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## The Ethics of Torture

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## The Ethics of Torture

### Abstract

A review of:

Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective. Edited by Kenneth Roth and Mindy Worden. New York: The New Press, 2005. 201 pp.

### Keywords

Coercive interrogation, Geneva Conventions, Terrorism, Torture

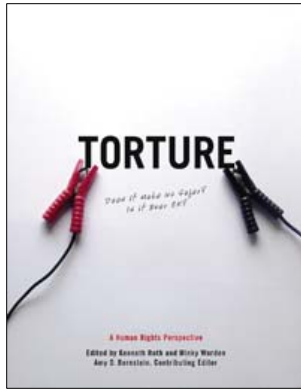
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## The Ethics of Torture

By Rebecca Evans

**Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective. Edited by Kenneth Roth and Mindy Worden. New York: The New Press, 2005. 201 pp.**

Torture has once again become a timely topic. The “War on Terror” launched after September 11, 2001 has renewed a philosophical and political debate, in the United States and elsewhere, about whether torture is ever justified. The basic parameters of this debate revolve around the question whether there should be an absolute prohibition against torture or whether, under carefully specified circumstances, it is a lesser evil to torture a suspect for information to prevent a greater evil that menaces society.

A position of moral absolutism holds that individuals must “do things only when they are right” rather than calculating the consequences of their actions (Nye 2005: 21). Such a perspective condemns torture as an unacceptable practice, arguing that torture and related abuses should be absolutely banned because they are

*antithetical to the entire concept of human rights. Rights define the limits beyond which no government should venture. To breach those limits in the name of some utilitarian calculus is to come dangerously close to the ends-justify-the-means rationale of terrorism. By contrast, a society that rejects torture affirms the essential dignity and humanity of each individual (xiii).*

Torture is morally unjustified, therefore, because it “dehumanizes people by treating them as pawns to be manipulated through their pain” (xii).

This perspective is reflected in the absolute moral imperatives laid out in various international conventions. The 1948 Universal Declaration of Human Rights stipulates, in unqualified terms, that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Article 5). The Geneva Conventions of 1949 not only provide protection for enemy combatants and civilians but also instruct that unlawful combatants must be “treated with humanity and...shall not be deprived of the rights of fair and regular trial” (Fourth Geneva Convention, Article 5). The 1966 International Covenant on Civil and Political Rights prohibits torture even “during public emergencies that threaten the life of the nation” (Articles 4 and 7). Similarly, the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment insists that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability of any other public emergency, may be invoked as a justification of torture” (Article 2).

Yet, despite these unconditional prohibitions, torture persists. Countries that have ratified treaties outlawing torture are in some cases actually more likely to use torture than countries which have not joined such international conventions (Hathaway 2004: 201-202). Although despotic and

totalitarian regimes are the worst offenders, these are not the only kinds of regimes which find it expedient to use torture from time to time. Despite their support for human rights and rule of law, democratic countries have also adopted repressive policies, especially in times of perceived insecurity (Forsythe 2006: 467). Given the gap between rhetoric and reality, some scholars have called for a more pragmatic approach, arguing that the use of torture should be regulated rather than proscribed. Alan Dershowitz maintains that the better question to ask is whether torture should be allowed to continue “below the radar screen, without political accountability” or whether to require authorization from top political or judicial leaders as a precondition to the infliction of any type of torture. From Dershowitz’s perspective, torture will inevitably occur, so a more “realistic” emphasis on accountability is important for reducing hypocrisy and minimizing the occurrence of torture (Dershowitz 2004: 259, 266-267).

Other scholars forward a different kind of utilitarian argument, criticizing the moral perfectionism of absolutists who prefer to “let justice be done though the heavens fall” (Levinson 2004). From this perspective, “far greater moral guilt falls on a person in authority who permits the deaths of hundreds of innocents rather than choosing to ‘torture’ one guilty or complicit person” (Elshtain 2004: 87). In order to thwart threats to national security and save the lives of the many, the rights of the one or the few must be sacrificed. Torture of enemy soldiers or terrorists is therefore justified in order to extract vital information that could prevent future attacks and save innocent lives (Bowden 2003: 53-54; Posner 2004: 293-294). This line of justification often focuses on a philosophical discussion of extreme cases—ticking bomb scenarios—in which torturing one guilty or complicit person prevents the deaths of thousands if not millions of innocents. Such theoretical examples have been reflected in popular culture, including television shows such as *24* that suggest that torture is both necessary and effective in obtaining information urgently required to avert a looming catastrophe (Green 2005).

Both the absolutist and utilitarian positions have widespread appeal and explain why there is considerable ambivalence toward the issue of torture. On the one hand, neither American policymakers nor the public openly legitimize the use of torture. The Bush administration categorically denies using torture; cases uncovered by the media have been attributed to a few “bad apples” rather than official policy. Public opinion polls shows that a majority of Americans (51 to 53 percent) believe that torture should rarely or never be used to gain important information from suspected terrorists (Foreign Policy Attitudes 2004; Thomas and Hirsh 2005: 26).

On the other hand, a sizable minority (43 to 44 percent) thinks torture can at least sometimes be justified (Foreign Policy Attitudes 2004). In a struggle against unprincipled, even barbaric enemies, many people believe that the government must do whatever it takes to prevent its citizens from being hurt. This sentiment was reflected in public comments by U.S. officials as well. In a television interview shortly after 9/11, Vice President Dick Cheney stated, “We also have to work, though, sort of the dark side, if you wish. We’ve got to spend time in the shadows...so it’s going to be vital for us to use any means at our disposal, basically, to achieve our objectives” (quoted in “Getting Away with Torture?” 2005). Cofer Black, a former director of the CIA’s counterterrorist unit, testified in early 2002, “there was a before-9/11 and an after-9/11. After 9/11 the gloves came off” (quoted in “Getting Away with Torture?” 2005).

More privately, the White House also began to rethink its policy on torture, drafting internal memos that laid out a legal case for the use of torture by U.S. interrogators if acting under the

directive of the President (Forsythe 2006: 471-479). In January 2002, Deputy Assistant Attorney General John Yoo provided a legal rationale for denying detainees protection according to the Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III), thereby authorizing U.S. interrogators to employ a wider range of techniques than would otherwise be permitted (Yoo 2002; Isikoff 2004). Later the same month, then-White House counsel Alberto R. Gonzales endorsed Yoo's legal analysis, arguing that the new war against terrorism "places a high premium...on the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians, and the need to try terrorists for war crimes" (Gonzales 2002). Gonzales further advised that "the president, as commander-in-chief of the armed forces, has the constitutional authority to order interrogations of enemy combatants" and can lawfully order torture, without regard to federal criminal laws or international law. Any measure "that interferes with the President's direction of such core war matters as the detention and interrogation of enemy combatants would thus be unconstitutional" (Barry, Hirsh and Isikoff 2004).

An August 2002 memorandum written by Jay Bybee, the assistant attorney general in charge of the Office of Legal Counsel at the Justice Department, not only forwarded a particularly narrow definition of torture (an extreme act "of an intensity akin to that which accompanies serious physical injury such as death or organ failure"), but also suggested that even if a government interrogator were to use methods against an enemy combatant that constituted torture, "he would be doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network. In that case, we believe that he could argue that his actions were justified by the executive branch's constitutional authority to protect the nation from attack" (Bybee 2002: 46; Barry, Hirsh and Isikoff 2004; Priest and Smith 2004; Zernike 2004). In March 2003, a Defense Department legal task force agreed that "in order to respect the President's inherent constitutional authority to manage a military campaign...the prohibition against torture must be construed as inapplicable to interrogations undertaken pursuant to his Commander-in-Chief authority (Department of Defense 2003: 20; Lewis and Schmitt 2004).

Significantly, these deliberations took place privately rather than publicly.<sup>1</sup> Once the internal documents were publicized, government officials were quick to qualify the memos as legal research that did not signify any intention to use torture. Secretary of Defense Donald Rumsfeld insisted that the government did not order, authorize or permit "torture or acts that are inconsistent with our international treaty obligations or our laws or our values as a country" (quoted in "Torture Policy" 2004: A18) and Attorney General John Ashcroft stated categorically that "this administration opposes torture" (Allen and Priest 2004: A3; Lewis 2004). Similarly, the administration condemned the torture and mistreatment of prisoners at Abu Ghraib prison, attributing abuses there to the actions of "a few bad apples" (Carter 2004). Others have suggested that torture was not meant to be a normal military practice but was only authorized within the context of a highly secretive special operations program designed to kill or capture and interrogate high-value targets in war on terrorism, using "unprecedented harshness" if necessary (Barry, Hirsh and Isikoff 2004). As one government consultant commented, the program needed to remain secret "because the process is

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<sup>1</sup> The documents mentioned above were internal administration documents, which were leaked to reporters from *The Washington Post* and *The New York Times* in June 2004. Other documents were subsequently released pursuant to a Freedom of Information Act lawsuit by the American Civil Liberties Union. The publication of these memos followed on the heels of the broadcast of photographs of abuses at Abu Ghraib prison in Iraq in late April 2004.

unpleasant. It's like making sausage—you like the result but you don't want to know how it was made" (Hersh 2004).

The undeniable moral stigma of torture therefore means that the public prefers not to know the details, just as top government leaders prefer “plausible deniability” to shield themselves both legally and morally. Government leaders are also inclined to draw fine distinctions, advocating “coercive interrogation” rather than torture and emphasizing the distinction between “sleep deprivation and amputation or burning or some other horror” (Elshtain 2004: 86). By resorting to “moderate physical pressure” or “torture lite” rather than brutal, repulsive forms of torture, officials seek a morally comforting middle ground.<sup>2</sup> In practice, however, it is difficult—especially for untrained military personnel—to apply such techniques without crossing the line. What began as a general directive to use sleep deprivation in order to get detainees at Abu Ghraib to talk was transformed into the much more sinister practice of attaching wires to hooded Iraqi prisoners who were forced to stand on a box with arms extended and threatened with electrocution if they fell asleep and moved off the box (Hersh 2004; Carter 2004). While the administration formally disavowed the use of torture, it simultaneously created a context in which military personnel and intelligence officers were given a broad mandate to come up with “creative” strategies for getting more “actionable intelligence” out of interrogations (Smith and White 2006: A10).

The authors of the book Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective, edited by Kenneth Roth and Minky Worden and co-published by Human Rights Watch, reject such a compromise. While the book poses the question whether torture is ever justified, its contributors all answer in the negative. Kenneth Roth sets the tone in his introduction by arguing that “lesser forms of mistreatment are often gateways to torture,” such that all forms of coercion—torture as well as cruel, inhuman, or degrading treatment—should be banned under any and all circumstances (xiii). Michael Ignatieff (“Moral Prohibition At a Price”) also rejects both torture and coercive interrogation. He admits that there is a conceptual distinction between lawful, permissible interrogation methods and others that are inhuman and degrading, but he contends that this distinction breaks down in practice:

*I accept that a slap is not the same thing as a beating, but I still don't want interrogators to slap detainees, because I cannot see how to prevent the occasional slap deteriorating into a regular practice of beating. The issue is not, as Elshtain implies, that I care overmuch about my own moral purity but rather that I cannot see any clear way to manage coercive interrogation institutionally so that it does not degenerate into torture (22).*

Ignatieff therefore comes to the conclusion that an absolute and unconditional ban on both torture and “those forms of coercive interrogation that involve stress and duress” is necessary (24). In defending such a posture, he forwards a kind of utilitarian calculation that the benefits of staying true to our liberal values outweigh the gains in terms of usable intelligence. For Ignatieff, our liberal values rule out entrusting government with the power to decide when security concerns warrant the use of torture: “we cannot torture, in other words, because of who we are” (27). Although he admits that this means that the United States must fight the war on terror with one hand tied behind its

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<sup>2</sup> Mark Bowden describes “torture lite” as “sleep deprivation, exposure to heat or cold, the use of drugs to cause confusion, rough treatment (slapping, shoving, or shaking), forcing a prisoner to stand for days at a time or to sit in uncomfortable positions, and playing on his fears for himself and his family” (Bowden 2003: 53).

back (since he concedes that torture can be effective), he argues that this is a necessary trade-off. Ignatieff expresses a firm conviction that the danger of endorsing harsh interrogation methods and thereby comprising our democratic identity is greater than the threat that terrorist attacks pose to our security.

James Ross (“A History of Torture”) also counts himself among the “dedicated opponents of torture [who] rest their case on the absolute prohibition found in international human rights law” (16). He comes to this conclusion after reviewing the history of the use of judicial torture and its gradual prohibition, arguing that criticisms of the unjust, irrational and unreliable nature of torture came to outweigh justifications for its use during the Enlightenment. While he admits that torture continues to occur “day in and day out,” Ross traces the development of a powerful norm against torture (3). At the same time, however, he also notes that torture carried out under the guise of state security has not triggered the same popular outrage; “the post-World War II human rights treaties, which banned torture absolutely, have failed to fully convince the public that even in an age of terror, torture is forever unacceptable” (4). For much of the public, torture is unacceptable if used against the innocent—using torture to root out witches, for example, would clearly be rejected as barbaric. On the other hand, terrorist suspects are seen to get what they deserve. In this latter case, there is a presumption of guilt that makes people much more willing to condone torturing terrorist suspects to get intelligence that might be useful for foiling future terrorist attacks.

Both Ross and Ignatieff end their chapters on a rather pessimistic note, admitting that their absolutist stance does not have widespread appeal. Ross ends by suggesting that “more is needed to win the hearts and minds of the public” (17) and Ignatieff rather weakly concludes “this is the best [he] can do” even though many of his fellow citizens are bound to disagree (27). As a result, the first several contributions to *Torture: Does It Make Us Safer?* seem to be preaching to the converted. As one reviewer has noted, “controversy within the book itself is minimal,” although she goes on to suggest that the authors outline counter-arguments and address them, “making the volume constructive fuel for discussion” (Webster 2006: 550). Indeed, since many of the contributors to the book actually provide arguments to challenge utilitarian justifications for torture, the remainder of this essay will use these to make the case that an absolute prohibition on torture is not only justified on moral and legal grounds but on utilitarian grounds as well.

One of the first questions to address is whether torture is an effective means of dealing with threats such as terrorism. Most people assume that torture is necessary to make hardened terrorists talk. Ignatieff declares that “while some abuse and outright torture can be attributed to the sadism of individuals, poor supervision, and so on, it must be the case that other acts of torture occur because interrogators believe, in good faith, that torture is the only way to extract information in a timely fashion” (25). Mark Bowden provides qualified support for this perspective, describing a number of ways in which torture has compelled suspects to talk. At the same time, however, Bowden notes that results vary from person to person; while torture works in some cases, it will not always work (Bowden 2003: 57-60). Similarly, Phillip Carter suggests that information obtained through torture has produced some desired results, such as Saddam Hussein’s capture in December 2003. However, he adds that “a vast body of literature on the subject indicates that, on the contrary, coercive interrogations tend to elicit unreliable intelligence more than they do useful information” (Carter 2004). Stephen Budiansky also refers to “widespread disdain” among experienced military interrogators for abusive forms of interrogation: “many old hands in the business have pointed out

that abusing prisoners is not simply illegal and immoral; it is also remarkably ineffective” (Budiansky 2005: 32). According to the current Army Field Manual, the most effective approach to questioning prisoners is the “direct” approach, which entails the direct questioning of a prisoner without coercion of any kind (Van Natta 2004). While controversy over the effectiveness of torture continues, the fact that a number of experts criticize the resort to harsh techniques and praise non-coercive methods tends to undermine the case for torture as a more generalized practice.

The objection might nonetheless be raised that torture may be necessary in exceptional circumstances when there is no time to use “gentle persuasion.” Eitan Felner (“Torture and Terrorism: Painful Lessons from Israel”) looks at this objection in his analysis of the 1987 report by the Israeli Commission of Inquiry which held that coercive interrogation tactics were justified in order to obtain crucial information that could save innocent lives, such as the location of a bomb meant to be used in an act of mass terror against civilians (30-31). While the Commission held that the proper course of action was “self-evidently” to choose the lesser evil, Felner notes a number of criticisms of this argument (31). First, Felner cites criticisms that the “ticking bomb” scenario rests on a set of assumptions that are extremely improbable. It presumes that there is a bomb that will explode if not neutralized; the suspect knows where the bomb is located and the bomb has not been moved since the suspect’s arrest; the suspect will provide the necessary information if and only if tortured; the information will enable us to discover and disarm the bomb in time, and so forth. (32). Given the implausibility that all these conditions would be met, Felner concludes that the ticking-bomb case is “an interesting case for philosophy students to ponder” but misleading as a basis for public policy (42; and 197). In short, the ticking-bomb case assumes rather than proves that torture is an effective means to avert a clear and present danger; as such, it fails to provide a pragmatic basis for decision-making.

Yet even if torture would be effective under very specific conditions, Felner points to a second problem with its use: the “lesser evil” rationale opens the door to justifying torture in a much broader set of circumstances, as the Commission report itself contemplates:

*When the clock wired to the explosive charge is already ticking, what difference does it make, in terms of the necessity to act, whether the charge is certain to be detonated in five minutes or in five days? The deciding factor is not the element of time, but the comparison between the gravity of the two evils—the evil of contravening the law as opposed to the evil which will occur sooner or later....(34)*

The danger with this, Felner observes, is that once the paradigm case shifts from an immediate danger to an open-ended need to prevent future attacks, the door is open to using coercive interrogation techniques under a wide variety of circumstances and against a potentially broad group of suspects. After all, if the lives of many are truly at stake, the same logic would apparently justify using torture against people who *could* be guilty. Indeed, a narrow utilitarian calculus would justify torturing people known to be innocent—for example, a suspect’s son or daughter—to get the suspect to talk. According to Dinah Pokempner (“Command Responsibility for Torture”), the act of torture engages an emotional and psychological reaction in the torturer that makes it difficult to control (161). At the same time, given the right circumstances (including pressure from social authorities to produce results and an accepted rationale for harsh behavior), torture can become a “normal” act (161-162). When this occurs, it becomes difficult to limit or regulate torture, as the rationale of averting imminent and massive harm to civilians through a “pinpoint” application of torture “easily slides to cover ever more remote sources and more hypothetical harms” (167). As



proof, both Felner and Pokempner point to the case of Israel, where the limited authorization of physically coercive interrogation in exceptional cases devolved into routine torture, as the government applied such techniques not only against guilty individuals but broadly targeted groups (43; 167; and 198).

Marie-Monique Robin (“Counterinsurgency and Torture: Exporting Torture Tactics from Indochina and Algeria to Latin America”) provides further support for this criticism, showing how the French military’s use of harsh interrogation techniques, including torture, became a widespread practice in France’s battle against nationalist guerrilla forces in Indochina and Algeria. The nature of these guerrilla wars made it critical to gain information about the enemy, and efforts to uncover the leaders and structure of insurgent organizations led to the arrest, interrogation and torture of masses of civilian “suspects” (46). Since enemies could be anywhere, they were sought everywhere. French General Paul Aussaresses, a senior intelligence officer during the Battle of Algiers, rationalized that “once a country demands that its army fight an enemy who is using terror...it becomes impossible for that army to avoid using extreme measures” (quoted in Forsythe 2006: 469).

Juan E. Méndez (“Torture in Latin America”) similarly argues that granting security forces free rein to use brutal methods in the name of national security ultimately undermined the rule of law and allowed abuses to spread unchecked:

*When security forces are allowed free rein, as in Argentina in the 1970s, they torture not to prevent harm or to gather evidence but to develop leads that might guide them in destroying the structures of the guerrilla organizations they are fighting. This means they will routinely torture every person they capture, without regard to guilt or innocence or to their significance as potential intelligence yields (61)*

The second problem with torture is, following Robin and Méndez, that it tends not to be restricted to exceptional circumstances but becomes a routinized, institutionalized practice. Allowing torture in “ticking bomb” cases opens the floodgates to systematic abuse, encompassing an ever-increasing number of victims “in the off chance that at least one will give up some useful information” (61). This raises problems not only from a moral standpoint but from a practical one as well. Although the use of coercive interrogation techniques may originate from a desire to protect national security, its widespread use actually plays into the hands of the enemy. To the extent that governments use coercive methods against perceived political enemies, they sow fear and distrust among the citizenry, making it harder to obtain information and cooperation in solving crimes and averting future attacks (67).

Indeed, one of the wry ironies of Marie-Monique Robin’s chapter comes in her reference to the fact that military officers from Latin America, the United States and Israel have looked to the French experience for guidance, regularly screening the film *The Battle of Algiers*, a portrayal of the dirty war waged by French soldiers in Algeria (51). Though the film shows that brutal tactics helped the French defeat the urban insurgency in Algiers, it also suggests that such an approach ultimately backfired, as the French were forced to withdraw from Algeria only a couple of years later. As David Forsythe corroborates, “Torture may have helped the French win the battle of Algiers, but their policy of abuse led to many negatives, including increased domestic criticism and loss of reputation in the world; meanwhile their enemies failed to lessen their struggle” (Forsythe 2006: 470). The use of torture or other forms of cruel, inhuman or degrading treatment therefore proves to be a shortsighted, counterproductive policy. According to one American army officer with experience in

counter-insurgency training, “in the long run, it is a bad calculation because it is the best recruiter for the terrorists it claims to fight” (54).

Some argue that certain enemies are so completely conditioned by hostility and violence that they cannot be stopped except through extreme measures. Senator John McCain (“Respecting the Geneva Conventions”) addresses this objection, pointing to the doubts that many people have about applying regular rules of justice to actors who willfully violate such rules themselves: “If Al Qaeda beheads kidnapped Americans, some argue, why must we be bound to treat detained members of Al Qaeda humanely?” (156). This skeptical point of view emphasizes that the principle of reciprocity does not apply in conflicts with fanatical enemies—that is, our self-restraint will not ensure that captured American soldiers will be treated humanely. Under such circumstances, abiding by international law on the treatment of detainees would appear to be “a hindrance to our ability to extract intelligence from prisoners that might save U.S. lives” (155). McCain counters this reasoning, insisting that we can continue to seek intelligence but must do so through humane, legal means. For one thing, “our commitment to basic humanitarian values affects—in part—the willingness of other nations to do the same.” Although “Al Qaeda will never be influenced by international sensibilities or open to moral suasion...they will [not] be the last enemy America will fight, and we should not undermine today our defense of international prohibitions against torture and inhumane treatment of prisoners of war that we will need to rely on in the future” (McCain 2005: 34). McCain’s views are shared by a number of career military officers who argue that the Geneva Conventions should be observed in order to reduce the risk that future generations of U.S. military personnel will not be treated in compliance with international humanitarian law (Carter 2004). It is worth noting that Secretary of State Colin Powell, who saw combat in Vietnam and helped run the first Gulf War, argued in January 2002 that failure to abide by the Conventions would “undermine the protections of the laws of war for our troops” as well as “public support among critical allies” (Powell 2002). In a February 2002 memorandum, Powell’s chief legal adviser, William Howard Taft IV, also argued that “a decision that the conventions do not apply to the conflict in Afghanistan in which our armed forces are engaged deprives our troops there of any claim to the protection of the conventions in the event they are captured” (Taft 2002).

McCain also argues that if the United States sinks to the level of its enemies, we forsake our values and “lose the moral standing that has made America unique in the world” (156). Since military power alone will not win the fight against implacable enemies such as al Qaeda, the United States needs to remain true to its values. Inhumane or degrading treatment of detainees threatens our moral standing and makes American power less legitimate. Phillip Carter, a former U.S. Army officer and national security analyst agrees, arguing that “the United States cannot succeed strategically simply by vanquishing its foes on the battlefield; it must secure the peace as well, which requires the winning of hearts and minds. Regardless of America’s past reputation, it cannot hope to ever win the popular support of a country unless it acts both with just cause and just means” (Carter 2004).

In addition to arguments that the United States best serves its long-term interests by taking the moral high road and adhering to liberal ideals and the rule of law, critics also cite evidence that information extracted through torture is unreliable. In a similar context where the United States faced “a fanatical and implacable enemy, intense pressure to achieve quick results, a brutal war in

which the old rules no longer seem to apply,” military interrogators found through experience that humane interrogation was much more effective than torture:

*The brutality of the fighting in the Pacific and the suicidal fanaticism of the Japanese had created a general assumption that only the sternest measures would get Japanese prisoners to divulge anything. [Military interrogator Marine Major Sherwood F.] Moran countered that in his and others' experience, strong-arm tactics simply did not work. Stripping a prisoner of his dignity, treating him as a still-dangerous threat, forcing him to stand at attention and flanking him with guards throughout his interrogation... invariably backfired. It made the prisoner 'so conscious of his present position and that he was a captured soldier vs. enemy intelligence' that it 'played right into [the] hands' of those who were determined not to give away anything of military importance (Budiansky 2005: 32-33).*

Abusive treatment of detainees “often produces bad intelligence because under torture a person will say anything he thinks his captors want to hear—whether it is true or false—if he believes it will relieve his suffering...the terrorists we interrogate under less than humane standards of treatment are also likely to resort to deceptive answers” (McCain 2005: 34; also see Roth and Worden: 199). *Newsweek* reporters Evan Thomas and Michael Hirsh provide a case in point, describing the results of an interrogation of al Qaeda member Ibn al-Shaykh al-Libi, who was sent to Egypt for questioning using “techniques unknown, but not hard to imagine.” Al-Libi produced a statement that al Qaeda members had gone to Iraq to learn about chemical and biological weapons; al-Libi’s statement, which he subsequently recanted, was used as evidence by Colin Powell in his now-discredited case against Iraq before the U.N. Security Council in February 2003 (Thomas and Hirsh 2005).<sup>3</sup> In the case of Abu Ghraib, James Corum, a retired lieutenant colonel in the U.S. Army who specialized in military intelligence, commented that “the torture of suspects did not lead to any useful intelligence information being extracted...The abusers couldn’t even use the old ‘ends justify the means’ argument, because in the end there was nothing to show but a tremendous propaganda defeat for the United States” (Budiansky 2005: 32).

Supporters of coercive interrogation techniques argue that it is possible to find and use effective techniques that do constitute torture, yet this argument is problematic. In fact, the administration approved a whole range of coercive methods for “softening up” detainees that the United States criticizes as torture in other countries, as described by Tom Malinowski (“Banned State Department Practices”). In doing so, the United States “violates the principles it preaches to others, its moral authority diminishes, and repressive governments find it much easier to resist American calls for change” (141). Not only is the systematic use of coercion morally repugnant, it opens the United States to charges of hypocrisy that undermine its effectiveness. This, in turn, threatens national security, insofar as it weakens America’s ability to promote human rights as part of “an effective, long-term campaign against terror” (141). Kenneth Roth also emphasizes this point, arguing that hypocrisy undercuts U.S. efforts to pressure other countries to turn toward democracy and respect human rights; violator countries find it easier to deflect U.S. pressure by claiming that Washington lacks the moral authority to accuse others (186; also see Forsythe 2006: 490). Moreover, this sabotages one of the most important tools for dissuading potential terrorists: “many militants need no additional incentive to attack civilians, but if a weakened human rights culture eases even a few fence-sitters toward the path of violence, the consequences could be dire” (188). As Reed Brody

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<sup>3</sup> See Mayer (2005) on the U.S. policy of sending detainees to countries known to torture suspects.

(“The Road to Abu Ghraib”) comments, “the iconic pictures from Abu Ghraib are—like the pictures of orange-suited detainees at Guantánamo—being used as recruiting posters for jihad. Policies adopted to make the United States more secure from terrorism have in fact made it more vulnerable” (151).

Reed Brody also makes it clear that the pattern of abuses that were reported at Guantánamo, Abu Ghraib and Afghan detention centers “resulted from decisions made by the Bush administration to bend, ignore, or cast rules aside” (146). Brody points to specific instances in which senior officials signed off on policies that entailed violations of international law (50). A 2004 *Newsweek* report also found that top officials approved a secret system of detention and interrogation; while they did not explicitly authorize torture outright, they did call for techniques to systematically soften up prisoners “through isolation, privations, insults, threats and humiliation—methods that the [International Committee of the] Red Cross concluded were ‘tantamount to torture’” (Barry, Hirsh and Isikoff 2004). Dinah Pokempner suggests that permission to torture was conveyed in subtle ways, granting top officials the kind of plausible deniability meant to shield them from criminal liability yet making their wishes clear. Public calls for a “different type of battle,” the decision to label detainees as “enemy combatants” rather than prisoners of war, assertions that detainees were to be treated humanely “for the most part” and “when appropriate,” and the use of aggressive metaphors all created a context in which subordinates clearly understood that abuse would be tolerated (162-166). Kenneth Roth provides a list of policy decisions made by high-level officials that anticipated, planned and covered up violations of international law, creating an “anything goes” atmosphere in which the ends were assumed to justify the means (191-195).

The failure to hold senior officials accountable for approving or tolerating detainee abuse sends another powerful signal, hampering efforts to prevent future abuses by creating an atmosphere of impunity. While some defend the use of violence against detainees as just and necessary—in the words of one national security official, “if you don’t violate someone’s human rights some of the time, you probably aren’t doing your job”—the problem with such an approach is that it does more harm than good (official quoted anonymously in Priest and Gellman 2002: A1). It hinders U.S. efforts to “build the diplomatic, political and military alliances the government will need” in its efforts to counter terrorism (151). It diverts effort from developing more reliable methods of interrogation, such as noncoercive expert interrogation (171). It raises serious future problems, when “continued detention without trial becomes politically impossible, but prosecution is legally impossible because the use of coercive interrogation has effectively precluded it” (189; also see Forsythe 2006: 490).

As in the case of prison inmates, detainees are often thought to deserve abusive treatment; their criminal behavior presumably forfeits their right to humane treatment. Yet as Jamie Fellner (“Torture in U.S. Prisons”) points out, some 650,000 men and women are released from prison every year; if prisons are destructive places where inmates are subject to violent mistreatment, releasing them into the community poses a significant danger. Therefore, community self-interest dictates that a prison sentence should not be a sentence to abuse (183). Similarly, enlightened self-interest suggests that detainees should be treated humanely. Though torture may “begin in the shadows with the poor, the despised, those outside the range of social sympathy,” experience shows that “it will inevitably spread” (92).

Judgments on the use of torture need to go beyond assessments of the motives involved. The decision to authorize or condone harsh interrogation techniques against a few individuals may reflect understandable if not moral intentions. As Kenneth Roth notes in his conclusion, “it is not enough to argue, as its defenders do, that the Bush Administration is well intentioned...A society ordered on intentions rather than law is a lawless society” (189). Actions that violate the law are necessarily made in an atmosphere of secrecy and confusion, greatly raising the risk that the whole process will spin out of control and produce atrocities that do even greater harm (Thomas and Hirsh 2005). History teaches that abusive treatment tends to escalate, and various contributors to Torture: Does It Make Us Safer? make it abundantly clear how morally repugnant and socially destructive the systematic use of torture can be.<sup>4</sup>

At the same time, history teaches that torture need not be accepted as inevitable; just because torture occurs regularly does not mean that circumstances should be specified when it may be authorized or immunized (166). In order to prevent and prosecute the worst kinds of abuse, torture must be condemned absolutely and not just if it is done by “bad guys” instead of conscientious public servants working to find the ticking bomb. Cruel, inhuman and degrading interrogation methods must also be rejected; although these are “designed to appear innocuous...they can be as cruel as those involving physical violence” (139-140). Rape and other acts of sexual violence must be recognized as serious violations of human rights that must be redressed rather “regarded as an accepted concomitant of war” (120).<sup>5</sup> Minky Worden, who describes the prevalent use of torture in various countries throughout the world, argues that it is nevertheless possible to make progress. The key is to provide information and effective monitoring, since this makes abuses of all kinds, including torture, less likely (98). Notwithstanding the fact international officials only wield the “power of persuasion, prodding, and peer pressure,” such pressure can be an important way to clarify facts and reduce violations (107-112). The effectiveness of such a strategy rests on the fact that countries do not want to admit to something that is a violation of their own laws, in addition to international law, thus shining the spotlight on abuses can reduce their frequency and severity (115; and 99-105). It is clear that “where torture is currently the worst in the world today is where it is most cost-free for the perpetrators” (104). What is less clear is the danger that occurs when “minor” cases of abuse are covered up. The more that people choose to ignore or condone the ugly face of counterterrorism efforts, the easier it is for abuses to spread and for “torture lite” to degenerate into “torture heavy” (Forsythe 2006: 490).

Judging the ethics of torture requires an examination of intentions, means and consequences rather than an ends-justifies-the-means utilitarian calculus. Even if the intended end is to save lives, the use of torture or other coercive forms of interrogation is an unacceptable means due to the fact that the net effects are to increase opposition and therefore decrease security. The volume Torture: Does It Make Us Safer? Is It Ever OK? teaches that coercive interrogation is never acceptable, not only from a human rights perspective but also from the practical standpoint of long-term consequences.

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<sup>4</sup> See Héctor Timerman (“Torture: A Family Affair”) and Mary R. Fabri (“Treating Torture Victims”), both in Roth and Worden.

<sup>5</sup> Fellner makes the same argument about sexual abuse in U.S. prisons (178).

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