

Torture and Human Rights: A Paradoxical Relationship?¹

John Beverley

The avowed purpose of torture is to elicit useful information—torture is in the first place a form of interrogation. The argument that is usually advanced in this regard is the “ticking bomb” question. What would you do if you knew you could avoid an imminent disaster by torturing a suspect or threatening him or her with torture to reveal the details of the plot? If you agree that terrorism is the enemy of our values and institutions, that it is directed against our way of life, that it destroys innocent victims, then you should be prepared to take the necessary measures to combat it. If it would have been possible to prevent the 9/11 attacks or similar attacks in the future by torturing suspected terrorists, would you not have acquiesced in the use or threat of torture too?

The “ticking bomb” argument of course leaves itself open to the objection frequently raised by opponents of torture and military intelligence specialists alike that information elicited by torture may be unreliable, because the victim of torture will tend to say anything, do anything to avoid the unbearable pain. The problem with this objection, however, is that it depends on the same logic as the “ticking bomb” argument itself. Both make the case for or against torture essentially a *utilitarian* one (does it work or doesn’t it?) rather than an ethical or legal one: is it right in any circumstance to torture or is there a right to torture in law? One can concede that in some situations torture might be pragmatically warranted (although it would remain illegal and therefore punishable under law). But something else, some other form of truth, is involved in torture beyond the extraction of information from an unwilling subject. The “ticking bomb” argument is a screen for another purpose, another intensity involved in torture. It puts under the guise of an unpleasant, but rational means/ends, cost/benefit calculation something that is deeply irrational, in the way that racism is irrational (and that is not unrelated to the anxiety about personal and group identity that is at stake in racial prejudice or homophobia). Torture or practices approximating torture, such as those countenanced by the Bush

administration in the War on Terror, are not primarily about information that may be useful in fighting terrorism. They have become themselves a form of terrorism, exercised by or with the complicity of the State, intended to reinforce or re-impose relations of power and inequality in situations where these have been challenged or come into question.

The campaign by the Bush administration in the wake of 9/11 to suspend the Geneva Convention and set aside or pervert the explicit and universal prohibitions on torture in both U.S. and international law, often against objections from military lawyers and the very intelligence agencies that were to supervise and conduct prisoner interrogations, was connected to its doctrine of a special, para-constitutional executive privilege. To combat Islamic terrorism, to prevent another 9/11, to exercise American power in a dangerous world, a “strong” State was necessary. Niceties about habeas corpus and Geneva Convention rights only aided and abetted the terrorists; it was time “to take the gloves off.” (A similar reasoning was involved in the rush to invade Iraq: to wait was to risk letting the initiative pass to a potentially deadly enemy.) To be clear on this point: the Bush administration did not celebrate torture as such or acknowledge publicly that it tortured people. It was prone rather to phrases like “aggressive interrogation techniques.” But everyone understood, and I believe the administration intended us to understand, that what was at stake was torture, the fact of being able to inflict incredible pain and psychic humiliation on others who were perceived as a threat to ourselves. The very same kinds of “aggressive interrogation techniques”—sleep deprivation, stress positions, semi-starvation, noise bombardment, etc.—when used by the Communists on U.S. prisoners of war in Korea or Vietnam, were called torture by the U.S. government, which now uses them on Islamic prisoners in the War on Terror). What is surprising about Guantanamo, for example, is not how much of what went on there the Bush administration kept secret from the American public, but rather how much it was willing to reveal.

One assumes that, as a matter of course, most contemporary States, including the United States, employ and/or countenance torture—you do not have to look too far beyond your local police station to find evidence of more or less routine and longstanding use of extreme physical and psychological duress or outright torture against prisoners. But such practices were officially disavowed; they took place in the “shadows,” literally and figuratively. What is new during the Bush years was the way in which torture became part of accepted public discourse and debate in the United States—rarely a day went by without a major story in national newspapers related to torture, Guantanamo, arbitrary detention, extraordinary rendition, wiretapping, and the like. Why this need on the part of the Bush administration and conservative commentators to put the issue of torture and its many permutations into the public sphere, even in the very gesture of

arguing that the United States does not, technically speaking, torture? That was (and is), of course, more a political question than a legal or ethical one.

The Democrat victory in 2008 could be seen as a repudiation of this position and a return to a more sober constitutional legal framework. Both candidates in the 2008 presidential elections—including John McCain, who otherwise remains faithful to the Bush legacy—repudiated the use of torture or “harsh” interrogation techniques that Bush and Cheney’s legal advisors did not consider torture, such as waterboarding. If we are to judge from some of its recent decisions, the legal weight of even an unusually conservative Supreme Court appears to have shifted against the Bush position.

But the picture is perhaps not as rosy as it seems. We need to recognize that *our own* cultural and ethical relation to torture, not just that of the Bush administration and its neoconservative cheerleaders, has undergone a major shift since 9/11. One of the paradoxes we have to confront in that regard is that the discourse of human rights no longer lends itself unproblematically to the task of dealing with the presence of torture in the modern world. Though it was born in part as a response to the widespread use of torture in the 1970s and 1980s by military dictatorships supported, and in some cases installed by the United States, and though the International Declaration of Human Rights explicitly forbids torture or for that matter any form of physical or psychological coercion against prisoners, human rights discourse has become part of the ideological rationale for the War on Terror. And since the War on Terror involves, and will continue to involve, the widespread forms of “harsh” interrogation and degradation and abuse of prisoners and subject populations, human rights discourse has become in some ways complicit with torture itself. Perversely, it has merged with elements of the earlier idea of Manifest Destiny, to produce something like a new form of American Exceptionalism. The result is an argument that goes something like this: We, the United States (and our allies) are in favor of human rights (and “modernity”); they, the enemy, whoever that may be at any given moment, are against human rights. Therefore the war we fight against them, the War on Terror, is a just war.²

In noting this paradox, I do not mean to detract in any way from the exemplary work of the Center for Constitutional Rights, Amnesty International, Human Rights Watch or other human rights organizations. I am also aware that the spokespersons for the Bush administration were careful not to invoke human rights declarations too explicitly in explaining the rationale for the War on Terror, aware that to do so would inevitably draw attention to very clear and universal prohibitions contained in them not only of torture but of any form of physical or psychological duress against prisoners. But I also want to indicate one of the limitations of a human rights approach to the question of torture. I am inviting you to consider, in other words, that we may have become complicit with torture ourselves at the

same time that most of you reading this essay would probably oppose torture in the name of human rights.

That changed personal relation to torture is evident, for example, in the proliferation of torture as “entertainment” in contemporary American popular culture. I mention, for example, the continuing television series *24*, the horror films *Hostel* (2005) and *Saw* (2004) and their sequels, and a new generation of spy thrillers centered on the War on Terror rather than the Cold War, like Vince Flynn’s *Memorial Day* (2004); but these represent only the tip of the iceberg.³ The representation of torture in American popular culture, I would argue, involves the fantasy of an *effective* State, in a post neoliberal and post 9/11 world where the actual American State is seen as vulnerable and ineffective.

The traditional cultural representation of torture—for example, in the well known films *The Battle of Algiers* (1966) or *The Deerhunter* (1978), or in Amnesty International’s mass mailings of letters under the title “Someone Is Being Tortured” describing the torture of this or that specific person—was intended to provoke a revulsion against the practice of torture. The assumption was that to make torture explicit, visible was to indict it. In one of the most influential contemporary studies of torture, *The Body in Pain* (1985), Elaine Scarry argues that torture violates or unsettles the very notion of the human subject and personal agency enshrined in liberal-democratic societies. It places the victims of torture outside language and the social bond itself: “Physical pain does not simply resist language, but actively destroys it, bringing about an immediate reversion to a state anterior to language, to the sounds and cries a human being makes before language is learned” (4).

For Scarry, this means that the restoration of the subject obliterated as such by torture involves bringing that subject back into language, in a manner similar to the way in which therapists treat victims of post traumatic stress syndrome. There is a paradox here similar to the one I noted earlier apropos human rights discourse and torture, however. Since it is in the name of an autonomous, self-actualizing, self-narrating, rights-bearing, “modern” subject that torture is being employed now, and has been employed in the past, by affluent liberal societies like the United States, Great Britain, or France against other, usually non-European, peoples or sectors of their own populations, torture becomes an instrument in the defense of the very social domesticity that torture unsettles, and that Scarry and human rights activists defend or seek to restore.

The contradiction between the illusion of domesticity the State is supposed to maintain and the practice of torture is why Bush’s apologists for torture like Alberto Gonzalez or John Woo had to play a now-you-see-it, now-you-don’t game with the issue. On the one hand, the Bush regime promoted, indeed insisted on, the widespread de facto use of torture or interrogation techniques approximating a common sense understanding of

torturer in the War on Terror, as well as sanctioning the practice of extraordinary rendition (remanding prisoners to the custody of other countries, where they could be tortured without concern for the prohibition of torture in U.S. and international law). On the other hand, to install a supposed right to torture or mistreat prisoners at the very center of the War on Terror would have been to contradict its rationale, which is that Western humanism was superior to Islamic fundamentalism precisely in its respect for human rights. After all, what was most scandalous, most unacceptable, about Saddam Hussein, perhaps even more than his supposed possession of weapons of mass destruction and his support for terrorist groups, was his systematic use of horrific forms of torture against his own people, a fact that both the liberal and neoconservative apologists for the Iraq war never tired of emphasizing.

When torture is used as an instrument of the State, it can have, in a context in which liberal democracy or simply rule of law is the expected norm and goal of State action, the unwanted effect of delegitimizing the State in the eyes of large sectors of its own population or of the external population it is used against. The reason the overt and systematic use of torture by the French in the Algerian War was self-defeating in the long run was not that it was ineffective as an interrogation technique. As the film *The Battle of Algiers* shows, in tactical terms torture was actually highly effective in dismantling the Algerian National Liberation Front's underground terrorist network in Algiers. The reason torture became counterproductive strategically lay rather in the recognition on the part of both Algerian and French publics that the continuation of French colonial rule *required* the use of torture, a recognition fed by graphic contemporary accounts of the experience of torture itself, such as Henri Alleg's harrowing memoir *La Question*, published with a famous preface by Jean-Paul Sartre in 1958, or the final section of Frantz Fanon's *The Wretched of the Earth*, where Fanon recounted in some detail cases from his own clinical practice of torture victims (and torturers).⁴

But that paradox—that the use of torture by the French army in Algeria was one of the causes for the loss of support for the war in France and internationally—depended on there being a pre-existing moral consensus against the use of torture. In part, that consensus was shaped by the revulsion against Nazi atrocities in World War II, still very much on the mind of Europeans in the 1950s and early 1960s. It is not clear that a similar moral consensus against torture exists in the United States, however, in part because of the reaction to the terrorist attacks of 9/11, which had deep effects on the national psyche, and in part because of the general deterioration of American power and prosperity, which has raised the level of anxiety about our national identity and status. At least, such a consensus cannot be taken for granted.

We may now be involved instead in a relation to torture akin in some ways to that supposed in an ancien regime, where public torture and executions were the rule rather than the exception. What happens in the sometimes quite graphic torture scenes in the TV series *24* (which no one would mistake as simply “aggressive interrogation”), for example, is that something normally hidden from sight in the regimes of juridical modernity is not only presented explicitly, but presented so as to elicit a peculiar kind of voyeuristic fascination, with very ambiguous political and psychic consequences.

From the point of view of power, the compelling moment in the torture session is the moment of acquiescence rather than the moment of physical agony. Here is an instance of this from Vince Flynn’s thriller, *Memorial Day*, which I mentioned earlier apropos the cultural marketing of torture as entertainment. It describes the interrogation by a CIA agent named McMahon of an Islamic subject, Ahmed al-Adel, suspected of being involved in a plot to set off a dirty nuclear bomb in Washington D.C. McMahon is speaking, threatening the suspect with extraordinary rendition:

McMahon wanted to give the self-righteous little al-Adel something to think about. He picked up his file and stood. ‘The CIA wants to question you Ahmed. Don’t be surprised if you get woken up in the middle of the night and transferred to a different location.’

Jackson [al-Adel’s lawyer] was out of his chair like a shot: ‘You just threatened my client with torture! That’s it. I don’t want anyone else talking to my client. You people are done, and when I tell the media, let alone a judge, what this idiot just said, heads are going to roll.’

McMahon ignored Jackson and kept his gaze fixed on al-Adel. Satisfyingly, he saw genuine fear in the terrorist’s eyes at last. In that moment he could tell that the Saudi was not a man who could handle pain. (317)

Here the threat of torture is as effective as actual torture, relieving the interrogator (and the reader) of any of the ethical or legal messiness actual torture might have entailed (although the novel is replete with scenes of torture). The moment of acquiescence is, of course, also the compelling moment in Hegel’s description of the master/slave dialectic in the *Phenomenology*, the moment when one subject yields, under the threat of death, to the will of the other and in that yielding concedes mastery. But what makes the acquiescence of the slave suspect as the necessary foundation of the master’s autonomy and authority is just that: the master’s sense of having self-sufficient agency is contingent on that acquiescence, is not given in advance.⁵ The result is what Hegel calls the “unhappy

consciousness,” the longing for a certainty that can never be fully satisfied. So even in the act of producing subalternity, torture shows a performative willfulness. Scarry puts this well: “The physical pain [of torture] is so incontestably real that it seem to confer its quality of ‘incontestable reality’ on that power that has brought it into being. It is, of course, precisely because the reality of that power is so highly contestable, the regime so unstable, that torture is being used”(27).

What needs to be said here, of course, is that it is not surprising that people break under torture or yield under the threat of death. Why should we expect otherwise? If that is the basis for the personal certainty behind the mask of power, then it is a slim foundation indeed. It is impossible to anticipate how any of us might act under similar circumstances, but I think it would be fair to say that many of us might also break under torture. The narrative of the militant or martyr, like Henri Alleg, who resists torture heroically paradoxically ends up confirming in some ways a hierarchy of social (and often masculinist) value that reasserts the elite/subaltern distinction that the person being tortured is supposedly struggling against. It simply places torturer and tortured on the same “elite” plane of that hierarchy (the torturers in Alleg’s memoir congratulate him on his ability to resist the torture, which they see as a sign of toughness or machismo they share with him). The narrative of the person “broken” by torture, by contrast, forces us to confront both the materiality of the human body and the ways in which the ubiquity of torture in the modern world is bound up with concrete forms of inequality, repression, and domination. It reminds us that personal heroism or ethical idealism are not enough; that structural social change is the precondition for changes in the forms of human subjectivity.

Let me bring up in that regard a more recent memoir of the experience of torture, Luz Arce’s *The Inferno* (1993). Arce narrates there how, as a young socialist activist, and a member of President Allende’s personal bodyguard, she was arrested after the 1973 coup in Chile and brutally tortured by the dictatorship’s secret police, the DINA. Aware that in cases of militants like herself, the policy of the DINA was to “disappear” the person after extracting as much information as possible, she decides at a certain point to save her own life and protect her infant child by collaborating, and eventually becoming a DINA agent herself.

The Inferno illustrates graphically the point we started with: torture in Chile was designed not only (or perhaps even mainly) to yield information in interrogation, information that would be useful in dismantling or destroying the organizations of the left and the trade union movement. It had a second, political, purpose in excess of that immediate purpose, which was to terrorize and atomize the population through the abjection of the victim of torture, trapping it in private fears and fantasies of punishment. Besides its very drastic physical effects, torture produced in its victims and their children, friends, colleagues and families, feelings of paranoia, shame, self-

loathing, guilt, powerlessness, and incapacity to act: the Chilean phrase for this was “un golpe a la lengua”—a blow to the tongue, or to language itself, as Scarry might put it. Torture in Chile was part of a social war against a broad popular political bloc—the lower middle class, the rural poor, and the urban working class—that gave strong support to Allende and his project of a parliamentary “Chilean Road to Socialism.” It became the instrument of a counter-revolution and Restoration by the conservative classes, in other words. It was the subject produced directly or indirectly “by” torture—a subject alone with its own unbearable pain or the fantasy of that pain, cut off from any prior sense of community, loyalty or commitment, trapped in a monadic sense of guilt and self recrimination—that then becomes available as the paradigmatic subject of the neoliberal economic model adopted by the military dictatorship, based on a rational choice model of maximizing reward and minimizing loss or pain. Against the assumption in neoliberal theory of the coincidence between free markets, human rights and democracy, torture in Chile became de facto the material basis of neoliberal hegemony. For Luz Arce, agreeing to collaborate with her torturers was a “rational choice.” But it installed her, and writ large her country, in a kind of personal hell. She writes her memoir many years later in the context of the transition to democracy in Chile in the 1990s, after leaving the secret police and converting to Catholicism, among other things, as she puts it herself, to both recover her name, and testify to the names of those who shared the experience with her but were subsequently “disappeared.”

As in the case of Chile, the question of torture in US life today is not simply a contingent one, related to the immediate circumstances of the War on Terror, but rather a question of our national identity and future. As I suggested earlier, the tolerance for torture at the level of both the State and popular culture marks the United States as a country that has entered in some ways the stage of an ancien regime. It is not the only or the most important such indicator; but it is a sufficient one. In the face of the humiliation of American power and the shattering effect of the 9/11 terrorist attacks and their aftermath, the catastrophe of Hurricane Katrina, the ongoing bloody stalemate in the Iraq war, and the recent economic downturn, Guantanamo, the Abu Ghraib photos, a TV series like *24*, the sadistic violence of enormously popular video war games function at some level of the national consciousness as imaginary enactments of a world in which the American economy is still strong and American power is still unlimited and effective, a world in which we can keep an alien other under control, subject to the most arbitrary and sadistic acts of vengeance and retribution, but still maintain some facade of rationality and moral self-righteousness. That is the essence of what I have been calling here the paradoxical relationship between torture and the discourse of human rights.

Both the actual practice of torture and the cultural marketing of torture have to do with our relation not only to the world *outside* us, to those we

define as our national friends or enemies, but also, and perhaps most profoundly, to ourselves. As in the case of the use of torture in Chile by the military dictatorship, torture is also a way of managing a contradiction *within* the United States itself: a contradiction about continuing class, race and gender inequalities. The 1960s proposed a program for the American future that entailed a radicalization of the elements of the New Deal coalition in the direction of an American form of socialism or, failing that, a massive extension of the welfare state. It was the imperial dimension of the United States, expressed above all in its rivalry with the Soviet Union in the Cold War, coupled with the continuation of white racism at home in spite of (or in response to) the gains of the civil rights movement, that prevented such a program from going forward, especially among the social group that would have been a necessary if not the exclusive bearer of such a transformation: the American working class. As the lection of Barack Obama has demonstrated, the elements of that coalition are still present in American life; indeed if they could be brought together again they would constitute a clear majority, something like a new historical bloc. But this possibility seems to have been blocked by the same conservative Restoration in the 1970s that produced the coup d'état against Allende and his Popular Unity government in Chile, the other 9/11 (September 11, 1973). It is that blockage of the possibility of fundamental social change—change of class and race relations within the United States, and a change in the relations between the United States and the rest of the world—that marks its passage into an ancien regime.

Historically, an ancien regime lends itself to two different outcomes. In the first, it is abolished—becomes in fact *ancien* in the sense of the former or the late regime—by a revolutionary transformation in which a new class or historical bloc comes to power. That is classically the model of the French Revolution. The other outcome is the example of Spain and its empire, where there is a cultural, political and economic impasse at the very heart of a national formation, an impasse that appears at the height of its power and confidence, and that subsequently prevents any new class project or historical bloc from emerging into dominance or hegemony. The result is a long process of stagnation and decline in which sometimes quite powerful forces and constituencies for change appear, but in which in the final instance no fundamental change from within is possible. Something always arises to block it. Change can only come from outside.

My fear is that it is this second outcome—the “Spanish path,” if you will—that awaits the United States. Perhaps that prediction is too pessimistic, and ignores resilience within American life and a basic decency in the American people. In any case, the election of Barack Obama should have been enough to prove me wrong. (I voted enthusiastically for Obama). However even with Obama victory, the paradox I have tried to outline here has not dissolved. Indeed, the issue of torture continues to appear in the daily

news. It simply takes a new form: chronicling the difficulty of the Obama administration to manage the question of how deeply it will investigate the use of torture in what is still sometimes called the War on Terror. Obama knows that to restore the authority of the American power, he must act decisively against torture and suspension of legal rights; but he is trapped by the knowledge that to do so may also erode the coercive force of that power.

There is a deeper political question here too. If it is true that the question of torture cannot be approached solely from the perspective of abstract human rights or constitutional principles, but must involve eliminating the great social inequalities within nations and between nations and peoples, then nothing less than something like a new project of socialism would be required to address it adequately. But no one takes that possibility seriously anymore. Obama himself explicitly rejected the idea of socialism in favor of a pragmatic, morally driven centrism (he is in some ways the Albert Camus of American politics), and those of us who do continue speak of socialism are likely to be considered these days as outdated and rapidly aging remnants of the 60s, modern Don Quixotes. Still, the issue of socialism—that is, of equality—needs to be posed, if only as a kind of horizon for whatever concrete change is possible in the present. Failing that, we are left for the time being with the curious and perverse spectacle in the United States of a largely working class and multiethnic population that thinks of itself, with some reason, as morally high-minded and scrupulously attentive to the rights of others, as well as its own, but that continues to consume as entertainment and psychic gratification representations of a practice—the torture or mistreatment of others—that is bound up with its own conditions of economic and political disenfranchisement.

Notes

1. An earlier and somewhat differently argued version of this essay appeared as “The Question of Torture, the Spanish Decadence, and Our Own” in *boundary 2*.
2. Such an argument was, of course, at the very core of the neoconservative Realpolitik favored by Cheney and Bush’s closest foreign policy advisors before the Iraq debacle. But also influential in forming a national consensus in this regard were nominally liberal figures like Michael Ignatieff, Christopher Hitchens, or Samantha Power, who linked the championing of human rights to a justification for U.S. military intervention abroad, beginning with Kosovo and Bosnia during the Clinton years. The same might be said of middle brow cultural texts like the film *Kandahar* (2001) or novels like *Reading Lolita in Teheran* (2003) or *The Kite Runner* (2003), which purvey a kind of high-minded and sometimes “feminist” neo-Orientalism. Power, whose ill-considered remark about Hillary Clinton during the primaries forced her withdrawal as one of Obama’s principal foreign policy advisors, has

- criticized the Iraq invasion in particular, but has defended the use of U.S. military power in defense of human rights elsewhere.
3. One source for the “aestheticization” of torture in American popular culture may have been the virtuosic and extremely violent torture scene in Quentin Tarantino’s influential 1992 film *Reservoir Dogs*, where the act of torture was simply gratuitous, not linked to any utilitarian purpose. *Hostel* pictures a post-communist society somewhere in Eastern Europe where a former factory has been converted into a sort of torture spa, where the rich and powerful of the global system may, for a fee, torture victims (who are abducted from a local youth hostel—hence the title) at will. In that sense, while *Hostel* and its sequel participate in the perverse commodity logic of torture as entertainment, they also make explicit the connection between torture and the winners and losers in economic globalization.
 4. Henri Alleg was a French Algerian member of the Algerian Communist Party and a prominent newspaper editor. In July 1957, he was captured and tortured by units of the French army in Algiers. The original 1958 edition of *La Question* was the first book banned in France since the 18th century. The English translation by John Calder was recently re-issued (*The Question*).
 5. Terry Pinkard explains that “Recognition [for Hegel] can only come from an ‘other’ whom one takes to be a self-conscious agent (an agent who has a point of view on the world and therefore his own practical projects, and who *confers* that recognition on one. [. . .] The result of this would be at first a struggle to the death. [. . .] If both stake their lives and struggle to the death, with the result that one survives and the other dies, then although the survivor has indeed demonstrated that he values independence above life itself, his victory will be nonetheless empty. [. . .] The only possible resolution therefore is for one to opt for life over recognition and simply to accept the other’s point of view as the truth. The one who opts for life becomes the slave, the other becomes the master” (57–59).

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