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Elizabeth Dale. *Robert Nixon and Police Torture in Chicago, 1871-1972.* DeKalb: Northern Illinois University Press, 2016. 184 pp. $32.00 (cloth), ISBN 978-0-87580-739-3.

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The aim of Elizabeth Daleâs short and compelling book is to show that the long list of abuses of suspects by Chicago police detective Jon Burge, which took place between 1972 and 1991, were not anomalies. Burge, it will be recalled, ended up in prison and the City of Chicago apologized for his abuses, paying out $100,000 in damages to his victims, expected to number between fifty and eighty-eight people. Dale intends to prove that it did not start with Burge, that he was just the most recent and notorious illustration of a systematic effort by Chicago police to âtortureâ suspects stretching back to the nineteenth century. Her goal, she says, is to recapture the history of these abuses. To do this, Dale collected public records on police mistreatment claims going back to 1869. These cases are briefly referenced laundry-list style in the first twenty-seven pages of the book. Then comes the heart and soul of the work: a detailed account of the case of Robert Nixon, a young black man condemned for a series of murders of women and executed on June 15, 1939. This book is the story of Nixonâs crimes, his arrest and physical abuse by the Chicago police, his trial, and his unsuccessful appeal.

Dale successfully shows that Burge is not unprecedented. The implications of her work, however, are not clear. Is she implying that police are just as abusive now as in the pre-1960s period? Probably not. Or that the Chicago Police Department has a culture of âtorturingâ suspects, which is why Burge cannot be explained merely by lapsed supervision (p. 2)? Perhaps.

Another unresolved issue involves the word âtorture,â used matter-of-factly throughout the book. Unlike Dale, I donât think torture is a self-explanatory term, though it certainly is an inflammatory one. The United Nations Convention Against Torture, which Dale does not reference until p. 114 of her book, states that the term means âany 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 consent or acquiescence of a public official or other person acting in an official capacity.â

The operative phrase here is âsevere pain or suffering,â and the severity of the discomfort is the measure. Whether all or most of the police abuse cases Dale considers involve âtortureâ is, for me, an open question. For her, it is not an issue worth discussing.

Robert Nixonâs case began with the vicious murder of a woman, Florence Johnson, in her ground-floor apartment in Depression-era Chicago. Florenceâs sister, Margaret Whitton, lived with her, Florenceâs husband, Elmer, a Chicago firefighter, and their two young children. Elmer had gone off to work early that day–May 27, 1938. Awakened by a noise, Whitton put on her robe, stepped out of her bedroom, and saw a brown-skinned man walk past and into the childrenâs room. She then went to the doorway of the childrenâs room and watched as the stranger climbed out a window. The children re-

mained sound asleep. Whitton then went to the sun room shared by her sister and brother-in-law. There she saw Florence sprawled across the bed, blood gushing from her head. Relying on her training as a nurse, Margaret administered what aid she could. It was too late. At 5:40 am Whitton phoned the police, who arrived within minutes. They soon found the murder weapon: a brick with blood on it was recovered from Mrs. Johnsonâs bed.

A radio bulletin was broadcast almost immediately and a detective speeding to the crime scene (by the 1930s American police were thoroughly motorized) saw a young black man walking quickly in the other direction. Stopping, the detective approached, noticed a cut on the young manâs finger and what appeared to be blood stains on his hands and clothes. Asked for an explanation, the man said he was Thomas Crosby, that he had cut his hand in a fight, and that the blood on his shirt was from a job skinning chickens. Unpersuaded, the detective took Crosby–actually Robert Nixon–to the murder scene. There he was viewed by Margaret Whitton, who initially identified him as the man she had seen, but then expressed doubts about his height. Later that day, at the stationhouse, Whitton made two more positive identifications of Nixon, both equivocal.

Not only was the identification evidence (often a problematic area of proof) less than ideal, but the forensic evidence also proved surprisingly weak. Chicago had a state-of-the-art police lab, which by the 1930s could run all sorts of scientific tests, including analyses to determine whether blood stains were of human origin and, if so, the blood type of the individual. Yet, the chemist testifying in Nixonâs case said only that he found that the stain on the defendantâs shirt was human blood (thus contradicting Nixonâs chicken claim). He did not say that that it matched the blood on the brick, nor that of the victim. More astonishing, he testified that he never even determined Nixonâs or Florence Johnsonâs blood types. Dale suggests that the test results must have âfailed to support the prosecutionâs caseâ (p. 58), but I think she might have gone further. It is difficult to believe that no tests were made of Nixonâs or the victimâs blood; a failure to do so would have been gross nonfeasance. And if tests had been conducted then the chemist must have perjured himself.

The fingerprint evidence was just as fraught. Although apparently there were prints obtained from the Johnson apartment (they were shared with Los Angeles police, where, as discussed below, Nixon was a suspect in other murders), the prosecution never suggested that they matched Nixonâs prints. Indeed, there was no evidence that Nixonâs prints matched any of those found in the apartment (p. 80).

And yet, fingerprints implicated Nixon in crimes of a similar nature. In 1937, Los Angeles was shocked by lethal assaults on two women and the 12-year-old daughter of one of the victims, Edna Worden–all committed with bricks. One year later, a California newspaper reported the brick murder of Florence Johnson followed by the arrest of Nixon, alias Thomas Crosby, in Chicago. A search by Los Angeles detectives of their fingerprint files uncovered a juvenile named Thomas Crosby, arrested for burglary, whose prints, it turned out, matched one from the scene of the Worden slaying. This, of course, strongly implicated Crosby/Nixon in the Worden murder, but even more, seeing that the attacks were home invasions followed by bludgeoning with bricks, it pointed to Nixon as Johnsonâs killer. Moreover, a brick was used in the fatal attacks on two other Chicago women, Florence Castle, murdered in her hotel room in 1936, and Anne Kuchta, a nursing student killed in the Chicago Hospital in 1937 (p. 39).

Given the common *modus operandi* in all these killings, and the fingerprint proof of âCrosbyâsâ involvement in the Worden case, one can understand why the police and prosecution were convinced that Nixon was their man, but given the weakness of the evidence, one can also appreciate why they felt that a confession was essential. Here is where the story of the investigation becomes disturbing, and here is the reason Dale made Nixonâs case the focal point of her book.

During Nixonâs trial, the prosecution offered the defendantâs incriminating statements into evidence. Nixonâs attorneys objected on the grounds that they were a product of duress, beatings, and improper promises. The African American press, noting that Nixon had been held incommunicado for over two weeks, alleged coerced confessions. (Nixon had two, apparently very competent, African American lawyers, both involved in leftist and civil rights causes. Dale does not say who paid them to handle Nixonâs case.) The trial judge then excused the jury and held a hearing on the admissibility of the statements.

The law on coerced confessions was evolving at this time. Only two years earlier, in *Brown v. Mississippi* (1936), the US Supreme Court reversed a Mississippi conviction of capital murder of two black men who were subjected to brutal whipping and hanging in order to extract confessions. The Court, admonishing the state for sub-

stituting âthe rack and torture chamber ... for the witness stand,â reversed the conviction as a violation of due process of law. What was new here was the establishment of a clear federal constitutional right against coerced confessions enforceable against the states, part of a multidecade effort to nationalize the Bill of Rights. Moreover, the federal Wickersham Commission (1931) had devoted an entire volume of its highly publicized report to the âthird degree,â as it was called, singling out Chicago for condemnation. Dale relates all of this, but observes that the effect was to drive the abuse underground; police kept suspects incommunicado until the bruises started to fade.

During the hearing Nixon testified at length about his mistreatment; this portion of the trial transcript ran nearly eighty pages. He told how on May 27, his first full day in custody, teams of police beat him, hung him by his arms, dangled him out of a window and threatened to drop him, shined hot lights in his face, and questioned him for hours. He testified that the beating stopped only when he agreed to confess to killing Florence Johnson. The next day he was beaten again and questioned about another Chicago brick murder as well as burglaries in California. On May 29, he said, he was struck again when at first he refused to reenact the crime, then was left unmolested until June 7, when he was punched into agreeing to make a statement at the inquest.

The prosecution mounted a strong rebuttal, putting forty witnesses on the stand, including thirty-seven police officers, each of whom denied abusing Nixon or knowing of abuse by others. The trial judge admitted the statements, but allowed the defense to present evidence of the coercion to the jury. In their closing statements the defense attorneys, who spoke for hours, attacked the stateâs evidence, challenged the confessions, and condemned the torture of Nixon. To no avail. After only seventy minutes of deliberation the jury found Nixon guilty and recommended a death sentence.

Dale suggests that the public at that time, whose views are reflected in jury decisions, thought that some physical abuse was needed to get confessions. After all, why else would anyone confess? Even experts shared that view. Fred Inbau, a leading criminologist and interrogations expert, defended secret interrogations and contended that the third degree would end only when confessions themselves were outlawed. But public opinion has changed, and legal elites have long since abandoned views like Inbauâs.

Nixon, through his attorneys, appealed to the Illinois Supreme Court, focusing on the coerced confession issue. (Capital cases in numerous states go directly to the state high court, skipping the intermediate appeals tribunal.) But the court, as often happens, gave little credence to defense efforts to overrule the trial court on a question of fact. These are difficult claims in American law as appeals courts do not hold hearings or take testimony to determine factual matters, such as alleged beatings by police. Deference to trial courts is still the rule today, though appellate judges will disregard it when the claim is sufficiently compelling.

Unlike todayâs endlessly protracted capital appeals process, the system made quick work of Nixon. The state supreme court accepted his appeal in December 1938 and ruled against him in April 1939; he was executed by electrocution in June.

Was he guilty? Probably he was. The matching of his fingerprints with prints from other murders, including those in Los Angeles, and the use of bricks to assault the victims, strongly suggest a pattern of killings. Plus, Nixon, along with a codefendant, did reenact the Johnson murder in considerable detail, though there was a hostile crowd in front of the building that had to be restrained by police. On the other hand, as Dale points out, the pattern of police behavior in the 1930s supports Nixonâs âtortureâ claims and, I conclude, the confession should have been excluded. Had that happened would there still have been proof of guilt beyond a reasonable doubt? I do not think so. The forensic evidence linking him to the Johnson murder simply was not there, and the beatings tainted both the confessions and the reenactment.

Was this a case of racism? Some of the media coverage was overtly racist, and the jury was composed of all white men. One article, in the *Chicago Tribune* of June 5, 1938, bore the headline âBrick Slayer Is Likened to Jungle Beast,â accompanied by a subheadline âFerocity Is Reflected in Nixonâs Features.â Despite this, given the grisly crime, and the distinct possibility that the accused had committed others just like it, it is very doubtful that had he been white he would have fared any better. Dale recognizes that most of the âtortureâ subjects, especially before the 1940s, were white, so despite Nixonâs case, race bias was not the primary motivator of such misconduct. She does add that from the 1940s to the 1970s the subjects of police abuse increasingly were African American, which, she explains, was not unexpected given that at this point in history âblacks became presumptively criminalsâ (p. 120). She conveniently leaves out the massive increase in black-perpetrated violent crime in

Chicago and other northern cities during this period.[1]

In 1966, the United States Supreme Court decided the famous and controversial *Miranda v. Arizona* case, aimed directly at curtailing abusive police interrogations. One of the Courtâs motivations was the failure to regulate police abuse through existing law, that is, through due process claims that confessions were coerced. It was widely believed in the legal community that such claims were nearly impossible to adjudicate, as they inevitably degenerated into swearing contests between defendants and police–just as in Nixonâs case. *Miranda* therefore took a different tack. Police would have to read suspects their rights, and honor them, before custodial interrogation could take place, and, to ensure compliance, the state would have the burden of proving that the police followed the rules. The penalty for noncompliance was a suppressed confession and the risk of freeing the guilty. *Miranda* was one of a series of controversial Supreme Court rulings in the 1960s and 70s that sought to restrain law enforcement by suppressing improperly acquired proof of guilt. Did these rulings work?

The answer is yes, but imperfectly. Although Dale does not say so, I would wager that there are far fewer allegations of âtortureâ in the post- than in the pre-*Miranda* period. But it is also clear that abuses still occurred–Burge proves the point–and probably still occur, if only rarely.

Modern technology offers an effective solution, although it too is not perfect: interrogations should be video-recorded. This, combined with assigning to the state the burden of proof that a confession was uncoerced, seems to be the best legal solution. In fact, Illinois became, in 2003, the first state to require police to record interrogations of homicide suspects. This occurred in the wake of the firestorm over Burge. The best answer, then, is an aroused public opinion that repudiates police brutality and demands political and police leadership that forbids it on pain of serious sanctions.

Elizabeth Dale has performed a service in writing this book. It is a welcome reminder of the bad old days of policing–days that one would hope are behind us now, provided we remain vigilant.

Note

[1]. For a recent history of violent crime and policing in the post-World War II United States, see Barry Latzer, *The Rise and Fall of Violent Crime in America* (New York: Encounter Books, 2016).

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