

[Review]

**The Moral and Pragmatic
Bankruptcy of Torture :
A Review Essay on *The Ethics of Torture*,
by J. Jeremy Wisnewski and R. D. Emerick**

David Murchie

It is undoubtedly a negative commentary on the current state of American thought and morality that the subject of torture is even a matter of ethical debate. Indeed, pragmatically speaking, to decide on a definition of torture is also to allow the possibility of “redefining” torture to suit policies desired by those doing the defining. Nevertheless, torture is, in fact, a matter of current debate, and the discussion is being carried on not only at the philosophical or theological levels of thought. Quite to the contrary, though torture has long been practiced covertly by American governmental institutions, since the World Trade Center bombings of 2001, arguments favoring the use of torture for gathering information have been offered publically and without hint of reservation or apology by political leaders at the highest levels of the United States (US) government. Most significantly in this regard, one could refer to President George W. Bush, his Vice-President Richard Cheney, and his Secretary of Defense, Donald Rumsfeld. Tentacles of this conversation have influenced not only the commentary of TV news pundits and editorial writers, but TV dramas and movies as well, from the recent TV series “24” that focused on counter-terrorist efforts to defuse so-called “ticking-bomb” scenarios and depicted torture as an effective investigatory means, to the recent movie *Zero Dark Thirty* which many have seen as possibly suggestive of a pro-torture position (though to be fair, director Kathryn Bigelow and screenwriter Mark Boal see such a suggestion as “preposterous.”) Nevertheless, the fact that something as morally odious as torture is even up for debate in a society that has, throughout its history (in spite of covert practices to the contrary), openly denied its moral legitimacy is suggestive of a new barbarism breaking forth from a culture in search of some simple, default position that will justify the self-created paranoia of a country Noam Chomsky has described as “an imperial power desperately trying to cling to authority it no longer has.”

Though the faddish elements of this debate may well die out in the near future, the reality of torture as a tool of public policy (foreign and domestic) will not. For this reason, works like Wisnewski’s and Emerick’s play an important role in pointing thoughtful people away from the popularized and shallow conclusions of media-generated images to a reason-

able consideration of the frighteningly holistic effects of torture on both the material and immaterial facets of the human person. Through their book, the authors seek “to lay out the most important types and models of torture and reveal, through careful argument and analysis, what each of these models reveal [sic] about the moral impermissibility of torture.” (p. 2)

In the initial chapter the authors wrestle with the problem of nailing down a definition of torture. Though they use the “United Nations Convention against Torture”¹ as a point of departure, they are critical of the statement at many points and view it, as do many others, as unsatisfactory. Fundamentally, the definitional problem is one of delimiting torture conceptually to one particular thing “when in fact there is a family of related practices and activities that can be felicitously characterized as ‘torture.’” (p. 2-3) For example, the “malicious creativity” of torture makes governmental attempts to define torture extremely difficult. According to the authors, the UN statement is plagued by a general vagueness, its limitation of torture to an act carried out by a public official, and an inadequate understanding of the role of intent in the practice of torture. They point to the tradeoff between defining something like torture generally or specifically, suggesting that “the higher the level of definitional abstraction, the more difficult the task—and often, interestingly, the less its payoff of our conceptual archaeology.” In short, the authors leave unresolved the issue of developing an overall definition of torture in favor of proposing a fairly standard typology of torture which includes the following types: Judicial/Evidential, Punitive, Interrogational, Dehumanizing, Terroristic/Deterrent, and Sadistic. Their approach assumes that torture is, in fact, a group (or “family”) of various types of torture that can, for the most part, be discussed under a rubric of four models, viz., the “Economic Model,” the “Phenomenological Model,” the “Dramaturgical Model,” and the “Communicative Model.” Through a critical evaluation of each of these models, the authors seek to show that “torture cannot be morally or politically defended.” (p. 9)

Torture as a Transaction

From the perspective of the authors’ *economic model*, torture is “a transaction between two agents, one wanting to acquire something from the other, and the other resisting such acquisition.” (p.8) The role of torture in this transaction is “to force the exchange to occur by making the stakes of refusing the exchange too high.” (p.8) This model is probably what most people have in mind when they think of torture; i.e., something akin to the hypothetical “ticking-bomb” scenario that has been popularized in television dramas and movies like

¹ *Article One: For the purposes of this Convention, the term “torture” means any 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. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.* (As quoted on p. 2)

Zero Dark Thirty. However, scholars and public figures like Harvard Law Professor Alan Dershowitz (“Tortured Reasoning,” in *Torture: A Collection*, ed. Sanford Levinson) and US Senator John McCain have also argued in favor of allowing torture in such situations. Since Wisniewski and Emerick refer to the ticking-bomb scenario throughout their book, it is worthwhile to quote their description here :

Imagine that you, an agent of the CIA, have just captured a well-known terrorist (let’s say it’s Osama Bin Laden). You have excellent information that there is an imminent attack planned on a major US city. This attack will involve the explosion of a nuclear device. You also know that this attack will be carried out within the next 5–10 hours, making evacuation impossible. As it happens, you are also an expert interrogator, skilled in the dark arts of torture. You are convinced that through applying various techniques of physical and psychological manipulation you will get a confession of the location of the nuclear bomb, and thereby save the lives of perhaps a million US citizens. The question is simple : do you move forward with the torture? (pp. 16–17)

The authors discuss various objections to allowing torture in situations of this nature, e.g., Kant’s deontological rejoinder that individual human respect is inviolable, Henry Shue’s argument that, just as in jurisprudence hard cases make bad law, in philosophy “artificial cases make bad ethics” (p. 19), and Slavoj Žižek’s suggestion that any discussion of the subject at all legitimates torture ; i.e., to develop policies is not only to set limits, but also to establish a line that, though it should not be crossed, is, by its very existence, a line that *can* be crossed. The authors follow with plausible answers to these objections, demonstrating that these objections are insufficient for ending the “ticking-bomb” utilitarian argument.

In the development of their own critique of the economic model of torture, the authors weave together a tapestry of logical, semantic, and pragmatic factors to demonstrate the inherent weaknesses in the argument for torture warrants in exceptional cases like that of the “ticking-bomb” scenario. For their argument they draw upon a good variety of sources that include experiential accounts and evaluations from both public and private sources, e.g., *The CIA’s Human Resource Exploitation Manual*, the *UN Convention against Torture*, works of Dershowitz, Vittorio Bufacchi and Jean Maria Arrigo, John H. Langbein, and Elaine Scarry. A key element in their argument is the authors’ convincing demonstration that, on the basis of a large body of evidence, the use of torture has little if anything to offer to the kind of information gathering that is the purpose of the relevant interrogations. For example, in the case of the ticking-bomb scenario, all reasoning is based on the immediacy of the bomb’s expected explosion. However, since any method of coercion requires substantial time to be implemented, the use of torture in this case would be ineffective. Furthermore, if there is enough time to use other approaches to gathering the needed information, the torture is unnecessary.

Torture as the Destruction of Human Agency

The authors look next at what they call “the phenomenological model of torture.”

Critical of views which defend the use of interrogational torture if such is done with no long-term consequences, the authors make one of their most important claims, viz., that “one of the hallmark features of torture is that it *stays with you*...[A] careful analysis of the phenomenology of torture will go a long way to countering the view that torture is something one can undergo and be done with.” (p. 56)

The authors discuss three illusions in particular about torture that persist in contemporary discussions. The first illusion is that “torture has no lasting effects.” Using evidence compiled from numerous and varied sources, the authors offer a critical evaluation of this illusion, arguing convincingly that, in reality, the long-term effects of torture cannot be denied: “Torture is marked by its relative permanence—a continuing pain that marks the memory of what the body has been through.” (pp. 56-57) It is something akin to the literary description of torture in George Orwell’s *Nineteen Eighty-Four* when O’Brien tells Winston, “What happens to you here is forever... We shall crush you down to the point from which there is no coming back. Things will happen to you from which you could not recover, if you lived a thousand years. Never again will you be capable of ordinary human feeling. Everything will be dead inside you.” (p. 57) Though a fictional account, the Orwell example illustrates the authors’ point that the effects of torture are so massive that the tortured person’s very self is destroyed through a kind of dissembling of the ego, or, in the more technical language of Norbert Gurriss of the Berlin Treatment Center, “[t]hrough torture, the unity of body and soul (psychosomatic unity) within the person is significantly and profoundly disturbed.” (p. 58) As a result of such an assault on a person’s humanity, tortured persons suffer a profound sense of powerlessness and, most interestingly and tragically, a deterioration of the normal human sense of *agency*: “[T]orture upsets the schema of an agent; that is, it disrupts the basic organizational assumptions about life, humanity, and value that typically allow adults to understand social interaction and navigate the world around them.” From the perspective of a Christian theologian, we are dealing here with the breakdown between the material and immaterial selves and the significance of this for the broader *I-Thou* relationship that is essential for productive spiritual relationships with God and other people.

The second illusion is that “torture is not as bad as death.” The authors point out that arguments along this line seem to disregard the relevant empirical literature. On the basis of numerous sources, they explain that torture cannot reasonably be seen as an isolated incident, i.e., an incident from which there is no residual effect. Numerous psychological and physical disorders occur following torture, with the tortured person destined often to a life of agony. In the end the authors conclude that “[t]orture *is* a kind of death, but one that draws out one’s pain and suffering indefinitely. And this pain, moreover, is the very means by which one’s agency is dismantled.” (p. 63) The discussion of this second illusion concludes with the chilling words of David Sussman: “When sufficiently intense, pain becomes a person’s entire universe and his entire self, crowding out every other aspect of his mental life. Unlike other harms, pain takes its victim’s agency apart ‘from the inside,’ such that the

agent may never be able to reconstitute himself fully.” (p. 63) As the authors remark, “[D]eath is not the greater of two harms. In fact, quite the contrary.” (p. 63)

The third illusion is that “torture is like other uses of coercion and pain.” (p. 63) For their critique of this illusion, the authors draw heavily upon the insightful work of Elaine Scarry in *The Body in Pain*, in which Scarry deals with the phenomenology of torture. The tortured person is subjected to so much pain that her world is “unmade.” The tortured person’s world is reduced to the world of the torturer. Pain becomes the sole focus of her life, to the exclusion of thinking about other things or even about the self itself. Scarry points out further that as the world of the tortured person disintegrates, so does the person’s language and, thereby, the person’s capacity for self-expression. In short, in the torture experience, the tortured person’s “experience of time is made into the awareness only of the immediate—of the pain felt by one and forced by an other.” (p. 65) Of such is the life-changing power of pain, or, in Scarry’s words: “the absence of pain is the presence of world; the presence of pain is the absence of world.” (p. 65) The authors conclude that coercion and torture must be distinguished; coercion is, in fact, more respectful of an agent than is torture, because coercion shows more respect for the person’s agency even to the extent of utilizing the rational capabilities of that person. With minor exceptions, torture utilizes consistent deception in an attempt to destroy the tortured person’s sense of order.

The section on the phenomenological model of torture concludes with a discussion of “torture and the phenomenology of dignity.” Drawing upon Kant, the authors reason that “respect for persons” is a moral primitive, i.e., “it cannot be deduced from anything more certain than the proposition itself is.” (p. 73) In Kantian terms, the concept is an *analytic* process as opposed to a *synthetic* one. Respect for persons is a moral primitive “because it cannot be deduced from anything more epistemically secure than it itself is.” In this sense, respect for persons can be considered to be what Kant spoke of famously as a *categorical imperative*.

Torture as Drama

Though many would hesitate to admit it, there is a theatrical element of torture, as evidenced by the common human desire to be horrified and entertained at the same time. From the perspective of this *dramaturgical model*, the self is a product of one’s *performance*, i.e., one’s action in a narrative or drama. The idea of a true or real self makes no sense, nor is there any interest in the origin of human activity. Indeed, the self may change according to circumstances, taking on different roles that are required by contextual circumstances. What is important is the human activity itself, which is always expressive. The dramaturgical model is particularly valuable for illuminating aspects of the self-denial and loss of dignity that accompanies torture. In particular, it has been valuable for understanding the practical, ethical, and interpersonal weaknesses of torture used by military interrogators. Drawing upon the testimony of experienced interrogators the authors illuminate the futility of using torture to extract information from human subjects. Indeed, based on the

conclusions of professional military interrogators, a moral approach turns out to be even the most pragmatic approach. Far from torturing their subjects, successful interrogators seem to be those who seek to cultivate the positive aspects of human relationships, i.e., to fashion and maintain stable selves. In the authors' words, "It's *only* these sorts of selves that will be capable of supplying verifiable, reliable, actionable intelligence through the drama that their stories tell." (p. 95) Torture serves to dismantle the self. On the other hand, transforming the self into an actor that can play a helpful role in the interrogation process holds far more promise for success in gathering information. Consequently, those whose intuitions lead them to allow torture in cases like the ticking-bomb scenario would seem to be grossly misinformed. Interrogational torture is ineffective and, in fact, "counter to the goals of military intelligence and its institutional practice is anathema to those social girders which support the formation of a self with the substance and dignity worthy of our veneration." (p. 99)

Torture as Institutional Violence

The authors look to the work of Jürgen Habermas and his model of communicative action to explain their fourth model, viz., the *communicative model of torture*. The focus is on institutional violence in which people are abused by other people openly, with impunity, and as part of broader strategic goals. Habermas' model offers a framework which can help one understand this kind of institutional violence as a function of "lifeworld crises" at personal, social, and cultural levels and as the result of lengthy exposure to "systematically distorted communication which itself [takes] place in broader contexts of asymmetrical power and communication procedures." (p. 117) The reference here is not to something like mob violence, in which multiple assailants carry out the violence but where there is no particular institutional structure facilitating the violence. Rather, this is violence occasioned, at least in part, by a combination of institutional factors such as command structures, previously determined objectives and methods, training in measures for carrying out the violence, and even a cultural context created to undergird the violence.

In this discussion, the authors focus on the aspect of interrogation. In particular, they are concerned with when interrogations act as normal conversations and when they do not. Following a summary explanation of Habermas' understanding of the different types of speech acts and of the idea of discursively redeemable speech, the authors suggest that interrogation differs from normal conversation because the interrogators and the detainees have different goals for that "conversation," i.e., the interrogator is seeking to determine the intelligence value of the detainee's remarks while the detainee is seeking to provide whatever information will lead to his release.

Of critical importance to the argumentative dimension of interrogation is the element of freedom, without which the interrogator and her interlocutor will not be able to reach a consensus, nor will the interrogator be able to persuade the interlocutor. In addition, the argumentation process "must demonstrate a norm of *justice* in the form of the 'reciprocal

and symmetrical distribution of rights among participants.” (p. 109) However, since the interrogator and her interlocutor are each aware of the purpose of the other in the conversation, the sincerity of the discussion of each is doubted by the other, resulting in what is referred to as a “‘systematically distorted’ at the level of sincerity” situation. Such a situation can easily lead to frustration on the part of the interrogator, resulting in manipulation of the “detainee for the purpose of establishing truthfulness (through deceit and duplicity—that is, through his own use of insincerity), to the actual *physical* coercion of a detainee (persuasion with the use of reason, when thwarted, becomes persuasion with the use of force.” (p. 109)

There is, however, another reason why such distorted conversations can lead to violence, and that is that to the interrogator, the detainee is not only a human being but also an *opportunity*. Because of this reality, it is apparent that the two persons are brought together not primarily for reasons of communication but for *strategic* reasons. In this case, the detainee becomes a tool used to get information desired by the interrogator. This can be devastating for both. Indeed, the more the detainee resists, the more he is considered as a strategic tool by the interrogator. As Habermas might describe it, “the more resistance a detainee provides, the more *de-humanized* he will become to the interrogator.” (p. 110) Furthermore, as the situation deteriorates and the frustration of the interrogator leads to punishment or threats of same, those punishments “frustrate the communication that the detainee will have with his own body.” (p. 111) In the end, the effects of such distorted communication is far broader than many would initially think. For example, in addition to the often horrific mental and physical consequences for those being violently interrogated, such distorted communication can have serious, negative effects on the interrogators themselves.

As the authors conclude, this particular model should serve as a moral reminder that “should we wish to reduce violence of this sort and thus increase the chance that *justice* and *freedom* will flourish, our institutions (military or otherwise) ought to be developed with just those moral categories as an engineering principle.” (p. 117)

The Ethics of Torture is a challenging read, though not overly difficult for one willing to take the time to consider the authors’ well-reasoned descriptions and arguments. Their preference for using plain language whenever possible is most welcome and, in fact, plays an effective role in helping the reader to follow the book’s various arguments. The authors’ economic style, however, does not detract from their carefully documented use of a variety of evidence and sources, most of which are helpfully included in the footnotes and bibliography. Since many of the book’s passages call for a footnote check by the reader, this reviewer found it regrettable that footnotes are inconveniently listed all together at the end of the book and not at the bottom of their relevant pages. The book is appropriate for reading by anyone interested in a cross-disciplinary discussion of the issue of torture which treats this heinous human practice from philosophical, logical, psychological, sociological, phenomenological, and even theological perspectives. The book should certainly make its

way into undergraduate and graduate libraries and into book collections of those interested in the serious study of contemporary issues.

The sources listed in the footnotes and bibliography at the end offer the reader a rich collection of important works on this subject worthy of future study. Indeed, the content of the book itself should raise many important questions in the minds of its readers. The authors even call attention to various aspects of problems they can only mention, perhaps seeking to encourage future readers to pursue the study of such aspects on their own. For example, the authors do a superb job of demonstrating not only the immorality of all torture, but also its ineffectiveness. One wonders, however, how much their argument would, if at all, be weakened were future interrogators to conclude on the basis of new evidence that torture actually is effective. Actually, this aspect does enter the authors' conversation at points ; however, one wonders if the *immorality* of torture and the *ineffectiveness* of torture are, in some sense, linked together, to the extent that both are necessary for denying (as the authors do) the legitimacy of torture, or whether one or the other, in itself, is enough to declare torture as illegitimate. This is just an example of a question raised in the mind of one reader by this fascinating and challenging book.