



FROM BIRTH TO DEATH AND BENCH TO CLINIC

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for Journalists, Policymakers, and Campaigns

CHAPTER 36

Torture: The Bioethics Perspective

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torture: the bioethics perspective

by Steven H. Miles

Framing the Issue

Torture occupies the odd position of being universally illegal and widely practiced. Despite many studies showing its inefficacy, more than half of the world's nations systematically use torture, and medical personnel have a long history of involvement with torture. Derived from the Latin word for "twist," torture conveys the technique of bending a victim's body. The torsion applied by medieval racks or the "stress positions" at Abu Ghraib epitomizes the origin of the word. However, torture is a larger act than the application of batons to a person's feet or wires to his genitals. Bioethical concerns with torture must take account of its empirical and social dimensions, as well as its corporal nature.

Torture has been illegal since the Enlightenment, and the horrors of World War II brought illicit torture to public consciousness and censure. Torture was condemned in the 1948 United Nations' "Universal Declaration of Human Rights," the Geneva Conventions, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the United Nations' "International Covenant on Civil and Political Rights," and countless more specialized regional groups, such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Medicine's Involvement with Torture

In ancient Greece, using torture when interrogating slaves was common. Romans extended the practice to freemen. Torture acquired its present meaning of pain inflicted by officials about 800 years ago when the Church or governments applied "the torture" to extract testimony. Shakespeare is credited with first using "torture" as a verb in *Henry VI*. However, it is likely that he simply recorded colloquial usage.

Renaissance physicians were assigned legal roles in interrogational torture. The German *Constitutio Criminalis Carolina* of 1532 required a physician to certify that a person was not incapable of giving testimony by virtue of being blind, mute, or insane, and that he or she could survive a planned regimen of torture. By confirming pregnancies, midwives afforded a temporary exemption from torture for women. Such medical and midwifery certificates were used throughout Europe until torture became illegal during the eighteenth century. As long as torture was legal or ecclesiastically licit, "torture physicians" were not stigmatized,

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HIGHLIGHTS

- Torture is universally illegal yet widely practiced. More than half of the world's nations systematically use torture, and medical personnel have a long history of involvement.
- Bioethical concerns with torture must take account of its empirical and social dimensions, as well as its corporal nature.
- The horrors of World War II brought illicit torture to public consciousness and censure, yet torture persists despite numerous sanctions against it.
- Empirical evidence—including research by the CIA and former Secretary of Defense Donald Rumsfeld's working group on counterresistance interrogations—demonstrates the inefficacy of torture.
- Despite the evidence, "antiabolitionist" bioethicists remain who rely on the discredited "ticking time bomb" argument to support their position.
- Given its inefficacy, the moral challenges to torture are overwhelming. It not only leads to the abuse of innocent or ignorant persons, but also undermines civil society.

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secretive, or coerced.

Torture became illegal during the Enlightenment, when the public accepted that it was barbaric, subject to abuse, and an unreliable way to obtain evidence. The most influential compilation of arguments against torture was in a 1764 book, *On Crimes and Punishment*, by Italian prison reformer Cesare Beccaria. The English jurist William Blackstone scorned torture, writing, “It seems astonishing [to be] . . . rating a man’s virtue by the hardness of his constitution, and his guilt by the sensibility of his nerves.”

Nonetheless, torture—and medical involvement in it—persisted. World revulsion at medical collaboration with torture was ignited by revelations of the actions of Nazi physicians at death camps. In 1946 and 1947, 20 physicians were indicted, tried, and mostly convicted at Nuremberg for war crimes and crimes against humanity pertaining to their complicity with mass-murder and sadistic experiments on prisoners. After the war, the World Medical Association passed the Declaration of Geneva, the 1956 “Regulations in Time of Armed Conflict,” and finally the 1975 Declaration of Tokyo, formally called “Guidelines for Medical Doctors Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment.” The Declaration of Tokyo explicitly condemned any medical role in torture and in cruel, inhuman, or degrading treatment or punishment. In 1977, the United Nations passed the First Additional Protocol to the Geneva Conventions, which specifically bars medical complicity in torture or mistreatment of prisoners. In 1982, it passed “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.” Since then, countless medical societies have passed various medical codes against torture.

Despite medical association codes and the resistance of very brave clinicians, many more clinicians are complicit with torture than treat its victims or fight these kinds of human rights abuses. Nearly half of torture survivors report seeing clinicians monitoring their mistreatment. Physicians have been accomplices with torture in Asia, Europe, Africa, and South America. Recent attention has focused on active and passive medical complicity with torture in United States’ military prisons at

Guantanamo Bay, Iraq and Afghanistan.

Tortured Bioethics

Given the prevalence of torture, it is not surprising that its proponents go beyond those who are officials in torturing governments. The arguments of “antiabolitionist” bioethicists, including Fritz Allhoff, Michael Gross, and Charles Krauthammer, along with other scholars such as Alan Dershowitz and Michael Levin (see Resource box for further reading), align closely with the policies of torturing governments. Both ignore empirical evidence unequivocally showing that torture doesn’t work:

- The CIA’s 1963 counterintelligence manual concluded that, based on 200 studies, “No report of scientific investigation on the effect of debility upon the interrogatee’s power of resistance has been discovered. For centuries, interrogators have employed various methods of inducing physical weakness, prolonged constraint, prolonged exertion, extremes of heat, cold or moisture, and deprivation or drastic reduction of food or sleep. . . . Interrogatees who are withholding but who feel qualms of guilt and a secret desire to yield are likely to become intractable if made to endure pain.”

THE TORTURING PHYSICIAN

Physician-torturers do not have a unique psychological profile. Some split their prison selves from their civil personae. Some Nazi, Serbian, and Soviet physicians who were leaders in abusing prisoners seemed to be political enthusiasts, but most are just doing their job.

Prison medical staff who collaborate with torturers play several roles. They devise methods of torture that will not leave marks or that inflict severe suffering without killing. Extending the nontherapeutic use of medical knowledge, military physicians and behavioral scientists study how to use psychoactive, hallucinogenic, or caustic drugs or sensory deprivation to cause pain, anxiety, disorientation, or regression. They certify prisoners as fit for torture. They monitor torture to assess when the abuse can be increased without causing death, or decreased to avoid killing the prisoner. In some cases, they experiment on prisoners for national security purposes. Finally, to protect torturers from accountability, physicians have failed to record signs of torture on medical reports and death certificates.

It is important to note that the very presence of a physician during torture compounds the victim’s suffering by emphasizing that even the assumed humanity of medicine has turned against the prisoner.

- Former Secretary of Defense Donald Rumsfeld's working group on counterresistance interrogations stated, "interrogation experts view the use of force as an inferior technique that yields information of questionable quality, [that has] adverse effects on future interrogations, . . . harms public support for the military effort . . . endangers Americans who become POWs . . . and could have an adverse impact on the cultural self-image of U.S. military forces."
- Other empirical studies examine the inefficacy of torture from the Gestapo to current events. The most authoritative literature review is the Defense Intelligence University's 2007 report. Paraphrased, it says, "Research in North America and in China has shown that using coercive influence strategies . . . creates a competitive dynamic that facilitates rejection of the other party's position where persuasion creates a cooperative dynamic that facilitates greater openness to the other party's position

and productive conflict resolution. Research shows that rational persuasion— and avoidance of 'pressure'—increases the likelihood of target commitment in influence interactions... Belief change and compliance was more likely when physical abuse was minimal or absent."

Furthermore, antiabolitionists, along with government policies supporting torture, reduce the moral and legal rationale for torture to a narrow case framework that ignores the societal implications of legalized torture. Sometimes called the "ticking time bomb" argument, it is central to the antiabolitionist position. However, there are numerous critiques of it:

- Interrogators rarely know that a prisoner has specific information.
- They do not know how much pressure must be applied to break the prisoner.
- They usually obtain false information that can lead to disastrous consequences, such as the torture-acquired testimony used to support the

RESOURCES

Web sites

- <http://www1.umn.edu/humanrts/OathBetrayed/> – Oath Betrayed: United States Military Medicine in War on Terror Prisons. Human Rights Library of the University of Minnesota.
- <http://www.hrw.org/english/docs/2004/05/24/usint8614.htm> – Human Rights Watch. A summary of international and U.S. Law prohibiting torture; includes links to the text of relevant treaties, declarations, and conventions.
- <http://conventions.coe.int/Treaty/en/Treaties/Html/126.htm> – European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Recent news

- Benedict Carey, "Psychologists Vote to End Interrogation Consultations," *New York Times*, September 18, 2008.
- Pamela Hess, "House Fails to Override Torture Veto," *Boston Globe*, March 11, 2008.
- "Horrible and Unnecessary" (editorial), *New York Times*, March 2, 2008.
- Scott Shane, "Waterboarding Focus of Inquiry by Justice Department," *New York Times*, February 23, 2008.
- Dan Eggan, "Justice Official Defends Rough CIA Interrogations," *Washington Post*, February 17, 2008.

Further reading

- Matthew K. Wymia, "Laying the Groundwork for a Defense against Participation in Torture?" *Hastings Center Report*,

January-February 2008.

- Michael L. Gross, *Bioethics and Armed Conflict: Moral Dilemmas of Medicine and War*, MIT Press, 2006.
- Steven H. Miles, *Oath Betrayed: Torture, Medical Complicity, and the War on Terror*, Random House, 2006.
- Fritz Allhoff, "Physician Involvement in Hostile Interrogations," *Cambridge Quarterly of Healthcare Ethics* 15, no. 4 (2006): 392-402.
- National Defense Intelligence College, Intelligence Science Board, *Educating Information: Interrogation: Science and Art—Foundations for the Future* (Washington, D.C.: National Defense Intelligence College Press, December 2006).
- Charles Krauthammer, "The Truth about Torture," *Weekly Standard* 11, no. 12 (2005).
- Alan Dershowitz, "Tortured Reasoning," in *Torture: A Collection*, ed., S. Levinson (New York: Oxford University Press, 2004), 257-280.
- U.S. Secretary of Defense, "Counter-Resistance Techniques in the War on Terrorism," April 16, 2003, at <http://www.defenselink.mil/news/Jun2004/d20040622doc9.pdf>.
- Fritz Allhoff, "Terrorism and Torture," *International Journal of Applied Philosophy* 17, no. 1 (2003): 105-118.
- Michael Levin, "The Case for Torture," *Terrorism and Torture*, *Newsweek*, June 7, 1982.



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invasion of Iraq. (This claimed that Sadaam Hussein and al Qaeda were cooperating on bioweapons development, which has been roundly disproven.)

- Finally, a premise of the ticking time bomb hypothetical is the need to act fast, but intelligence services rarely have that capacity.

By contrast, the implausibility of the argument raises credible moral challenges, such as:

- Is it moral to use interrogational torture knowing that most of those questioned will be innocent or ignorant? About 85% of the persons at Abu Ghraib were innocent or ignorant of insurgency activity.
- If so, how should society balance the harms to those people with the good that allegedly comes from torture? Should society compensate and provide therapy to the innocent victims of legal torture?
- Is it moral to torture a culpable person who is unlikely to give useful information despite being tortured?
- Is it wise to torture when torture procures false information that swamps limited intelligence analysis resources?
- Is it prudent to employ torture when torture destroys the ability to recruit human intelligence, makes our enemies more numerous and hardens them against us, and makes enemy soldiers more willing to fight to the death rather than risk capture and torture?

Conclusion

Twentieth century torture has always spread far beyond ticking time bomb scenarios to the abuse of many innocent or ignorant persons. Societies that torture arm a real time bomb. Bioethicists should distinguish the instrumental purpose of torture—interrogation—from its social function. Torture is most often used against civil society. In this use, it is aimed against leaders in the press, religion, education, unions, student groups, and opposition political movements. Even where torture is not aimed to suppress civil society, as in Iraq, it destroys the political and moral credibility of an authority that claims to want to build civil society.

Medical ethics is a form of social capital in civil society. Medical authorities who have spoken out against these practices in torturing societies have become highly vulnerable to being abused. Such was the case of physicians in the Chilean and Turkish Medical Associations who protested torture, as well as Dr. Anatoly Koryagin, a psychiatrist in the former Soviet Union who protested the arbitrary commitment and forced medication of dissidents. Antiabolitionists heighten the danger to colleagues in countries that practice torture. Appeals to laws against torture have been used by governments and groups like Amnesty International to protect friends of civil society and prisoners of war. The practice of torture erodes the foundation for such appeals anywhere. 🌳