SPIRITUALITY AND THE ETHICS OF TORTURE

Derek S. Jeffreys

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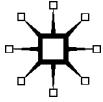
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Derek S. Jeffreys

To W. Norris Clarke, S.J.

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A C K N O W L E D G M E N T S

Introduction

> But I refused to have him tortured. I trembled the whole afternoon. Finally, the bomb did not go off. Thank God I was right. Because if you once get into the torture business, you're lost…Understand this, fear was the basis of it all. All our so-called civilization is covered with a varnish. Scratch it, and underneath you find *fear*. The French, even the Germans, are not torturers by nature. But when you see the throats of your *copains* split, then the varnish disappears.
>
> Paul Teitgen[1]

In late 2007, Americans got a rare glimpse of torture in the "War on Terror."[2] A former Central Intelligence Agency (CIA) official, John Kiriakou publically admitted that the CIA tortured a suspected al-Qaeda operative. He detailed how the CIA captured Abu Zubaydah in a March 2002 raid. Zubaydah was almost killed, but the CIA flew in skilled doctors to nurse him back to health. Once he recovered from his wounds, CIA officials begin interrogating him. According to Kiriakou (who chose not to participate in the interrogation), Zubaydah initially resisted nonviolent interrogation. Believing another al-Qaeda attack was imminent, the CIA subjected him to "enhanced interrogation techniques," one of which was waterboarding. During waterboarding, interrogators place a detainee on a flat board, perhaps with his feet elevated. They cover his face with cloth and then pour water into his nostrils and mouth. The water immediately produces a powerful sensation of suffocation that few can withstand. Kiriakou reports that Zubaydah resisted for thirty-five seconds, but then immediately began cooperating. When questioned about this episode, Kiriakou acknowledged that waterboarding amounts to torture, but defended it by noting its beneficial effects. He claimed it produced valuable intelligence that saved

American lives and maintained that the CIA had no time to employ nonviolent interrogation.[3]

The Zubaydah revelations illustrated diverse elements of the debate about torture and the War on Terror. Like many, Kiriakou justified torture by claiming it saves lives in extreme circumstances. His view also reflect that of the Bush administration, which fought unsuccessfully against restrictions on interrogations. Some public commentators even denied that waterboarding is torture whereas others insisted that it is self–evidently torture. They condemned Zubaydah's treatment, maintaining that torture is never morally justified. They also mounted a campaign against violent coercion that successfully found its way into U.S. Army field manuals, Congressional legislation, and Supreme Court decisions. Finally, debates about the Zubaydah case focused on sensational instances of torture and other cases. They ignored hundreds of other incidents that did not seem like torture. Waterboarding "looks" like torture, whereas sensory deprivation appears less threatening. In reality, however, sensory deprivation, sleep deprivation, isolation, and stress positions can destroy one's personality. The attention to the Zubaydah case, thus, illustrated the sad truth that "we are less likely to complain about violence committed by stealth."[4] For many, torture that leaves no discernible marks is not leaving torture at all.

The Zubaydah case also reflected a new post–September 11 willingness to openly discuss torture. For example, noted legal scholar Alan Dershowitz infamously proposed that the United States issue "torture warrants" specifying precisely when torture is permitted. Maintaining that governments invariably engage in torture, he argued that we should legally control them. Columnist Charles Krauthammer went further, insisting that we are obligated to torture terrorists with information about violent acts. Krauthammer, Dershowitz, and others provoked a storm of controversy. Organizations such as Amnesty International and Human Rights Watch insisted on an absolute ban on torture. In contrast, political philosopher Jean Bethke Elshtain adopted a "dirty hands" approach arguing that interrogators may be tragically forced to abuse and torture.[5]

The debate about torture shows no sign of abating and will likely persist for many years. Unfortunately, ethically, it has ignored important issues, more often focusing on imaginary or sensational cases. It has also uncritically embraced contemporary ethical ideas thereby ignoring religious and philosophical traditions that help us understand torture.

Finally, although religious leaders and scholars have issued statements on torture, discussions on this issue remain largely secular.[6]

This book corrects these lacunae in the public debate by considering spirituality and torture. To introduce the book, I first discuss the deficiencies of ticking bomb scenarios, arguing that they do little to illuminate the ethics of torture. They make artificial assumptions, rely on uninformed intuitions, and encourage us to calculate consequences. Second, I describe how current debates about torture ignore spirituality. By focusing entirely on human rights, autonomy, or other topics, they fail to consider how torture assaults our spiritual nature. Third, I introduce Thomistic personalism, noting in particular its conception of spirituality. Fourth, I consider the difficulties in writing about torture, acknowledging the need to listen to torture victims. I also discuss how Nazi and Communist examples detrimentally affect discussions of torture. Fifth, I describe how I use the sources in this book, expressing modesty about classified information. Finally, I outline the book's structure discussing in turn the contents of each chapter.

Torture and Ticking Bombs

Many contemporary debates about torture feature a ticking bomb scenario. In this scenario, a public official captures a terrorist who knows the location of a bomb that is about to kill numerous people. To prevent carnage, should he or she torture the terrorist? Or, should the public official retain an absolute ban on torture, thus allowing innocents to die? In the aftermath of the September 11 attacks, many believed we ought to torture in ticking time bomb situations. Those disagreeing accepted the terms of the debate, but insisted that they would refrain from torturing even in extreme circumstances. In this way, reflecting on ticking bomb scenarios became a cottage industry in political ethics.

Unfortunately, the ticking bomb scenario presupposes artificial circumstances with little relevance for real interrogations. It assumes that interrogators possess great certainty that a terror suspect knows the bomb's location. However, this is rarely the case, and the ticking time bomb scenario never indicates an appropriate level of certainty. At what point should an interrogator conclude that he knows enough to torture? Moreover, the ticking bomb scenario mistakenly

presupposes that torture reliably produces true statements rather than lies. Undoubtedly, it yields useful intelligence at times, but how do we know that torture as a *practice* produces reliable intelligence? As I discuss in chapter two, its advocates offer no scientific studies supporting its general reliability. In fact, we "really have no idea how reliable torture is as a way of obtaining information," and we learn little from occasional instances when it produces good intelligence.[7] Perhaps torturing someone will yield false and damaging information. For example, suppose we torture a suspected terrorist who then falsely claims he received support from a nation-state. We then use this information to launch a preemptive strike, initiating a destructive war. The moral of such a tale is that once we fabricate hypothetical scenarios, many possibilities emerge. In the absence of detailed empirical or historical studies, we have little reason to know which outcome will prevail. Finally, the ticking bomb scenario overlooks important institutional realities. Interrogators operate within rules and bureaucracies and are rarely as unencumbered as they appear in the philosopher's hypothetical cases. They require special training that few people can undergo. Training and institutional culture shapes character, and individual acts have long-term consequences for institutions.[8]

The ticking bomb scenario also trades on uninformed moral intuitions. One person refuses to torture despite the threat of thousands of deaths whereas another agrees to torture, arguing that her act produces positive consequences. How can we respond to such profound disagreements? What usually transpires is charge and countercharge or anecdote against anecdote. Those supporting torture accuse its opponents of moral self-indulgence or political irresponsibility. Torture opponents respond by accusing them of moral callousness or they raise the specter of Nazism or other forms of totalitarianism. These exchanges do little to further our understanding of ethics and torture.

By engaging in this fruitless discussion, we also learn little about why torture is wrong. What makes it so uniquely horrible? Why should we refrain from it and risk the lives of numerous people? Some people believe torture is self-evidently wrong and simply refuse to discuss the topic. However, such a stance cuts off conversation, ignoring people of good will who think torture is sometimes morally legitimate. Other thinkers condemn torture because it destroys autonomy, violates rights, or represents the ultimate form of tyranny.[9] Undoubtedly accurate, these analyses fail to capture our deepest feelings about torture. Is the specter of tyranny the main reason we recoil when looking at the

Abu Ghraib photographs? Or, is there something deeper here about how torture affronts human dignity? Without addressing this issue, we are left wondering why torture is so morally objectionable. Torture proponents quickly capitalize on this confusion, arguing that torture is no different than self-defense or other such acts.

Torture and Spirituality

We cannot adequately comprehend the immorality of torture without considering our inner life. Approaches to torture emphasizing human rights, autonomy, or utilitarianism rarely penetrate a person's inner core. For example, human rights thinkers infrequently discuss the nature of a torture victim's suffering. In fact, they often assume a shallow conception of the human person, identifiable only with autonomy or external actions. Similarly, utilitarians presuppose moral agents maximizing pleasures, interests, or utility functions without acknowledging the person's deeper dimensions. Yet, we cannot understand torture's horror simply by identifying it with physical pain because the "vastness and the many forms of moral suffering are certainly no less in number than the forms of physical suffering."[10] Some thinkers like Elaine Scarry and David Sussman recognize these dimensions of torture.[11] However, they focus almost entirely on the body and agency, ignoring the spiritual dimensions of torture. We suffer in ways that are irreducible to our being's physical dimensions. A person's suffering "manifests in its own way that depth which is proper to man, and in its own way surpasses it. Suffering seems to belong to man's transcendence."[12] Torturers subtly exploit and undermine these inner dimensions of our being. Contemporary thinkers often cannot understand such evil because they lack a rich conception of the human person.

The superficiality of contemporary debates is particularly disturbing because of events in the War on Terror. We have reputable accounts of U.S. personnel who deliberately attacked the religious beliefs of suspected terrorists. We have also seen, as I demonstrate in this book, the revival of psychological methods of torture harkening back to the 1950s. They subtly assault the human psyche often without ever touching the person. Finally, religious movements are proliferating globally, affecting the lives of millions of people. However, few scholarly treatments of torture draw on religious traditions. All these developments should lead us to think more carefully about spirituality and torture.

The Human Person as an Embodied Spirit

To respond to these shortcomings in contemporary analyses, this book draws on a conception of spirituality grounded in Thomistic personalism. Personalism, a twentieth-century philosophical and theological development, makes a person the center of ethical and political analysis. Thomistic personalism grounds its understanding of the person in Thomas Aquinas's thought, at the same time retrieving insights from phenomenology, a philosophical movement analyzing consciousness and experience.[13] It focuses particularly on the fundamental difference between persons and things. For example, if I kick a chair, my friends might suggest that I take anger management courses, but will hardly accuse me of cruelty. In contrast, if I kick a random stranger, they will be naturally horrified. Unlike things, persons are living, rational beings with inner lives revolving around truth and goodness. They possess self-awareness and the capacity to respond to others. They also exercise freedom and self-determination, actively cultivating relationships of giving and receiving. These capacities reveal each person's unique existence and value.

Thomistic thought offers a rich conception of spirituality. Many contemporary philosophers misunderstand spirituality. They are unaware that it has a long history marked by philosophical and theological sophistication. For centuries, thinkers insisted that our spiritual nature differentiates us from things and nonhuman animals. They conceived of the human as a "frontier" or "horizon" being situated in both the material and the spiritual worlds. For example, Aquinas maintains that we are embodied spirits with spirit and body linked intimately. The intellectual soul, he says, "is said to be on the *horizon* and *confines,* of things corporeal and incorporeal."[14] For Aquinas, the human person is an immaterial and material being who rises above the body and the world of things and other animals.

We express spirituality through knowledge, self-possession, and communication without loss—capacities I discuss in this book. Through knowledge, we transcend our biological, historical, and cultural circumstances. We relate to objects and gradually learn about their essences.[15] We pass from object to object, unify them into wholes, and locate them into hierarchies.[16] We pursue ideals or values opening us up to beings beyond our immediate environment. Knowing also empowers the person to develop a remarkable inner unity called self-possession. As a knowing being, I am no slave to my surroundings but respond to them through a center of activity. I act internally learning to be a

source of action.[17] I appear as someone who "possesses myself and who is simultaneously possessed by myself."[18] I can thus take responsibility for my character and actions.

This capacity for self-possession enables us to communicate with others in amazing ways. One such mode is what philosopher Kenneth Schmitz calls "communication without loss," an "enjoyment of free activity" not "governed intrinsically by the laws that govern physical motion."[19] Human beings often interact in a zero-sum way with distinct winners and losers. Persons, in contrast, can give to one another without loss and actively accept the gifts of others. This extraordinary capacity reveals our nature as embodied spirits able to transcend narrow self-interest.

Considering these spiritual capacities helps us define torture. The War on Terror has seen deeply troubling definitions of it, particularly those in the 2002 Office of Legal Counsel's "torture memos." Secretly written by a small group of lawyers, they justified inflicting terrible pain on suspected terrorists. Scholars have also defended lesser forms of abuse they call "torture lite." Many carelessly analyze torture treating it simply as a physical matter. In contrast, in this book, I carefully define the elements of torture. I characterize it as voluntarily and intentionally inflicting severe mental or physical suffering on a helpless victim for the purpose of breaking the will.

We see torture's spiritual horror clearly if we think about sensory deprivation and self-inflicted pain. These techniques have a long history, particularly in European colonies and Asian countries. However, as Alfred McCoy and Michael Otterman have demonstrated, they emerged as CIA interrogation techniques in the 1950s and the 1960s, aided by social-scientific research promising to unlock the mind's secrets.[20] The Bush administration revived them, subjecting detainees to extreme sensory deprivation and stress positions. As I discuss in this book, sensory deprivation powerfully assaults spiritual transcendence, cutting us off from essential sources of knowledge. It disorients the person internally, creating powerful hallucinations. Similarly, stress positions create deep internal conflicts in the person. Both these practices illustrate torture's true character as an assault on the human spirit.

Should We Ever Torture?

Despite this horror, many people believe that torture is morally legitimate. They often justify it by appealing to consequentialism, the idea

that consequences should determine an act's moral character. In current debates, torture proponents allege that torture sometimes produces vital information that saves lives. If we rationally calculate consequences, they maintain, we should sometimes be willing to torture.

Some critics respond to consequentialism by denying that torture ever "works," but they fail to refute consequentialism. They point to how torture often produces false confessions. This is a strong argument that I evaluate in this book, but I maintain that it misses the larger ethical point. Those defending torture's reliability presuppose we can accurately predict its consequences. I reject this idea, drawing particularly on twentieth-century critics of utilitarianism like the famed economist Friedrich Hayek. I argue that with large institutions, we cannot often accurately predict an act's consequences. I add to this uncertainty by considering how spiritual goods are immaterial and thus difficult to measure. Consequently, although torture sometimes yields accurate information, we cannot establish its reliability as a social practice.

Some contemporary thinkers recognize consequentialism's limitations but argue that torture is still tragically necessary. Their position, known as the "dirty hands" approach, has been championed by Michael Walzer and Jean Bethke Elshtain and appeals to many people today. For them, we should not hubristically demand precision in political life. Political actors operate in a foggy world of imperfect information and demands for immediate action. Unlike academic theorists, they make no pretence to possessing complete information and know they cannot calculate all the consequences of their action. International politics is marked by violence and pursuit of power and interest, and all politicians in such an arena roughly estimate consequences, hoping to protect spiritual and material goods. Often, they confront intense clashes of goods or obligations admitting of no easy resolution.

Although the dirty hands position is very attractive, I argue that it suffers from philosophical liabilities. Like consequentialism, it cannot coherently measure consequences and ends up appealing to intuitions or emotions. In the dirty hands account, the politician mysteriously decides when to disregard moral norms. More significantly, the dirty hands position underestimates torture's horrible consequences because it ignores our spirituality. Torture shatters personalities leaving a perverted moral residue in persons and institutions. Once we recognize the damage it causes, the dirty hands position loses much of its attraction.

Rejecting both dirty hands arguments and consequentialism, I defend an absolute ban on torture insisting that it is always wrong. I recognize