

Secondary Publication



Heaphy, Janina

When identity meets strategy : The development of British and German anti-torture policies since 9/11

Date of secondary publication: 28.10.2025

Version of Record (Published Version), Article

Persistent identifier: urn:nbn:de:bvb:473-irb-111012x

Primary publication

Heaphy, Janina (2023): When identity meets strategy: The development of British and German anti-torture policies since 9/11, in: Cooperation and conflict: journal of the Nordic International Studies Association, London [u.a.]: Sage Publ., vol. 59, no. 1, pp. 66–85, doi: 10.1177/00108367231184723

Legal Notice

This work is protected by copyright and/or the indication of a licence. You are free to use this work in any way permitted by the copyright and/or the licence that applies to your usage. For other uses, you must obtain permission from the rights-holders.

This document is made available under a Creative Commons license.



The license information is available online:

<https://creativecommons.org/licenses/by/4.0/legalcode>

When identity meets strategy: The development of British and German anti-torture policies since 9/11

Cooperation and Conflict

2024, Vol. 59(1) 66–85

© The Author(s) 2023



Article reuse guidelines:

sagepub.com/journals-permissions

DOI: 10.1177/00108367231184723

journals.sagepub.com/home/cacJanina Heaphy 

Abstract

Since 9/11, considerable research has been done on US interrogation and detention operations, but comparatively little is known about the involvement of other traditionally liberal states' intelligence agencies and their evolving perspectives on torture-related policies for foreigners abroad. Particularly, the United Kingdom and Germany provide interesting cases; despite similar levels of public and political pressure regarding their indirect involvement in Central Intelligence Agency's operations, the two states took different strategic decisions in 2010 on whether to implement new extraterritorial human rights safeguards. While the United Kingdom introduced a new intelligence guidance for interrogations overseas, the German government opted for policy-continuance, which raises the question why the two states embarked on different policy trajectories, even if they found themselves in contextually similar situations and were subjected to the comparable accountability measures. By bridging insights from Rationalist and normative literature, the article addresses this conundrum by clearly outlining the states' differing strategic preferences, and by dissecting the multi-layered composition of these interests. As a result, the article delineates how strategic constraints pertaining to the states' national, international, or political elite level affect decision-makers' policy responses.

Keywords

convention against torture, counterterrorism, foreign policy, Germany, human rights, identity, rational-choice, UK

Introduction

Why should states refrain from torturing foreigners abroad? A question seemingly easy to answer and yet one that often sparks debates, as illustrated by the different outcomes of British and German policymaking during the first decade of the War on Terror.

Corresponding author:

Janina Heaphy, Friedrich Alexander University Erlangen-Nuremberg, Kochstraße 4, 91054 Erlangen, Germany.

Email: janina.heaphy@fau.de

Although both countries similarly pride themselves with being democratic advocates for human rights, both states, in the aftermath of 9/11, grew complicit to the Central Intelligence Agency's (CIA) Detention and Interrogation Program by enabling rendition flights via their respective air spaces and by providing vital information and question sets to the US agency (European Parliament, 2006). Although individual numbers and official accounts of breaches vary, the public and international backlash against the states' intelligence services manifested in similar ways: The European Union (EU) called out both countries for their active complicity (European Parliament, 2006); both the German Bundesnachrichtendienst (BND) and the British Secret Intelligence Service (SIS) were publicly shamed by non-governmental organizations (NGOs; Amnesty International, 2009; Human Rights Watch, 2006); both states' parliaments confirmed indirect violations of the Convention against Torture (CAT); and both countries experienced moderate waves of public protest throughout the early 2000s.

Notwithstanding the similar degrees of backlash against their intelligence agencies' conduct, the policy reactions of each country differed greatly: While David Cameron issued an interrogation guidance for overseas missions in 2010, the German government withstood any demands for similar reforms. This is not to say that Cameron's guidance constituted a benevolent panacea against torture; in fact, it has been severely criticized as window-dressing and has been since updated. Nonetheless, it suggests that the British government perceived a policy-change as strategically beneficial, while its German counterpart seemingly did not. Considering this apparent contradiction, it is necessary to explain why the two states embarked on different policy trajectories to better understand the effectiveness of shaming and other traditional means of accountability.

In Human Rights literature, such differences in state behavior are explained through the actors' degree of norm internalization (Sikkink, 2013), or the role of international organizations in holding states accountable (Creamer and Simmons, 2019; Johansen, 2020). Intelligence Studies, however, suggest the country-specific evolution of counterterrorism paradigms as potential reason for divergence (Luban, 2007). In addition, scholars have defined "complicity" in the context of torture as referring to any "secondary actor [. . .] not participating directly in the crime but [making] a contribution to its commission" (Gaskarth, 2011: 947), without considering the implications of such behaviors on policymaking. Although the literature offers valuable insight into states' motivation for (non-)compliance with the international ban on torture, neither approach can identify an observable cause for the countries' diverging conclusions despite responding to similar forms and degrees of (inter-)national pressure and sharing similar norms as well as counterterrorism paradigms.

Consequently, this article contributes to the academic debate in the following five ways. It (1) enhances the empirical knowledge about states' strategic policymaking processes in the aftermath of security-related complicity in human rights violations. By enriching rationalist insights with normative literature, the (2) article illustrates the interplay of a state's identity and strategic preferences, accounting thus for country-specific multi-layered strategic constraints. Yet, it differs from similar research by not considering identity as one-size-fits-all approach, but rather (3) scrutinizes three different dimensions of the concept as well as their respective impact on the state actors' strategic calculations. In addition, (4) the focus on the torture norm contributes to ongoing academic debates on

norm regression (McKeown, 2009; Sikkink, 2013), as it warrants consistency in the normative variable, while offering variation in the types of actors and their levels of culpability. Finally, (5) the article shifts the debate away from the commonly discussed violations by direct perpetrators and focuses instead on the rather indirect transgressions by “accomplices.” Furthermore, the findings are also of practical relevance, as they offer insight into each state’s interests and motivations, which is pertinent to holding accountable other countries that have aided and abetted the CIA’s use of torture.

This article proceeds in two parts: First, it analyzes British and German decision-making processes to gain an overview of *how* the countries’ strategic arguments and cost-benefit analyses diverge. Utilizing a rationalist approach and taking inspiration from normative literature, the study then explores the multi-layered composition of strategic interests and constraints explaining *why* the decision-makers’ assessments differ. Specifically, this article uses diverse primary sources as well as 21 semi-structured interviews with relevant British and German experts, politicians, and stakeholders to scrutinize how three types of constraints (*national, international, elite*) have affected British and German strategic rationale toward the use of torture by intelligence services in the post-9/11 era.

Part I: the states’ strategic positioning

Following 9/11, the fear of future terrorist attacks dominated the national security paradigms in most Western states, enabling multi-national intelligence operations to directly and indirectly violate the prohibition of torture. Based on a memorandum granting the CIA “unprecedented counterterrorism authorities” (Senate Select Committee on Intelligence, 2014: 16), the agency’s so-called Detention and Interrogation Program (henceforth “CIA Program”) quickly grew into a global network of secret detention sites where the CIA and its cooperation partners violated the most basic human rights of at least 119 detainees (pp. 10–11). Although the CIA’s respective Enhanced Interrogation Techniques (EITs), including water boarding, stress positions, and food deprivation, directly contradicted the CAT, the complicit involvement of the United Kingdom and Germany did not necessarily accumulate to a systematic form of *direct* mistreatment, but still enabled, assisted, and encouraged US practices (European Parliament, 2006). British SIS officers not only shared intelligence, but also conducted over 1000 interviews with suspects detained in Guantanamo, Afghanistan, and Iraq. Although no direct use of torture could be proven, repeated incidents of threats of torture, direct involvement in mistreatment, and knowledge of mistreatment by others eventually became public (Intelligence and Security Committee, 2018a: 18–31). Similarly, Germany provided vital information enabling the detention of multiple suspects, opened its airspace to numerous rendition flights, provided question sets for CIA interrogations, and even faced allegations of hosting a secret detention site on its own territory (Deutscher Bundestag, 2009a: 432–461). Over the years, however, the political landscape and the terrorist threat assessment started to change, calling into question future collaboration between the United Kingdom, Germany, and the CIA. The following sections will thus briefly explore both countries’ strategic debates on whether to revise the rules governing intelligence cooperation and interrogation procedures.

The United Kingdom

Upon joining the “Coalition of the Willing,” the United Kingdom supported the United States “War on Terror” by sending its military and SIS to Afghanistan and Iraq; soon after, however, the close cooperation turned into a complex political balancing act. The first big scandal erupted in 2004 with the leak of graphic photos depicting the detainee abuse in Abu Ghraib; though most perpetrators could be identified as American, the British public demanded clarifications regarding the British role in the matter (Intelligence and Security Committee, 2005: 2). The ensuing parliamentary investigation claimed not to have found any proof of British personnel violating the Geneva Conventions (Intelligence and Security Committee, 2005: 29); concluding, however, that “[t]he SIS and Security Service personnel deployed to Afghanistan and Guantanamo Bay were not sufficiently trained in the Geneva Conventions, nor were they aware which interrogation techniques the UK had specifically banned in 1972” (Intelligence and Security Committee, 2005: 30). Relatedly, the report provided evidence that British intelligence personnel continued cooperation despite witnessing several cases of American CAT violations (Intelligence and Security Committee, 2005: 22–26). Similar condemnations of the SIS’ involvement were echoed by the European Parliament (2006). Despite these repeated accusations of norm-violating behavior, the public remained relatively silent, thus, limiting any significant public pressure on the government.

Upon entering office, Cameron attempted to prevent future torture scandals by tasking Peter Gibson with investigating SIS torture allegations, and by simultaneously revising, combining, and publishing different intelligence agencies’ interrogation guidances (Cameron, 2010). Domestically, the investigation and “new” policy enabled the government to pro-actively craft a narrative with little administrative costs, which depicted Cameron as a norm-compliant leader who was responding to allegations while protecting British “heroes” in the MI6 from international criticism and litigation (House of Commons, 2010: Column 175). Internationally, the policy-change promised to limit further reputational harm and to reinforce the United Kingdom’s positioning as a reliable, transparent, and law-abiding intelligence partner (House of Commons, 2010: Column 176). In the end, the perceived benefits of introducing the reforms outweighed the anticipated costs, paving thus the way for the so-called “Consolidated Guidance.”¹ The new policy stressed the strict prohibition of torture and cruel/inhumane/degrading treatment, extended previous guidelines on addressing concerns about detainee mistreatment, and significantly increased accountability by publicizing the guideline. Despite these improvements, however, it also gave great discretionary power to Ministers, displayed a limited scope of applicability (Intelligence and Security Committee, 2018b: 2), maintained ambiguous language (Blakeley and Raphael, 2020: 705), and failed to extend the Guidance to external cooperation partners (Liberty, 2018). Consequently, the Gibson Inquiry, due to its non-judge-led composition, faced significant criticism from the start and was eventually abandoned in 2012. Nonetheless, it produced important insights, which built the basis for a parliamentary investigation that eventually released the hitherto most detailed account of British CAT violations during the War on Terror (Intelligence and Security Committee, 2018a).

Germany

Across the Channel, Berlin was also confronted with strong international criticism concerning its involvement in CIA operations. The European Parliament, for instance, released multiple reports detailing how and where Germany colluded with US intelligence in various cases of rendition, abduction, and detainee mistreatment (European and Parliament, 2006; 2007: 15–17). Furthermore, the UN Special Rapporteur for Torture in 2006 demanded that Germany ensures that neither German authorities nor German territory be used to illegally transfer detained individuals (European Parliament, 2007:17). Domestically, the media and NGOs called out senior politicians for publicly supporting the use of evidence obtained by torture and reported on the complicity of the BND in the severe mistreatment of, among others, Murat Kurnaz, and Khaled al-Masri (Amnesty International, 2009; Deutsche Welle, 2005; Frankfurter Allgemeine Zeitung, 2007). Although this uproar failed to translate into palpable political pressure, the opposition parties filed for a parliamentary investigation to scrutinize the allegations. The ensuing report concluded that information shared by the BND enabled unlawful CIA detentions (Deutscher Bundestag, 2009a: 432–442), that the German government had intentionally ignored allegations of an American base in Mannheim being used as an illegal CIA detention facility (p. 461), and that according to third party investigations by NGOs, German authorities had approved the use of the country's airspace for rendition flights in over 400 cases (p. 455).

Nonetheless, the German government remained inactive, forgoing thus any substantive change to the rules governing German intelligence sharing. Given the moderate public pressure, the anticipated electoral and political costs of policy-continuance remained relatively low, reducing thus, on the domestic level, the strategic benefits of a new policy. Conversely, policy-change would require at least partial recognition of German involvement in CAT-violating behavior, which could “wake sleeping dogs” (Interview 18). Likewise, similar complicity by other European member states drastically diminished the likelihood of costly material sanctions (Nowak, 2010: 4–5). As a result, Merkel's government rejected policy-change, and the Bundestag, despite approving efforts to increase its oversight powers over the BND, avoided any references to torture or interrogation in the debate and in the resulting bill (Bundesgesetzblatt, 2009).

In sum, British and German complicity with the CIA created pressure from national and international actors, resulting in similarly strong levels of criticism. Upon deciding whether to change the rules for intelligence sharing and interrogation procedures, however, each state interpreted the situation differently, reaching ultimately opposite conclusions regarding the costs and benefits of policy-change. So why do states with such a similar situational background come to such different assessments?

Part II: identity meets strategy—the evolution of strategic constraints

The following section builds on the above findings, delving into *why* the British and German strategic assessments of the situation differ so greatly. In doing so, the first part of the section will outline basic theoretical assumptions on Rationalism and use insights

from the literature on state identity to further elaborate on the concept of strategic constraints. The second part puts these theoretical postulations into test by applying them to the British and German decision-making processes.

Theory

As indicated by the name, rationalist theory assumes political actors to behave rationally, meaning that they assess policy choices by weighing expected benefits against potential costs based on their individual preferences, interests, and information available in order to anticipate and to pursue the most gain-maximizing strategy to reach their goals (Fearon, 1995). Accordingly, rational actors are characterized by risk-averse, evaluative, and self-interested behaviors, which secure the greatest benefits for themselves (Epstein, 2013: 293). While these notions can be applied to all actors in the political arena, the theory defines state actors as any incumbent state representative with sufficient authority and power to speak and act for their respective country on the international stage (Alden, 2017).

According to this approach, state actors' proceedings are not only guided by their strategic preferences, but also by external limitations and the principal of bounded rationality (Shannon et al., 2019). Correspondingly, based on national and individual interests, each actor develops intrinsic strategic preferences, which define perceived ideal results as well as a ranking of less favorable options, which are decreasingly compatible with the actor's interests (Scharpf, 2018: 79). Changing strategic environments, other actors' involvement, uneven power distributions, distinct expectations, and limited information available, however, constrain actors' decision-making; forcing them eventually to consider their own preferences in relation to their likelihood of success (Hafner-Burton et al., 2017: 19).

Suitably, actors attempt to maximize the utility of their choices by aligning them with their preferences regarding the outcome and the menu of alternatives (Hafner-Burton et al., 2017: 6–7). In this context, the rational-choice model accounts for heterogeneous risk, action, and outcome preferences, that are unique to each actor and can, but ultimately do not have to be materialistically motivated (Fearon and Wendt, 2002: 59). Given the model's positivist approach, however, Rationalism falls short in comprehensively explaining why exactly the actors' preferences differ or might even change over time. It is in this context that this article looks into Constructivist literature on state identity to filter out potential analytical patterns that can be translated into the rationalist understanding of constraints and thus provide further insight in the development of political actors' intrinsic hierarchy of preferences. In doing so, the article follows a trend in compliance theory (e.g. Bates, 2014; Peat, 2022), which carefully bridges Constructivism and Realism to warrant a more sophisticated analysis of international rule observance; hence, the article takes inspiration from Constructivist principles to enrich the overarching rationalist approach, without aiming to fully marry both theories.

Accordingly, this blending approach is not novel on its own, but by translating Constructivist notions of (state-)actors having multiple identities into Rationalist thinking, a new multi-layered model of strategic constraints and thus a more nuanced understanding for the diverging development of actors' preferences, is created. Constructivism

can account for diverging political preferences by not assuming a static Rationalist self-interest model; rather, it considers how differing cultures, values, and thus identities affect the actors' behavior and decision making (Adler, 2013: 113). Specifically, by analyzing individual practices, norms, and ideas, Constructivist scholars "explore not only how state identities are produced in interactions with other states, but also how its identities are being produced in interaction with its own society and the many identities and discourses that constitute that society" (Hopf, 2002: 294).

Consequently, state identities play a particularly important role, as they serve as first point of orientation in an otherwise complex constellation of interests within the international system. Hence, this article deductively introduces and investigates three different types of state identity to better illustrate the social constraints limiting each state's rational decision-making at a particular point of time. Unlike a purely Hopf-Constructivist approach, it is not within the scope of this article to examine the identities' discursive formation and cognitive structure. Instead, the article's primary focus lays on capturing the essence of the individual states' identity during the first decade of the War on Terror, to then translate their respective implications into the states' decision-making. Within the overarching state-centric Rationalist approach, however, the state and its elite representatives remain the unitary actors. Therefore, other identity patterns including regional affiliations and interests have been excluded as their consideration would go beyond the possibilities of one article. The resulting constraints differ from the concept of scope conditions (Risse et al., 2013), as they enable a more detailed analysis of actors' motivation(s) behind compliance, as opposed to being just indicators of the likelihood of rule conformity.

The first type of constraints emerges from the states' *national identity* characterized by a shared history, common traditions, norms, and values, as well as the country's distinctive political culture. Accordingly, past events shape the collective national memory generating myths, rituals, common historic narratives, and a sense of group cohesiveness (Gillis, 1994; Weedon and Glenn, 2012). In doing so, these experiences mark the limits and boundaries of what people perceive as (un-)desirable actions at home and abroad, as some incidents of the past may constitute a source of national pride, while others, like international conflicts, scandals, or war atrocities can conjure strong negative recollections and a mind-set of "never again" (Ryan, 2012). Closely intertwined with a state's history is a country's political culture; cultural sentiments, ideals, and attitudes spawn a web of rules, which governs the state's political system and the politicians' behavior. Classical examples for such cultural patterns would be a state's view on democratic governance, the degree of (de-) militarization, or the country's attitude toward the rule of law. Nonetheless, components like loyalty, geographical attachments, or ethical values also form an important part of a nation's expectations regarding the public life and ideals for their political realities (Pye, 2015: 8). In sum, a country's national identity is heavily influenced by its history and culture, providing thus the leading political elite with a frame of suitable political actions, which shape and define state preferences, while also imposing clear limitations on acceptable decision-making outcomes.

The second variant of identity-based constraints scrutinized in this article, refers to a state's *international identity* comprising components like the country's self-perception on the global stage, its reputation among other international actors, respective dependencies,

and power-relations as well as the state's legitimacy claims for its international actions. Hence, the state's self-perception encompasses indicators that reveal how a state subjectively understands, distinguishes, and envisions its own role in the international order (Manners and Whitman, 2003: 383). Its international reputation, however, is determined by other states whose interpretation and assessment of the state's actions ultimately influence future cooperative opportunities (Brewster, 2009: 231). As a result of these constructed and at times idealistic perceptions, alliances, rivalries, and other power structures emerge, establishing eventually a global net of dependencies and partnerships (Baldwin, 2012). Moving within this net, basic rules of state interaction are marked by internationally held ideas and beliefs, whose transgression could not only trigger conflict, but also undermine the state's self-ascribed role in the international system. Hence, constraints linked to a state's international identity affect a state's preferences as it factors in their actions' prohibitive costs and consequences on their international power and standing.

Finally, the third variant of constraints is linked to the identity of the state's *political elite*, consisting of unique government constellations, dominating party ideologies, and the notion of culpability within the governing body. Suitably, the parliament's and government's partisan composition plays a distinctive role in decision-making processes, as it determines the general power distribution among incumbent politicians while setting the framework for joint motions, negotiations, and political opposition between the individual caucuses. In this context, the individual party ideologies can be particularly decisive as they reflect the representatives' interests and overall policy goals, while also delineating the bottom line of the opposition's stance in negotiations (Raunio and Wagner, 2020: 515). Relatedly, the concept of culpability accounts for previous power constellations and for who would first be publicly blamed for any perceived wrongdoings, outlining thus which actors have to factor in policy constraints such as prohibitive costs of information sharing, or anticipated shaming campaigns. Whereas a newly elected government can blame their predecessor for poor decision-making and encourage policy-change without any personal or partisan admission of guilt, leaders, who themselves have sanctioned contentious policy actions, would likely have to bear high political costs for admitting culpability, before being able to trigger change (Weaver, 1986: 371). Constraints linked to the political elite's identity therefore shape state preferences by not only reflecting who is in power, but also by delineating party ideals and the extent of potential culpability.

To assess the applicability of these identity-based constraints, the following article traces British and German political debates from 9/11 until 2010 to enable an in-depth analysis of the countries' first substantial debates surrounding the introduction of anti-torture safeguards for foreigners abroad. As of November 2021, Germany has yet to publicly introduce any similar protections against torture abroad, therefore the analysis does not exclude any comparable German developments. Following a qualitative research approach, the applicability of the three deductively derived strategic constraints has been tested throughout data from 21 semi-structured interviews conducted in London (February 2020) and Berlin (September 2019) with among others, members of parliament, the former Attorney General of England and Wales, and the former German Federal Commissioner for Human Rights Policy. In addition, the analysis considers relevant primary sources including parliamentary hearings, politicians' speeches, governmental reports, and press releases to identify reoccurring themes and concepts.

The United Kingdom and Germany have been chosen as case studies as they share Western democratic values, have both faced similar pressures due to their involvement in the CIA Interrogation and Detention Program, are signatory parties to the same international regimes prohibiting torture, and yet show differing outcomes in their respective policymaking processes. The thesis focuses on the policy debates governing each state's intelligence services as opposed to their military for the following two reasons: On one hand, repeated scandals surrounding the British military's engagement in the War on Terror could construe the results, while on the other hand, the German military's behavior has been less scrutinized by official investigations and parliamentary reports inhibiting the reliance on credible sources and the triangulation of evidence. In addition to these methodological and empirical considerations, practical implications for research and civil society likewise influenced the case selection, as so far little work has been done on the emergence of extraterritorial human rights protections, but even less work on indirect perpetrators' motivation and preferences behind such policymaking.

Empirical analysis

In the remainder of this section, strategic arguments presented by British and German politicians are dissected and scrutinized along the lines of the states' identity-based constraints, to explain why the two states reached opposing conclusions regarding the strategic benefit of extraterritorial protections against torture.

National constraints

The United Kingdom. A key strategic argument behind the introduction of the "Consolidated Guidance" and the Gibson Inquiry was conveying the message that the government was taking torture-related allegations seriously to limit any further discussions; an endeavor especially important in the context of recent British history (Interview 7). Revelations of British collusion with the CIA provided graphic reminders of the British government's notorious and not-so-distant use of torture during the "Troubles," which threatened to undermine fragile domestic relations with Northern Ireland. During the Troubles, the British military and intelligence grew particularly infamous for their use of the so-called "Five Techniques," which were used as coercive interrogation methods against detained, suspected resistance. Although the Five Techniques were not found to amount to torture by the European Court of Human Rights, they were nonetheless in violation of Article 3 of the European Convention on Human Rights for being inhumane and degrading: resulting in their eventual prohibition in the United Kingdom in 1972 (UK Parliament, 2008). As details of the United Kingdom's involvement in the CIA Program became public, however, the media quickly drew comparisons to the government's history of coercive practices (Times, 2009). In fact, it was eventually revealed that UK personnel had assisted in the CIA's use of EITs, including the Five Techniques, supporting accusations of a "lesson not learned" (Interview 4). This direct link between a dark period in the United Kingdom's recent history and its involvement in the War on Terror fanned the Northern Ireland's distrust in its government, and ultimately threatened to destabilize domestic relations, establishing thus a hard constraint on policy-continuance.

In addition, British policymakers worried that change was needed to protect the efficiency and reputation of the British intelligence community domestically (Interview 8).

Not only were British intelligence personnel widely recognized as a source of national pride in the United Kingdom, but there were concerns that the torture allegations would distract the MI6 from focusing on its key priority: National security in the War on Terror (Cameron, 2010). Accordingly, decision-makers grew worried that SIS officers would have to dedicate most of their time on fending off torture allegations, rather than on collecting and evaluating new intelligence if measures were not introduced (Interview 9). Furthermore, senior officials, such as former MI6 chief, Sir John Sawers, deemed change as necessary to protect the domestic standing of the MI6 (Interview 12), and to publicly defend the reputation and morale of the “remarkable men and women who [. . .] are among the most loyal, dedicated and innovative in the entire public service” (Sawers, 2010: 1). Considerable pressure was therefore put on the government to interfere on behalf of the British intelligence agencies and to prevent any more “false” accusations by “ungrateful” and “treasonous” human rights lawyers (Interview 13).

Germany. In contrast, German history put considerably different constraints on the policymakers’ strategic contemplations as no politician wanted to “wake sleeping dogs,” nor incite public indignity. Similarly, any policy-change could be construed as an admission of guilt, which in the context of torture and against the background of the Second World War would carry very high political costs (Interview 18). As the German public paid rather little attention to the matter, and international accusations could be deflected with counter-references to other states’ own misconduct, a narrative of denial promised more strategic advantages, especially given the opaque nature of indirect torture hampered direct comparisons with the atrocities of the Second World War. Furthermore, even the slightest admission of guilt could constitute a slippery slope between Germans’ deeply held “never again” conviction and the people’s gradually growing sensitivity toward hastily made allusions to Germany’s Nazi past (Interview 15). Any political motion in this regard bore the risk of becoming the centerpiece of a very critical public debate. Consequently, even policymakers supporting policy-change were constrained in their calls for policy reforms as they anticipated high political costs.

Similarly, the absence of public concern on the issue failed to justify the risk of being accused of failing to regulate the intelligence community’s involvement in already contentious military operations, a notion which given Germany’s de-militarized political culture could prove to be particularly costly (Interview 21). Even if a public debate, which alluded to Germany’s Nazi past, could be avoided, a policy-change indirectly referencing previous intelligence collaboration threatened to bare high political risks; a documentary’s mere accusation of CIA and BND cooperation already triggered a significant uproar on the political level and paved the way for an in-depth parliamentary investigation (Stadler in *Deutscher Bundestag*, 2009b: 25702). Although Germans are less inclined than Britons to view their intelligence officers as heroes, such a potential scandal would nonetheless highlight the government’s failure to command its own forces according to its relatively high human rights standards. Consequently, German policymakers in their attempt to repeatedly deny Germany’s complicity insisted instead that policy reforms would be redundant since German law already prohibited torture.

In sum, patterns of constraints linked to the states’ national identity can be observed in both the British and German strategic reasoning. In the British case, the MI6’s shaking

reputation and morale, combined with historical references to the Northern Ireland conflict, formed prohibitive constraints on inactivity and policy-continuance. In the German case, however, the risk of policy-change being interpreted as partial admission of guilt ultimately favored a strategy of denial; especially against the background of the Second World War and the de-militarized German culture.

International constraints

The United Kingdom. Internationally, a key strategic drive behind Cameron's decision laid within restoring the United Kingdom's position as a role model and democratic leader in the world. Such notions were particularly rooted in the United Kingdom's self-perception as a great world power and a "beacon of the rule of law," which not only respects, but also defends human rights globally (Hague, 2009). Any unaddressed torture allegations would thus undermine the British self-image on the international stage, and directly contradict the state's global ambitions: According to which, "[British] long term interests and values are best protected by the spread of democratic values, good government, and respect for human rights" (Foreign & Commonwealth Office, 2006: 35). Hence, to uphold the self-concept of exceptionalism and international norm-compliance, a policy-change addressing the torture allegations remained indispensable (Interview 8), regardless of whether it effectively translated into full norm-compliance.

Another strategic constraint often linked to the policy-change in 2010, pertains to the consequences of international reputational harm for the British government caused by the pictures of Abu Ghraib and the subsequent torture-related accusations against the SIS (Interview 12). By 2010, the British reputation had worsened significantly among its allies: The EU openly called out the United Kingdom's complicity with the CIA, while other states questioned the reliability of the United Kingdom's intelligence community due to the court-ordered disclosure of classified operation details (Interview 10). Furthermore, Cameron, in a speech before parliament admitted that such damage could be used by the United Kingdom's enemies to taint its reputation abroad and undermine British national security:

For the past few years, the reputation of our security services has been overshadowed by allegations about their involvement in the treatment of detainees held by other countries. [. . .] Our reputation as a country that believes in human rights, justice, fairness and the rule of law—indeed, much of what the services exist to protect—risks being tarnished. [. . .] And terrorists and extremists are able to exploit those allegations for their own propaganda. (Cameron, 2010: Column 175)

Consequently, the British reputation and identity imposed significant constraints on the government's strategic contemplations. Without a good name, not only could intelligence cooperation be jeopardized, but the future of the 145 British military sites abroad could also be put into question. While these circumstances alone could already threaten the country's national security, the additional risk that such details could be used to further terrorist propaganda constituted another burden to the government's security strategy.

Germany. Although, Germany likewise prides itself with being an international advocate for human rights, other aspects of the German self-image, including its dependency

on and loyalty to the United States, seem to have particularly constrained German decision-making on the matter (Interview 16). Fears of upsetting the United States, Germany's main ally, constituted a recurrent theme in the debate (Fischer in Zeit Online, 2005). Germany's self-image as an international actor has repeatedly changed in recent history following the Second World War and its reunification in the 1990s. Throughout this time, however, the close partnership with the United States constituted a stable pattern within different areas of German policymaking, slowly evolving into a key feature of Germany's international identity (Auswärtiges Amt, 2021). While in many areas, this partnership translated into notions of loyalty, it also created structures of dependency, especially in the field of military and intelligence cooperation (Lübke-meier, 2021: 9). Consequently, these notions of dependency and loyalty transpired into the strategic interests of not upsetting their US counterparts, especially when any policy-change could either damage US-German relations by disclosing previous legal standards, or by undermining the future execution of alliance obligations (Hannig in Deutscher Bundestag, 2009a: 403).

Furthermore, German policymakers were concerned that a new policy would introduce new hurdles for future intelligence cooperation, and thus generate substantive strategic costs (Interview 19). Although Germany has in recent history generally enjoyed a relatively good international reputation, the country has often been criticized for bandwagoning on North Atlantic Treaty Organization (NATO) efforts, and for not stepping up its own military presence in international conflicts (Süddeutsche Zeitung, 2010b). Hence, policies, which further complicated international cooperation, could aggravate Germany's bureaucratic and passive reputation among its allies, making the country eventually a less attractive security partner (Interview 16). This point, in particular, threatened to undermine Germany's strategy for claiming international legitimacy, which is primarily anchored in multilateral approaches that require good partnerships built on solid reputations.

In the end, connections can be drawn between the British and German strategic constraints and the countries' respective international identities. Cameron's rationale favoring policy-change reflects the United Kingdom's self-perception as "beacon of the rule of law," while also taking into account the importance of the country's international reputation. In contrast, German reasoning particularly emphasizes Germany's dependence on and loyalty to the United States, which combined with the relatively bureaucratic and passive reputation of the German military and intelligence rather discouraged policy-change and additional rules.

Elite constraints

The United Kingdom. Domestically, a desire to differentiate Cameron's administration from the previous Labor governments provided another strategic benefit in favor of policy-change; especially as neither retribution nor increased notions of culpability were to be expected (Interview 2). Newly elected Prime Minister Cameron and his ruling coalition between the Conservatives and the Liberal Democrats represented a new government constellation whose members had hitherto been in the opposition during the War on Terror. Given this previous outsider position in decision-making processes, the administration could take a pro-active stance instigating investigations and policy-change without fearing any accusations of culpability. Therefore, policy reform not only

promised to differentiate Cameron's government from the ones of his predecessors, but also to further emphasize the repeated failure of Tony Blair and Gordon Brown to properly address the torture-related allegations and to protect the SIS' reputation. Policy-change had minimal transaction costs, especially as it was mostly based on pre-existing confidential policies, and enabled Cameron's government to position itself as the more responsible and competent party in comparison to Labor.

In addition, policy reform had the potential to aid relations within the young coalition (Interview 6). Prior to the May 2010 elections, the Liberal Democrats clearly positioned themselves against the Iraq War, the "subservient relationship with the United States" (Liberal Democrats, 2010: 63), and against any behavior that led to the torture allegations against the United Kingdom (Liberal Democrats, 2010: 67). In their manifesto, they pledged to bring back British pride and values to the United Kingdom's foreign policy, envisioning a "full judicial inquiry into allegations of British complicity in torture and state kidnapping as part of a process to restore Britain's reputation for decency and fairness" (Liberal Democrats, 2010: 68). Although Conservatives distinctly condoned the use of torture in general (Conservative Party, 2010: 109), Cameron's party predominantly emphasized national security concerns in their manifesto, leaving out any allusion to the actual handling or rebutting of the torture allegations against the United Kingdom (Conservative Party, 2010). Being perceived as compromising on the issue allowed the Conservatives not only to co-determine the wording of the policy and to preserve their national security interests, but it was an opportunity to better their own position in future negotiations with Liberal Democrats.

Germany. In contrast to the United Kingdom, the German government constellation had not changed since 2005, creating thus important constraints in the context of culpability and blame attribution (Interview 20). When the allegations against Germany gained traction and the parliament published its report in June 2009, Angela Merkel had already been chancellor for 4 years. Hence, the likelihood that any policy-change could be perceived as an admission of guilt remained relatively high (Hartmann in *Deutscher Bundestag*, 2009b: 25705); given the pending 2009 federal elections, the costs of such accusations seemed particularly disadvantageous. Furthermore, at the time of the debate, Germany was ruled by the so-called "Big Coalition" between Christlich Demokratische Union Deutschlands (CDU)/Christlich-Soziale Union Bayern (CSU) and the Sozialdemokratische Partei Deutschlands (SPD); therefore, any in-depth investigations into allegations against former Chancellor Schroeder's (1998–2005) SPD government, could have severe consequences for Merkel's coalition partner. A scandal in which key politicians from either party were linked to misconduct would not only be disastrous for their individual party, but it could also undermine the future of the entire ruling coalition.

Although both parties recognized the importance of human rights and the ban on torture, both CDU/CSU and SPD ran on campaigns prioritizing national security (Interview 15). In fact, several high-ranking members of both parties publicly supported the use of torture in "ticking-time bomb scenarios," thus illustrating the parties' perspective on the matter. In an interview, then SPD Minister of Justice Brigitte Zypries, for instance, reiterated the importance of the ban on torture, but added that German law allowed for extraordinary measures in justified emergency situations (*Deutsche Welle*, 2003). Similarly,

then Minister of Internal Affairs Wolfgang Schäuble (CDU) stated that Germany upholds the prohibition of torture, but that it would be irresponsible not to use evidence, only because it was unclear whether foreign intelligence services had gained the information through torture in the context of terrorist prevention (*Süddeutsche Zeitung*, 2010a). Hence, in light of their party priorities, any additional restrictions were primarily seen as undermining national security priorities, and thus, too costly.

Ultimately, the identities of British and German elites played a decisive factor in constraining their respective decision-making. While Cameron's newly elected government could blame previous administrations, Merkel's coalition government faced high political costs if policy-change were to be interpreted as an admission of guilt. Whereas shared ideological interests in Germany resulted in the prioritization of national security over human rights by the coalition government, diverging party interests in Britain nonetheless advanced human rights concerns as a strategic measure within the context of negotiations among coalitions partners.

Conclusion

This article investigates why in 2009 and 2010, despite similar attempts of being held accountable, the British and German governments came to opposite conclusions on whether to introduce anti-torture safeguards for foreigners abroad. Utilizing insights from identity literature, this article scrutinized each country's decision-making processes by investigating how national, international, and elite identities shaped the government's preferences and strategic contemplations. In both cases, a connection between these multi-layered constraints and the representatives' final decision-making could be drawn; thus enabling a more refined understanding for the differing state policy conclusions. According to which, close historic ties, a jeopardized international reputation, and little risk of culpability further motivated Cameron's decision, the same country-specific parameters in Germany paved exactly the opposite path.

Despite persistent flaws in Cameron's policy, this case provided an opportunity to establish a more comprehensive understanding of the countries' preferences, which in turn may inform more promising strategies of social influence. In fact, Cameron's policy was arguably a window-dressing measure (Hafner-Burton and Tsutsui, 2005: 1378); a point also reflected in the rather revised than innovative nature of the Consolidated Guidance, as well as in the government's parallel pursuit of using private settlements to block the disclosure of new evidence through the courts.² Nonetheless, this article still demonstrates how considering the multiple layers of a state's strategic preferences can render important information to future accountability campaigns (Donno and Neureiter, 2018). For instance, with a solid understanding for the decision-makers' country-specific, multi-faceted constraints, policy entrepreneurs can tailor their strategic interventions, negotiation efforts, and learning processes to the countries vulnerabilities rather than pursuing a generic one-size-fits-all approach. After all, allusions to British historic responsibilities seem to have motivated change and increased transparency, while similar approaches in Germany have rather solidified the decision-makers' determination for policy-continuance.

Furthermore, the concept of complicity plays an important factor in the actors' perception of and responses to allegations of human right violations, as their abetting behavior

enables substantial leeway in the interpretation and framing of the states' culpability. Despite the CAT condemning complicit behavior and public records proving beyond doubt the states' involvement in the CIA Program, the data of both case studies show how the respective policymakers nonetheless maintained their narrative of norm-compliance. Hence, senior decision-makers justified their country's role in US operations as necessitated by the imminent security threats during the "War on Terror." They thus publicly reconciled their actions with the states' (inter-)national identity as human rights champions by

- (a) Emphasizing that their respective governments would never sanction torture in itself.
- (b) Asserting previous unawareness regarding the whole extent of the CIA Program.
- (c) Claiming that abetting US interrogations was a necessary but tragic choice due to the looming terrorist threat.
- (d) Reiterating that despite security concerns neither the United Kingdom, nor Germany "behaved as badly as the United States had."

Hence, the research shows how the indirect nature of the states' right infringements allows them to vindicate and gloss over their own transgressions, while simultaneously deflecting any responsibility to the United States as main perpetrator.

In line with that, the research shows how targeted shaming as an accountability mechanism for indirect human rights violations is more effective when focusing on undermining such flawed narratives and the state's self-image on the international stage, rather than solely trying to trigger immediate domestic uproar without any graphic evidence (Sikkink, 2013). Hence, both states were at different points of time subjected to public shaming campaigns, however, both states withstood the pressure by juxtaposing their own involvement and with that of the United States as the main perpetrator (Blakeley and Raphael, 2020) resulting ultimately in neither Merkel, Blair nor Brown pursuing policy-change. It was not until Cameron was motivated however by the new coalition partner, but more importantly by the credible, anticipated threat to the British international identity that he eventually introduced the new guidance to avoid such a scenario. Despite such a strategic rather than normative proceeding, and regardless of the many loopholes Cameron's policy entailed, it still increased the transparency of British intelligence operations; an important step, which never took place in Germany.

In the end, there remain three avenues for future research. First, while this analysis did translate insights from identity literature into a more nuanced understanding of strategic constraints, it did so in the context of a rationalist analysis. While such a proceeding offered important insights and inferences, Constructivist research regarding the primacy of individual identities (Hopf and Allan, 2016) could shed further light on the ranking of preferences and the hierarchy of respective constraints. Second, future studies looking into additional cross-case comparisons could generate a greater generalizability of the findings and filter out which identity patterns are particularly prone to trigger decisions in favor of policy-change, and which patterns rather encourage policy-continuance. In this context, it might also be of interest to conduct comparisons with non-Western accomplices of the CIA program, like Thailand, to see if the importance of identity patterns also

transgresses culture boundaries. Finally, another avenue adding to a greater generalizability would be to test the interplay between identity patterns and strategic decision-making on additional cases of non-torture related human rights violations, in order to further explore the states' motivation behind blocking or introducing extraterritorial human right safeguards.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

ORCID iD

Janina Heaphy  <https://orcid.org/0000-0003-4229-9795>

Notes

1. "Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees."
2. See, for example, *Binyam Mohamed v. Secretary of State for Foreign and Commonwealth Affairs*.

References

- Adler E (2013) Constructivism in international relations: Sources, contributions, and debates. In: Risse T, Simmons BA and Carlsnaes W (eds) *Handbook of International Relations*. London: Sage, pp. 112–144.
- Alden C (2017) Critiques of the rational actor model and foreign policy decision making. In: Thompson WR and Capelos T (eds) *Oxford Research Encyclopedia of Politics*. Oxford: Oxford University Press.
- Amnesty International (2009) Gegen den strom. Available at: <https://www.amnesty.de/journal/2009/juni/gegen-den-strom> (accessed 15 September 2021).
- Auswärtiges Amt (2021) United States of America: Bilateral relations to Germany. Available at: <https://www.auswaertiges-amt.de/en/aussenpolitik/unitedstatesofamerica/218718> (accessed 4 September 2021).
- Baldwin D (2012) Power and international. In: Risse T, Simmons BA and Carlsnaes W (eds) *Handbook of International Relations*. London: Sage, pp. 273–297.
- Bates ES (2014) Sophisticated constructivism in human rights compliance theory. *The European Journal of International Law* 25(4): 1169–1182.
- Blakeley R and Raphael S (2020) Accountability, denial and the future-proofing of British torture. *International Affairs* 96(3): 691–709.
- Brewster R (2009) Unpacking the state's reputation. *Harvard International Law Journal* 50: 231–270.
- Bundesgesetzblatt (2009) Gesetz zur Fortentwicklung der parlamentarischen Kontrolle der Nachrichtendienste des Bundes. Available at: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl__%2F%2F%5B%40attr_id%3D%27bgbl109s2346.pdf%27%5D__1628065614723 (accessed 4 August 2021).
- Cameron D (2010) Treatment of detainees. Available at: <https://hansard.parliament.uk/commons/2010-07-06/debates/10070631000002/TreatmentOfDetainee> (accessed 1 September 2021).

- Conservative Party (2010) An invitation to join the Government of Britain—The conservative manifesto 2010. Available at: <https://conservativehome.blogs.com/files/conservative-manifesto-2010.pdf> (accessed 3 September 2021).
- Creamer CD and Simmons BA (2019) Do self-reporting regimes matter? Evidence from the convention against torture. *International Studies Quarterly* 63(4): 1051–1064.
- Deutsche Welle (2003) Police threat fuels debate on torture. Available at: <https://www.dw.com/en/police-threat-fuels-debate-on-torture/a-785751> (accessed 3 September 2021).
- Deutsche Welle (2005) Schäuble: Facts obtained through torture should be used. Available at: <https://www.dw.com/en/sch%C3%A4uble-facts-obtained-through-torture-should-be-used/a-1822384> (accessed 3 August 2021).
- Deutscher Bundestag (2009a) Beschlussempfehlung und Bericht: Des 1 Untersuchungsausschusses nach Artikel 44 des Grundgesetzes. Available at: <https://dserver.bundestag.de/btd/16/134/1613400.pdf> (accessed 28 July 2021).
- Deutscher Bundestag (2009b) Deutscher Bundestag 230 (Sitzung 02). Available at: <https://dserver.bundestag.de/btp/16/16230.pdf#P.25700> (accessed 3 August 2021).
- Donno D and Neureiter M (2018) Can human rights conditionality reduce repression? Examining the European Union's economic agreements. *The Review of International Organizations* 13(3): 335–357.
- Epstein C (2013) Theorizing agency in Hobbes's wake: The rational actor, the self, or the speaking subject? *International Organization* 67(2): 287–316.
- European Parliament (2006) Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17454&lang=en> (accessed 23 June 2023).
- European Parliament (2007) Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)). Available at: https://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf (accessed 3 August 2021).
- Fearon JD (1995) Rationalist explanations for war. *International Organization* 49(3): 379–414.
- Fearon JD and Wendt (2002) Rationalism v. constructivism: A skeptical view. In: Risse T, Simmons BA and Carlsnaes W (eds) *Handbook of International Relations*. London: Sage, pp. 52–72.
- Foreign & Commonwealth Office (2006) Active diplomacy for a changing world. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272260/6762.pdf (accessed 1 September 2021).
- Frankfurter Allgemeine Zeitung (2007) Fall Kurnaz: Neue Vorwürfe: Steinmeier in Erklärungsnot. Available at: <https://www.faz.net/aktuell/politik/fall-kurnaz-neue-vorwuerfe-steinmeier-in-erklarungsnot-1412129.html> (accessed 20 January 2022).
- Gaskarth J (2011) Entangling alliances? The UK's complicity in torture in the global war on terrorism. *International Affairs* 87(4): 945–964.
- Gillis JR (1994) *Commemorations: The Politics of National Identity*. Princeton, NJ: Princeton University Press.
- Hafner-Burton EM and Tsutsui K (2005) Human rights in a globalizing world: The paradox of empty promises. *American Journal of Sociology* 110(5): 1373–1411.
- Hafner-Burton EM, Haggard S, Lake DA, et al. (2017) The behavioral revolution and international relations. *International Organization* 71: 1–31.
- Hague W (2009) Remarks at British conservative party conference. Available at: <https://www.c-span.org/video/?289357-2/william-hague-remarks-british-conservative-party-conference> (accessed 4 September 2021).
- Hopf T (2002) *Social Construction of International Politics: Identities & Foreign Policies, Moscow, 1955 and 1999*. Ithaca, NY: Cornell University Press.

- Hopf T and Allan B (2016) *Making Identity Count: Building a National Identity Database*. New York: Oxford University Press.
- House of Commons (2010) Oral answers to questions: Foreign and commonwealth office. Available at: <https://publications.parliament.uk/pa/cm201011/cmhansrd/cm100706/debt-ext/100706-0001.htm> (accessed 2 August 2021).
- Human Rights Watch (2006) Undermining the torture ban. Available at: <https://www.hrw.org/legacy/backgrounder/eca/uk1106/4.htm> (accessed 16 March 2022).
- Intelligence and Security Committee (2005) The handling of detainees by UK intelligence personnel in Afghanistan, Guantanamo Bay and Iraq. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/224699/isc_handling_detainees.pdf (accessed 2 August 2021).
- Intelligence and Security Committee (2018a) Detainee mistreatment and rendition: 2001–2010. Available at: <https://fas.org/irp/world/uk/isc-detainee.pdf> (accessed 28 July 2021).
- Intelligence and Security Committee (2018b) Detainee mistreatment and rendition: Current issues. Available at: <https://isc.independent.gov.uk/wp-content/uploads/2021/01/20180628-HC1114-Report-Detainee-Mistreatment-and-Rendition-Current-Issues.pdf> (accessed 28 September 2022).
- Johansen SØ (2020) *The Human Rights Accountability Mechanisms of International Organizations*. Cambridge: Cambridge University Press.
- Liberal Democrats (2010) Liberal democrat manifesto 2010. Available at: <https://www.markpack.org.uk/files/2015/01/Liberal-Democrat-manifesto-2010.pdf> (accessed 3 September 2021).
- Liberty (2018) Liberty's response to the investigatory powers commissioner's consultation on consolidated guidance. Available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/04/Liberty-response-to-IPCO-consultation-on-the-Consolidated-Guidance-October-2018.pdf> (accessed 13 October 2022).
- Luban D (2007) Liberalism, torture, and the ticking bomb. In: Lee SP (ed.) *Intervention, Terrorism, and Torture*. Dordrecht: Springer, pp. 249–262.
- Lübckemeier E (2021) Standing on our own feet? Opportunities and risks of European self-defence. SWP research paper. Available at: https://www.swp-berlin.org/publications/products/research_papers/2021RP01_EuropeanSelfDefence.pdf (accessed 4 September 2021).
- McKeown R (2009) Norm regress: US revisionism and the slow death of the torture norm. *International Relations* 23(1): 5–25.
- Manners I and Whitman R (2003) The “difference engine”: Constructing and representing the international identity of the European Union. *Journal of European Public Policy* 10(3): 380–384.
- Nowak M (2010) Folter und die Verwertung von Informationen bei der Terrorismusbekämpfung. Available at: https://www.ecchr.eu/fileadmin/Publikationen/Folter_und_die_Verwertung.pdf (accessed 5 September 2021).
- Peat D (2022) Perception and process: Towards a behavioural theory of compliance. *Journal of International Dispute Settlement* 13(2): 179–209.
- Pye LW (2015) Introduction: Political culture and political development. In: Pye LW and Verba S (eds) *Political Culture and Political Development*. Princeton, NJ: Princeton University Press, pp. 1–26.
- Raunio T and Wagner W (2020) The party politics of foreign and security policy. *Foreign Policy Analysis* 16(4): 515–531.
- Risse T, Ropp SC and Sikkink K (eds) (2013) *The Persistent Power of Human Rights: From Commitment to Compliance*. Cambridge: Cambridge University Press.
- Ryan L (2012) Cosmopolitan memory and national memory conflicts: On the dynamics of their interaction. *Journal of Sociology* 50(4): 501–514.

- Sawers J (2010) Sir John Sawers's speech. Available at: <https://www.theguardian.com/uk/2010/oct/28/sir-john-sawers-speech-full-text> (accessed 15 October 2022).
- Scharpf FW (2018) *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*. New York: Routledge.
- Senate Select Committee on Intelligence (2014) *Committee study of the Central Intelligence Agency's Detention and Interrogation Program*. Senate report no. 113–288, 9 December. Available at: https://fas.org/irp/congress/2014_rpt/ssci-rdi.Pdf (accessed 8 December 2020).
- Shannon BN, McGee ZA and Jones BD (2019) *Bounded Rationality and Cognitive Limits in Political Decision Making*. Oxford Research Encyclopedia of Politics. Available at: <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-961> (accessed 6 September 2021).
- Sikkink K (2013) The United States and torture: Does the spiral model work? *Cambridge Studies in International Relations* 126(1): 145–163.
- Süddeutsche Zeitung (2010a) CDU-Ministerpräsident kritisiert Schäuble. Available at: <https://www.sueddeutsche.de/politik/verwertung-von-folter-gestaendnissen-cdu-ministerpraesident-kritisiert-schaeuble-1.653331> (accessed 3 September 2021).
- Süddeutsche Zeitung (2010b) Kriegsscheue Deutsche Trittbrettfahrer. Available at: <https://www.sueddeutsche.de/politik/bundeswehr-einsatz-in-afghanistan-kriegsscheue-deutsche-trittbrettfahrer-1.293070> (accessed 3 September 2021).
- Times (2009) Techniques of the troubles outlawed in 1972. Available at: <https://www.the-times.co.uk/article/techniques-of-the-troubles-outlawed-in-1972-rzpgkffhh6r> (accessed 4 September 2021).
- UK Parliament (2008) Joint committee on human rights twenty-eighth report. Available at: <https://publications.parliament.uk/pa/jt200708/jtselect/jtrightts/157/15703.htm> (accessed 4 September 2021).
- Weaver RK (1986) The politics of blame avoidance. *Journal of Public Policy* 6(4): 371–398.
- Weedon C and Glenn J (2012) Collective memory: Theory and politics. *Social Semiotics* 22(2): 143–153.
- Zeit Online (2005) Bedingt aussagebereit. Available at: https://www.zeit.de/2005/52/Fischer?utm_referrer=https%3A%2F%2Fwww.google.com%2F (accessed 5 September 2021).

Interviews

- Interview 1: Former Senior Member UK National Preventive Mechanism, London 11/02/2020.
- Interview 2: Member of Parliament, Conservative Party, London 04/02/2020.
- Interview 3: Member of Parliament, Labour Party, London 12/02/2020.
- Interview 4: Senior Lecturer in Politics and International Relations, London 14/02/2020.
- Interview 5: Former Senior Member of the Equality and Human Rights Commission, London 17/02/2020.
- Interview 6: Spokesperson Reprieve, London, 10/02/2020.
- Interview 7: Former Member Gibson Inquiry, London, 25/02/2020.
- Interview 8: Former Member United Nations Subcommittee for the Prevention of Torture, London, 25/02/2020.
- Interview 9: Former Security and Intelligence Coordinator in the Cabinet Office, London, 04/03/2020.
- Interview 10: Professor of Foreign Policy and International Relations, London, 05/03/2020.
- Interview 11: Former Barista at Public Interest Lawyers Ltd., Skype, 09/04/2020.
- Interview 12: Former Attorney General of England and Wales, Skype, 27/04/2020.
- Interview 13: Reader in International Law, Birmingham, 17/02/2020.

Interview 14: Spokesperson Human Rights Watch, Skype, 13/08/2019.

Interview 15: Former Director German Institute for Human Rights, Skype, 26/09/2019.

Interview 16: Former Federal Commissioner for Human Rights Policy and Humanitarian Aid, Berlin, 20/09/2019.

Interview 17: Former Member of Parliament and Member of the BND Untersuchungsausschuss 2009, die Linke, Skype, 10/09/2019.

Interview 18: Member of Parliament, FDP, Berlin, 12/09/2019.

Interview 19: Professor for International Law, Berlin, 09/09/2019.

Interview 20: Spokesperson Aktion der Christen für die Abschaffung der Folter, Skype, 14/11/2019.

Interview 21: Professor for International Relations, Berlin, 09/09/2019.

Author biography

Janina Heaphy is a Lecturer at FAU Erlangen and a Research Fellow at the University of Bamberg. Her research interests include the interplay of political strategy and foreign policy-making processes, counterterrorism, as well as comparative analyses of the emergence of anti-torture safeguards in the United States, the United Kingdom, and Germany. [Email: janina.lang@uni-bamberg.de]