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(Re)interpreting Human Rights: The Case of the “Torture Memos” and their Translation into Italian

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Abstract: The language of human rights can prove as difficult to define as it is to determine its boundaries as a legal discipline and to assert its universal acceptance. The indeterminacy and vagueness often observed in the language of its documents is clearly aimed at fostering Human Rights acknowledgment and protection; however, these same features are also a powerful tool for States seeking manipulative interpretations of human rights conventions. By combining the Appraisal Framework with an analysis of the rhetorical strategies employed in a specific type of legal document, this paper will explore the linguistic devices and rendering in translation of the so-called “Torture Memos” released by the US Government after 9/11 in an attempt to provide a legal framework for the CIA interrogation program for “unlawful combatants”.

Keywords: legal language; evaluative language; changed positioning; appraisal theory; translation studies; contrastive linguistics

1. Introduction

Human rights as an international political concern and an interdisciplinary field, mostly grounded in international law, are strictly dependent on claims of universality, that is, the universal consensus that some rights are “fundamental”, “equal”, “inalienable” and “universally held” by individuals because they are human beings. Despite such a claim, human rights norms are not necessarily understood nor enforced in the same way everywhere: culturally bound and historically relative interpretations are possible and violations very frequent because of the conceptual vagueness and the linguistic indeterminacy upon which the very claim for their existence is constructed.

If vagueness is a characteristic feature of legal discourse [1–5], deriving from normative text needs of balancing precision and all-inclusiveness [6], it is even more so for human rights documents, which show the difficult compromise between value prescription and respect for cultural diversity. As observed in recent studies [7–10], the vagueness, ambiguity and under-specification of human rights language are on the one hand an inevitable consequence of the abstractness of human rights concepts, usually grounded in moral and philosophical perspectives (which are relative *per se*), but also permeable to economic and social issues (which are context-specific), and on the other hand a strategic tool used to prevent states' objections, dissent and judgment of non-applicability.

Unfortunately, the benefits of this communicative and semantic indeterminacy are far exceeded by drawbacks when it is exploited by ad-hoc interpretations, as in the US “Torture Memos” readings of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Geneva Convention relative to the Treatment of the Prisoners of War (GPW).

It is beyond the scope of this paper to provide an analysis of the language used in these Human Rights documents [11]: in fact, this paper will only explore the linguistic choices substantiated in the memos and their translations, and will focus, in particular, on possible changes in the textual voice positioning from the source text (ST) to the target text (TT).

This paper will first provide background information about the context and content of the Torture Memos; then, it will offer a brief outline of the methodological approach and some preliminary remarks on the lexical choices, leading to a more detailed analysis of the evaluative language used in the memos, conducted within Martin and White's Appraisal Framework [12–15], and to a discussion of whether the translation of these texts into Italian has achieved the same specific communicative ends. The research questions therefore will be: What linguistic elements have been used to help state the conclusions of these legal memos? What happened in their translated versions? Has the reformulation in another language altered the purpose and effect of the source text?

2. Context and Content

The story of the torture memos is part of a much broader story in which at least 100,000 pages of documents regarding the mistreatment of detainees by American soldiers have been released since 2004. It all began in late 2002, after some newspapers had broken the news [16,17] that American soldiers had been subjecting suspects of terrorism detained in U.S. military bases in Afghanistan to “torturous” techniques such as sleep deprivation, nudity, dietary manipulation, hooding and shackling, as well as kicking and beatings. These procedures had also been coupled with “rendering” the suspects over to foreign governments notably known to use torture in order to obtain confessions from detainees.

Following these stories, in October 2003, a series of nonprofit organizations [18] filed a first Freedom of Information Act (FOIA) request [19] asking the American Government to release all documents—reports, memos and conduct guidelines—regarding the mistreatment of detainees held in U.S. prisons and military bases outside the U.S., documents on deaths allegedly occurred because of U.S. interrogation programs, and documents regarding the procedure of extraordinary rendition. The addressees of this request were the Department of Defense (DOD), the Department of Homeland Security (DHS), the Department of Justice (DOJ), the Department of State (DOS) and the Central

Intelligence Agency (CIA). As no action was taken by the government in order to comply with this request, a second request was filed in May 2004.

Meanwhile, the first Abu Ghraib photographs had appeared on 28 April 2004 on the *60 Minutes* show, a weekly primetime TV program, and on 21 May 2004, *Newsweek* revealed the 9 January 2002 Memo that John Yoo and Robert Delahunty, two Justice Department lawyers in the Office of Legal Counsel (OLC), had written to the general counsel reaching the conclusions confirmed in a later memo signed by the head of the OLC, Jay Bybee, and dated 22 January 2002: the prisoners taken in Afghanistan had no right to legal protection.

On January 19, three days before Bybee's final memo, a memorandum by the Secretary of Defense Rumsfeld already incorporated the Yoo/Delahunty advice, which was later referenced in a memo from White House Counsel Alberto Gonzales to the President, dated January 25.

As the second request of document disclosure made by the no-profits organization fell on deaf ears, the requesters addressed the United States District Court for the Southern District of New York. The conclusion of the court, which came on 15 September 2004, established that the defendants should produce the documents requested or at least provide author's name, addressee's name and subject matter of the documents that could not be submitted.

Following the court decision, from 2004 to 2005, American Civil Liberties Union (ACLU) and other nongovernmental organizations obtained a series of documents among which were letters and emails exchanged within the FBI, where officials clearly sought to draw a line between the "[...] allegations of abuse and the use of techniques which fell outside FBI/DOJ training and policy [...]" [20], a directive to the combined task force in Iraq for the use of interrogation techniques and counter resistance techniques by interrogators, a series of DOD memos on the use of "enhanced interrogation techniques" by the American soldiers, a CIA memorandum on the interpretation of the CAT by the DOJ, a memorandum in which the DOJ recommended the use of the enhanced interrogation techniques and another memo in which the U.S. President authorized the construction of detention facilities abroad and the use of the interrogation techniques. This material has come to be known as the *Torture Papers* [21].

Not only do these papers provide evidence of the discussions involving members of the Bush administration and the military as to how to obtain intelligence in the aftermath of 9/11 and how to deal with suspect terrorists, but, most importantly, they prove how legal advisers could push the boundaries of the legally permissible treatment of the detainees by playing with language and reductively interpreting (inter)national laws against torture. How far could interrogators go without risking war crime charges? The answer was that they could go very far once the Presidential authority to conduct military operations in wartime had been established. In his 22 January 2002 memo to Alberto Gonzales, the Counsel to the President, Assistant Attorney General Jay S. Bybee states:

- (1) "As we understand it, as a matter of practice, prisoners *are presumed* to have Article Four POW [Prisoners of War] status until a tribunal determines otherwise. Although these provisions seem to contemplate a case by case determination of an individual's detainee status, the President *could determine categorically* that all Taliban prisoners fall outside Article Four. Under Article II of the Constitution, the President possesses the power to interpret treaties on behalf of the Nation." (Appendix (3), pp. 30–31, italics mine)

A few weeks later, in a memo to Mr. Gonzales, dated 7 February 2002, Assistant Attorney General Bybee restates his conclusion: “the President has reasonable grounds to conclude that the Taliban, as a whole, is not legally entitled to POW status under Articles 4(A) (1) through (3)” (Appendix (7), p. 2). Although the Geneva Convention relative to the Treatment of POWs entitles them to “certain protection”, continues Bybee, pending the determination of their status by a “competent tribunal”, the President’s power under the U.S. Constitution entitles him to make a finding that “would eliminate any legal doubt”. On the same day, a memo from the White House clears up the doubt. While reasserting the US support of the Geneva Convention, and compliance with the military requirement that detainees be treated humanely, President Bush declares:

(2) “Pursuant to my authority as Commander in Chief and Chief Executive of the United States, and relying on the opinion of the Department of Justice dated January 22, 2002, and on the legal opinion rendered by the Attorney General in his letter of February 1, 2002, I hereby determine as follows:

a. I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.

[...]

d. Based on the facts supplied by the Department of Defense and the recommendations of the Department of Justice, I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war”. (Appendix (8), pp. 1–2)

The discussion of the applicability of human rights and humanitarian law had lasted for months since the initial exchange of memos on the use of military forces to combat terrorism in 2001. A memorandum on the *Application of Treaties and Laws to al Qaeda and Taliban Detainees*, submitted on 9 January 2002, by John Yoo and Robert J. Delahunty of the DOJ, first suggested the idea of exploiting presidential power to allow contempt for international laws and use of torture:

(3) “We conclude that customary international law, whatever its source and content, does not bind the president, or restrict the action of the United States military, because it does not constitute federal law recognized under the Supremacy Clause of the Constitution” (Appendix (2), p. 2)

On 1st August 2002, Bybee strengthened the idea in a memo on *Standards of Conduct for Interrogation* by reminding that “the president enjoys complete discretion in the exercise of his Commander-in-chief authority” (Appendix (9), p. 33), that “one of the core functions of the Commander in Chief is that of capturing, detaining, and interrogating members of the enemy”, which is defined as “*imperative* to our national security and defense” and “*invaluable* in preventing further direct attacks” (Appendix (9), p. 33), and that “the DOJ could not bring a criminal prosecution against a defendant who had acted pursuant to an exercise of the President’s constitutional power”

(Appendix (9), p. 36). The argument was further elaborated in a memorandum of 14 March 2003: “Congress cannot interfere with the President’s exercise of his authority as Commander in Chief to control the conduct of operations during a war.” (Appendix (11), p. 13). So presidential power overrode the International Convention against Torture, to which the United States is a party, and the Congressional statute enforcing the convention. Subsequent memos were written to prove that “certain” “enhanced interrogation techniques” could be used to obtain information without violating Humanitarian Law, namely GPW, human rights instruments (CAT), and Title 18 of the U.S. Code which makes it a criminal offense for any person “outside the United States [to] commit or attempt to commit torture”.

3. Methodological Approach

In assessing how the particular inter-subjective stances of both the author and the reader of these memos are constructed by linguistic resources, the Appraisal approach proves especially useful for its focus on the way evaluative language can pass implicit and/or explicit judgment and emotional responses, and ultimately elicit ideological convergence or divergence towards individual/textual propositions in actual or potential respondents.

As a theory, Appraisal is a development of Systemic Functional Linguistics and the result of studies conducted in the last 15 years at the University of Sydney by a group of researchers led by Prof. James R. Martin [22]. It proposes a complex framework for systematically analyzing the author’s evaluation and stance in a text: as such, it is concerned not only with the means by which text producers express their feelings, but also with

“how writers/speakers construe for themselves particular authorial identities or personae, with how they align or disalign themselves with actual or potential respondents, and with how they construct for their texts an intended or ideal audience” ([14], p.1).

The framework includes three evaluative domains or subsystems by which emotions and interpersonal positioning are conveyed or portrayed: ATTITUDE; ENGAGEMENT; GRADUATION.

ATTITUDE comprises resources for expressing emotive reactions (*Affect*), social values (*Judgment*) and esthetic assessment (*Appreciation*). It encompasses the meanings by which the textual voice indicates a positive or negative evaluation of people, places, things, events and situations, and can be inscribed, or made explicit in a text, evoked or implied. More specifically, while Affect is concerned with the expression of positive and negative feelings, Judgment deals with attitudes towards admired, praised or condemned human behavior, evaluated against a set of institutionalized norms, and Appreciation includes the evaluation of objects, products, natural phenomena and also humans according to aesthetic principles and the systems of value applied in a specific field.

ENGAGEMENT is an umbrella term for resources of intersubjective positioning. Its conceptualization is based on Bakhtin’s and Voloshinov’s notions of dialogism and heteroglossia, according to which any form of communication relates to and is influenced by previous communication regarding the same issue, while anticipating the reaction of actual or potential addressees to the propositions uttered and values sustained. Engagement devices can be dialogically contractive (with the resources of *Disclaim* and *Proclaim*) if they foreground the author’s position by

closing down the space for dialogic alternatives, or can be dialogically expansive (with the options of *Attribute* and *Entertain*) if they open the space to other positions. When disclaimed, dialogic alternatives can be denied or countered; when proclaimed, the authorial intervention in the text can be formulated as an explicit pronouncement, as concurring with a specific viewpoint presented in the text, or as endorsing it because of its reliability. In dialogic expansion, heteroglossia diversity can be recognized by attributing it to an external source which can be acknowledged in neutral terms or from which the author can take distance, or it can be “entertained”, that is represented as just one of a range of subjective positions by using markers of modality and evidentiality, cognitive and mental verbs. Engagement is, therefore, concerned with the ways in which a vast array of lexico-grammatical elements, such as modal verbs and modal adjuncts, reporting verbs, conjunctions and connectives of expectation and counter expectations, evidentials and negative forms, are used to position the author towards the point of view presented in the text and towards potential responses to it.

GRADUATION is a resource for grading or scaling the evaluation presented as ATTITUDE or ENGAGEMENT, whose strength can be expressed either in terms of interpersonal *Force*, with assessments indicating the intensification of qualities or processes or the quantification of entities, or in terms of preciseness of *Focus* with which an item is identified as belonging to a prototypical category. While the term Force refers to attitudinal evaluation of gradable categories whose scaling is generally expressed through intensifiers and emphasizees, Focus applies to categories that are not scalable and evaluation gradability is expressed through elocutions such as “true”, “real”, “genuine”, “a kind of”, “of sorts”, and the suffix-ish.

Being a flexible and multi-layered model of analysis, Appraisal configuration is continuously expanded and improved by new research and application in different fields, not least that of translation assessment. Indeed, new improvement emphasizes the ideational aspects of evaluative responsibility: who takes responsibility for the evaluation and how this responsibility is attributed within a text. This aspect is particularly relevant to our analysis for the key role played in the legal documents and their translations by extratextual and intratextual references and the strategies employed to accept or convey specific legal advice and/or suppress alternative views.

Of course, the parallel reading of the Source and Target Texts posits itself within the framework of Descriptive Translation Studies [23–27], an empirical, target-oriented and functional approach to translation, whose analysis methodology can rely today on interdisciplinary contributions and is, therefore, not limited to language comparison of ST-TTs pairs but is also meant to evaluate how social and cultural elements are incorporated in the translated texts, how these are constrained by expectations in the receiving culture and what function they perform in it [28,29].

4. Preliminary Remarks

The most obvious linguistic phenomenon at play in these memos is a process of (re)definition which helps construct both writers’ attitudinal positioning and readers’ overtly requested or implied response.

4.1. Redefinition of Events

Events are reframed. Appreciation and Judgment are the dominant motifs in the *State of the Fact* section of these documents. By stressing the novelty and unforeseeability of 9/11, whose attacks “have

achieved an *unprecedented (attitude/appreciation)* level of destruction” (Appendix (11), p. 3) and “continue to pose an *unusual (attitude/appreciation)* and *extraordinary (attitude/appreciation)* threat to the national security and foreign policy” (Appendix (1), p. 18), these memos built up an “*emergency situation (attitude/appreciation)*” narrative which made increased Presidential powers and extreme measures necessary. Hence, terrorist attacks are transformed into “acts of war” [30], *a new kind of war* (Appendix (4), p. 2), which requires a *new approach* (Appendix (4), p. 3), *a new thinking in the law of war* (Appendix (8), p. 1) and a different treatment of the prisoners:

- (4) “this is a new type of warfare (*attitude/appreciation*)—one not contemplated in 1949 when the GPW was framed- and requires a new approach (*attitude/appreciation*) [...] the nature of the new war (*attitude/appreciation*) [on terrorism] places a high premium on...the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities (*attitude/judgment*). In my judgment, this new paradigm (*attitude/appreciation*) renders obsolete (*attitude/judgment*) Geneva’s strict (*attitude/judgment*) limitations on questioning of enemy prisoners and renders other Geneva provisions quaint (*attitude/judgment*)” (Appendix (4), pp. 3–4)
- (5) “[...] lawyers further believe (*engagement/attribute/acknowledge*) that this conclusion is appropriate (*attitude/judgment*) for policy reasons because it emphasizes that the worldwide conflict with al Qaeda is a new sort of conflict(*attitude/appreciation*), one not covered by GPW or some other traditional rules of warfare. [...]” (Appendix (6), p. 3)
- (6) “the war against terrorism ushers in a new paradigm (*attitude/appreciation*), one in which groups with broad international reach commit horrific acts (*attitude/judgment/sanction/negative propriety*) against innocent civilians (*attitude/judgment/sanction/positive propriety*)... this new paradigm (*attitude/appreciation*)—ushered in not by us, but by terrorists requires new thinking (*attitude/appreciation*) in the law of war [...]” (Appendix (8), p. 1)

As observed by Jackson [31], this discourse strategy had two purposes: (a) overcoming the lack of a formal declaration of war, which would have clearly identified a state-enemy; (b) denying the applicability to captured fighters of the international humanitarian law, namely the Geneva Convention III on the Treatment of POWs. Interestingly, while enemies’ attacks are described with adjectives and words negatively connoted—“direct”, “violent”, “sophisticated”, “spectacular”, “massive”, U.S.’ “counterinsurgency”, “counter-terrorism”, “low-intensity conflict” and “self-defense” “measures” invoke readers’ empathy and alignment.

4.2. Redefinition of Rights and Their Subjects

Rights and their subjects are redefined. Taliban and al Qaeda prisoners are never identified as human beings who are entitled to Human Rights protection. Indeed, the only occasion in which a word related to the concept of human treatment is associated with them is, ironically, in the title of the memo from the President, *Humane Treatment of al Qaeda and Taliban Detainees*, which, while reassuring that “the U.S. Armed forces shall continue to treat detainees humanely”, denies the GPW status to both al Qaeda and Taliban. Throughout the *Torture Papers*, they are referred to as “unlawful combatants”,

“illegal belligerents”, “irregular forces”, “fighters”, “operatives”, “detainees”, “captives”, or simply “such individuals” and “sources” (of information). In lengthier descriptions they are:

- (7) “*armed militants (attitude/judgment/sanction/negative propriety) that oppressed (judgment/sanction) and terrorized (judgment/sanction) the people of Afghanistan*” (Appendix (4), p. 3), and
- (8) “groups with broad, international reach [who] commit horrific (*appreciation/reaction + judgment/sanction/negative propriety*) acts against innocent civilians (*judgment/sanction/positive propriety*) sometimes with the direct support of states.” (Appendix (8), p. 1).

Not being qualified as “legal combatants” nor as “civilians” of a state party to a war, they are not entitled to GPW or CAT protection.

4.3. Redefinition of Actions

Torturous actions under (legal) scrutiny are renamed. The “enhanced interrogation techniques”, which are also defined as “certain proposed conduct” in Bybee’s 1 August 2002 Memo to John Rizzo, (Appendix (10), p. 1) and “certain techniques” in Principal Deputy Attorney General (the head of the OLC) Stephen Bradbury’s 10 May 2005 Memo to John Rizzo (Appendix (13), pp. 7–13) include practices metonymically defined as: “walling”, “water-boarding” and “water dousing”, denominal conversion verbs and de-verbal nouns respectively used in place of more realistic *wall-standing or slamming into a wall, partial or interrupted drowning, pouring icy cold water or hypothermic bath*, and whose morphological formation and derivational structure reminds more of sporting or gardening activities than of similar but less painful practices, equally defined in these memos with verbal nouns such as “hooding” and “shackling”; circumlocutions such as “dietary manipulation”, euphemistically substituted for (*quasi-starvation*); understatements as “sleep adjustment” for *sleep deprivation*; “environmental manipulation” for continuous light, noise or unpleasant smell exposure.

As Orwell acutely observed in the essay *Politics and the English Language*, “such phraseology is needed if one wants to name things without calling up mental pictures of them” [32]. The use of euphemistic substitutes for more denotative expressions not only disguises acts of violence, an age-old taboo, but also creates a distance between the interrogators and their “techniques”, and between them and the memo addressees, helping minimize the feeling of responsibility of both. It also spares intended and unintended readers the unpleasant impressions evoked by crude language and distracts them from a more careful assessment of the (con)text [33]. Some of the names used to camouflage taboo topics confirm Casa Gómez’s perspective on euphemism: it does not only act to replace or hide the unnamed and forbidden term but also to represent an absent referent for a forbidden concept [34].

What is most striking, however, is the legal twist by which the concept of torture, already quite vaguely defined in CAT [35] and in Title 18 of the United States Code [36], finds its ultimate description in Bybee’s Memo of 1 August 2002 (Appendix (9), p. 1):

- (9) “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”.

The indeterminate concept of “severe (physical and mental) pain”, which is vague as to pain intensity and duration, is exploited to justify torturous interrogation techniques that do not amount to “serious physical injury, organ failure, and even death”; this becomes the arbitrary cutoff point of a Sorites sequence inapplicable to the incommensurable concept and vague evaluative standard of severe pain.

5. Evaluating Language and Textual Strategies

The Torture papers deal with responses to 9/11 events: acts of violence amounting to torture are just some of them. Conceived as a necessary measure to obtain information relevant to self-defense, torture needs to be reframed in a socially acceptable, legally applicable and linguistically manageable practice. The semantic shift of existing words to indicate blatantly illicit measures is one strategy; their description with precise and emotion-less expressions, as extract (41) will show, is another. It is also interesting to note how, in an attempt to prove that “certain interrogation techniques” do not amount to torture, because the legal concept only includes the most “egregious” forms of “cruel, inhuman and degrading treatment” (intensification is used here to minimize the effects of violent behavior), these memos endorse their interpretation of CAT provisions by using reporting verbs that present the information as authoritative and agreed, as in (5)—“lawyers further believe”, and resorting to the appraisal resources of Judgment: the accepted/preferred interpretation of the law is presented as “legal” in (2), and alternative and undesired opinion is “incorrect”, “illogical”, “mistaken” (*sanction/veracity*).

These texts can be, as their purpose requires, either dialogically contractive, as shown in examples (2)—“I accept”, “I determine” (*engagement/proclaim/concur*), where the textual voice aligns itself with the correct and authoritative external voice, or dialogically expansive by admitting alternative views, as in example (1)—“prisoners are presumed” (*engagement/attribute/acknowledge*); “although (*engagement/proclaim/counter*) these provisions seem” (*engagement/entertain*), from which, however, the textual voice overtly distances itself by formulating negative judgments as in (4) where “Geneva’s strict limitations” are “obsolete” and its provisions “quaint”, or by making those views unidentifiable and ungrounded, as shown in the following extracts from Bybee’s 22 January 2002 Memo (Appendix (3), pp. 24–32):

- (10) “Some commentators argue (*engagement/attribute/distance*) that these provisions should be read to bar any State party from refusing to enforce their provisions, no matter the conduct of its adversaries... This understanding of the Geneva Conventions cannot be correct (*engagement/disclaim/deny*)”.
- (11) Geneva III contains no strict deadlines for compliance. Indeed, it would be illogical (*engagement/entertain + judgment/sanction*) to require immediate compliance, particularly if a nation were suddenly attacked [...].
- (12) “Under the view promoted by many international law academics, (*engagement/attribute/force*) any presidential violation of customary international law is presumptively unconstitutional. These scholars argue (*engagement/attribute/distance*) that customary international law is federal law, and that the President’s Article II duty under the Take Care Clause requires him to execute customary international law as well as statutes lawfully enacted under the Constitution. [...] This view (*graduation/focus/down-scaling*) of customary international law is seriously (*graduation/force*) mistaken (*judgment/sanction/veracity*). The constitutional

text nowhere brackets presidential or federal power within the confines of customary international law.

The interpretation of international treaties and humanitarian law promoted in these memos is endorsed by its attribution to DOD and DOJ lawyers; opposite interpretation is disendorsed by attribution to “some commentators”, “academics” and “scholars” who remain unknown and therefore less reliable. It is the interplay of disendorsed propositions, attributed to unnamed sources, and endorsed utterances whose responsibility is shared by “we” as in (13) and (14) or taken by an authoritative voice as in (2) that makes it possible for prisoners’ POW rights to be initially “presumed”, then reduced to “certain provision” and finally “categorically” denied.

Readers’ alignment is invoked either implicitly by using negatively connoted expressions such as “unlawful combatants” in (2), “terrorists” and “enemy” in (4), “armed militants” in (7) or explicitly shaped by the use of antithetical adjectives as in (8)—“horrific acts against innocent civilians”, which contribute to de-humanize the prisoners and consequently justify negation of their entitlement to human rights protection. The memos’ structure is also well turned to this end since counter arguments and information about adversarial court decisions are often confined to footnotes.

Let’s consider, for example, footnote number 23 of Bybee’s memo to Alberto R. Gonzales and William J. Haynes II (Appendix (3), p. 8), which admits that “Some international law authorities seem to suggest that common article 3 [of the Geneva Convention] is better read as applying to all forms of non-international conflict”. In the later memo to Alberto Gonzales, while discussing the jurisprudence of the Torture Victims Protection Act (TVPA) [37], Bybee quotes its definition of torture as an act “intentionally inflicted” (Appendix (9), p. 23) and only reports in footnote number 13 on the same page that “with respect to the text of CAT, [...] this language might be construed as requiring general intent”.

When *The Washington Post* broke the story about this memo (drafted by John Yoo and signed by Bybee) on 8 June 2004, the White House asked Jack Goldsmith, who had replaced Bybee [38] as head of the OLC, to reaffirm the legal advice. Goldsmith refused, withdrew the initial memo and left the office. Daniel Levin, who replaced him, released a new memo on interrogation techniques in December 2004 (Appendix (12)). Equally troubled by the White House’s advocacy of torture as a method of obtaining information, Levin clearly stated American repudiation of torture (in the first paragraph), blatantly rejected the August 2002 Memo’s definition of torture as “excruciating and agonizing” on page 2, but eventually restated on page 12 that “to constitute torture the conduct in question must have been specifically intended to inflict severe pain or mental pain or suffering”. Only in footnote number 6 on page 2 did he concede that Bybee’s memorandum discussed the prohibition against torture “in somewhat abstract and general terms”, without addressing the many other sources of law that may apply, and advised “great care”. Levin’s memo focused its argumentation on the distinction between good faith and specific intent (on the part of the interrogators) and, again, contained only in footnote number 24 on page 14 the flat assertion: “to the extent that formulation was intended to suggest that the mental harm would have to last for at least ‘months or even years’, we do not agree”.

When also Levin left [39], Stephen Bradbury proclaimed the legality of waterboarding in the 10 May 2005 Memo on the Application of 18 U.S.C. to Certain Techniques (Appendix (13), p. 15):

- (13) “We understand (*engagement/entertain*) that in many years of use on thousands of participants in SERE [40] training the waterboard technique, although (*engagement/disclaim/counter*) used in substantially more limited way, has not resulted in any cases of serious physical pain or prolonged mental harm. In addition, (*graduation*) we understand (*engagement/entertain*) that the waterboard has been used by the CIA on three high level (*attitude/judgment*) al Qaeda detainees, two of whom were subjected to the technique numerous times, and according to OMS, (*engagement/attribute/acknowledge*) none (*engagement/disclaim/deny*) of these three individuals (*attitude/implicit-negative appreciation*) has shown (*engagement/proclaim/endorse*) any evidence (*graduation/quantity*) of physical pain or suffering or mental harm in the more than 25 months since the technique was used on them.”

He only admitted in footnote number 19 on pages 14–15 that:

- (14) “OMS identified other potential risks: In our limited experience (*engagement/entertain/force*), extensive sustained (*graduation/force*) use of the waterboard can introduce new risks (*engagement/entertain entertain*). Most seriously, for reasons of physical fatigue or psychological resignation, the subject may simply give up (*engagement/entertain entertain*), allowing excessive (*appreciation/valuation*) filling of the airways and loss of consciousness [...]” OMS Guidelines [41] at 18. OMS has also stated (*engagement/attribute/acknowledge*) that “by days 3–5 of an aggressive (*attitude/judgment/capacity*) program, cumulative effects (*judgment/capacity*) become a potential concern (*judgment/capacity*). Without any hard data to quantify either this risk of the advantages of this technique, we believe (*engagement/entertain*) that beyond this point continued intense (*appreciation + graduation*) waterboard applications may not be medically appropriate (*engagement/entertain + attitude/judgment*).”

Significantly, both the undesired effect (a subject’s resignation) and the negative judgment (*not medically appropriate*) are presented as a discretionary act with low level of probability (*may*); moreover, intensification with the repetition of quasi-synonymic adjectives and duplets (*extensive sustained, continued intense*) imply that only prolonged applications become a *potential* concern. As we will see in the following paragraphs, the transformation of footnotes in endnotes in the Italian translations makes even more invisible, with or without the Italian translators’ awareness, the authors’ uncertainty about the validity of certain allegations expressed in the discussion sections and their concerns about the applicability of certain “enhanced interrogation techniques”.

6. Memos Translations in Italian

In Italy, the news about the mistreatment of detainees in American army bases started to spread in 2002 [42,43] after the first exposure of the abuses in *The Washington Post* and *The Observer*. Since then, thousands of articles have been written in major Italian newspapers, such as *La Repubblica*, *Il Corriere della Sera*, *Il Messaggero*, *L’Unità*, and uploaded by online magazines such as *La Voce*, *Europa*, *il Journal*, *Privata Repubblica*, documenting and commenting the American application of “enhanced interrogation techniques” especially after the disclosure of the Memos following the ACLU’s FOIA request and Obama’s decision to release DOJ classified documents. However, despite

their relevance, and besides extensive newspaper discussion, not many books and journal articles can be found on the topic: in 2004, the Turin publisher EGAE (Edizioni Gruppo Abele) published an Amnesty International book entitled *Abu Ghraib e dintorni. Un anno di denunce inascoltate sulle torture in Iraq* [44]; in the same year, another Italian publisher, Carrocci, made available the title: *Tortura di stato: le ferite della democrazia* [45] and the publisher Massari disseminated the volume *Torture “made in USA”. Viaggio nel Gulag a stelle e strisce* [46]. In 2009, Caterina Mazza’s paper “Tortura oggi: perché no! Riflettendo su Abu Ghraib e Guantànamo” [47], and Daniele Cocco’s article, “Dal Kubrac a Guantanamo: Tecniche che arrivano da lontano” [48], also discuss the topic, but none of these texts, nor Amnesty International’s 2012 document *Decimo Anniversario di Guantanamo: cronologia* [49], provides a complete translation of the Torture Memos. The documents are mentioned, explained, excerpted, commented and condemned but not translated [50]. To the best of my knowledge, the only complete translation of four of the many documents released over the years by the CIA and the DOJ was jointly published online in January 2010 by the Italian association *Giornalismo e democrazia*, an independent observatory for the study of journalism, and by LSDI (*Libertà di stampa, diritto ed informazione*), an association of journalists related or belonging to FNSI, the Italian National Press Federation, the journalists’ trade union [51].

The analysis attempted in the next paragraphs is based on these translations of the following documents:

- Memorandum for John Rizzo, regarding the interrogation of al Qaeda operatives (Appendix (10)) [For convenience purposes henceforth named STA (Source Text A). Therefore, the Italian Translation, “Interrogatori di operativi di Al Qaeda”, will be identified as TTA (Target Text A)]
- Memorandum for John Rizzo on the application of 18 U.S.C. §§ 2340–2340A to certain techniques (Appendix (13)), henceforth STB. The Italian translation, “Risposta a: Applicazione del titolo 18 Codice penale Usa (USC) USC), articoli 2340-2340A, a determinate tecniche che possono essere usate nell’interrogatorio di detenuti di Al Qaeda di alto livello”, will be TTB.
- Memorandum for John Rizzo on the application of 18 U.S.C. §§ 2340–2340A to the combined use of certain techniques (Appendix (14)), henceforth STC. The Italian translation, which has maintained the English subject, will be TTC.
- Memorandum for John Rizzo on the application of United States obligations under Article 16 of CAT (Appendix (15)), henceforth STD. The Italian translation, “Re: Applicazione degli obblighi degli Stati Uniti previsti dall’Articolo 16 della Convenzione contro la tortura (CAT) a determinate tecniche che potrebbero essere state usate durante gli interrogatori a detenuti di alto livello di al Qaeda”, will be TTD.

7. Translation (and) Evaluation

An initial observation can be made about the attempt of the target texts to reproduce the layout of the source texts, whose equivalent pragmatic function cannot be found in the Italian civil law-based legal system. The heading of the Memo format indicating its recipient, sender, date and subject is faithfully reproduced in English. The subject matter is also reported in English and provided with a translation in Italian in all but one document, Text C, where the topic remains untranslated. The unfamiliarity of the translators with a similar genre in Italian is probably the reason why the

abbreviation for “Regarding” is left untranslated in the TTs but in text B, where it has been erroneously translated as “Risposta” (Reply).

The distribution of the content in the page is generally followed by the TT with the ST missing parts equally blotted out in black ink or signaled by the Latin expression *Omissis* or by ellipsis (...). However, minor changes have been occasionally made to pinpoint elements of potential interest for the target readership: the list of the applicable interrogation techniques which are mentioned in the first paragraph on page 2 of text A is typed in bold letters in Italian and separated from the paragraph to which it belongs in the TT. A few other phrases are highlighted elsewhere by being separated from the paragraph to which they belong, such as the Federal Anti-Torture Statute definition of torture as a crime on page 2 of Text C, and the heading “Phases of the interrogation process” on page 4 of same text, which stands out in bold letter (*Le fasi del processo di interrogatorio*) in the TT.

The ST footnotes are translated at the end of the page when they consist of few lines, but they are transformed into endnotes when they are numerous and filled with full length paragraphs, as in texts C and D, having respectively a total of 23 and 58 footnotes. This has some consequences on the overall effect of the target text because footnotes are often purposely used in the STs to discuss any “matter that should be disclosed but not emphasized” [52] such as concerns about the use and effects of “enhanced” and “combined” interrogation techniques: their displacement to the final pages of the translated documents make these concerns even less evident.

The receiver’s and the signer’s title have been reported in English in the TT with the only exception of Bybee’s 2002 Memo (Text A) where the signer’s job title has been translated with “Assistente Procuratore Generale”.

Naturally, the cultural and legal specificity of certain terms has implied translators’ choices which range from zero-translation, when the term has no equivalent in the Italian legal culture, as in the case of “constitutional avoidance” on page 3 of text B, which however might have been explained in a translator’s note with a comparison to the principle of self-restraint applied by the Italian Constitutional Court, to Explicitation consisting in adding a few words for clarity purposes. This occasionally causes a graduation shift as in the translation of the names of interrogation techniques: “facial slap” is generally literally translated as “schiaffo in faccia”, “schiaffo sul viso”, “schiaffo in volto” (slap in the face), but occasionally also as “schiaffo in pieno viso” (slap full in the face), in TTA; “sleep deprivation” is usually rendered with the post-modifier “privazione del sonno” (deprivation of sleep), but also, in TTA as “privazione prolungata del sonno” (prolonged sleep deprivation); “stress positions” is translated as “posizioni stressanti” and “posizioni da stress” (stress positions and stressful positions, respectively), but also as “posizioni innaturali” (unnatural positions) in TTs C and D; “waterboard”, which has been translated with the umbrella term “tortura dell’acqua” (water torture) in relevant Italian literature or with the metonymy “asse della lavandaia” (washer woman’s board) by some Italian press [53], is generally left untranslated in these texts and explained as “annegamento simulato” (simulated drowning) in TTA. The expression “enhanced (interrogation) techniques”, which in the STs conveys and evokes positive attitude being the verb “enhance” usually associated with improvements, is rendered by “tecniche rafforzate” (reinforced techniques) or “tecniche dure” (harsh techniques) eliciting a different reaction in Italian. A huge and largely unnecessary addition is inserted in a footnote for the acronym SERE [54], which in STA is simply spelled out as *Survival, Evasion, Resistance, Escape* but is quite over-explained in TTA, where the attitudinal

sub-system of (negative) *judgment* is evoked by the contextual association with the methods of Chinese torture:

- (15) Programma segreto (“Survival, Evasion, Resistance, Escape”) che aveva come obiettivo primario quello di addestrare i soldati a resistere alla prigionia, qualora fossero caduti in mano nemica e poi rielaborato per renderlo spendibile nella “Guerra al Terrorismo” di Bush. Ne sono stati artefici due psicologi, James Elmer Mitchell e Bruce Jessen, che hanno riadattato gli strumenti della tortura cinese. (TTA, p. 2)

(Secret program which had as its primary goal that of training soldiers to resist in captivity if they fell into enemy hands, and then redesigned to be used in Bush’s “War on Terror”. Its authors were two psychologists, James Elmer Mitchell and Bruce Jessen, who adapted the tools of Chinese torture). (Back translation mine)

In most cases, however, textual expansion has the only effect of raising the target text’s level of explicitness, as in the following examples from ST and TT A:

- (16) our previous oral advice (STA, p. 1)
il precedente parere verbale di questo ufficio (TTA, p. 1)
(the previous oral advice of this office)
- (17) Our advice is based upon the following facts, which you have provided to us (STA, p. 1)
Il nostro parere si basa sui dati che seguono e che voi avete sottoposto alla nostra attenzione (TTA, p. 1)
(Our advice is based on the following data that you have brought to our attention)
- (18) against our interests overseas. (STA, p. 1)
contro zone di interesse americano oltre oceano (TTA, p. 1)
(against American areas of interest overseas)

In some other cases, the objective of content clarification is pursued by text contraction and simplification, that is by reducing repetitions and omitting references to extra-textual information that is considered unnecessary or inferable from the context, as in the following examples extracted from STs A and B and their translations:

- (19) The duration of confinement varies based upon the size of the container. For the larger confined space, the individual can stand up or sit down; the smaller space is large enough for the subject to sit down (STA, p. 3)
La durata del confinamento varia in base alle dimensioni dell’area utilizzata: in spazi √ più ampi l’individuo può stare in piedi o sedersi, in spazi più ristretti √ può soltanto rimanere seduto (TTA, p. 3)
(The duration of confinement varies based upon the size of the used area: in larger spaces, the individual can stand up or sit down; in smaller spaces he can only remain sated)
- (20) You have asked us to address whether certain, specified interrogation techniques designed to be used on a high value al Qaeda detainee in the War on Terror comply with the federal prohibition on torture, codified at IS U.S.C. (STB, p. 1)

Ci avete chiesto di stabilire se certe √ tecniche di interrogatorio pensate per essere usate su detenuti di alto livello di Al Qaeda nella Guerra al Terrore siano in linea con la proibizione √ della tortura, prevista dal titolo 18 dell' USC... (TTB, p. 1)

(You have asked us to establish whether certain interrogation techniques thought to be used on high value al Qaeda detainees in the War on Terror comply with the prohibition on torture laid down in title 18 of the USC)

- (21) (We provided a copy of that opinion to you at the time it was issued.) Much of the analysis from our 2004 Legal Standards Opinion is reproduced below; all of it is incorporated by reference herein. (STB, p. 1)

√ Molta di quell'analisi è ripresa qui di seguito, e comunque tutto il documento è utilizzato come riferimento. (TTB, p. 1)

(Much of that analysis is repeated below and, in any case, the entire document is used as reference)

- (22) We base our conclusions on the statutory language enacted by Congress in Sections 2340-2340A. (STB, p. 3)

Basiamo le nostre conclusioni sulle definizioni delle norme √ contenute negli articoli 2340–2340A. (STB, p. 2)

(We base our conclusions on the definitions of the rules contained in articles 2340–2340A)

Whether consciously or inadvertently, content simplification occasionally de-emphasizes important statements altering information reliability and the scale of *force* of the conveyed meaning, and even leading to mistranslations, as in the examples below, again from TTB:

- (23) As a practical matter, the detainee's physical condition must be such that these interventions will not have lasting effect, and his psychological state strong enough that no severe psychological harm will result. (STB, p. 4)

In pratica, la condizione fisica del detenuto deve essere tale che questi interventi non possano avere un effetto permanente, e che il suo stato psicologico è abbastanza forte che non ne risulterà alcun √ danno psicologico. (TTB, p. 3)

(Practically, the detainee's physical condition must be such that these interventions cannot 3pl Present Subjunctive + Have a permanent effect, and his psychological state strong enough that no psychological harm will result)

- (24) the President has directed unequivocally that the United States is not to engage in torture (STB, p. 2)

il presidente ha indicato inequivocabilmente che gli Stati Uniti non ammettono la tortura (TTB, p. 2)

(the president has pinpointed unequivocally that the United States do not admit torture)

- (25) You have informed us that the initial OMS assessments have ruled out the use of some-or all-of the interrogation techniques as to certain detainees. (STB, p. 5)

Ci avete spiegato che i controlli iniziali dell'OMS hanno riguardato alcune o tutte le tecniche di interrogatorio, così come alcuni determinati detenuti. (TTB, p. 3)

(You have explained us that the initial OMS assessments have regarded some or all the interrogation techniques as well as certain detainees)

Examples (17), (19) and (21) also show some of the many cases of sentence structure normalization obtained in Italian translations by standardizing punctuation and adding connectors to transform English hypotactic structures into Italian paratactic ones, more compliant with Italian formal legal writing conventions. Extract (19) also provides one more example of how the strength of evaluation changes *force* and *focus* from ST to TT. In the source text, the confinement space (which is the grammatical subject of the sentence), although “smaller”, is positively represented by being “large enough for the subject”; in the target text, negative attitudinal position is conveyed and invoked by foregrounding the individual, who is the agent and the grammatical subject of the sentence, and who “can only remain seated”.

These changes may not create a significant shift in the interpretation of the texts at a micro-level, but they do produce a different result at a macro- level because of their overall cumulative effect, which is also enhanced by TT shifts in the degree of the writer’s commitment towards endorsed or disendorsed statements attributed to external sources and in the rendering of the strength of true-value assessments expressed by modal operators. In this regard, it is worth noting that the firm prohibition resulting from the use of the negative future “will not have lasting effect”, in extract (23), in downscaled by the Italian choice of the subjunctive mood having more an optative than a mandative meaning. Indeed, the existence in Italian of a single modal form POTERE for may/can overshadows the different readings of deontic, dynamic and epistemic modality, as clearly shown in the examples of Table 1. Thus, if in the STs the presence of a low value modal can overlap the meanings of possibility and probability of the propositions expressed in the sentences, in the TTs the use of POTERE, declined in the Indicative rather than in a more appropriate Conditional mood, can also convey in Italian a message of permissibility besides likelihood.

Table 1. Translating modality.

| Source Texts | Target Texts | Back Translations |
|--|--|---|
| (26) Application of 18 U.S.C. §§ 2340–2340 to Certain Techniques that <u>may be used</u> in the Interrogation of High Value al Qaeda Detainees (STB, p. 1) | Applicazione del titolo 18 Codice penale USA (USC), articoli 2340–2340, a determinate tecniche che <u>possono essere usate</u> nell’interrogatorio di detenuti di Al Qaeda di alto livello (TTB, p. 1) | Application of 18 U.S.C. §§ 2340–2340 to Certain Techniques that POTERE-Present- Indicative 3pl be used in the interrogation of high level al Qaeda detainees |
| (27) we addressed the application of the anti-torture statute, 18 U.S.C. §§ 2340–2340A, to certain interrogation techniques that the CIA <u>might use</u> in the Questioning (STC, p. 1) | Abbiamo trattato l’applicazione delle norme anti-tortura (Titolo 18, articoli 2340–2340A) ad alcune tecniche di interrogatorio che <u>possono essere impiegate</u> dalla CIA (TTC, p. 1) | we have dealt with the application of the anti-torture provisions (Title 18, articles 2340–2340A) to certain interrogation techniques that POTERE-Present-Indicative 3pl be employed by CIA |

Table 1. Cont.

| Source Texts | Target Texts | Back Translations |
|--|--|---|
| (28) Use of the techniques <u>may be continued</u> if the detainee is still believed to have and to be withholding actionable intelligence (STB, p. 5) | L'uso delle tecniche <u>può essere proseguito</u> se si crede che il detenuto stia nascondendo informazioni importanti (TTB, p. 4) | The use of the techniques POTERE-3pl be continued if it is believed that the detainee is concealing important information |
| (29) You have also described how sleep deprivation <u>may be</u> prior and during the waterboard session (STC, p. 9) | Ci avete indicato che la privazione del sonno <u>può essere impiegata</u> prima e durante la sessione del waterboard. (TTC, p. 9) | You have shown us that sleep deprivation POTERE-3sing be employed before and during the waterboard session |

As to the attitudinal positions advanced by these texts by means of associations and/or attribution of certain evaluative meanings to a specific textual voice, be it internal or external to the text, it must be noted that the U.S. memos show a more neutral attitude towards the subject matter than their translations. In other words, in the memos the issues under discussion are presented as the object of unbiased and thoughtful consideration requested by and based upon the information of a well-known, authoritative external source, as in examples (20) and (25), whose reliability is usually acknowledged if not endorsed, as in examples (21) and (22). In the target texts, the authorial bias is manifest.

The memos available in translations are basically replies to the CIA's legal queries: they establish a dialogue between a "You" (the CIA personnel requesting legal advice) and a "We" (the DOJ respondents), which is presented in a neutral frame in the STs. Here, distance from the information reported or provided is only and sparingly taken in footnotes (e.g., footnote 1 of text D: "The legal advice of this Memorandum does not represent the policy view of the Department of Justice"). In the target texts, this exchange of information is generally rendered by reproducing the same taxonomy of acknowledgement and attribution of the reported material as shown in extracts (20) and (25) and (30)–(31) of Table 2; however, when it comes to the discussion of the applicability of certain interrogation techniques, the frequent use of reporting verbs in the passive form or in impersonal constructions, as in examples (32)–(34) and (35)–(37), and the choice of marked expressions, as in extracts (38)–(40), have the potential to activate a negative disposition in the reader and to invoke an attitudinal assessment of the reported information, whose reliability is challenged, as shown especially in extract (40), where the present simple construction, encoding an epistemic stance on the part of the ST author, is translated with the Italian present conditional.

Table 2. Intertextual positioning.

| Source Texts | Target Texts | Back Translation |
|---|---|---|
| (30) <u>You have informed us</u> That <u>your</u> research has revealed that (STA, p. 3) | Ci avete informato del fatto che le <u>vostre</u> ricerche hanno messo in luce (TTA, p. 3) | <u>You have informed us</u> about the fact that <u>your</u> research has brought to light |
| (31): With these caveats, we turn to specific examples that <u>you have</u> <u>provided</u> to us. (STD, p. 10) | Con questi presupposti, possiamo passare ad esempi specifici che <u>ci</u> sono stati forniti <u>da voi</u> (TTD, p. 9) | With these assumptions, we can turn to specific examples <u>we have been given by you</u> |

Table 2. Cont.

| Source Texts | Target Texts | Back Translation |
|---|---|---|
| (32) <u>You have orally informed us</u> that this procedure triggers an automatic physiological sensation of drowning (STA, p. 4) | <u>Siamo stati verbalmente informati</u> che questa procedura scatena una sensazione psicologica automatica di annegamento (TTA, p. 4) | <u>We have been</u> verbally <u>informed</u> that this procedure triggers an automatic physiological sensation of drowning |
| (33) <u>You have informed us</u> that <u>you have taken</u> various steps to ascertain what effect (STA, p. 4) | <u>Siamo stati informati</u> che <u>sono stati svolti</u> degli accertamenti sugli effetti (TTA, p. 4) | <u>We have been informed</u> that <u>investigations have been carried out</u> on the effects |
| (34) <u>You have informed us</u> that diapers are used solely for sanitary and health reasons and not in order to humiliate the detainee. (STD, p. 13) | <u>Siamo stati informati</u> che i pannoloni vengono utilizzati solo per ragioni sanitarie e di salute, e non per umiliare i detenuti. (TTD, p. 12) | <u>We have been informed</u> that diapers are only used for sanitary and health reasons and not to humiliate the detainees. |
| (35) <u>You have indicated to us</u> that you have not determined either the order or the precise timing for implementing these procedures (STA, p. 15) | <u>Ci è stato segnalato</u> che l'ordine o la tempistica precisa degli interventi non sono ancora stati decisi. (TTA, p. 14) | <u>It has been reported</u> (to us) that the order or the precise timing of the interventions have not yet been decided. |
| (36) <u>you believe</u> that he knows many stories of capture (STA, p. 7) | <u>si presume</u> sia a conoscenza di diversi racconti di catture (TTA, p. 7) | <u>it is assumed</u> he knows several stories of captures |
| (37) and <u>you believe</u> it is likely that the two discussed Zawahiri's experience as a prisoner (STA, p. 7) | e <u>si ritiene</u> che i due abbiano discusso del periodo di prigionia di Zawahiri (TTA, p. 7) | and <u>it is believed</u> the two have discussed Zawahiri's period of imprisonment |
| (38) <u>We also understand that</u> a Medical expert <u>with SERE experience</u> will be present (STA, p. 4) | <u>Ci è poi stato fatto capire</u> che un medico <u>autorizzato del SERE</u> sarà presente (TTA, p. 4) | <u>We have been made to believe</u> that a doctor <u>authorized by SERE</u> will be present |
| (39) Moreover, once again <u>we understand</u> that use of this technique will not be accompanied by any specific verbal threat (STA, p. 12) | Inoltre <u>V ci è dato capire</u> che l'uso di questa tecnica non implica l'uso di minacce verbali (TTA, p. 12) | <u>We are given to understand</u> that the use of this technique does not imply the use of verbal threats |
| (40) <u>As we understand it</u> , Zubaydah <u>is</u> one of highest ranking members of the al Qaeda terrorist organization (STA, p. 1) | <u>Da quanto ci dite</u> il sig. Abu Zubayadah <u>sarebbe</u> uno dei membri più importanti dell'organizzazione... (TTA, p. 1) | <u>From what you tell us</u> , Mr. Abu Zubayadah <u>would be</u> one of the most important members of... |

These examples, particularly those extracted from ST and TTA, show how intertextual positioning—the dialogue at play between DOJ's primary textual voice and CIA's secondary textual voice—advances different value positions in the Italian translations. In the TTs extracts, the same information is presented as less factual and less trustworthy because the textual voice either distances itself from it by presenting it as dubious (Da quanto ci dite = From what you say; Ci è poi stato fatto capire = We have been made to believe; Ci è dato capire = We are given to understand) or erases its authorial external source, resorting to personal passive forms (Siamo stati informati = We have been

informed; *ci è stato segnalato* = it has been reported to us), or impersonal constructions (*Si ritiene* = it is believed; *si presume* = it is assumed that). The application of the appraisal framework to the reported propositions reveals the transformation of dialogic expansion—in which alternative viewpoints are admitted—into dialogic contraction of the space for alternatives in examples (32)–(34) where the primary textual voice takes sole responsibility for the reported material, and in (38)–(40) where the propositions are disendorsed and the information credibility implicitly questioned. As to the imprecise rendering of “physiological” with “psychological” in Italian, shown in extract (32), this is probably a mere language slip not appearing in other similar occurrences in other translations of these documents.

8. Conclusions

The analysis of the linguistic features of some of the most controversial Torture Memos and the parallel reading of the few translations available in Italian, conducted in this study mostly by applying the Appraisal framework, has highlighted evaluative language uses at play in the native text discourse aimed at influencing and aligning not only the direct addressee but also the putative reader towards certain conclusions. Different strategies, mainly relying on changes in the textual voice positioning, seem to pursue the opposite effect in the translated texts. Failure in reproducing the writing conventions of a textual genre unfamiliar in the target culture (a legal document furnishing legal advice on request and on the basis of prior jurisprudence and of the information provided by an identified external source) and in understanding the importance of the dialogue enacted by that generic form to the elaboration of the overall meaning has probably contributed to obscure the intended evaluation of the STs and to evoke negative responses in the TTs. Whether certain linguistic choices were due to translators’ inattentiveness and time constraints or were influenced by the target readers’ expectations following the negative press discussion or were motivated by the ideological orientation of the associations which published them, these translations undoubtedly increase the negative impact compared to the original, and prove that “translations are inevitably partial”, in a wider sense than originally meant by M. Tymoczko and E. Gentzler. “Engaged and committed, either implicitly or explicitly” [55], translations do not only create (partial) representations of the source text culture, but also display, intentionally or unintentionally, partial representations of the target culture.

A final comment can be made about the vagueness of Human Rights discourse. Human Rights instruments prohibiting torture are one of the cases in which linguistic indeterminacy is the result of inevitable legal ambiguity and normative vagueness, since pain tolerance levels are extremely subjective and, according to recent research, also genetically, psychologically and even gender-based. However, the lack of precision, devised by legislators to make Human Rights instruments compatible with national legal systems and facilitate local implementation, generates a loophole allowing serious misinterpretation. Both the CAT and the U.S. Statute indicate no intensity nor temporal requirements qualifying the type of pain and suffering inflicted as criminally liable. This underspecification of the concept of torture enabled the “Torture memos” lawyers to release under the imprimatur of the DOJ legal opinions where the limits of torturous infliction of physical pain was “organ failure, impairment of bodily function or even death” and where “prolonged mental harm” could last “for months or even years”—as stated in extract (5).

If acts of violence can be called “interventions” or “applications” and explained in declarative sentences with precise and emotionally neutral words as if they were steps of a surgical procedure, as shown in the following extract:

- (41) “The waterboard. In this technique the detainee is lying on a gurney that is inclined at an angle of 10 to 15 degrees to the horizontal, with the detainee on his back and his head toward the lower end of the gurney. A cloth is placed over the detainee’s face and cold water is poured on the cloth from a height of approximately 6 to 18 inches. The wet cloth creates a barrier through which it is difficult—or in some cases not possible—to breathe.” (STB, p. 13)

and be translated, almost integrally, in an equally neutral tone:

Il waterboard. Il detenuto è disteso su una barella inclinata con un angolo di 10–15 gradi. La testa è rivolta verso l’estremità della barella. Gli viene poggiato un panno sul viso e viene versata acqua fredda sul panno da una distanza di circa 15–45 centimetri. Il panno bagnato crea una barriera attraverso la quale è difficile—e in certi casi impossibile—respirare. (TTB, p. 9)

then, we must agree with Orwell again: if thought corrupts language, language can also corrupt thought.

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Appendix

List of the memos used in the analysis

(1) Date: 25 September 2001

To: Tim Flanigan, Deputy Counsel to the President

From: John Yoo, Deputy Assistant Attorney General

Re: The President’s Constitutional Authority to Conduct Military Operations against Terrorists and Nations Supporting Them

(2) Date: 9 January 2002

To: William J. Haynes II, General Counsel, Dept. of Defense

From: John Yoo, Deputy Assistant Attorney General; Robert J. Delahunty, Special Counsel

Re: Application of Treaties and Laws to al Qaeda and Taliban Detainees

(3) Date: 22 January 2002

To: Alberto R. Gonzales, Counsel to the President, and W. J. Hanes II, General Counsel to the Dept. of Defense

From: Jay Bybee, Deputy Assistant Attorney General

Re: Application of Treaties and Laws to al Qaeda and Taliban Detainees

(4) Date: 25 January 2002

To: The President

From: Alberto Gonzales, Counsel to the President

Re: Decision Re Application of the Geneva Convention on Prisoners of War to the conflict with al Qaeda and the Taliban

(5) Date: 26 January 2002

To: Alberto Gonzales, Counsel to the President

From: Colin Powel, Secretary of State

Re: Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan

(6) Date: 2 February 2002

To: Alberto Gonzales, Counsel to the President

From: William Taft, IV

Re: Comments on Your Paper on the Geneva Convention

(7) Date: 7 February 2002

To: President, Vice President, Secretary of States, Secretary of Defense, Attorney General

From: Jay Bybee, Deputy Assistant Attorney General

Re: Human Treatment of al Qaeda and Taliban Detainees

(8) Date: 7 February 2002

To: Vice President, Secretary of State, Secretary of Defense, Attorney General, Chief of Staff to the President, Director of Central Intelligence, Assistant to the President for National Security Affairs, Chairman of the Joint Chiefs of Staff.

From: The White House

Re: Humane Treatment of al Qaeda and Taliban Detainees

(9) Date: 1 August 2002

To: Alberto Gonzales (Counsel to the President)

From: Jay Bybee (Assistant Attorney General)

Re: Standards of Conduct for Interrogations under 18 U.S.C 2340–2340

(10) Date: 1 August 2002

To: John Rizzo (Acting General Counsel of the CIA)

From: Jay Bybee (Assistant Attorney General)

Re: Interrogation of al Qaeda Operative

(11) Date: 14 March 2003

To: William J. Haynes II, General Counsel of the Dept of Defense

From: John C. Yoo, Deputy Assistant Attorney General

Re: Military Interrogation of Alien Unlawful Combatants Held outside the United States

(12) Date: 30 December 2004

To: James Comey (Deputy Attorney General)

From: Daniel Levin (Acting Assistant Attorney General)

Re: Legal Standards Applicable Under 18 U.S.C §§ 2340–2340A

(13) Date: 10 May 2005

To: John Rizzo (Senior Deputy General Counsel of CIA)

From: Steven G. Bradbury (Principal Deputy Assistant Attorney General)

Re: Application of 18 U.S.C 2340–2340A to Certain Techniques that may be used in the
Interrogation of High Value al Qaeda Detainee

(14) Date: 10 May 2005

To: John Rizzo (Senior Deputy General Counsel of CIA)

From: Steven G. Bradbury (Principal Deputy Assistant Attorney General)

Re: Application of 18 U.S.C 2340–2340A to the Combined Use of Certain Techniques in the
Interrogation of High Value al Qaeda Detainee

(15) Date: 30 May 2005

To: John Rizzo (Senior Deputy General Counsel of CIA)

From: Steven G. Bradbury (Principal Deputy Assistant Attorney General)

Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to
Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees

(16) Date: 31 August 2006

To: John Rizzo (Senior Deputy General Counsel of CIA)

From: Steven G. Bradbury (Principal Deputy Assistant Attorney General)

Re: Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Detention Facilities

Conflicts of Interest

The author declares no conflict of interest.

References and Notes

1. Timothy A.O. Endicott. *Vagueness in Law*. Oxford: O.U.P., 2000. The problem of indeterminacy of meaning in the language of legal texts has been widely discussed by theoretical linguists, legal scholars and philosophers of law. Its constitutive elements are usually associated with lexical and syntactic ambiguity (whose disambiguation is context-dependent) and vagueness (of predicates, whose applicability depends on gradient properties, giving rise to borderline cases).
2. Timothy Williamson. *Vagueness*. London: Routledge, 1994.
3. Stewart Shapiro. *Vagueness in Context*. Oxford: Clarendon Press, 2006.
4. Lawrence M. Solan. "Vagueness and Ambiguity in Legal Interpretation." In *Vagueness in Normative Texts*. Bern: Peter Lang, 2005, pp. 73–69.
5. Andrei Marmor. *The Language of Law*. Oxford: Oxford University Press, 2014.
6. Vijay K. Bathia, Jan Engberg, Maurizio Gotti, and Dorothee Heller, eds. *Vagueness in Normative Texts*. Bern: Peter Lang, 2005.
7. Giuseppina Cortese. "Indeterminacy in 'Rainbow' Legislation: The Convention on the Rights of the Child." In *Vagueness in Normative Texts*. Bern: Peter Lang, 2005, pp. 255–85.
8. Christiana Ochoa. "Advancing the Language of Human Rights in a Global Economic Order: An Analysis of a Discourse." *Boston College Third World Law Journal* 23 (2003): 57–114.
9. Girolamo Tessuto. "Language and Meaning in the European Discourse of Human Rights." *Textus* 17 (2004): 197–216.
10. Girolamo Tessuto. "Ambiguity and Vagueness in Human Rights Discourse." In *Vagueness in Normative Texts*. Bern: Peter Lang, 2005, pp. 287–312.
11. An in-depth discussion can be found in Jeremy Waldron. "Cruel, Inhuman, and Degrading Treatment: The Words Themselves." New York University School of Law, New York, NY, USA, 2008, Public Law Research Paper No. 08-36. Available online: <http://srn.com/abstract=1278604> (accessed on 26 June 2014).
12. James R. Martin. "Beyond exchange: Appraisal systems in English." In *Evaluation in Text: Authorial Stance and the Construction of Discourse*. Edited by Susan Hunston and Geoffrey Thompson. Oxford: O.U.P., 2000, pp. 142–75.
13. Peter White. "Appraisal—The Language of Evaluation and Stance." In *The Handbook of Pragmatics*. Edited by Jeff Verschueren, Jan-Ola Östman, Jan Blommaert and Chris Bulcaen. Amsterdam and Philadelphia: John Benjamins, 2002, pp. 1–27.
14. James R. Martin, and Peter White. *The Language of Evaluation: Appraisal in English*. London and New York: Palgrave/Macmillan, 2005.

15. Lucia Abbamonte. *Integrated Methodology for Emotion Talk in Socio-legal Exchanges: Politeness, Accommodation and Appraisal Insights*. Napoli: Edizioni Scientifiche Italiane, 2012.
16. Paul Harris, and Buran Wazir. "Briton tells of ordeal in Bush's torture jail." *The Observer*, 29 December 2002. Available online: <http://www.guardian.co.uk/world/2002/dec/29/terrorism.usa> (accessed on 24 April 2014).
17. Dana Priest, and Barton Gellman. "Us Decries Abuse, but Defends Interrogations." Available online: <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901356.html> (accessed on 24 April 2014).
18. The American Civil Liberties Union (ACLU), the Veterans for Peace organization (VFP), the Physicians for Human Rights association (PHR); the Center for Constitutional Rights (CCR) and the Veterans for Common Sense (VCS).
19. The Freedom of Information Act, passed in 1966 by President Johnson, gives citizens the right to obtain access to information from the federal government and defines the rules and principles that governmental agencies must follow in order to make that information known. The full procedure is explained on the FOIA website. Available online: <http://www.foia.gov/about.html> (accessed on 3 May 2012).
20. Quoted from the ACLU website. Available online: <http://www.aclu.org/accountability/>, which provides a full account of the initiatives conducted by the American Civil Liberties Union to obtain the disclosure of the classified material and a list of the released documents.
21. A list of the memos taken into consideration in this study is provided in the Appendix. Of course, the number of memos made publicly available since President Obama's took office in 2009 is much higher. Underlining in the selected extracts will be used to pinpoint elements of analysis. Back translation of the target texts (TTs) is provided in parenthesis.
22. For an extensive discussion, see [12–14]. A quite comprehensive overview, including recent developments of the intertextual positioning section, is available on P.R.R. White's Appraisal Website. Available online: <http://grammatics.com/appraisal/index.html>. For a discussion of the inevitable overlapping of the main subsystems, see [15].
23. James S. Holmes. *The Name and Nature of Translation Studies*. Amsterdam: Department of General Literary Studies, Translation Studies Section, University of Amsterdam, 1972.
24. James S. Holmes. *Translated! Papers on Literary Translation and Translation Studies*. Amsterdam: Rodopi, 1988.
25. Theo Hermans, ed. *The Manipulation of Literature: Studies in Literary Translation*. New York: St. Martin Press, 1985.
26. Theo Hermans. *Translation in Systems. Descriptive and System-oriented Approaches Explained*. Manchester: St. Jerome, 1999.
27. Gideon Toury. *Descriptive Translation Studies and Beyond*. Amsterdam and Philadelphia: John Benjamins, 1995.
28. For an overview of DTS as a multifaceted approach developed by individual scholars in various directions which have differentiated the branch of the discipline from the areas originally delineated by J. S. Holmes in his founding map of the Translation Studies, see Rosa Maria, Bollettieri Bosinelli, and Margherita Ulrych. "The State of the Art in Translation Studies, an Overview." *Textus* 12 (1999): 213–19.

29. The application of the Appraisal Theory in the field of translation studies is quite recent and can count on limited research so far. See, for example, Jeremy Munday. *Evaluation in Translation: Critical Points of Translator Decision-making*. New York: Routledge, 2012.
30. An analysis of the rhetorical moves used to transform terrorism in terror and acts of terrorism into acts of war during the Bush administration can be found at different level in many scholars. See, for example, Sandra Silbernstein. *War of Words: Language, Politics and 9/11*. New York: Routledge, 2002.
31. Richard Jackson. "Language, Policy and the Construction of a Torture Culture in the War on Terrorism." *Review of International Studies* 33 (2007): 353–71.
32. George Orwell. "Politics and the English Language." London: Horizon, 1946. Available online: http://www.orwell.ru/library/essays/politics/english/e_polit (accessed on 26 June 2014).
33. On the influence of derogatory and taboo terms on the interpretation of the context of use, see Keith Allan, and Kate Burridge. *Euphemism and Dysphemism: Language Used as Shield and Weapon*. New York: Oxford University Press, 1991.
34. Miguel Casas Gómez. "Towards a New Approach to the Linguistic Definition of Euphemism." *Language Sciences* 31 (2009): 725–39.
35. Art 1 of the Convention Against Torture states: "the term 'torture' means any act by which severe purposes as pain or suffering, whether physical or mental, is intentionally inflicted on a person for such obtaining from him or a third person information or a confession, punishing him for an act [...], or intimidating or coercing him or a third person, or for any reason based on discrimination [...]" Available online: <http://www.hrweb.org/legal/cat.html> (accessed on 26 June 2014).
36. In chapter 113 C, 18 USC §2340: U.S. Code-Section 2340 defines torture as an "act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control. Severe mental pain or suffering" means the prolonged mental harm caused by or resulting from—(A) the intentional infliction or threatened infliction of severe physical pain or suffering [...]" Available online: <http://www.law.cornell.edu/uscode/text/18/2340> (accessed on 26 June 2014).
37. A U.S. Statute which supplies a tort remedy for victims of torture.
38. Bybee had become a federal appellate judge in the meanwhile.
39. Levin was forced out of the office soon after this memo by the new Attorney General Alberto Gonzales.
40. U.S. Military training acronym for Survival, Evasion, Resistance, Escape.
41. Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention, written by the CIA Office of Medical Service (OMS) in 2003 and 2004.
42. Goffredo Buccini. "Guantanamo: La legge dei vincitori." *Il Corriere della sera*, 22 January 2002. Available online http://www.corriere.it/Primo_Piano/Esteri/2002/01_Gennaio/22/buccini.shtml (accessed on 24 April 2014).
43. Vittorio Zucconi. "Stati Uniti sotto accusa per il campo di Guantanamo." *La Repubblica*, 23 January 2002. Available online: <http://www.repubblica.it/online/mondo/attaccodiciannove/zucconi/zucconi.html> (accessed on 23 April 2014).

44. Amnesty International. *Abu Ghraib e dintorni: Un anno di denunce inascoltate sulle torture in Iraq*. Torino: EGAE (Edizioni Gruppo Abele), 2004.
45. Alessandra Gianelli, and Maria Pia Paternò, eds. *Tortura di Stato: Le ferite della democrazia*. Roma: Carrocci, 2004.
46. Mario Pasquinelli. *Torture "Made in USA": Viaggio nel gulag a stelle e strisce*. Bolsena: Massari, 2004.
47. Caterina Mazza. "Tortura oggi: Perché no! Riflettendo su Abu Ghraib e Guantànamo." *Teoria Politica* 25 (2009): 121–44.
48. Daniele Cocco. "Dal Kubrac a Guantanamo: Tecniche che arrivano da lontano." *InStoria*, 2009. http://www.instoria.it/home/kubark_guantanamo_abu_ghraib.htm (accessed on 20 April 2014).
49. Amnesty International. "Decimo Anniversario di Guantanamo: cronologia." Available online: <http://www.amnesty.it/decimo-anniversario-guantanamo-cronologia> (accessed 24 April 2014).
50. Also the 2004 Dossier on torture, published by La Repubblica. "La democrazia nell'età della paura." and the 2005 online issue of Fondazione Internazionale Lelio Basso. "La tortura oggi nel mondo." published one year later by EDUP (Edizioni dell'Università Popolare), discuss the topic lengthily with hints and/or explicit references to USA prisoners' abuses and rendition programs, but do not provide any translation of the documents which have revealed them.
51. While the relevant pages on the LSDI website (<http://www.lsdì.it/>) are no longer available, the site of Giornalismo e Democrazia (<http://www.giornalismoedemocrazia.it/>) maintains an online section entitled: La tortura in USA? where articles on the topic and the Italian versions of the USA Memos with the names of their translators can still be downloaded. Some untranslated documents, disclosed by Wikileaks, can be found on the site Dark Truth (<http://darktruth1.wordpress.com/2011/05/04/wikileaks-ecco-i-documenti-segreti-delle-torture-di-guantanamo/>) which has also provided the Italian subtitled version of the CBS *60 Minute Show* which in 2005 broadcast the interview to sergeant Eric Saar, author of the book *Inside the Wire* (New York: Penguin Press, 2005) revealing the cruelties against the prisoners in Guantanamo, and displayed pictures of some of the memos.
52. This is what R.K. Newmann says about footnotes in a legal memo (*cf.* Richard K. Newmann. *Legal Reasoning and Legal Writing*, 3rd ed. New York: Aspen Publishers, 1998, p. 1). The use of footnotes and lengthy citations in legal memos is the subject of much disagreement among professional writers and legal experts because of the risk of burying important parts of an analysis or of using them to hide uncertainty about the validity of certain allegations. It is the subject of well-known judges' disputes, published in Court Reviews, and funny newspaper commentaries easily retrievable online.
53. See for example Il Corriere della Sera. "Tortura". Available online: http://archiviostorico.corriere.it/2011/maggio/05/TORTURA_co_9_110505006.shtml (accessed on 20 April 2014).
54. U.S. military corps websites agree in defining SERE as a set of training activities designed to teach skills and methods of survival and escape from captivity and values expressed in the military code of conduct. Wikipedia also explains it as a program "that provides U.S. military personnel, U.S. Department of Defense civilians, and private military contractors with training in evading capture, survival skills, and the military code of conduct."

55. Maria Tymoczko, and Edwin Gentzler, eds. *Translation and Power*. Amherst: University of Massachusetts Press, 2002, vol. xviii.

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