# Constructivism, Contestation and the International Detention Regime: The Case of the Blair Government and Bush Administration 2001-2006

Submitted by Jodie Anstee, to the University of Exeter as a thesis for the degree of *Doctor of Philosophy* in Politics, September 2008

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## Acknowledgements

I would like to thank Professor Theo Farrell, Dr Milja Kurki, Professor Tim Dunne and Professor David Armstrong for all their intellectual support and guidance during the course of writing this thesis. I would also like to thank Jocelyn Vaughn for all her comments, stimulating discussion, and peer support, as well as Rob Anstee, whose broader support has been crucial from the start of my PhD journey right through to completion.

# Abstract

The international detention regime has been placed under a considerable amount of strain in the context of the war on terror. Political elites in both the USA and UK have significantly challenged accepted standards of appropriateness regarding detention, even though these states are traditionally strongly associated with the promotion of human rights internationally. Such defections and contestations present researchers with an intriguing process to understand, as these practices, by definition, challenge our settled assumptions about the post Cold-war international order. This thesis examines one element of this puzzle, assessing how the normative constraints associated with the international detention regime were negotiated by the Blair government and Bush administration so as to allow for contestation and apparent defection in 2001-2006. Generally, the IR literature on norms has focused on their constraining power, considering simple dichotomies of compliance and defection, often drawing on pre-defined interests to explain behaviour. Whilst constructivists have recognised the constitutive nature of norms, they lack a persuasive account of the micro-foundational processes of norm influence which prevents them from engaging with the contestation of seemingly embedded international normative standards. In order to address this problem I draw from the social identity approach in social psychology, where scholars focus on the multiplicity of social identities and the interactive processes of norm influence and contestation at a micro-foundational level. I demonstrate that by firmly embedding individuals in the broader social identities context and focusing on the management strategies employed by political elites we can better understand the nature of normative constraint in these cases, and whether or not an enabling framework for such counter-normative practices was established. This thesis aims to bridge some of the gap that exists between research that focuses on international norms and that which concentrates on state leaders, demonstrating the importance of the broader interactive processes of contestation, generally missing from current constructivist accounts of international norms.

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# Introduction

*'I was in extreme pain and so weak that I could barely stand. It was freezing cold and I was shaking like a washing machine. They questioned me at gunpoint and told me that if I confessed I could go home' (Tarek Dergoul, a British citizen held in Guantánamo Bay, cited in Rose, 2004a)*

*'Nobody should feel defensive or unhappy about the quality of treatment they've received. It's probably better than they deserve' (US Vice President Cheney, cited in Kampfner, 2004: 150)*

The international detention regime has been significantly undermined in the course of the US led war on terror.[1] Images of torture, abuse, and the harsh conditions of detention have, in certain spheres, come to dominate the representation of counter-terrorism policies. Many of the measures sought clearly indicated a revision of international standards of appropriateness. What has been particularly surprising about such practices is the centrality of the UK and USA. Their detention policies have created a vast amount of controversy and normative debate amongst academics, lawyers, politicians, journalists, and the general public. These practices do not appear to fit well with the liberal democratic identities of these states, and indeed their association with human rights promotion and moves to eradicate torture in the world. Indeed, they significantly challenge our expectations due to the strong 'negative' association between torture and identity, as indicated in the statement 'the torturer has become like the pirate and the slave-trader before him, *hostis humani generic*, an enemy of all mankind' (Kaufman, 1980).

The rhetoric and policies of political elites in the UK and USA, with regards to detention, suggest an unravelling of established codes of practice. This is in a global context where human rights progression has long been assumed, and for states where human rights have a recognized role in political preferences and policies (Hunt, 2007). Whilst, an overwhelming amount of anti-terror legislation has been enacted across the world since the September 11th attacks in New York in 2001 (Ramraj, Hor, and Roach, 2005), the detention practices of representatives of the UK and USA in 2001-2006 are particularly challenging. This is because political elites from these states have previously been instrumental in the creation of such normative regimes, and are

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[1] For the sake of clarity, this thesis uses the term 'international detention regime' to refer to the international normative regime prescribing minimum standards for detention and prohibiting torture. I employ the term 'regime' to indicate a normative and constitutive collection of internationally recognized standards. This differs from the neo-liberal use of the concept, where regimes are understood in an institutional and regulative manner. The international detention regime that I refer to in this study is defined in detail towards the end of Chapter 1.

generally seen as norm innovators in international society. Due to their positioning, their policies have a significant influence on other states in terms of example-setting and demonstrating standards of appropriateness, challenges to which are very difficult to reverse (Roach, 2007). The US detention facilities and procedures at Guantánamo Bay, Cuba, are perhaps the most visible symbol contesting the international detention regime, which has been accompanied by the resurrection of debates on torture and accepted interrogation practices. These behaviours, which are contrary to general expectations, create a considerable demand for researchers to understand the processes involved; in particular, how international normative regimes actually influence the behaviour of political elites given such stark examples of contestation. This thesis addresses the following overarching question: **How have the normative constraints regarding detention practices been negotiated by the USA and UK in the war on terror so as to enable contestation of the international detention regime?** For example, how can we account for the processes that allow for contestation at a micro-foundational level? How was constraint manifest in this period given that it looks like the regime failed? And, were the political elites in the USA and UK successful in creating an enabling framework to allow for sustainable action counter to the normative regime?

The literature in international relations (IR) provides us with different ways to understand the seemingly counter-normative practices concerning detention sought by the UK and USA in 2001-2006. Insights from realist and neo-liberal scholars have focused on power and pre-defined interests to explain defections from international norms (Goertz and Diehl, 1994; Slaughter and Raustiala, 2002). However, such approaches rely very heavily on a simple dichotomy between compliance and defection, which obscures value conflicts and isolates states and state leaders from the broader normative context. They neglect to engage with the processes of contestation that accompany seemingly counter-normative behaviours, and debates about what exactly is in the state's interests in these circumstances.

Constructivist scholars have on the other hand advanced our understanding and appreciation of international normative regimes by recognising their constitutive, as opposed to purely regulative nature, and demonstrating their importance in the conduct of international affairs. They have not, however, provided a persuasive account of the processes by which these normative standards are embedded as well as contested, allowing for fluctuations in influence. The need to account for revisionism, defection

and contestation is a gap that is identified in the literature (Cardenas, 2004, Dunne, 2007).[2] Constructivist scholars are often limited in their engagement with these questions again due to a central focus on the dichotomy between compliance and defection mentioned above. How normative constraints are negotiated so as to allow for deviations, as well as the role of the broader social identities and normative context in which political elites make decisions and formulate policy, is frequently over-looked.

In order to delve deeper into the processes of normative influence and advance our understanding of contestations of the international detention regime by the UK and USA, this thesis engages with insights from social psychology, drawing individuals firmly into analysis. Moves to utilise insights from psychology is a growing trend in constructivist scholarship (e.g. Shannon, 2000; Shannon and Keller, 2007; Flockhart, 2005; 2006), however, often this seems to focus too heavily on the individual as opposed to viewing them in relation to their interactive environment (e.g. Shannon 2000; Shannon and Keller, 2007).[3] Again such research does not engage with the processes of contestation and changing interpretations.

To address this gap in the literature, I draw on insights from the social identity approach in social psychology, where the research focus is on understanding processes of social influence. Many similarities exist with constructivist scholarship, for example a concern with social identities and the role of norms in influencing behaviour. In this thesis I demonstrate how the micro-foundational insights developed by social identity scholars significantly advance our understanding of norm influence by engaging more with the role of individuals. This approach focuses on the micro-foundations of the multiplicity of social identities, where norms function as a means by which to validate membership or association with these different social identities, both to self and others. By drawing from this framework, the research in this thesis is orientated away from general membership of international society, towards the multiple social identities associated with the state, those that are well established (although not static) as well as those that

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[2] Hedley Bull (1977) certainly provides early insights in this area, in terms of variation in the violation of international rules and the impact on order in international society. However, this thesis engages predominantly with the constructivist literature where there has been more emphasis on the functioning of international norms in relation to state identity.

[3] Whilst not engaging in detail with the broader structure-agency debate, due to a specific concern with understanding the processes involved in the contestation of the international detention regime by the Blair government and Bush administration, this thesis does share some of the same principles. For example, a recognition that separating structures and agents is problematic and that 'agents are always contextually bound and do not act in social vacuums' (Wight, 2006: 290).

are emerging and evolving. In this broader social identities context norm influence and contestation is a dynamic and interactive process. The validation of association or membership of social identities is not a one-way process and depends on acceptance by various audiences including other members. Leadership is not simply a case of having certain personality attributes, but is a process of doing, one of managing the different social identities associated with the state. IR research into norms often obscures these social relations, which are crucial to understanding the interactive processes of contestation and normative influence. Ignoring these factors can lead to inaccurate expectations of state behaviour, taking 'progression' towards human rights norms for granted in international society, and concealing the need for normative regimes to constantly be re-made.

Thus, the main question posed in this thesis asks how normative constraint is negotiated so as to allow for the contestation of international detention standards by the UK and USA. As mentioned above, in order to address this question I delve deeper into the processes norm influence, focusing on the micro-foundational insights generated in the social identity approach. Doing so provides a robust framework for analysis and leads to the following central argument, which is advanced throughout this thesis, namely that **the contestation of the international detention regime is an interactive and dynamic process embedded in a broad social identities context**. There are three inter-related claims to this argument:

1. To understand processes of contestation and influence we need to consider how the social identities associated with the state are constructed and managed by political elites
2. We cannot expect social influence where the social identities to which normative regimes pertain are not deemed to be important.
3. Validation of social identity membership, or association, is not a one-way process. Interaction constrains justifications of counter-normative behaviour, and the capacity to construct a sustainable and enabling framework for contestation.

As the focus of this thesis is on understanding the processes of contestation and normative influence as contextually situated, I do not aim to build a predictive framework to test these claims. Furthermore I do not aim to isolate factors to explain why political elites in the UK and USA sought policies that challenged the international

detention regime. To do so is beyond the concerns of this thesis, and would not fit with the theoretical orientation outlined in Chapters 1 and 2. Instead, I focus on the question and arguments above in relation to the detention policies of the UK and USA.

## *Method*

### Case Selection

As already mentioned, this thesis focuses on the policies and discourse of the Blair government and the Bush administration in the context of the war on terror. In doing so I do not suggest that these two countries are alone in their contestation of the international detention regime, or that their practices in 2001-2006 are somehow the 'worst' in the world. We only have to flick through the annual reports of Amnesty International to realise that the contestation of basic human rights is much more prevalent than we may have hoped.

However, given the efforts of the USA and UK to promote human rights internationally, involving the investment of a vast amount of time and resources, contestation by political elites in these states is much more difficult to understand and is likely to have a wider impact on detention standards across the globe. These cases are particularly fascinating due to the role of the USA and UK in norm creation and norm setting. An approach that can account for the processes of norm influence and contestation by representatives of these states will provide a much fuller understanding of the role of normative regimes in international relations. The importance of the liberal democratic social identity for the USA and UK, frequently stressed by constructivist scholars, also makes these cases very intriguing as expectations are created for norm compliance with regards to detention practices. Challenging the international detention regime compromises association with this international social identity as the latter is constituted in large part by observance of human rights standards. As such, these cases demand a framework that delves deeper into norm influence and negotiation.

### Sources and Analysis

In order to examine the overarching question posed in this thesis, how the normative constraints are negotiated, I adopt a discourse analysis approach. There is much variation in how discourse analysis has been used in the academic literature. The processes of investigation undertaken in this thesis are predominantly informed by the

writing of Fairclough (1992) and Potter and Wetherall (1987). Whilst traditional qualitative methodologies assist researchers who aim to understand the social world as it exists, the purpose of discourse analysis is to examine how this comes into being, is challenged and evolves. Language is a site where meanings are both created and changed as opposed to simply reflecting and revealing social phenomenon (Wetherell, Taylor and Yates, 2001). Discourse analysis enables the generation of insights into how 'identities are constructed on a continuous, interactive, discursive basis' (Phillips and Hardy, 2002: 14). Such an approach is crucial to investigate the arguments advanced in this thesis, which focuses on the interactive processes of social identity management to understand the contestation of the international detention regime. This is also complementary to a constructivist framework that engages with the constructive nature of language (Gergen, 1999), where discourses reproduce or contest the normative assumptions of social groups and societies. From this perspective, common understandings and interpretations are promoted by those with access to the media (Burnham, 2004); for example, political elites, as well as lobby groups (e.g. the human rights and humanitarian social group), and less frequently professional groups such as lawyers or military leaders. In line with the perspective adopted in this thesis, identities are seen as 'constantly … sought after, contested, validated, maintained and so on through the use of language' (Burr, 1995: 46).

The benefits of a discourse analysis approach are well recognised by academic scholars. David Howarth for example states that through such a discursive approach we can examine, 'the complexities of political identity and difference; the construction of hegemonic formations; … and the connection between the role of identities and interests in the social sciences' (2000: 6). The purpose of this section is not, however, to give an in-depth account of the different approaches to discourse in the social sciences (see for example, Phillips and Jørgensen, 2002), but is instead to articulate the position adopted in this thesis. In brief, the notion of discourse is understood here as the means by which normative standards are articulated, communicated and contested.[4] Fairclough (1989: 77), for example, argues that 'conventions routinely drawn up in discourse embody ideological assumptions which come to be taken as mere "common sense"', thus setting normative standards for social groups and societies. Therefore, normative standards are constructed and recognised in discourse, where discourse also reflects the

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[4] Whilst I focus on normative standards, this position is consistent with that taken by van Dijk (1998) and Fairclough (1989) with regards to ideology.

meanings attached to normative standards, whether widely seen as 'common sense' or contested, both consciously or subconsciously.

As Fairclough (2001) states, discourse analysis is often used to look at how a problem arises and the ways in which a resolution is sought. The research in this thesis focuses predominantly on the latter element – how normative constraint is negotiated, thus how a resolution is sought to manage the negative effects of counter-normative behaviour. This is in terms of the restrictions such actions and policies place on the ability to validate association with certain social identities. The way social categorizations are made and how they are used in the process of the negotiation of normative constraint will be considered. This is not as a route to something beyond the text like attitudes, as social texts are not seen as a 'transparent information channel' (Fairclough, 1992: 160), but to identify what themes are apparent and what functions these serve in terms of management strategies. As Fairclough (1992: 225) and many other discourse analysts have noted, there is 'no set procedure for doing discourse analysis' so I shall now clarify what this approach means in terms of the process of investigation and analysis adopted in this thesis.

The focus of analysis in this piece of research is on public statements, speeches, and publicly available policy documents, as opposed to interview data. This reflects the orientation of the overarching question of this thesis towards public representations. Chapter 3, for example, uses a variety of sources to define the social identities considered (understood in terms of social groups). As the aim of the Chapter is simply to build a basic picture of each of the social identities, I rely on publicly available information. Where primary sources are not available, secondary data is used to supplement analysis. The central defining principles and normative elements of these social identities are established through a process of identifying the key defining themes apparent in the sources and drawing from the existing academic literature. Chapters 4 and 5 are based on a more thorough analysis of the political speeches and statements of the Blair government and the Bush administration, available from the Number 10 and White House websites.[5] Also included in analysis are the arguments and concerns raised by the social groups considered in Chapter 3. This is to generate an interactive assessment of contestation. The study focuses on the time period running from January

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[5] Discourse analysts engage with a wide range of linguistic and non-linguistic material (for example actions and images) (Howarth, 2000). However, this thesis focuses predominantly on the speeches, statements and press conferences of Prime Minister Blair and President Bush.

2001 until the end of December 2006. This covers several areas of challenge to the international detention regime, and is sufficient in length to track these interactive processes.

A broad range of data is available for both of these state leaders, and is taken to be representative of the consensual views of their inner circles. Where appropriate this core of data will be supplemented with the statements of other close members of government. Certainly, there has been a divergence of opinion in both the Blair government and the Bush administration with regards to detention. However, the discourse of the leader is the most important voice in constructing priorities and establishing policies. These are not reduced to the individual, but instead are understood as representative of the consensus established with close members of the government and their inner circle of advisers. Public discourse tends to be carefully crafted and is generally the product of efforts far beyond the individual that delivers them. As Woodward (2004: 134) writes with regards to Bush, 'presidential speeches were policy'.

A further point to clarify before detailing the actual process of analysis is the focus on political elites who are seemingly distant from the actual occurrences of abuse in detention, for example that at Abu Ghraib. I must stress here that compliance, defection or contestation, are not considered to involve just the practice of torture but highly central are government policies that should be designed to prevent or punish the perpetrators of torture. Indeed as Kelman argues (2005: 124), research must go 'beyond the characteristics of the individual perpetrators or even of the situations in which the torture is practiced … focusing attention on the larger policy context in which the practice of torture is embedded'. Such policies and the values that leaders promote certainly have a significant role in framing a culture in which torture and abuse may occur (Reicher, Haslam and Hopkins, 2005). As Jackson (2007: 354) states, they 'create the wider legitimacy and social consensus that is required to enact policy'. Philip Zimbardo's book, *The Lucifer Effect* provides a very good account of the 'trickle down' effect from these policies and values (also see, Bandura, Underwood, and Fromson, 1975; and Milgram, 1974; for fascinating classic studies into dehumanization and obedience). This thesis considers the policies that contest the international detention regime on a broader basis than just torture, however most contestations also contribute

in some way to making the occurrence of abuse more likely. Thus, contestations by political elites have a much broader impact than may have been intended.

Chapters 4 and 5 are based on the analysis of 705 speeches, statements and press conferences, 345 by Tony Blair and 360 by George W. Bush. A maximum of 60 are taken from each year, averaging 5 a month (for Blair the number of relevant and available sources falls short of this target in 2001, the lower number of 45 are included). Those sources with less than 250 words spoken or written by the state leader in question are not included. Some months produce more data than others, for example in the aftermath of the September 11th attacks or in the build up to hostilities in Iraq, whereas others will be relatively quiet. Sources were selected on the basis of relevance to the topic of detention and the social identities assessed. This involved a broad range of material in order to sufficiently capture interactions with the different social groups. This core body of data is supplemented by material from other central members of government where this is available, as well as secondary material which helps to situate the discourse.

There are several stages to the process of analysis I undertake. Initial coding of the source material was in very broad terms, summarizing the discourse by means of the social identities that are engaged with. The data was coded where the state leaders made reference to these social groups, addressed their core elements (as outlined in Chapter 3), or responded to the arguments and concerns raised by these groups. This was to narrow down the corpus of material to focus on that which will 'yield as much insight as possible' (Fairclough, 1992: 230). This was done as inclusively as possible, borderline cases were included and the large body of data was managed using NVivo computer software. Due to the public and open nature of the discourse, certain phrases where categorized in relation to more than one social identity (e.g. phrases referring to Part 4 ATCSA, and *non-refoulment* are examples that concern both the human rights as well as legal social identities). The second stage of coding focused on identifying the key themes that emerged from a closer reading, in relation to the different social identities. Saturation point was reached when no new themes were apparent in the discourse for the time period and social identity considered. A large list of these themes was condensed where there was overlap (definitions of these themes and examples are provided in the table below). This enabled the presentation of clear concepts to consider

in relation to the framework of management strategies provided by Roccas and Brewer (2002) (see Chapter 2).

A key feature of the assessment in this thesis is the recognition that validation of association with social identities is a two-way process, thus responses and preceding arguments to the government's constructions from members of the social groups considered are used to complement the main analysis. This is with the aim of capturing some of the interactions that are apparent in 2001-2006. Unfortunately, the need to use public discourse, which is not a direct conversation between the governments and the different social identities, places limitations on the degree to which this is possible; the analysis cannot provide an assessment of direct interactions as would be the case in conversation analysis. The interactions captured are those based on whether or not arguments are accepted, as well as changes to the management strategies and techniques employed. Finally, in terms of the validation of research findings, to show that the arguments are recognised by Bush and Blair would be very difficult indeed. Instead, validation in this thesis is based on the scope of the schema to make sense of the cases assessed.

Discourse analysis of political speeches and press conferences, accompanied by statements from the social groups assessed in this thesis, helps to illustrate the interactive nature of normative constraint in these cases, as opposed to an objective and static approach (with fixed meaning and application), to defection and compliance. As this analysis is based on an interpretive approach I acknowledge my own role in the research process. I certainly bring to this project my own normative leanings, which I must clarify. For example, I believe that compliance with the international detention regime would benefit the objective of tackling terrorism and that torture does much more harm than it can ever do good. I reject the 'ticking bomb' scenario (popularised in shows like *24*), and instead agree with the historical accounts and more recent psychological studies on interrogation that show that torture does not work (see Holmes, 2006; Arrigo and Wagner, 2007). Furthermore, I think that resorting to such measures damages the reputation and moral standing of states, alienates communities, and increases the future risk of attacks. This is in addition to the intrinsic moral objections to harm production. However, due to these beliefs I am very keen to understand how contestations evolved in both the UK and USA. In order to overcome the potential bias in my representation I shall document the analysis in a clear and transparent way to

readers, demonstrating in an open way how I reach certain conclusions. To do so I remain close to the texts that I analyse, drawing on numerous examples in the Chapters to support the points I make. The main themes this process generates are detailed in the table below. I only use one example to illustrate each technique in the summary table of key concepts. However the process of research is based on the emergence of the theme across a range of statements. As such the singular example does not illustrate the whole of the technique and definition for all inclusions in the table.

**Table 1: Key Concepts**

| Management Strategy | Technique | Definition | Example |
|---|---|---|---|
| **Merging** (all diverse social identities are held despite their lack of convergence) | Blurring of boundaries | Ideas and social identities are combined | 'the moralists and the realists are partners' (Blair, 2001zv) |
| | Centrality | The importance of the social group to all aspects of the state and the life of citizens is stressed | 'the role our legal system plays in the lives of every American' (Bush 2001l) |
| **Dominance** (the subordination of the relevant social identities to one super-ordinate group identification – all techniques are based this super-ordinate identification) | Directing | Re-framing or articulating a new purpose for the social identity based on super-ordinate identification, as interpreted by political elites in the context | '[w]hy doesn't the United Nations stand up as a body and show the world that it has got the capacity to keep the peace' (Bush, 2003c) |
| | Challenging | Strongly questioning the normative basis of the social group, the relevance of their arguments, and/or constructing them as a restraint on appropriate policy | 'NGOs and pressure groups with single causes can be benevolent but can also exercise a kind of malign tyranny over the public debate' (Blair, 2006zf) |
| | Denial | Refusal to acknowledge self-engagement in counter-normative behaviour | 'the analogies with things like internment are just fatuous frankly' (Blair, 2005zr) |
| | Dismissal | Rejection of the arguments and criticisms articulated by the social group on the basis of super-ordinate imperatives | 'my experience of these debates is that very swiftly a civil liberties issue turns into a national security issue' (Blair, 2003zw) |
| | Re-assuring | Stressing the rightness of the social group's actions in the face of criticism | 'the sacrifice [of the military] has been worth it' (Bush, 2006zzh) |
| | Blaming | The social group has forced the government or administration to act outside of international normative regimes, or to legislate further to bring themselves back in | '[the DTA] provides more clarity for our professionals [than Geneva III]' (Bush, 2006zv) |
| | Threatening | Circumstances are framed as a test for the social group, with warnings of future damage to authority | 'that the greater danger to the UN is inaction' (Blair, 2003n) |

| | Displacing | Criticism is transferred onto others | 'America has no interest in being the world's jailer', however, 'many countries have refused to take back their nationals held at [Guantánamo]' (Bush, 2006zt) |
|---|---|---|---|
| | Embedding | Firmly grounding the social group in the mission and context as defined by the government or administration | 'You [the US Military] are bringing a long tradition of duty to this new and urgent task' (Bush, 2003zc) |
| | Leading | Emphasis is explicitly placed on the position of leading the social group | 'America is leading the world with confidence and moral clarity' (Bush, 2004zp) |
| | Dividing | Constructing distinct categories and boundaries in the international sphere | 'a struggle between fanaticism and extremism on the one hand, and people who believe in freedom and in tolerance on the other' (Blair, 2003zy) |
| **Intersection Representation** (focusing on the area of overlap between diverse social identities) | Bolstering | Stressing areas of overlap, often praising the social group's role and influence, as well as their normative basis | 'I care deeply about the civil liberties of this country' (Blair, 2005zm) |
| | Unifying | Stressing areas of consensus, drawing divergent opinions together | Focusing on the 'Millennium Development Goals on poverty, on education, [and] across a range of indicators for Africa' (Blair, 2005l) |
| | Utilising | Drawing on the credibility of the social group to establish authority | 'what you have now is a United Nations process…which all sensible people should be backing' (Blair, 2005ze) |
| | Defence of group | Supporting their actions in the face of criticism by stressing shared objectives and vision | 'the actions of the people in that prison do not reflect the nature of the men and women who wear our uniform' (Bush, 2004t) |
| **Compartmentalisation** (social identities are seen as applicable in different circumstances or in relation to different issues) | Context dependent | Emphasising the nature of the situation to justify action counter to the normative basis of the social group | 'it is important that we never lose sight of our basic values. But we have to understand the nature of the enemy and act accordingly' (Blair, 2001q) |
| **Separation** (withdrawing or keeping apart from a social identity) | Distancing | The government or administration is presented as separate from the social group and a degree of distance is established | 'We believe that the just demands of the international community must be enforced, not ignored. We believe this so strongly that we are acting on our convictions' (Bush, 2003t) |

## *Structure of the Thesis*

Chapter 1 provides a theoretical grounding for this thesis in the literature of IR and outlines the constitutive elements of the international detention regime. I consider mainstream approaches to the study of norms and norm defection, focusing predominantly on the constructivist research programme. I argue that the latter does not have a convincing account of the micro-foundational dynamics of norm influence and defection, and is thus unable to provide a suitable framework from which to comprehend the processes of contestation regarding the international detention regime, as is examined in this thesis.

These limitations provide the impetus for an engagement with psychology, which is the subject of Chapter 2. I consider the ways that insights from the discipline of psychology have been used to explain events as well as advance our understanding of the issues of concern in IR. After critically assessing the use of psychology in constructivism, I argue for an enhanced engagement with research conducted within the social identity approach in social psychology. Chapter 2 provides the framework for analysis in this thesis, focusing on the micro-foundational dynamics of the multiplicity of social identities, and the interactive processes of norm contestation. I argue that to understand the negotiation of normative constraint, and fluctuations in social influence, research needs to focus on the interactions of political elites with the broader social identities context.

Chapter 3 provides an account of the different social identities associated with the UK and USA that will be assessed in this thesis. These are based on the following large social groups; human rights and humanitarian, legal, military, the United Nations, and the liberal democratic international social identity. Definitions of these social identities and justification for their inclusion will form the basis of Chapter 3.

Chapters 4 and 5 examine the management strategies employed in relation to this social identities context, highlighting the interactive processes of the contestation of the international detention regime. Chapter 4 focuses on the Blair government, whilst Chapter 5 assesses the discourse of the Bush administration. These Chapters highlight the value added of an engagement with the social identity approach, which, I argue, allows us to, (1) reject the simple dichotomy between defection and compliance that permeates norms research in IR, (2) provides us with a micro-foundational framework

from which to understand and examine the contestation of the international detention regime, and (3) bridges some of the gap between political elites and international normative regimes. This approach widens our understanding of the nature of normative constraint as contextually situated, and in doing so, allows us to assess the processes of contestation by the UK and USA that challenged accepted standards of appropriateness and our expectations for rightful conduct.

## Chapter 1: Norms, Influence and Expectations

Examining how the normative constraints regarding detention practices have been negotiated by the USA and UK first requires a definition of norms and in particular how we expect them to be influential in international politics. Norms feature heavily in research across the social sciences as well as in IR however what we actually mean by the concept clearly varies depending on our theoretical orientation, as does the significance attributed to their role. This Chapter provides a definition of norms grounded in the constructivist research programme. I justify this position with reference to both realism and neo-liberalism. The first section of this Chapter draws out the central principles governing the realist, neo-liberal and constructivist approach to norms in IR. I argue that a constructivist understanding provides the best framework for analysis as this captures many facets that the other perspectives neglect, for example, the constitutive, as opposed to purely regulative, nature of norms. The second section considers variations within constructivism regarding norms, comparing research from both the conventional and thick ends of the constructivist spectrum. From this basis section three provides an outline of the theoretical understanding underpinning this thesis, as situated within current constructivist debates. Building on this framework, the third section also establishes what is meant by the international detention regime and what expectations this generates for behaviour internationally. Throughout the Chapter I highlight some of the challenges presented by the cases examined in this thesis. This provides the motivational basis for a subsequent engagement with psychology.


## *1. Norms and Theoretical Divergence in IR*

Norms have a highly significant role in international relations scholarship, largely as a result of the growth in regime theory and the surge in constructivist literature over the past two decades.[1] Definitions have centred on norms as collective understandings of appropriate behaviour. There is however much divergence regarding the details of such a definition, as well as the expected influence of norms on behaviour. I argue that a constructivist approach is the most illuminating with regards to norms, and indeed takes into account a number of highly significant insights from the broader social sciences, for example, those provided by Wittgenstein (1958), Winch, (1970a; 1970b), and Searle

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[1] Whilst norms are also a feature of the earlier English School literature, this approach did not theorise, to the same degree, the processes of influence on state actions, but focused more on the role of norms in the constitution of international society.

(1995). Whilst scholars, such as these have, for a long time, highlighted the importance of norms to social life,[2] this section is predominantly concerned with how norms are characterised in the literature of IR and therefore focuses on the key perspectives of realism, neo-liberalism and constructivism.

Scholars from the various approaches to IR differ greatly on how they conceptualise norms, what they expect norms to do, and the manner in which norms are deemed relevant to the study of international politics. This has profound implications for our understanding of defection and contestation, and in particular, the questions raised by the empirical cases examined in this thesis. The different perspectives provide diverging explanations as to why and how norms influence behaviour, if indeed they do, as well as under what conditions. This section justifies why the constructivist approach to norms is privileged in this study, and indeed informs the central driving questions.

## 1.1 Realism

Realism attaches the least significance to norms in terms of their influence on behaviour in the international sphere. States are not considered to be bound by norms, and when other overriding imperatives (such as those generated in the domestic sphere) take precedence, they are simply thought to give way. This approach to IR presides on the assertion that '[i]nternational politics, like all politics, is a struggle for power' (Morgenthau, 1985: 31). The most important factor in explaining or predicting the actions of states is therefore the distribution of power in the international system. Norms, consequently, are epiphenomenal. Where they do feature in analysis they are presented as an adjunct to realist explanations (Desch, 1998), as opposed to being granted any independent value. The behaviour of actors in the anarchic system is **not** thought to be altered in any fundamental way, by changes in the normative context (Fischer, 1992).

Norms, from a realist perspective, are deemed to be the preferences of the most powerful state or states in the international system. They will thus be modified or replaced in accordance with changes in the interests of powerful states, or shifts in the fundamental distribution of power in the system, as in neo-realism (Waltz, 1979). The

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[2] Theoretical interest in norms and social rules is certainly not new. Winch's key insight, that all human behaviour is rule-governed, as rules provide meaning to human behaviour, provides a fundamental basis for certain strands of the constructivist approach to norms. Such an approach indicates that we can only understand social life if we can understand the rules that give it meaning.

functioning of norms is largely limited to that of the 'convenient tools' of statecraft for those states in positions of power; firstly in providing a moral slant to justify behaviour, and secondly to induce compliance in weaker states, in a way that falls in line with the interests of the powerful.[3]

Great powers are thought by realists to deploy norms to justify their behaviour. In this sense, they are able to choose among norms or indeed create new ones. This is partly a consequence of the nature of norms, which, as Krasner suggests 'can be contradictory…and there is no authority structure to adjudicate such controversies' (1999: 6). Hurrell (2002) gives the example of the detention of 'illegal enemy combatants' at Guantánamo Bay and the tensions between different legal, moral and political norms governing behaviour. Value-conflicts are understood here to reduce the influence of norms on powerful states, as opposed to provoking a process of contestation whereby states negotiate competing normative constraints.

Whilst powerful states have an important role in norm-setting I argue that this does not make them somehow separate from the normative context in which they are situated. That states can simply justify their behaviour with reference to conflicting international norms negates the importance of the audience, and acceptance of such claims. Competing norms and the power to construct dominant narratives determining appropriateness are key considerations, however, reducing the influence of norms in international politics to an account of power leaves a great deal out of assessment (such as the role of identity), which has been shown to be highly significant for the analysis of behaviour in the international realm. Such research will be considered later in this Chapter.

International norms are also often studied in close association with alliances and institutions. From a realist perspective, states are thought only to enter such collective agreements based on self-interest, for example when they desire restraint on specific issues and joining is seen to be to their advantage. Mitigating the uncertainty of the security dilemma as well as establishing mechanisms to enhance trade to the benefits of

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[3] Gilpin (1981: 35) suggests that the 'primary foundation of rights and rules is in the power interests of the dominant groups or states in a social system'. Indeed a convergence can be seen between international norms and the national interests of the powerful, in terms of norms promoting free trade (Goertz and Diehl, 1994: 106). Norms in this sense can be seen as a means by which to create an international order in favour of the powerful states in the system.

the powerful (Goertz and Diehl, 1994), provide two such areas. Underlying political or economic factors are considered to drive actors to enter into agreements, resulting in abandonment when the regime no-longer fulfils the self-interests of the state. The USA, due to its great power status, is often considered to be able to pursue such a strategy. Many criticisms and counter-arguments have been presented concerning the realist perspective on regimes (e.g. Haas, 1983; Stein, 1983; Krasner, 1983; Linden, 2000; Glaser, 2003; Desch, 2003) however these are beyond the scope of this Chapter, where I mean only to briefly highlight the central concerns of a realist understanding of norms.

To sum up, realists do recognise a role for norms in international politics however this is always subordinate to power. Crucially for realists, norms are not considered to be binding upon states when they are in opposition to their interests (Dunne and Wheeler, 2004). As such they tend to be considered as largely superfluous to action, and the focus has fallen on the use of norms as a rhetorical moral guise for the actions of powerful states, for the purposes of inducing compliance in weaker states, and, in terms of regimes, reducing uncertainty and the conditions of the security dilemma when this is in the interests of powerful states. For realists then, power and not norms are the important concept in international behaviour.

If we were to agree that, 'patterns of international interactions can be satisfactorily analysed in terms of power' then the employment of norms in our explanation does indeed become 'superfluous' (Kratochwil, 1989: 47). However, this conceptualisation creates certain problems, for example can it really be said that those who hold power can simply choose to comply, defect, or choose freely between different norms? Surely this would have implications in terms of undermining the legitimacy of powerful states and their ability to set the international agenda. Furthermore, even if powerful states create norms in their interests, it seems logical to suggest that they would still be constrained by these if they hope to retain influence and power over those they expect to comply? These questions largely come down to our understanding of the concepts, whether we see norms or power in social or purely material terms (see Reus-Smit, 2004 for a discussion of social power). I would question whether without legitimacy and social influence we can really hold power in terms of being able to influence and enforce our will upon others, and be successful in the process.

The very fact that norms are employed to justify behaviour suggests that there are limitations to the choices available to states; not all action can be justified in terms of conflicting norms in a way that will be accepted as legitimate by significant others. We can certainly see many problems with the USA's appeal to norms of security in relation to their detention policies in the war on terror. Despite their many claims to be acting appropriately in the context, the Bush administration has not been able to gain legitimacy internationally for such practices, or even domestically for that matter if we look at the campaign promises of the Obama and McCain camps in the build up to the 2008 presidential election.[4] Interpretations of conflicting norms as well as legitimacy claims are restricted by the shared understandings and practices of others (Hurrell, 2002). Defections and contestations are not a simple one-way process.

Furthermore, scholars have demonstrated that war itself, which features heavily in the conflictual world of realism, is subject to regulation and limitation (Farrell, 2005a). In this context, the use of certain weapons or practices is deemed illegitimate (such as chemical or biological weapons) and state practice has largely followed suit (Legro, 1995; 1997). Even the possibility of war is socially constructed as opposed to purely the result of shifts in the balance of power (Alkopher, 2007; Finnemore, 2003). Realism therefore struggles to comprehend action by states that does not appear to be in their material interests, based on a desire for power, but instead is considered to be socially appropriate for their position in the hierarchy of states.[5]

## 1.2 Neo-Liberalism

Scholars falling within the research domain of neo-liberalism, tend to accept many of the principles of realism (as outlined above), particularly neo-realism (Keohane, 1986). However, neo-liberals give more weight to the role of norms in international politics. Indeed, institutions and regimes are deemed to have some independent value and influence over state members after their construction (Keohane, 1984). Institutions and not merely the balance of power structure affect state preferences. However, whilst the neo-liberal approach does allow a greater role for norms, generating more insights into their functioning, this is limited to a rationalist and instrumental standpoint.

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[4] Obama in particular, focused on the need to close the detention facilities at Guantánamo Bay.
[5] The role of norms in the calculation of state interests is also negated.

In contrast to realist and neo-realist enquiry, neo-liberals ask the question of how the development of norms can reduce the competitive nature of the international system and result in cooperation. A central purpose of international regimes is arguably to ease the creation of 'mutually beneficial agreements among governments so the structural condition of anarchy does not lead to a complete "war of all against all"' (Keohane, 1983: 148). Neo-liberals suggest that the role of norms and the emergence of regimes is down to the desire of actors to overcome the dilemmas of common interests and common aversion by (in certain circumstances) forgoing independent decision-making.[6] Regimes emerge when the costs outweigh the benefits (Martin and Simmons, 1998).[7]

Neo-liberals also propose that regimes may alter the preferences of actors over time. This is an area where neo-liberalism significantly advances our understanding of norms from that of realism. Norms are influential because they 'not only reflect, but also affect, the facts of world politics' (Keohane, 1984: 57). Waever's (1998) example of NATO is appropriate here. States may have formed the alliance in line with the predictions of neo-realism and balancing power against a common threat, however members' preferences have generally developed beyond these initial interests to favour mutual cooperation in line with the values of the institution. The costs of non-compliance, resulting in a lack of cooperation, consequently weigh in heavily. Compliance with norms, as embedded in political institutions, is however approached in an instrumental fashion, where they are assessed by means of cost-benefit calculations. Norms are presented as 'intermediate factors, or "intervening variables" between fundamental characteristics of world politics such as the international distribution of power on the one hand and the behaviour of states and nonstate actors…on the other' (Keohane, 1984: 64).

Whilst neo-liberal scholars tend to recognize that preferences may change, they also generally contend that 'vital national interests … [are] unlikely to be modified or relegated in the face of institutional imperatives' (Simpson, 2000: 458). Interests are still predominantly exogenously given and influence the processes of cost-benefit

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[6] An illustration of this can be found in 'The tragedy of the commons' (Hardin, 1968). An example that seems to fit this model can be drawn from disputes over fishing in certain areas, alongside agreements to stop the depletion of resources (Stein, 1983). Scholars recognise that in order to achieve this, the regime must be specific about what constitutes cooperation and cheating in order for states to feel assured enough to participate and strive for sub-optimal independent gain.

[7] More recently Dai (2005: 364) has noted the importance of considering games such as the Prisoners Dilemma in the domestic as well as international realm as governments may face an 'entirely different strategic environment domestically'.

calculations with regards to international norms. Thus, in terms of defection from the international detention regime, there would be the assumption of a 'cost' to compliance, and that this is counter to state interests in certain circumstances. Cost-benefit analysis, would therefore override a concern with compliance. This reasoning, however, misses several points. For example, are the costs of compliance really that clear? Why do certain states view non-compliance as the most beneficial course of action and others do not, particularly given the many studies that suggest there is little utility to torture (see Ross, 2005)? Primarily, why do they view such action to be in their interests? The international detention regime for example, includes prohibitions on torture which have arguably shaped state interests to prefer compliance due to the detrimental affect non-compliance would have on state identity. The importance of these ideas will be explored in greater depth throughout the course of this Chapter.

In addition to asking why certain practices come to be seen as in a state's interests, other empirical research has further highlighted the limitations of a neo-liberal approach to norms by demonstrating the 'effect' of norms which are contrary to states' strategic and economic interests. Klotz (1995) provides the example of South Africa and the introduction of sanctions by the great powers in the 1980s. Sanctions were imposed by the 'United Nations (UN), the Commonwealth, the European Community, the Nordic states, Britain, France, Germany, Japan, and the United States' even though they held strategic and economic interests against such action (Klotz, 1995: 451). This case demonstrates a modification of competing global norms in favour of those promoting racial equality, and a subsequent reformation of state interests in terms of these international norms. Klotz furthers this point by stating that 'international actors – even great powers such as the United States – inherently are socially constructed; that is, prevailing global norms, such as racial equality, partially define their interests' (Klotz, 1995: 460).

By focusing primarily on norm influence as a 'straight forward result of rational adaptation to strategic circumstances', neo-liberals miss many dynamics of state behaviour, for example, the factors involved in the construction of the 'nuclear taboo' (Tannenwald, 2005: 7), or indeed, the more recent construction of a treaty banning the use of cluster munitions (BBC, 2008; Landmine Action, 2008). As Hawkins (2004) further points out, those that rely on power and interests as explanations for behaviour, are often extremely limited in their capacity to account for changes in the process of

treaty negotiation, particularly when there are costly implications for sovereignty.[8] In terms of this thesis, the emphasis on pre-defined interests and a simple dichotomy between compliance and defection again misses the interactive processes of contestation.

Thus, there are significant limitations with both the realist and neo-liberal approaches to norms, primarily due to their negation of social power, consideration of vital national interests as exogenously given, and their concentration on the regulative function of international norms. As I argue below, a basis in constructivist understandings, with an emphasis on co-constitutive dynamics, provides greater depth to our understanding of the international detention regime, and is essential to examine the overarching question of this thesis; that is, **how have the normative constraints regarding detention practices been negotiated by the USA and UK in the war on terror?**

## 1.3 Constructivism and Constitutive International Norms

Constructivism diverges significantly from the above perspectives of realism and neo-liberalism. Instead of limiting international norms to purely regulative functions, constructivists privilege the social nature of international norms, how they constitute identity (particularly state identity), and consequently the very interests of states.[9] International norms are therefore fundamental to our understanding of international politics. From such a perspective scholars are able to account for a greater range of compliance behaviours than the above utilitarian positions allow. In the course of this section I will outline why I find this a more convincing position to take with regards to the study of international normative regimes. This will lead us into section two of this

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[8] Hawkins provides a very interesting account of negotiations regarding the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), particularly with regards to provisions for universal jurisdiction. The author identifies the norms of precedence, that international cooperation is the best way to tackle most 'identifiable social problems', and the need to prevent bodily harm as providing a more informative context within which to understand the treaty negotiations. The role of identity in this process is deemed to be crucial (2004: 786).

[9] The social foundation to norms is by no means unique to constructivism. Indeed I mentioned the work of Wittgenstein and Winch at the beginning of this Chapter, who along with scholars such as Habermas and others, have provided the roots for some of the more critical perspectives of IR. There has also been a long tradition of research referring to the social nature of norms evident in the English School; indeed there has been much overlap between this and certain strands of constructivism with some scholars seemingly claimed by both traditions (see Adler, 2005 for an assessment of their differences). Certainly research on international society (where international norms are a key characteristic) provides the backdrop to much constructivist research; indeed the existence of an international society is an assumption without which much research on international norms is likely to prove futile. Writings in this domain undoubtedly predate the rise of constructivism in IR by several decades. However, it is largely those working under the banner of constructivism that have brought questions concerning the functioning of norms, particularly regarding their influence and relationship to identity, to the fore in IR research in more recent times.

Chapter where I assess variations in the constructivist approach in order to outline the theoretical basis to this thesis.

Constructivists have defined norms, at a basic level, as standards for appropriate behaviour for actors with a given identity. The crucial difference to the previous perspectives is the inclusion of identity in the analysis of norms in international politics. International norms are shared understandings founded in an international society, where members can judge the appropriateness of each others' actions (Risse and Sikkink, 1999). They are social as they are based on the agreement of other members, whether implicitly or explicitly, as to the dynamics of the norm – i.e. what behaviours the norm covers and when it is applicable. International norms are understood, by constructivist scholars, as expectations that are in a sense generated by membership of international society.[10]

Some international norms have been shown to place significant demands on the foreign and domestic policies of member states, for example in terms of the emergence of an environmental regime (Eckersley, 2007). Others have served to guide practices, for example through their influence on the development of military doctrine (Farrell, 2005b), understandings about the appropriate use of force (Alkopher, 2007; Finnemore, 2003) and determining what actors can be legitimately involved in warfare (Percy, 2007a; 2007b). This is not based on a utilitarian calculation founded on exogenous interests; instead international norms inform the interests of states and place demands on behaviour through being constitutive of identity. The role of social practices in the establishment, reproduction and challenge to international norms has also been heavily emphasised. As Kratochwil puts it, '[a]ctors are not only programmed by rules and norms, but they reproduce and change by their practice the normative structures by which they are able to act, share meanings, communicate intentions, criticize claims, and justify choices' (1989: 61). The degree to which this co-constitutive process is accounted for in constructivist research certainly varies, however, it remains a fundamental principle to this approach.

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[10] This does not mean they are restricted to the international realm, indeed, in terms of detention and prohibitions on torture such normative standards are very much part of the domestic sphere for certain states. How this manifests itself and the interaction between normative regimes will be examined in the empirical Chapters of this thesis.

Constructivists consider international norms to be constitutive in the sense that they form the rules of the game and the options available to actors within it; indeed they 'create the very possibility of engaging in conduct of a certain kind' (Schauer, 1991: 6). International norms are enabling as well as constraining, for example in terms of facilitating warfare in international society (Alkopher, 2007), or legitimizing the participation of previously disempowered actors (Klotz, 1995; Finnemore, 1996). Such an account is neglected in neo-realism and neo-liberalism.

Thus, a constructivist approach to the study of norms provides a much fuller account of their fundamental role in international politics. Any assessment of how the international detention regime is negotiated by the USA and UK in the war on terror would be limited without the means by which to account for the importance of identity. Indeed, such a question requires an approach that moves beyond a reliance on material power and pre-defined interests. In order to provide a more in-depth assessment, this thesis is anchored in a constructivist approach to norms.

## 2. Variations in Constructivism

This section builds on the above insights by focusing on variation in constructivism with regards to the study of international norms. As this thesis is grounded in the constructivist research program a more detailed assessment is required than has been provided in the previous section. Whilst constructivists may largely agree on a basic definition of international norms as outlined above, there is much divergence in the literature in terms of research focus.[11] Whilst some scholars have separated these two approaches to constructivism into different camps, based on epistemological differences (see Fierke, 2007), I view them on a continuum across a spectrum of constructivist understanding. This position is supported by scholars such as Thomas Risse (2008), and allows researchers to benefit from the broad range of insights into norms that constructivists have provided. Thus, whilst I consider both perspectives in turn for the sake of clarity, I must stress that I view them on a spectrum where there is a differing

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[11] Conventional constructivists have tended to concentrate on demonstrating the impact of relatively stable international norms on state behaviour, often with the aim of countering the realist reliance on material power in explaining the actions of states. Thick constructivists have, however, privileged the study of norm construction and identifying the norms generated in historical events to provide an enhanced understanding of how certain situations came into being. Weldes (1999), for example, provides a very illuminating account of the Cuban missile crisis. The focus is on meanings as opposed to the assessment of previously defined norms of behaviour. Hopf (1998) is one of the first of many constructivists to draw a distinction between varieties of constructivism.

emphasis as opposed to clearly defined lines of separation. I shall explore these variations by first focusing on the conventional constructivist approach to the study of international norms.

## 2.1 Conventional Constructivism

Conventional constructivists tend to view norms as standards of appropriate behaviour that guide interactions and influence the interests and thus behaviour of states. Norms are generally viewed as 'single standards of behaviour' with strong 'evaluative dimensions' (Finnemore and Sikkink, 1998: 891). Due to their function as a means by which to judge behaviour, evidence of their existence is provided by the justificatory trail of discourse that accompanies the actions of states. Scholars working towards this end of the constructivist spectrum have focused on questions regarding the emergence of international norms as well as how they exert an influence on states, attempting to explain variations in state behaviour – for example why some international norms are influential for some states and not others and when this is likely to be the case.

### *Emergence and Development*

A classic study regarding the emergence of international norms is provided by Finnemore and Sikkink (1998) who introduced the notion of a norm life-cycle to international politics. The model proposes three stages to the development and acceptance of a norm internationally. The initial stage, norm emergence, is demonstrated to be down to the work of norm entrepreneurs with organizational platforms (such as NGOs) from which to promote their conceptions of appropriate behaviour. Through the efforts of entrepreneurs, norms make the transition from these organisational platforms to the international realm. One of the examples given is the work of Henry Dunant in the promotion of norms protecting medical personnel in war-time, leading to the establishment of what is now known as the International Committee of the Red Cross (ICRC) and the various Geneva Conventions outlining humanitarian law. The motives for such action are thought to lie in the conviction of norm entrepreneurs that these ideas form the most appropriate guide to behaviour, based on their ideational commitment, empathy and altruism (Finnemore and Sikkink, 1998: 898). As such, the actions of norm entrepreneurs are aimed at convincing 'a critical

mass of states (norm leaders) to embrace new norms' through a re-framing of the issues at hand (Finnemore and Sikkink, 1998: 895).[12]

Once this 'tipping point' of persuasion has been reached, Finnemore and Sikkink suggest that the second stage of the norm lifecycle is led by these states, and/or international organizations with the aim of socializing norm compliance in other states and promoting 'social norm following' as opposed to 'rational norm following' (Farrell, 2005b). This is with the objective of initiating a 'norm cascade' through the mechanisms of socialization, demonstration and institutionalisation. Various scholars have explored this notion of social learning, for example Checkel (2001), and it is generally seen as fundamental to the conventional constructivist understanding of norms – states learn the norms of international society and through this process they become part of identity and are influential. Motivation for states to respond emanates from the 'pressure for conformity, desire to enhance international legitimation, and the desire of state leaders to enhance their self-esteem' (Finnemore and Sikkink, 1998: 895).

A large amount of research in this area has focused on norm promotion by international institutions (e.g. Checkel, 2005), whether this is related to the first stage of the norm life cycle in terms of norm formation, for example the UN's role in establishing international norms associated with decolonization, human rights, education, and norm development, or building on and regulating that which is already recognized and well-known (Barnett and Finnemore, 2004). In this process international institutions are given much more autonomy than in the previous perspectives of realism and neo-liberalism. Indeed, in *Rules for the World* Barnett and Finnemore (2004: 7) demonstrate that international organisations such as UNHCR, the WTO and the IMF 'use their knowledge and authority not only to regulate what currently exists but also to constitute the world, creating new interests, actors, and social activities'. The authors construct an argument that suggests that international organisations have often served to define what is considered as good governance, in both regulative and constitutive ways, due to the authority and autonomy that they hold. So in terms of norm setting, these institutions have both autonomy and influence.

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[12] The issue of framing and persuasion is explored in more detail by scholars such as Payne (2001), and is also seen as a crucial mechanism associated with norm change (e.g. Finnemore, 2003).

The final stage in the lifecycle is norm internalization, where these international norms achieve a taken-for-granted quality, as can be seen for example in norms against state sponsored slavery and piracy as well as those protecting medical personnel in war time. These are areas where the standards for appropriate behaviour have moved beyond debate and are so widely accepted that they take on qualities associated with habit.

Constructivists have traced the development and evolution of many international norms. Studies have focused on, for example, the rise of a pro-NGO international norm (Reimann, 2006), the international norms for election-monitoring (Kelley, 2008), the nuclear taboo (Tannenwald, 2005), or the anti-mercenary international norm (Percy 2007b). Scholars have also assessed potential international norms that have failed to come into being, for example in the domain of anti-whaling (Bailey, 2008). For those international norms that are established, changes to definitions over time are also monitored, for instance with regards to the international norms governing the use of force (Finnemore, 2003; Alkopher, 2007). The processes of treaty development have been identified as one very illuminating way to trace the development of an international norm. Hawkins (2004) suggests that the negotiations for the Convention against Torture are a revealing record of how the international norms prohibiting torture progressed. Although as both Tannenwald (2005) and Percy (2007a) demonstrate this does not mean that international norms are reducible to law, in fact strong international norms may be very weak in law as the authors show to be the case with regards to the nuclear taboo and anti-mercenary norms respectively (also see Scott and Ambler, 2007).

Certainly the stage at which the international norms, or potential international norms, are in this lifecycle framework is important for how we view questions regarding defection and contestation. The expectations we hold regarding behaviour will be different depending on the stage in the norm life cycle. If actors defected in stage one of the model, we are unlikely to expect other international actors to regard their action as defection from the norm, as this norm would not yet be established internationally. In stage 2 however, a number of states (norm leaders) will have accepted the norm and be promoting it internationally, in doing so these norms become constitutive of what is meant by being a legitimate member of international society (e.g. human rights compliance; Donnelly, 2003). Defection at stage 2 as opposed to stage 1 is more challenging, as this becomes contrary to the identity of a legitimate member of international society. International normative regimes, such as those associated with

human rights and detention, are so closely associated with what it means to be a liberal democratic state (Risse, Ropp and Sikkink, 1999), challenge to these norms by states for whom this identity is important raises a number of questions. For example, what does this mean for our understanding of compliance in terms of the benefits to self-esteem and legitimation? Has the influence of international norms been vastly over stated by constructivists? Is material power really the overriding factor? Or, as Dunne (2007) asks, can international norms somehow unravel in new contexts? Defection at this point in the lifecycle by states considered to be norm leaders is particularly difficult to understand given the relationship between norms and identity and the progressivist basis to most constructivism research.[13]

Research that examines the development and evolution of international norms is certainly very valuable as it provides a framework within which to understand changes in state behaviour over time. However, there are issues to address in relation to this body of work. Primarily, the norm life-cycle has often been taken to suggest a process towards the internalization of a particular norm at the international level. The 'cycle' privileges emergence over decline, and does not easily account for changes in the meaning of norms as they go through the various stages, and indeed continue to change even once internalized (Kersbergen and Verbeek, 2007; Sandholtz, 2008).[14] There is often the assumption of 'moral' development and 'progression', yet as Keene (2007: 335) points out, whilst there may be progress in one area (his example is that of anti-slavery), this 'can be counterbalanced by more questionable developments in another (the exclusion of African states from the family of nations)'.[15]

The changing dynamics of international norms as well as the interactions between different normative regimes are certainly a fascinating feature of the international environment. With regards to the international norms prohibiting torture, Hawkins (2004) suggests that violations of such norms have become part of an enabling structure for intervention in the domestic affairs of a state, and in extreme circumstances military intervention. However, what happens when states such as the USA, who are generally

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[13] This would be unless these particular states (norm leaders) are considered to be somehow separate and exempt from the influence of norms.

[14] Research of such a nature, focusing on the constantly changing meaning of norms, has tended to fall towards the thicker end of the constructivist spectrum.

[15] There seems to be an underlying assumption that international society is moving 'forward', which may be the case, however, 'blips' or more substantial periods of regression need to be accounted for as they can be very significant in changing direction and shaping shared understandings.

considered to be norm leaders, also defect from these international norms? Can defection from the norms prohibiting torture still remain part of an enabling framework for intervention? The effect of such defections could further change the framework, and thus the nature of intervention. Whilst this is speculation, such scenarios demonstrate why changes in the dynamics of norms and interactions between regimes are a significant part of the life-cycle of international norms, which consequently have a bearing on the practices of international politics. International normative regimes certainly do not stay the same, as the in-depth historical studies of Finnemore (2003) and Percy (2007b) have highlighted, nor are they likely to do so. This thesis is based on the premise that, even once established, there will be a constant battle over meaning, and international normative regimes are by no means immune from decline. This does not however negate the significance of their influence on behaviour in the international sphere.

*Normative Influence*

Having established the presence of certain international norms and broader normative regimes in the international sphere, constructivist scholars have been tasked with demonstrating how they are important and how exactly they 'shape actors and agency in world politics' (Farrell, 2002: 56). Evidencing the existence of an international norm does not automatically equate to compliance behaviour. Indeed, a large amount of constructivist research has been based on the call for scholars to give greater specification to the mechanisms involved in the influence of international norms, explaining how and why they are 'compelling to actors' (Yee, 1996: 102). Conventional constructivist scholars have responded with research that problematizes state interests and identity.

International norms can influence behaviour in the international sphere by shaping the terms of debate that underpin political decisions. As Dimitrakopoulos (2005) suggests, international norms have both problem-solving and legitimising dynamics. The author claims that international standards 'affect political outcomes by providing a menu of legitimate forms of action from which actors choose those that are considered likely to solve a given political problem' (Dimitrakopoulos, 2008: 330). Dimitrakopoulos, like various conventional constructivist scholars before, emphasises the way norms influence the interests of states, in this case by 'link[ing] perceived interests to

appropriate strategy' (2008: 320), which sometimes results in 'normative lock-in' (2008: 322) – actors are tied to a particular strategy.

Such research follows earlier insights that have problematized the interests of states. Finnemore (1996), for example, suggested that in order to understand the interests of states we need to appreciate the wider social structure in which states are embedded. These 'dense networks of transnational and international social relations' then socialize states to want particular things (Finnemore, 1996: 2). In doing so, states mould their view of the world as well as their understanding of their particular role in it. State interests are therefore seen to be constructed through this process of social interaction and 'in the context of internationally held norms and understandings about what is good and appropriate' (Finnemore, 1996: 2). Over time as the normative context changes there are corresponding alterations in state interests.[16]

International norms in this sense can change the preferences of actors in the international realm and the policies they consider. Empirical examples can be taken from Klotz's (1995) discussion of anti-racial discrimination norms and South African apartheid (as mentioned earlier) as well as Price's (1997) analysis of norms prohibiting chemical weapons. These studies (among others) serve to demonstrate that the means by which norms are able to influence the preferences of states is through their guidance on appropriate behaviour for actors with a given identity. In Price's research, international norms are shown to provide a measure of identity by distinguishing 'civilized' states from 'savages' in associating advanced technology with the former and chemical weapons with the backward ideas of the latter. Any defection from these international norms has the potential to 'painfully negate' a state's 'own common and supposedly superior standard of civilized identity' (Price, 1997: 43).[17] This may render the 'threshold of violations of social practices … so high that certain actions exceed the realm of intelligibility' (Price, 1997: 126).[18]

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[16] This influence is of course not only limited to states, scholars such as Farrell (2005a; 2005b) have explored the impact of international norms on military organisations, whilst Atkinson (2006) has focused on US military exchange programs as a mechanism of state socialisation.

[17] Parallels can be draw with Krebs and Jackson's more recent claims that the 'Bush administration was nearly as preoccupied with how the combat was portrayed as with the combat itself' (2007: 35).

[18] There are of course very strong normative leanings to this finding in suggesting a correlation between civilization and compliance, particularly in this case due to benefits this representation of reality provides to those dominant in international society. However, such insights do serve to illustrate the conceived relationship between norms and perceived identity, regardless of who benefits (although a consideration of the latter is important).

Hawkins (2004) provides a further example with regards to the treaty negotiations over the universal jurisdiction of the *UN Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) (1984). Hawkins suggests that states worked very hard to avoid standing against other states particularly where they shared a similar identity. The author cites Kamminga's (an Amnesty International lobbyist) recollection that 'one of Amnesty's major arguments was, ''How can you be in the same camp as Uruguay and Argentina on this?'' When some states began to switch to favor universal jurisdiction, a variety of other states quickly followed' (2004: 793).[19] To stand against universal jurisdiction on torture would put states against those with whom there is a shared identity, as well as suggesting to others that the state in question is either in favour of torture or fears being found out pursuing such practices (Hawkins, 2004: 787).

International norms are therefore influential for those who value the identity with which the norms are associated. For example, norms determining appropriate behaviour and what it means to be a liberal democratic state will be influential for actors who share this identity. As alluded to above, international human rights norms or those prescribing standards for detention are strongly associated with what it means to be a liberal democratic state, thus defection and contestation by those who share in this identity is puzzling. This is because these identities are thought to form the very 'basis of interests' (Wendt, 1992: 398), as what we want is perceived to depend to a large degree on 'who' we are. Identities define the range of interests actors consider both possible and appropriate as 'identities constitute interests and actions' (Price and Reus-Smit, 1998: 266-267). Interests can only be determined by reference to 'the ideas and norms that are the lens through which states interpret their interests and forge their identities' (Sikkink, 2005: 10). As highlighted in Fierke (2007: 171) conventional constructivist scholars tend to suggest that the 'identity as a liberal democracy cannot be detached from an interest in complying with human rights norms', and increasingly human rights are seen as a constitutive feature of what it means to be a legitimate state in international society.

Thus, international norms influence state behaviour by shaping the terms of debate and constituting identity, for example – as in the above research, what it means to be a legitimate state in the international society, thus often informing state interests. This is

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[19] Such arguments in relation to recent US practices are unlikely to have received as much impact as coalitions have been built by close association with states that have less than favourable human rights records.

not to suggest that international norms always change behaviour or indeed influence the actions of states in singular fashion. The normative environment within which decisions are made is far too complex and crosses too many contexts to suggest that this could be the case. Scholars account for such complexity to a greater or lesser degree. An understanding that engages with this is fundamental to this thesis, as I will further outline towards the end of the Chapter. First however, I consider how conventional constructivists have approached this varying impact of international norms.

*Variation in Impact*

Demands for conventional constructivist scholars to explain variation in compliance with international norms has naturally followed from the enhanced influence with which international norms are accredited. How can we know when and for whom international norms will be influential? Questions such as this have often been translated into research attempting to demonstrate the causal impact of international norms on behaviour, and the mechanisms by which they are influential. The nature of the norm, the degree of internalisation into the domestic structures of the state, and a combination of rationalist and normative perspectives, are all areas that have been explored to approach such questions.

Research focusing on variation due to the nature of the international norm has explored both the realms of norm strength and degree of legalization. Legro (1997) devised a measure of norm strength based on specificity (how well the norm is defined), durability (how long it has been in effect/whether violators have been penalised) and concordance (how widely it is accepted in diplomatic discussions and treaties).[20] However, whilst it would seem sensible to suggest that the robustness of international norms needs to be taken into account, this was not found to 'directly relate to their [the international norm's] impact on the thinking and actions of actors' in WWII (Legro, 1997: 57). Goldstein, Kahler, Keohane, and Slaughter (2000) have generated similar measures in terms of legalisation. As Kahler (2000: 679) suggests at the end of the special issue of *International Organization* (focusing on legalisation), those norms that are characterised by 'heightened precision, obligation, and delegation associated with legalization are more likely to be secured' and are thought to provide a 'backstop normative evolution against retrogression'.

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[20] This approach is based on the premise that even when norms have been established (following Finnemore and Sikkink's lifecycle) they are likely to vary in 'strength'.

This analysis of legalisation, however, does also recognise that such a factor needs to be considered in relation to identity, the importance of which has been demonstrated in the previous section.[21] The legalisation of norms, for example, 'serves to attach the identity of "law abiding" (more valued in some societies than others) to those who observe particular norms' (Kahler, 2000: 679), creating reputational costs to defection. Thus international norms are considered to be influential for the reasons of identity given above, but variation in this is found in the norm itself in terms of the degree of legalization. This certainly seems like a logical argument, however, again there are problems for the international detention regime considered in this thesis. Prohibitions against torture, an aspect of this normative regime are, for example, highly legalized (Lutz and Sikkink, 2000) so we would expect that they are less likely to be challenged or defected from given that law is in place to prevent retrogression. Furthermore, both the USA and UK would seem to value the identity of law-abiding given the association of the rule of law with the principles of liberal democracy thought to be informing the actions of such states.

Risse and Sikkink (1999) have, alternatively, focused on the variations in international norm influence in terms of the processes of norm internalisation,[22] which is based on ideas of social learning in the domestic sphere.[23] The authors present a 5-phase spiral model based on human rights development[24] applied to initially norm-violating countries. In the model a state is thought to pass through the stages of repression, then denial, tactical concession, prescriptive status and rule-consistent behaviour.[25] Once the international norms are internalised into the domestic practices of the state the authors

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[21] As also mentioned in the previous section, legalisation is not necessarily directly linked to the impact of international norms; Percy (2007a) and Tannenwald (2005) provide evidence of cases where norms are strong but the corresponding law is weak.

[22] Koh (1997) has also taken a similar stance with regards to international law.

[23] Whilst Finnemore and Sikkink's (1998) model looked at norm diffusion internationally, Risse et al (1999) focus on diffusion domestically. Once ideas have become norms internationally, they approach the question of how these norms then influence the behaviour of states at a domestic level.

[24] In this they tend to focus on a 'central core of rights – the right to life' defined as 'the right to be free from extrajudicial execution and disappearance' and 'freedom from torture and arbitrary arrest and detention' (Risse and Sikkink, 1999: 2).

[25] The variation in level of internalisation and hence domestic effect of international norms is thought to be based on three types of causal mechanism through an overall process of socialization:
- Process of instrumental adaptation and strategic bargaining
- Process of moral consciousness-raising, argumentation, dialogue, and persuasion
- Process of institutionalisation and habitualization

argue that they form part of their 'taken-for-granted' behaviour, significantly reducing the impact of individual state leaders.[26]

Certainly, this model provides interesting insights generated by case studies forming the chapters of the book. However, as they are aimed at demonstrating how human rights norms can have an influence in initially violating countries, compliance is almost assumed in 'Western' states.[27] Yet if we consider the actions of those thought to be norm leaders, such as the USA and UK, there certainly appear to be significant anomalies the model does not account for. Questions are raised such as whether these states have regressed from 'taken-for-granted' rule-consistent behaviour, where the importance of the leader is minimal, or whether they were ever there in the first place. Certainly they now fall short on several aspects of Phase 4 (persistent behaviour), as this requires that actors normative ideas do not change with context and who they are interacting with. We only have to consider Tony Blair's press conference of August 2005 where the former Prime Minister (2005zb) emphasised that 'the rules of the game are changing', after the attacks of July 7th 2005; context clearly has a role here. Also there needs to be a strong consistency between words promoting human rights and actions – there are certainly exceptions to this for the USA and UK. Indeed, aspects of Phase 2 (denial) appear to be evident, for example, whilst there does largely seem to be agreement concerning the moral validity of the international detention regime which encompasses prohibitions on torture, there is at the same time disagreement as to applicability.

We are then left with a contradiction between identity and practice leading to various questions regarding the influence of norms. Theories of compliance such as the above are certainly criticised for focusing too much on the role of structure and process at the expense of adequately accounting for agency (Flockhart, 2006). They are also limited by not providing sufficient means by which to study the changing nature of international norms; assumptions regarding their meaning, permanence and one-way progression are very apparent.

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[26] International norms are considered to have achieved a taken-for-granted status independent from individual belief systems.

[27] These states are referred to as having the 'identity as promoters of human rights' (Risse and Sikkink, 1999: 23) and human rights norms are seen to 'both prescribe rules for appropriate behavior, and help define identities of liberal states' (1999: 8).

Various authors taking the conventional constructivist approach have proposed to overcome some of these problems by generating a synthesis between constructivism and more instrumental perspectives to explain defection or strategic action. The tendency has been to weaken the influence of international norms and suggest that there is room for state actors to create 'rules of exception'[28] or 'exclusion'[29] (Cardenas, 2004).[30] Authors seem to have moved towards a focus on state decision-making and room for manoeuvre within the parameters of the international norm (e.g. Shannon, 2000; Farrell, 2005b). To do so scholars have often relied on a combination of appropriate and instrumental action and have concentrated on suggesting when each is likely to 'win out'; for example, when the logic of consequences will take precedence over the logic of appropriateness (March and Olsen, 1998). Yet, as Hurrell (2002) suggests, the divide between these logics of action is by no means clear. Indeed, surely we are in fact calculating **what** the LoC is based on broader normative frameworks? The constitutive side to norms, where they inform the interests of states, often appears to be very down-played in such research. The focus is instead on actors deciding whether or not to follow international norms where their meaning is assumed. Much is left out of the picture with regards to defection and contestation, for example, the interactive processes of contestation. This reflects the top-down nature of much work in the constructivism/rationalism domain.

Thus, whilst conventional constructivism provides many illuminating contributions with regards to international norms, such as the need to consider factors such as the nature of the norm, the stage at which it is located in the norm life-cycle, and how international norms are influential by means of socialisation and identity, there are several areas where significant limitations are apparent. First, the focus is often on international norms where, when they achieve a certain status, meaning is held constant.[31] I find this problematic and prefer to consider international normative regimes as in a constant process of change with regards to interpretations of meaning and application, however fast or slow this may be at different times in history. Second, there appears to be a

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[28] These are rules that 'specify the conditions under which a state can trade one set of norms for another, or when international norms can be violated' (Cardenas, 2004: 222).
[29] These may occur 'anywhere that powerful groups see others as less equal than themselves' and can serve to justify the suspension of human rights to a certain group (Cardenas, 2004: 223) as has often been the case in the U.S. led 'war on terror'.
[30] Certainly arguments concerning exceptionalism will have to be considered when working though the cases in this thesis.
[31] There are of course exceptions to this, as mentioned Finnemore (2003) traces changes to the norms governing the use of force.

degree of permanence suggested with regards to compliance behaviour. I begin from the premise, however, that there is always room change in interpretation, both as human agents change, as well as the different normative regimes that are interacting at any one time. Third, explanations that rely on perceived interests coming into conflict with international norms only provide part of the picture; understanding these interests and how they develop, rather than making fixed assumptions is generally more illuminating. And fourth, much of the above analysis rests on the importance of a liberal democratic identity in international society. The interplay of different social identities in the process of norm negotiation is not considered.

Whilst these are general claims and as such they mask certain divergences within the conventional constructivist research programme (as mentioned previously I view constructivism more as a spectrum so scholars will come up against these criticism to differing degrees), they serve as a means to clarify the positioning of this thesis. I shall now refine this further with reference to scholarship that falls more towards the thick end of the constructivist spectrum.

## 2.2 Thick Constructivism

Whilst sharing many of the same principles as conventional constructivism, in terms of a concern with the construction of social reality and the mutual constitution of structure and agent, those constructivists towards the thicker end of the spectrum place more emphasis on the importance of language and the continuously changing nature of norms. This is within a framework that engages to a much greater extent, with the multiplicity of identity.

### *Language*

Fundamental to this end of the spectrum of constructivism is the focus on language (see Fierke, 2003). The means to achieve an understanding of social reality rests on the discovery of the processes by which social facts are constituted by language and rules (Fierke, 2003; 2007). Scholars in this domain, such as Onuf (1989) and Kractochwil (2000) have located their arguments in a broader lineage (Fierke, 2007) drawing on the 'linguistic turn' in philosophy and in particular the insights of Wittgenstein.[32] The focus has been on areas such as the influence of different speech acts on interactions in the

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[32] The linguistic turn has influenced a range of scholars, for example, John Searle, Jurgen Habermas and Richard Rorty.

international sphere, where the limits of shared understandings are, how politicians set boundaries to what is possible in a given context, and the relationship between language and shared norms (Fierke, 2003: 81). Emphasis is placed on language both sustaining and enabling identities.

Thick constructivism tends to be characterised by a rejection of 'getting behind our words to compare them with that which they describe'. Instead language is viewed 'as a form of action in itself' (Fierke, 1996: 469, drawing from Wittgenstein, 1958). The act of naming a particular context, for example labelling the 'war' on terror and the historical analogies drawn upon, will create certain parameters for action – they create 'games' within which actors are situated (Fierke, 1996).

As opposed to generating predictive hypotheses to test in relation to norm defection, our focus is shifted to understanding the use of language by actors in their construction of the world and the identities and norms that are portrayed as important in the discourse. This creates a 'game' which then affects the parameters for action. Instead of a direct concern with intention, the emphasis towards this end of the spectrum of constructivism is on 'the generation of meaning, norms and rules, as expressed in language, by the subjects of analysis' (Fierke, 2007: 176). To determine an isolated or singular cause for something, such as the defection and contestation of the international norms concerning the detention and treatment of prisoners in the 'war on terror', drifts into the realm of interpretation; how can we really determine a singular cause for this action and is **one** really likely to exist? As such, we are better placed studying questions that focus on how the 'social fact' that detention abuses happened became possible, how normative constraint was negotiated to allow for this, and the variation in meaning attributed to these actions (Fierke, 2007). This approach is firmly grounded in a constitutive, as opposed to Humean, conception of cause (Kurki, 2008).

*Norms, Meaning and Interpretation*

Scholars writing from the thicker end of the constructivist spectrum certainly emphasise different elements with regards to international normative regimes. Norms, at any level (institutional, domestic society or international for example), tend not to be internalised by actors as has been the case in much conventional constructivist thought (Onuf, 1998). Scholars are less deterministic with regards to the impact of international norms

on behaviour.[33] This position is more consistent with my conclusions at the end of the consistent constructivism section, moving away from a sense of permanence and allowing room for interpretation. Judgement governs the chosen course of action, based on that which makes sense within the particular context of rules. Variability in the context, the array of rules available, and their changing nature is built into our understanding.

As Kratochwil suggests, '(n)orms not only establish certain games and enable the players to pursue their goals within them, they also establish inter-subjective meanings that allow the actors to direct their actions towards each other, communicate with each other, appraise the quality of their actions, criticize claims and justify choices' (1993: 75-76). They serve to reduce complexity, render action meaningful, as well as forming the basis for justification and communication. Thus they are influential on actors but not in the same stable, isolated, and Humean causational manner that tends to be portrayed towards the conventional constructivist end of the spectrum.

Wiener (2004) provides a useful account of the differences between these two approaches with regards to norms. The author suggests that scholars working in the conventional constructivist programme employ a largely behavioural[34] interpretation of international norms as relatively stable causes for action, as has been explored earlier in this Chapter. This is in contrast to the more reflexive approach to norms now under consideration where norms are seen as contested and the focus is on the construction of norms in practice as opposed to influence. The concern is with contested meaning as located in practice. Attention is shifted 'towards social practices to assess the *meaning* of a norm' (2004: 199) as opposed to making assumptions as to how they are understood and testing for compliance or defection. This brings into focus questions surrounding the 'impact of variation in the meaning' of norms (Wiener, 2004: 200) as opposed to their direct influence where meaning is taken as stable even across context. This meaning is thought to be located in discourse such as 'official documents, policy documents, political debates and media contributions' (2004: 201) and can also be accounted for through interviews (Wiener, 2008).

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[33] This is not to suggest that constructivists towards the conventional end of the spectrum are completely deterministic in their approach, elements are however apparent.
[34] This is not in terms of ""Do X to get Y," norms take a different form: "Good people do X"" (Risse and Sikkink, 1999: 8, citing from Fearon, 1997).

The functioning of international normative regimes (particularly those of a prescriptive nature) would certainly benefit from being located within this framework, as opposed to isolating singular international norms from the broader normative context. It then becomes an interesting question as to how far these meanings can be contested, and how fairly stable international normative regimes (whilst still contested to a degree) retain influence, restricting or enabling certain behaviours in the face of this contestation. International normative regimes certainly hold an influence related to that in conventional constructivism through informing the interests of states and setting the parameters of action by means of identity. Indeed, as Wiener (2004: 219) notes both approaches 'are important strands of compliance research', and 'pursuing them in isolation unnecessarily obscures important theoretical advances in the field'.

Thus, as opposed to focusing on a behavioural account of norms where there is an isolated and observable causal relationship between norms and behaviour, based on the assumption of stable international norms exerting an influence, scholars taking a more reflexive approach to norms tend to focus on their constitutive side; where meaning is interpreted in different contexts of interaction. Therefore, the application and perceived parameters of the international detention regime will be influenced by contextually based interpretations which are in a constant state of reproduction or challenge; social consensus internationally leading to the presentation of stability over a period of time.

This approach presents a different perspective to the previous accounts generated from the conventional constructivist approach and allows for interpretation and contestation, revisionism and defection, from relatively stable international normative regimes. This is achieved by focusing on meaning and interpretation as situated in broader normative structures. However, how do we consider the arguments made previously concerning the influence of international norms through constituting what it means to be a legitimate state in the international society, in light of this more interactive and dynamic approach? To address this issue our focus is shifted to the various social identities influencing and informing decisions.

*Multiplicity of Identity*
Issues concerning the multiplicity of identity have been granted more attention towards the thick end of the constructivist spectrum. Indeed questions have been posed as to whether or not an account of multiple social identities can fit with more conventional

constructivism. Maja Zehfuss has been one particularly prominent critic of the type of constructivism put forward by Wendt. Although Wendt himself suggests that actors have several social identities, Zehfuss (among others) points out that this is still based on a relatively stable characterisation of identity. There is little room for multiplicity or contestation as change is portrayed as simply moving from 'one relatively stable identity to another' through interaction (Zehfuss, 2002: 90). Wendt's position does not account for insights from scholars such as Jutta Weldes (1999) who have demonstrated that state identity is always precarious and in need of stabilisation or reproduction. Indeed, Zehfuss (2002: 89) notes that Wendt simply 'reduces identity to something negotiable between states'. The author also suggests that 'Wendt's recognition that domestic politics influence state behaviour and state identity fails to address the complexity of the issue at hand' (Zehfuss, 2001: 335).[35] Steve Smith (2001: 53) further supports this point, arguing that the perspective presented by Wendt seems to be largely 'limited to examining how states construct identities and interests through interactions, and will not delve deeper into the identity of the state than that'.

Zehfuss (2001; 2002) has investigated the consequences of Wendt's characterisation of identity in relation to the redefinition of the Federal Republic of Germany's identity to allow for military involvement abroad (such action was previously unacceptable). The author found that a number of exclusions were needed to sustain Wendt's approach negating the complexity of identity and the contestations that are inherent, resulting in a loss of understanding. Clearly this is a theoretical problem that is always approached in the social sciences, the compromise of focusing on either explaining or understanding (Hollis and Smith, 1990) and how parsimonious we wish to be, however for the purposes of this study I would question how much we can really explain if we do not have the means by which to understand. Although Zehfuss' (2001: 317) account is limited to Wendt's conceptualisation of identity, the tensions demonstrated do not reflect well in general for those constructivists who do not account sufficiently for the multiplicity and complexity of identity in their analysis.

Scholars towards the thicker end of the constructivist spectrum suggest that identities are contingent and changeable. This is not taken to mean that states simply switch identity through interaction but that we work with multiple identities. Certainly I agree

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[35] Indeed Zehfuss goes even further to state that, '[t]he contingency and even inherently contradictory character of …expressions of identity is…not only invisible through Wendt's framework but in tension with his conceptualization of identity' (Zehfuss, 2001: 335).

that we need to move away from a unitary account of identity to progress passed the problems presented in the previous sections. I also feel that more needs to be made of the interaction between the domestic and international as opposed to being seen as separate spheres. Questions are raised as to how we understand the influence of norms in terms of such a framework. This is where I look to psychology for guidance, in terms of how to approach the study of multiple social identities in conjunction with the influence of international normative regimes. In the next Chapter I provide the micro-foundations for such an approach by drawing from the social identity approach in social psychology. By employing insights from the social identity approach, we can utilise both areas of constructivist research into norms. Before I go on to the next Chapter I will however sum up exactly where I stand within the above debates and outline how this position relates to the international detention regime that is of concern in this thesis.

## 3. Approaching International Norms

Drawing from the above literature review this section will outline the specific approach to the international detention regime taken in this thesis. The central points I highlight focus on relating this international normative regime to a liberal democratic social identity internationally, embracing the tensions and complexities in the international normative environment, and concentrating on the multiplicity of identity.

As has been demonstrated, there are various ways in which international norms have been characterised and studied within the constructivist research programme. I begin from the premise that international norms exist and have a causal impact on behaviour in the international sphere in a constitutive, not isolated or singular, manner. They are experienced by individuals, and do not exist without them, but they are not solely reducible to individuals as by definition they are shared. There are many areas in which there is substantial consensus internationally for the existence of normative regimes influencing the actions of international actors. For example, researchers more towards the conventional end of constructivism have highlighted norms governing the use of force, mercenary use, human rights, and diplomatic arrangements as previously mentioned. Such norms are by definition shared internationally, although they are certainly not restricted to this sphere as somehow separate from the domestic. International normative regimes not only provide guidance as to appropriate behaviour internationally, but also domestically, for example in relation to human rights.

Predominantly, the international norms referred to by constructivists relate to those associated with being a liberal democracy, a dominant social identity internationally. Whilst the norms that constitute this social identity predate the concept of a liberal democratic state (for example the human rights regime), they are now taken to be a constitutive aspect of what this social identity means, which is also often seen as indicative of being a legitimate state in the broader international society. Whilst the liberal democratic social identity is dominant in the international society, taking this as representative of a singular international identity does not account for the multiplicity of social identities or indeed fit with the principles of the social identity approach as further articulated in Chapter 2, where I ground these insights in the micro-foundations provided by this perspective in social psychology. Thus, I relate the international detention regime to a liberal democratic international social identity. Given that the international detention regime constitutes, in part, what it means to be a liberal democratic state, I share the conventional constructivist assessment that they will then to some extent inform the perceived national interests of the political elites that represent individual states, where they value this social identity. As Wendt (1992: 398) suggests, identities form the 'basis of interests'.

Thus, international normative regimes are understood in general to relate to the predominant social identity in international society, that of being a liberal democratic state. As such these standards contribute to the construction of the national interest by political elites. However, where I diverge significantly from those who are firmly grounded towards the very conventional end of the spectrum of constructivism is in accounting for multiplicity, both in terms of identity and international norms. As mentioned, much conventional constructivist scholarship focuses on a singular state identity which encompasses international norms. As such there is often little room for divergence in terms of their impact, other than the explanations that I have addressed, such as variations in norm strength, variations in the degree of internalisation into the domestic structures of the state, or indeed a separation of the logic of consequences from the logic of appropriateness. These arguments, whilst insightful, do little to address the issue of multiplicity, which is fundamental internationally, particularly in relation to the question posed in this thesis.

I disagree with the concept of a singular identity in which different norms compete. As Zehfuss has pointed out, multiplicity also applies to identity. Political representatives are not simply faced with a singular identity of being a liberal democratic state in the international society; they have many social identities, some based on historical ties, others on international and trans-national groupings with which they are associated. Whilst these may not appear to contradict each other, the varying normative content can be accentuated in certain circumstances, for example the norms of a country's military can become out of tune with those of human rights groupings.

International norms, as associated with being a liberal democratic state, interact with those from other social identities, to inform and give meaning to the actions of states. Thus, an approach that isolates international norms from the broader social identities context in which they are situated is highly restrictive in terms of the analysis of behaviour.[36] Whilst identities form the basis of interests, there is always room for judgement and negotiation in this broader social identities context without having to rely on exogenous interests or a separation between the Logic of Consequences and the Logic of Appropriateness (see Muller, 2004: 396). Actors are calculating what is in their interests in certain contexts based on broad normative regimes relating to different social identities; interests are always embedded in such frames of reference.

The environment within which political elites are located is certainly exceptionally complex, with many social identities and normative regimes influencing behaviour.[37] Defection, contestation and revisionism, can reveal changes and modifications to international normative regimes, their application, and what is meant by the social identity of being part of a group of liberal democratic states, which then sets the framework for subsequent debates. To say that a particular act violates an international norm tells us very little unless we embed this in the broader normative and social identities context encompassing public arguments with opponents on particular policies. Analysis must capture these public negotiations (Hasian, 2007). Thus, focusing on singular isolated norms with permanent meaning leaves much out of the picture that is essential to our understanding of the negotiation of normative constraints and processes of influence.

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[36] I will give greater specificity to account for such factors in Chapter 2.
[37] Kowert and Legro (1996) raise this point with regards to competing and contradictory norms.

In this thesis, singular international norms are not considered to be internalized to the extent that there is no room for individual decision-making; a degree of contestation is always possible but this relies on an interaction between the individual or group of individuals (embedded in the social context), and the various audiences judging behaviour. Such actions may or may not result in changes to international normative regimes, depending on broader acceptance. The meanings and interpretations at the agent level (whether individual or collective) are therefore a vital consideration in understanding the processes of defection and contestation by members of the social identity to which these regimes relate.

Such an approach also enables us to capture the co-constitutive processes central to constructivist understandings. The significance of this is often lost in research that focuses purely on the impact of normative regimes on behaviour in the international sphere. The approach taken in this thesis engages with norm influence in terms of an interactive process, addressing concerns raised about previous research where norm entrepreneurs and norm leaders often appear to be separate from the normative context, (see Kornprobst, 2007 for further criticism along these lines). Norm leaders and norm entrepreneurs are instead firmly embedded in the broad normative and social identities context.[38] The framework outlined in Chapter 2, based on the micro-foundations of social psychology, will provide the means by which to capture such processes in relation to the political elites that represent the state.

In relation to epistemological issues that are generally seen to separate the different ends of the spectrum of constructivist research, I must also clarify my position. Whilst constructivists share a commitment to social subject matter, the means by which enquiry is sought has often been framed very differently. This thesis goes some way to acknowledging the 'multiple norms [that] can influence actors – with competing or even contradictory prescriptions for behavior and identity' (Kowert and Legro, 1996: 486). As a consequence, I avoid focusing on the prediction of behaviour in relation to singular and isolated variables, and instead favour a constitutive approach to causation over a Humean one. I consider the unity of state identity, and the conventional constructivist characterisation of norms as single standards of appropriate behaviour exerting an influence on states, too restrictive. As I have demonstrated in this Chapter there appear to be too many contingent and contested factors for this type of research. Indeed, I feel

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[38] The content of the social identities context considered in this thesis is outlined in Chapter 3.

we are better placed to aim for a framework that will enhance our understanding of the processes involved in the negotiation of normative constraint, thus highlighting influential factors that we may not have previously seen, as opposed to aiming for prediction. What exactly this framework will show us then, in terms of the negotiation of normative constraint becomes an empirical question.

Research towards the conventional end of the constructivist spectrum also rests on 'a strong specification of the subjective motivations of individuals' yet to achieve this would require 'unmediated access to people's minds' that researchers would not be able to obtain even through the private statements of state leaders (Krebs and Jackson, 2007: 40). In terms of the positioning of this thesis, I agree with the standpoint of scholars such as Krebs and Jackson (2007), that we cannot get behind language to compare it to reality, language has a hugely significant role in constructing reality. To miss this point loses much of the value of the constructivist approach to enquiry in international relations. Thus, the focus of analysis in this thesis is on the language used to negotiate international normative constraints and manage social identities, as contextually situated. Karin Fierke (2007) has been direct in stating that this is likely to lead to a separation into two distinct sectors of constructivism. However, again I have to stress that I view these differences on a spectrum as opposed to clear camps with distinct boundaries. Before providing the specific framework for such an approach, which is the subject of Chapter 2, I must also demonstrate what this means for the international detention regime.

## 3.1 The International Detention Regime

In this section, the Chapter moves from a general discussion of the different theoretical interpretations of international norms, and the approach adopted in this thesis, to a specific focus on the normative regime of concern in this study. Standards governing the use of detention and appropriate treatment of prisoners, particularly in warfare, have a long history. However we do not have to look far back to see reasons for the construction and continued development of an international normative regime to protect the rights of detainees; the horrors of the two world wars in this regard will suffice. This means that there are strong images and clear memories providing impetus for the international detention regime to develop even further. It has indeed become more prominent as a sub-field of human rights in the last 20-30years.

The foundations for the normative regime concerning the detention and treatment of prisoners can be traced as far back as the crusades with regards to the ideas of reciprocity and ransom. Whilst not hugely prevalent at that time, Megret (2007) suggests that reciprocity preserved a small amount of humanity in this area. This was applicable to certain 'like-minded' groups – a theme certainly apparent today in debates over applicability in the war on terror with non-state entities. The idea that prisoners might mean profit in terms of ransom also provided incentives to treat captives well, at least those with money. In the 19th Century detention practices shifted away from ransom to the more long-term holding of prisoners (Neff, 2007). Such moves were accompanied by a change in attitude regarding responsibility, prisoners were no longer the responsibility of the individual (hence ransom was prevalent), but were prisoners of the state. Furthermore, the focus was no-longer solely on military necessity with regards to detention, but began to encompass ideas about the rights of captives. Neff suggests that this shift to humanitarianism from military necessity was based in broader intellectual trends, such as the Romantic Movement which stressed the rights and dignity of individuals, the anti-slavery movement, the American Declaration of Independence, and the development of rights and duties in the French republic. Whilst debates ensued on applicability, reciprocity and humanitarianism are taken to form the sources of the international detention regime. There is also a historical basis to arguments concerning the lack of utility to torture in such contexts, dating back to Aristotle, further strengthening these normative developments (Ross, 2005).

These foundations have been reinforced by the construction of legal treaties with which we are familiar with today as documented in human rights and humanitarian law, with a brief mention in refugee law. Humanitarian law seems to have the longest history in this regard as many of the roots for institutionalised norms have their origins in the principles of religion and ancient practices which have then been reflected in humanitarian law, otherwise referred to as the laws of war or *jus in bello*.[39]

Before the twentieth century the legal basis for the international detention regime is largely restricted to customary international law, however mention is made in the *Lieber Code* of 1863. Article 56 states that:

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[39] For example suggestions were raised in the sixth century BCE by the Chinese warrior Sun Tzu that limitations should be placed on the conduct of war. War crimes were also referred to in around 200 BCE in the Hindu code of Manu. Later in 1625 Hugo Grotius wrote on the humanitarian treatment of civilians in *On the Law of War and Peace* (2004). This is to name but a few of the texts or codes of conduct that have been constructed to regulate the conduct of hostilities (see Trombly, 2003).

A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

The first *Geneva Convention*, adopted in 1864, laid further foundations for international humanitarian law in that it set rules for the protection of victims of conflict and the provision of medical care in conflict with the introduction of the red-cross symbol. The *Hague Conventions* of 1899 however refer specifically to the humane treatment of prisoners of war. Chapter 2 of the annex to Hague II is devoted to prisoners of war and Article 4 refers specifically to humane treatment. This is again echoed in 1907. These conventions do not specifically refer to torture but by banning action that is inhumane it would seem reasonable to deduce that torture is of concern in this provision. Article 2 of the *Geneva Conventions* in 1929 again refers to humane treatment but this is expanded to include protection 'particularly against acts of violence, insults and public curiosity'. The Convention gives extensive guidance to the treatment of prisoners of war including provisions for the conditions of detention.

Despite this durability it is largely the *Geneva Conventions* of 1949 that we look to for clarification of international detention standards in times of conflict. The conventions were aimed at providing greater regulation to the conduct of hostilities and protection to those involved than was experienced before and during WWII. The two additional Protocols to the *Geneva Convention* of 1977 again refer to prisoners of war, and Protocol II specifically concerns humane treatment. With respect to the treatment of prisoners of war, the laws developed still in some aspects go 'far beyond that of rules of human rights law relating to the treatment of prisoners in peacetime' (Rodley, 2002: 3).

In terms of human rights, documentation of detention standards can be found in the *Universal Declaration of Human Rights* (UDHR) which clearly states that:

Everyone has the right to life, liberty and security of person (Article 3.)
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5.)
No one shall be subjected to arbitrary arrest, detention or exile (Article 9.)

The protection of detainees has been further documented in the *International Covenant on Civil and Political Rights* (ICCPR) (1966), Article 7 referring to prohibitions on torture and Article 9, arbitrary arrest or detention. The topic of detention has however grown much more significantly as a field of human rights law in the last 20 years with various changes to the legal norms and institutions set to deal with the area. Major advances include the General Assembly Resolution 3452 (XXX) of 1975 containing the Declaration against Torture, alongside General Assembly Resolution 3453 (XXX) referring specifically to 'Torture and other cruel, inhumane or degrading treatment or punishment in relation to detention and imprisonment'. This was followed by the development of enforcement mechanisms with the power to investigate, such as the Working Group on Enforced or Involuntary Disappearances (1980), and the appointment of a Special Rapporteur on Summary or Arbitrary Executions. In 1984 the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted by the General Assembly. Later in 1985 a Special Rapporteur on Torture was appointed. With regards to disappearances the *International Convention for the Protection of All Persons from Enforced Disappearance*, was adopted in 2006.

Regional developments have also been hugely prevalent with references to international standards for detention being found in treaties such as the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), the *American Convention on Human Rights* (1969), the *African Charter on Human and Peoples' Rights* (1981), the *Inter-American Convention to Prevent and Punish Torture* (1985), and the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (1987). The latter has also set up procedures for visiting places of detention. Examples of other instruments relating to detention are:

- Standard Minimum Rules for the Treatment of Prisoners (1977)
- Basic Principles for the Treatment of Prisoners (1990)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2000)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982)

- Code of Conduct for Law Enforcement Officials (1979)
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- United Nations Rules for the Protection of Juveniles Deprived of the Liberty (1990)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985)

References to detention can also be found in the *Convention Relating to the Status of Refugees* (1951) albeit limited to Article 31 concerning penalties (Art 31(1)) and restriction of movement (Art 31(2)). However, these basic principles were developed as part of a UN Expert Roundtable in 2001 on Article 31. The roundtable decided that there was a need for greater elaboration particularly in terms of national legislation to ensure compliance with the basic principles above.[40] The concerns generated by detention practices have increased to present the need for a greater clarification of Article 31 and the protections afforded to refugees and asylum seekers.

We can see from the brief consideration above that issues concerning detention are heavily prevalent in international law. Many conventions, codes of conduct and standards have been put in place internationally. Together these represent the international normative regime prescribing standards for detention and prohibiting torture. In the interests of concision, this thesis will refer to the aforementioned as the international detention regime. As stated in the introduction, I use the term 'regime' to refer to the above as a collection of normative and constitutive standards. This differs from the purely regulative and institutional approach employed by neo-liberals.

Given that there are a variety of legal standards and mechanisms in place, what can we deduce to be the main themes that emerge regarding the international detention regime? Clearly norms concerning torture and inhuman treatment occupy a central role in this

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[40] The Expert Roundtable identified that detention must be considered an exceptional response in terms of individual cases, and needed to be undertaken in line with both human rights and refugee law - not introduced arbitrarily. Justification for the detention of those covered by the *Refugee Convention* was found in the protection of national security and public order, not to be used for the purposes of deterrence. The conclusions suggested that overall usage should be minimized and the authors point out that there are in fact many other means of restrictions on the freedom of movement that do not amount to detention.

area; we only have to look at the amount of literature written on this specific aspect of detention and human rights standards to establish this. Whilst there are many other themes which I will consider below, a number of these do in fact relate back to torture in terms of avoiding conditions that may lead to torture and abuse.

The standard definition of torture employed can be found in Article 1 of the *United Nations Convention against Torture* (CAT) as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

One point to draw from this is that States will be in breach of this Article if they provide consent or acquiescence to actions that defect from the agreed international normative standards in this area.

Article 2 (2) is quite clear in stating:

No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Thus the prohibitive standards are not deemed to be context specific in any way. A further theme concerning detention, and related to torture, is the principle of *non-refoulement*. Article 3 (1) of the CAT states that:

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

This position is given further support in Article 33 of the *Refugee Convention*, although under this legal document exceptions are granted on national security grounds – there are however no exceptions under part 3 of ECHR, which also refers to *non-refoulement*.

The CAT also includes provisions on the prevention of torture in providing education and information 'in the training of law enforcement personnel, civil or military, medical

personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment' (Article 10 (1)).

Whilst Article 31 (1) does allow for the denouncement of the Convention 'by written notification to the Secretary-General of the United Nation' this can only come into effect one year later. Indeed, the absoluteness of the prohibition is backed up in the ICCPR where no derogation is permitted from Article 7 concerning torture and 'cruel, inhuman or degrading treatment'. Article 4 makes clear that this applies even in times of emergency. Common Article 3 of the *Geneva Conventions* also prohibits 'cruel treatment and torture' as well as 'outrages upon personal dignity'. Additionally support for prohibitions on torture can also be found in the various legal instruments listed earlier in this section. Prohibitions on torture are therefore robust, absolute and highly specified across times of peace, armed conflict and states of emergency. The right has achieved the status of *jus cogens* and as such cannot be changed by a later rule of customary law or treaty, but can only be altered through an opposing new norm of *jus cogens* status. Such a status is reflected in the Judges' opinion on *Filártiga v. Peña-Irala* (Kaufman, 1980), that 'the torturer has become, like the pirate and the slave trader before him, *hostis humani generis*, an enemy of all mankind'.

Whilst clear definitions are provided for torture (giving us a substantial basis from which to consider defection and contestation), this is less than precise for inhumane and degrading treatment. Reference is made to the inherent dignity of the human person in the preamble of the ICCPR which suggests this forms a fundamental part of the detention regime, yet there is no specific definition for this. There has indeed been much debate in terms of practice. The ICRC interprets the provision to involve a degree of suffering, either physical or mental (Aeschlimann, 2005). However Aeschlimann also notes that 'it is practically impossible to establish precisely, whether technically or legally, the threshold of suffering or degree of pain "required" for each category has been met, given that each individual will feel and react differently when subjected to the same methods' (Aeschlimann, 2005: 111). The variation in cultural connotations to different forms of suffering, are impossible to control for. There is therefore scope for interpretation on what constitutes inhumane and degrading treatment. However, this is dependent on acceptance by other members of the social group to which this pertains –

in the context of this thesis, an international social group of liberal democratic states is prominent.

Prohibitions on indefinite imprisonment are another area that is covered by the current detention regime. Indefinite detention is incompatible with Article 9 of the UDHR as given earlier in this section; this is again supported by Article 9 of the ICCPR:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law.

Similar sentiments can be seen regionally, under Article 5 of the ECHR, Article 7 of the American Convention on Human Rights, and Article 6 of the African Charter of Human and People's Rights. Further to this we also find in the ICCPR that:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such a court may decide on the lawfulness of his detention and order his release if the detention is not lawful (Article 9 (4)).

The broad application of these rights is documented in 'General Comment 15' (Office of the United Nations High Commissioner for Human Rights, 1986) where, 'the enjoyment of Covenant rights is not limited to citizen's of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum-seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party'.[41]

In addition to the above, the right of a detainee to challenge the legality of his/her detention is held in the writ of *habeas corpus* in common-law countries. *Habeus corpus* dates back to the *Magna Carta* of 1215, where Article 39 states that 'No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law

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[41] Temporary derogation can be permitted from Article 9 under Article 4 of the ICCPR however this is restricted to a 'time of public emergency which threatens the life of the nation' and 'to the extent strictly required by the exigencies of the situation'. Derogations have to be limited in terms of duration and must follow the principle of proportionality. Detention which may begin as legal must also be subject to review to avoid it becoming arbitrary (Zayas, 2005).

of the land.' Inherited from the English legal system the right to *habeus corpus* features, for example, in Article 1 (9) of the *United States Constitution*.

Also, related to protections against indefinite detention are the right to a fair trial and essential judicial guarantees. Article 14 of the ICCPR sets out 'minimum' guidelines for this and refers to the entitlement to 'a fair and public hearing by a competent, independent and impartial tribunal established in law'. Amongst other rights the detainee is to be 'informed promptly' of the charges against him. This right falls under the same rules for derogation as included in footnote 41.

Norms prohibiting disappearances also feature in the international detention regime. Article 1 of the *UN Declaration on the Protection of all Persons from Enforced Disappearance* (1992) suggests that action in this regard is considered to be an 'offence to human dignity'. In his writings on the matter Rodley (2002: 267) goes as far to determine that disappearances can be seen as 'constituting a crime against humanity'. Disappearances may amount to torture or even the arbitrary deprivation of life. The importance of such prohibitions can be seen in the adoption, in December 2006, of the *International Convention for the Protection of All Persons from Enforced Disappearance*. Article 1 (2) of the Convention states that:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

Article 2 defines disappearance as:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

International norms against such behaviour are very strong given the horrendous nature and 'unthinkability of the behaviour' (Rodley, 2002: 243). Prohibitions on disappearances certainly seem to play a strong part in the international detention regime.

Alongside the aspects already covered, the international detention regime also makes provisions for prohibiting extra-legal executions and the death penalty, as well as

inadequate or degrading conditions of detention. If we consider this normative regime in terms of robustness or legalization we can see that prohibitions on torture and disappearances in particular should be fairly robust and they are highly legalized, the other areas vary on this dimension. However, as mentioned I do not wish to view these as single standards. Instead I view them as a collection of norms, a normative regime internationally, which prescribes standards for detention. The above demonstrates what is entailed by this; prohibitions on torture and inhuman treatment, disappearances, and indefinite detention, the right to *habeas corpus*, a fair trial, and *non-refoulment*, as well as prohibitions on extra-legal executions, the death penalty and degrading conditions of detention.

There is one further point of clarification that I must add regarding the terms 'prisoner' and 'detainee' that will be used in this thesis. I draw on the conclusions of Rodley (2002: 5-6) where:

the terms 'prisoner' and 'detainee' (used separately or together) should be taken as referring to any persons who are so positioned as to be unable to remove themselves from the ambit of official action and abuse.

The terms are not limited to 'a person confined, after due legal process, to a formal institution of detention, as a result of conviction for a criminal offence, or on remand pending trial' (Rodley, 2002: 6). Although such prisoners are obviously also as entitled as any others to have their basic human rights respected. The rights discussed above are given regardless of the reasons for or legitimacy of detention. This broad definition will inform the analysis in this thesis.

The above outline has drawn very heavily from the legal sphere to establish what factors constitute the international detention regime. There are several reasons for this which require further clarification. First, I do not view normative regimes solely in terms of international law. I agree with scholars such as Percy (2007a; 2007b) and Tannenwald (2005) that international normative regimes can be strong even if weak in international law. International law does however provide very useful documentary evidence of normative change and establishment in the international sphere, as I have drawn upon above, however international norms and normative regimes are not reducible to this. International law regarding detention documents the shared understandings governing such behaviour, and indeed contributes to the furtherance of the international detention

regime, yet these legal agreements are not the regime in themselves – the shared understandings as experienced by individuals are.

The rule of law and the normative standards documented in international law are furthermore taken to be largely associated with the liberal democratic social identity in the international society, even though the development of the latter social identity has followed the establishment of such standards. For the purposes of this thesis, it is sufficient to draw from international law as an indication of shared understandings. From this basis I focus on the processes of negotiation in terms of defection and contestation. International normative regimes are not, after all, static in their nature, interpretation and contestation are indeed the focus of this thesis. International legal sources provide us with the language and foundations from which to undertake such an analysis, generating expectations for behaviour on these lines. With a clear definition of norms and the international normative regime governing detention in place, we can engage with overarching question of this thesis; **how have the normative constraints regarding detention practices been negotiated by the USA and UK in the war on terror so as to enable contestation of the international detention regime?** For example, were the political elites in the USA and UK successful in creating an enabling framework to allow for sustainable action counter to the regime? How was constraint manifest in this period given that it looks like the regime failed? And, how can we account for the processes that allow for contestation at a micro-foundational level? These questions are crucial if we are to understand the nature of normative constraint in these cases and the processes of contestation involved, thus enabling us to address the puzzle of counter-normative behaviour raised in this thesis.

## Conclusion

My objective in this Chapter has been to provide the foundations for understanding the international detention regime, as assessed in this thesis. I have considered the various ways in which international norms have been conceptualised in IR, in terms of power for realists and interests for neo-liberals. I then demonstrated why a constructivist characterisation of international norms captures many more dynamics of their functioning, which are crucial to understanding international behaviour. This is in terms of their social dimension, constitutive nature and importance attributed to identity in understanding the influence of international norms. I situated this thesis' conception of the international detention regime in the current debates within the constructivist

approach and highlighted exactly where this study falls in the broad spectrum of 'constructivisms'. The multiplicity of identity and broader normative environment are central to analysis in this thesis, allowing for a greater degree of contestation and defection, with the influence of international normative regimes characterised more as an interactive process. International law was then utilised to provide the foundations for an assessment of the international detention regime and the language through which such analysis can be sought. Chapter 2 will give greater specification to the framework generated in this thesis by drawing from social psychology, in particular the social identity approach to provide a micro-foundational basis for this contribution to constructivist research, focusing on the contestation of international detention regime.

## Chapter 2 – The Contribution of Psychology

Over the past decade psychology has been granted an increasingly significant role in constructivist research (e.g. Shannon, 2000; Shannon and Keller, 2007). The demand for scholars to give greater specification to the functioning of normative regimes, particularly regarding their influence on the behaviour of states, has provided a considerable catalyst for such moves. Psychology has proven to be of great assistance in this area. In this Chapter I will demonstrate why an engagement with the discipline of psychology, particularly social psychology, is crucial to understanding the issues of concern in this thesis; that is the processes of defection and contestation of the international detention regime. In particular, I will establish why some of the insights generated in social psychology are essential to approach the overarching question of this thesis**; how have the normative constraints regarding detention practices been negotiated by the USA and UK in the war on terror so as to enable contestation of the international detention regime?**

Psychology, like other social sciences contains different ways in which to view the world and the nature of its employment in constructivism certainly reflects this. This Chapter will consider these variations, demonstrating why social psychology (particularly insights from the social identity approach) provides the most beneficial framework from which to engage with the questions of this thesis. I argue that the social identity approach, provides a framework for understanding the processes of contestation in relation to international normative regimes (more specifically, that associated with detention practices as outlined in Chapter 1). Whereas research into the varying impact of normative regimes in the international sphere has tended to focus on disparities in norm strength (Legro, 1995; 1997), variations in internalisation and diffusion at the state level (Risse, Ropp and Sikkink, 1999; Flockhart, 2006), and a separation of the logic of consequences from the logic of appropriateness as assessed in Chapter 1, these insights generally rely on a dichotomy between compliance and defection and lack a persuasive account of both influence and contestation. The social identity approach, however, provides a micro-foundational assessment which highlights the interactive processes with the broader social context that have a significant impact on normative influence and contestation internationally. Thus, these contributions enable a much more comprehensive analysis regarding the processes of norm influence and contestation.

In order to support this position I begin by firstly considering the historical engagement of psychology with international relations, largely in terms of leadership studies and diplomatic style. I demonstrate how this became much more analytical in orientation in the 1970s/80s reflecting changes in psychology itself. The growth in literature focusing on foreign policy analysis, leadership and decision-making, particularly in times of crisis, is reflective of this period. From this basis I evaluate the different ways in which psychology has been utilised in the constructivist research program, considering both the reasons for engagement as well as the implications. This will form the second section of the Chapter.

In the third section I demonstrate the potential value of further engagement with the social identity approach, establishing a framework for assessing the negotiation of normative constraints to allow for contestation and defection from the international detention regime. I outline the ways in which the social identity approach (1) provides a micro-foundational assessment of the influence of normative regimes, (2) demonstrates how the processes of group membership are crucial to understanding variations in the influence of normative regimes, and (3) draws our attention to the management of social identities in the negotiation of normative constraint. These factors provide us with a framework from which to assess the main question of this thesis; how is normative constraint negotiated so as to allow for the contestation of international detention standards by the UK and USA? Furthermore, they inform the central argument of this thesis; **that contestation of the international detention regime is an interactive and dynamic process embedded in a broad social identities context**.

Thus, engagement with psychology in this thesis is not in terms of assessing the beliefs and values of state leaders to explain defection (the motivational dynamic that has been popular with much engagement with psychology in international relations), but instead focuses on the multiplicity of social identity and processes of contestation to generate further understanding with regards to the influence of normative regimes. This approach serves to highlight the interactive practices of leadership, as opposed to focusing solely on the personal qualities that particular leaders possess. The latter is certainly an important factor in international relations scholarship, but to address the processes of defection and contestation of the international detention regime in the cases of the UK and USA, this thesis needs a framework that brings together the elements of both leadership and the broader context of social identities.

## 1. Psychology's Relevance to International Relations

Psychologists are concerned with understanding the minds and behaviours of humans and other organisms. There has been a long founded role for such a discipline in international politics, particularly in the study of leadership and decision-making. This section aims to re-situate the use of psychology within this historical framework, serving as a basis from which to consider the more recent employment in constructivist research and generate informed accompanying debate.

The historical use of psychology in the study of international affairs has been predominantly based on research into the dynamics of leadership, in particular, the values held by leaders and their means for conducting diplomacy. Overall the early insights were not aimed at generalisation; instead they provided specific observations of particular leaders to understand certain circumstances. Accounts of this kind are based on the strong assumption that leaders can be the 'agents of change' (Elock, 2001: 5) and that leadership stems from the personal qualities leaders possess.

The study of personality has since become increasingly analytical, accompanied by a drive to establish leadership as a separate field of inquiry (Paige, 1972; Hermann, 1977). Through this process a significant body of literature has emerged focusing on the profiling of leaders and the development of research methods to enable investigators to assess personality types and leadership style from a distance (e.g. Feldman and Valenty, 2001). The importance of this type of examination is based on the assumption that the beliefs held by individual leaders are fundamental in determining the course of international affairs. Indeed Jervis (1994) has suggested that this has become ever more apparent in the increasingly complex post-Cold War era.

In addition to moves to make the study of personality and leadership style more analytical, the 1970s and 1980s also saw a growth in literature on crisis decision-making. This research programme aimed to generate general propositions about the ways in which leaders deal with crisis situations. Studies were conducted to develop guidance concerning the general mistakes that state leaders make as well as proposing means by which to avoid such mistakes. Significant illustrations can be found, for example, in Irving Janis' development of *Group Think* (1982), and the study of *Perception and Misperception in World Politics* by Robert Jervis (1976). Various areas

of psychology were granted a major role in identifying factors that are likely to have an impact on the ways that decision-makers process information in international politics.

Yet whilst the transfer of psychological insights to the study of international decision-making and leadership may seem like a natural and logical move to make, scholars have advanced a variety of objections. Jervis himself points to a problem that is often raised in the use of psychology in international relations, that of transferring results obtained in an experimental (often laboratory based) or interpersonal setting to international phenomena. A particularly interesting point that Jervis (1976: 4) suggests in relation to his own research is that, 'very few [psychology] experiments give subjects incentives to perceive accurately' whereas this tends to be a fundamental concern to policy makers.

In more general terms, relating to the use of psychology in international relations (or for that matter any other discipline), a consideration of the initial aims of the psychological research and the conditions in which the original studies were conducted are certainly crucial elements to take into account. These will often highlight conditions where specific factors, such as types of identity, were created experimentally and then tested with controls placed on other potentially influential elements.[1] This process of creation is markedly different to the discipline of IR that attempts to explain or understand past events or environments, often with the aim of predicting future actions.

We cannot, therefore, take for granted that the insights generated in psychology will transfer easily to the complex world of international affairs where isolating influence becomes a much more daunting and perhaps undesirable task. The latter is particularly apparent when the aim of research is to assess the multiplicity of influences, as opposed to testing the impact of singular isolated variables. Whilst both approaches are important for constructivist scholars, depending on their orientation, multiplicity is of significant concern in this thesis.

This brief discussion highlights the presence of reservations in drawing from psychology even when there is a shared methodological basis such as a focus on individuals and a positivist understanding of the world in terms of the 'search for explanation, description, and prediction' through the isolation of variables (McDermott, 2004: 3). Ultimately though, these common foundations and the evidently crucial role

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[1] For a consideration of the experimental method and social psychology see Haslam and McGarty (2001).

of psychology in this area of foreign policy analysis and decision-making, in addition to the value of such an engagement, have enabled scholars to overcome the misgivings that are raised. This is certainly reflected in the significant growth of the field, for example in the expansion of undergraduate modules focusing on both political psychology and psychology and international relations, particularly in the USA (e.g. Rose McDermott at the University of California, Santa Barbara and Paul Kowert at Florida International University; also see the *International Society of Political Psychology's* website for course listings).

This shared basis is not necessarily true however of constructivism. Caution is therefore required in terms of the manner of engagement with psychology. The discussion in this section, whilst only providing a cursory glance at the material, serves to provide a basis from which to consider the expanded use of psychology in constructivist research.

## *2. Psychology in Constructivism*

Having briefly highlighted various benefits to the employment of psychology in the study of issues such as leadership, diplomatic style, and decision-making, as well as some of the reservations that have accompanied such moves, I will now assess the different contributions that psychological insights have made within the constructivist research program. The factors discussed above will be very important to consider in the course of evaluating the different ways in which constructivist scholars have engaged with psychology to date. First I will briefly outline why constructivist scholars have drawn on insights from psychology, as despite initial reservations as referred to above, the use of insights from psychology to enhance aspects of constructivism has been on the increase over the past 10 years. This has been particularly apparent in research into international norms and normative regimes. This section will briefly examine some of the reasons for this increased engagement with psychology.

As demonstrated in Chapter 1, constructivist scholars have provided a diverse range of literature revealing the important role of normative regimes in international affairs. Those towards the conventional constructivist end of the spectrum have focused on questions surrounding their varying impact on state behaviour. In allocating substantial influence to international normative regimes, defection and contestation become more difficult to understand especially in cases where these standards are thought to be

embedded domestically within the state. As suggested in the previous Chapter, the ways in which scholars have accounted for defection in the cases assessed in this thesis would benefit significantly from analysis informed at the micro-foundational level, particularly where there is more engagement with processes of contestation. The issues advanced in Chapter 1 certainly raise the question of how deep we need to research within the state to understand the variation in normative influence.[2] If we are to bring the individual decision-maker into analysis then it would seem that psychology has a substantial role to play, this position certainly fits with research highlighted in the previous sections concerning the importance of individual leaders in the study of international affairs. The question of how normative regimes actually connect to individual actors is one raised by several scholars (e.g. Yee, 1996; Checkel 1998) and is a challenge that is taken up by Vaughn Shannon whose work I shall consider in more detail below. There certainly is a need to assess how political elites interpret their situations, particularly regarding international normative regimes, and as such the move to psychology seems an appropriate one to make.

Psychology can provide the means to account for the variation in normative influence by focusing our attention on constructivism's micro-foundations, how constructivist concepts are influential at the individual level (Checkel, 1998; Goldgeier and Tetlock, 2001; McDermott, 2004). Shannon (2000: 298) is a strong advocate of such a position suggesting that we can draw on the 'psychological needs underlying constructivist logic' to further illuminate the factors involved in normative influence.[3] Utilising research from psychology certainly provides a basis from which to study the influence of normative regimes at a level beyond the state. Psychology can provide insights in a way that other disciplines cannot primarily due to their focus on individuals.

Constructivist scholars such as Alexander Wendt have capitalised on psychological contributions by directly transferring them to the state, personifying the state by suggesting that such entities function just like people do. Whilst such an approach provides for very interesting analysis this is not the position taken in this thesis. Indeed, I disagree with Wendt's statement that the state-as-person has become 'so deeply embedded in our common sense that it is difficult to imagine how international politics might be conceptualized or conducted with out it' (Wendt, 1999: 196). Such a position

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[2] This was also a point advanced by Checkel (1998).
[3] This point will be further developed when I consider Shannon's work in more detail below.

is certainly tempting particularly as state leaders themselves often 'engage in the practice of perceiving states as people' thus effectively creating such a social reality (Greenhill, 2008: 346). However, the state only has the capacity to 'act' based on human agents. Human political action takes place within the structure of the state and pertaining to the state, but the state-as-person cannot replace the actions of individuals in our assessment of international affairs. Indeed, to do so would miss much variation in behaviour, particularly in terms of contestation relating to international normative regimes. As Flockhart (2006) suggests, individuals are socialized and act; this represents the position taken in this thesis. Thus, I agree with scholars such as Wight (2004) that the state is not a person and as such cannot be ascribed personal qualities.[4] Instead the focus in this thesis is on the political elites in the state and their interactions with representatives of the different social identities associated with the state. The state provides a framework and structure – as such it very much exists as an entity, but this is not separate from the subjects of analysis which are the individual's that represent the state.

On this basis, psychology enables us to explore the normative and regime based insights of constructivism at the level of the individual. Such an approach provides significant micro-foundational understanding to key concepts, supplying greater specificity and capacity to account for variations as well as mechanisms for change that are generally obscured from analysis.

As highlighted at the end of Chapter 1, there is a great deal of multiplicity to normative regimes and international social identities. Constructivist research towards the thicker end of the spectrum certainly gives us the means by which to acknowledge this multiplicity and accompanying contestation. However we are left without a micro-foundational account by which to assess normative influence in this framework. Certainly, scholars demonstrate how the construction of norms set the rules of the game and the parameters within which action can take place, developing by means of contestation and co-constitutive processes. However, greater specificity could be provided to assist scholars in understanding these processes and the negotiation of normative constraint, in a framework that incorporates both contestation and influence. This provides the motivation for engagement with psychology in this thesis.

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[4] As Wight further argues, this does not mean the state cannot have agency, as agency 'also resides in structural contexts' (2006: 293).

## 2.1 Psychology's Added Value

Given the reasons above for looking to psychology, how exactly have the insights generated in this discipline been used to benefit constructivism to date? Certainly this has varied hugely in terms of scope and amount of psychology used. Whilst some scholars have engaged with psychology fairly minimally to illustrate small modifications or clarifications of constructivist concepts others have gone much further and privileged psychological components.

We can see references to psychology in the work of Wendt (as mentioned above) particularly in terms of his '"sociological social psychological" form of systemic theory' (1992: 394) in contrast to the economic basis of neo-realism. Wendt certainly cites several sources from psychology or at least political psychology and this provides the basis for the cognitive-constructivism that he presents. Ted Hopf (2002) also follows this cognitivist line to develop an understanding of how identity works. By drawing on literature from experimental psychology, identity is demonstrated to function in a similar way to heuristics, schemas and scripts providing us with the means by which to classify and make sense of the world. Identity allows us to interpret the world, and in turn dictates what about the world is considered relevant. Partly as a consequence of this 'individuals routinely choose only a small fraction of the actions, verbal and otherwise, that are objectively available to them at any given time' they are in this sense 'bounded by the social cognitive structure, its discourses, and their identities' (Hopf, 2002: 5). The author proceeds from this basis to provide an inductive account of Russian identity, by also drawing on sociology and social theory.

The value of psychology in the above research is very much limited to providing a basis for understanding the functioning of identity as a cognitive shortcut. Hopf gives clear reasons for this limitation in terms of the theoretical pre-loading associated with other insights from psychology regarding identity. The author refers in particular to the assumptions that are generally made concerning issues such as the drive for group membership that underpins a great deal of research in social psychology. With the inductive emphasis in Hopf's work it is clear that engaging with psychology any further would lead to a compromise of the research objectives. Psychology thus helps by contributing to an understanding of the functioning of the key concept of identity and providing a basis for such research. However beyond this the role of psychology is minimal.

Psychology has also been drawn upon in the domain of social learning and persuasion (Finnemore, 1996; Checkel, 2001; Finnemore, 2003). Finnemore (2003) for example has employed concepts from social psychology to assist in highlighting certain factors involved in explaining normative change with regards to the changing purpose of the use of force. Social psychology is used to identify the means by which social movements 'change law and institutions, as well as social norms and understandings' (2003: 151). Finnemore specifically applies insights from social psychology to illustrate individual-level mechanisms of change such as 'persuasion and communicative action', as well as the 'affective mechanisms' of liking and empathy.

With regards to the latter, Finnemore suggests that affect and emotion have been largely neglected in the IR literature however they are considered by the author to be 'essential to creating purposes for social action' and initiating change (2003: 154). This is a point also raised by Ross (2006), who, also engaging with psychology, suggests that constructivists have neglected the important role of emotions in identity formation. Finnemore draws on research from psychology that has demonstrated our tendency to be more easily persuaded by people we like, as well as insights suggesting that increased interaction with others increases our liking. Finnemore also focuses on the issue of empathy. In terms of policy this area is particularly interesting as changes in empathy are considered to 'create changes in identification with others, ergo changes in political priorities for intervention' (2003: 157).

Farrell (2005b) alternatively, draws more specifically on social identity theory from social psychology. The author highlights the concepts of 'norm bolstering' and 'norm stretching' as alternative strategies that may be sought in rising threat conditions. This is in relation to situations where militaries are faced with strategic circumstances where they come into conflict with the normative regimes as set in humanitarian law and those of conventional warfare. Which alternative is advanced is suggested to depend on the nature of the norm; whether it is well or poorly established. Where norms are poorly established it is thought that there is much potential for norm stretching, although a desire for legitimacy will prevent violation. If a norm is well established actors are thought to put more resources into bolstering a norm even if that course of action is not the most satisfactory in terms of strategic imperatives. Psychology is therefore used to illuminate the means by which actors can behave strategically whilst at the same time being norm-followers.

From this brief consideration of some of the ways in which psychology has been used in constructivist research we can see that this has been for a variety of purposes, but has largely centred on the need for greater agency and understandings at a micro-foundational level. The studies above have all tended to use psychology in a fairly minimal but significant way. This has certainly suited the nature of their research. However, Hopf (2002) highlights further reasons for this restricted usage. One particularly significant point that Hopf raises is that psychology often goes too far in focusing on the individual, sacrificing the importance of social structures. This is an issue that I will consider in more detail below in relation to the work of scholars such as Vaughn Shannon where individual state leaders are privileged. I demonstrate why I agree with Hopf's claims in this respect. However this does not prevent further engagement with psychology and utilisation of the micro-foundations that this discipline provides. To overcome this issue I engage to a much greater extent with the social identity approach in social psychology, where individuals are firmly embedded in the broad and complex normative and social identities context.

## 2.2 Decision-Making in a Normative Environment

One distinct approach to the question of defection from international normative regimes has been put forward by Vaughn Shannon. The author claims that the sociological focus of constructivism has created an obstacle to the study of norm violation (as he terms it). Instead his research centres on the individual decision-maker operating within the international normative environment. International norms, in this sense, function to constrain policy makers as they pursue their interests, process information, and make decisions. To explain this Shannon draws on psychological insights concerning decision-making and argues that norms operate as shortcuts, based on actors' needs to organize and comprehend difficult situations. They also indicate to actors the means by which to satisfy their need for social approval[5] and the need to maintain a positive self-image to enhance self-esteem. As such they 'indicate pathways likely to bring positive feedback to actors, and provide a reasonable heuristic for successful action' (Shannon, 2000: 300). Psychological needs are used to underpin the constructivist logic of norm compliance, whilst recognising instrumental imperatives as well.

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[5] Actors are considered to be both socially aware, as well as conscious of their own interests and instrumental needs.

For the violation of international norms to occur, Shannon suggests that leaders must be motivated to violate due to a conflict between their 'perceived "national interests" and a given norm' (2000: 294). This conflict then drives actors to interpret the situation in such a way as to mitigate the restraints of the norm so they are able to justify the violation as 'socially acceptable'. This is particularly important if international social standing is of great value to the actor, and as a consequence violation will only be possible if there is sufficient room for interpreting the norm or situation in such a fashion as it is justified. In this sense the 'parameters of a norm indicate under what situations the norm's prescriptions will apply' (Shannon, 2000: 295). To resolve the dilemma posed by a conflict between actor interests and social structure, Shannon suggests that policy makers employ the use of accounts. Account-giving is a concept studied in psychology and involves individuals using several methods to justify action that is in violation of a norm, to both themselves and others (Fritsche, 2002, provides a good review of the typologies used). In Shannon's assessment accounts take the form of apologies, denials, excuses and justifications[6] which are used to 'avoid negative social judgments, and maintain a positive self-image' (Shannon, 2000: 299). If actors have both the will and the ability to violate in terms of the above, violation is considered to be a more likely course of action.

Shannon does recognise some of the failings of this approach in his later work (Shannon and Keller, 2007), for example that the simple existence of the above circumstances is not enough to guarantee violation, and that comparatively unambiguous norms can be violated. Nonetheless, there is another issue that I would like to raise here. That is the usefulness of framing arguments in terms of compliance/violation seemingly as opposites, which I also considered briefly in Chapter 1. By doing so we appear to be creating a value judgement, associating compliance with 'good' behaviour and violation with 'bad'. Norms surely can be either; this is a matter of judgement as appropriate does not necessarily mean good or bad, although it is often portrayed as such in constructivist research (e.g. Finnemore and Sikkink, 1998). Bad norms can spread too, for example Fujii (2002) explores the diffusion of a genocidal norm in Rwanda. Indeed, the normative environment is very complex where regimes often clash, compliance in one area may lead to violation in another – a point missing from assessment that focuses on singular norms. Whilst Shannon does acknowledge that norms have many sources, our understanding would surely benefit from a framework that embraces this as opposed to

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[6] Each has a different purpose and effect on the norm in question.

focusing on one isolated source and comparing this to behaviour. In addition to this, by concentrating on violation versus compliance, it also becomes much more difficult to consider issues such as the changes to the shared meaning of norms that can result from contestation.

We can therefore identify some potential difficulties with this approach for the type of analysis sought in this thesis that is heavily grounded in multiplicity. This largely results from the strict concepts used by Shannon. Whilst I have further reservations about this manner of engaging with psychology, before moving on to these I shall reflect on how Shannon has developed this approach. He has done so partly in collaboration with Jon Keller, also based in the USA. Keller's work largely falls in the domain of foreign policy decision-making and political psychology so has a similar focus to that considered in the first section of this Chapter, considering the relevance of psychology to the issues of IR.

Keller's (2005a; 2005b) research concerns the impact of democratic norms of restraint on decision-makers. Keller focuses on domestic constraint, and differentiates between direct constraints and potential constraints. Most constraints are not considered to be direct, they are instead potential in nature, and as such they must be interpreted by leaders before they can exert an influence on policy. The core of the argument is that potential constraint cannot be deduced from the apparent nature of the constraint instead this can only be understood in relation to the personality informing interpretation.

The author proposes two approaches to constraint, constraint respecters and constraint challengers. The former involves leaders who tend to internalise the constraints of their environment, where as the latter focuses on constraints as obstacles. These concepts are then used to analyse decision-making processes in times of crisis. Four factors were considered to be particularly relevant in determining whether a leader was to be characterised as a constraint respecter or challenger. These included a continuum on the following aspects; task or interpersonal emphasis, the need for power, distrust, and nationalism. The first two shape sensitivity to constraints in general and the second, the tendency to pursue violent policy.

Keller explores the impact of these factors in times of crisis as it is in these circumstances that 'the connection between leaders' characteristics and their states'

foreign policy behavior is likely to be particularly strong' (2005b: 214). The author tests a range of hypotheses relating to expectations of the techniques that constraint respecters or challengers will employ to manage crises and domestic constraint. This is regarding the crises of Vietnam (1961) and Laos (1961) in relation to President Kennedy (rated as a constraint respecter), and Grenada (1983) and Libya (1986) in relation to President Reagan (rated as a constraint challenger) (Keller, 2005a).

Whilst there are some situational differences, Keller (2005a: 862) argues that the 'very different perceptions and responses to potential pacifying constraints exhibited by Kennedy and Reagan' cannot be attributed to these factors alone, but instead demonstrate the importance of leadership style in relation to domestic constraint. Leadership style is considered to be a highly significant source of variation in how leaders perceive and respond to domestic constraints, yet Keller certainly does not suggest that this factor works alone.[7]

In a later paper authored by Shannon and Keller (2007) these issues of personality and leadership style are related directly to the violation of international norms. The authors build on their respective analysis and propose that violation is in fact heavily influenced by the beliefs and decision-making styles of leaders. Two areas are considered in determining leadership style – how sensitive the actor is to the 'political context' and how they 'view the international environment'. If actors are deemed to be low in sensitivity to political context, and view the world in terms resembling a Hobbesian state of nature, then they are considered to have motivation to violate. Those leaders considered to be more sensitive to their political context and with a more favourable world outlook are deemed to be less likely to violate international norms.

The authors provide an illustration of these arguments with reference to the 2003 military intervention in Iraq. Through a consideration of U.S. officials involved in the decision to go to war in Iraq,[8] Shannon and Keller suggest that 'distrust' and 'ingroup bias' are the most important factors in predicting actors' orientation towards violation.[9]

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[7] Keller suggests that there is a need for a more complete model that also accounts for the influence of situational factors and the 'precise character of the constraints themselves' (2005a: 860).
[8] President George W. Bush, Vice President Dick Cheney, Secretary of Defense Donald Rumsfeld, Secretary of State Colin Powell, and Deputy Secretary of Defense Paul Wolfowitz. Senator John Kerry is also included to increase variation on the dependant variable. (Positions as at time of intervention).
[9] Task/interpersonal emphasis, need for power, belief in ability to control events, self-confidence, conceptual complexity were the other factors tested.

This moves beyond Shannon's (2000) previous work concerning the belief that states wish to avoid 'anti-social' norm violation to enhance a positive self-image, and instead focus' on variation in this due to personality factors.

Shannon and Keller cite Hermann's (1999) previous consideration of these issues for clarification on the differences between the concepts. Hermann suggests that for those high in distrust and ingroup bias:

International politics is centered around a set of adversaries that are viewed as "evil" and intent on spreading their ideology or extending their power at the expense of others; leaders perceive that they have a moral imperative to confront these adversaries; as a result, they are likely to take risks and to engage in highly aggressive and assertive behaviour (1999: 29).

For those who are low in these traits:

[The] world is not a threatening place; conflicts are perceived as context-specific and are reacted to on a case-by-case basis; leaders recognize that their country, like many others, has to deal with certain constraints that limit what one can do and call for flexibility of response; moreover, there are certain international arenas where cooperation with others is both possible and feasible. [Their] focus is on taking advantage of opportunities and building relationships (1999: 28)

It seems from this then that those who are high in the traits of distrust and in-group bias are likely to disregard international norms as ineffectual. Shannon and Keller suggest that all members of the Bush Administration studied, except Colin Powell, were rated high on distrust and in-group bias. Whilst the authors do acknowledge that this approach does not diminish the importance of structure (instead it is to supplement this) the importance they place on individual factors such as personality is clear to see.

This approach to constructivism is based on international norms as environmental constraints to which decision-makers vary in their sensitivity.[10] Psychology plays a major role in analysis of this kind and is incorporated in a fairly direct manner. Psychology is used to provide the means by which to assess the micro-foundations of constructivist ideas concerning the influence of specific international norms and their effect on individuals. Shannon and Keller suggest that whilst we have seen a move to 'second-wave constructivism' where agents (individuals, collectives or states) are

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[10] This is also true of other authors that have considered the role of psychology in constructivism, for example Goldgeier and Tetlock (2001), in terms of trade-off reasoning and bounded decision-making.

deemed to internalise norms to differing degrees we should in fact move beyond this understanding to focus more on how norms are perceived or understood by individuals and how they function within the policy-making process. This also reflects moves in political psychology to engage more with constructivism to provide a more mainstream basis for their insights (Houghton, 2007).

Such an approach does indeed fit with the direction that many have asked of constructivism in terms of bridging the gap between international norms and individuals, giving greater specification of how they function and are influential at this level (for example Yee, 1996). Whilst the authors do clarify that they do not 'dismiss norms out of hand as do realists' (Shannon and Keller, 2007: 82), as their purpose is to approach questions of why violation occurs, it is questionable how much is left of the constructivist understanding of international norms particularly in terms of their constitutive effects. The individual is quite isolated from the broader normative environment, interactive processes are negated, and constraints simply seem to boil down to a matter of choice with little regard for the role of audiences in this process.

By isolating the individual and a specific singular international norm to such an extent we seem to be moving away from the core of constructivism, perhaps more towards the domain of neo-liberalism. To be fair, some aspects of the above research suggest that international norms are constitutive for some leaders and not for others. However, we must then ask where do the interests come from for those leaders that are not influenced by international norms, are they singularly held interests, interests that are dominant in the decision-making group, reflective of the wider domestic population, or are they some how 'natural'? I would tend to follow Meyer's (2006: 527) statement that, actors 'cannot extract themselves and their potential utilitarian considerations from the cultural and social context in which they are embedded and their actions will always reflect this context.' The approach taken by Shannon suffers from too much top-down emphasis in terms of the influence of international norms as opposed to an interactive process; also the meaning of the international norm in question is simply assumed. This again reflects the issues raised in the previous Chapter.

So is it really the individual identity of the elite policy makers that we should be concerned with in assessing the influence and contestation of international normative regimes? What about the social aspects of identity? What are the implications of this

individual analysis for constructivist research? Certainly, by presenting international norms in the way that Shannon does, the link between norms and identity, and therefore their influence, appears to be markedly reduced. Yet, given the social and collective nature of international normative regimes can our understanding of these issues really come down to a few key players and their personality to understand the negotiation of international normative constraints? Although Shannon and Keller are justified in pointing to the previously broad claims made by constructivist theorists concerning the power of structural variables to constrain state action, and hence their inability to account for violation, I question whether they give slightly too much agency to the individual as opposed to embedding them in broader structures. Indeed I disagree that the individual can truly be isolated to such an extent as is required in research of this nature.

## 2.3 Norms, Identity and the Social Identity Approach

The research outlined above is by no means the only way we can engage with psychology in order to provide a micro-foundational assessment of normative influence and contestation in international affairs. The area I shall now explore is the potential contribution of the social identity approach from social psychology.[11] Whilst Shannon's account does not really consider identity (this was only in terms of individual personality), social psychologists, particularly those working from the social identity approach have incorporated the 'multifaceted and situationally contingent' nature of identity into their analysis (Huddy, 2001: 127-128), and as such would seem to have much to offer constructivism on the basis outlined in Chapter 1, where multiplicity and changing interpretations were drawn out as key factors from the literature.

Insights from this approach to psychology have been applied to issues in international relations such as inter-group conflict (for example Gibson, 2006; Mercer, 1995), to assess potential threat (Gries, 2005), societal security (Thelier, 2003), norm diffusion (Flockhart, 2005, 2006), and the role of recognition in identity formation (Greenhill, 2008). Whilst these contributions span different theoretical approaches to IR, in this section I shall concentrate specifically on usage in constructivism. In many respects the social identity approach is highly complementary to constructivist research. This is partly due to a shared concern with the impact of norms, social influence, and the

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[11] This approach was briefly mentioned with regards to the work of Farrell (2005b) earlier in this Chapter, which specifically engaged with SIT.

functioning of identities. As the social identity approach is centred on the relationship between the individual and social groups this perspective is a particularly appropriate area of psychology with which to engage.

It is perhaps surprising then, that constructivist scholars have not granted more attention to this developing research program.[12] Logical connections are certainly ripe to be made given the similarities in research focus. In fact, constructivist scholars have in the past been critical of the value any enhanced engagement may bring (Checkel, 1998: 345). This position is understandable given some of the difficulties with early insights in terms of their applicability to real world situations beyond the laboratory. The position advanced in this thesis, however, reflects the growing body of research within the social identity approach that addresses these and other concerns.

This approach to social psychology is based on a growing body of literature that originated in the 1970s. Unlike the forms of psychology drawn upon in the previous section, the social identity approach concentrates on social groups; social identity is defined in terms of group membership or association with a group.[13] The key tenets of this perspective are found in both Social Identity Theory (SIT) and Self-Categorization Theory (SCT), which, taken together, present an account of the psychological processes of group membership related to the comparative context and based on assumptions of motivation for membership.

SIT was introduced by Tajfel and Turner in 1979 to explain findings generated in a series of 'minimal group experiments'[14] (Tajfel, Billig, Bundy and Flament. 1971); how it was that individuals came to express preferences for an in-group defined on the basis of minimal shared characteristics such as being labelled as having a preference for the paintings of Kandinsky or Klee.[15] The 'simple designation of group boundaries' was

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[12] Notable exceptions include Flockhart (2005; 2006), Greenhill (2008).

[13] The concept of social identity has various meanings across the social sciences. For a review of the different types of social identity conceptions see Brewer (2001).

[14] This involves volunteers that have not previously met. After being asked to estimate the number of dots on a screen participants are divided into groups, which they are led to believe is based on their having over or under-estimated in their approximation. The allocation is actually completely random. Having been assigned, the groups are asked to distribute money between their group and the other; this is done on the basis of pre-defined matrices. Whilst we would expect participants to have no preference on distribution, they actually show strong in-group favouritism in both absolute and relative terms.

[15] Three variables are considered to influence in-group favouritism. Firstly, the extent to which individuals identify with the group and internalize the group membership and it becomes part of their self-concept. Secondly, how much the context in which we are in makes comparison with a relevant out-group meaningful, and thirdly the relevance that this comparison has (Tajfel and Turner, 1979). I shall not

enough to lead to the basic construction of a social identity, which consequently had an impact on the decision-making behaviour of individuals in the group (Huddy, 2001: 133). Hogg and Abrams (1988: 16) suggest that this reflects a process by which the group 'installs itself in the mind of the individual'; the individual not only becomes a member of the group, but the group also becomes constitutive of the individual. As individuals are members of many groups they have multiple social identities with the potential to influence behaviour. This influence is dependent on social identity salience; that which is salient forms the basis of our self-conception in terms of 'our sense of self and associated perceptions, feelings, attitudes and behaviour' (Hogg and Vaughan, 2005: 127). This has a significant bearing for constructivists when assessing the impact of international normative regimes on the behaviour of states or political elites as there are multiple normative influences to consider that may or may not be complementary – for example those associated with membership of a human rights social grouping, the UN, or indeed the military profession. Our attention is directed to social group memberships, with their varying content, to understand disparities in international normative influence, this is in contrast to other areas of psychology mentioned previously that concentrate investigation on the attributes of the individual.

SCT builds on the insights of SIT by highlighting the importance of categorisation in the process of social identity salience. Categorisation into social groups serves to satisfy the basic human need to reduce cognitive complexity and create a degree of parsimony, with regards to the complex social world. We need look no further than the discourse of state leaders in the USA and UK to see evidence of such factors, for example the very broad categorisation of the world into civilized and non-civilized groupings. Through the process of self-categorisation social identity salience is reached. This involves a series of stages where the social identity is '*situationally accessible, and chronically accessible*', it has a good '*structural fit*', '*normative fit*', and can 'satisfy *uncertainty reduction*' and '*self-enhancement*' to become psychologically salient (Hogg and Vaughan, 2005: 128 (see also Table 2, page 78)). Self-categorisation as a group member enacts the associated social identity (the normative content is thought to be largely derived from prototypical members), which, when salient forms the basis of our interests; if we identify highly with a particular group a benefit to the group is

be focusing on the areas concerning inter-group conflict. This is still an area very much under debate in the literature, whether or not motivation towards an in-group will lead to conflict (see Gibson, 2006).

considered to be a benefit to the self. A favourable representation of the social group is therefore taken as a positive reflection on the self.
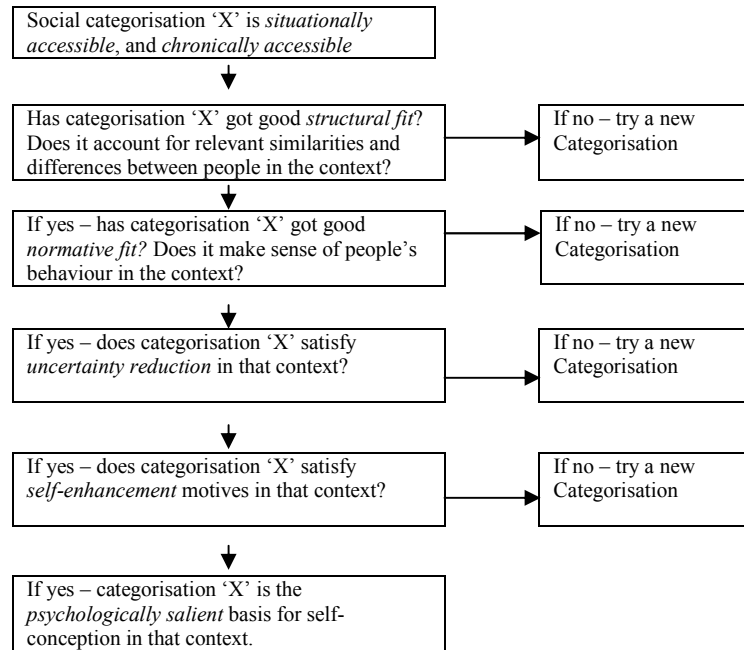
We can take an example here from constructivist research, where being a liberal democratic state is generally understood to influence the human rights behaviour of states with this social identity.[16] If we follow the micro-foundational insights generated in the social identity approach, being a liberal democratic state forms the basis of an international grouping of states with like minded political elites. If political elites identify highly with this social group and it is salient in the context then the norms that constitute the group will be influential and favourable representations will be seen to reflect positively on members. However, as this will always be only one of many group memberships (even if it generally dominates) the micro-foundational insights provided by the social identity approach allow significant room for variation in influence depending on shifts in both context and identification with the social groups. These factors, including the salience of representations of the social group are essential to any assessment of normative impact. In the case of this thesis, the salience of membership of a group of liberal democratic states is essential to understand contestation of the international normative regime prescribing minimum standards for detention and prohibiting torture.

Whilst this makes it appear that context dictates precisely which isolated social identity is most salient for us we must note that, 'social identities are emergent higher order products that are *transformed* by context, rather than merely aggregated from it' (Haslam and Ellemers, 2005: 72). We do not completely switch identity dependent on our situation, yet there is a degree of re-organisation where certain aspects obtain greater significance due to their contextual relevance. For example, our social identities such as gender or age will vary in salience across situations yet they do not disappear. The emphasis is on context to explain salience and this will in turn influence comparisons that are made to the out-group.

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[16] See Fierke's (2007) review of constructivism for this point.

**Table 2. Social Identity Salience**

| | |
|---|---|
| Social categorisation 'X' is *situationally accessible*, and *chronically accessible* | |
| ↓ | |
| Has categorisation 'X' got good *structural fit*? Does it account for relevant similarities and differences between people in the context? | → If no – try a new Categorisation |
| ↓ | |
| If yes – has categorisation 'X' got good *normative fit?* Does it make sense of people's behaviour in the context? | → If no – try a new Categorisation |
| ↓ | |
| If yes – does categorisation 'X' satisfy *uncertainty reduction* in that context? | → If no – try a new Categorisation |
| ↓ | |
| If yes – does categorisation 'X' satisfy *self-enhancement* motives in that context? | → If no – try a new Categorisation |
| ↓ | |
| If yes – categorisation 'X' is the *psychologically salient* basis for self-conception in that context. | |

(Taken from Hogg and Vaughan, 2005: 128)

If individuals come to define themselves in terms of a particular group membership then the norms of that social identity are seen as crucial to identity maintenance (Postmes, Haslam and Swaab, 2005). Our 'beliefs about appropriate behavior' are deemed to be a direct consequence of our 'self-perception as a group member' (Christensen, Rothgerber, Wood and Matz, 2004: 1296).

There is of course much more to this approach, further elements will be highlighted throughout the remainder of this Chapter as I outline the framework for analysis in this thesis. There is indeed a wealth of literature in psychology exploring and debating the different factors in this approach. For now though we have a sufficient basis from which to evaluate the use of the social identity approach in constructivism.

One prominent example is that of Flockhart (2005; 2006) who undertakes a substantial engagement with SIT in order to understand variation concerning the diffusion of international norms domestically. The author poses the question of why 'the same norms matter so differently to apparently similar agents' (2006: 90). As opposed to just focusing on the elite level (as in Shannon's work), a re-conceptualisation of the state is proposed in terms of two distinct social groups, the 'mass' and the 'elite', varying in social construction and 'categorization processes', thus leading to 'very different conceptions of interests and political preferences' (2005: 252). This will then affect the

perception of the norm set (Flockhart's term) in question and whether or not it will be influential; the relations between these two groups (the mass and elite), whether they are in agreement or not, is thought to depend on the norm set in question.

Flockhart (2006) uses the example of Denmark to illustrate that even where 'the traditional domestic structure concept would be characterized by homogenous relations between elite and mass, a social democratic ethos and a particular set of political structures and coalition processes, one will find that the constellation around state/elite-nation/people is completely different in the cases of Europeanization and Human Rights' (2006: 99-100). By viewing the state in terms of two different social groups we appear to be better placed to understand variations in normative influence.

To approach the question of norm diffusion however, Flockhart also needs to be able to account for shifting norm sets. After 'a critical juncture' or some form of 'commonly destabilizing shock' (the example of the end of the Cold War is given) Flockhart suggests that agents experience 'an ideational vacuum, where previously held stable ideas no longer provide a base for problem solving and policy-making' (2005: 259).[17] As in Hogg and Vaughan's model of social identity salience, if a social identity is unable to satisfy those factors identified, a new categorisation of the self will be sought in terms of a different social group membership becoming salient or indeed a new one being developed. In this period different idea sets compete, those of the preferred social group then win out. These ideas are then gradually internalised into the domestic structures of the state, successful diffusion depending on acceptance by both the mass and elite.

The framework that Flockhart presents is quite complex and I do not wish to re-articulate the whole argument here. Instead I shall draw out the main points that the social identity approach adds. These build on the insights of Marcussen, Risse, Englemann-Martin, Knopf and Roscher (1999) suggesting that change in the norm sets of elites is the result of a critical juncture. Research in the social identity approach proposes that if the social group is no longer satisfactory in terms of the criteria in the model, then there will be a need for new social membership. If there is a desire for membership,[18] the social identity of the group will be accepted and hence the associated

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[17] In this Flockhart is drawing on Martin Marcussen's (2000) ideational life-cycle.
[18] It is not thought to be possible to socialise agents that don't wish to belong.

norms or normative regimes become influential.[19] The social identity approach leads us to the conclusion that the salient normative regimes will be those associated with the social group attributed with the 'most positive value' (Flockhart, 2006: 96). This refers predominantly to the state level and international group membership. However, within the state there is variation in terms of social groups. Flockhart refers to the elite and the mass, although as I propose in the following section I intend to extend this to consider other sectors such as the military, legal, human rights and humanitarian, UN, and liberal democratic social groups. If membership of the new international group is not considered important for the social group of the mass or elite (it can work both ways) then the chances of acceptance of new norm sets are heavily reduced.

These contributions provide significant advantages, and serve to demonstrate potential benefits for constructivists in drawing on insights from the social identity approach. However, again there are limitations. Given Flockhart's concern with norm diffusion emphasis is understandably placed on this, internalisation involving 'successful norms transfer, achieved once the behavioural attributes of the norm set no longer require active enforcement and norm consistent behaviour has achieved a status of 'taken-for-grantedness'' (2006: 98). This, however, favours a focus on the progression from previously held norm sets to those in line with the Euro-Atlantic community, desire for membership of this group determining norm acceptance and leading to processes of diffusion and internalisation depending on the nation's people and political elite. Such an approach seems to suggest a positive one-way process towards the norms of the Euro-Atlantic community and as such a degree of finality is implied in the norms achieving 'taken-for-grantedness'. Does this then leave us with the same problems that were discussed in Chapter 1, in that we are puzzled by the emergence of behaviour that appears to be contrary to these norms or suggests a degree of contestation or defection after they seem to be embedded in terms of the two groups?

Certainly, Flockhart's analysis does refer to the possibility of 'de-socialization' of an 'unacceptable norm set' either 'gradually through long-term persuasive argument' or 'following an event that is perceived as a critical juncture within the society/social group in question' (2006: 107). This is to explain norm change through either top-down or bottom-up processes, change may occur through either the elite or mass first.

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[19] Although this is thought to vary in terms of degree of identification with the social group (e.g. Jetten, J., Postmes, T., Mcauliffe, B. J., 2002).

However, there seems to be a degree of tension between the stability implied in internalisation and the fluidity required for the changes in social identity salience of the social identity approach that needs to be further addressed. Conventional constructivism is based on a relatively stable understanding of norms and identity, whereas much less is taken to be enduring in the social identity approach, as emphasis is placed on the context-specific nature of social identity (Huddy, 2001; 2002). Indeed, the degree to which identity is context dependent or enduring is contested in the social identity literature and is generally taken to be an empirical question. Such disagreements should not be ignored as they generate further avenues for enquiry as opposed to assumptions to make.

Furthermore, the insights provided by Flockhart do not take into account the multiplicity of social identities (the Euro-Atlantic community and the sub-groups of the mass and elite form the focus of analysis) or the complexity of the international normative environment that are essential to understanding the questions of concern in this thesis. Indeed, the above analysis does not engage with more recent advancements in the social identity approach that move away from the previously mechanistic causational flow from context, to the salience of a particular social identity, to actions in line with that social identity. The dynamic and interactive nature of normative influence, contestation and multiplicity are not brought to the fore. The remainder of this Chapter engages with these and other more recent advancements in the social identity approach, and in doing so builds the framework for analysis taken in this thesis.

## 2.4 Developments in the Social Identity Approach

There are several areas where there has been significant progress in the social identity approach, that are beneficial to constructivist research. These revolve around questions concerning identity formation (Postmes, Haslam and Swaab, 2005), causational flows and the role and characterisation of context (Klein, Spears and Reicher, 2007), as well as issues of leadership (Haslam and Reicher, 2007) and the management strategies employed to cope with often competing social identities (Roccas and Brewer, 2002; Haslam and Reicher, 2007). Of primary concern for the questions of this thesis are causational flows, leadership and the management of social identities. These key areas will provide the basis for the framework of understanding employed in this study.

Traditionally the social identity approach has been associated with a highly mechanistic and one-way causational flow from context to social identity salience to action. However, Klein et al (2007) have expanded this framework to include reciprocal flows and engage with the strategic side to identity performance. Klein et al (2007: 41) provide empirical research to suggest a bidirectional approach where 'causality can flow back from performance to identity and to context.' They outline various ways in which these dynamic relationships may occur. Such an approach shares greater similarities with the key tenets of constructivism relating to the importance of practices which are both a consequence of context and identity, but also a means by which identity and context are shaped.[20] This is developed and supported at a level of analysis that draws individual actors into the picture. The interactive element is certainly an essential component of the position taken in this thesis, to assess the contestation and negotiation of normative constraint regarding detention practices in the international sphere. This allows for greater integration of structure and agency, crucial when our objective is to understand processes of defection and contestation, without negating the importance of the broader normative and social identities context.

Another interesting facet of the research presented by Klein et al reflects a growing trend in the social identity approach focusing on the influence of leaders in constructing particular social identities. This approach differs considerably from other ways in which constructivists have engaged with leadership, often either by negating the importance of leadership once norms are internalized (Risse et al, 1999) or by focusing on the attributes leaders possess (Shannon and Keller, 2007). Research in the social identity approach privileges social category membership, as opposed to individual characteristics. Leadership is demonstrated to be fundamentally dependent on the development of a shared identity and in contrast to a prioritisation of the specific personality traits, beliefs, and attitudes held by individuals, leadership is seen as 'a much more dynamic, active and practical process of social identity management' (Haslam and Reicher, 2007: 141).

Research in this expanding area of the social identity approach has tended to focus on the capacity for leaders to receive support,[21] based on analysis of followers (Duck and

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[20] Although the degree of separation between performance, identity, and context suggested in Klein et al's characterisation will not suit all scholars working within the constructivist research programme.
[21] Noting factors such as leaders' proto-typicality, distributiveness, fairness, or identity-affirming behaviour.

Fielding, 2003). Haslam and Reicher (2007: 125), however, argue for a more dynamic approach to the 'relationship between leadership, social identity, and social reality.' Through studying the interactive processes between leaders, on the one hand as sharing identities with followers, and as on the other creating and managing these social identities, we can appreciate the 'balance between existing constraints and future possibilities,' dependent on the way in which actors harness social identities and construct social reality (Haslam and Reicher, 2007: 128). Often in constructivist research norm entrepreneurs and norm leaders appear to be some how isolated from the broader normative context, as mentioned in Chapter 1. The social identity approach addresses this issue by highlighting the interactive processes that function at the micro-level, in terms of this thesis, in relation to political elites.

This approach to leadership differs from that which is often taken in psychology and political psychology in that it directs research toward the processes of social identity management. As Haslam and Reicher suggest, leadership 'is more about doing than having' (2007: 141). In contrast to the more traditional interpretations of the social identity approach, these developments also allow a greater role for state leaders and political elites in terms of manipulating social identities with regards to their fit to context as well as salience. This process is restricted, however, by audiences and context. These factors are considered to be central in influencing and organizing constructions of social reality.

The above insights share much in common with constructivism broadly conceived, but focus predominantly on the cognitive and social micro-foundations as well as questions of leadership processes, areas that are highly relevant to the questions of concern in this thesis. In the remainder of this Chapter, I demonstrate how a framework focusing specifically on the management of social identities by political elites, in terms of the social groups associated with the state, can provide significant insight into the processes of contestation and defection from the international detention regime.


## 3. A Framework for Understanding

As outlined above, the social identity approach has developed into a more interactive and dynamic perspective, much more beneficial for understanding contestation and defection. Insights point to the centrality of the processes of social identity management

in understanding the interactions between context, the social identities associated with the state, normative influence, and behaviour. I propose that in order to appreciate the processes of contestation regarding the international detention regime we have much to gain from assessing the management strategies employed by political elites. They provide a framework from which to understand the interactive nature of normative constraint in specific cases.

Research into the management of social identities is another area where there has been significant development in the social identity approach. Whilst previous laboratory based social identity studies have tended to focus on clearly defined groups, with a singular salient in-group and out-group, the political context is clearly much more complicated than this.[22] Leaders in particular, are limited in how far they can operate on a straightforward in-group/out-group dynamic since the social environment involves many memberships and audiences. The social identity approach, furthermore, has traditionally been based on a hierarchical understanding of social groups, where one is more highly valued than the rest. Yet this does not really capture the complexities of the political environment and the necessity to maintain different memberships and thus social identities simultaneously. In the political sphere we must also note that boundaries are less likely to be clearly defined.[23]

In light of these concerns social identity scholars have increasingly engaged with questions of management strategies as opposed to relying on that of hierarchy across all circumstances.[24] Scholars are recognising, more and more, that competing frames of reference (based on social group membership) can be simultaneously salient or overlap (e.g. Reicher, Haslam and Hopkins, 2005). Thus how these memberships are negotiated, how we understand social influence in light of overlapping and interconnected categories and how we deal with competing normative pressures becomes a matter of significant interest. Indeed, this is an area that has also often been neglected in certain strands of constructivism, where the emphasis has been on the impact and defection

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[22] One example of a real world study highlighting this is provided by Gibson (2006). In his assessment of in-group attachment the findings suggest that 'the influences on people are not purified; instead, they are often highly cross-cutting and contextual' (2006: 697).

[23] For an interesting study that considers the construction of boundaries between in-group and out-group, where they are drawn, and their implications for cooperation and conflict see Rousseau (2006).

[24] The hierarchical ranking of social groups in terms of salience and importance.

from singular international norms or shifts from one identity to another to explain change.[25]

An increasing number of social identity studies have demonstrated that we do not simply switch between different social identities as simplistic interpretations of the social identity approach have suggested (e.g. Klein et al, 2007).[26] Instead we attempt to render compatible our various different social identities. One complicating or constraining factor in this process is that of the various audiences to which there is potential accountability. Audiences can both judge and contest an actor's claim to be part of, or indeed representative of, a particular social identity, as well their interpretation of that which constitutes the social identity (Klein et al, 2007). The 'multiplicity of accountability pressures', as characterised by Klein et al (2007: 41), is certainly evident for leaders in the political sphere. Indeed, as social identities are by definition shared 'the individual cannot easily redefine or adjust one social identity to better fit with other identities' (Brewer, 2001: 122); this is dependent on persuasion and acceptance by the various audiences. In the context of international politics it is certainly fair to say that there are significant pressures and strategic considerations regarding both the selection and presentation of social identities. The management strategies employed will undoubtedly be based on such deliberations.

One typology of such strategies is provided by Roccas and Brewer (2002). The authors focus on ways to reduce inconsistencies in memberships, based on the need for cognitive consistency and compatibility between different beliefs and attitudes. In doing so they suggest four different ways in which multiple memberships may be organised. The first strategy, dominance, involves the subordination of the relevant social identities to one super-ordinate group identification. This could be used to mask or to reconcile divergence between subgroups or as a vehicle for social change, in terms of identity formation at a super-ordinate level and associated emergent norms.[27] The dominant

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[25] Of course the multiplicity of identity has been more apparent in areas of constructivism associated with scholars such as Maja Zehfuss (2001). However, this has tended to be in terms of social roles and has not been based on the micro-foundations for multiplicity and the capacity for management.

[26] The traditional approach is largely a consequence of laboratory based study as mentioned earlier in the Chapter.

[27] However, this form of social identity could lead to intolerance especially when the super-ordinate group is represented in a non-complex way, not representing the 'diversity of dimensions' but focusing instead on 'one set of prototypical dimensions' (Amiot et al, 2007: 368). Studies are cited that also suggest the more we see our own in-group as prototypical of the super-ordinate category, the more our attitudes to out-group are will be negative.

subgroup within the super-ordinate category is seen as most likely to impose its own characteristics on the group (Amiot, Sablonniere, Terry and Smith, 2007).

The second strategy involves the process of compartmentalisation, where the various social identities are differentiated and seen as applicable in different circumstances or in relation to different issues. The diverse social identities are kept separate, reconciliation is not attempted and context plays an important role in determining their relevance, as is traditionally associated with the social identity approach.

The third strategy identified by Roccas and Brewer involves intersection representation where the overlapping attributes of the diverse social identities are acknowledged and they are viewed on this exclusive basis. Only the attributes common to all the social identities form the area of focus as the basis for a new and very narrow category. The authors give the example of 'women' and 'researcher' as categories to form the exclusive category of 'woman researcher'. Whilst this process draws from the existing social identities to constitute the exclusive category, Hutter and Crisp (2005) have also demonstrated that when we cannot rely on the attributes of the categories themselves to explain the conjunction, we generate new emergent attributes. The example is given of a 'Harvard educated carpenter' where the conjunction demands new attributes not based in either category.

The final strategy Roccas and Brewer highlight is that of merging social identities. All divergent social identities are held despite their lack of convergence, as they all share at least some common features. They are all seen on the most inclusive terms.
Which of these four strategies is chosen is highly dependent on the degree of conflict between the different social groups and corresponding social identities. An additive strategy (such as Roccas and Brewer's final category) is highly unlikely in times of contestation when differences are accentuated. However, merging is likely to be fairly easy when conflict is not apparent. Where there are conflicting normative demands management is crucial to increase tolerance and efforts will tend to be made at achieving compromise and reconciliation. Compartmentalisation as a strategy could alternatively either exacerbate or reduce conflict, but in certain circumstances may be the only strategy available.

Expression of these strategies can vary and may be explicit in the language actors employ. Alternatively actors may make use of more subtle implicit suggestions. Overall these strategies aim to draw together or differentiate between multiple social identities, at times through the generation of new categories of membership, for example international coalitions fighting terrorism, or changes to existing categories, for example constructions of the international community as super-ordinate. The strategies serve various functions. First, to assist individuals in their ability to cope with their own multiple memberships and competing demands, second, as a mechanism by which to perceive the multiple memberships of others, and third, for strategic purposes such as mobilization or social change, particularly for those in leadership positions.[28]

Whilst the categories identified by Roccas and Brewer above are quite neat and appear to be isolated, I must note that this is not how I expect them to translate into the complex political sphere. Indeed, as will be apparent in the empirical Chapters to this thesis, they often appear in conjunction with each other in the same passage and in relation to the same social identity. Intersection representation in particular, does not feature purely in terms of forming an exclusive category exactly as Roccas and Brewer suggest. However, areas of overlap are bolstered, alongside other arguments, generally to support dominance. I use this interpretation of intersection representation in my analysis. The management strategies outlined above serve as a framework for analysis but it is important to stress that I do not attempt to impose strict and false boundaries around them.

**Conclusion**

In relation to constructivism there is much value to a consideration of how political elites as representatives of states manage different social identities and what this tells us about the interactive nature of normative influence as contextually situated. Such a framework provides us with insights into contestation processes which internalisation and personality based arguments miss out. The changing and contestable nature of norms is often marginalised as are the interactive processes of leadership that social identity scholars emphasise. This can however be brought to the fore in analysis by considering how the negotiations between context, social identities and international normative regimes are constructed. This is crucial to our understanding of how

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[28] The latter usage need not be direct in construction, but instead, as Klein et al (2007) point out, the use of ambiguity in discourse relating to multiple audiences is a potentially very significant strategy.

contestations and defections became viable policy options. We are indeed led to stimulating questions such as, what social identities are at play, how do they seem to interact, and how are they managed by political elites in order to allow for the contestation of international normative regimes? These questions will be explored in the empirical Chapters of this thesis in order to assess the interactive processes of contestation in relation to the international detention regime by the USA and UK 2001-2006. The value of the framework provided by the social identity approach, particularly in relation to the management of social identities, will be evaluated in responding to the overall question posed by this thesis; how are normative constraints negotiated so as to allow for the contestation of the international detention regime, by the USA and UK in the war on terror? I argue that such an approach is highly beneficial to the development of understandings in this area.

In order to show the value of the social identity approach it has been necessary to engage with the relevance of psychology to IR, how insights from the discipline have been used, particularly in constructivism, where there has been an increase in engagement over the past decade. I have provided justification for the type of psychology employed in this thesis, the social identity approach, by evaluating the different ways in which insights from psychology have been used by constructivist scholars and the implications these have for the study of normative influence and contestation. I have outlined the manner of employment adopted in this thesis, building a framework for subsequent analysis based on advancements in the social identity approach, in particular the management of social identities by political elites.

In the remainder of this thesis I evaluate how far these arguments are beneficial in enabling us to access the processes of contestation in relation to normative constraints, essential to answering the overall question of this thesis. This is based on the micro-foundational understanding of the influence of norms and normative regimes provided by the social identity approach in relation to the multiplicity of social identities. In order to provide such an assessment, Chapter 3 proceeds by identifying the social identities to be considered, providing justification for their inclusion, before Chapters 4 and 5 assess the management strategies apparent in 2001-2006.

# Chapter 3 – The Social Identities Contexts of the USA/UK

The last Chapter established the framework from which I will assess the interactive processes of contestation and defection from the international detention regime, by the USA and UK in the context of the war on terror.[1] By drawing from the micro-foundational insights provided by the social identity approach in social psychology, our attention is directed toward social group memberships (or association with different social groups), and their importance for understanding the negotiation of normative constraint. The purpose of this Chapter is to highlight the social groups of significance with regards to the international detention regime, building a picture of the social identities context within which political elites make decisions and set policies.

The normative context which IR scholars usually evaluate tends to be very limited, often focusing on one identity or one international norm, as evidenced in Chapter 1. This thesis moves away from such an approach by identifying and assessing the multiple social groups associated with the state, where these are relevant to the detention regime. This Chapter, unlike the others in this thesis, does not make substantive claims in itself with regards to the contestation of the international detention regime. The limited discussion presented is, nonetheless, very important to contextualise and provide clarity for the Chapters that follow.

Chapter 3 has three main objectives: (1) to identify the social identities to be examined in remainder of this thesis; (2) to define, albeit in a limited and generalised manner, these social identities; and (3) to argue why they are relevant to examine contestation of the international detention regime by the USA and UK. Practical restrictions prevent a more weighty analysis than that which I provide below. For example, the material used for this Chapter has been limited to that which is publicly available. These sources do not provide in-depth insights into the issues of concern. Whilst interviews with key personnel from these social groups may have overcome some of these constraints, there are still problems in terms of how much we can generalise from a very small sample of individuals. Indeed, there are further constraints in terms of access to officials, as well as the feasibility of such an approach within the confines of this thesis, given that describing these social identities is not the primary focus of analysis. To define each of these social identities in substantial depth would be a thesis topic in itself, and beyond

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[1] The basis for the international detention regime was outlined at the end of Chapter 1.

the requirement of this Chapter, which is to contextualise the analysis that follows in Chapters 4 and 5. Thus, I provide a very general and limited discussion of the complex social identities of concern in this thesis in order to provide the reader with a sufficient contextual basis for the analysis in the remainder of this thesis.

This Chapter considers the social groups of the UK and US militaries, the human rights and humanitarian social grouping, the UN, the UK and US legal professions, and membership of a group of liberal democratic states internationally, in this order. The optimal way to provide a valuable frame of reference for Chapters 4 and 5 is to consider these different social identities in relation to a set of three consistent questions. (1) What constitutes the social identity of this group? (2) How is this social group important to the UK and/or the USA? (3) How is this social group relevant to the international detention regime (and vice versa)? This Chapter builds on the framework established in Chapters 1 and 2, and generates a basis from which to assess the management of these social identities in Chapters 4 and 5.

*Method*

The social identities assessed in this thesis have been pre-selected for analysis. This is a significant point that requires further justification. This thesis does not attempt to recover, inductively, the social identities that are most significant in the discourse of political elites in the USA and UK 2001-2006. There are several reasons for rejecting such an approach. First, focusing only on the social identities evident in the discourse would not capture exclusions or significant issues that political elites refuse to address. Second, this would restrict our ability to assess interactive processes, as the basis for analysis would rest on the discourse of political elites. Third, political elites are unlikely to always directly refer to specific groups (they are more likely to refer to issues pertaining to that group), therefore, we need an understanding of the social identities in order to access the management strategies employed in the discourse.

The social groups included in this thesis have been selected on the basis of their overall importance to the state, thus the need for political elites to consider them in the formulation of policy, as well as their relevance to the international detention regime (and vice versa). I have not included membership or association with the EU because it is only the UK that is actually a member. I have also not included religion as a social group. Religion is of course highly significant to both Bush and Blair, however, the

inclusion of religion would go beyond what is feasible in a thesis. The different sections of this Chapter, which focus on the social groups identified, will provide further justification for those selected.

There are several other areas that I must also clarify before embarking upon the discussion in this Chapter. First, I do not in any way suggest that these social identities, understood in terms of social groups (see Chapter 2), are static. I do not engage with changes to them in this Chapter, as to track these changes would be a thesis topic in itself and is therefore beyond the scope of this research project. Some attempts to redefine these social groups will be considered in the course of Chapters 4 and 5, where relevant to the questions posed. Second, I realise that there are variations within the social groups presented – they generally do not form a coherent whole on all dimensions, there is of course room for variation as there is in any organisation or grouping. The purpose of this Chapter is to provide a general overview of the basis of these social groups, where variations within are highly significant, these will be acknowledged. Third, in order to achieve this assessment I will draw on key documents and discourse pertaining to these social groups. Fourth, as mentioned above, this Chapter does not claim to provide an in-depth assessment of these social groups. Various scholars have focused on each of these groups individually and where appropriate I will draw on their insights. I do not hope to replicate in any way studies such as those into military culture, or into the organisational culture of the UN. Whilst there is the risk of over-simplification, the modest objective in this Chapter is to establish the basic principles of the social identities context within which decisions and policies pertaining to the international detention regime are made.

## 1. The UK Armed Forces

**What constitutes the social identity of this group?** The social identity of the UK armed forces is based on the shared ethos and values of the three services, the Army, the Navy and the Air Force. Whilst there are clearly differences between these services, and even between the regiments and brigades within services, this Chapter aims to identify the general and fundamental principles that underlie this social group.

In terms of the ethos, values and standards that define the three services there is much similarity. The British Army (2008a) for example, emphasises the core values of, self-

less commitment, courage, discipline, integrity, loyalty, and respect for others, alongside standards of lawful and appropriate behaviour, underpinned by professionalism and excellence. The RAF (2008) and Navy's (2008) approach also reflects these core values and standards. The guiding principles of 'humanity **and** victory' (**emphasis added**, Ministry of Defence, 2003a), alongside duty (British Army, 2008c) permeate the discourse of this social group.

The overall objective of the UK armed forces however is to serve the aims of foreign and security policy as determined by the British government. These priorities feature in both the *Strategic Defence Review* (1998) and the *New Chapter* (2002), and are reiterated in the *Defence White Paper* (2003b):

To deliver security for the people of the United Kingdom and the Overseas Territories by defending them, including against terrorism; and to act as a force for good by strengthening international peace and stability (Ministry of Defence, 2003b: 4).

Certainly, many factors that contribute to the social identity of the UK armed forces, particularly regarding their purpose and future direction, are the result of government policy. However, this policy is also influenced by the character and existing doctrine and culture built up by the UK's Armed Forces. This is quite logical as policy must be militarily possible in terms of culture, training and capacity. Indeed the complex relationship between government policy and military doctrine is identified in the publication, *British Defence Doctrine* (Ministry of Defence, 2001a). The values and standards identified above are therefore crucial in the construction of government objectives and will also be central in establishing how these objectives should be achieved. Normative constraints are therefore evident, however, the manner in which they will be manifest is not clear. This is due to the complexity of competing factors, such as 'humanity and victory' as mentioned above.

**How is this social group important to the UK?** The UK armed forces form a central component of the British government's foreign and security policy (e.g. the *Strategic Defence Review*, 1998; Blair, 1999). Blair's 'Doctrine of the International Community' speech in 1999 granted a central role to the use of military force, with particular emphasis on fighting for values, should circumstances require such action. This built on UK involvement in Bosnia (1995) and Kosovo (1999), and set the tone for the use of force in Sierra Leone (2001), Afghanistan (2001) and Iraq (2003). The armed forces are

also a significant part of UK society based on strong historical roots, and responsibilities between the nation and the armed forces as codified in the military covenant (British Army, 2008c). Thus, they are a highly significant social group in relation to the UK.

**How is this social group relevant to the international detention regime?** The UK armed forces have been involved in the detention of prisoners in the war on terror, both in Afghanistan and Iraq. Their actions directly relate to the international detention regime. They are practitioners in this context and are responsive to the interpretations of the British government regarding appropriate detention standards.

The basis for an assessment of perceptions of the international detention regime rests on this social group's approach to the rule of law and human rights more generally. The rule of law is mentioned in the discourse, largely in terms of International Humanitarian Law (IHL) and guidance for soldiers in field operations as we would expect. *The New Chapter* to the *Strategic Defence Review* stresses that actions must only be taken 'when legally justified' (Ministry of Defence, 2002: 9) and conduct must be in accordance with 'international legal obligations' (2002: 12). However, the restrictive nature of international law is also highlighted, in terms of the enemy knowing the range of options available and the potential for permitted actions to be less severe than those outside the law. The 'increasing demands of legislation, including international law' (Ministry of Defence, 2001b: 10) and growing 'judicial scrutiny by international courts' (Ministry of Defence, 2001c: 16) are identified by the Ministry of Defence.

The need to address this intensifying international legal climate is acknowledged in terms of the training of servicemen and women, as well as 'the development and procurement of weapon systems' that are more suitable to this emerging environment (Ministry of Defence, 2001c: 16). The government's publication, *The Future Strategic Context for Defence* (Ministry of Defence, 2001c: 31) suggests that:

Weapon systems and tactics will need to evolve to cope with limitations on rules of engagement caused by public, international and allied opinion, and by developments in international law.

Thus there is much emphasis on the future requirements of international law, and public opinion in response to such a climate. Meeting these objectives is constructed as

something to strive for whilst at the same time being cautious about the 'possibility that these pressures will affect our ability to fulfil military objectives', and may be seen as a weakness by the enemy (Ministry of Defence, 2001c: 16).

In terms of human rights, there is a humanitarian focus in much of the discourse, indicated by the motto for the UK Armed Forces 'a force for good' as mentioned previously. The '[p]ressure to mount military operations for "moral" reasons' is identified as an area that will continue to increase (Ministry of Defence, 2001c: 14). There will be a greater need to tackle issues of human security and support human rights. Thus, human rights have become part of the armed force's objectives, yet concerns are also raised about the potential for 'unreasonable operational restrictions' that may be generated by such an emphasis (Ministry of Defence, 2001c: 17). There is an expressed desire for dialogue with 'other Government Departments and NGOs' on these issues and for public debate to be properly informed on the need to balance human rights with operational requirements (Ministry of Defence, 2001c: 17). The need for a positive international legal framework to encompass these competing demands is called for.

Thus, there is much complexity to this social identity. International normative regimes are highly valued and very important in the standards and values of this social group. However, these are often juxtaposed with operational requirements. Although this does begin to change with *The Aitken Report* (British Army, 2008) where defection with regards to detention is seen as damaging to operations. To set government policies contrary to the international detention regime or that place strain on the Armed Forces in terms of compliance with these standards would undermine the Armed Force's reputation internationally, sometimes compromise effectiveness, as well as be counter to their values and ethos.[2] The strong emphasis on duty in the armed forces means the government has a responsibility to ensure that these circumstances are not created. Thus, this social group generates normative constraints on the development of policy relating to detention in the context of war but these are counterbalanced by the emphasis on trade-offs as above.

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[2] This is in terms of the institutional reputation, values and standards of this group, based on the inductive and deductive interactions of the collection of individuals that are members of this social group (Postmes, Haslam and Swaab, 2005).

## 2. The US Military

**What constitutes the social identity of this group?** As with the UK Armed Forces, the US Military is run on a joint service basis, each with a particular history. There is indeed much justification in the US Military documents as to the merits of each service, perhaps reflective of the nature of funding for defence in the USA in comparison to the UK. As stated previously, where there are specifics to individual components these will be mentioned. However, again the objective of this section is to build an overall picture of the fundamental aspects of social identity for this social group.

Whilst some differences are apparent in each service's creed, espousing the values of what it means to be a US soldier, airman or sailor, the overall ethos is very similar. Each emphasises service to the United States as we would expect. The US Navy however places particular stress on 'Honor, Courage and Commitment', 'excellence and the fair treatment of all', as well as obedience to those in higher authority (US Navy, 2007). The US Air Force and Army both underline the primary place of the mission, that they 'will never accept defeat', 'never leave a fallen comrade' (US Army, 2007) or 'an Airman behind' and that they 'will never falter' (US Air Force, 2007). Answering a call to duty is also stressed in the Air Force creed, as it is throughout much of the more general Army discourse. In the current climate 'the attacks of September 11th' serve 'as the Call to Duty for today's generation' (US Army, 2006a), where duty to one's country is seen as 'a noble calling and…among life's greatest work' (US Army, 2006a). There is also much mention of a 'warrior ethos', which involves the elements stressed in the creeds of the Army and Air Force mentioned above. In terms of the Army this warrior ethos 'defines who Soldiers are and what Soldiers do' (US Army, 2004: 5). Army values and the warrior ethos are a 'non-negotiable element of…Army Culture' serving to influence decisions, particularly 'where expediency may compete with morality' and helping soldiers to 'understand what "doing the right thing" means' (US Army, 2005a: 4). As indicated above:

Soldiers who live the Warrior Ethos always put the mission first, refuse to accept defeat, never quit and never leave a fallen comrade behind. They are trained and equipped to engage and destroy the enemies of the United States in close combat (US Army, 2005a: 4).

Other values revolve around issues of 'sacrifices, courage, and heroism' (US Army, 2006b), professionalism and preserving freedom.

In terms of purpose across the Military this is expressed as supporting the goals and objectives set out in the *National Security Strategy* (NSS) (The White House, 2002; 2006), the *National Defense Strategy* (NDS) (Department of Defense, 2005; 2008) and the *National Military Strategy* (NMS) (Joint Chiefs of Staff, 2004). There is an emphasis on making a difference in the world and having a positive effect, 'shaping the world to be a safer place' (US Army, 2000: 10) as well as a better place. The strategic objectives identified in the NDS involve, securing the nation from direct attack; 'secur[ing] strategic access and maintain[ing] global freedom of action; establish[ing] security conditions conducive to a favorable international order; and strengthen[ing] alliances and partnerships to contend with common challenges' (Department of Defense, 2005: Executive Summary). Additionally the NMS defines Military objectives as 'to protect the United States against external attacks and aggression; prevent conflict and surprise attack; and prevail against adversaries (Joint Chiefs of Staff, 2004: viii). Again, these factors are the product of an interaction between military culture and the government's political aims.

Thus, as with the UK armed forces, normative constraints are apparent in terms of military culture, however, the way in which this will take shape is highly context dependent due to the complexity of competing factors – as is evident in the warrior ethos itself.

**How is this social group important to the USA?** The US Military is heavily engrained in US culture and political objectives. The US Army stresses their 'vital role in the growth and development of our nation' (US Army, 2006b) as well as their contribution to enabling 'America to survive and flourish throughout the 21st Century' (US Army, 2004: 21). Their 'central role in US engagement around the world' and 'in shaping the international environment' (US Army, 2000: 3) is given great importance both by the Military themselves, as well as in political rhetoric (the latter will be addressed in the course of Chapter 5). This role is thought to come with the 'responsibilities pre-eminence requires' (US Army, 2005b: 1). The US Army highlights their frequent position 'at the top of opinion polls as the most respected institution in the country' with soldiers serving as 'the face of America' (US Army, 2006a). The importance of support from the Nation to fulfil their objectives is regularly highlighted. Thus, this social group and their normative content are highly significant to US policy-makers and political elites.

**How is this social group relevant to the international detention regime?** The US Military, like the UK, have been involved in the detention of prisoners in the war on terror, both in Afghanistan and Iraq. Their actions therefore are also directly related to the international detention regime and the interpretations given by the government. The US Military have been implicated in much more controversy than the UK with regards to detention practices, for example at Abu Ghraib and Guantánamo Bay.

The basis for an assessment of perceptions of detention standards again rests on this social group's approach to the rule of law and human rights more generally. The *Geneva Conventions* are generally considered to be firmly embedded in US Military culture. For example, Woodward (2006: 86), highlights General Myers' and Colin Powell's arguments against the Bush administration's denial of Geneva provisions (also see Goldsmith, 2007: 113-114). Specific details regarding detention are however limited to the field manuals that deal with procedures relating to prisoners. A new manual was released in 2006 (2-22.3) following the *Detainee Treatment Act* (2005) and the various controversies surrounding detainee abuse. This replaced the Army's field manual (34-52) from 1992. In the more general documents, the ethos informing such situations is that there will be 'morally uncertain situations' (US Army, 2005a: 4) within which servicemen and women will have to make decisions as to how to balance the factors involved.

Thus, as with the UK Armed Forces, there are normative constraints in relation to this social group on the subject of detention, based on the centrality of Geneva and the core ethos of doing the right thing. However, again there is much complexity to this due to perceived operational requirements and instances of moral ambiguity. More recently, detention practices and the treatment of civilians have been increasingly linked to operational success; however this appears to be a relatively new idea that is beginning to emerge in relation to the US Military (Chiarelli and Michaelis, 2005).

## *3. The Humanitarian and Human Rights Social Group*

As with the UK Armed Forces and the US Military considered above, there are certain difficulties in placing all human rights and humanitarian organisations under one umbrella when determining an overall identity for this social grouping, however there is also much common ground to be found. This will be established through a consideration

of Amnesty International (AI) – with headquarters in London, Human Rights Watch (HRW) – with headquarters in New York, and the International Committee of the Red Cross (ICRC) – with headquarters in Geneva. Where appropriate, the differences between these organisations will be highlighted, when they shed light on varying aspects of the framework of social identities with which state leaders and political elites interact and generate policy.

**What constitutes the social identity of this group?** The ICRC has the longest history of the three organisations, founded in 1863 as the International Committee for Relief to the Wounded, and later becoming the ICRC. Based on the vision of Henry Dunant and his experience of the casualties of the Battle of Solferino in Italy, the organisation was established with the objective to, 'preserve a measure of humanity in the midst of war' (ICRC, 2005: 3). In addition to direct assistance in the form of establishing communication and reunification with families separated by conflicts, providing food and medical assistance, as well as visiting prisoners of war, the ICRC also aims to increase knowledge and awareness of IHL, promote and monitor compliance with IHL, contribute to the development of IHL, and where appropriate draw attention to violations of this area of international law. One significant feature of the ICRC is that its role is assigned by states. However, at the same time the organisation retains independence in order to fulfil the functions of its mandate.

The organisation is based on principles of humanity, impartiality, neutrality, independence, voluntary service, unity and universality. These principles are seen as central to the identity of the ICRC, where perception by others along these lines is of essential importance in the work they carry out. This is particularly true of impartiality and neutrality; access into many areas where their work is undertaken is dependent on these characteristics. This is a matter where there is a difference in weighting between the ICRC and HRW/AI. Greater value is placed on dialogue between the ICRC and governments as opposed to systematic public denunciation; this allows for access to facilities or areas where it may otherwise have been denied. There is an emphasis on the 'fostering of a culture of responsibility' (ICRC, 2007) as opposed to direct shaming, in order to increase compliance with IHL.

AI was founded much later than the ICRC in 1961, with the specific purpose of campaigning on behalf of political prisoners across the world. The organisation's

mandate since then has developed to encompass human rights issues across a much broader spectrum. Influence takes the form of letters to government, increasing public awareness and putting a face on those suffering from human rights violations. The organisation provides a vast range of reports on violations in all areas of the world. AI's 'vision' is based on 'a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards' (AI, 2005a). There is an absolute nature to this claim, applicable to all individuals across the globe.

As with the ICRC, AI's values are based on a belief in the rule of law and compliance with international standards. This is certainly a common theme across this sector as we would expect. AI defines itself as forming 'a global community of human rights defenders with the principles of international solidarity, effective action for the individual victim, global coverage, the universality and indivisibility of human rights, impartiality and independence, and democracy and mutual respect' (AI, 2005a). As we would anticipate these cover hugely similar if not the same principles as those set out by the ICRC. There is again a belief in the universality of the issues of concern, in this case human rights values though as opposed to the ICRC's focus on IHL. The global reach of the issues, the features of impartiality and independence and international solidarity are echoed in the ethos of the ICRC as well as AI.

HRW has the shortest history of the three organisations. Founded in 1978, the organisation was set up with the purpose of monitoring compliance with the human rights elements of the Helsinki Accords in the Soviet bloc countries. Subsequent to this initial focus, America's Watch developed in the 1980s concentrating on human rights abuses in the war in Central America. The aim of the organisation was to counter the one-sided application of human rights norms. In 1988 HRW brought all their concerns in different areas of the world together to form one organisation with the objective of 'protecting the human rights of people around the world' (HRW, 2005a: 1). The organisation's stated purpose, as with AI, is to reduce the amount of human rights abuses through publicising them and as a consequence shaming those who are responsible for their occurrence. As such there is a strong reliance on international normative regimes prescribing human rights standards in order to achieve this objective.

Whilst evident in the other organisations, the discourse of HRW really highlights the social nature of power and how this enables certain actions. There is the belief that 'our strength lies in our principle, our credibility, and the many supporters who stand with us' (HRW, 2005a: 3). Through being legitimate, effectiveness can be achieved. HRW refers to this principle in terms of their own actions however such a belief would also seem to inform their understandings of the behaviours of other actors, such as the political elites that represent states.

HRW also emphasize the links between human rights and 'civilized society' – a point frequently raised in constructivist research. This is expressed as a belief in the 'basic values of dignity and justice that are, and should be, markers of a civilized society' (HRW, 2005a: 19). These principles form the basis from which to judge the behaviour of actors, suggest appropriate ways to behave, and is reflective of the organisation's understanding of the international environment.

Whilst there are differences in emphasis and focus we can see common themes running through these organisations, for example, in the belief in the value of standards set in international law, the need to address human wrongs (whether this is in terms of public or private contestation), the need for all to be judged by the same standards, the belief in the universality of HR/IHL, and the belief that this social group can urge changes in policy. In addition to the values, beliefs and norms expressed above, other themes that emerged in the discourse of these organisations related to issues such as the importance of history, the enduring quality of IHL/HR, the need for morality in state leaders, as well as responsibility and accountability. However, there is a slight difference in expectations, how absolute we can be in terms of expected compliance with these standards; the ICRC being less absolutist and not placing as much emphasis on public protest and shaming.

**How is this social group important to the USA and UK?** The human rights and humanitarian social group is highly visible in western society, particularly in the USA and UK. They also have a significant role in supporting and influencing the international normative environment. This is probably most visible in the work of the ICRC and their role in the development of IHL. Reimann (2006) however has also demonstrated how NGOs, generally speaking, have experienced substantial growth in the international sphere. They have broad support from inter-governmental

organisations such as the UN and EU as well as Western democracies. Reimann identifies the liberal democratic and neo-liberal economic ideology that dominates in the international sphere, as symbiotic with the rise of a pro-NGO norm internationally. Whilst previous constructivist research has focused on NGOs as promoters of world culture, Reimann highlights NGO dependence on the normative environment. The importance of NGOs to states such as the USA and UK is emphasised in the following statement, that 'in order to be a properly functioning free market and democratic nation in the 1990s and 2000s, it was now necessary to have a flourishing "civil society" sector that included NGOs and other citizen-organized groups' (Reimann, 2006: 59). Whilst this is a broad statement, it relates to the human rights and humanitarian social group under consideration in this section. They have political access and participate internationally, are important for the maintenance of international normative regimes, and Western states generally promote the spread of NGOs to non-Western part of the world. This social group is highly interlinked with what it means to be a member of an international group of liberal democratic states, and uses an international discourse, particularly for judging behaviour. Thus, this group is extremely important for states such as the USA and UK.

**How is this social group relevant to the international detention regime?** The human rights and humanitarian social group are very involved in international detention practices, albeit from a different angle than the US and UK militaries. Their interest is in monitoring the implementation of these detention standards, often visiting sites to assess conditions and treatment, and then highlighting practices that fall short to the relevant authorities and sometimes publicising in the public realm. The ICRC has a long history of visiting sites of detention, however as mentioned previously the reports are often not made public. HRW and AI are involved in some site visits and indeed campaign to be granted access, yet their emphasis is more on bringing abuses into the public sphere.

The international detention regime is highly important to this social group, threats to this and other normative regimes are frequently cited. For example, AI states that the current context is experiencing a 'threat to perhaps the most universally accepted human right – the right not to be tortured' (2006a: 4). The implications and consequences of these challenges are emphasised. AI suggests that '[b]y flouting fundamental principles of international law, the US administration's detention policies in the so-called "war on

terror" risk making the world a less secure place' (AI, 2004a: 1). Instead of IL placing an obstacle to measures designed to prevent terrorism, defecting from this framework is considered to make us more vulnerable to terrorism. Furthermore, there is also the threat that defection from IHL poses to soldiers in the field. If there is no strong example of compliance, others who are less inclined to comply, may in turn reject these principles. Defection becomes an excuse for others to follow suit.

Unlike the UK Armed Forces and the US Military, the demands of IHL are not balanced against operational requirements. Indeed, as the ICRC state, in terms of IHL, a balance was struck between state security and individual rights in war in the drafting stages; the treaties were crafted with this in mind. IHL recognises that harmful actions do happen in times of war due to security imperatives but places limits on these. The ICRC is not unrealistic in this respect. They acknowledge that in war-time there is an emphasis on factors that run counter to certain principles of IHL and that war is a continuum of violence where there will be a risk of breaking humanitarian rules. Yet, this is not the same as them being undermined by political elites. International normative regimes are a vital symbolic resource even if they are not always adhered to; they provide important references for behaviour in times of war. Thus, whilst the ICRC recognises that there will be defections from the international normative regimes prescribing minimum standards in warfare, and it is impressive that they are so frequently adhered to in war, degradation of the actual regimes is very dangerous.

There is a strong emphasis on the importance of international normative regimes as we would expect, and this is certainly the case with regards to detention. The utility in compliance with these standards in terms of the credibility and legitimacy that they grant to actions is a salient feature of the discourse of these organisations. The importance of rules in the conduct of international affairs is clearly recognised. Their application generally goes across all situations and for all actors, particularly with regards to normative prohibitions on torture – defection from which is considered to be illegitimate for anyone in spite of claims they may make to the contrary.

## 4. The United Nations

**What constitutes the social identity of this group?** Established in 1945 and now inclusive of 192 member states the UN has been mandated internationally to assist in

preventing the 'scourge of war', establish lasting peace and further social progress for all. The purpose and aims of the organisation are clearly set out in the preamble to the Charter of 1945 and are further articulated through more recent reports and statements by the Secretary-General (for the period considered – Kofi Annan).

The UN has many roles and functions across a range of issue areas,[3] however, the main goals of the organisation are clearly identified in the Charter as aspiring for peace, development, human rights and the promotion of international law, all founded on an ethos of cooperation. The route to achieving the first three of these goals is underpinned by the strengthening the rule of law. Whilst these objectives relate back to the context of 1945, it is thought that they still remain humanity's goals in the new millennium (Annan, 2000a), with human rights being central to 'peoples' expectations about the future role of the United Nations' (Annan, 2000b: 15). The emphasis is on the attainment of better standards of life through the promotion of social progress and the achievement of a 'larger freedom', including 'freedom from want and freedom from fear' (Annan, 2000c: 55). The organisation aspires to assist in creating a 'more peaceful and just world' (Report of the Secretary-General, 2001: 13) and to 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small' (UN, 1945: Preamble). The UN is characterised as 'serving as the place where the cause of common humanity is articulated and advanced' (Annan, 2000b: 13).

The influence of this social group in achieving these goals is thought to rest on its work 'in creating and sustaining the global rules without which modern societies simply could not function' (Annan, 2000d: 68). This role is evident in the Charter and other UN mechanisms, 'to introduce new principles into international relations' that have a positive impact on 'day-to-day conduct' (Annan, 2000e: 6). We can see this clearly in the UDHR, articulating common aspirations for a more equitable and just world.

This normative role is seen as essential to 'formal governance structures' such as the UN, in 'defining objectives, setting standards and monitoring compliance' (Annan, 2000b: 14) internationally. Essential to this function is the social group's 'capacity to

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[3] Those set out in the Millennium Development Goals include targeting: climate change, organised crime, HIV/AIDS, malaria, poverty, corruption, protecting the vulnerable especially in emergencies, WMD, arms reduction education, conflict prevention, freedom of the media, racism, gender discrimination, and problems caused by increases in the world population.

inspire' (Annan, 2000f: 77) and the need for and belief in legitimacy, which appear as fundamental aspects of the social identity constructed in the discourse, indeed this is where it is thought its strength and capacity to influence lies. This is evidenced in the two following passages:

The great strength of the United Nations remains its legitimacy, founded on the bedrock principles of international law accepted by all States and expressed in the decisions of an Organization which represents the entire international community. In the international arena there is no substitute for such legitimacy (Report of the Secretary-General, 2003: 3).

We are an organization without independent military capability, and we dispose of relatively modest resources in the economic realm. Yet our influence and impact on the world is far greater than many believe to be the case—and often more than we ourselves realize. This influence derives not from any exercise of power, but from the force of the values we represent; our role in helping to establish and sustain global norms; our ability to stimulate global concern and action; and the trust we enjoy for the practical work we do on the ground to improve people's lives (Annan, 2000d: 68).

Both of these passages demonstrate the importance of legitimacy to the purpose of the UN and to its capacity to influence and fulfil its goals. The values that characterise the UN and provide aspirations for the member states are given as follows: freedom, equity, solidarity, tolerance, non-violence, respect for nature, shared responsibility, pluralism, peace, and respect for every human life. Stress is placed on good governance based on the principles of 'the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights, and the participation of all citizens in the decisions that affect their lives' (Annan, 2000g: 22). The UN is constructed as a 'guardian of the Charter and the core values enshrined therein' as well as the principles above (Report of the Secretary-General, 2002: 4).

Formal membership of the UN is articulated in the Charter in Article 4 (1):

Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

The threat of expulsion is stated in Article 6, should a member state persistently violate the principles of the Charter. Thus there is a clear sense that identity as a group member is compromised if states do not live up to the standards as found in the Charter and

discourse of the social group, and as set by those considered to be prototypical members. This is despite the fact that the chances of expulsion are extremely slim.

**How is this social group important to the USA and UK?** Membership of the UN is extremely important in international society, particularly in terms of contributing to what it means to be a legitimate state. The UN is the home to many institutionalised rules and laws governing behaviour internationally. High hopes were held of the UN at the end of the Cold War, in terms of new possibilities for action without the threat of paralysing vetoes. Indeed, the then US President George H. W. Bush (1990) stated that, 'the rule of law supplants the rule of the jungle'. The UN provides a basis for multilateralism and is very important for the USA and UK in terms of providing legitimacy for actions and giving such states social standing internationally.[4]

**How is this social group relevant to the international detention regime?** The UN is very relevant to the international detention regime for similar reasons to the human rights and humanitarian social group. For example, they are involved in monitoring state practices and setting standards internationally. The main activities of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, include, 'transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged cases of torture; undertaking fact-finding country visits; and submitting annual reports on activities' (Office of the United Nations High Commissioner for Human Rights, 2008). The UN Human Rights Commission has, furthermore, increased awareness and drawn attention to cases of torture, disappearance, and arbitrary detention in the world, generating international pressure on governments to improve their record in these areas (Stewart, 2008).

In terms of the recent arguments concerning the need to balance human rights and security in the war on terror (particularly with regards to detention), Kofi Annan has been very clear that, '[r]espect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism – not privileges to be sacrificed at a time of tension' (Annan, 2003a). The former Secretary-General rejected claims of a

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[4] The value that the Blair government and Bush administration place on such membership is clearly different in 2001-2006 however, with the latter viewing the organisation as an obstacle to avoid with regards to the invasion of Iraq. This will feature in the following Chapters, but is beyond the scope of assessment here.

trade-off (Annan, 2003b), instead 'the moral vision of human rights – the deep respect for the dignity of each person' is seen as 'among our most powerful weapons against it [terrorism]' (Annan, 2003c). The arguments for a balance are rejected in favour of a belief in the potential of human rights and the rule of law. Thus, the direction of normative constraint from membership of this social group is clear to see.

## 5. The UK Legal Grouping

The legal profession, perhaps more so than the other social identities discussed above, contains too many differences to go beyond the fundamentals of a culture in this particular area. The legal profession involves, for example, those who form part of the human rights and humanitarian social group, work as military lawyers, are lawyers at the UN or are involved in the judiciary. Thus, the following discussion is very general.

**What constitutes the social identity of this group?** The legal social group has a very long history in the UK. The characteristics that I draw on are, however, gleaned from the legal system as it stands today. Hunt (1999: 91) provides a very useful account of the legal culture in the UK based on the 'habits of mind and patterns of thought on the part of judges and practitioners'. Two particularly salient features that Hunt identifies are the principle of Parliamentary sovereignty which demands absolute 'unquestioning loyalty' to Parliament, and an objective, value-neutral approach (Hunt, 1999: 92).

There is a very practical basis to both of these elements, where value-based choices are left to Parliament. In order to retain the authority of this social group, an objective approach is taken to the law, to 'protect the courts against the loss of their legitimacy' (Hunt, 1999: 94). Moving away from value-based choices has the effect of 'depoliticising the rule of law' (Hunt, 1999: 93). This notion is grounded in a positivistic understanding of the law, where the emphasis is on finding the 'real meaning' of legal texts as opposed to assessing their 'contingency of meaning' (Hunt, 1999: 93). The positivistic emphasis is thought to have a strong bearing on the culture of this social group, restricting the range of arguments that are deemed to be legitimate in legal terms. As Hunt states, such an approach, 'dictate[s] a very particular mindset which subscribes wholeheartedly to the view that the courts are merely neutral arbiters applying 'legal' rules and principles which never embroils them in controversial value choices which might threaten their legitimacy' (Hunt, 1999: 92). The individualistic

weighting in the court room is also thought to contribute to this mindset, often creating a barrier to consideration of some of the broader issues that might be at hand (Hunt, 1999; Clements and Young, 1999).

Another fundamental component which tends to be emphasised in relation to the UK legal social group is the duality of international and national law. Whilst advances have been made in this area, Dickson (2006a) suggests that it is still uncommon for the Law Lords to draw on human rights standards that are not yet part of British Law. They may exist internationally, and the government may have indicated a desire to comply with these standards, but until they actually form part of British Law, the Law Lords are unlikely to utilise these standards. The basis to this principle is that 'an international treaty creates no rights or obligations at the national level unless and until it has been incorporated through domestic legislation' (Dickson, 2006a: 336). Lord Steyn is cited as an advocate of a move away from this principle.

These factors, Parliamentary sovereignty, a distancing from value based choices, and the perception of duality are fundamental principles that inform the social identity of the legal social group in the UK. Yet, as with the other social groups, this does not form a 'monolithic' identity where change is impossible. Indeed, in the period assessed in this thesis (2001-2006) there is evidence of increased flexibility and assertion of the power of the judiciary. This is partly down to the obligations that result from membership of the European Community as well as the entry into force in 2000 of the *Human Rights Act* (1998). An illustration of some of these changes is provided by Dickson (2006b) in relation to rulings concerning the IRA in the period 1969-1993 and 1994-2005. The analysis suggests that there has been a subtle move towards the Lords 'deciding cases in accordance with the rule of law, rather than with government preferences' (2006b: 415).

**How is this social group important to the UK?** Like the Armed Forces, the legal social group is very much part of the state apparatus, and as such expected on the whole to support the government. This group has an important task in the implementation of government legislation and advising the government on the legal context for proposed actions. Presenting a legal basis for action is extremely important in the UK in order to establish legitimacy. This social identity is very much part of the language and fabric of society in the UK.

Whilst not always framed in a positive manner, the significance of the UK legal social group in the broader social identities context is illustrated in the following statement by David Blunkett for BBC News, 'I'm personally fed up with having to deal with a situation where Parliament debates issues and the judges then overturn them' (BBC, 2003a). Thus, the concerns of this group are highly significant to the UK government in terms of possibilities for action.

**How is this social group relevant to the international detention regime?** The international detention regime is highly legalised. The standards involved form part of domestic law in the UK. The *Human Rights Act* (HRA) (1998) has granted more power to this social group in terms of judging the government's behaviour including that regarding the international detention regime. The Act stipulates that the judiciary pass judgement on the compatibility of legislation with the HRA, a subtle move away from an absolute principle of Parliamentary sovereignty (Clements and Young, 1999).

The human rights based approach that has developed with regards to this social group is something that is noted in the literature. This challenges the 'traditional view … that judges could not be trusted with human rights at all', such matters were not seen to be part of their remit, yet now 'the Lords are fast obtaining a global reputation for their pro-human rights approach in legal disputes' (Dickson, 2006a: 330). This has indeed been supported in the discourse of members of the House of Lords, such as the now retired Lord Steryn and Lord Falconer. Speaking on human rights at Bangor University in March 2007, Lord Falconer stated that 'human rights considerations are at the heart now of how laws are made', they are mainstream and apply to everyone including our enemies. This human rights emphasis is not however consistent across this social group.

The principles of duality and Parliamentary sovereignty may generally apply, however, the HRA has created a different role for this social group, one that is still emerging and is based on a tension between these, at times, competing demands. There are, therefore, normative constraints from this social identity that are highly relevant to detention standards. As we shall see in Chapter 4, this social group has been very important in this regard, challenging the government on various counts.

## *6. The US Legal Grouping*

**What constitutes the social identity of this group?** The legal system in the USA has a number of differences to the UK, however, overall the key principles and norms that underpin this social group are very similar. These include a value-neutral interpretation of the law with emphasis on the legitimacy this provides, equality before the law, and duality in terms of domestic and international law.

The judiciary forms one part of the US governance system, alongside the executive and congress, each as independent and separated powers. Each branch contributes to the legal system however the judiciary is most closely aligned with the conception of a US legal social group. The Supreme Court is one fundamental aspect of this system. The purpose of the court is to 'preserve and protect' the US constitution. To do so the Court is charged with the task of interpreting the constitution, and has the power to quash legislation that is deemed to be unconstitutional. Doing so would render the proposed law invalid. As Madison wrote, 'constitutional interpretation must be left to the reasoned judgement of independent judges, rather than to the tumult and conflict of the political process' (US Supreme Court, 2008). As such, there is an emphasis on the authority, independence and legitimacy of the court's opinion in providing a final interpretation as to the meaning of the legal texts in question.

This is very similar to the UK legal social identity in terms of an emphasis on being value-neutral and separate from the realm of politics. These factors contribute to both legitimacy and authority which are fundamental to this social group. Goldsmith (2007) claims such cultural dynamics also permeate the Office of Legal Counsel (OLC) where neutrality, detachment and personal integrity are privileged. The OLC has, Goldsmith states, 'powerful cultural norms about the importance of providing the President with detached, apolitical legal advice, as if OLC were an independent court inside the executive branch' (2007: 33). These ideals are therefore, part of a broad legal culture, however, as Goldsmith goes on to suggest, they were highly compromised in the war on terror in relation to the OLC.

The US Supreme Court also places great emphasis on 'Equal Justice under Law', these words being written above the Supreme Court Building's main entrance, and taken to 'express the ultimate responsibility' of the Court (US Supreme Court, 2008). Equal protection and a right to due process are part of the 14th Amendment (1868), and again

are fundamental to this social group; this is alongside an emphasis on proving guilt beyond reasonable doubt (US Department of State, 2004). The values of the US legal social group are further articulated by the American Bar Association (2008) as 'promoting justice, professional excellence and respect for the law' as well as striving for the defence of liberty.

As with the UK there is a separation between domestic and international law. Various voices associated with this social group have expressed scepticism about the 'creeping influence of international law on American law' (Goldsmith, 2007: 21).[5] This certainly is a contested issue, as in the UK. However, overall, the system is still one that reflects duality where 'international law becomes part of and is applied by the US legal system only to the extent that it is incorporated into the US legal system' (Murphy, 2004: 6). Thus, a value-neutral approach, equality and duality form the fundamental components of this social group.

**How is this social group important to the USA?** The historical importance of the rule of law to the USA is a strong feature of American culture, where a central role is granted to this social group. This is largely based on interpreting the law (as mentioned above), and setting parameters for action.

However, as was the case with the UK legal social group, there are limitations to this. For example, the US Courts generally refuse 'to examine the legality of US actions in foreign affairs' in terms of 'international or general federal law' as well as 'their constitutionality' (Murphy, 2004: 86). As Murphy further states, 'US courts are especially unlikely to uphold a challenge to an act authorized by the president that allegedly violates a treaty, because the president has independent constitutional authority in foreign affairs that allows him to denounce or otherwise terminate a treaty even if this puts the United States in violation of international law' (2004: 87). The courts do have the power to declare executive orders unconstitutional, however, as Bell suggests, this tends to be rare in occurrence 'largely because of the perception that the president is entitled to direct his staff to act in whatever way he believes is most appropriate' (Bell, 2004: 203). Thus, whilst this social group is extremely important to the USA, and the discourse of law enters into most aspects of social life, the executive

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[5] Scepticism regarding the binding nature of international law is certainly rife among political elites in the USA (Murphy, 2004: 12).

retains a large amount of authority with regards to interpretation and applicability of international law in foreign affairs. Whilst there have been shifts in power between the different branches of government in history, the period of the Bush administration is generally considered to be one characterised by decreased judicial oversight. As we will see in Chapter 5 however, the Courts began to present significant challenges to the administration's interpretations, in 2004 and after.

In addition to potential constraints through challenges in the Courts, the salience of legalism in the USA has created a highly restrictive environment due to the fear held by political elites of ending up before a Court or grand jury (Goldsmith, 2007). The President has a constitutional duty to faithfully execute the law, and the executive is heavily bound by law. Thus, this social group is clearly important for the USA and significant constraints are apparent, yet their remit is complex.

**How is this social group relevant to the international detention regime?** As mentioned with regards to the UK legal identity and highlighted in Chapter 1, the international detention regime is highly legalised. Many aspects are part of US domestic law. Thus this social group is very relevant in terms of interpreting and setting standards for US practices in this area. The normative constraints of this social group in terms of equality of justice, the right to due process, and value-neutral interpretation are very important in this context. This is however, complicated by the duality approach and assertions of presidential power in areas of foreign affairs.


## *7. The International Social Group of Liberal Democratic States*

**What constitutes the social identity of this group?** Unlike the previous social groups assessed in this Chapter, the liberal democratic state social identity has more abstract foundations. It does not have an organisational basis in comparison to most of the previous social groups. Whilst the legal social identities also have less of an organisational basis there are still elements of a clear structure that are not so apparent with regards to the liberal democratic social group. However, there are clear components that constitute the social identity of this group, and it certainly exists as an influential social identity internationally.

Various studies have identified the key attributes of this social identity, often with the aim of assessing how countries score on these measures (e.g. Foweraker and Roman, 2000). Liberal democratic political values are based on both liberty and equality as defined by Foweraker and Roman (2000). These two constitutive dynamics are thought to be achieved by means of various legal and institutional factors. The legal values include civil, property, political, and minority rights whereas the institutional attributes focus on accountability, representation, constraint and participation. A belief in the rule of law and in particular human and democratic rights, as well as liberal toleration and equality, are key elements for this social group.

The collective identity that is dominant in the international society is based on these shared characteristics. Constructivist scholars have investigated various elements, most frequently human rights (e.g. Risse, Ropp and Sikkink, 1999), as well as more specifically the emergence of a pro-NGO norm (Reimann, 2006), norms governing election monitoring (Kelley, 2008), humanitarian intervention (Wheeler, 2003) and the development of the 'Responsibility to Protect Doctrine' based on the notion of expansive rights (Banda, 2007; Welsh, 2007).

The liberal democratic social grouping was identified in Chapter 1 as a basis for the international detention regime that is of concern in this thesis. As we can see from the assessment in this Chapter though, this normative regime, like many others, is by no means limited to this social group. There is indeed much general overlap between the liberal democratic social group and the others assessed in this Chapter. This is not really surprising as the different groups all relate in some way to the constitutive components of the liberal democratic social identity. As mentioned at the beginning of this Chapter, by separating these social groups in the way I have done, I do not intend to draw distinct boundaries between groups. They do indeed overlap significantly and are highly interlinked. However, they are not reducible to one overarching identity, to take such an approach would obscure the complexities and dynamism of the social identities environment and, as I have argued in the previous two Chapters, this would reduce our ability to understand the processes of contestation regarding the international detention regime.

A further point to mention again, is that this social identity, as with the others assessed in this Chapter, is not considered to be static in terms of that which constitutes the social

identity, how these factors are interpreted by members, the predominant normative regimes of the social group, and indeed, what it means to be a prototypical member of such a group. These features, whilst slow to change, are open to contestation by members based on the interplay between different memberships and emerging social identities. As there is no definite organisational structure to underpin this social group, arguably it is more open to contestation than the others. However, again any changes are dependent on acceptance across a variety of audiences, including the social groups identified in this Chapter. This social group does provide another basis from which to judge behaviour, both of the self and of others, and provides shared guidelines as to how to validate membership of and association with this group. The liberal democratic social group provides an international social unit beyond formal institutions and contains shared understandings about what it means to be a legitimate or prototypical state in the international society. It exists through the practices of political elites but what constitutes the social identity of this group is not reducible to members individually, as by definition the social identity is shared.

**How is this social group important to the USA and UK?** The importance of membership of this social group was highlighted in Chapter 1 in relation to constructivist research that has investigated the constitutive components of this social group. Factors such as reputation, self-identification and social standing that relate to membership of this social group are all important, to varying degrees, to political elites in the USA and UK. The liberal democratic social group is dominant internationally so in order to be a prototypical member and influence other members socially, validating this identity through practices is essential. Sometimes being a prototypical member of this group will be more desirable to the USA and UK than others. Indeed, what it actually means to be prototypical is of course not static and is open to contestation by members.

**How is this social group relevant to the international detention regime?** The basis for this was outlined in Chapter 1 in relation to how the international detention regime is understood. This normative regime is a component of what the liberal democratic state social identity means. Whilst these shared standards have roots beyond the concept of liberal democracy, they are nonetheless, partly constitutive of this group today. Thus this social group is very relevant to action regarding the international detention regime in terms of providing a basis for judgement and normative constraint.

**Conclusion**

In the discussion above I have addressed the three questions set out in the introduction to this Chapter regarding each of the different social groups. First, I have identified and defined, in very general terms, each of these social identities (bearing in mind the restrictions set out in the introduction to this Chapter). Second, I have demonstrated how these social identities are important to both the USA and UK. Third, I have argued how these particular social identities are relevant the international detention regime. All these factors serve to justify the inclusion of these social groups in this study. The limited discussion above goes some way to demonstrating how each varies with regards to these questions, for example, the military social identity associated with the state is very different in how it is valued by political elites in both the USA and UK than the human rights and humanitarian social identity. Whilst this is only to be expected, it is important to be clear on these points prior to the subsequent analysis in Chapters 4 and 5. Doing so enables a more informed examination of the interactions between these social groups and the Blair government and Bush administration, giving us an appreciation of the potential for public contestation from these groups. As will become more evident in Chapters 4 and 5, the social groups of the UK and US Militaries, the human rights and humanitarian social grouping, the UN, the UK and US legal professions, and membership of a group of liberal democratic states internationally, are all part of the complex context in which interpretations of the international detention regime are contested by political elites.

Unlike the other Chapters in this thesis there are no main findings to be drawn from the above discussion. The aim has been to contextualise the subsequent analysis. An examination of the processes involved in the contestation of the international detention regime requires prior understanding of this broad social identities context. This not only determines the social groups that are relevant to the analysis, but by also providing an informed basis for subsequent investigation into the interactions between these social groups and the Blair government and Bush administration, this Chapter enables greater depth of analysis into the contestation of the international detention regime. Without this contextual basis some of the richness and nuances of the subsequent Chapters would be lost. To contest the international normative regime prescribing minimum standards for detention and prohibiting torture, political elites must interact with these social identities; how this is manifest will be examined in the following Chapters.

# Chapter 4 – The Management of Social Identities: The Case of the UK

*'[T]he right not to be subjected to torture or other ill-treatment, which includes the right not to be removed to a country or territory where one would be at risk of such treatment - the protection against* refoulement *- applies to all individuals, irrespective of whatever offence they may have committed or are suspected of having committed, and is a rule of customary international law binding on all states. It has also been codified in treaty law' (Amnesty International, 2005b)*

*'[W]e hear an immense amount about their human rights and their civil liberties, but there are also the human rights of the rest of us to live in safety, and when people say to me, unless I can give absolutely cast iron guarantees, and they have all sorts of monitoring arrangements, we have got to keep people here who maybe engage actively in inciting terrorism in this country, I have to say I think we have got the world the wrong way round' (Blair, 2006i).*

The previous Chapter identified and explored the various social identities associated with the state that have the potential to be salient concerning the international detention regime. The content of these social identities was established, in order to form the basis for analysis in Chapters 4 and 5. This Chapter will build on these insights to assess the management of these social identities by political elites in the UK, in this case the Blair government 2001-2006. As opposed to focusing on state leaders in relation to specific international norms, this thesis argues that a broader understanding of the normative and social identities context in which political elites make decisions and formulate policy is required to comprehend both the influence of and defection from international normative regimes. I demonstrate that by examining the management strategies of political elites, we are better placed to understand the interactive processes of defection and contestation of the international detention regime, thus how these normative constraints are negotiated.

The international detention regime has been significantly compromised by several policies of the Blair government between 2001 and 2006; this is in addition to the challenging and revisionist rhetoric that has accompanied these changes. The main areas of concern relate to domestic anti-terror legislation, the deportation of terror suspects, and responses to US policies such as those pertaining to Guantánamo Bay and rendition. Contestation is highly apparent in both policy and rhetoric, particularly with regards to the right to a fair trial and the right not to be returned to countries where there is a risk that the individual will be subjected to torture and inhumane treatment. This thesis aims

to understand how such practices, contrary to the international detention regime, became possible by focusing on the interactive processes involved in negotiating normative constraint; this is in relation to the broader social identities context. The management strategies employed by political elites, will provide an insight into these interactions.

The UK is a particularly interesting site of analysis, as our expectations, as established in Chapter 1, suggest that the Blair government will not defect from the international normative regime prescribing detention standards and prohibiting torture. These expectations are based on the emphasis political elites in the UK have previously placed on the promotion of human rights internationally, for example the 'ethical dimension' to the UK's foreign policy as outlined by Robin Cook (The Guardian, 1997), as well as the incorporation of the European Convention on Human Rights (ECHR) into domestic law in the form of the Human Rights Act (1998). Furthermore, the Blair government have argued that values must provide a guide for action, based on '[e]qual worth, responsibility, community' (2001i), 'humanity and compassion' (2001b), as well as inclusivity.[1] As the former Prime Minister states:

Politics without values is sheer pragmatism. Values without politics can be ineffective. The two must go together (Blair, 2001i).

How the Blair government manage the interactive process of contestation and defection will be extremely illuminating in terms of furthering our understanding of normative influence, defection and contestation in this case.

This Chapter is based on the framework established in Chapters 1 and 2, and draws from the insights of Chapter 3 regarding the specific social identities assessed in this thesis. As such, the analysis will demonstrate the utility of employing the social identity approach in a constructivist framework. The main argument advanced is that normative influence is negotiated through interaction with the social identities context. We cannot simply rely on the nature of the international norm, the degree of internalisation, or the personality of the state leaders to understand the processes of

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[1] This is not to ignore the UK's recent history of internment and the use of stress positions in the Northern Ireland conflict. However the Blair government have emphasised a new direction banishing such measures to history. Whilst they can certainly be criticised for their inconsistency with regards to human rights (e.g. see Kampfner, 2004: 76), I am interested in the factors that the Blair government argue are fundamental, which influences social identity associations and expectations.

defection and influence. By drawing on the micro-foundational insights of the social identity approach we can increase our comprehension of the relationship between international normative regimes and the behaviour of political elites, thus enabling us to avoid inaccurate expectations.

Analysis in this Chapter is based on three time periods, 2001-2002, 2003-2004, and 2005-2006. This is in order to track the interactive processes. Within these time-bound sections interactions with the human rights and humanitarian, legal, Armed Forces, United Nations (UN), and international liberal democratic social groups will be assessed, for example how these social identities are managed by the Blair government. As a point of clarification, when referring to the Blair government I do not mean the whole of the Labour Party, members certainly hold a variety of viewpoints on the issues discussed in this Chapter. Instead, I am mainly referring to the former Prime Minister Tony Blair, his close allies and inner circle of advisers in government. I do not attribute the arguments presented solely to Blair himself, even though there was certainly a strongly centralised concentration of power in government (Kampfner, 2004: 195). When I draw quotes from Blair, or indeed other close members of the government, they are understood as carefully crafted language representative of the dominant viewpoint of this small state leadership group that then forms the party line on such issues.

The management strategies and techniques identified are illustrated in Table 3 on the following page. The emphasis is very much on dominance, directing and re-framing the different social identities to fit with an emergent super-ordinate international social identity. However, the means by which this is sought varies with the interactive context. As contestation increases dominance is harder to pursue and in certain circumstances the Blair government are forced to compartmentalise and heavily compromise their association with some of the social identities. There is only so far this can be pushed though, and as a strategy this is not sustainable long-term given the interactive context, particularly if there is a desire to remain associated with the social identities in question.

**Table 3 – The Management of Social Identities by the Blair Government**

| Human Rights and Humanitarian | **Dominance**<br>- Directing<br>- Challenging<br>- Denial<br>**Intersection**<br>**Representation**<br>- Bolstering<br>**Compartmentalisation**<br>- Context dependent | **Dominance**<br>- Directing<br>- Challenging<br>- Denial<br>- Dismissal<br>**Intersection**<br>**Representation**<br>- Bolstering<br>**Compartmentalisation**<br>- Context dependent | **Dominance**<br>- Directing<br>- Challenging<br>- Denial<br>- Dismissal<br>**Intersection**<br>**Representation**<br>- Bolstering<br>**Compartmentalisation**<br>- Context dependent |
|---|---|---|---|
| **Legal** | **Dominance**<br>- Directing<br>**Intersection**<br>**Representation**<br>- Bolstering | **Dominance**<br>- Directing<br>- Challenging<br>**Intersection**<br>**Representation**<br>- Bolstering<br>- Utilising | **Dominance**<br>- Directing<br>- Challenging<br>- Dismissal<br>**Intersection**<br>**Representation**<br>- Bolstering<br>**Compartmentalisation**<br>- Context dependent |
| **Military** | **Dominance**<br>- Directing<br>- Re-assuring<br>**Intersection**<br>**Representation**<br>- Bolstering | **Dominance**<br>- Directing<br>- Re-assuring<br>- Dismissal<br>**Intersection**<br>**Representation**<br>- Bolstering<br>- Defence of group | **Dominance**<br>- Directing<br>- Re-assuring<br>**Intersection**<br>**Representation**<br>- Bolstering<br>- Defence of group |
| **UN** | **Dominance**<br>- Directing<br>**Intersection**<br>**Representation**<br>- Bolstering<br>- Utilising | **Dominance**<br>- Directing<br>- Challenging<br>- Blaming<br>- Threatening<br>**Intersection**<br>**Representation**<br>- Bolstering<br>- Unifying<br>- Utilising | **Dominance**<br>- Directing<br>**Intersection**<br>**Representation**<br>- Bolstering<br>- Unifying<br>- Utilising |
| **International** | **Merging**<br>- Blurring of boundaries<br>**Dominance**<br>- Directing<br>- Dividing | **Merging**<br>- Blurring of boundaries<br>**Dominance**<br>- Directing<br>- Dividing<br>- Challenging | **Merging**<br>- Blurring of boundaries<br>**Dominance**<br>- Directing<br>- Dividing |

# 1. Phase 1 - Initial Contestation: 2001-2002

*'[A] new role for Britain in the World' (Blair, 2002zc)*

## 1.1 The Human Rights and Humanitarian Social Identity

The human rights and humanitarian social group raised a number of concerns about the UK's approach to detention in the context of counter-terrorism in 2001-2002. Even before the attacks of September 11th in New York, Amnesty International (AI) was

critical of changes to the government's anti-terror legislation.[2] The concerns of this group intensified further following the *Emergency Anti-Terrorism Bill* put forward in November 2001. AI warned that the measures contained in the Bill risk the indefinite detention of innocent people without charge or trial; they even related these reservations to the detrimental effect of internment in Northern Ireland (AI 2001b; see also AI, 2001c; AI, 2001d; Human Rights Watch (HRW), 2001a).[3] In particular, both HRW and AI highlight the discriminatory nature of Part 4 of the *Anti-Terrorism Crime and Security Act* (ATCSA) (e.g. AI, 2001e; 2002b; 2002c), which violated international obligations regarding detention and the right to a fair trial.[4]

This social group has also been very vocal raising objections to the conditions and procedures for the detention of terror suspects at Guantánamo Bay. AI (2002e) has called for action with regards to the UK nationals held at the base. Whilst, the Blair government is unlikely to have had any direct control over what has been an American policy of seemingly indefinite detention at the former Naval Base, there is little comment in opposition to the US position in this period. We may not expect a firm public rejection of the policy given the close relationship between the USA and UK, however Blair's position in private was also largely non-critical (Cook, 2004: 82). In public, reference is made to the 'unusual situation' (Blair, 2002zc) from which the USA and UK are 'still getting information' (Blair, 2002x). The importance of being able to interrogate detainees on the basis of new information and checking it with those prisoners held at Guantánamo Bay is often cited (e.g. Blair, 2002zc). Whilst the position articulated by Blair is not reflective of the entire Labour government, (e.g. Cook, 2004; Short, 2005), such an outlook does present a **challenge** to the international detention regime and indeed the human rights and humanitarian social identity. In order to sustain such a position, Blair's discourse reflects a variety of strategies involving, **dominance**, **intersection representation** and **compartmentalisation**.

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[2] This was because the measures in the *Terrorism Act* 2000 discriminated on the basis of motivation for crime as opposed to the severity of the crime (AI, 2001a).

[3] Indeed, AI did not shy away from actually comparing the government's measures to internment (2001b; 2002d). AI (2002a) are also critical of practices in domestic prisons, particularly with regards to young people in detention. The organisation stresses that many international obligations are not being fulfilled. However this thesis is predominantly concerned with detention relating to anti-terror measures so an assessment of the domestic difficulties in the prison service, whilst important to highlight, is beyond the scope of this project.

[4] This measure was the subject of much criticism and was replaced in 2004.

In terms of **dominance**, this social identity is framed in line with the counter-terrorism agenda. For example, responses to the criticisms cited above are based on the protection of the majority and the right to life and to live free from terror (e.g. Blair, 2001r). There are subtle attempts to **direct** the constitutive elements of the human rights and humanitarian social identity along these lines. This is in addition to **challenging** the arguments of this group as mentioned above, by seeming to defend the situation at Guantánamo in defiance of the core human rights ethos of equality, and absolute support for the international detention regime.

Interactions with this social group are also based on **denials** of the arguments presented. This is illustrated by frequent references to the identity of the UK and in particular the identity of the Labour government led by Blair. For example, as the Labour government promotes and values human rights, evidenced by the *Human Rights Act* (1998), the actions of the Blair government should be viewed in this framework.[5] Identity provides a basis for denial in response to accusations that the government is compromising the human rights and humanitarian social identity. As such, **intersection representation** is also apparent through **bolstering** that which is shared. However this is based on a super-ordinate counter-terrorism agenda, suggesting that intersection representation supports a strategy of dominance.

**Intersection representation** is also evident in Blair's portrayal of this social identity in terms of the right to life and the right to live free from terror, as mentioned above in relation to dominance (e.g. Blair, 2001r). Through **bolstering** elements that validate association with this social group, accusations of running counter to it can be minimised, allowing detention policies to still be presented within a human rights framework both to the public and as a means by which the Blair government can reconcile the potentially diverging demands to themselves. Such a strategy appears to allow room for manoeuvre with regards to the normative constraints pertaining to detention standards. However, as demonstrated above, these arguments are not accepted by members of this social group thus association with the human rights and humanitarian social identity remains in a state of contestation.

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[5] Whilst not directly related to detention, such reasoning is also very notable in relation to the just cause for intervention in Afghanistan. Blair stresses on several occasions that as 'we' are peaceful people, intervention will only take place on the basis of a just cause (e.g. 2001zc); furthermore, '[w]e are a principled nation, and this is a principled conflict' (Blair, 2001zl).

As a consequence, we should not be surprised that **compartmentalisation** also accompanies the strategies of dominance and intersection representation. Even within the discourse assessed, context is noted as highly determinant in guiding changes in foreign policy, the goals remain the same, but what is meant by them and how they are best achieved is seen as a matter of interaction with **context**. Such an approach is apparent in the following passage:

We are democratic. They are not. We have respect for human life. They do not. We hold essentially liberal values. They do not. As we look into these issues it is important that we never lose sight of our basic values. **But** we have to understand the nature of the enemy and act accordingly (Blair, 2001q, **emphasis added**).

Validating the human rights and humanitarian social identity and strengthening association with this group is juxtaposed with the apparent need to take measures that are counter to this. The social identity is compartmentalised based on a different context and situation (this is also evident in the statements of the Blair government concerning Guantánamo, as cited on page 120).

There is a significant amount of contestation with this social group in 2001-2002, reflected in the numerous strategies employed, as outlined above. We can see that normative constraints lead to compartmentalisation, which is the least sustainable of all the strategies. The Blair government cannot simply defect from the international detention regime, interactions with the broader social identities context therefore place significant restraints on the means by which such a course of action can be pursued.

## 1.2 The Legal Social Identity

The legal social identity is also evident in the discourse of the Blair government in 2001-2002. Significant challenges from this social group to contestations of the international detention regime do not emerge until later periods. However, in 2002 the government does receive a setback with regards to the power to detain foreign terror suspects, potentially indefinitely. This is in relation to a Special Immigration Appeals Commission (SIAC) ruling that determined such measures discriminatory and not compatible with the *European Convention* (AI, 2002b). As if pre-empting the backlash to come, the discourse falls within the categories of **dominance** and **intersection representation**.

This social identity, like that in the previous section, is very much re-framed and **directed** in line with the broader war on terror. There is a notable shift in the discourse from a need to 'protect at all costs the civil liberties of the innocent', to a system that focus' more on the rights of the victim, protection of the general public and conviction (Blair, 2002k). Change and reform are heavily emphasised (Blair, 2002k), with a degree of subordination of this group to an emergent international counter-terrorism social identity (Blair, 2002i). As such, a **dominant** strategy is apparent.

This is supported, however, by **intersection representation** in terms of **bolstering** the dimensions on which there is much overlap between the legal social identity and the emergent international social identity. For example, the strengthening of laws is a particularly prominent theme, in relation to issues such as asylum and immigration, counter-terrorism, the incitement of religious hatred, extradition and deportation. The need to tighten the law to deal with a minority, is deemed to be 'balanced and proportionate to the risk we face' (Blair, 2001y) and in line with many other countries.[6] Strengthening the law is indeed argued to provide a very powerful message 'from the civilised world to terrorists everywhere' that effective action will be taken, and this is considered to form a 'very important deterrent' (Blair, 2001zzc).

Whilst frustrations arise regarding the lack of acceptance in the courts of some of these measures in later periods, at this stage the emphasis is on setting the direction for change as well as strengthening and tightening the law to cope with the perceived level of threat. Normative constraints from association with this social identity are therefore channelled in a certain direction to fit with the Blair government's counter-terrorism objectives so as to enable validation. As we shall see in the subsequent time periods, as such an approach again relies on acceptance the reduction of normative constraint from this social identity is short lived.

## 1.3 The Military Social Identity

The British Armed Forces are also part of the social identities context with which the Blair government interacts. They play a significant role in foreign policy, fundamental to a vision of the world based on a belief in the power of diplomacy backed by military

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[6] By this Blair means other countries making changes as opposed to the same changes as the UK.

force (Kampfner, 2004: 57). They also add immensely to 'Britain's strength and international standing' (Blair, 2001zv).

Whilst many of the issues highlighted in this Chapter regarding detention are largely political and not military matters, certain aspects do affect this social group. For example, the context in which the military operations take place is one where there is a very close association with American counterparts and US foreign policy more generally. The USA is not subject to the same constraints as the UK under the International Criminal Court (ICC), raising concerns as to whether the Pentagon will be 'attentive to conduct that could result in war-crimes charges' in any joint ventures (Roth, 2002). Furthermore, US policies to restrict the applicability of the Geneva Conventions and hold detainees indefinitely at Guantánamo Bay affects the overall context in which UK troops operate and are judged by potential adversaries. Admiral Sir Michael Boyce, then Chief of Defence Staff reportedly warned in December of 2001 that 'a 'single-minded aim' of destroying the Taleban and al-Qaeda with a 'high-tech Wild West' operation would not be enough to win the hearts and minds across the Arab world' (Kampfner, 2004: 150). Counter-normative behaviour regarding detention certainly corresponds to these concerns. However, there is no direct and significant contestation from this social group, particularly with regards to detention, in 2001-2002. I must also note however that the scope for contestation is very limited.[7]

In this context, the discourse of the Blair government concerning the Armed Forces, both prior to the military intervention in Afghanistan and after, mainly revolves around the articulation of purpose in terms of security, humanitarian issues and the wider positive impact on the world. There is much emphasis on **direction** (e.g. as part of a broader context in which '[f]ighting for these values is a cause the world needs', Blair, 2002i). This is alongside **re-assuring** this social group in the face of significant criticisms and questions over legality concerning proposals for their involvement in military intervention in Iraq. For example, in addition to the threat posed by Iraq, and keeping the terror attacks of September 11th salient in people's minds,[8] Blair's speeches

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[7] As General Sir Mike Walker has stated, 'The Armed Forces of this country take their oath of allegiance to the Sovereign as Head of State, and they are constitutionally bound to follow the lawful directions of the duly elected Government of the day. It would be unthinkable for the Armed Forces not to do as they are directed – or, worse, to act without authorization. That is the road to anarchy' (Walker, 2008: 404). The retired General is strongly opposed to the involvement of soldiers in politics. However, as we shall see in later periods others have been more outspoken when legality and resources are in question.
[8] Blair warns of 'a real danger we forget the lessons of September 11' (2002i).

focus on the just cause of military intervention and the humanitarian component of going to war (e.g. 2001zc; 2002x; 2002i). In making these arguments, Blair and his inner circle draw on debates internationally about the use of force for moral ends. Historical analogies based on involvement in Kosovo, Sierra Leone and Afghanistan are utilised to suggest that 'unless you do have the capability to use force if necessary, it is very hard to make the world a more secure and more peaceful place' (Blair, 2002zr). Kosovo in particular is used to quell reservations about acting outside UN authorisation (Blair, 2002t). These techniques are suggestive of a **dominance** strategy where appeals are made to super-ordinate understandings, as mentioned earlier with regards to directing, reflective of an emergent international social identity, largely based on a particular approach to counter-terrorism. This is alongside expressions of pride, duty and courage and recognition of the high esteem in which the Armed Forces are held around the world. Blair (2001zc) suggests that, '[t]here is no greater strength for a British Prime Minister and the British nation at a time like this than to know that the forces we are calling upon are amongst the very best in the world', **bolstering** this social identity. The latter emphasises an overlap, indicating a subtle strategy of **intersection representation** to accompany dominance.

As with the legal social identity, normative constraints from association with this social group are channelled in a certain direction to fit with the government's objectives so as to minimise digression. There is little contestation in this period to challenge such an approach, so dominance is only subtly accompanied by intersection representation.

## 1.4 The United Nations Social Identity

Like the previous two social groups, there is little public criticism from the UN with regards to the counter-terrorism detention practices of the UK in 2001-2002. Instead, the UN more generally highlights the importance of the rule of law and human rights in 'an increasingly dangerous world' (Annan, 2002a). Despite this, the discourse in relation to this social identity is still very revealing with regards to the management strategies employed, indicative of the nature of interactions. The strategies of **dominance** and **intersection representation** are both apparent.

In terms of **dominance**, this is largely based on statements targeted at the **direction** of this social identity. Change and reform are frequently stressed. There is much reference

to the UN as in a state of becoming,[9] generating a degree of scope for directing the organisation's future priorities (Blair, 2002x). As I have argued in relation to the other social identities already assessed in this Chapter, this tends to be in light of an emergent super-ordinate social identity largely based on a particular approach to counter-terrorism, one where inaction is framed as weakness and avoidance as opposed to reasoned calculation (Blair, 2002x). For example, whilst there is an expressed belief in the UN route to tackle the threat of Iraq, this is only framed in terms of action; action against the 'defiance' of the UN by Iraq (Blair, 2002zd).

Attempts to strengthen this position are evident in the various references to Kofi Annan, in particular, the former Secretary-General's stated understanding that diplomacy needs to be backed by force, capitalising on the legitimacy and universalism the then Secretary-General confers (Blair, 2002x).[10] The language of the UN, in terms of Resolutions, is also **utilised** to construct a legal basis for military action in Iraq (Blair, 2002zd). The need to frame the discourse in such terms as well as on the basis of restraint (for example claims that the USA and UK are not rushing to military action) is very apparent. There is much emphasis on overlap and dialogue with the UN (Blair, 2002x), especially in the build up to the use of force in Afghanistan, thus **intersection representation** accompanies the dominant approach.

Remaining within the UN framework is certainly of great importance for the UK, particularly when considering military involvement. Indeed, Sally Morgan, Blair's adviser on domestic affairs reminded him prior to the military intervention in Iraq that 'every Labour manifesto since 1945 had referred to the UN Security Council as the highest international authority' (Kampfner, 2004: 192). This social identity is also a crucial component of Blair's 'Doctrine of the International Community', and great emphasis is put on strengthening the UN through reform to enable this doctrine to be put into practice (Blair, 2001zy). Thus, **bolstering** is concurrent with **direction** here. The influence of this social identity appears to have limitations or at least allows scope for manoeuvre as it is juxtaposed with discourse on change and reform.

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[9] Blair is drawing on the words of then Secretary-General Kofi Annan here.
[10] References are also made to Ruud Lubbers, then UN High Commissioner for Refugees, in the build up to military intervention in Afghanistan (Blair, 2001x).

## 1.5 International Society and the Liberal Democratic Social Identity

As has been advanced throughout this thesis, the liberal democratic social identity in international society has been and continues to be exceptionally important to the UK, both in terms of how political elites have understood, and attempted to represent, the UK internationally. However, what is meant by this has been significantly challenged in 2001-2006. This section draws attention to the strategies of **merging** and **dominance** in relation to this large international social identity which are apparent in 2001-2002.

**Merging** between domestic and international spheres is very apparent in the discourse assessed. National self-interests and the collective interests of the international community are viewed in unison as opposed to conflict (Blair, 2002i). Blair presents a position that confronts the traditional understanding of international relations by suggesting there has been a merging of utilitarianism and utopianism, with no more spheres of influence.[11] In relation to this broader understanding of international relations and the international context Blair (2001zv) states that '[i]n the war against terrorism the moralists and the realists are partners, not antagonists'. The vision presented is one based on universal values behind which states must unite, with Britain assuming a leading role in these developments.[12] These sentiments certainly seem to fit with constructivist portrayals of the predominance of the liberal democratic social identity in international society as demonstrated in Chapters 1 and 3.

However, such an approach is also accompanied by **dominance**, in terms of **directing** new normative understandings, emergent international coalitions, and a re-definition of parameters. This is largely based on an outlook that favours close relations with the USA. As Kampfner notes, Blair in particular had 'an extremely acute sense of American power', based on immense US capability and reach (2004: 152). The UK is positioned side by side with the USA, accepting the doctrine of pre-emption and other US counter-terrorism policies that come with this close relationship. The objectives of 'being at the heart of Europe and engaging with China, Russia and India' are subordinated to such priorities (Kampfner, 2004: 236). Whether or not this understanding has provided the

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[11] Blair (2001l) also talks about 'another decisive shift away from selfish individualism and towards a society based on community and shared values' in relation to domestic issues, but as we can see this community approach is also apparent in Blair's public statements regarding the international sphere.
[12] Britain's strength through memberships of international organisations and alliances as a consequence of its history is understood by the Blair government to place this role on the UK, particularly as a unifier, even before the September 11th attacks (Blair, 2001e). With this, they state comes the responsibility to and duty to make the world safer.

UK with the most beneficial course of action is of course debateable. Certainly this approach seems to neglect the nuances of soft power, social influence, and example-setting, arguably crucial to reducing the occurrence of terrorist attacks.

Accompanying such a positioning in the international sphere is an emphasis on the civilized and non-civilized world as binary opposites (e.g. Blair, 2001q),[13] a stress on the need for action even if there is a lack of social consensus,[14] and an agenda based on enhanced engagement particularly where there is a perceived threat from disorder (Blair, 2002f). The latter is seen in expeditionary and interventionist terms, where the negative impact of inaction is weighed more heavily than making mistakes in action (Blair, 2002t). Also evident in this emergent social identity is a reduction in the significance of deterrence as a policy option, if not total abandonment (Blair, 2002t).

In conjunction with these normative priorities, the dominant social identity internationally (formed on the constitutive elements above) came to encompass states beyond those satisfying the criteria of a liberal democratic social identity. For example, relations with Pakistan were forming and those with Russia advancing in the context of coalition building (e.g. Blair, 2001zv; 2001zo). By integrating such states into an emergent coalition, the importance of normative regimes governing human rights and detention appear to be vastly reduced, as the social identity to which they largely pertain no longer appears to be dominant in international society, from the perspective of the Blair government.

Alongside this reformulation of a dominant international social identity, significant **divisions** and parameters are also put up. Boundaries are very apparent between a 'civilized' and 'non-civilized' world (as mentioned above); suggesting that a civilized world exists and that there are enemies of it (Blair, 2001q), and rendering elements of the world very much excluded from 'civilized' status.[15] A defining feature of such positioning in relation to these categories is based on whether or not states stand with the USA in the fight against terrorism.[16] There is a sharpening of distinctions between

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[13] Kampfner (2004: 216) notes Blair's private comments complaining that British parliamentarians were not as eager as US politicians to do the right thing.

[14] For example, Blair (2002t) states that the intervention in Iraq would be better done 'with the broadest international support…but it does have to be done' regardless of whether or not this is achieved.

[15] States such as Saudi Arabia are considered to be 'friends' of the civilized world.

[16] This stark division is very clear in statements concerning 'a war, if you like, between the civilised world and fanaticism' (Blair, 2001r), or a battle 'between the free and democratic world and terrorism' (Blair, 2001o).

groups with the use of binaries and comparisons, most significantly those associated with the categories of justice, good and evil (Blair, 2001zd; 2001zv).[17]

A range of very interesting complex dynamics are at play in the shifting status of international social identities, and group memberships. The factors identified above form constitutive elements of an emergent dominant social identity in international society in this time period. These present a significant challenge to a liberal democratic social identity based on the rule of law and human rights, a complicated dynamic to manage, particularly given the number of audiences involved. This is negotiated by attempting to re-define that which forms the prototypical social identity internationally, supported by a degree of merging.

## 2. Phase 2 - Attempts to Sustain Contestation: 2003-2004

*'11 September has changed the psychology of America. It should have changed the psychology of the world' (Blair, 2003n).*

### 2.1 The Human Rights and Humanitarian Social Identity

As in 2001-2002, the Blair government's detention policies are again highly criticised by the human rights and humanitarian social group. A large set of concerns are raised which is certainly very damaging for the Blair government, significantly compromising their ability to validate close association with the human rights and humanitarian social identity. In response there is an intensification of the techniques employed in 2001-2002, falling predominantly under **dominance, intersection representation,** and **compartmentalisation**.

AI and HRW have both been extremely critical of Part 4 of ATCSA since the legislation came into force in 2001. AI (2004b) refers to Part 4 as a form of internment, and the system for appeals against the Secretary of State's determination of individuals as terror suspects through SIAC trials, as a 'shadow criminal justice system' that falls far short of fair trial standards (AI, 2003a).[18] Further questions were raised in 2003 as to whether

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[17] Whilst not in the discourse analysed, an interesting question posed by Blair was mentioned in a BBC Program presented by John Ware, 'No Plan, No Peace' (October 2007). Contributors suggest that at a meeting before the invasion Blair asked a group of Iraqi experts whether or not Saddam Hussein was 'uniquely evil'.

[18] The potential for indefinite detention without charge or trial on the basis of secret evidence is highlighted by AI as a very significant concern. This is alongside the lower burden of proof that is

some of the evidence relied on in SIAC trials was gained under torture, which AI (2003b) stresses is prohibited under international law.

Such arguments are however **dismissed**. David Blunkett (2003a), for example maintains that the ATCSA has improved the UK's ability to fight terrorism. Furthermore, with regards to questions on torture evidence, the former Home Secretary employs a degree of compartmentalisation stating:

Let me make it clear, we unreservedly condemn the use of torture and have worked hard with our international partners to eradicate this practice. However, it would be irresponsible not to take appropriate account of any information which could help protect national security and public safety (Blunkett, 2004d).

Jack Straw's private comments published in the Guardian are also less than critical of the use of evidence gained through torture by a third party, presenting a **challenge** to the arguments of this social group. He asserts that:

It does not follow that if it is extracted under torture, it is automatically untrue (cited in Leigh, 2005).

Both statements certainly do very little to strengthen the international detention regime, particularly with regards to torture.[19]

Other concerns relating specifically to torture involve accusations that certain individuals are being held under 'cruel, inhuman and degrading conditions in violation of international law' at Belmarsh prison (AI, 2004c), as well as criticisms of government policy to establish Memorandums of Understanding (MoUs) with countries known to torture in order to deport terror suspects.[20] Overall, the Blair government is accused of defecting from international obligations seeking detention policies that undermine human rights protections as well as compromising the government's ability to establish an effective anti-terror strategy (HRW, 2004c).

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required from the Secretary of State compared to normal court proceedings (AI, 2003b). AI are also highly critical of the government's appeals against SIAC acquittals (2004d).

[19] These comments, made in November 2004, are after the Court of Appeal ruling in August 2004, that rendered torture evidence admissible in certain circumstances (so long as UK personnel did not instigate, were not involved and the abuse did not take place on UK soil), undermining the global ban on torture (HRW, 2004a).

[20] AI and HRW highlight the unreliability of such agreements and the significant risk of torture and ill-treatment that individuals will face (e.g. HRW 2004b).

In response the Blair government focuses on the nature of the threat faced, and the need to strike a balance between human rights and security. Such arguments, employing elements of compartmentalisation, serve to **direct** the terms of the debate.[21] Blair (2003c) states, for example, that 'people have to understand if we want to deal with this new menace we have to take the measures necessary to deal with it properly'. The arguments of this group are **dismissed** on the basis of security imperatives and a different understanding of civil liberties and human rights, privileging the right to life and the right to live free from terror.

Blair (2004ze) also draws on his background as a 'lawyer with a strict belief in the rule of law and civil liberties' to support this position. Blair grounds his reasoning in this identity which serves to strengthen his arguments through **intersection representation**. Blunkett (2004b) is equally firm in emphasising his 'commitment to human rights' and uses a speech to Harvard Law School to also **challenge** and **deny** the notion that the UK and USA are 'destroying traditional human rights and freedoms'. To do so the former Home Secretary underlines the importance of 'the most fundamental human rights … those of life, liberty and security of person', based on the *Universal Declaration of Human Rights*, and which have been compromised by terrorists. He argues that 'human rights and the institutions which sustain them' must be balanced 'with the basic right for life and freedom from fear' (Blunkett, 2004b).

The Blair government also faces a vast amount of criticism regarding the situation at Guantánamo Bay. They are urged to do more with respect to the UK nationals and residents held at the base, as well as to use their influence with the US President to ensure fair trials take place (Ross, 2003). Blair's public response to the situation at Guantánamo Bay is again largely supportive of the US policy. Blair stresses that the government are satisfied with the treatment of UK nationals detained at Guantánamo (2003s) and reminds us of the context in which the situation arose (2003zm), one of 'huge danger for ourselves and our Armed Forces' (2003zo). In direct response to the human rights and civil liberties concerns raised by organisations such as AI and HRW calling for UK residents to be returned to the UK, Blair states:

the people who are out in Guantánamo Bay are people who got there via a particular process to do with the Afghan conflict and I just ask people to be a little understanding of the fact that there are also issues to

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[21] Blunkett (2004a) calls for a 'rational debate … based on facts'.

do with our national security that we have to be careful of, and my experience of these debates is that very swiftly a civil liberties issue turns into a national security issue (2003zw).[22]

The dangers of civil liberties are highlighted, presenting a significant **challenge** to the human rights and humanitarian social identity. Blair also draws attention to the 'uncomfortable fact' that 'there is still information that is being checked with people in Guantánamo Bay that does have a genuine interest and use for us in fighting terrorism' (2003s), suggesting that in this **context**, the normative constraints associated with this social identity do not take precedence.[23]

In addition to such **compartmentalisation**, Blair (2003zy) minimises the degree to which this seems to be apparent by stressing that 'the very fact that we are in discussion about making sure there are fair procedures for trial' is an 'indication that we actually treat people differently. So even though this arose out of this appalling brutal attack on America on September 11, nonetheless we make sure that justice is done for people'.[24] The detrimental effect of compartmentalisation on the Blair government's association with the human rights and humanitarian social identity is by small measure reduced.

Thus, in 2003-2004, the human rights and humanitarian social identity is a very difficult one to manage, again forcing the Blair government to adopt a compartmentalisation strategy, in addition to dominance and intersection representation, where validation of association is heavily compromised.

## 2.2 The Legal Social Identity

Interactions with the legal social group are quite mixed in 2003-2004, however, on the whole the government faces mounting opposition with regards to anti-terror legislation, in particular that which aims to establish new standards and procedures for detention. The Blair government also encounters much criticism with regards to their position on

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[22] When the Tipton 3 are returned and released without charge Blair simply states that there are 2 sides to every story and their detention 'arose out of a situation where people were picked up in Afghanistan in circumstances where British and American troops were fighting Al Qaeda and the Taliban' (2004k). Blair also asks for more credit to be given to the American's in terms of their standards for fair trials, the former Prime Minister states that, '[a]ny Military Commission that they have is subject to rules that I think would be regarded as reasonably strict by anybody (2003zo).

[23] Indeed, HRW highlight the UK's reported invocation of 'Article 103 of the U.N. Charter to argue that its obligations to the Counter Terrorism Committee under Resolution 1373 took precedence over its obligations to the Human Rights Committee' (HRW, 2003a). The context dependent nature of this argument is clear.

[24] Blair also draws comparisons with Iraq's defiance of the Geneva Conventions in terms of their parading of prisoners in public (2003r).

Guantánamo Bay. Their response employs the same management strategies as in 2001-2002, **dominance** and **intersection representation**. However, further techniques are employed in light of increased contestation.

Much of the contestation in 2003-2004 centred on Part 4 of the ATCSA, as mentioned above in relation to the human rights and humanitarian social group. In December 2004 Part 4 was deemed to be in breach of the ECHR by the Law Lords. A majority of eight to one ruled that the provisions for indefinite detention discriminated on the grounds of nationality. As there was a comparable threat from UK nationals as opposed to just foreign nationals, Part 4 was ruled to be in breach of Article 14 of ECHR. This ruling compromised the government's derogation under Article 5 of ECHR, because if UK nationals, which were a comparable threat, were not seen to require the same treatment then such derogations cannot be 'strictly required' (HRW, 2004d).

Lord Hoffman's (2004) statement in the ruling is clear in challenging the government as he asserts that:

The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these.

Prior to the Law Lords ruling in December 2004, the Blair government had spent much time publicly defending Part 4 ATCSA.[25] In response to the Newton Report that reviewed the ATCSA and concluded that Part 4 should be replaced, David Blunkett (2003a) argued that he would be 'failing' in the 'duty of public protection if the Part 4 powers were removed from the armoury of measures available to protect the United Kingdom from specific terrorist threats'.[26] The Law Lords ruling in December 2004 clearly undermines these arguments. The Blair government's attempts to **direct** the terms of the debate by drawing on a framework of protection, that emphasises the 'basic right for life and freedom from fear' (Blunkett, 2004b), and 'security and order' as a direct path to liberty (Blunkett, 2003a), appear to have been firmly rejected by this social group.

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[25] This was indeed supported by the Court of Appeal in August 2004, where the admissibility of evidence gained through torture was also upheld for SIAC proceedings.
[26] The conclusions of the Newton Report are further rejected in the government's own report on *Counter-Terrorism Powers* (Secretary of State for the Home Department, 2004: 10-11).

The Blair government is also very **challenging** and critical towards the legal social group in 2003-2004. The former Prime Minister (2004k) focuses on the need to keep 'law up to date with the reality on the ground', and appears to view the Courts as an obstacle to such progress. In relation to tightening domestic law Blair (2004zl) recognises that 'in the end we have to work within a framework set down by the Courts as well', suggesting that such procedures are viewed as a hindrance to effective counter-terrorism policies.[27]  The former Home Secretary, David Blunkett (2004a) goes even further and verges on **compartmentalisation** in his statement that:

As Home Secretary, I must balance legal theory with the practical job of protecting people.

The traditions of legal theory are juxtaposed with the demands of the context, however, Blunkett is not proposing to work outside a legal framework here, but to dispute the principles that predominate.

This challenging approach is also apparent in the international context when Blair uses his speech in Sedgefield in 2004 to question international law and oppose the absolute principle of non-intervention. [28] He questions and rejects this principle as he perceives it to currently stand. Earlier in the year Blair had also stressed that:

our demand is not that we should be subject to different rules from the rest of the world, but on the contrary that everybody should be within a proper framework of international law (2004q).

The Blair government expects 'all international colleagues … [to] abide by the law in the way that we do' (2004f), yet this is juxtaposed with revisionism, a very difficult position to adopt.

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[27] Earlier, in March of 2004, the government was refused permission to appeal against the SIAC ruling that had rejected the Secretary of State's determination of a Libyan man as a 'suspected international terrorist' (AI, 2004e).
[28] The Blair government have certainly received a vast amount of criticism with regards to the legality of intervening militarily in Iraq. One notable case was the resignation on the eve of the war of Elizabeth Wilmhurst, a legal adviser who had served in the foreign office for 30 years (Kampfner, 2004: 304). Blair has noted that 'lawyers continue to divide' over the decision to intervene, yet the former Prime Minister attempts to shift the debate away from one of legality to that of politics by suggesting that 'their legal opinions bear… a remarkable similarity to their political view of the war' (2004h). For the legality to be in question is much more detrimental than political disagreement. Additionally, the lack of legality for the 'occupying force' in Iraq after the initial combat phase was a significant concern for the government, one raised by the Attorney-General Lord Goldsmith (Kampfner, 2004: 317; Short, 2005). However, the legality of the Iraq intervention is not the focus of this thesis. I mention this only briefly to demonstrate Blair's overall approach to this social identity.

**Intersection representation** is also apparent in relation to the legal social identity, supporting the dominance strategy outlined above. This is in terms of **bolstering** this social identity. The repeated references to 'tightening' and 'strengthening' the law by members of the Blair government, stressing the importance of the rule of law, are aspects of this. The Blair government also employ the language of international law in relation to Iraq, **utilising** association with this identity to suggest that such action is in defence of international law, and that those that act outside a framework of international law are a threat (Blair, 2004q).

However, whilst the Blair government have employed the management strategies of dominance and intersection representation in 2003-2004, the government's close association with the legal social identity has been brought into question. Further criticisms, concerning the detention facility at Guantánamo Bay and the proposed military tribunals, from both Lord Steyn (2003) and Lord Goldsmith (2004) (the former Attorney-General), have challenged this even more, particularly given the government's defensive responses outlined in the previous section on the human rights and humanitarian social identity.[29]

## 2.3 The Military Social Identity

Discourse concerning the Armed Forces is again frequent in 2003-2004, as expected given their continuing engagement in combat operations. Again there is not much contestation, especially publicly, with this group. Questions are however raised of the government in relation to this social group (if not necessarily by the members of the Armed Forces themselves), particularly concerning the betrayal of soldiers. This is largely based on the reasons for the military intervention in Iraq, legality, and equipment shortages in the field. Armed Forces personnel were led to believe they were going into combat to protect the country from a direct threat and to liberate Iraq from Saddam Hussein, however, this significantly shifted to a battle to free Iraq from terrorism and a global conflict between ideologies, subsequent to the initial invasion. Also, various media sources reported allegations of an equipment shortfall, both in terms of medical kit (e.g. BBC, 2004a) and protective armour (e.g. BBC, 2004b).

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[29] The government's response on Guantánamo Bay has been outlined in relation to the human rights and humanitarian social group. Clearly there is a significant overlap here with the legal social group, however the discourse of the government is largely directed at the concerns raised by the human rights and humanitarian social group and does not alter the strategies identified in relation to this group.

Whilst not directly related to the detention of terror suspects, the Blair government's responses form part of the broader interactions with social identities in this context.

The Blair government's statements again largely fall within the category of **dominance**. There is much emphasis on how current missions do help to protect the peace and security of Britain and the world and that the soldiers do see a real and positive difference in people's lives in Iraq as a consequence of their military actions (Blair, 2003f). The 'gloom-laden observations of armchair generals' (Kampfner, 2005: 316), are **dismissed**, at the same time as **directing** the purpose of this social group, as is their job to do. Purpose is very much linked to the broader war on terror, and a super-ordinate social identity based on the coalition fighting terrorism, perhaps detracting from the more immediate divisions within the country and internationally regarding the issue of the UK presence in Iraq. Blair's (2004a) expressions of the gratitude of the international community when addressing the military provide an indication of super-ordinate orientation in relation to the UK Armed Forces; one that was questioned in private by Admiral Boyce who is reported to have 'expressed misgivings about the American's approach to the war on terror' more generally (Kampfner, 2004: 305).

Linked to notions of purpose were questions of legality. This is a strong concern for the Armed Forces, given developments in the international sphere such as the ICC. As Kampfner notes, 'military chiefs in the UK were deeply worried that they and their soldiers could be prosecuted at the International Criminal Court (ICC) if the war were deemed unlawful' (2004: 378).[30] Blair publicly **reassures** members of the Armed Forces that he wouldn't commit forces unless he believed such measures were morally right, that military intervention was the last resort (2003i), it was a just cause (2003t) and was absolutely necessary (2003b). Discourse concerning the subsequent military presence is also heavily linked to the UN mandate post-intervention.

Concerns about overstretching the Armed Forces were also raised in private by Admiral Boyce according to Kampfner (2004: 305), which certainly had the potential to undermine norms of professionalism and capacity to deliver sufficiently on the 'hearts and minds' component of the war. The latter is granted great importance by the Blair government, particularly the need to persuade people to turn away from the ideology of

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[30] In order to address this concern, Admiral Boyce, then Chief of Defence Staff, sought definite assurances from the Attorney General Lord Goldsmith on the legality of the planned military intervention in the immediate build up to hostilities in Iraq (Jackson, 2008: 402).

terrorism and extremism. Such an emphasis diverges from the factors directly associated with and within the control of the Armed Forces, involving them in a global battle of ideologies. Doing so, in the global context of 24 hour news media, highly legalised warfare, and an unpopular intervention, meant that the conflict was subjected to an unprecedented degree of scrutiny.

Thus, accusations of abuse by the armed forces, particularly in relation to detainees, were particularly damaging. The Blair government frequently speak to the **defence of this group**, stressing that such behaviours do not apply to the vast majority of soldiers, who in very difficult circumstances do a magnificent job and are trained very well. Blair (2004a) is clear in articulating that he is in a lucky position as the Prime Minister of the UK, to have such confidence and strength in the Armed Forces, stressing their capacity to be the 'new pioneers of soldiering in the 21$^{st}$ century'. Admiration for their skill, professionalism, courage and sense of duty are some of the issues touched upon in the discourse, which serves to further **bolster** this social identity. The gratitude for the work that the Armed Forces are doing, and their major role in the foreign policy and defence of the UK bring the above two techniques firmly within the category of **intersection representation** (Blair, 2004zzc).

Interactions with this social group serve to demonstrate the importance of the evolving super-ordinate social identity predominately based on counter-terrorism, founded on the constitutive principles previously mentioned. Whilst intersection representation is evident, this is largely to facilitate the dominant approach.

## 2.4 The United Nations Social Identity

Whilst most of the discourse of the Blair government in 2003-2004 that relates specifically to the UN, focuses on issues of intervention and post-conflict reconstruction, various areas of concern are raised by this social group regarding the detention policies of the UK in the war on terror. This largely relates to the trade-off between human rights and security, as well as more specifically, the government's position on the admissibility of evidence gained by torture, in court proceedings. The Blair government's interactions with the UN, whilst not always on the topic of detention are largely based on **dominance** and **intersection representation** as will be advanced in this section.

In 2004 Kofi Annan spoke of a world where there was a dangerous possibility that the fabric of 'rules, institutions and principles built up to promote prosperity and protect peace … may be starting to unravel' at a time when they are most needed (Annan, 2004a). In terms of combating terrorism the UN suggests that 'any sacrifice of human rights…demeans us all and also diminishes the prospects for successfully combating the scourge of terrorism' (Report of the Secretary-General, 2004: 4). The notion of a trade-off is rejected. Human rights are also, furthermore, strongly linked to legitimacy, where 'in order for a state to criticize others with legitimacy, that State must pay attention to its own observance of human rights' (Corell, 2004). The UN is particularly critical of the UK's breach of Article 15 of the CAT, concerning the admissibility in court proceedings of evidence gained through torture (AI, 2004f).[31]

Such arguments do not fit well with the discourse of the Blair government, where there is a great deal of emphasis on a trade-off between human rights and security. Statements directed at the UN are however largely based on the intervention in Iraq. **Dominance** as a strategy is certainly very evident here, in terms of **directing**, **challenging**, and **blaming**, as well as **threatening**. The Blair government is insistent that 'we must uphold the authority of the United Nations' (Blair, 2003c); and action must be taken if the will of the UN is breached (Blair, 2003b).[32] The situation is framed as a test of the UN, one where the organisation's authority is at stake (Blair, 2003e). On the eve of the war Blair (2003n) further stated 'that the greater danger to the UN is inaction'.

Blame is placed on the Security Council for not agreeing on a second Resolution regarding Iraq, and forcing the USA and UK to act outside the rule-based system (Blair, 2004h). Accompanying such rhetoric is significant contestation regarding 'how you make the rules and how you decide what is right or wrong in enforcing them' (Blair, 2004h). Blair (2004h) states that the 'UN Universal Declaration on Human Rights is a fine document. But it is strange the United Nations is so reluctant to enforce them'.

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[31] The Blair government's responses to such criticisms have been assessed in relation to the human rights and humanitarian social group so will not be covered again here. The purpose of this section is to deal specifically with the management strategies employed in relation to the UN, thus establishing the context within which concerns from this social group are viewed.

[32] Blair is also directing on other issues stressing that the UN needs 'to understand that faced with the threats we have, we should do all we can to spread the values of freedom, democracy, the rule of law, religious tolerance and justice for the oppressed, however painful for some nations that may be; but that at the same time, we wage war relentlessly on those who would exploit racial and religious division to bring catastrophe to the world' (2004h).

There is a sense of Blair knowing the rules promoted by the UN better than the UN itself, despite the contestations regarding detention.[33]

In addition to dominance as above, **intersection representation** is also evident. The Blair government **utilises** the language of the UN in terms of Resolutions, and stresses that they remain committed to the UN, and the importance of their role in the post-conflict phase is portrayed as something around which members of the UN can **unite** (Blair, 2003zu; Blair, 2004m).[34] Blair (2004q) **bolsters** this social group and his government's association with it by stating:

whatever difficulties there are historically about the UN's role in Iraq, my assessment is that both within Iraq and within the international community, the UN is the body that has the international legitimacy to be able to certify and help guide the process of political transition.

Despite divisions in the recent past, Blair is suggesting the UN retains sufficient legitimacy to have authority on the Iraq issue and is drawing the UK closer to this social identity. Thus dominance is closely accompanied by intersection representation, particularly in the post-conflict phase in Iraq. The criticisms above that relate to detention are likely to have been drowned out by the arguments concerning intervention, which overall served to create a degree of distance to this social identity, weakening the social influence of the UN's normative arguments.

## 2.5 International Society and the Liberal Democratic Social Identity

Challenges to the liberal democratic social identity are again apparent in 2003-2004. The discourse certainly denotes shifting dynamics in the international sphere, as the Blair government attempt to establish a degree of unity under a complex super-ordinate identity, blending elements contained in the doctrine of the international community, the liberal democratic social identity and the emphases of the war on terror. The strategies of **dominance** and **merging** are both evident.

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[33] Indeed this is reflected in the insistence that the UK 'had gone to war to uphold UN resolutions – even though the UN itself had steadfastly refused to back the very cause he was making' (Kampfner, 2004: 374).

[34] Blair claims that 'in the United Nations we have come back together now' (2003zi). The UN backing for the presence of coalition forces is achieved through Resolutions 1483 and 1511 and the legitimacy this denotes is subsequently stressed. The UN High-Level Panel Report (December 2004) is also seen as something around which to unite (2004zz). The report focuses on establishing a new consensus for collective security, drawing on themes from the 'Responsibility to Protect' doctrine. This report is constructed in the discourse as something around which reform can take place enabling the UN to act effectively.

The emphasis on community, and the world as a community, continues and indeed is increasingly evident in 2003-2004. The value of community both domestically and internationally is a strong theme, with parallels created between them. There is a degree of **merging** where boundaries are again **blurred.** Blair (2004h) builds on the notion of community, stating:

The doctrine of international community is no longer a vision of idealism. It is a practical recognition that just as within a country, citizens who are free, well educated and prosperous tend to be responsible, to feel solidarity with a society in which they have a stake; so do nations that are free, democratic and benefiting from economic progress, tend to be stable and solid partners in the advance of humankind.

Blair (2003a) suggests that 'there has never been a time when domestic and foreign policy were so closely linked', and later argues that such a situation demands 'an entirely different, more just and more modern view of self-interest', based on blurred boundaries (Blair, 2004h).[35]

However, what exactly constitutes the large social identity with which the Blair government appear to be employing a merging strategy is highly contested. **Dominance** is again evident, particularly in terms of **directing,** and **challenging** previous understandings.[36] In his Sedgefield speech in 2004 Blair (2004h) speaks 'passionately' of the 'mortal danger of mistaking the nature of the new world in which we live'. The former Prime Minister argues later in 2004:

A world that is fractured, divided and uncertain must be brought together to fight this global terrorism in all its forms, and to recognise that it will not be defeated by military might alone, but also by demonstrating the strength of our common values - by bringing freedom and democracy to Iraq, as we have done to Afghanistan; by pursuing with the same energy peace in the Middle East between Israel and Palestine; by accepting it is our duty to combat poverty and injustice on the continent of Africa and elsewhere in the world (Blair, 2004zs).

This agenda draws a variety of factors together and appears to provide the constitutive elements of an international social identity based on tackling these and other issues, as

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[35] Whilst this ethos has been apparent throughout the discourse of the Blair government, this particular statement clearly highlights why assumptions regarding the interests of a state may not always be that helpful, and indeed a constructivist problematisation of this is essential.

[36] Significant challenge is presented, for example, to nothing less than the traditional conception that 'has held sway since the treaty of Westphalia in 1648; namely that a country's internal affairs are for it and you don't interfere unless it threatens you, or breaches a treaty, or triggers an obligation of alliance' (2004h).

well as promoting universal values.[37] Global threats such as that from poverty, global warming, WMD and terrorism are all stressed. The former Prime Minister is very optimistic with regards to this agenda emphasising the willingness of the international community 'to confront the challenges we have together on a concerted basis' (Blair, 2003zl). The UK's role is considered to be central in bringing together the different actors, particularly the USA and the EU, thus assuming a directing position in relation to an evolving and dynamic international social identity.

As with the previous period, there is again much emphasis on new alliances and group formations in the changing world. This is particularly notable in relation to an alliance struck with General Gaddafi of Libya. Blair suggests that our view of the world and whole thinking has to change in the post-September 11th world, and in response we must offer leaders such as Gaddafi the chance to work with the War on Terror grouping. This is seen by Blair as a signal that the USA and UK can work with the Arab world.[38] Alongside this emphasis on new members, parameters, boundaries and **divisions** are again extremely apparent characterised predominantly as 'a struggle between fanaticism and extremism on the one hand, and people who believe in freedom and in tolerance on the other' (Blair, 2003zy).

Thus, there are a variety of dynamics at work in the international sphere. Much of the discourse of the Blair government appears to be attempting to merge elements of the liberal democratic social identity with the anti-terrorism agenda that has a different membership base. There are many contradictory factors here which are extremely difficult to merge. One highly visible example concerns Guantánamo Bay, where the international normative standards and regimes associated with a liberal democratic social identity are juxtaposed with those perceived to pertain to the loosely and dynamically defined counter-terrorism social identity in the international sphere. We can understand how the influence of the international detention regime is highly contested as the international social identity to which it largely pertains is being heavily challenged by the Blair government. Indeed, Blair's (2003n) warning that we cannot allow the 'natural urges of our democracy towards peace' to be seen as a weakness is

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[37] Blair pictures a world working together, based on 'universal values', and for mutual benefit (2004h). This approach to international relations is based on the ambition for humanity to reach the goals as set out in the UDHR and the UN Charter, notably the protection of human rights, freedom, democracy and the rule of law.
[38] Other noted relations in this period are with India, Pakistan, Poland, the Ukraine (often in relation to the EU) and the Commonwealth.

very telling. However, as this thesis argues, **international** social identities are not the only context with which political elites must interact. Such a contradictory approach is certainly hard to sustain given the wider context of social identities and social influence.

## 3. Phase 3 - The Unravelling of Contestation? 2005-2006

*'Let no-one be in any doubt, the rules of the game are changing' (Blair, 2005zb).*

### 3.1 The Human Rights and Humanitarian Social Identity

Many of the key criticisms raised by the human rights and humanitarian social group regarding the Blair government's detention policies continue to intensify in 2005-2006. The response again utilises a complex array of **dominance, intersection representation** and **compartmentalisation**, employing the same techniques as in the previous periods, however, the discourse used is increasingly dismissive of the arguments of members of this social group.

The controversial Part 4 of the ATCSA 2001 was replaced in 2005 with control orders in the *Prevention of Terrorism Act*. Human rights groups have been very critical of these new measures suggesting that they also violate human rights (AI, 2005c), do not meet international human rights obligations (HRW, 2005i), and fall short of the requirements outlined in the Law Lords rejection of Part 4 ATCSA (AI, 2005d).[39] HRW and AI are also extremely critical of the government's proposals to increase the length of pre-trial detention for terror-suspects from 14 days to 90 days. AI has referred to such measures as 'draconian and unnecessary', and which 'effectively amount to internment in all but name' (AI, 2005e).

The human rights and humanitarian social group has been highly critical of the 'serious attack on human rights' that the Blair government's detention policies present. In addition to compromising the right to a fair trial as above, this group also accuses the government of undermining the global ban on torture 'attempting to circumvent' for example the principle of non-*refoulement* (AI, 2005f; HRW, 2005b). HRW (2005c) suggest that the Blair government is leading a 'growing trend' in defiance of international law by seeking to establish MoUs with countries such as Jordan and

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[39] Prior to passage into law, AI called for 'the withdrawal of the Prevention of Terrorism Bill (PTB), as it will effectively end the rule of law and the separation of powers by placing key powers in the hands of the executive' (2005g).

Algeria that are known to torture. They are 'condoning' (Crawshaw, 2006) and 'encouraging' (AI, 2006g) torture through their detention policies, including their statements in favour of the admissibility of evidence gained through torture in court proceedings.

The government's response and interaction with such criticisms from this group is to again attempt to reformulate the concept of human rights. Whilst **intersection representation** is apparent in terms of strengthening human rights and **bolstering** this group, **dominance** and **compartmentalisation** are paramount. For example, Charles Clarke (2005a), the former home secretary, stated on several occasions in 2005 that:

Our strengthening of human rights needs to acknowledge a truth which we should all accept, that the right to be protected from torture and ill-treatment must be considered side by side with the right to be protected from the death and destruction caused by indiscriminate terrorism.

Whilst Blair (2006i) himself does not go so far as to overtly balance torture with security, the former Prime Minister does **dismiss** the concerns of the human rights and humanitarian social group with regards to the lack of reliability of MoUs, and argues that the human rights and humanitarian social group 'have got the world the wrong way round'.

Furthermore, the ECHR is framed by Charles Clarke (2005a) as outdated, 'established over 50 years ago in a quite different international climate', one where John Reid (2006) suggests concerns such as 'unlawful detention … torture and punishment without trial came centre stage' due to the very recent horrors of WWII. Blair (2006zf) argues that 'traditional civil liberty arguments are not so much wrong, as just made for another age'; the debate now is not 'about whether we respect civil liberties or not; but whose take priority' (Blair, 2006zb). **Compartmentalisation**, informed by super-ordinate priorities, is therefore apparent, as human rights are deemed to be **context dependent** in relation to the individuals concerned. This has again been evident with regards to Guantánamo Bay. Whilst Blair (2006m) conceded that 'it would be better that it is closed', this is again juxtaposed with a reminder of the circumstances in which the situation arose – the attacks of September 11th. These issues are grounded in Blair's (2006zb) suggestions that our framework for evaluating the appropriateness of the

proposed procedures needs to shift to one placing greater emphasis on protection and the rights of the 'law-abiding majority'.[40]

Thus, the government's interactions with this social group also largely fall within the category of **dominance**, where political elites attempt to **direct** the terms of the debate. They also **deny** the human rights concerns arguing that 'the analogies with things like internment are just fatuous frankly' (Blair, 2005zr). Indeed, in response to criticisms regarding the proposed 90 day pre-charge detention period Blair (2005zr) remarks 'I find it really odd for people to say this is such a terrible thing because it seems to me that if you balance it up properly it is perfectly fair'. Further **dismissals** such as this are also found in relation to the US practice of rendition. Blair (2005zzf) rejects accusations that 'I, or the Americans, or anybody else approve or condone torture, or ill treatment, or degrading treatment' as 'completely and totally out of order in any set of circumstances'. However, this clearly depends on the definition of torture as practices such as water-boarding have featured on a list of approved interrogation techniques for the USA, and as John Bellinger has stated, has been used on three occasions between 2001 and 2003, most famously on Khalid Sheikh Mohammed.

More **challenging** however are accusations that critics are detached from the reality of the situation (Blair, 2005zzb), and should not be dominating the debate. Blair (2006zf) suggests that 'NGOs and pressure groups with single causes can be benevolent but can also exercise a kind of malign tyranny over the public debate'. Blair's (2005zm) frustrations that the government is forced to be distant from this social identity are apparent in the following statement:

I am not doing it because I am authoritarian or don't care about the civil liberties of this country. I care deeply about the civil liberties of this country, but I care about one basic civil liberty which is the right to life of our citizens and freedom from terrorism and I think if these measures are necessary we should take them.

Also, in response to an e-petition from Liberty, Blair (2006zzh) emphasises that all counter-terrorism measures are set 'in the context of our general commitment to human rights and the protection of individual freedoms, including the enactment of the Human

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[40] This also relates to rhetoric concerning reform of the criminal justice system. Blair (2006a) goes even further than previous periods in 2006 to proclaim the unsuitability of the 19th Century values underpinning the criminal justice system, for the 21st Century World.

Rights Act 1998 which made the rights enshrined in the European Convention on Human Rights (ECHR) enforceable in domestic courts'. Self-identity informing interpretation of one's own actions and stressing overlap with this identity again appears to be a theme here, indicative of **intersection representation**. As 'we' are the government that introduced these human rights protections into domestic law, current actions cannot be seen as anything other than extremely necessary.

The above certainly demonstrates attempts to re-frame civil liberties and human rights with narrow priorities that are perceived to fit the global war on terror and the evolving super-ordinate social identity that appears to dominate for the Blair government. Whilst AI and HRW argue that the UK should be taking a leading role in promoting human rights to tackle terrorism, the global impact of their detention policies is thought to have the opposite effect.

### 3.2 The Legal Social Identity

There is also a continuation of contestation with the legal social group in 2005-2006. The Blair government faced setbacks with regards to the Law Lords ruling rendering torture evidence inadmissible in court, in line with international law (House of Lords, 2005; BBC, 2005a), as well as the High Court ruling that control orders are incompatible with human rights law (Ford, 2006). The then Attorney-General, Lord Goldsmith (2006) was also increasingly outspoken against procedures at Guantánamo Bay,[41] contradicting Blair's earlier claims of utility with regards to the detention facility. Contestation regarding the proposals to circumvent non-*refoulement* did not begin to surface with this group until after 2006 (see Ford, 2007; Gardham and Rayner, 2008), however, much of the Blair government's discourse appears to be pre-empting such a backlash. Their interactions with the legal social identity fall under the categories of **dominance** and **intersection representation** as in the previous periods. However, in 2005-2006 the language employed in relation to dominance intensifies and at times **compartmentalisation** is also apparent.

In terms of **dominance** and **directing**, the Blair government are extremely forthright in making a case for a revision of the criminal justice system based on understandings of the current context. Blair (2005zm) argues that 'new types of crime' cannot be tackled

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[41] Whilst Lord Goldsmith usually stresses the importance of a balance between security and fundamental rights (see Goldsmith, 2006), this is not deemed to be proportionate with regards to Guantánamo Bay and the US military tribunals. Indeed, whilst supportive of control orders, deportations and 90 day detention, the former Attorney-General argues that the right to a fair trial is one that cannot be compromised.

'by the rules of the game we have at the moment'. The current legal system is characterised in terms of restraint, an obstacle for the government to find a way around to confront the problems of the day. The former Home Secretary Charles Clarke (2005b) called for 'a legal framework' where there is a better balance between rights as, '[w]e cannot properly fight terrorism with one legal hand tied behind our back'.

The concerns that have been raised by members of the legal social group, in particular those made by Lord Hoffman at the end of 2004, are **dismissed** based on a changing context. Lord Hoffman's (2004) statement is worth repeating here:

The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these.

Blair (2005y) argues, in the weeks following the attacks of July 7th 2005 in London, that, 'I doubt those words … would be uttered now … I think the mood on this thing does change'. In light of this the Blair government implies that it would be irresponsible to block proposals concerning the detention and deportation of terror suspects.

The Blair government's discourse concerning the legal social identity certainly takes on a **challenging** tone in the aftermath of the July 7th attacks. Blair (2005zb) argues that '[s]hould legal obstacles arise' in relation to detention policies, the government 'will legislate further including, if necessary, amending the Human Rights Act in respect of the interpretation of the European Convention on Human Rights'.[42] The situation is almost as though war has been declared on the courts, indeed 'an ongoing battle in the Courts and in Parliament to deal with the issue of deportation' is certainly recognised (Blair, 2006zi).

There is a clear, if guarded, message signalled to the judiciary with regards to 90 day detention, to 'be aware that there is a proper role for the judiciary and there is a proper role for government and for Parliament' (Blair, 2005zm). Blair (2005zm) stresses that the 'threat is real' and as the police are asking for these powers 'you have got to have good reasons to say no to that'. Whilst the independence of the judiciary is recognised as a 'principle of our democracy' that must be upheld (Blair, 2005y), suggesting

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[42] The HRA was designed for the judiciary to pass judgement on the compatibility of legislation with the HRA, moving away from an absolute principle of Parliamentary sovereignty (Clements and Young, 1999), however, this statement suggests a reversal of such safeguards.

elements of **bolstering** and **intersection representation**, the emphasis on direction and this group as an obstacle is paramount.[43] Blair (2005zm) denies 'trying to browbeat the Judiciary or to substitute the role of government to the proper role of judges', yet the need for those members to understand 'the rules of the game' as he does is made very clear. A degree of incomprehensibility and 'alarm' is evident in relation to court decisions, as the former Prime Minister stresses 'the absolute urgency for people to understand this is an active threat and we have to deal with it with the measures that are necessary' (Blair, 2006zi, also see Reid, 2006).

A very interesting passage articulating this view and the need for revision of the legal social identity follows. Blair (2006zb) states that:

it is the culture of political and legal decision-making that has to change, to take account of the way the world has changed. It is not this or that judicial decision; this or that law. It is a complete change of mindset, an avowed, articulated determination to make protection of the law-abiding public the priority and to measure that not by the theory of the textbook but by the reality of the street and community in which real people live real lives.

With specific reference to the ECHR, the former Home Secretary John Reid is also very direct in challenging this social group. He argues that the Convention:

drawn up by British lawyers in the aftermath of the second world war was shaped inevitably by that war and by what was happening, not only during that war in places like Germany but across the iron curtain. And from the struggle to defeat fascism and the fascist state, and stand up to Stalinism, came an understandable focus on protecting the individual from the overweening evil power of the fascist state (Reid, 2006).

This is not considered to be relevant today, but instead is framed as a **context dependent** set of principles. John Reid goes on to be highly critical of the *Chahal* judgement by European lawyers that prevents the deportation of terror suspects to their home countries if there is a risk of torture and ill-treatment. He also employs a comparative argument, stressing that the terrorists:

would have no compunction about all unlawful killing or detention. They would have no compunction breaking all the laws of war in the Geneva Conventions while demanding the protection of the Geneva Conventions. That is what we are trying to tackle with the means of an increasingly constrained

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[43] Attempts to stay within the legal framework are also apparent when Blair is questioned on the US practice of rendition. He states, 'it all depends on what you mean by rendition. If it is something that is unlawful I totally disapprove of it; if it is lawful, I don't disapprove of it' (Blair, 2005zzf).

democratic society - constrained by international conventions and laws, so as the enemy has become less and less constrained in intention and capability, we have become more constrained by the intrusion, inspection and standards which we set upon ourselves in conducting that struggle, rightly so (Reid, 2006).

The emphasis is very much on this social identity as a constraint on action, as an obstacle to the protection of the majority. Whilst the importance of the rule of law is recognised (note Reid says 'rightly so' at the end of this passage), and strengthening the law is given priority due to its role in deterring terror suspects from entering the UK (Clarke, 2006), the employment of dominance and compartmentalisation suggest that bolstering is on very narrow terms.

### 3.3 The Military Social Identity

Questions start to be raised by various members of the UK Armed Forces in 2005-2006 with regards to the Blair government's policies. For example, in the annual Dimbleby Lecture of December 2006, the then recently retired head of the British Army, General Sir Mike Jackson, identified a dangerous 'mismatch between what we do and the resources we are given with which to do it'. A previous statement by General Sir Richard Dannatt (published in the *Daily Mail* (Sands, 2006)) seemed to provide the catalyst for the emergence of a more public dialogue between the government and the military than had been evident previously. However, this becomes more apparent after the period of analysis, in 2007 and 2008.

The Armed Forces have certainly been placed in a very complex situation, where they are caught in the 'potential cross-fire' between society and government (Strachan, 2006: 73). Indeed, in the context of an unpopular war in Iraq there is the significant worry raised by General Sir Michael Walker in 2005 that '[s]ome of the opprobrium attached to the war [in Iraq] is also attached to the fact that the armed services are taking part in it. We are, if you like, guilty by association with a decision to go to war that not the whole of this country enjoined' (as cited in Schofield, 2005).

As with the previous periods, the Blair government attempts to counter such perceptions by emphasising the purpose of the Armed Forces' actions. The wider implications of the military's job in both Afghanistan and Iraq, for both the region and the rest of the world, are stressed. This is largely situated in a broader framework of an evolving **dominant** super-ordinate social identity internationally. Blair (2006zzd) suggests for example that, '[w]e are not fighting a state, we are fighting a set of ideas, an ideology, a group of

extremists that share the same perspective that is a hatred of our way of life and what we believe in'. The immense importance of the military's task is underlined. Whilst the Blair government recognise that this is not something soldiers probably thought they would ever be involved in when they joined, now due to the changed context and the different type of enemy, this is the case and there is no alternative. Soldiers are now on the frontline in the Global War on Terror, in a battle of ideologies that goes far beyond the traditional capacity of the Armed Forces. Values are taken to form the battleground in this context as we are reminded that the conflicts in Iraq and Afghanistan are **'**not just about security or military tactics. It is about hearts and minds about inspiring people, persuading them, showing them what our values at their best stand for' (Blair, 2006zh). **Direction** of purpose along such lines certainly places significant if not unrealistic constraints on this group in their application of military force and provides a framework from which their actions will be severely judged.

In the years to come Blair (2006l) argues that 'the sacrifice made by British troops, and also by other countries' troops, will be seen for what it is - a sacrifice in the name of freedom and democracy'. He suggests, in a speech to the military, that '[w]hat we have done therefore in intervening in this way, is far more momentous than possibly we appreciated at the time' (Blair, 2006zh). Legitimatisation through references to the elections in Iraq, the support of the Iraqi people, and the presence of a post-conflict UN Resolution are also highly salient means of **re-assurance**. This is accompanied by **defence of the group** in relation to accusations of abuse, with the Blair government emphasising the good work of the British Armed Forces (Blair, 2005e).[44]

There is also a degree of **intersection representation** here in expressions of praise and gratitude that generally accompany these comments, as well as identification of the pride that 'shines through' (Blair, 2006zv). This is related to the need for support from the general public for the forces in combat. The need to be proud of these soldiers in their defence of 'our country's security and that of the wider world' in hostile conditions (Blair, 2006zh), precipitates later statements by General Sir Richard Dannatt (2007) on the lack of understanding and support for the Armed Forces in the British public. Such

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[44] The UK Armed Forces behaviour in terms of detention in Iraq was also coming under increasing scrutiny, for example 'holding around 10 "security internees" in Iraq without charge or trial, including at least one person who holds both UK and Iraqi citizenship' (AI, 2005h).

rhetoric serves to **bolster** this social identity and clearly focuses on areas of overlap between the actions of this group and the Blair government's objectives.

As mentioned in previous time periods, whilst the Blair government's detention policies are not challenged by this social group, they are still part of the complicated social identities environment in which policies are made, and interactions give a further indication of super-ordinate orientation.

## 3.4 The United Nations Social Identity

The main areas of concern that are raised by the UN in 2005-2006 with regards to detention, relate to the use of diplomatic assurances or MoUs to return terror suspects to countries known to torture, as well as more generally stressing the importance of human rights and the rule of law in countering terrorism (this is in contrast to being seen as an obstacle to tackling such threats). The Blair government's interactions with this social group are less confrontational than in 2003-2004, but the overall strategies of **dominance** and **intersection representation** remain.

Kofi Annan stressed in 2005 that 'the prominence of human rights and the rule of law in our conduct of international affairs' needs to be elevated (Annan, 2005a). Indeed the former Secretary-General identifies a 'lack of respect for human rights and human dignity [as] the fundamental reason why the peace of the world today is so precarious, and why prosperity is so unequally shared' (Annan, 2006). From such a perspective 'compromising human rights cannot serve the struggle against terrorism' (Annan, 2005b). In stark contrast to the Blair government's rhetoric that has strongly juxtaposed the requirements of counter-terrorism with human rights, even prohibitions on torture, Kofi Annan (2005c) expresses the judgment that '[h]uman rights law makes ample provision for strong counter-terrorist action, even in the most exceptional circumstances'. Thus, the Blair government's previous attempts to bring this social identity in line with their perception of the global war on terror and the evolving super-ordinate social identity, has clearly not been accepted.

Indeed, the Blair government's detention policies are on the receiving end of much criticism, particularly with regards to non-*refoulement*. Manfred Nowak (2006: 2), the UN Special Rapporteur on torture, has stated that:

diplomatic assurances, which attempt to erode the absolute prohibition on torture in the context of counter-terrorism measures. … are not legally binding and undermine existing obligations of States to prohibit torture, are ineffective and unreliable in ensuring the protection of returned persons, and therefore shall not be resorted to by States.

He further highlights that:

Diplomatic assurances are sought from countries with a proven record of systematic torture, i.e. the very fact that such diplomatic assurances are sought is an acknowledgement that the requested State, in the opinion of the requesting State, is practising torture (Nowak, 2006: 10).

Such sentiments are supported by Louise Arbour, the High Commissioner for Human Rights. Her address on Human Rights Day, on the 10th of December 2005, argues that:

even if some post-return monitoring were functioning, the fact that some Governments conclude legally non-binding agreements with other Governments on a matter that is at the core of several legally-binding UN instruments threatens to empty international human rights law of its content. Diplomatic assurances basically create a two-class system among detainees, attempting to provide for a special bilateral protection and monitoring regime for a selected few and ignoring the systematic torture of other detainees, even though all are entitled to the equal protection of existing UN instruments.

Thus, representatives of the UN have spoken out very clearly against a key component of the Blair government's approach to terrorism.[45] Some of the responses to such criticisms have been discussed earlier in relation to the human rights and humanitarian social identity, where the opposing arguments continue to be stressed. Here I shall focus on the discourse directly relating to the UN.

In support of the Blair government's position the strategies of **dominance** and **intersection representation** are employed in relation to this social identity. As with previous periods a **directing** approach is utilised, for example in terms of restructuring the UN to meet global challenges – especially the issue of reforming the Security Council to increase legitimacy, and the need for leadership from the UN on a range of issues (Blair, 2005zd; 2005zg; 2005zt; 2006x). Blair (2006y) in particular expresses the need for the UN to act earlier to tackle global concerns, that problems are urgent and that the consequences will be felt all around the world. The emphasis continues to be on action, with inaction viewed as a weakness.

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[45] The deportation of terror suspects was one track of a twin-track approach to countering terrorism (Clarke, 2005c).

However, **dominance** in 2005-2006 is largely limited to this, perhaps given the troubled relationship apparent in 2003-2004 and the significant criticisms above. **Intersection representation** addresses some of these issues, drawing the social identity closer, to publicly and symbolically validate membership. Blair stresses that the UN can be absolutely essential in solving the world's problems in certain circumstances, **bolstering** this social group. Indeed the former Prime Minister argues that '[t]he principles of the UN have always had a moral force' yet '[t]oday they receive the sharper impulse of self-interest' (Blair, 2005zg). Thus the values and principles have been there for some time, but these now have much more potential as they are so tied up with an 'enlightened' view of self-interest. Such expressions appear to take on board some of the Secretary-General's concerns with regards to the juxtaposition of human rights and security. However, this is certainly not yet reflected in the detention policies of the Blair government.

**Unifying** under the 'Millennium Development Goals on poverty, on education, [and] across a range of indicators for Africa' (Blair, 2005l) as well as under the UN processes in place in Afghanistan and Iraq is also emphasised. Blair (2005ze) argues that:

whatever feelings people have about the original decision in respect of Afghanistan or Iraq, what you have now is a United Nations process in which all sensible people should be backing the right of those two countries to elect their own government.

In addition to unifying, **utilising** is also at play here. UN involvement certainly strengthens the legitimacy and credibility of Blair's call for the country and the world to unite and allows the former Prime Minister to draw this social identity closer, almost setting the UK up as a prototypical member.[46] Such a strategy is also employed in relation to counter-terror measures at home. Charles Clarke argues that the 'ambitions of the Security Council resolution' on counter-terrorism need to be met, and this is what the new *Prevention of Terrorism Bill* seeks to do (Clarke, 2005b). Such an argument would however appear to be quite difficult to sustain given the criticisms raised by the UN outlined above.

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[46] In response to the actions of Iran, Blair directs them to stop meddling in a country governed by a UN process and where UN supported multinational forces are present. The UN clearly strengthens statements and grants a vast amount of legitimacy.

## 3.5 International Society and the Liberal Democratic Social Identity

The portrait that is painted by the Blair government of international social identities is increasingly complex in 2005-2006. The effect of September 11th is still very prominent as are other ways in which the world is changing, for example, '[n]ew powers are emerging', and as Blair (2006zt) further acknowledges, '[i]n the decades to come there will be many international negotiations, debates, occasionally, if only in a diplomatic sense, confrontations'. However, the strategies that are employed in this complex environment are still those of **merging** and **dominance**.

The emphasis is again on the doctrine of the international community with a 'strongly activist' and value based approach to military intervention, 'climate change, world trade, Africa and Palestine' (Blair, 2006n). In this context the **boundaries are blurred** both between the domestic and the international, as well as in the international sphere itself. Blair (2006zt) argues, for example, that Britain's national interests can only be pursued in 'close concert with others', as interdependence continues to be a fundamental characteristic of the international environment. In such a climate, particularly with regards to terrorism, Blair (2006zh) argues that there is no possibility for isolationism, as 'global terrorism means we can't opt-out even if we wanted to'. Blair (2006zh) goes on to state that '[t]o be engaged is only modern realpolitik', as 'all countries depend for their strength on the relationships that they can have with other countries' (Blair, 2006l).

The need to act as a unified international community is prominent in the discourse.[47] Blair suggests that the 'divisions of the past' must be put behind them and the emphasis is on unified messages. For example, the former Prime Minister argues that:

it is time we sent out a clear unified message from the international community and said that is no longer legitimate, not merely in terms of committing acts of terrorism but in terms of supporting or inciting it, that that is not something that can have any hiding place in respectable opinion (Blair, 2005zd).

The power of legitimacy or in this case de-legitimising activity is clearly recognised as is the need to build social consensus in order to achieve this. The attacks of September 11th continue to be seen as attacks on 'the civilised values of the entire world' (Blair, 2006l), and the 'we' that emerges is not deemed to be restricted to the West, but all

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[47] Whilst at all other times unifying has been indicative of an intersection representation strategy, here it is very much used to **direct** under a super-ordinate social identity.

'those who believe in religious tolerance, openness to others, to democracy, liberty and human rights administered by secular courts' (Blair, 2006n).

Thus, the **merging** process is again limited by the construction of parameters and **divisions**. Setting a definition of 'we' based on the above, serves to exclude those who do not meet these criteria. This is largely framed in the context of terrorism where Blair suggests we are seeing 'the age-old battle between progress and reaction, between those who embrace and see opportunity in the modern world and those who reject its existence; between optimism and hope on the one hand; and pessimism and fear on the other' (Blair, 2006n). Dictatorship is also seen as in the long run incompatible with human progress (Blair, 2005b), providing further exclusions.

The strategy of **dominance** is apparent here, in terms dividing as above, as well as **directing** and defining the super-ordinate social identity internationally and subordinating other identities to this. International rules, for example, are understood to provide the basis for relations between states (Blair, 2006b); however, Blair (2005zb) suggests that these require greater clarification. Certain rules are given preference for example that 'you don't in any shape or form implicitly or by any act support terrorism or assassination in … other countries' (Blair, 2006b). This is highlighted in relation to Iran and Syria as they are given the option to 'either come in and participate as proper and responsible members of the international community; or they will face the risk of increasing confrontation' (Blair, 2006ze).

Blair (2006zh) extends this notion of 'fighting a war' based on tackling terrorism, to one based on influencing 'how the world should govern itself in the early 21st century', founded on global values. An international agenda moving beyond direct perceptions of security to one that will tackle global issues such as the Middle East peace process, poverty in Africa and climate change is suggested in order to 'get real support for the tough action that may well be essential to safeguard our way of life (Blair, 2006n). A social identity based on tackling these issues is situated within a counter-terrorism framework, based on action, engagement, and values. However, the capacity of the UK to be leading such an agenda is clearly questionable given the criticisms raised throughout this Chapter with regards to detention.

**Conclusion**

The analysis in this Chapter has demonstrated why previous assessments of defection and compliance are extremely limited. An emphasis on 'doing' and interactions creates a very different narrative of normative influence and contestation to that which is generated by studies focusing on personality, degree of internalisation, the nature of the norm, or indeed the overriding imperatives of power and interests as explored in Chapter 1. Such an approach advances our understanding of the complex and interactive processes involved, as grounded in the micro-foundational insights provided by the social identity approach. Decisions to defect from or comply with the international detention regime are not straightforward assessments; they are interactive processes that evolve.

As evidenced throughout this Chapter, a dominance approach to these social identities is the most prominent strategy apparent in the discourse. This has involved appeals to an emergent super-ordinate social identity defined predominantly in terms of a particular approach to counter-terrorism. The constitutive elements of this social identity, as apparent in the discourse assessed, are an emphasis on pre-emption (this influences perceptions of detention not just military intervention), action (with inaction characterised as a weakness), a trade-off between human rights and security, the privileging of the right to life and to live free from fear, and the notion that rules (both domestic and international) must take account of this very new context within which current decisions are made. These factors, in addition to those that are more direct (for example, not supporting terrorism and taking 'appropriate' measures to tackle terrorism), form the basis for membership in an emergent but dominant international social group from the perspective of the Blair government.

However, such a social identity cannot, it appears, be isolated from other imperatives, creating a very complex and dynamic process of construction with regards to social identities in international society. Indeed, the Blair government attempt to merge the counter-terrorism agenda with elements of the liberal democratic social identity and notions of the Doctrine of the International Community. Given the framework of understanding generated in Chapters 1 and 2 that suggests normative regimes have social influence as a means by which to validate social identity membership, it is not surprising that in this complex and shifting social environment, the influence of the international detention regime is not consistently evident.

Nevertheless, as has been advanced throughout this thesis, we cannot limit our understanding of international normative regimes to the international sphere. Analysis also needs to account for more domestically orientated social identities. Such an assessment demonstrates that a super-ordinate framework, such as that constructed, is not easily accepted by the various social groups relevant to counter-terrorism detention policies. The frustrations this generates are evident as the Blair government is forced to compartmentalise, and the opportunity to validate association with social identities such as human rights and humanitarian, and legal, are markedly reduced. Attempts to minimise the negative consequences of such distancing by means of intersection representation are certainly apparent but the lack of acceptance here has further restricted the Blair government's ability to be associated with these social identities. The evidence of the multiple strategies employed go some way to demonstrating how important the social identities are to the Blair government, they do not simply compartmentalise or reject them.

Thus, to understand the nature of constraint regarding the international detention regime we need to consider the broader social identities context and the role of interactions in processes of defection and contestations. Whilst scholars such as Keller (mentioned in Chapter 2) have identified the role of personality factors such as sensitivity to normative restraints, this only accounts for part of the picture of contestation and defection. How constraints are manifest can only actually be determined through interaction; 'having' does not equate to 'doing' as is argued in Chapter 2, and indeed can develop and evolve in the interactive context. Whilst research focusing on personality, internalisation, the nature of the norm, or pre-defined interests may increase parsimony, they reduce our understanding of the processes involved and lead to inaccurate explanations and expectations. The approach advanced in this thesis may not make specific predictions as to when defection will occur, however, it does allow us to further understand the 'how possible' questions associated with seemingly counter-normative behaviour. With regards to the sustainability of such practices, the social identities context is clearly not managed sufficiently to diffuse criticism and validation of association remains heavily challenged. This is not a sustainable approach towards social identities that are core to the UK.

There are always many possible viewpoints on how to approach issues of public protection and the right to life and to live free from terror, which have been emphasised

by the Blair government throughout 2001-2006. Despite the importance of international normative regimes, such as that prescribing standards for detention and prohibiting torture, individuals have many memberships or associations with social identities to draw on. Some of these emerge in certain circumstances through individual interactions often on a small scale. There will always be room for challenge and different interpretations regardless of how internalised at a collective level normative regimes appear to be, as the role of individuals and interactions is very important. Indeed, the use of internment and stress positions by the UK is more recent than we often acknowledge with regards to the conflict with the IRA.

This Chapter has demonstrated the significance of interactions with the broader social identities context to understand processes of normative influence, contestation and defection, in a hard case where defection may lead one to immediately resort to pre-defined interests to explain behaviour. To limit research on this basis would miss the interactive processes that are key to understanding the how possible questions raised by contestation and defection. Chapter 5 will further examine the framework developed in this thesis in relation to the USA which presents an even harder case as the international detention regime is more heavily compromised and the role of the broader social identities context is very much in question.

# Chapter 5 – The Management of Social Identities – The case of the USA

*'Very simply the reason for their detention is that they're dangerous. Were they not detained, they would return to the fight and continue to kill innocent men, women and children… It is a security necessity, and I might add it is just plain common sense.'*
(Rumsfeld, 2004a)

*'There seems to be a new world order, an acceptance of utter illegality. You have all these wonderful treaties after World War Two – the Geneva Conventions, bans on torture – and all of them have been torn up. Effectively you are allowing international law to be re-written'*
(Gareth Pierce, lawyer for Moazzem Begg, cited in Rose, 2004b: 39)

The international detention regime has been placed under significant strain by the Bush administration during the course of the war on terror. Defections have been well documented by academics, journalists, and legal professionals as well as political commentators and practitioners. Criticisms have included US practices regarding unfair trial procedures, denial of *habeas corpus* rights, indefinite detention without charge or trial, arbitrary detention, prolonged incommunicado detention, secret detention, enforced disappearances, humiliating and degrading treatment, as well as torture, cruel or inhuman treatment. Torture in particular, long associated with only the most 'barbaric' regimes, has become the subject of intense debate, entering into mainstream public discourse in the USA shortly after the September 11th attacks (Rutenberg, 2001). Leaked photographs documenting abuse alongside media images of the detention facilities at Guantánamo Bay, Cuba, have been extremely damaging in the battle for public perception. Guantánamo has become what some commentators refer to as an 'icon of oppression' (Rose, 2004b: 11), others have gone further and accused the Bush administration of constructing a 'secret culture of torture…in the heart of a liberal culture' (Luban, 2006: 52).

This thesis has been engaged with the question of how such policies, contrary to the expected behaviour of liberal democratic states, became possible, in terms of the negotiation of normative constraints, particularly for states such as the USA and UK. These states have invested a great deal of time and resources in the establishment of human rights regimes, standards for practices regarding detention, and campaigns aimed at the eradication of torture. The USA, the focus of this Chapter, is the home of the *Lieber Code* (1863), which provides an early codification of certain privileges to which

prisoners of war are entitled.[1] The USA has furthermore, ratified all the Geneva Conventions, with the exception of the two protocols in 1977. Later, in 1988, the USA signed the *Convention against Torture* (CAT) (1984) which they then ratified in 1994. Federal law in the USA also firmly prohibits the use of torture, as well as 'severe mental pain or suffering' that is prolonged in nature (*US Code*, Title 18, Article 2340).[2]

The Bush administration has also stressed their commitment to the rule of law, human dignity, and freedom, as well as issuing proclamations each year on Human Rights Day (early December) in support of human rights globally (e.g. Bush 2001zzf; 2002zzg; 2003zzf; 2004zzf; 2005zzd; 2006zze). Yet, many of these statements appear hollow and hypocritical. For example, the Human Rights Reports of the State Department have strongly criticised the harsh interrogation practices of various countries, such as Burma, Turkey, Saudi Arabia and Iran. Yet these very same practices (for example 'stress and duress' techniques such as sleep and food deprivation, uncomfortable positions, or exposure to cold) have been used by the USA in the interrogation of terror suspects with the approval of the Defense Department (Malinowski, 2005: 140).

In the aftermath of the September 11th attacks, 2001, the Bush administration focused attention on fighting a new war, supported by new rules, in a changed international context. The detention of terror suspects and 'unlawful enemy combatants' was brought to the fore in the public arena, largely because of contestation and defection from internationally held appropriate standards. Detention was also granted a particularly prominent role by President Bush himself, through repeated assertions of the numbers of terror suspects captured by the USA and her allies.[3] Revealing these numbers in the early months of the war on terror seems to be used (problematically I must add) as a means of demonstrating progress in tackling the threat of terrorism.[4] Detention was

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[1] The *Lieber Code* is the first attempt to codify the laws of war. Section III covers prisoners of war, hostages and deserters, and article 76 of the code specifically stresses that prisoners of war (PoWs) must be 'treated with humanity'. Section VI refers to the exchange of PoWs and Section VII parole for PoWs.
[2] Article 2340 refers to the prolonged 'severe mental pain or suffering' that is caused by 'intentional infliction and threatened infliction', the administration or threatened administration of 'mind-altering substances', the 'threat of imminent death', or threats that another person will be subjected to death or abuse.
[3] Bush begins asserting numbers as early as October 1st 2001 where he states, '[t]here's 150 detained, and more to come' (Bush, 2001zj). This number rapidly rises to over 1000 arrested in America by October 26th (Bush, 2001zu), and over 2400, as a part of broader coalition efforts, by June 11th 2002 (Bush, 2002zf).
[4] The latter is based on the logic that the larger the number of suspected terrorists 'hunted down' and detained the smaller the threat of attack becomes. Also the harsher the conditions seem the more such practices will serve as a deterrent to terrorist activity. A similarly problematic tactic has also been employed by Bush in related to the number of insurgents killed in Iraq; this is taken to show that there are

placed firmly on a war-time footing, focusing on the removal of terror suspects from the USA, the removal of insurgents or 'unlawful enemy combatants' from the broader battlefield including Afghanistan and Iraq, and using detention for the purposes of interrogation and intelligence gathering. Detention was not orientated toward rehabilitation or even prosecution. Rehabilitation was dismissed very early on as impossible for the 'evil-doers' detained, and prosecution certainly fell well behind the priority of preventing another attack. There was also a strong determination of guilt, regarding the detainees, throughout the discourse assessed. Indeed, these factors have framed many aspects of the Bush administration's detention policies, particularly in the Pentagon and Justice Department, as well as filtering into the ethos of the FBI and CIA.[5]

Part of the CAT and the international detention regime is to prevent the occurrence of conditions that are likely to lead to torture or abuse. This has certainly not been the case with the denial of Geneva protections, the use of indefinite detention, pre-trial assertions of guilt, keeping some detainees hidden from ICRC, disappearing detainees through rendition, and holding them in undisclosed locations around the world. There is a vast array of scholarship regarding torture and how to prevent it, with organisations such as ICRC campaigning to increase awareness (See ICRC website; also Fresard (2004); Munoz-Rojas and Fresard, 2004). The impact of the decisions and statements of the Bush administration would not have been unknown. Thus, we are again left with a puzzle. This Chapter, as with that previously, focuses on the question, of how such practices, contrary to the international normative regime prescribing detention standards and prohibiting detention, became possible. I again focus on the interactive processes involved in negotiating normative constraint, in relation to the broader social identities context.[6] The management strategies employed by political elites in the Bush administration, will provide an insight into these interactions.

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now less insurgents to fight. The possibility that harsher measures may create more insurgents due to the multiple audiences and variety of communicative strands to these policies does not gain any attention in the discourse of the administration.

[5] In response to FBI Director Mueller's assertion that it would be important not to taint any evidence regarding terror suspects so as to assure potential for prosecution, the then Attorney General John Ashcroft is reported to have stressed the need to 'think unconventionally' and focus on prevention as opposed to prosecution (Woodward, 2002: 42). Bush himself stated in 2001, '[t]he culture in our agencies have changed. We are now interested in preventing attack. We're now interested in finding those who may attack America, and arrest them before they do' (Bush, 2001zu).

[6] Whilst others have focused on the fluctuating balance of power between the Executive, Congress and the Courts (for example, Kroenig and Stowsky, 2006; Lindsay, 2003; Rudalevige, 2006), or indeed the contestation across government departments (Roberts, 2007), this Chapter is concerned with the publicly

**Table 4 – The Management of Social Identities by the Bush Administration**

| | *2001-2002* | *2003-2004* | *2005-2006* |
|---|---|---|---|
| **Human Rights and Humanitarian** | **Dominance**<br>- Dismissal<br>- Denial<br>- Challenging<br>**Compartmentalisation**<br>- Context dependent<br>**Intersection Representation**<br>- Bolstering | **Dominance**<br>- Dismissal<br>- Denial<br>**Compartmentalisation**<br>- Context dependent<br>**Intersection Representation**<br>- Bolstering | **Dominance**<br>- Dismissal<br>- Denial<br>- Challenging<br>- Displacing<br>**Compartmentalisation**<br>- Context dependent<br>**Intersection Representation**<br>- Bolstering |
| **Legal** | **Dominance**<br>- Directing<br>**Compartmentalisation**<br>- Context dependent<br>**Merging**<br>- Centrality | **Dominance**<br>- Denial<br>**Compartmentalisation**<br>- Context Dependent<br>**Intersection Representation**<br>- Bolstering | **Dominance**<br>- Directing<br>- Denial<br>- Blaming<br>- Challenging<br>**Compartmentalisation**<br>- Context dependent<br>**Intersection Representation**<br>- Bolstering |
| **Military** | **Dominance**<br>- Directing<br>- Embedding<br>**Intersection Representation**<br>- Bolstering | **Dominance**<br>- Directing<br>- Embedding<br>**Intersection Representation**<br>- Bolstering<br>- Defence of group | **Dominance**<br>- Directing<br>- Embedding<br>**Intersection Representation**<br>- Bolstering |
| **United Nations** | **Dominance**<br>- Directing<br>- Defining<br>- Threatening<br>**Intersection Representation**<br>- Bolstering | **Dominance**<br>- Directing<br>- Defining<br>- Dismissal<br>- Denial<br>**Intersection Representation**<br>- Bolstering | **Dominance**<br>- Directing<br>- Defining<br>- Dismissal<br>- Denial<br>**Intersection Representation**<br>- Bolstering |
| **International** | **Dominance**<br>- Directing<br>- Leading<br>- Dividing<br>**Separation**<br>- Distancing | **Dominance**<br>- Directing<br>- Leading<br>- Dividing<br>- Defining<br>**Separation**<br>- Distancing | **Dominance**<br>- Directing<br>- Leading<br>- Dismissal<br>- Dividing<br>**Intersection Representation**<br>- Bolstering<br>- Utilising |

This Chapter follows the same format as Chapter 4 and is broken down into three time periods to allow changes to be tracked and highlighted, 2001-2002, 2003-2004, and

articulated management strategies and negotiation of normative constraints in relation to the social identities examined in Chapter 3.

2005-2006. Table 4 on the previous page details the strategies and techniques that are apparent. Again I focus predominantly on the discourse of the state leader as representative of the administration and close advisers. When referring to President George W. Bush's statements these are not understood as purely reducible to Bush himself, but generally reflect carefully crafted language representative of the small state leadership group. The President's statements are again supplemented with those of other members of the administration. The management strategies employed by the Bush administration in relation to the social identities that are under consideration in this thesis, largely resemble that of **dominance**,[7] but are also supplemented with **compartmentalisation**, **intersection representation** and **merging**. The techniques evident in pursuit of these strategies again vary with both social identity and time period.

## *1. Phase 1 - Initial Contestation: 2001-2002*

*'The Pearl Harbor of the 21st century took place today'*
*(Bush, cited in Woodward, 2002: 37)*

### 1.1 The Human Rights and Humanitarian Social Identity

The human rights and humanitarian social group began to raise many concerns regarding the detention of terror suspects in 2001-2002. Human Rights Watch (HRW) (2001b) were early to 'caution against ill-considered changes to U.S. law and policy that would erode basic rights to personal liberty', including changes to detention policies.[8] The organisation was particularly critical of the broad reach of the *Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism,* issued on November 13, 2001 (Bush, 2001zzb).[9] HRW and Amnesty International (AI) also express concerns with regards to the situation at Guantánamo Bay (e.g. Fellner, 2002), with AI (2002f) calling for the protection of law to be granted to Guantánamo detainees. Torture is also an issue about which there is significant unease in 2001-2002. For example, in response to the resurgence of debate on the topic in the USA, HRW

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[7] This strategy is consistent with the insights of scholars who have highlighted the rhetorical constraints on political opposition in the USA at this time (Krebs and Jackson, 2007), in particular, drawing attention to the framing of threat and the impact of norms determining what constitutes patriotic behaviour (Cramer, 2007).

[8] HRW, as well as AI, also raise concerns about the detention of foreign terror suspects under immigration charges in the USA (HRW, 2001d; AI 2002h, HRW, 2002a).

[9] HRW (2001e) argue that the Order, which details the use of military commissions, 'sacrifices fundamental rights to personal liberty and to a fair trial that go far beyond what is permitted even in times of crisis'. Whilst improvement to the rules governing these military commissions is recognised in April 2002, HRW (2002b) suggest they are still flawed.

(2001c) express their belief that torture is simply not an option.[10] AI (2002g) goes on to highlight the risks of torture and ill-treatment inherent in the Bush administration's use of incommunicado detention.[11] The discourse of the Bush administration in 2001-2002 largely reflects a **dominance** approach based on **dismissal**, **denial** and **challenge** to the above concerns. This is accompanied by **compartmentalisation** of human rights in this context, and very limited **intersection representation**.

Rumseld (2002a), for example, is **dismissive** of the 'hyperbole' and 'allegations, that have been made by many from comfortable distance'. He suggests that such reports 'are undoubtedly [made] by people who are uninformed, misinformed or poorly informed'. The following two passages are particularly revealing with regards to both **denials** and **dismissals**:

You know, it's perfectly possible for anyone to stand up and say, "Henny Penny, the sky's falling, isn't this terrible what's happening?" and say that; and have someone else say, "Gee, I view with alarm the possibility that the sky's falling!" And then it gets repeated. And then some breathless commentator repeats it again. And then it goes on for three days. Now, does that make it so? No. At some point does the air come out of that balloon? You bet.

I think … if someone looked down from Mars on the United States for the last three days, they would conclude that America is what's wrong with the world. America is not what's wrong with the world. And what's taking place down there [Guantánamo Bay] is responsible, it's humane, it's legal, it's proper, it's consistent with the Geneva Conventions. And after a period, that will sink in, let there be no doubt.

Such arguments are further supported by the President himself, who states that:

there's no evidence that we're treating them outside the spirit of the Geneva Convention. And for those who say we are, they just don't know what they're talking about (Bush, 2002g).[12]

Indeed, the dangers of civil liberties are highlighted in the following statement, **challenging** the human rights and humanitarian social identity:
 we must not let foreign enemies use the forums of liberty to destroy liberty, itself. Foreign terrorists and agents must never again be allowed to use our freedoms against us (Bush, 2001zzc).

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[10] HRW (2002c) are also critical of US opposition to the draft optional protocol to CAT that would establish a system of inspections, internationally, to visit places of detention.
[11] These concerns are accompanied by many expressions of the importance of human rights in the post September 11th period, from both organisations.
[12] President Bush emphasises that the detainees are being well-treated and have good medical care.

Such a position certainly goes beyond a rejection of the arguments of this social group, suggesting their ideals facilitate the terrorist cause. Predominantly the emphasis above has been on **denials** and **dismissals** and constructing a **dominant** narrative. However, this last statement also goes some way to demonstrating how this social identity has been subordinated to the dominant framework of counter-terrorism.

In addition to the above approach, human rights are also, at times, juxtaposed with **context**. Bush (2002i), for example, speaks of the 'need to respect people's rights' whilst at the same time balancing this with the 'most important job … to protect innocent Americans'. Justification of military commissions is also along these lines (Bush, 2001zzd). Whilst Bush often refers to 'inalienable rights' (2002za), the extension of these to detainees at Guantánamo is certainly restricted, as they 'are killers', '[t]hey don't share the same values we share', and '[t]hey would like nothing more than to come after America, or our friends and allies' (2002s).[13] Comparison is used to back up such **compartmentalisation**, particularly that relating to military commissions, in that detainees 'will be given a heck of a lot better chance in court than those citizens of ours who were in the World Trade Center or in the Pentagon were given by Mr. bin Laden' (Bush, 2001zzh).

The effects of **compartmentalisation** are slightly reduced by very limited **intersection representation**. Before the September 11th attacks, Bush (2001n) refers to the USA as 'one of the great bastions of human rights'. However, subsequent to the attacks this is generally limited to the 'chief' right, the right to life (Bush, 2002d). Thus, whilst some **bolstering** is apparent in relation to this social identity, this is either juxtaposed with threat (as above regarding compartmentalisation), or this is highly restricted to the right to life. The emphasis on defending 'freedom no matter what the cost' (Bush, 2002n), greatly reduces the salience of this social identity, indeed, at times it is seen as a weakness, used by the terrorists.

## 1.2 The Legal Social Identity

Whilst 300 law professors signed a letter criticising Bush's *Military Order* (as mentioned above), calling the military commissions 'legally deficient, unnecessary and unwise' (Seelye, 2001), there were no further public challenges from the legal social

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[13] The utility in terms of intelligence gathered from these detainees is also emphasised.

group in 2001-2002. Various management strategies are, however, still apparent. These range from initial **merging** to both **dominance** and **compartmentalisation**.

The rule of law is frequently presented as **central** to US identity; this is indeed the case throughout the whole 2001-2006 period of analysis. The USA is characterised as 'a nation of laws' (Bush, 2002m), where the rule of law provides the basis for US democracy (Bush, 2001l). The judiciary is credited as an integral part of the US system of governance, with 'a strong and independent judiciary' being essential to freedom (Bush, 2001l). There is indeed an annual law day at the beginning of May 'to celebrate [US] legal heritage' (Bush, 2001l). President Bush, furthermore, refers to the equality of law where '[n]o one is above the law, and no one is beneath it' (Bush, 2002m) law is simply **merged** with all other aspects of identity.

After the attacks of September 11th however, a degree of tension is also apparent with regards to this social identity. **Merging** is still evident yet elements of friction and slight divisions from this social identity are also visible. For example, Bush often remarks that al-Qaeda must have thought, 'that all we would do after the attack was maybe file a lawsuit or two' (e.g. Bush, 2002zf). The frequent use of this statement suggests a questioning of the centrality of the legal social identity and is indicative of an association of law with weakness and inaction.

Bush also juxtaposes the identity of being 'a nation of law', with being 'a nation under attack' (Bush, 2001zd):

Ours is a land that values the constitutional rights of every citizen. And we will honor those rights, of course. But we're at war, a war we're going to win (Bush, 2001zi).

There is a sense that the administration will abide by law and the constitution because of the centrality to identity, but the **context** may determine otherwise, suggesting a degree of **compartmentalisation**. The messages that are generated are at odds in that the USA will abide by law, but at the same time the USA will not allow law to get in the way in the fight against terrorism. There are constant reminders that '[w]e're dealing with terrorists' (Bush, 2001zzc), who require a different set of rules. This is evident in the memorandum signed by Bush on February 7th 2002, where the administration rejected the legal provisions of the Geneva Conventions, particularly common Article 3,

governing the treatment of detainees (Greenberg and Dratel, 2005).[14] There is an apparent lack of trust when it comes to the judicial process and their capacity to try terror suspects, with the administration often second-guessing the actions of the legal profession (Greenberg, 2006: 7).

Law is further marginalised in terms of Bush's *Military Order* setting up the system of military commissions to try terror suspects. Kassop (2003: 520) argues that:

> To dismiss with a broad brush the ability of the judicial branch to review governmental actions simply because the subject matter is foreign policy or war overlooks past precedents and suggests a view that is uncomfortably at odds with basic principles of constitutional government.

However, to say that the legal social identity has simply reduced in salience in relation to the war on terror, and that this identity enjoys less applicability in this context, would be to miss out some of the important nuances of the apparent change in interactions with this group. Bush (2002a) may have been dismissive at times, stating for example, 'I wasn't interested in lawyers, I wasn't interested in a bunch of debate',[15] yet the President could not simply 'switch off' this social identity. Instead, a strategy of **dominance** emerges where attorneys are placed 'on the front line of war' (Bush, 2001zq), with the Office of Legal Counsel (OLC) charged with 'pushing antiterrorism efforts to the limits of the law' (Goldsmith, 2007: 42). As opposed to a traditional focus on legal precedent (by nature backward looking), the President is more encouraging of looking forward to circumstances that may arise, both to avoid restraint on actions that may be required by the USA as well as to prevent possible future terrorist activity (Goldsmith, 2007: 133-134).[16] This social identity is brought into line with the preventive and forward-leaning posture of the Bush administration. There is thus much emphasis on **direction** and **dominance** as the legal social identity is drawn into the overall super-ordinate framework of the war on terror, and **merging** is restricted.

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[14] Common Article 3 was determined non-applicable to either al-Qaeda or Taliban detainees, and the Geneva provisions more broadly were seen as non-applicable to the conflict with al-Qaeda.
[15] There was to be no 'lawyering this thing to death' only a demonstration of resolve (Woodward, 2002: 96).
[16] In the context of tackling terrorism the role of law and the legal profession was one of making sure the USA was not restrained as well as avoiding the subsequent prosecution of administration officials. Scholars have criticised this characterisation of 'lawyer as absolver' (Luban, 2006: 68) or lawyers 'lend[ing] such policies a patina of respectability' (Holmes, 2006: 119). This is in a context where the decision on how to legally interpret the situation of detainees is emerging and evolving (Bush, 2002g).

Thus, **merging**, **compartmentalisation** and **dominance** are all evident in this period, demonstrating that even though there were not any substantial challenges from the legal social group in 2001-2002 the need to manage this social identity was very apparent. At this stage, these strategies do appear to be accepted as there is little contestation; this may however be largely reflective of the time it takes for cases to come to court.

### 1.3 The Military Social Identity

Whilst law was often associated with weakness by the Bush administration in the post September 11th context, the military were portrayed as a show of strength and might. This emphasis is apparent even before the terror attacks in 2001, and was a central element of Bush's 2000 election campaign as well as the broader neo-con agenda. The management strategies apparent in 2001-2002 predominantly reflect a **dominance** approach, supported by elements of **intersection representation**.

The US military are granted much centrality in the discourse, contributing to the 'meaning and conscience and soul' of the country (Bush, 2001p).[17] Furthermore, service personnel are credited with being 'ambassadors from the land of freedom' (Bush, 2001p). Centrality is certainly suggestive of a merging strategy with other social identities, yet the discourse is very focused and **directed**. There is a great deal of emphasis from both Bush and Rumsfeld on change, building a force for the future, moving away from nation-building,[18] and 'redefining the terms of war' (Bush, 2001e).[19] Rumsfeld's interactions with the military certainly indicate a **dominant** approach, promoting risk-taking and forward thinking (Woodward, 2006: 53), establishing a chain of command through the Secretary of Defense to the Whitehouse, wrestling back civilian control of the Pentagon, and taking on 'entrenched military interests' (Woodward, 2006: 363).[20] Thus, the line has been crossed from **merging** to **dominance** even before there was a clear overarching mission of eradicating terrorism.

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[17] Bush, Cheney and Rumsfeld each give a large number of speeches to the different services in the US military, often stressing that the military is '[o]ur first priority' (Bush, 2002e). These speeches are often used to articulate new defence and security policies such as pre-emption (Moens, 2004: 170)

[18] Nation building was seen to have contributed to a drop in readiness under Clinton due to reduced combat training. Such missions were also considered to be related to under-funding and low morale (Moens, 2004: 37).

[19] This is reflective of the forward-leaning strategy of the Bush administration more generally.

[20] The independence of military advice was also brought into question.

After the September 11th attacks, with a more salient agenda, this only intensifies.[21]
Many of the constraints on military planning were further reduced (Woodward, 2004:
37), for example, Rumsfeld is reported to have stressed the need to think
unconventionally, and, through using fewer troops, elevate the risk in military planning
(Woodward, 2004: 35).[22] In relation to the questions of concern in this thesis, a lesser
number of troops is unlikely to have helped avoid the conditions conducive to the abuse
of detainees.

The Bush administration also went against military culture in rendering the Geneva
Conventions non-applicable. As Major Michael Dan Mori outlines, '[i]n the military,
you capture someone and assume that he is a prisoner of war until you have a hearing
that says he is not a prisoner of war…in the David Hicks case, the military was stopped
by civilian leadership', this was due to Rumsfeld's memo dated January 22nd 2002
(Neuborne, Priest, Lewis, Dratel, Mori and Gillers, 2006: 26). The Chairman of the
Joint Chiefs of Staff, General Richard Myers, is also reported to have argued against the
administration's position stating that the Geneva Conventions are 'ingrained in U.S.
military culture', that 'an American soldier's self-image is bound up with the
Conventions,', and that '[a]s we want *our* troops, if captured, treated according to the
Conventions, we have to encourage respect for the law by our own example' (from
Feith (2004) cited in Goldsmith (2007: 113-114)).[23] Whether or not the Geneva
Conventions technically applied in a legal context was therefore not the only issue of
concern for the military (Woodward, 2006: 86). This position was overruled.[24]

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[21] Rumsfeld has expressed the opinion that, 'the war transforms the military' (Woodward, 2002: 135).
The implications of the wars chosen were certainly not lost on the administration who wanted a strong
military ready to fight wars, not to build nations.
[22] Rumsfeld's clashes with a 'risk adverse' military culture are well documented by Woodward (e.g.
2006: 53). Disputes over troop numbers between neocons and realists in the Bush administration have
also been noted by scholars such as Dolan and Cohen (2006: 51-52). Powell in particular was concerned
that the military would be talked into using too small a force in Iraq (Woodward, 2004: 80).
[23] Roberts (2007: 202) reports that there were further memos in this period 'which show how strenuously
many qualified experts in the government and the armed forces argued against the departures from the
Geneva Conventions but failed to carry the day'. However, the voices of military lawyers are often
overlooked as much has yet to be declassified, despite the protests of some military lawyers to have their
objections made public. We do know that concerns were raised by the US military though in 2002 (Mora,
2004) regarding Rumsfeld's authorisation of abusive interrogation techniques (see Haynes (2002) in
Greenberg and Dratel (2005: 237)). Mora's opinions did not however reflect a unitary military voice on
the matter.
[24] As Hasian (2007: 711) later suggests, in response to Rumsfeld's 'flippant remarks' about the length of
time detainees could be made to stand (see Haynes (2002), in Greenberg and Dratel, 2005: 237), '[r]eal
warriors need leaders who understood both the letter and spirit of these laws' as opposed to belittling their
content.

In order to support these policies the Bush administration appears to have focused on **embedding** the military in the super-ordinate framework of the war on terror and celebrating their achievements in this context (for example, the heroism displayed (Bush, 2001zm), the weapons technology used in this war (Bush, 2001zzg), and the sheer patriotism on show (Bush, 2001zm)). **Intersection representation** is apparent through **bolstering** areas of overlap. Techniques involve, praise, appreciation, emphasis on capability (Bush, 2001ze; Bush, 2001zr), as well as highlighting funding and the administration's concerns for the living conditions of soldiers as well as their families (Bush, 2001b; 2002b). Reminders of 9/11, juxtaposing the military's humanitarian actions with those of the enemy, and emphasising their 'noble mission' to defend civilization, all further serve this purpose (Bush, 2001zr). Bush (2001zm) addresses some of the norms of the military, stressing their clear objectives and just goals, at the same time as heavily embedding this social identity in the super-ordinate war on terror framework.

However, several other key norms of the US military, for example, the need to overestimate the numbers of soldiers required, the need for clear exit strategies and Geneva Convention applicability, were undermined in 2001-2002. The main management strategy evident in the discourse is **dominance**, attempting to fit the military into the super-ordinate framework of the Bush administration's war on terror. Whilst there is unrest behind the scenes, this does not surface in 2001-2002, indeed this would have been inappropriate as challenges could have created significant uncertainty amongst personnel. Publicly there is acceptance of this super-ordinate framework.

### 1.4 The United Nations Social Identity

Interactions with the UN differ significantly from the previous two social identities, perhaps not surprisingly given that the neo-con agenda even prior to September 11th, was very critical of involvement in multilateral institutions. The 2001-2002 period of analysis begins with rather strained relations due to the decision to 'kick the United States off' the Human Rights Commission and permit Sudan to join (Bush, 2001m).[25] Bush (2001zz) states later in the year, that such a move 'undermines the credibility of this great institution', and jeopardises the 'moral authority' on which the UN depends. By suggesting that the UN lacks credibility and has lost its way, the stage is certainly set

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[25] US proposals for exemptions for their peacekeepers from ICC jurisdiction were also rejected by the UN Security Council in 2002 (HRW, 2002d).

for a strategy of **dominance**, which is facilitated by elements of **intersection representation**.

In the discourse assessed, the UN is **defined** almost solely in terms of the super-ordinate framework of the war on terror; the organisation's capacity to meet its responsibilities and uphold its values is presented through this lens. Bush (2001zz) emphasises that the 'struggle' of the war on terror is a 'defining moment for the United Nations' and that the 'United Nations was founded in this cause'. The attacks of September 11th are furthermore framed as an attack on the UN, but the administration argues that the UN is too weak to stand up for itself.

The USA is also positioned as more humanitarian than the UN, where the former is fulfilling a duty to future generations in confronting 'the true challenges of the 21st century' (Bush, 2002zl). Bush (2002zj) reminds listeners that the 'United States helped found the United Nations'. Thus there are hints at **intersection representation**, **bolstering** that which the USA shares with the UN, as well as citing the UNSC Resolutions the USA is attempting to uphold. However this is exceptionally narrow and very limited in 2001-2002, with discourse more firmly reflecting **dominance**. The following statement is highly illustrative of this form of **dominance**, facilitated by **intersection representation**:

And my message to the United Nations was this: We want you to succeed as a[n] international body. The world is different, the threats are real, we can do a better job if we work together through the United Nations, and here's your chance to succeed. You have a choice, and the choice is whether you'll be an effective peacekeeping organization, or whether you'll be like the League of Nations. Your choice (Bush, 2002zq).[26]

Where there is overlap, this is emphasised, however if the UN perceives the world in a different way to that **directed** by the Bush administration, the argument **threatens** that the organisation will cease to be relevant. Vice-President Cheney partially instigated this approach insisting that if the USA went down the UN route in the build up to the Iraq war, the framing of such action must be in terms of testing the UN's resolve

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[26] Smith (2004: 212) notes that this line of attack may have made Iraq the most prominent issue, 'but it did not create an environment where many member states had much incentive to cooperate'. The author goes on to highlight the problems of such an approach, suggesting that this will have made it more difficult for the USA to 'pass even the most benign resolutions' in the future (2004: 212). Whilst such rhetoric may have been useful for preparing the US public for war, Smith suggests that 'this same rhetoric clearly had a direct negative impact on the negotiating environment in New York' (2004: 212).

(Kamfner, 2004: 193).[27] Responsibility for US action is shifted onto the context and the organisation itself. Indeed, waiting for the UN to make a decision is ruled out as un-fitting for any representative of the USA including any 'elected member of the United States Senate or House of Representatives'. Instead Bush (2002zk) stresses that 'if you're representing the United States, you ought to be making a decision on what's best for the United States'. Any normative pressures from taking a stance contrary to this social identity are therefore heavily reduced.

John Kampfner notes the remarks of a member of Blair's inner-circle stating that 'Bush gives the impression that the UN is just a process to get through' (2004: 274). The UN is also described by the administration as 'a diplomatic mud pit' (Woodward, 2004: 189). Thus any identification with this social identity is exceptionally limited in 2001-2002, allowing the administration to be largely free from the normative pressures to validate membership.

## 1.5 International Society and the Liberal Democratic Social Identity

Another social identity under consideration in this thesis is that of the liberal democratic state in international society. Such an identity is not highly apparent in the discourse assessed. Whilst Bush makes claims that the administration has 'rejected isolationism…and protectionism' they actually begin 2001 on a decidedly non-internationalist and more regionalist stance. Concerns about American withdrawal were rife, with the administration ending the ABM treaty, as well as pulling out of the Kyoto agreement and the International Criminal Court, the latter raising doubts over continued support for peacekeeping missions in the Balkans. There are indications of a new approach internationally even before the attacks of September 11th, as Bush (2001k) states '[w]e must all look at the world in a new, realistic way'; however what this actually means becomes much more apparent after the attacks. The predominant management strategy evident in relation to social identities in international society in 2001-2002 is **dominance**. However, a degree of **separation** is also apparent.

The **dominant** framework that emerges after September 11th focuses on 'one universal law, and that's terrorism is evil' (Bush, 2001zy). The accompanying discourse of

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[27] Cheney had little confidence in the UN route in the build up to military intervention in Iraq (Moens, 2004: 176). There was the perceived danger that a new UN Resolution would separate the dual goals of disarmament and regime change, understood by the Bush administration as part of the same overall goal (Moens, 2004: 182).

President Bush certainly **directs** any international social identities along these lines. He argues that 'the civilized world must take seriously the growing threat of terror on a catastrophic scale' (Bush, 2002r) and focuses on the goal of achieving freedom and peace in the world (Bush, 2001zf). Bush clearly asserts a **leadership** position, stating that 'the world is ready for leadership' (Bush, 2001zf) and at this 'defining moment in history… this country must lead' (Bush, 2002a).

As opposed to focusing on an international liberal democratic social identity, the Bush administration is much more pre-occupied with the notion of 'coalitions of the willing', or as Kampfner terms, 'multilateralism *a la carte*' (Kampfner, 2004: 159).[28] Cameron (2002: 68) provides another term, 'utilitarian multilateralism', to capture the lack of concern for the credentials of those states the USA engaged with on the specific issue of terrorism. Coalitions are built, whose membership is based on those that 'understand it's now time to unite to defeat evil' (Bush, 2001zk), are working to isolate terrorists (Bush, 2001zv) and are sharing 'the responsibilities and sacrifices' of the 'cause' (Bush, 2002o). Whilst Bush suggests that the fundamental principles of this international social identity are founded on 'progress and pluralism, tolerance and freedom' (Bush, 2001zh), the offer to 'join this cause' is extended to '[a]ny nation that makes an unequivocal commitment against terror' (Bush, 2002o).

The administration was also deeply concerned with the need to avoid other countries influencing the terms of intervention and the prosecution of the war on terror (Hurrell, 2002: 200).[29] As President Bush is reported to have stated, there may come a point where they are 'the only ones left'. He continues, 'That's okay with me. We are America' (Woodward, 2002: 81). The Bush administration's general sentiments are summed up in the following statement by President Bush in an interview with Bob Woodward (2002: 341):

[28] The idea of coalitions of the willing is not new to this time period. The idea emerged as a neocon initiative in the *Defense Planning Guidance* 1992, the draft of which was supervised by Wolfowitz, Cheney and Libby (Dolan and Cohen, 2006: 43). Debates regarding understandings of coalitions are apparent in Woodward (2002: 113; 180; 281).

[29] I must point out though that this was not a consensus across the administration. There was in fact much division between those taking a more realist approach to the international realm and those informed by neo-conservatism. That the President did appeal for multilateral support is often taken to be a compromise between the two (Dolan and Cohen, 2006: 51).

action – confident action that will yield positive results provides kind of a slipstream into which reluctant nations and leaders can get behind and show themselves that there has been – you know, something positive has happened toward peace.

This perspective recognises that nations will never all agree, you just have to act, deal with the 'international hyperventiliation' (Rumsfeld, 2002b), and they will eventually see that the course of action you sought was right. As such a degree of **separation** and **distancing** is apparent. This is also evident in the following statement:

I understand the propaganda machines are cranked up in the international community that paints our country in a bad light (Bush, 2002zzf).

There is no indication that this may be a sign that the particular course of action may be 'wrong', or not beneficial to the world, instead the USA is at times in rhetorical opposition to membership of any form of international social identity. Whilst the notion that nations will never all agree certainly stands as a truism, this approach to criticism, based on absolutism is not conducive to interaction that would serve to generate normative influence.

Furthermore, the Bush administration's approach to international society in general, is also very **divisive** in orientation. The message that you are either with us or against us has been heavily plugged by the Bush administration (e.g. Bush, 2001zk), based on a divide between those who love freedom and those who are classified as 'barbaric' and set themselves 'against the entire world' (Bush, 2001zze).[30] Bush (2002zl) articulates a 'straightforward' choice 'between a world of fear, or a world of progress', where the 'world community' must make a stand. Whilst the President argues that the 'vast majority of countries are now on the same side of a moral and ideological divide' (Bush, 2001zzg), Saddam Hussein being isolated 'from the civilized world' (Bush, 2002zr), this binary logic wasn't popular in much of Europe.[31]

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[30] There is a danger here that countries such as Syria and Iran are forced into the position of an out-group developing their own alternative or oppositional norms, counter to Blair's strategy of attempted inclusion as mentioned in Chapter 4.
[31] The French Prime Minister Jean-Pierre Rafferin reproached those with 'a simplistic vision of war between good and evil', which, whilst not naming the USA or the Bush administration, talks to their characterisation of the situation (Moens, 2004: 187). Javier Solana, the EU foreign policy chief, also chided the USA for this binary position, stating, '[i]t is all or nothing. For us Europeans it is difficult to deal with because we are secular. We do not see the world in such black and white terms' (cited in Kampfner, 2004: 248).

Given the emphasis on division and separation from any international social identity that falls outside the dominant framework of the war on terror, the normative influence of the liberal democratic social identity would appear to be exceptionally weak.

Thus, considering the social identities context as a whole in 2001-2002, the potential constraints of the international detention regime are vastly reduced.

## 2. Phase 2 - Attempts to Sustain Contestation: 2003-2004

*'We do not condone torture. I have never ordered torture. I will never order torture. The values of this country are such that torture is not a part of our soul and our being'*
*(Bush, 2004zi)*

### 2.1 The Human Rights and Humanitarian Social Identity

Criticisms from the human rights and humanitarian social group, regarding the Bush administration's counter-terrorism detention policies, continue to increase in 2003-2004. HRW and AI published a large number of reports, and wrote various letters to the Bush administration expressing concern over the treatment of detainees and their indefinite detention. The practices of the Bush administration are characterised as a 'backward step for human rights' (AI, 2003c). The administration's response again employs the strategies of **dominance** (particularly **denials**), **compartmentalisation** and **intersection representation**.

Much of the discourse is based on **dominance, dismissing** arguments that suggest there has been any wrong-doing, and utilising a range of **denial** techniques, including dissociation (Stuckey and Ritter, 2007). Again this is predominantly in terms competing for the dominant narrative as opposed to directly appealing to a super-ordinate framework. Preceding the release of the infamous pictures from Abu Ghraib, Rumsfeld (2004b) addresses the mounting accusations of torture at Guantánamo Bay,[32] rejecting such claims and stating that:

When I hear those stories, those reports, the thought that comes to my mind is not the detainees and not Guantánamo Bay, Cuba. It is Fidel Castro and the prisoners he holds.

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[32] For example HRW called for a stop to the use of interrogation techniques that amount to torture such as 'stress and duress' (Roth, 2004), suggesting such measures, which are considered contrary to human rights, are not the way to fight terrorism.

Such statements are significant in that they draw on comparison to strengthen denials, placing actions onto others.

When the pictures do break, the administration are faced with accusations that much of the blame for the 'systemic abuse' (AI, 2004g) of detainees rests with the Bush administration, and their lawyers (HRW, 2004e; HRW, 2004f; HRW 2004g; Ross, 2004); this is firmly rejected by the administration. In response to the pictures documenting abuse at Abu Ghraib, the President stresses his repulsion (Bush, 2004zf), that '[t]hey sickened my stomach', and that the 'acts were abhorrent' (Bush, 2004u).[33] The abuse is restricted to a few people (Bush, 2004s) and Bush (2004r) stresses that this is 'not the way we do things in America'. Consequently, the president is quick to dissociate America from these practices, stating that '[t]hese humiliating acts do not reflect our character' (Bush, 2004y).

The Bush administration also employs identity-based denials to further dissociate themselves from the abuses. For example:

We don't torture people in America. And people who make that claim just don't know anything about our country (Bush, 2003zy).

Furthermore:

I don't like it when the values of our country are - are misunderstood because of the actions of some people overseas (Bush, 2004zk).

Bush (2004u; 2004w) stresses that investigations are underway, that they are acting to stop such practices occurring, and detainees are being treated humanely; a fundamental difference distancing them from the practices of dictatorships. Predominantly the emphasis is on denials and dismissals and constructing a **dominant** narrative. However, a lack of transparency and accusations of immunity (some of the very factors Bush uses to differentiate the practices of the USA from those countries whose human rights records they criticise), are brought into the limelight by the human rights and humanitarian social group. Indeed, Bush's (2004zi) statements that the USA 'do not

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[33] There is of course no admission that the acts depicted in the photos show torture, they are instead classified as abuse. Rumsfeld notes that, '[w]hat has been charged so far is abuse, which I believe technically is different from torture. I'm not going to address the 'torture' word' (quoted in Hochschild, 2004).

condone torture', and that the 'values of this country are such that torture is not a part of our soul and our being', are significantly compromised by memos showing Department of Justice Lawyers and Pentagon lawyers trying to work out ways to toughen interrogation and redefine torture.

With regards to the terms and conditions of detention, the human rights and humanitarian social group also highlight, for example, 'The Legal Limbo of the Guantánamo Detainees' (AI, 2003d), the denial of the right to a fair trial through the use of military commissions (HRW, 2003b), and the deportation of terror suspects to be tortured.[34] **Compartmentalisation** (supported by drawing on a super-ordinate framework) is again apparent as a response; there is a reminder of the context, the dangerous nature of the detainees and the need to keep them off the battlefield. For example, Bush (2003x) argues that 'some terrorists are just plain cold-blooded killers. As such, '[s]urely nobody wants to let a cold-blooded killer out of prison that would help derail the process…it doesn't make any sense' (Bush, 2003zp). In these circumstances the predominant emphasis is on hauling terror suspects in so they are no longer a problem (Bush, 2003a; Bush, 2003b). The human rights and humanitarian social identity does not appear to be salient.

However, the above is also accompanied by **intersection representation**, perhaps to draw this social identity closer in the face of mounting criticism. For example, Bush (2004a) stresses that the USA 'remains steadfastly committed to upholding the Geneva Conventions'; that they 'are driven to defend the human rights of others' (Bush, 2003zc); and have a vision for a 'more peaceful world', 'based upon human rights, human dignity and justice', as well as a world that does not discriminate (Bush. 2003zzc). Bush further **bolsters** association with this social identity by drawing from history. The President reminds the various audiences that:

We are the nation that liberated continents and concentration camps. We are the nation of the Marshall Plan, the Berlin Airlift and the Peace Corps. We are the nation that ended the oppression of Afghan women, and we are the nation that closed the torture chambers of Iraq (Bush, 2003zc).

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[34] AI further describes Guantánamo as 'an affront to the rule of law' (2004h), as a 'Scandal' (2003e) and as 'A Deepening Stain on US Justice' (2004i). Both AI and HRW, as well as ICRC, have also experienced problems in gaining access to detainees and court proceedings (see HRW, 2004h; HRW, 2004i; HRW, 2004j; also Rose 2004b: 106-108. The latter details ICRC's 2003 concerns of this nature).

On the UN International Day in Support of Victims of Torture, Bush (2004zj) also states that:

The non-negotiable demands of human dignity must be protected without reference to race, gender, creed, or nationality. Freedom from torture is an inalienable human right, and we are committed to building a world where human rights are respected and protected by the rule of law.

Torture is firmly associated with 'repressive regimes' (Bush, 2004zj). Additionally, 'Terrorists and their allies' are framed as the enemies of human rights, believing that 'the Universal Declaration of Human Rights and the American Bill of Rights, and every charter of liberty ever written, are lies, to be burned and destroyed and forgotten' (Bush, 2004zu).

However, regardless of these attempts at **intersection representation**, given the accusations from this social group, the Bush administration's association with this social identity is highly compromised. An apparent desire to draw this social identity closer is not accepted.

## 2.2 The Legal Social Identity

Challenges from the legal social group also intensify in 2003-2004. After the successful conviction of John Walker Lindh in October 2002, and the 110 year jail sentence handed out to Richard Reid (the so called shoe-bomber) in January 2003 (see BBC, 2003b), the Bush administration began to encounter difficulties with the courts in relation to terror suspects. In an Opinion issued on December 18th 2003, the U.S. Court of Appeals for the 2nd Circuit disagreed with the Bush administration's designation of Jose Padilla as an enemy combatant and deemed that he could not be detained indefinitely on the President's determination as he was not picked up in 'a zone of active combat'. In June of 2004, the Bush administration received another set back, this time from the Supreme Court. In *Hamdi vs Rumsfeld* (2004), the Court did support Hamdi's detention until the end of the conflict in Afghanistan, however, the traditional military powers of the president were challenged with regards to the broader conflict with al-Qaeda. Restrictions were placed on the president's powers in that they were not considered to be indefinite. On the same day, in *Rasul vs Bush* (2004), the US Supreme Court ruled that foreign nationals detained at the Guantánamo detention facilities, had the writ of *habeas corpus*, they had the right to challenge the legality of their detention.

Federal jurisdiction was deemed to apply to Guantánamo, even though the USA did not have 'ultimate sovereignty'.

Jack Goldsmith, former head of the Office of Legal Council (OLC), October 2003- June 2004, suggests that US 'legal culture had become very suspicious of the administration's grand assertions of executive power' (2007: 135). Justice Sandra Day O'Connor's opinion (in *Hamdi v. Rumsfeld*) that the administration did not have a 'blank check' in wartime is one indication that previous attempts at **dominance** and **compartmentalisation** were not accepted. However, these Court rulings, whilst significant did not demand a great deal from the Bush administration and on the whole upheld the traditional war time powers of detention.

Further legal challenges did emerge in 2003-2004 though, in relation to the establishment of military commissions. Jack Goldsmith draws attention to the military lawyers who, 'committed to their own well-developed legal system – the Uniform Code of Military Justice – threw up roadblock after roadblock to the[ir] development' (2007: 121). Rose (2004b: 136) also suggests that when the rules for military commissions were released in 2003, 'they provoked outrage among lawyers' as they restricted the defendant's right to choose his lawyer and denied the defense counsel the means required to prepare an effective defence.

In response the Bush administration employs **dominance** (predominantly in terms of constructing a dominant narrative through **denial**), **compartmentalisation** (supported by a super-ordinate framework), and elements of **intersection representation** to counter the challenges. In response to questions on interrogation techniques, Bush (2004zg) uses identity-based **denials** (dominance) and a degree of **intersection representation** stressing that:

The instructions went out to our people to adhere to law. That ought to comfort you. We're a nation of law. We adhere to laws.

As law is part of US history, we are asked to assume that current actions are in compliance. Accusations that the USA is no longer a nation of laws are dismissed as 'unfair' criticism. Bush (2004zzh) argues:

our courts have made a ruling, they looked at the jurisdiction, the right of people in Guantánamo to have habeas review, and so we're now complying with the court's decisions.

However, at the same time, Bush (2004zzh) highlights the dilemma faced by the administration, that 'these are people that got scooped up off a battlefield, attempting to kill U.S. troops' and there is a danger that if released they will 'come back to kill again'. Whilst Bush (2004zl), on the one hand draws attention to America's proud history of equality before the law,[35] where 'people are innocent until proven guilty' (Bush, 2004y)[36] on the other the President suggests that the counter-terrorism **context** is exceptional. The intelligence gathered from detainees at Guantánamo is juxtaposed with the importance of letting 'the world know that we fully understand our obligations in a society that honors rule of law' (Bush, 2004zzh). This highlights a strategy of **compartmentalisation,** informed by a dominant super-ordinate framework, challenging legal constraint in these circumstances. Alberto Gonzales' private statement, 'I don't see how terrorists who violate the laws of war can get the protections of the laws of war', is also illustrative of **compartmentalisation** in relation to terror suspects (Goldsmith, 2007: 41). Such a strategy, supporting **dominance**, suggests that law is characterised as a constraint in the counter-terrorism context, as something to work around or bring into line.

## 2.3 The Military Social Identity

In 2003-2004 the US Military were involved in three wars, in Afghanistan, Iraq and the global war on terror. This certainly reduced the scope for challenge from this social group; military generals and officers would not want to create a public backlash whilst the troops were in combat and risking their lives (Hasian, 2007).[37]

Individual concerns did however emerge in this period. For example, in a meeting with Jaymie Durnan, January 8th 2003 (a Special Assistant to Secretary Rumsfeld and Deputy Secretary to Paul Wolfowitz), Navy General Counsel Alberto Mora stressed, 'In

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[35] This is in relation to 'The Civil Rights Act of 1964 [which] gives all Americans another reason to be proud of our country … the laws of this nation and the good heart of this nation are on the side of equality' (Bush, 2004zl).

[36] This statement is in relation to accusations and investigations into abuse by US soldiers.

[37] Hasian (2007: 697) suggests that scope for criticism from the military was very much restricted as officers and generals would not want to 'give the impression that they are leading some rebellion against the political leadership'. This meant that options such as mass resignations were ruled out in favour of more gradual tactics of reform. Involvement in the actions that were disapproved of further restricted the form that criticism could take. Hasian suggests this had to be directed at the 'decision makers who are violating the nation's guiding principles' (2007: 697). However, Hasian also notes a desire not to embarrass the President.

addition to their unlawfulness, the abusive practices – once they become known to the American public and military – would have severe policy repercussions: the public and the military would repudiate them' (Mora, 2004: 10). In a meeting the following day, Mora goes on to stress, that:

Even if one wanted to authorize the U.S. military to conduct coercive interrogations, as was the case in Guantánamo, how could one do so without profoundly altering its core values and character? Societal education and military training inculcated in our soldiers American values adverse to mistreatment. Would we now have the military abandon these values altogether? (2004: 11).

Mora's memo emphasises that members of the military involved in coercive interrogation were not a 'rogue element' (2004: 12), and that there was a chain of command to the highest levels of the Department of Defense (DoD). He also argues that such practices could not be justified by the 'ticking bomb' scenario as this was not the case with detainees in Guantánamo. Mora ends his memo stating that he is confident that prisoner abuses stopped after January 15th 2003, however discussions about the OLC memos and the president's authority to authorise torture continue.

I do not claim that we can take Mora's opinions to reflect the whole of the military's thinking on the issue of detention and abuse. Indeed, General Myers was quick to comment in a television interview shortly after the release of the photos from Abu Ghraib that they were isolated incidents by 'rogue soldiers' (Zimbardo, 2007: 325). Furthermore, Lieutenant-Colonel Jerald Phifer had previously written to the (DoD) in October 2002 about frustrations that harsher interrogation techniques were not authorized in Guantánamo. Certainly, there was a divergence of opinion on issues of detention. Yet the presence of discontent was definitely apparent, leading to the leaking of the photos and the later release of personal accounts from soldiers referring to the degree of uneasiness caused by the withdrawal of Geneva protections and the confusion that this produced (Zimbardo, 2007: 424).

The Bush administration's discourse during 2003-2004 in relation to the military skims over this contestation and is very similar to that in 2001-2002. In this context, the Bush administration largely employs a **dominance** strategy. The US military are 'called to defend our freedom', and 'to protect America and our friends and allies from these thugs' (Bush, 2003i), suggestive of a **directing** approach. The importance of the US military in the **dominant** framework of the war on terror is also frequently expressed,

**embedding** them in this context. Indeed, troops are politicised to a degree, as to criticise the war is deemed to be a criticism of the troops whilst they are fighting in the field (Lindsay, 2003: 538).

When rallying the troops, Bush (2003a) repeatedly stresses that the enemy 'kill without regard for the rules of war', that they are 'nothing but a bunch of cold-blooded killers, and that's the way we're going to treat them', that 'terrorists will not be stopped by mercy or conscience', that '[t]here are no rules of war for these cold-blooded killers' (Bush, 2003i) and that the enemy has 'rejected every rule of warfare and morality' (Bush, 2003zc). These statements construct a dehumanized image of the enemy, antithetical to aspects of military culture, which then provides a framework within which the military are tasked to perform.[38] Such a **dominant** agenda would certainly serve to reduce any potential for public challenge to the Bush administration's detention policies from this social group.

To accompany such an approach there are also numerous sentiments of support,[39] an emphasis on defense spending, gratitude to military families, and prominence given to the 'exceptional skill and courage' (Bush, 2004w), alongside capability that the US military has shown, **bolstering** this social group. The Bush administration employs a degree of **intersection representation** to assist in embedding the US military in this framework. President Bush also speaks to the norms of this social group stressing the clearness of the mission at hand, that 'no one who falls will be forgotten' (Bush, 2003s), that war has been 'forced upon us' (Bush, 2003g), and that the US military 'serve the great ideals of America' (Bush, 2003zc) as 'part of a great force for good in this world' (Bush, 2004zh). Additionally, the role of the Generals in planning, deciding troop numbers, and reporting back to the President the situation on the ground is frequently stressed (e.g. Bush, 2003zh; Bush, 2003zzb; Bush, 2004m; Bush, 2004zzh).[40] **Defence of the group** is also apparent in relation to accusations of abuse. With regards to Abu

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[38] Hasian (2007: 708) also identifies 'Rumsfeld's constantly vacillating position on the treatment of detainees', which has been recognized as a contributing factor to abuse. This in turn, has 'helped tarnish the reputation of all the American troops who relied on expert leadership' (2007: 708).

[39] Bush often refers to the website set up by the Department of Defense – AmericaSupportsYou.mil.

[40] This addresses accusations that there was not a clear military strategy (Woodward, 2006: 336) and that there was a mismatch between military and political concerns (2006: 300). The Military position reportedly could not get through to the administration. Woodward indeed refers to the administration closing off any negative or counter positions from the military (e.g. 2006: 371). Strachen (2006: 65) goes further to criticise this subordination of, as opposed to harmonisation with, military advice.

Ghraib, Bush (2004t) states that 'the actions of the people in that prison do not reflect the nature of the men and women who wear our uniform'.

A **dominance** strategy is therefore apparent both publicly and, one suspects, privately, where the US military are embedded in the framework of the war on terror. **Intersection representation** is also evident in the public discourse facilitating such an approach.

## 2.4 The United Nations Social Identity

With regards to the UN in 2003-2004, disagreements are much more overt. Whilst disputes are predominantly over the invasion of Iraq, they also involve issues relating to detention. For example, the Human Rights Commission ruled in March 2004, that governments have a responsibility to ensure human rights violations do not occur wherever they have effective control, thus extending these provisions to Guantánamo Bay. The importance of human rights treaty obligations, as opposed to just the laws of war (the predominant focus in the discourse of the Bush administration), is also stressed. Kofi Annan furthermore reminds states that international law is not a luxury that can be discarded, instead it is 'the platform upon which the edifice of democracy rests' (Annan, 2004b). Despite these criticisms, the Bush administration's discourse regarding the UN again demonstrates **dominance** through **directing** and **defining**, as well as **dismissal** and **denial**. This is also again supplemented by **intersection representation**.

President Bush begins 2003, in his State of the Union address, stressing that the USA does not need the authority of the UN to invade Iraq (Bush, 2003b). This theme continues in March 2003 as Bush (2003m) asserts:

I'm confident the American people understand that when it comes to our security, if we need to act, we will act, and we really don't need United Nations approval to do so.

This **dismissal** represents a technique of **dominance** as the social identity is only deemed credible, in terms of their fit with the overarching and super-ordinate framework of the war on terror as understood by the administration. Other techniques to achieve dominance again include **defining** the purpose of the UN and **directing** the social identity largely on a very narrow issue basis. For example, '[w]e have called on the United Nations to fulfil its charter and stand by its demand that Iraq disarm' (Bush,

2003b); '[w]hy doesn't the United Nations stand up as a body and show the world that it has got the capacity to keep the peace' (Bush, 2003c); and '[i]f the members rise to this moment, then the Council will fulfil its founding purpose' (Bush, 2003l).[41]

This strategy is facilitated by a degree of **intersection representation**, reflected in Bush's statements that the USA is 'enforcing the demands of the United Nation[s]' (2003r), that '[i]n confronting Iraq, the United States is also showing our commitment to effective international institutions', that 'I was the person that took the issue to the United Nations' and '[w]e've been working through the United Nations' (2003m). Whilst this may not be true of all members of the Bush administration, Bush's assertions serve to construct a degree of identification with the UN, focusing on the elements shared by the UN and the USA. For example:

As an original signer of the U.N. Charter, the United States of America is committed to the United Nations. And we show that commitment by working to fulfil the U.N.'s stated purposes, and give meaning to its ideals. The founding documents of the United Nations and the founding documents of America stand in the same tradition (Bush, 2003zv).

This demonstration of **intersection representation** accompanies **denials** that the administration went round the UN, and reminders of Resolution 1441 (Bush, 2003zf) as well as the previous Resolutions that were argued to provide a basis for military intervention.

Thus, the strategies employed in relation to the UN show **dominance** through **directing**, **defining** and **dismissal**, as well as **denial** that the USA has gone round the UN. **Dominance** is further served by **intersection representation**, narrowly highlighting shared values and identification. Whilst much of the discourse suggests a lack of potential normative influence from this social identity, we must also note that in 2003-2004 the administration was becoming increasingly aware of how crucial the UN would be to the political process following the initial conflict in Iraq. As Kampfner (2004: 351) writes, such rhetoric was taken by one senior UK official in Iraq as evidence 'the Bush administration had 'slowly and reluctantly' begun to understand 'the

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[41] Saddam Hussein is framed as a threat to the UN in that, 'the more he ignored them, the weaker the United Nations became' (Bush, 2004c).

legitimising role of the UN''.[42] However, this does not yet extend to US detention policies.

## 2.5 International Society and the Liberal Democratic Social Identity

An international liberal democratic social identity is again not very apparent in the discourse of the Bush administration. Instead, the emphasis is on issue-specific coalitions and the spread of freedom around the world; with the USA leading the world, yet separate from the constraints of any social identity in this sphere. This is in a context where there is significant criticism regarding the decision to invade Iraq, particularly from representatives of European states,[43] and increasing concern and contestation about US detention policies. Various scholars have noted declining US legitimacy and influence, alongside a growth in anti-Americanism, particularly in Europe, as a result of the prison abuse scandals and US detention policies (Kagan, 2004; Nye, 2004; Tucker and Hendrickson, 2004). Kahl (2007: 8) also highlights the 'widespread sentiment that the United States has discarded the Geneva Conventions altogether, including their prohibitions against targeting civilians' in 2003-2004.[44] The strategies employed by the Bush administration in this context are again reflective of **separation**, and **dominance**.

In the discourse assessed, the Bush administration clearly continues to assume a **leading** role for the USA in the world. For example, Bush argues that 'America is still the leader in freedom's cause' (2003i), that America is the 'beacon' for free society (2004p), spreading 'freedom across the earth' (2004zu), and that 'America is leading the world with confidence and moral clarity' (2004zp). As such, the USA is, to a degree, set apart from the rest of the world. The President often refers to the USA as communicating with the world, in terms of laying 'out the facts for the world to see' (Bush, 2003i), sending a 'signal to the world' through action (Bush, 2003r), or indeed being 'misunderstood' due to the pictures of detainee abuse at Abu Ghraib (2004zk).Scholars have indeed commented on the 'very serious divide', based on both policy and doctrine

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[42] Although Woodward (2004: 360) reports that this was not to be taken as the UN running the country. Indeed, in his 2006 book, *State of Denial*, Woodward also highlights Garner's difficulties getting the administration to engage more with the UN and 'internationalize' the effort (2006: 135).

[43] These are often dismissed as simply reflecting the 'ascendency of power in Europe' (Woodward, 2004: 346).

[44] Kahl also refers to the Pew Global Attitudes study from June 2003, where 'more than 90 percent of Jordanian, Moroccan, Palestinian, and Turkish respondents and more than 80 percent of Indonesian and Pakistani respondents felt that the United States "didn't try very hard" to avoid Iraqi civilian casualties' (2007: 7). Kahl adds that this 'view was shared outside the Muslim world by more than 70 percent of Brazilians, French, Russians, and South Koreans' (Kahl, 2007: 7).

that 'separates the United States from its closest friends and allies' (Dombrowski and Payne, 2003: 400).

When Bush does refer to an 'international community' this appears to be highly dependent on the immediate audience, for example  when holding a joint press conference with Tony Blair in Northern Ireland (2003t), with Prime Minister Berlusconi (2004zf), and during a Presidential debate with John Kerry in 2004 (2004zy).[45] In the first reference, with Tony Blair, Bush (2003t) remarks that:

We believe that the just demands of the international community must be enforced, not ignored. We believe this so strongly that we are acting on our convictions.

Two things are interesting about this statement, first it provides a very one-dimensional portrayal of the international community based on their demands for Iraq to disarm, and second, it demonstrates a major contradiction. On the one hand there is consensus in the international community; on the other there is a need to be **separate** and act alone. This supports the notion above that the USA is, to a degree, set apart from any international social identities.

America's task is understood as one of advancing 'human freedom in a world at peace' (Bush, 2003a). Bush (2003a) argues, that this 'is the charge history has given us, and that is the charge we will keep'. As such, **direction** is apparent on these lines. Bush asserts that the world must 'rise to this moment', to 'keep the peace' with regards to Iraq (2003e), and 'come together' to send a 'clear message' to Iran and Syria (2003zq). The interests of the world are **defined** on the basis of a 'spread of democratic values, because stable and free nations do not breed the ideologies of murder' (Bush, 2003l).

Bush also argues that Europe and America in particular must 'work together to promote … human rights and human dignity and rule of law and freedom and justice' (2004ze; 2003ze). Whilst such words do begin to echo the liberal democratic social identity, this is very limited in the discourse assessed. Indeed, association with this social identity is

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[45] One other reference was apparent in 2003-2004 by President Bush, in a radio address to the nation (2003zza), however, this is in the context of a reference to the international coalition. This is based on the speeches and statements assessed in this thesis and may not include all references in this period. Mention of the international community is however found in the discourse of Colin Powell.

also restricted due to the level of contestation apparent with regards to the key priorities in the war on terror.

More prominent again internationally is the emphasis on coalitions. Bush (2003za) highlights the fact that 'America and a large coalition of nations are waging a global and unrelenting war against the terrorists'. Common interests and common goals are shared among members of the coalition (Bush, 2003zza; Bush, 2004zk), the numbers this involves fluctuate depending on the time period and the definition of the mission, this ranges from 30 (Bush, 2004zw) to 84 (Bush, 2004i). In this context Bush (2004b) suggests there has been an increase in international cooperation between 'like-minded nations', particularly with regards to the detention of terror suspects (Bush, 2003zi). Accusations that the USA is going alone are dismissed (Bush, 2004zw).[46]

Bush also refers to a 'community of free nations', suggestive of a broadly defined international social identity founded on this fundamental element of being free. The free world is argued to have an obligation to make Iraq successful (2004y), and cannot 'be neutral in the fight between civilization and chaos' (2003zu). Bush (2003y) extends membership and American friendship to all those who want peace and anyone 'who works and sacrifices for freedom'. However, this is juxtaposed with a continuation of **divisions**, based on the 'principle: either you're with us, or you're with the enemy' (Bush, 2003a); a world where the 'civilized world' is against the terrorists (Bush, 2003zu).

Thus, there are a variety of dynamics at play with regards to international social identities and the USA. The liberal democratic social identity is certainly not very prominent. The emphasis tends to be on coalitions based on countering terrorism, dealing with Iraq, and establishing world peace by the means privileged by the administration. **Dominance** is highly apparent in terms of super-ordinate priorities, as is a degree of **separation** of the USA from any international social identity partly through an emphasis on leadership.

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[46] Indeed Bush states, '[i]t denigrates an alliance to say we're going alone, to discount their sacrifices. You cannot lead an alliance if you say, you're going alone…They're sacrificing with us' (Bush, 2004zw). In addition, Wehner (2008) cites multilateral efforts in relation to Libya's abandonment of its chemical and nuclear weapons programmes in opposition to accusation that the USA is going it alone.

## 3. Phase 3 - The Unravelling of Contestation? 2005-2006

*'The men and women who protect us should not have to fear lawsuits filed by terrorists because they're doing their jobs' (Bush, 2006zt)*

### 3.1 The Human Rights and Humanitarian Social Identity

Criticism from human rights groups such as AI and HRW was again highly evident in 2005-2006. There were continued calls for the closure of Guantánamo Bay, highlighting the plight of child prisoners (e.g. AI 2006b),[47] as well as the suicide attempts (e.g. AI 2006c) and hunger strikes (e.g. AI, 2006d) taking place at the detention facility. AI argued that 'this prison is a disgrace to American values and international law' (Khan, 2005a). Additional reports and testimony were also provided by both organisations on the US practice of rendition (e.g. AI, 2006e),[48] and the unfair trials proposed through the use of military commissions (e.g. HRW, 2006a).

AI and HRW have highlighted these concerns alongside the publication of testimony from prisoners, as well as from US soldiers who have witnessed or been caught up in the abuse of detainees (e.g. AI, 2005i; HRW, 2006b). Again, both organisations have called for the prosecution of those involved in torture and abuse much further up the chain of command than has been the case to date. For HRW this stretches as far as Donald Rumsfeld (HRW, 2006c), George Tenet (HRW, 2005d) and President Bush (HRW, 2005e). The Bush administration has again responded with **denials**, **dismissals** and trivialisation of these accusations, as well as **challenging** such criticisms <u>by</u> suggesting they serve the interests of the terrorists.[49] The main strategy is **dominance**, supported by elements of **compartmentalisation** and **intersection representation**.

The public dialogue between the Bush administration and the human rights and humanitarian social group is certainly very tense in 2005-2006.[50] The Bush administration has responded to allegations of torture and abuse with forceful **denials**. Secretary of State Condoleezza Rice (2005a), when pressed on the specifics of the CIA

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[47] As well as the children **of** prisoners.

[48] One prominent example is the testimony of Maher Arar, a Canadian citizen who was in transit in New York when he was detained and sent to Jordan then Syria. He was reportedly tortured (LaHoodfor, 2005).

[49] This is accompanied by a great deal of absolutism. Interestingly, Woodward (2006: 406) notes that Bush was advised to be less pig-headed regarding his critics.

[50] Whilst the discourse of the Bush administration does not specifically address this social group very frequently, members speak to the concerns that the human rights and humanitarian social group have highlighted, often through journalists. This provides the basis for my assertions. Criticisms that abuse is 'Systematic and Chronic' (HRW, 2005f), and that the government has been 'creating [a] "climate of torture"' (AI, 2006e) are particularly damning.

rendition flights in a Sky News interview with Julie Etchingham, employs identity based denials, stating:

We are a country of laws and we do not believe in torture as appropriate in the international system.

Rice (2005b) also stresses US obligations under domestic law and international conventions, which 'extend to U.S. personnel wherever they are'. Porter Goss (head of the CIA June 2004-May 2006) has also made comments along similar lines, stating:

This agency does not do torture. Torture does not work. We use lawful capabilities to collect vital information, and we do it in a variety of unique and innovative ways, all of which are legal and none of which are torture (cited in Diamond, 2005).

Goss alludes to the 'huge amount of misinformation swirling about on the subject of detainees' (Diamond, 2005). HRW however are quick to point to the existence of several contrary reports by CIA officials (HRW, 2005d).[51]

Bush (2006zt) employs a similar tactic noting the 'conflicting information about Guantánamo' that has been presented to the public, and stresses that ICRC has the 'opportunity to meet privately with **all** who are held there' (**emphasis added**),[52] and that the facility has received visits from 'government officials from more than 30 countries, and delegations from international organizations'. Bush argues that Guantánamo does live up to the obligations of 'those who espouse human rights', that there are 'very few prison systems around the world that have seen such scrutiny', and he invites critics to visit the facility to see for themselves (2005ze; 2005zi). Guantánamo is portrayed as a facility US troops and the American people can take pride in, one which is vital in the **context** of the war on terror, keeping dangerous people off the battlefield, and where detainees are treated humanely (Bush, 2005ze; Bush, 2006d). Bush (2006zt) also **displaces** some of the criticism arguing that 'America has no interest in being the world's jailer', however, 'many countries have refused to take back their nationals held at the facility'. Whilst context is mentioned as a justification for Guantánamo (suggesting a degree of **compartmentalisation**), and there is some

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[51] Goss is also reported to have refused to discuss reports of secret detention centres in Eastern Europe suggesting that these sorts of stories have the capacity to provoke terror attacks as acts of revenge, particularly against allies that are accused of being involved in capture and interrogation (Diamond, 2005).

[52] This is in a context where, in 2005, John Bellinger admitted keeping some prisoners away from the ICRC in other locations (BBC, 2005b).

**displacement** of responsibility, the predominant focus is on **denials** that the Bush administration is acting inappropriately. This stands in stark contrast to the reports and headlines coming out of both AI and HRW.

President Bush is **dismissive** of these accusations, particularly the assertion by Irene Khan (2005b), Secretary-General of AI, that Guantánamo is 'the gulag of our times'. The President referred to such allegations as 'absurd', stressing that 'every single complaint against the detainees' is investigated (2005za). President Bush (2005zz) also rejects reports that suggest the USA has been complicit in torture, even with regards to accusations of using secret prisons in Europe.[53] Furthermore, he suggests that:

It seemed like to me they based some of their decisions on the word of – and the allegations – by people who were held in detention, people who hate America, people that had been trained in some instances to disassemble – that means not tell the truth. And so it was an absurd report. It just is (Bush, 2005za).

Through association with terrorists this social identity is significantly **challenged**.[54] As Edmund McWilliams (2005), Retired Senior US Foreign Service Officer, suggests, such forceful dismissal and disparaging responses very rarely come from the leaders of democratic states, especially those claiming to be at the forefront of human rights promotion, as well as leading the campaign against the use of torture. The Bush administration has gone so far as to imply that accusations of human rights violations are part of the terrorist strategy (e.g. in the above quote, see also Goldsmith, 2007: 59). Whilst this may be true in some cases, this does not change the evidence of abuse, the memos redefining torture, and the Bush administration's legal wrangles to render the Geneva Conventions non-applicable to 'enemy combatants' (also see Roberts, 2007: 200). Indeed, as Irene Khan (2005c), Secretary General of AI has stated:

President Bush's claim that prisoners at Guantánamo Bay "are being treated in accordance with the Geneva Convention" is belied by his own Executive Order of February 7, 2002 in which he ordered such treatment "to the extent appropriate and consistent with military necessity." The enormous loophole he

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[53] Direct reference is again made to the human rights and humanitarian social group in 2006, where the President responds to a question referring to the critical reports of AI and HRW, regarding the 'U.S. handling of terrorist suspects'; the President states, 'I haven't seen the report, but if they're saying we tortured people, they're wrong. Period' (Bush, 2006r).
[54] Interestingly, the President neglects to mention who the allegations would come from if not those who suffered the abuse, hence people who reportedly 'hate America', as is stated in the above quote. Thus, any such criticism appears to put the accuser, in line with terrorists.

authorized gave a green light for abuse, from the use of stress positions for up to twenty-hour[s]…to prolonged isolation, the use of dogs and sexual humiliation.[55]

Given the admission that Khalid Sheikh Mohammed was water-boarded, a technique employed three times in the 2001-2003 period, there is little surprise Bush's reassurances that '[t]hese procedures were designed to be safe, to comply with our laws, our Constitution, and our treaty obligations' were not accepted by the human rights and humanitarian social group.

Nevertheless, Bush (2006zt) goes on to stress the lawfulness of the CIA program employing 'alternative' interrogation techniques, the necessity of and successes from the program in terms of intelligence gained and that the program remains 'one of the most vital tools in our war against the terrorists'. Such arguments are presented in a way that suggests the right of the USA to pursue such practices should be obvious to all (Foot, 2006). HRW's response to Bush's arguments was to demand cruelty be called what it is (Malinowski, 2006), and highlight the factual inaccuracies that have resulted from the CIA program.[56]

In response to these and other accusations the Bush administration has **dismissed** these claims as helpful to terrorists, inaccurate and false even where there is evidence to the contrary. In doing so the Bush administration's association with the human rights and humanitarian social identity, is extremely strained and distant. **Intersection representation** is apparent to a degree, drawing the social identity slightly closer. For example, Bush stresses the USA's history of speaking out for 'human rights and human dignity' and that they will continue to do so (2005c), that the USA is a country 'that safeguards human rights and human dignity' (2005j), and that human rights 'are not determined by race or nationality, or diminished by distance (2005zh). However, the strong emphasis on **denials** restricts this as it is an extremely confrontational way to interact with this social group.

### 3.2 The Legal Social Identity

Contestations with the legal social group also continue in 2005-2006 with the Supreme Court ruling in *Hamdan v. Rumsfeld* (2006). This ruling is generally seen as a critical

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[55] Khan goes on to cite Rumsfeld's approval of unlawful techniques in December 2002.
[56] One piece of information, 'which turned out to be entirely wrong – was used in Secretary of State Colin Powell's speech to the United Nations to justify war with Iraq' (Malinowski, 2006).

turning point in the administration's counter-terrorism detention policies as the court struck down the system of military commissions authorized by President Bush in November 2001, largely because they lacked congressional approval and did not comply with the US military's *Uniform Code of Military Justice* or the Geneva Conventions' Common Article 3 (Roberts, 2007). The military commissions were deemed to fall short of fair trial standards. Additionally, the Supreme Court ruled that Common Article 3 applied to the armed conflict with al-Qaeda. Thus, the Court had ruled that all detainees, regardless of the presidential determination of status, must be treated humanely in all circumstance. This had implications beyond the military commissions that were the focus of the case, and put the administration's CIA interrogation program on the line. These factors forced the administration to reveal many of the practices previously kept secret, in order to seek congressional approval as the Court's ruling demanded. The Bush administration's response again employs the strategies of **dominance**, **compartmentalisation** and **intersection representation**.

As with the previous periods, the identity that 'we're a nation of law' (Bush, 2005zzb), and that 'any activity we conduct, is within the law' (Bush, 2005zz) is stressed. Law and legality are continually **bolstered** as central to the US identity. The President reminds the audience on several occasions that he has taken 'an oath to uphold the Constitution and the laws of the United States' (2006i; 2005zzg), thus **intersection representation** is evident to a degree.

The overall perspective is, however, very much one of policy driving law as opposed to law driving policy, suggesting a **dominant** and **directing** approach to this social identity. Law has got to fit with the demands of fighting a global war on terror, if not it is deemed to be a hindrance. For example, when the CIA program of interrogation of 'high value' detainees was dealt a serious blow by the Supreme Court in *Hamdan v. Rumsfeld*, the Bush administration's response was to highlight the value of this program,[57] and that the personnel involved would not be able to proceed if they thought they were violating the law. This is as opposed to recognising any basis for these restrictive protections. The Bush administration focuses on the 'vagueness' of Common Article 3 to make this argument. The basis of the argument is that these 'alternative'

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[57] As Bush (2006zx) states, the 'most potent tool we have in protecting America and foiling terrorist attacks, … is the CIA program to question the world's most dangerous terrorists and to get their secrets'. The debate surrounding this program is constructed as one 'that really is going to define whether or not we can protect ourselves' (Bush, 2006zv). Law, could therefore, stand in the way of national security and the fight against terror.

'tough' interrogation techniques are needed, and if the law is deemed to have been broken in this respect, it is the law's fault, not the personnel or the policy. The Bush administration set out to attack the 'vague standards' (Bush, 2006zv), providing clarification through the *Detainee Treatment Act* 2005, and the *Military Commissions Act* 2006. The Supreme Court is **blamed** for introducing this lack of clarity.

The Geneva Conventions were also portrayed as a hindrance directly on the battlefield. In his testimony before the Senate Judiciary Committee, Attorney General Gonzales stated that 'no one can expect members of our military to read Miranda warnings to terrorists captured on the battlefield, or provide terrorists on the battlefield immediate access to counsel, or maintain a strict chain of custody for evidence. Nor should terrorist trials compromise sources and methods for gathering intelligence, or prohibit the admission of probative hearsay evidence' (cited in HRW, 2006a).[58] These laws are portrayed as harmful, and counter-normative behaviour is denied in this **context**, suggesting a degree of **compartmentalisation** is also apparent.

In addition to being a hindrance to US strategy, law is also characterised by the Bush administration as a 'weapon' of the 'enemy'. This theme is apparent in *The National Defense Strategy* (Department of Defense, 2005: 6), where there is a passage describing the challenge posed 'by those who employ a strategy of the weak using international fora, judicial processes, and terrorism'. Rumsfeld is reported to have been particularly concerned with 'lawfare' and 'the judicialization of international politics' from the early days of the administration (Goldmith, 2007: 59).[59] President Bush also characterises law as a weapon of the terrorists, significantly **challenging** this social identity by stating:

I'm asking that Congress make it clear that captured terrorists cannot use the Geneva Conventions as a basis to sue our personnel in courts – in U.S. courts. The men and women who protect us should not have to fear lawsuits filed by terrorists because they're doing their jobs (Bush, 2006zt).

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[58] Gonzalez himself came under criticism in this period. HRW cite a letter addressed to Gonzalez from 'more than 100 U.S. law professors' which 'stated unequivocally that waterboarding is torture, and is a criminal felony punishable under the U.S. federal criminal code' (HRW, 2006d).

[59] 'Lawfare' refers to enemy tactics to criticise the US for legal violations as they are unable to match the US militarily. One example noted by Goldsmith is enemies claiming they have been tortured, damaging US identity and support. This was mentioned in the previous section on the human rights and humanitarian social group. Woodward (2006: 486) also notes Rumsfeld's frustrations with the restrictions and of Parliaments and bureaucracy. Rumsfeld is reported to have viewed Europe 'and the human rights industry that supported their universal jurisdiction aspirations' as employing a form of lawfare to serve as a check on U.S. power (Goldsmith, 2007: 59). This perspective surfaced in the *NDS* 2005.

Bush (2006zl) also emphasises the protection of the public, and asserts that '[t]he American people need to know that this ruling, as I understand it, won't cause killers to be put out on the street'.

The Supreme Court ruling in *Hamdan v. Rumsfeld* certainly 'impaired' the Bush administration's 'ability to prosecute terrorists through military commissions, and … put in question the future of the CIA program' (Bush, 2006zt).[60] However, the Court also declined to hear the case of Jose Padilla. This decision served to uphold the 'Bush administration's assertion that it can unilaterally and indefinitely detain without charge anyone, anywhere, on the grounds that they are an "enemy combatant"' (HRW, 2006f). Bush (2006zn), indeed, cites the court ruling as upholding the 'decision about creating Guantánamo in the first place' or at least, that they 'were silent on it' is taken as support. The Bush administration, furthermore, appears to have been able to circumvent many of the issues raised in *Hamdan* through further legislation. Thus, the scope of the legal challenge, whilst highly significant, has been fairly narrow.

The Bush administration was forced to put many of their detention policies on a stronger legal footing in 2005-2006, and this is exactly what they did. Law is a social identity that is fundamental to the US, yet in the current context there appears to be a degree of mistrust, viewing law as a hindrance to the administration's policies, and as a tool of terrorists. Centrality is taken to be a weakness. Thus, in terms of management, this is very much based on **dominance**, within the super-ordinate framework of the war on terror, supported by **compartmentalisation** and **intersection representation**.

### 3.3 The Military Social Identity

2005-2006 sees more instances of members of the US military speaking out against the policies of the Bush administration both in invading Iraq, and their policies for detention. For example, organisations such as *Iraq Veterans against the War* (founded in July 2004),[61] and *Veterans against Torture* (2005) were gaining in profile. In 2006

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[60] John Yoo (2006) also expressed significant concern that Bush's 'wartime judgement', with Congress' support, was being replaced with the 'speculation' of five members of the US Supreme Court. Yoo criticises the Court for viewing military commissions in the same framework as criminal justice courts. The subsequent *Military Commissions Act* of 2006 is heralded by Bush (2006zzb) as 'one of the most important pieces of legislation in the war on terror'.

[61] This organisation aims to give a voice and solidarity to those service personnel who are against the war for a variety of reasons, including the illegality of the war, civilian casualties, the dehumanization of Iraqis, and the overstretch the war has caused in the military. More recently, in 2008, this organisation was involved in the four day 'Winter Soldier' event, which also happened after Vietnam. This event

HRW published a report, '*No Blood, No Foul*', detailing the first-hand accounts of soldiers who had seen abuse in Iraq (HRW, 2006b). Soldiers had spoken out to show how systemic detainee abuse was, and the problems inherent in rendering the Geneva Conventions non-applicable.[62] Certainly, opinions within the military vary. However, there is evidence of a greater number of personnel speaking out against the Bush administration's policies, with many leaving the Army (Shanker, 2006a). One of the fiercest criticisms came from Lieutenant General Greg Newbold who alleged, in *Time Magazine*, that 'the commitment of our forces to this fight was done with a casualness and swagger that are the special province of those who have never had to execute those missions – or bury the results' (Newbold, 2006).

Indeed, in April 2006, there were repeated calls from retired Generals for the resignation of Donald Rumsfeld.[63] General Zinni (2006: 228) highlights 'poor intelligence, lack of planning, faulty political motivation, incompetent or inexperienced people placed in key positions, flawed assumptions, lack of understanding of the Iraqi culture, arrogance, spin, and the list goes on and on'. As Hasian (2007: 696) notes, whilst 'there are many times when presidents and their subordinates can summarily dismiss, trivialize, domesticate, or otherwise ignore those who disagree with their policies…even the strongest of unitary executives has to listen…when disgruntled soldiers gain the attention of broader American public'.

2005-2006 also sees the publication of the *US Field Manual on Intelligence Interrogation* issued by the Pentagon. The manual rules that 'torture and cruel, inhumane and degrading treatment is never a morally permissible option, even in situations where lives depend on gaining information' (cited in Daskal, 2006). Furthermore, the manual recognises that abuse leads to a loss of 'moral legitimacy', losing this is acknowledged to be detrimental to success in war.[64] The manual explicitly

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enabled service personnel to discuss their experiences and the reality of the war on the ground in Iraq. Indeed, these groups have gained much more press attention in 2007-2008.

[62] Indeed, the JAG involvement in *Hamdan v. Rumsfeld*, directly challenging the administration's use of military commissions, was substantial. As Lieutenant Commander Charles Swift notes, 'most countries, when a military officer openly opposes the president, it is called a coup. In the United States, it is called *Hamdan v. Rumsfeld*' (Swift, 2007).

[63] This is documented in a series of *New York Times* articles e.g. Janofsky (2006); Shanker (2006b); Cloud and Schmitt (2006); Cloud, Schmitt and Shanker (2006). Hasian (2007: 702) suggests that Rumsfeld provided a source of criticism for the military that would avoid directly embarrassing the President.

[64] Woodward (2006: 410; 469) highlights such movements in military thinking. Furthermore, Major General Chiarelli and Major Michaelis (2005) identify the different role demanded of the military in Iraq,

prohibits the use of water-boarding. As Lieutenant General John Kimmons, Army Deputy Chief of Staff for Intelligence, stated in response to the publication of this manual:

No good intelligence is going to come from abusive practices. I think history tells us that. I think the empirical evidence of the last five years, hard years, tell us that (Kimmons, 2006).

Furthermore, with specific reference to the Geneva Conventions and the Bush administration's policy on this, former Judge Advocate General of the Navy, Rear Admiral John Hutson has stated 'I don't think we can win the war unless we live within Common Article 3' (cited in HRW, 2006a). Counter-insurgency doctrine has also developed in this period, identifying similar themes, and noting the substantial amount of troops required for such missions, in direct challenge to Rumsfeld's previous aim of troop reduction (Gordon, 2006-2007).[65]

The Bush administration's strategy in this period seems to fluctuate between **intersection representation** and **dominance**. The increased challenge from members of this group, a lack of success on the ground, and repeated media questions regarding troop levels and strategy, seem to have rendered a **dominant** approach less feasible and **intersection representation** is ever more apparent in this context. Bush (2006zzc) is keen to emphasise that he is listening and talking with the US Generals in Iraq 'all the time'.[66] Bush expresses his confidence in General Casey, and the troop numbers the General suggests (2005zzf; 2006y).

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involving more humanitarian tasks. The authors also note the limits of military power, in an article for Military Review.

[65] The Haditha 'incident' also emerges in this period with accusations of a massacre of 24 Iraqi men, women, and children (Asser, 2008). Whilst the details of the deaths are contested they did lead to the re-training of personnel in the core values of the military.

[66] Although Woodward points out that this is often 'sugar-coated information' (2006: 477). Critical views from the military did not apparently get through (Shanker, 2006b; Woodward, 2006: 400), and military advice on not reporting body counts was certainly discarded (2006: 483). Woodward highlights the lack of independent military advice being sought by the Bush administration (2006: 404, 470), and goes on to suggest that this led to 'groupthink' (2006: 454). Whilst this largely presents a picture of the Bush administration excluding military viewpoints, Woodward also cites Andrew Card's (then White House Chief of Staff) suggestions that had the General's said more Bush would have listened (2006: 455-456). Indeed, in response to accusations that critical military advice was stifled Rumsfeld suggests that the issues emerging in the public were never raised with him. A Defense Department memo was circulated to this effect, 'stat[ing] that senior military leaders were involved in every decision-making process, and Rumsfeld was said to have met hundreds of times with the Joint Chiefs of Staff and many senior field commanders' (Hasian, 2007: 709). Rumsfeld, also portrays a set of circumstances more complex than those depicted by the Generals who had spoken out (Rumsfeld, 2006).

There is a clear benefit for the Bush administration in taking a step back from a public strategy of **dominance**, to focus on **intersection representation** where there is greater room for influence from this social group; this renders the administration's decisions more credible in the circumstances. The administration also focuses on the honour the troops have earned, speaking to military norms. When discussing his interactions with military families, Bush uses this notion of honour to strengthen the administration's position regarding Iraq. He states:

One opinion I've come away with universally is that, you know, we should do everything we can to honor the fallen. And one way to honor the fallen is to lay the foundation for peace (Bush, 2005zm).

The need for a continuing presence in Iraq is partially based on the honour of those who have died, to make sure 'the sacrifice has been worth it' (Bush, 2006zzh).[67] There is quite a bit of contestation over this point in 2005-2006, particularly due to the protests of Cindy Sheehan, whose son died in Iraq, calling for the troops to be brought home, and rejecting the president's use of fallen soldiers, like her son, to justify continuing US presence in Iraq. Bush deals with this criticism by suggesting her views are not representative, that force was used as a last option,[68] and that the mission in Iraq is 'vital to America's security' (2005zo; 2006zzc; 2006zzh). Support for military families more generally, is again a strong theme in the discourse of the Bush administration (e.g. Bush, 2005b; 2005zm; 2005zx).[69]

The gravity of the US military's role in the 'landmark events in the history of liberty' is frequently praised by the Bush administration (Bush, 2005b). In a context where the purpose of the troops in Iraq has been brought into question in various forums (e.g. media, political and academic), for example, there are many accusations of a lack of strategy, or indeed that 'politicians [are] pretending that policy is strategy' (Strachen, 2006: 61), this emphasis facilitates the drawing in of this social identity to a super-ordinate framework based on fighting the war on terror for a more peaceful world. In a speech to the graduating midshipmen at the US Naval College, Bush (2005z) determined that those graduating were 'now part of the greatest force for freedom in the

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[67] In his visits to military hospitals Bush encounters those with the opinion that the war in Iraq was not worth it (Woodward, 2006: 437; 438).
[68] Rice and others have supported this notion that force was used only as a last resort (Woodward, 2006: 396).
[69] Cynthia Enloe gave a fascinating assessment of the importance of military families and girlfriends, and their targeting by the Bush Administration in a plenary lecture at BISA 2007, Cambridge.

history of the world – the Armed Forces of the United States'. In this context, the troops are again highly politicised as criticism of the war in Iraq is framed as criticism of the troops (Woodward, 2006: 423; 490).

An increase in criticism has rendered a **dominance** strategy harder to achieve on its own, thus greater **intersection representation** is apparent in 2005-2006. This is accompanied by positive messages about the 'clear' strategy that is 'working' (Bush, 2005z) and that 'retention is high, recruitment is meeting goals, and people are feeling strong about the mission'; therefore the US military is in good shape (Bush, 2006g). Although the fact that the administration was looking to attempt to 'increase the permanent size of both the United States Army and the United States Marines' suggests this only reveals half a story (Bush, 2006zzh).

### 3.4 The United Nations Social Identity

Interactions with the UN in 2005-2006 are again quite confrontational. Several UN reports, such as the joint report on the 'Situation of Detainees at Guantánamo Bay', (UN, 2006a) came out against the Bush administration's detention policies. The administration also came under particularly strong criticism from the UN Committee against Torture. Whilst praise was given to the USA in certain areas in their progress to combat torture, in others they were found to fall far short. For example, the Committee calls for the USA to:

cease to detain any person at Guantánamo Bay and close this detention facility, permit access by the detainees to judicial process or release them as soon as possible, ensuring that they are not returned to any State where they could face a real risk of being tortured (UN, 2006b: 6).

The UN Human Rights Committee, in July of 2006, also released a critical assessment of the US government's human rights record, both at home and abroad (HRW, 2006e). The committee called on the Bush administration to provide the opportunity for those held at Guantánamo to challenge the lawfulness of their detention, to hold all those responsible for abuses accountable, and to end the use of secret prisons. Further criticism was aimed at the interrogation techniques employed by the USA, such as stress and duress, which they had not recognised as cruel, inhuman and degrading.

Many of these concerns are also echoed in a statement by Martin Scheinin, the Special Rapporteur on the promotion of human rights and fundamental freedoms while

countering terrorism. Scheinin (2006) expresses unease about a 'number of provisions of the MCA [*Military Commissions Act*]' which 'appear to contradict the universal and fundamental principles of fair trial standards and due process enshrined in Common Article 3 of the Geneva Conventions'. This is in addition to:

the protection of human rights in the context of countering terrorism such as the Patriot Act, immigration laws and policies, CIA secret detention centers, rendition flights, breaches of non-refoulement and the Government's denial of extra-territorial human rights obligations.

Thus, the detention policies of the Bush administration have been brought under significant scrutiny by the UN in 2005-2006.[70] These criticisms are met with strong **denials** and **dismissals**, as were similar concerns raised by the human rights and humanitarian social group. For example, when U.N. High Commissioner for Human Rights, Louise Arbour (2005), stated on Human Rights Day that:

The absolute ban on torture, a cornerstone of the international human rights edifice, is under attack. The principle once believed to be unassailable – the inherent right to physical integrity and dignity of the person – is becoming a casualty of the so-called "war on terror",

the US Ambassador to the UN John Bolton is reported to have responded that it was 'inappropriate and illegitimate for an international civil servant to second-guess the conduct that we're engaged in [in] the war on terror, with nothing more as evidence than what she reads in the newspapers' (HRW, 2005g). This reflects the tone of response that was aimed at the human rights and humanitarian social group at the beginning of this section on 2005-2006, where accusations were both **denied** and **dismissed**.

With particular reference to the UN, this is a period where the Human Rights Commission was severely discredited (an assessment shared by Secretary-General Kofi Annan), and replaced by the Human Rights Council which was also to suffer problems (HRW, 2006f). Accusations of corruption at the UN were also rife, and UN reform was very much on the agenda. In this context, the strategy of **dominance** can perhaps be more easily sought despite the above criticisms.

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[70] The lack of access to detention facilities granted to UN experts is also highlighted by AI and HRW (AI, 2005j; HRW, 2005h).

The Bush (2005zr) administration (as reflected in the discourse of Bush in particular) focuses on **defining** the overarching mission of the UN. The **direction** stressed is based on the 'calling' to 'advance … freedom and security'. Bush (2005zr) goes on to argue that 'the world needs the United Nations to live up to its ideals and fulfil its mission', demonstrating elements of **intersection representation**, **bolstering** this social identity to support the dominant approach. However, Bush (2006zv) goes further and questions the commitment of the UN a year later, stating:

I hope the United Nations still strongly stands for liberty. I hope they would support my call to end tyranny in the 21st century.

The USA is placed in a leadership position, ignoring the previous reports, and instead focuses on the overarching quest for freedom and liberty. Frustrations are highly apparent in the discourse in this regard, particularly with the perceived lack of commitment of the UN to the core mission of the Bush administration. Bush (2006zc) asserts his vision for the UN as one that is:

effective, one that joins us in trying to rid the world of tyranny, one that is willing to advance human rights and human dignity at its core, one that's an unabashed organization – is unabashed in their desire to spread freedom.

Bush supports such a **directing** stance and emphasis on reform by alluding to the lack of trust that has developed regarding the UN in the US public.[71] This is given as a reason why John Bolton was deemed to be such a good candidate for UN ambassador. Bush (2005za) states that:

We pay over $2 billion a year into the United Nations, and it makes sense to have somebody there who's willing to say to the United Nations, let's – why don't you reform? Let's make sure that the body works well and there's accountability and taxpayers' money is spent wisely.

As the UN is **defined** in such fluid terms the **dominant** strategy would seem easier to achieve. Furthermore, such an approach serves to negate the negative impact of criticisms from this social group. There are hints at **intersection representation**, focusing on that which the USA and UN share, however, the primary strategy is one of **dominance**.

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[71] One interesting comment was as follows, 'some of you were probably concerned here in Kentucky that it seemed like the President was spending a little too much time in the United Nations' (Bush, 2006c).

## 3.5 International Society and the Liberal Democratic Social Identity

In 2005-2006 perceptions of US moral authority continue to be negatively affected by their counter-terrorism detention policies (Foot, 2006), and the means by which they can validate a liberal democratic social identity are highly limited. Indeed, as Betts (2005: 1) argues, 'much of the world seems exasperated by American foreign policy'. In this climate, the Bush administration largely employs a **dominance** strategy, which at times is supported by **intersection representation**.

President Bush again discusses what the world is doing and must do (**directing**). This is generally in terms of speaking with one voice on security issues, such as difficulties with Saddam Hussein (2005i; 2005l) and Kim Jong-il of North Korea (2006zn). Beginning in September of 2005 though, Bush starts to refer to the international community more, for example in discourse concerning the international community's demands of Syria (2005zza), their responsibilities in Iraq (2006b), their 'working together to help Afghanistan's young democracy succeed' (2006j), the need for the international community to be firm with Hamas (2006l) and speak with 'one voice to the radical regime in Tehran' (2006l). The importance of having others in the international community (or the world – Bush continues to use both terms) 'send the same message' is frequently stated (Bush, 2006zza).

Accompanying this more multilateral rhetoric is a continuation of emphasis on **leading** the world in the direction of freedom, heading 'toward an ideal world' (Bush, 2005c), and seeking 'the end of tyranny in our world' (Bush, 2006h). This **dominance** approach is underpinned by strong notions of universalism. For example, 'universal values and universal ideas' (Bush, 2005c), that freedom and liberty are universal (Bush, 2006w) and that the 'war on terror is universal' (Bush, 2006n). In response to accusations that the USA are imposing their values on others, Bush (2006x) suggests that 'those are the folks who must not think that freedom is universal', that 'it just applies to only a handful of us'. The emphasis is on end goals as opposed to the means by which they are sought, which serves to **dismiss** criticism. Bush (2006x) argues that:

Much of my foreign policy is driven by my firm belief that everybody desires to be free; that embedded in the soul of each man and wom[a]n on the face of the Earth is this deep desire to live in liberty. That's what I believe. I don't believe freedom is confined just to the United States of America, nor do I believe that we should shy away from expressing our deep desire for there to be universal liberty.

Bush dismisses claims that such goals are 'misguided idealism' arguing that 'the future security of America depends on it [their realization]' (2006h). This is partly because '[d]emocracies don't war with each other' (2005zi),[72] but also because of the great 'ideological struggle' in the world (2005zi). One where those who oppose 'human rights, freedom of religion, [and] the ability for people to express themselves in the public square without fear of reprisal', are using 'tactics that are trying to drive us from the world' (Bush, 2005zi). Bush further argues that whilst '[s]ome would like us to look at the world the way we would hope it would be. My job as your President is to look at the world the way it is' (Bush, 2006i). Thus, the super-ordinate framework clearly takes precedence, and again generates **divisions** based on binary logic internationally.

**Intersection representation** is also apparent to a degree in 2005-2006. For example, Bush frequently stresses the US's shared values with Europe and that disagreements in the past do not mean they cannot cooperate now (2005o; 2005u). Indeed, in relation to Iraq, Bush (2005zg) argues that despite previous differences, 'the world understands that success in Iraq is critical to the security of our nations'. With regards to Iran the President also highlights that 'the world is coalescing around the notion' that they should not be able to develop a nuclear weapon (Bush, 2005zm). However, each of these statements, whilst drawing on areas of overlap, is still largely based on the super-ordinate framework of the war on terror as understood by the Bush administration. **Intersection representation** is very much in terms of **bolstering** and **utilising** the overlap, for example, as mentioned earlier, drawing on the extra strength that speaking with one voice in the international community generates.

Whilst there is still also much emphasis on transient coalitions to 'defeat the dangers of our time' (Bush, 2005d), there is greater engagement with international social identities in 2005-2006. The rhetoric is less confrontational and the separation apparent in the previous two time periods is not so evident. There is still a great deal of emphasis on leadership in this sphere, however this is firmly grounded in a **dominance** strategy in 2005-2006, perhaps because of the set backs in the war on terror in terms of the less than desirable situations in Iraq and Afghanistan. Complex dynamics are certainly at work in this period with a variety of factors brought together under a dominant super-ordinate social identity founded on the war on terror. As Jack Goldsmith (2007: 212)

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[72] Bush (2006l) later inserts caveats when making these statements, asserting that democracy does not have to look like American democracy and is different in different cultures.

notes, the administration has made 'little attempt to work with the other institutions of government', perhaps then there is little reason to expect the administration to engage any further with any international social identities.

## Conclusion

This Chapter has again demonstrated that defection from the international detention regime needs to be understood as an interactive process of contestation. Political elites cannot simply defect from international normative regimes if their arguments are not accepted in the broader social identities context. Research that relies on material power and interests or a personality that is more 'prone' to defection do not engage with this interactive process which certainly influences the sustainability of such practices. By viewing the influence of international normative regimes as outlined in Chapters 1 and 2, as a means by which to validate membership or association with a social identity (of which there are many) we can more easily comprehend contestations and fluctuations at the same time as influence. Including the broader social identities context in our analysis better equips us to approach the how possible questions of defection and the negotiation of normative constraints by orientating analysis towards the management strategies employed.

As with the previous Chapter, all of the management strategies identified in Chapter 2 are apparent in the discourse of the Bush administration. The techniques used in relation to these strategies again vary with social identity and time period. Dominance is the most prominent strategy, most frequently manifest in a range of denials, dismissals, and challenges to the criticisms. Also significant in this Chapter is a much weaker emphasis on international social identities than was apparent in relation to the Blair government. Additionally, separation is evident, which was not the case in Chapter 4.

With regards to social identities in international society, the discourse of the Bush administration certainly diverges from that of the Blair government. There is much less engagement with forms of social identity internationally; indeed at times we see evidence of separation. This is highly significant for the framework established in this thesis, where membership and desire for membership are crucial for normative influence. We cannot expect international normative regimes to have influence if the membership to which they pertain is not apparent for the Bush administration; in such cases where membership is not experienced, there is thus no imperative to validate

membership through compliance with the constitutive normative regimes. Much norms research assumes membership of the international society in general and leaves little if any room for changes in the positioning of individuals (as representatives of states), in relation to different international social identities.

The discourse of the Bush administration is very issue-specific in relation to international social identities, to a much greater extent than was evident in Chapter 4. The emphasis is on transient coalitions where the USA leads a group of states, brought together to tackle particular problems. There are moves to engage more internationally in 2005-2006, where the value of a more collective approach seems to gain further recognition and the discourse is less confrontational. However, the predominant emphasis is on an international social identity based on fighting the war on terror. Like in Chapter 4, this creates a complex framework of universalism and division, equality of human rights and restrictions on human rights, as well as the inclusion of a diverse range of members where counter-terrorism is the shared ethos. The influence of the international detention regime, as associated with the liberal democratic social identity, is heavily compromised in this dominant and separated approach to international social identities.

However, as I have argued throughout this thesis, we also need to consider the broader social identities context when assessing the contestation of the international detention regime. The main strategy employed by the Bush administration is again one of dominance, focusing on denials, dismissals and challenges, but often on the basis of constructing a dominant narrative. These techniques, apparent in relation to several of the social identities, for example human rights and humanitarian, legal and UN, are very confrontational. This is clearest with regards to challenges, where the criticisms of these social groups are argued to serve the terrorist's cause. These social identities are constructed under the super-ordinate framework of counter-terrorism, as understood by the administration, and are expected to fall in line.

The predominant reliance on denials, dismissals and challenges in the discourse assessed does not appear to be a sustainable strategy, if there is a desire to maintain association with these social identities, given the mounting evidence of actions that disprove statements. Arguing that such practices are appropriate given the context also does little to draw the social identities closer or gain any status from proto-typicality.

Cheney's statement that, '[n]obody should feel defensive or unhappy about the quality of treatment they've received. It's probably better than they deserve' (Sanger, 2002; Kampfner, 2004: 150)[73] is an example of this and fundamentally challenges the constitutive elements of equality and humane treatment that are generally inherent in the social identities assessed. The use of intersection representation which could bolster association does not on the whole appear to be accepted by the different social groups. Reliance on historical association and identity-based reasoning to justify current actions suggests that the process of social identity validation was approached in a very **one-way** fashion, which inevitably leads to frustrations when confronted with challenges. Overall, the strategies employed and the means by which they are sought is indicative of a lack of appreciation for the interactive process of social identity validation. Association with these social identities is taken for granted.

However, these social identities cannot simply be rejected, even by the USA, who is often considered to experience very few constraints on their actions. Bush certainly pushes association to the limits, but retains a fragile degree of identification through intersection representation. The apparent fear of constraints, the salience of attacks, and the existence of a very harsh penal system already in the USA are all factors that will have contributed to the defection from and contestation of the international detention regime. There are multiple factors for individuals and small leadership groups to draw on and there is always room to challenge interpretations.

They also however need to manage the broader social identities context for such policies to be sustainable. The presidential campaigns of John McCain and Barack Obama in 2008 appear to have recognised the detrimental affect of the administration's detention policies, speaking out as they have against Guantánamo Bay. Obama's camp, furthermore, have made various noises about taking a more 'European approach' to the conflict between Russia and Georgia. The differences in the management strategies and interactive processes in this future context will be fascinating to see.

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[73] This statement was made at a Republican fundraiser in Cincinnati, January 2002. Whilst the full text of the speech is not available, several respected journalists have cited the phrase.

## Conclusion

This thesis began with the following question; how have the normative constraints regarding detention practices been negotiated by the USA and UK in the war on terror, so as to allow for contestation of the international detention regime? Images of the abuse of detainees, harsh conditions of detention, and strong rhetoric contesting the applicability of the international detention regime have been highly prevalent in 2001-2006. These practices challenge our expectations for behaviour. As argued in Chapter 1 such expectations for compliance with the regime are generated by the association of the USA and UK with a liberal democratic state identity, and indeed the involvement of these states in human rights promotion and moves to eradicate torture in the world. The seemingly counter-normative behaviours of these states with regards to the international detention regime necessitate an explanation of how international normative regimes actually influence the behaviour of political elites given such stark examples of contestation. Not to do so leads to erroneous expectations of state behaviour, takes 'progression' towards human rights norms for granted in international society, and conceals the need for normative regimes to constantly be re-made.

In order to delve deeper into the processes involved in the contestation of the international detention regime I have drawn on constructivist research as well as insights from the social identity approach in social psychology. The framework established in Chapters 1 and 2 has enabled the following findings:

1. The normative constraints of the international detention regime are negotiated through management of the social identities associated with the state by political elites

2. Very complex social identity dynamics are apparent in international society for both the Bush administration and Blair government, which contribute to our expectations for behaviour pertaining to the international detention regime

3. Contestation of the international detention regime is a broad and interactive process, as opposed to one-way. Political elites do not simply defect from or comply with this normative regime in the cases examined. Interaction with the social identities context constrains justifications of counter-normative behaviour, and the capacity to construct a sustainable and enabling framework for contestation.

In relation to the first point above, this thesis has found that in order to consider how the normative constraints of the international detention regime are negotiated we need to focus on the management of the different social identities associated with the state, those that are relevant to this regime. As I contend in Chapter 1, the literature on international norms does not tend to engage with this broader social identities context but instead generally focuses on a singular international norm, and defection or compliance by the state or state leaders (e.g. Shannon and Keller, 2007; Cardenas, 2004). Scholars working from the social identity approach in social psychology have, however, demonstrated why it is so important to consider the broader social identities context in which political elites are situated, when evaluating the contestation of international normative regimes, as I argued in Chapter 2. In Chapters 4 and 5 I demonstrated that interactive processes of contestation are evident for both the Blair government and Bush administration with the social identities discussed in Chapter 3. I found that the discourse of Bush and Blair generally concentrates on the generation of a super-ordinate social identity, based on the war on terror, within which subordinate social identities are re-framed (this is however more apparent for Blair as opposed to Bush). This serves to facilitate continued validation of association or membership with these different subordinate social identities, such as the human rights and humanitarian social identity (both collectively and at an individual level), despite the contestation of the international detention regime by the USA and UK. This approach therefore accounts for contestation at a micro-foundational level through utilisation of the social identity approach.

Second, very complex international social identity dynamics are apparent for both the Blair government and Bush administration. The predominant emphasis is on the new international, and super-ordinate, social identity, developed through both comparison (e.g. civilized as opposed non-civilized divisions internationally) and interaction (e.g. between political elites across the coalitions established in the war on terror). This emergent social group certainly challenges notions of an international liberal democratic social identity as dominant for these states in this context. Given that the social identity approach suggests that the influence of normative regimes depends on the salience of the membership to which they pertain, we can understand how appeals to a super-ordinate social identity facilitate the contestation of the international detention regime

by the UK and USA.[1] However, the discourse also portrays very complex and dynamic formations of international social identities for representatives of these states in 2001-2006, for example, universalism and division, equality of human rights and restrictions on human rights, as well as the inclusion of a diverse range of members where counter-terrorism is the shared ethos. Such complexity is certainly very difficult to manage, with many competing normative demands. The framework outlined in this thesis allows us to understand apparent fluctuations in the influence of international normative regimes in this context, as the liberal democratic social identity is competing with various others. Whereas some scholars (as mentioned in Chapters 1 and 2) have simplified international social identities, this thesis has embraced the apparent complexity, and, assisted by the micro-foundational insights of the social identity approach leaves room for changes in the positioning of individuals (as representatives of states), in relation to different international social identities.

Third, the political context is one in which multiple social identities compete for social influence, and where leaders manage associations as well as develop and attempt to create new social groupings. This has been highlighted above. Reliance on a super-ordinate social identity based on the war on terror has, however, been complicated as these constructions are not accepted by the other social identities assessed, thus as a strategy this does not appear to be sustainable. As has been advanced throughout this thesis, we cannot limit our understanding of international normative regimes to the international sphere. Contestation is not a one-way process, where powerful state leaders can simply act as they chose; interaction with multiple social identities is also a significant part of the picture. In this thesis I have provided evidence to challenge the dominant approach to norms in IR which focuses on the counter-veiling logics of compliance and defection behaviours (e.g. Goertz and Diehl, 1994; Slaughter and Raustiala, 2002). Instead I have demonstrated how this is a two-way process of contestation, where various audiences and members are involved in this interactive process. Bush and Blair, for example, both rely on their country's historical involvement in human rights promotion and previous compliance with human rights standards at times where they are accused of defecting from these international standards (Blair also refers to the previous achievements of the Labour party in this regard). For example, as the Blair government introduced the *Human Rights Act* in

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[1] As evidenced in Chapter 5, the discourse of the Bush administration also demonstrates a degree of separation and less engagement with forms of social identity internationally.

1998, they ask for current actions to be seen in this light. As has been demonstrated in this thesis, such identity-based arguments are not accepted by the human rights and humanitarian social group and association with this social identity becomes very strained, evidenced by compartmentalisation and confrontational interactions with both Blair and Bush. Research that relies on material power and interests or a personality that is more 'prone' to defection do not engage with this interactive process which certainly influences the sustainability of such practices if the actors wish to validate association with this social identity. Political elites cannot simply defect from international normative regimes if their arguments are not accepted in the broader social identities context.

These findings all advance our understanding of how the normative constraints regarding detention practices have been negotiated by the USA and UK in the war on terror, so as to allow for contestation of the international detention regime. This thesis has demonstrated that defection from the international detention regime needs to be understood as an interactive process of contestation. As advanced in Chapter 1, constructivists lack a persuasive account of the micro-foundational processes of norm influence which prevents them from engaging with the contestation of seemingly embedded international normative standards. The framework established in this thesis accounts for the influence of social identities and international normative regimes, whilst at the same time allowing us to understand contestation. I have demonstrated that by firmly embedding individuals in the broader social identities context and focusing on the management strategies employed by political elites we can understand the interactive processes of contestation generally missing from current constructivist accounts of international norms. Whilst research focusing on personality, internalisation, the nature of the norm, or pre-defined interests may increase parsimony, they reduce our understanding of the processes involved and lead to erroneous explanations and expectations. Decisions to defect from or comply with the international detention regime are not straightforward assessments; they are interactive processes that evolve.

Scholars from the social identity approach (e.g. Haslam and Reicher, 2007) have highlighted the importance of considering, on the one hand, political leaders as sharing and being associated with certain social identities, whilst on the other managing and constructing this context. The significance of assessing existing constraints alongside

the creation of future possibilities is often missed in certain strands of constructivist research on norms, where the emphasis of the studies has tended to negate the importance of leaders and individuals, or gone too far in isolating the leader from the broader social identities context. The social identity approach privileges 'doing' as opposed to 'having' in their assessment of leadership. 'Doing' is a product of both the person and the interactive context. A reliance on personality generally misses this point, and would seem to run the risk of conflating personality measures with the product of interactions, particularly as measures of personality are often taken at the time of the events studied.

There are certain dangers to such an approach. For example, assessments of Saddam Hussein (particularly those articulated by Bush and Blair) appeared to be very isolated from the interactive context in which he was situated. The individual is clearly important, however, simply attributing actions to individual personality without recognising the broader constraints (and enabling factors) on their behaviour can lead to misconceptions (see Jervis, 1976). Such a perspective is also evident in the Bush administration's approach to detention, where the emphasis is on hunting down and hauling in the 'evil-doers', believing that the more who are captured, the less there are to fight. As mentioned previously, a reliance on this idea ignores the possibility of creating more terrorists. This thesis has attempted to demonstrate the importance of interactions and 'doing' processes, with regards to the contestation of detention standards by the USA and UK. Whilst other studies have concentrated on how these practices came about, I have delved deeper into the negotiation of normative constraint in the broad social identities context, based on the micro-foundational insights of the social identity approach.

Despite the importance of international normative regimes, such as that prescribing minimum standards for detention and prohibiting torture, there will always be room for challenge and different interpretations regardless of how internalised at a collective level normative regimes appear to be; the role of individuals and interactions is very important. Individuals have many memberships or associations with different social identities to draw on. Some of these emerge in certain circumstances through individual interactions which are often on a small scale; others are already apparent but not salient.

An interesting feature of the analysis in this thesis has been the significant overlap in the use of the different management strategies. Both Bush and Blair employ different strategies concurrently with the same social identity. Indeed, certain passages that I have included in Chapters 4 and 5 are indicative of compartmentalisation, intersection representation and dominance simultaneously. Furthermore, at times, strategies such as intersection representation appear to facilitate dominance, and at other times, dominance seems to allow for compartmentalisation or vice versa. Political rhetoric does not fall neatly into the typology of strategies identified by Roccas and Brewer (2002). This does not negate the usefulness of such an approach but simply goes some way to demonstrating the complexity of social identity management in the political sphere. I have included techniques under the different strategy headings to give a clearer indication of variations in the use of these strategies as, whilst they are apparent, there are differences in how they are manifest across both time and social identity. Simply focusing on the strategies identified by Roccas and Brewer would have obscured some of the differences and nuances in this analysis. Thus, utilising these insights in the political realm has demonstrated their value in this complex context, but has also highlighted certain particularities for this type of analysis, which may also be of interest for social identity theorists in psychology.

There are of course certain drawbacks to the approach adopted in this thesis that I must mention here. As I have argued, the framework provides a means by which to understand processes of contestation and normative influence. However, the framework does not generate insights in these cases that can be generalised with regards to these processes. Insights are contextually situated. Due to the emphasis on interactions they will vary both with different circumstances and actors. The social identities context, for example can be very different for certain states, certainly this would be very interesting to explore. The micro-foundational framework outlined in this thesis will still provide a very useful basis from which to conduct such analysis. Indeed I believe this framework will prove to be very valuable in understanding the different behaviours of states with regards to international normative regimes.

There are also a variety of other ways that the research outlined in this thesis can be developed. For example, the social identities included for analysis are by no means comprehensive. As I mentioned in Chapter 3, other factors such as religion are very important. Whilst it has not been possible to explore any more in the confines of this

thesis (those covered have certainly provided a very broad research project) this may be a consideration for future research. Although this suggests expanding the research further, the insights in this thesis could also be developed by deepening analysis. For example, investigation into interactions with the different social identities could be enhanced by the inclusion of interview data. For example, interview data could help to expand analysis by enabling us to delve deeper into the processes of contestation, to assess how interactions are perceived by members of these social groups, and indeed government officials where access is possible.

One of the aims of this thesis was to bridge some of the gap between international normative regimes and individuals. Indeed this has tended to be the main motivational driver for many moves to engage more with insights from psychology in constructivist research. I have approached this by drawing on research in the social identity approach where the predominant emphasis is on understanding the relationship between the individual and the group, particularly social influence in this context. The micro-foundational insights provided by social identity scholars have led me to focus on political elites, the processes of negotiation of normative constraint that are apparent in the discourse, and the interactions with the different social identities associated with the state. The management of these social identities has provided significant insight into the processes of contestation of the international detention regime in the cases of the USA and UK.

However, moves to bridge the gap between international normative regimes and agents could be developed even more by interviewing individuals to further assess how different normative constraints and social identities are managed. Whilst access for this would be very difficult for political elites, this could perhaps be possible for military personnel who also operate in an international context with competing normative demands. Tracking international norms to the individual, investigating interpretations, as well as the management of competing normative demands and social identities, would also assist in advancing our comprehension of normative influence which has been demonstrated by constructivists to be fundamental to our understanding of international affairs.

There are also further questions that emerge from the assessment in this thesis. For example, how has the negotiation of normative constraint and the management

strategies evident in the discourse influenced perceptions of the international detention regime around the world? Certainly very mixed messages have come from both of these countries with regards to the need to be tough on terrorism, but at the same time meeting human rights obligations. The emphasis on a trade-off between the two has been very salient, as has the hierarchical interpretation of rights, strongly privileging the right to life and to live free from terror above all others. The frequency of dismissals and denials in both the discourse of the Blair government and the Bush administration, in relation to the arguments of the human rights and humanitarian social group, would seem to have provided ammunition for other countries around the world to pursue such measures. As mentioned earlier, whilst both Bush and Blair employ identity-based reasoning to justify their own actions, the example set to others around the world has not featured as a significant concern. As Malinowski (2005: 141) writes:

State Department officials can continue to urge Saudi Arabia and Egypt and Algeria to treat people humanely, but when the governments of these countries can quote U.S. government memoranda to defend their brutal actions, what can an American diplomat say in response?

Indeed, Zayas (2005) draws attention to Malaysia's *Internal Security Act*, which has resurrected preventive detention that was introduced as a temporary measure in 1960 to fight a communist rebellion. The impact of the arguments of the Bush administration and the Blair government on interpretations of the international detention regime by different political elites around the world would certainly be a fascinating, albeit very difficult, area to assess. This would also go some way to establishing the current state of this international normative regime.

Additionally, it would be very interesting to consider how these management strategies and the arguments employed have influenced the moral standing of the UK and USA around the world. This is very important in terms of the social influence of political representatives from these states and the moral authority that their opinions on global problems or internal difficulties in other states, have in the future. Indeed, as recent assessments have recognised, human rights are crucial to the resolution of some of the most pressing instabilities in the world, the capacity of the USA and UK to advance this agenda is certainly questionable. The *National Security Strategy* of the UK (2008) for example, stresses the importance of a rule-based approach and social legitimacy is strongly valued, yet how far this is possible given recent actions and apparent

contradictions is certainly debatable. Thus, the implications of the management strategies employed provide several avenues for future research.

This thesis has only focused on one small but significant area of concern with regards to the influence and contestation of international normative regimes. I have, however, provided further demonstration of why it is so important for constructivist scholars to engage with and provide robust micro-foundations for their research. Drawing from the social identity approach I have shown the benefits of this for understanding how normative constraints are influential and contested with regards to the detention policies of both the USA and UK. Throughout this thesis I have demonstrated that contestation of the international detention regime and the negotiation of its normative constraints are an interactive and dynamic process embedded in a broad social identities context, which has implications for the sustainability of counter-normative practices. I have also bridged some of the gap between international normative regimes and individuals, and hope to have provided a micro-foundational basis for many more future developments.

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