions that suggest and assume that they are the top persons in the country for their positions. They have a unique knowledge and understanding of their role and the effects of their actions, both intended and unintended.

Using Sher’s model an actor can be held responsible for all of the consequences of his actions and not just those he intended. In other words, a person can be held accountable for aspects of his decision that he knowingly ignored. This caveat suggests that investigating the arguments of Bush administration critics would be beneficial. For example Staff Judge Advocate Diane E. Beaver approved several enhanced interrogation techniques. However she did so with the following recommendation. “I recommend that interrogators be properly trained in the use of the approved methods of interrogation, and that interrogations involving category II and III methods undergo a legal review prior to their commencement.”  

According to the investigations into the Abu Ghraib abuses, these types of precautions were never implemented. William Taft and Colin Powell both authored memos opposing the OLC recommendations to suspend the Geneva Convention privileges throughout the war on terror. Another voice of opposition was John McCain. He publicly opposed the Bush administration’s use of enhanced interrogation and their disregard of the Geneva Conventions. The opinions of these prominent officials are enough to conclude that members of the Bush administration were fully aware that concerns existed regarding their policies. Sher’s model suggests that if officials knowingly ignored the basis for those concerns, they can be held responsible for the resulting consequences.

78 Diane E. Beaver, as seen in William H. Haynes’ December 2002 Memo to Donald Rumsfeld.
A tension exists between politics and administration. This tension plays itself out within my paper as the dynamic between law and responsibility. Throughout the war on terror the Bush administration placed a premium on actionable intelligence as well as legality. They spent years analyzing various interrogation techniques and the legal consequences surrounding them. This is evident by the memos released by the OLC as well as the DoD. They made strides to alter existing policy but did not invest a similar effort in allocating authority for those methods. Legality was the ultimate authority and it was used by top policy makers as the basis for their reasoning. Dependence on ‘that which is legal’ is a faulty doctrine mainly because legality does not stand the test of time. Anti-sodomy laws, male-only suffrage, separate but equal and even slavery have all been deemed legal at some point throughout history. So although the law is a great guide it should never be considered an ultimate source of authority because it cannot be held accountable. It can only be changed.

More than anything else I believe this paper should convey the importance of the dynamic between politics and administration. This interaction is a key tool in allocating authority and determining responsibility. I believe whenever decisions are made that alter this relationship they should be made with great care and consideration for how it will affect responsibility. I believe that the Bush administration made statements and circulated documents that were meant to increase actionable intelligence. However, these actions did more than help the war effort, they were a direct assault on the military bureaucracy and the way it interacts with the political sphere. Politicians changed the rules and the military ended up vulnerable to the effects of those changes. Alan Dershowitz offers an imperfect solution to what was realized during the war on terror.
Like the Bush administration, he suggests sanctioning the use of extraordinary means of interrogations. However, he recommends this because of how much he opposes the use of it. Rather than the vague and routine acceptance of enhanced interrogation that was implemented during the war on terror, Dershowitz implies something much more transparent. He suggests that every extraordinary method be put under judicial review prior to its use. The latter implies that every situation would have a clear line of authority and a central point of accountability. I believe Dershowitz’s solution is better than what was realized during the Bush administration. However, it is not perfect either. I think if Dershowitz’s proposal was ever seriously considered it would have to include an anti-precedent clause. Federal courts are conditioned to act on precedent. However, I do not believe that the types of cases Dershowitz is referring to should be based on precedent. Rather, each case should be analyzed for its own uniqueness and surrounding circumstances independent from any previous cases. Implementing something like this is not likely considering the U.S. has already signed the Geneva Conventions and has committed to the humane treatment of prisoners. However, unless the U.S. confines the C.I.A. to the limits that it generally applies to its other agencies, the U.S. will never be in full compliance with these laws. Until all agents of the U.S. are forced to abide by clear and universal rules the U.S. will contain a potential for abusive techniques with no clear center of accountability.
References


Bush, G.W., Interview with Brit Hume, 2009

Bybee, J.S., August 1, 2002 Memo.


Haynes, December 2, 2002 Memo.


