CHAPTER THREE

The Laws of War and Illegitimate Combatants

The Philippine War was a direct result of the Spanish-American War, which the United States fought in part due to concerns over Spanish mistreatment of Cuban guerrillas and civilians. It was thus particularly ironic that the American army used torture, population concentration, property destruction, and food embargoes to win the war against Filipino guerrillas after having denounced the same strategies when used by the Spanish. Despite the public outcry against them, the practices of population concentration, property destruction, and the destruction of food supplies were legal strategies that America had used in prior conflicts, even against its own citizens in the Civil War. Given their legal status and long history, it is not surprising that commanders adopted these strategies. What is surprising is that soldiers began to use torture, a tactic never before used in American warfare. Given the availability of tough, legal methods of proven effectiveness, why did soldiers also use torture, which was unprecedented and illegal? This chapter provides background on the answer to this question by examining the history of the laws and norms of war and then reviews the history of the Spanish-American War, which culminated in the United States taking possession of the Philippines.

The Laws of War

To determine why soldiers use torture, one must look at the history of the laws of war and their relationship with informal norms. Warfare, like all human activities, is a cultural practice governed by codes of conduct. These codes include laws, written rules that are enforced...
by governmental authority, and norms, unwritten rules enforced by self-discipline and informal sanctions from peers. Officers first learn the norms of military ethics and conduct during their training, and these norms are reinforced as they learn on the job during field service. Officers pass down norms over time through mentorship and an oral tradition and enforce them through rewards of friendship, respect, and promotion when norms are followed and the withdrawal of these rewards when norms are violated.¹

To understand the nature and importance of norms in warfare one must understand their history. In early modern Europe, the officer class came entirely from the nobility. Believing themselves to be morally superior to people of common birth, officers demonstrated their superiority through their code of personal honor. Honor was a complex moral construct that grew out of the medieval code of chivalry and expressed the virtues needed by a warrior class. It included honesty, obedience, doing one’s duty, and being competent at military tasks. Honor involved maintaining behavior appropriate to one’s place in the social hierarchy, being respectful to superiors, and maintaining authority over subordinates. Courage in battle was important above all; no officer who demonstrated cowardice in battle could retain the respect of his peers. Courage also meant fighting against a fairly matched enemy and not bullying the weak. An honorable man fought in the open, against armed enemies. Only a dishonorable coward would harm defenseless noncombatants.²

Norms of humane treatment of prisoners grew out of genteel norms of hospitality, and norms of the exchange of prisoners grew out of the profitable medieval tradition of ransom. In the early Middle Ages, armies often did not take prisoners, but over time noblemen realized that it was more profitable to hold wealthy prisoners for ransom than to kill them outright. As captured officers were fellow nobility, norms of hospitality required captors to treat them as guests, and noblemen added to their reputation for honor by treating their prisoners well. As the prisoners were themselves men of honor, they could be trusted to be honest and could give their word—in French, parole—not to run away. Prisoners released on parole could move about freely while they waited for their families to ransom them. Over time, independent knights and noblemen became incorporated into modern armies as commissioned officers. Private ransoms gave way to state-organized prisoner exchange cartels, and the tradition of parole continued into the nineteenth century. The humane treatment of prisoners, at first reserved for noble captives, eventually became extended to common