



# RATIONALIZING TORTURE

## The Dance of the Intellectual Apologists

by James David Barber

**A**t this moment, thousands of citizens sit in their cells waiting for the next session of torture by their own governments. New techniques, such as painmaking drugs; pseudo-legal dodges, such as incommunicado detention and "disappearances"; ancient scenarios, such as children forced to watch the torture of their mothers—these practices have spread rapidly around the world. Amnesty International has tracked torture in nearly a hundred countries. Systematic, government-performed burning, shocking, smothering, cutting, crucifying, castrating—whatever horror you can imagine is probably being tried somewhere today. No government admits it. Most constitutions forbid it. But all you have to do is pay heed to the grisly accounts coming out of the trials of Argentina's former military rulers to see how deep and wide the morass of cruelty has become.

Many bear the responsibility of revealing and

working against torture—intellectuals in and out of universities, the press, government officials in this and other countries. Scholars and intellectuals play a particularly important role in shaping our perception of the extent of government-sponsored torture and what can be done to combat it.

At least since the age of Erasmus of Rotterdam, intellectual communities have held high the banner of humane learning. Our callings differ, but we share a common sense that our thinking has a purpose, an end beyond itself, which is to advance a civilization in which the human spirit can flourish. This ideal in no way contradicts the ideal of objectivity. In the actual conduct of research, sentiment is out of place. Theories must be subjected, coldly and systematically, to the test of fact, not bent to fit the hopes of the researcher. But in deciding what topics to research and what to make of the findings, we confront the fundamental obligation to put whatever talents we have to work on behalf of justice, freedom and compassion in the world. Generations of intellectuals have toiled to understand—and thus to contribute to healing—the miseries of

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humankind.

Of course, there have always been people who, shying away from the Erasmian principle, pursue instead whatever little puzzles help them while away the hours of tenured tranquility, comforting themselves with the thoughts that they, unlike Dr. Mengele, would never take part in the personal torment of the helpless. But there is an even darker path for the intellectual. At least since Machiavelli, scholars who would never dream of hurting anyone themselves have put their brains to work justifying cruelty by others. Some are cynics. Some are passionate careerists. But a good many think of themselves as realists who, alas, must undertake the awful business of crafting reasons for supporting, or at least ignoring, government brutality and murder. Such reasoning is often very subtle. It can connect with genuine realism, with the duty all of us bear to bring virtue into real life, not to be satisfied with merely hypothetical or vicarious decency. But what at first looks like reasonable compromise can easily drift over into the justification of cruelty. Even the most sincere torture abolitionist can be trapped by apparently sensible alternatives to the steady, adamant insistence that torture stop. The following are, I think, the major examples in our day.

## The progress trap

If the U.S. government makes foreign aid contingent on a nation's human rights performance, how is that performance to be judged? What mode of judgment will work—in the real world—to end abuses?

An obvious criterion would be to assess whether the nation's performance is *getting better*. If the nation's human rights record is improving, the aid will continue; if not, it will be cut down or cut off.

But the trap is also obvious. Putting aside the many ways governments can play with numbers, what constitutes progress? Recently Turkey, an ally of the United States and a government practicing torture on a massive and systematic scale, reduced from 45 days to 30 days the legal period of incommunicado detention in areas of emergency military government. That is when most torture takes place—during incommunicado detention, before family or friends or a lawyer can see the prisoner. Does that “progress” deserve approval and support from our government? The United States was asked to continue and increase aid to El Salvador because, in a given period, death squad murders declined

**‘I cannot emphasize strongly enough the favorable contrast between the current human rights situation in Guatemala and the situation last December.’**

**—Assistant Secretary of State Stephen Bosworth, July, 1982, praising the new government of General Efraim Rios Montt. Amnesty International reported that during the last six months of 1982 more than 2,600 Guatemalan civilians had been killed in more than 100 massacres.**

from the thousands to the hundreds. Was that supportable “progress”? What if the Soviet Union were to release Andrei Sakharov tomorrow—should that good news constitute “progress,” justifying a more generous economic policy by the U.S.?

Another way of posing the progress question is, how long? How long should it take a government to eliminate torture from its own practices in its own jails? Six months? A year? Five, ten, 20 years? Think of the analogy (inexact, but relevant) to civil rights in the United States: how long should a state be permitted to practice racial segregation in public schools before the federal government cuts off its funds?

We should welcome every step toward decency by an allied government. We should welcome every step by the United States government toward support of human rights. But in the name of the child being tortured today and tomorrow, we must not accept “progress” in this sense as satisfactory. That would be like allowing a murderer to continue because he has been murdering fewer lately.

## The prerequisites trap

It is written that Augustine, before he became a saint, lived with a mistress for 15 years, during which he prayed for the blessing of chastity, “but not yet.” The idea that torture should be absolutely and universally abolished—“but not yet”—gains credence and a fancy vocabulary in certain circles of modern social science.

The logic that prerequisites must be accomplished before torture can be abolished goes

**'Although I am not an apologist for Haiti's past problems with regard to human rights, I think it necessary that Congress establish and be open to a realistic perspective. Haiti is by all accounts the poorest country in the Western Hemisphere. . . . A country in such dire economic straits as Haiti can ill afford to jeopardize the political stability it has established thus far. . . . I am convinced that as Haiti's economic situation improves, so, too, will its record on human rights.'**

—Theodore Adams, Jr., president, Unified Industries, before the House Human Rights and International Organizations subcommittee, April 1985.

like this: Torture is but one relatively minor pathology in a society beset by much larger problems. Before we deal with torture, we must deal with the right to eat. As long as the economy is plagued by rocketing inflation, wild swings in the business cycle, disastrous dependency on fluctuations in world markets, and so forth, the government will fear for its life and thus resort to torture and other repressive measures. Therefore, if one is really interested in abolishing torture, one will begin by patiently and systematically working to stabilize the economy and thus establish civil peace. *Then* it will be possible to start the process of dismantling the torture system. Backers of Paraguay's dictator, Alfredo Stroessner, have been pushing this argument for more than 30 years of virtually continuous torture and repression.

The argument calls to mind the patient instruction American blacks used to receive from certain white intellectuals as to the conditions and developments that would have to pave the way for the march to civil rights. Martin Luther King, Jr. answered, in his book, *Why We Can't Wait*, that "the Negro wants absolute freedom and

equality, not in Africa or in some imaginary state, but right here in this land today." King's ancestors had lived through generations of torment waiting for the supposed prerequisites for the abolition of slavery to arrange themselves. From ancient slave rebellions to the women's movement of today, those demanding their rights again and again have been handed a plateful of "sometime" when they have asked for a serving of "now." It is that way with torture.

The intellectual prepared to put off the abolition of torture until the world is "ready for it" needs to imagine himself making that speech to a gang of brutes about to deal with his teenage daughter. But beyond its stone-hearted immorality, the prerequisites argument vastly exaggerates the calculability of politics. The test of prophecy in the social sciences is contingent prediction: on the basis of a theory, one poses as clearly as possible what will happen in the future, given certain conditions, and then tests the predictions explicitly against the actual results. But only a handful of daring or foolhardy scholars do that. Instead we have whole libraries full of post hoc wisdom, sociological tomes translating weak correlations into laws of nature, argument that relationships that held in the last era will hold in the next—theories denied by every great advance of rights in human history. Analysts mesmerized by the lure of precision can lose sight of the most elementary political facts of life.

Can a regime whose subjects hate it recruit popular support for social reform?

Does economic stability—or even strong economic growth—protect a torturing dictatorship from revolution?

Does a nation's international reputation as a vicious repressor of the rights of millions enhance or detract from its ability to lure foreign investment?

These questions answer themselves—and there is no shortage of examples directly evidential to each. Empirically speaking, torture *has* been stopped—in Greece, in Argentina, in Brazil, and elsewhere—but the socio-political conditions for that advance have varied widely. One set of prerequisites is clear, however: the determination of fellow human beings to get the facts of torture out into world consciousness and to press torturing governments to stop it once and for all.

## **The cultural relativity trap**

Twentieth century anthropology brought home a useful observation: people live differently, not just as deviants from a Western norm, but in a

rich variety of cultural patterns. We no longer call the outlanders "primitive" or "barbaric." No longer indignant, we are rather fascinated by the Zuni and the gentle Tasaday, the Masai and the Bushmen, the wonderful ways of the Eskimo. The liberal lesson is, judge not that ye be not judged; various cultures have their own dignity, their own integrity, their own respect-worthy differences from the American Way of Life. Generally we should let them be as they want to be, should protect them from our own disruptive exploitations and interventions.

How does that relate to torture? Well, the argument goes, in some cultures they think it more just to flog a man in public than to lock him up for five or ten years. Some cultures, take a very dim view of homosexuality or religious deviation and believe that torture is appropriate in such cases. In other cultures, what we call torture is to them nothing more than "behavior modification" or the treatment of mental illness by aversive conditioning. In short, cultures differ widely in the value they place on human life and the compassion they accord victims of torture. We have our values, they have theirs. They let us be, we let them be.

To destroy this line of sophistry requires but a moment's reflection on the meaning of what Tom Paine called "The Rights of Man." From time immemorial, cultures have supported cruelty—which never made it right. The "democratic" Greeks and the "gentle" Eskimos practiced child exposure. Aztec culture ripped out the hearts of maidens. Roman imperial culture developed the custom of crucifixion.

Rights in the human rights tradition reside in individuals, not cultures or groups. We assert the fundamental dignity of the person, not the clan. The doctrine of the American revolution declared *men* (today read: persons), not cultures or ethnic enclaves, equal and possessed of rights and applied those attributes to *all* human beings, not those in the neighborhood. A tradition of tyranny is no excuse for its existence one more day. That the *falaga* (beating of the soles of the feet) is fashionable in Iraq or the *cachots noirs* (totally dark cells for long-term detention) is a facet of Rwandan culture gives us not the slightest pause in demanding reform. We can respect cultural differences and still require nations which wish to have dealings with us to uphold certain standards of government conduct. If there is any principle this country stands for—at home or abroad—it ought to be respect for the individual per se. If any would insist that torture is somehow acceptable because it is culturally existent, let

them make it voluntary on the part of the victims.

## The blame trap

Intellectuals are notably prone to believe that when they have said something they have done something. Analysis can paralyze action, but it can also, curiously, substitute for action. Vigorously advanced distinctions, covered by the press as if they were events, slip into an equivalence with reports of changes in the flow of actual goods and services and bullets and bodies in the real world.

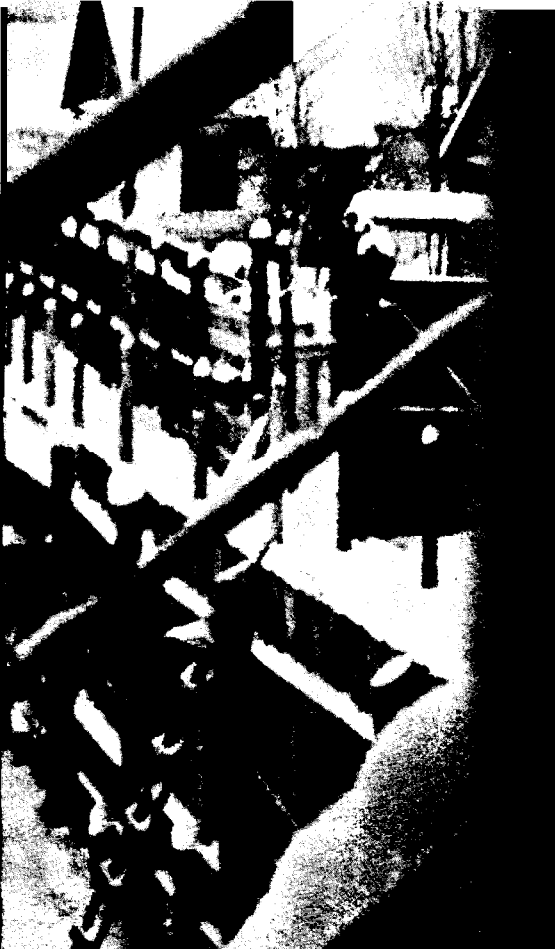
Consider the allocation of blame for torture. Is torture worse in the Soviet Union or in South Africa? How does Cambodia rate on a moral scale of torture in comparison to Iran? Is Turkish torture more or less hideous than Guatemalan torture? Is blundering torture to be more readily forgiven than efficient torture? Then: Within a national system, can the "government" be blamed for what the army does—especially in off-duty hours? Is torture *by* communists worse than torture *of* communists? Is "authoritarian" torture or "totalitarian" torture worse? Is torture for intelligence purposes more permissible than torture to intimidate opponents or to satisfy the sadist? Is torture of peaceful religious dissenters more awful than torture of violent revolutionaries? And so on.

The trouble with these delicate moral distinctions is that they contribute nothing to effective

**'It is not simply that different societies at different stages of development require widely different institutions for their survival and prosperity. Even when we are faced with a society which is grossly unjust in the sense that it maintains oppressive laws for which there is no conceivable excuse, we must pause before inferring that the members of that society have a right to the abolition of those laws.'**

—T.E. Utle, *Policy Review* 1978





**'The first requisite of a foreign policy is a nation's capacity for distinguishing between potential allies and potential aggressors. If this requisite is not fulfilled, no other considerations can compensate. I find the idea of strategic relations with Chile and South Africa not nearly as offensive to my moral values as I did relations with the Soviet Union in World War II, which were, however, necessary, indeed unavoidable.'**

—Robert Nisbet, *Commentary*  
November 1981.

action to stop torture. The truth about torture must be told: the world must know what is going on inside those fake Soviet "mental hospitals" as well as inside African dungeons. But knowing is not the same as doing. The government of the United States, in full knowledge that conditions may be worse elsewhere, should concentrate its efforts where they will do the most good, not merely focus attention on where the violations are the most evil. Our government's influence in Honduras and Turkey is, for example, considerably greater than our influence in Bulgaria or Iran. In the real world, each nation's primary obligation is to use its power where it can make a difference—a calculation involving a lot more than deciding where the blame lies thickest among the torturers of the world. In this field, merely moral comparisons are truly odious, for they distract from effective work to stop torture and result only in meaningless equations of blame.

## The national security trap

Perhaps the most common form of supposed "realism" in foreign policy is the argument that national security comes first. This school would convince us that the basic opposition is between moral idealists and practical leaders. The moralists, they say, distort and distract policy from its fundamental responsibility: to protect and advance the national interest. The essential national interest is military security—not being conquered. Moralists who would risk that result are not being moral at all; they toy with the destruction of civilization. The purpose of foreign policy, this argument continues, must be to build those alliances and mutual commitments that will best buttress the odds of survival in a dangerous world. A favorite example is the Philippines: surely our need to secure U.S. military bases there has to supercede our concern over what Ferdinand Marcos does to dissidents.

When it comes to torture by governments, the "realist" argument proceeds, we are in principle against it but in practice must permit our allies to operate on the same priority we do—namely, that their own military security comes first. Therefore when a government threatened by terrorism, revolution, or invasion jails dissidents, tortures to produce intelligence or intimidation, executes traitors or dangerous suspects, we must exercise understanding, must appreciate that their desperate situation contrasts with our secure one. Above all, if torture works to produce stability, our national interest may require us not only to

tolerate it but even to lend it our quiet support.

It is that little "if" around which this "realist" argument collapses. Even those prepared to set aside their morals cannot escape the facts. Far from producing stability, governmental brutality has again and again undercut the military security of states. Any attentive student of history can discern that cruelty arouses revulsion and, in the end, organized resistance. Regimes that fought dissent with terror—from perverted Rome down to the slaveholding American South, the British in India, the Japanese in Manchuria, and in our day torturers like the Shah of Iran, Idi Amin, and Somoza—have provoked the popular hatred that eventually helped to destroy them. Is there anyone prepared to argue that Batista's brutality built national security for his regime in Cuba? Is Castro *more* secure because his imprisonment and torture of dissidents and suspected or potential dissidents has engendered in thousands of Cubans a passionate determination to bring him down? Can any realist reasonably argue from the facts that the Marcos regime in the Philippines or the Botha regime in South Africa is *gaining* security by torturing more and more people into insanity in their prisons? If any case clinches the contemporary argument, it has to be Argentina, where mass torture and murder, far from securing the military junta in charge, precipitated its overthrow, arrest and trial.

The truth is that torture subtracts support from the torturing government and adds support to the resistance in other countries just as it would in our own. The mangled body of a teenager dumped in the village square scares everybody, but when the fear passes, hate takes its place. Those who must, flee elsewhere for protection. Those who can, find a gun and a group to fight with. When the response of the regime, counseled perhaps by modern "realists," is to step up its rate of cruelty to the helpless, the familiar process of polarization speeds up. The United States once again discovers itself facing a choice between a *butcher-ing government* and a resistance movement ready to take help wherever it can get it. The result—from Vietnam to El Salvador to Turkey—has been about as unstable a situation as we could have created had we set out to do so.

Thus even those prepared to cut and burn prisoners for a higher political purpose and even those unaffected by the reputation of the United States as the staunch ally of disgusting dictators ought to pause before the facts. If they are realists, it is in the medieval sense of those who believe in the pictures in their heads rather than in the realities of political life.

**'Authoritarian governments have significant moral and political faults, all the worst of which spring from the possession of arbitrary power. But compared to totalitarian governments, their arbitrary power is limited . . . [We need] a steady preference for the lesser over the greater evil.'**

—Jeane Kirkpatrick, *Commentary*,  
November 1981.

## The democracy trap

Critics of the human rights movement often say we are looking in the wrong place. The problem is not torture but economic exploitation, or famine, or inhuman ideologies, or the lassitude of the church, etc. The sophisticated version is procedural: we should not treat the symptom (torture) but the cause (dictatorship). The cure for torture is democracy. Specifically, according to this argument, if you get free elections in a country, the public will not stand for torture. If a representative national legislature is established, torture will be outlawed. If you get an independent judiciary, justice will prevent torture. If you bring the army and police under the control of civilian government, death squads will be effectively controlled. The key problem is to establish the rule of law and basic democratic institutions. Then the torture problem will take care of itself.

The great majority of human rights advocates are advocates of political democracy. But to suppose that the latter guarantees the former is to fly in the face of human history and common sense. It was no accident, in our own national history, that the ratification of the Constitution—a political system—could not be accomplished until there was attached to it a Bill of Rights—explicit guarantees of human rights. Issued by unanimous vote of Congress, endorsed by the recommendation of George Washington himself, advocated by the best brains of the American republic, the original Constitution supposedly needed no Bill of Rights because the procedures it set forth did not grant the government the power to deny basic freedoms. But as the text made its way to the states, skeptical patriots like George Mason and Patrick Henry rose up in ada-

**'We believe that when citizens have economic liberties, inevitable pressures lead toward greater political and civil liberties. This is precisely why totalitarian regimes are stubbornly opposed to economic liberties. Their economies stagnate under strangling and suffocating bureaucracies, but they do not dare to bestow economic liberties—for in their train all other liberties follow.'**

—Michael Novak, as U.S. representative to the United Nations Commission on Human Rights, 1981.

**'If we take sovereign equality seriously, we will recognize that the people of every state should determine their own system of justice and how they want to defend themselves against domestic or foreign dangers. . . . Freedom and justice are the fruit of long organic growth nurtured by religious values, personal courage, social restraint and respect for law. The majesty of law is little understood in traditional societies where ethnic identity tends to supersede all other claims on loyalty and obedience.'**

—Ernest W. Lefever, *Policy Review* 1978

mant resistance. Who could tell what the procedures would produce? Insist on the *substance* of rights—on free speech and religious liberty and the rest—and get it in writing, they said. In the years ahead, the resisters turned out to be right. No later than the regime of the second president, the federal government made it a crime to defame the president. Two centuries of United States experience make us grateful that the Anti-Federalists had sense enough to demand a tough Bill of Rights.

Today civilians control the Soviet police and armed forces, who engage in systematic torture from the Arctic Circle to Afghanistan. Today the judiciary system of South Africa grinds out its procedural decisions—condemning long trains of victims to the foulest of tortures. Today the national legislature of the Philippines has been unable to restrain the Marcos regime from daily torture in the jails and camps. Those who think a free election in Iran or Cuba today would topple those tyrannies are dreaming. In short, genuine democracy is far more than a set of mechanical processes of decision-making. Democracy is a structure—but also, and essentially, a culture in which structures are there to implement human rights, not to substitute for or replace them. It is important that this nation, founded on human rights, stand forth to insist that whatever the political machinery, its *result* must be "life, liberty, and the pursuit of happiness."

It is not the thrust of this argument that those who fight to end torture in the world should refuse to talk politics with those who have other priorities. Far from it. Our obligation is to be effective—to accomplish an end to the horror and blasphemy of torture. Effectiveness means persuading governments to change their ways, which in turn means entering into dialogue with the powers that be and those who can influence them. The first major contribution to the dialogue is information—revealing the facts of the torture epidemic—but we also seek cooperation in transforming information into policy. We will not make deals, in the political sense, with the fate of torture victims. But we will vigorously seek out allies to work with for the good of the cause.

In this field, what people think, or say they think, has consequences. Humane intellectuals can make a special contribution by pushing the key questions into the public debate and applying their findings to real change in the real world. The alternative is surrender to the sophists, who know perfectly well how to make cruelty look merciful. ■

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# WHOSE AGENCY IS IT, ANYWAY?

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## How OMB Runs EPA

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by Jim Sibbison

**B**efore he was elected president, Ronald Reagan complained that the Environmental Protection Agency lacked an understanding of industry's problems. In his five years in the Oval Office, he has changed all that. Today industry executives help rewrite some EPA regulations before they go into effect, giving corporations more influence over the nation's environmental policies than ever before.

The procedure works this way: EPA writes the first draft of a new regulation after receiving volumes of facts and opinions from industry, environmental organizations, and other concerned parties. This process is legal and similar to those in other government agencies. But Reagan has added an extra loop to the circuit. An executive order issued right after his inauguration in 1981 directs the White House Office of Management and Budget to clear every new EPA regulation before it is promulgated.

In time, most regulations win perfunctory approval. Occasionally, however, the projected cost to the affected industry is huge. In such situations, OMB officials have quietly teamed up with corporate representatives, who tell them how they want the regulation changed to reduce the cost. OMB has demanded that EPA make the necessary changes, and OMB tends to get what

it wants. No records of these OMB-business contacts are kept. It's all done in secret, outside of the law.

As a former EPA press officer, I can say confidently that even Richard Nixon never established an arrangement for corporate influence as ingenious as this one. To the contrary, when I was at EPA during the Nixon, Ford and Carter years, the White House would sometimes exert pressure on the agency's leaders to do industry a favor—no president ever lobbies for environmental causes—but its role was advisory and informal.

That's no longer the case. Looking back now, it's possible to say that the first known instance of the silent shift of power to OMB and the White House took place in the days of Anne Burford's tenure at EPA. Her chief of staff, John Daniel, noticed something strange about the way a water pollution regulation affecting the iron and steel industry was written after it came back from OMB. The language, Daniel noticed, was so technical that no OMB lawyer could have written it. He knew it had to have been done by industry personnel. The final version also happened to save industry a bundle of money. Daniel explained OMB's role in the matter at a House of Representatives hearing. When Albert Gore Jr. asked Daniel whether he thought OMB in general "acted as a back door channel to let the corporations affected hotwire the regulatory process to get the result they wanted," Daniel replied, "I

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