

Torture: What is it, Will it Work and Can it be Justified?

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The terms interrogation and torture are often wrongly confused or conflated in public discourse, due in part to commonplace fears about learning enough detail to tell them apart. A failure to adequately distinguish between the two has detrimental consequences for the legitimacy, authorisation and control of effective interrogation and indeed for the outlawing of torture. Most importantly, this failure needlessly hampers practical attempts to enforce the universal prohibition of torture embodied in the United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Almost as importantly it complicates effective discussion as to whether the universal prohibition could or should ever be relaxed in certain circumstances.

Many of the moral, legal and practical issues involved when discussing torture and its perceived role in questioning, if any, are not new and debating them is assisted by some general observations from history. But first, we need to examine the background to contemporary calls for relaxing the universal prohibition in dire emergencies such as large-scale terrorist attacks, not least because they seem to be largely based on three unspoken, and highly questionable, assumptions.

The first assumption is that torture is technically possible in the circumstances described, is necessarily effective in obtaining the specific information desired within the time constraints supposedly justifying its special use, and incurs no countervailing factors. The second assumption is that interrogation not involving torture is less effective, or is so less effective that torture should be used instead during dire emergencies. The final assumption is that the dire emergency scenarios used in arguments to relax the universal prohibition on torture are realistic, or likely, enough to justify such a step.

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eventually halt an institutionalised process of judicially sanctioned torture, or even be able to recognise when you should do so?

Any member of the profession of arms, after noting the same legal, moral and practical objections to torture, is likely to add one further strong objection. The international law intended to ameliorate the suffering of those captured in combat or otherwise affected by it is too often ignored by the types of regimes and groups Australia has had to fight. In the past 70 years the examples of the Japanese in World War II, the Chinese and North Koreans in the Korean War, the North Vietnamese in the Vietnam War, and now various types of Islamist terrorist in Afghanistan, Iraq and elsewhere, present a clear trend – pluralist liberal democracies often have to fight quite unsavoury, immoral and ruthless enemies who ignore international law. We should give no enemy, actual or potential, any excuse to mistreat Australian prisoners-of-war on the ostensible grounds that our adherence to international humanitarian law in general, and the laws of war in particular, are somehow questionable.

The arguments against torture by warrant are not just legal and moral. They are also practical in that professional interrogators know that torture is both unlikely to work and unnecessary as a purported form of intelligence gathering.

Notes

- 1 Alan M Dershowitz, 'Want to torture? Get a warrant', *San Francisco Chronicle*, 22 January 2002, A19.
- 2 Mirko Bagaric and Julie Clarke, *Torture: When the Unthinkable is Morally Permissible* (2007).
- 3 For further discussion of these arguments see Chapter 14 in this book.
- 4 Frederic William Maitland, *The Constitutional History of England* (1926).
- 5 The Manacles was a method whereby the prisoner was stood against a wall, atop wooden blocks, and hung up by their wrists using a form of iron glove which could be tightened. The blocks were then removed until the prisoner was hanging by the wrists and then left there for several hours at a time. The Rack in the Tower was the only one in England. It comprised a large oak frame resembling a double bed without a base. The prisoner (facing upwards) was tied with cords around the hands and ankles to rollers at each end. These could then be rotated to stretch the arms, legs and finally the torso. Dislocation of limbs was common and permanent damage virtually inevitable. The reputation of the Rack was such that it was often shown to those accused of crimes serious enough to merit its use as the next step in their questioning. This often elicited cooperation by the threat alone.
- 6 Australian Defence Force, *Interrogator's Handbook*. Most NATO countries employ the same or similar definitions. A related definition is the difference between an interview and an interrogation. In the latter the person being questioned is under some form of legal and physical constraint (such as arrest or capture in war) and is not free to end the questioning by simply leaving.