

# INTERROGATIONAL TORTURE

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## I. INTRODUCTION

Since 9/11 and the beginning of the war against extremist Muslim terrorists, questions about exactly what torture is and whether torture is ever morally justified have become a live issue. In previous wars, the question of exactly where to draw the line between torture and non-torture was not, at least in public, discussed in detail, and Americans generally assumed that the United States policy, both official and unofficial, unqualifiedly opposed what one would rightly call torture and indeed that the United States significantly differed from its enemies (the Nazis, the Soviets, and the North Vietnamese, for example) in this regard. However, perhaps partly because in this war the enemy is *avowedly* terroristic (openly intending to kill noncombatants in order to promote terror), in some circles it has been argued that there are some types of torture that can be morally justified. In this paper I will attempt to do three things: (1) identify the specific, distinct type of act (a specific type of choice) that should be called torture; (2) show that this type of act is intrinsically immoral; and (3) show that there are other types of acts, that some people sometimes call “torture,” that are not intrinsically immoral. Thus, I will conclude, *torture*, rightly defined, is intrinsically immoral.<sup>1</sup>

Examples of what people would generally call torture are not hard to come by: removal of organs, genital mutilation, searing with hot irons, electric shocks applied to genitals, extraction of fingernails. There also are mental torments that most would call torture: mock executions, prolonged sleep deprivation combined with drugs (to cause mental dis-integration). There are some acts that some people would call torture while others would not: being forced to stand or sit in unusually contorted and uncomfortable positions, being subjected to extremely loud and offensive music while being deprived of sleep, “moderate” sleep deprivation, and “water-boarding” (simulated drowning).<sup>2</sup>

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1. It seems that torture can be engaged in for different purposes: for punishment, as a deterrent, for satisfaction of sadistic feelings, or to induce someone to divulge important information. I will concentrate on the latter, often called “interrogational torture,” but my conclusions about torture in the proper sense will apply to it as done for any of the above purposes.

2. Water-boarding is generally cited as a separate type of coercive interrogation, and often not viewed as fitting the definition of torture. I discuss water-boarding more fully below, in section V.

A definition of what is generally meant by the word “torture” could be as follows: the infliction of severe pain and/or mental suffering for deterrence, for punishment, or sadistic pleasure, or to induce someone to divulge important information.<sup>3</sup> However, this presents what *the word* “torture” is usually thought to mean. The moralist is interested, however, in identifying specific human acts, that is, a single type of choice and execution of choice. It is often the case that an ordinary language term may group together into one class more than one type of human act. For example, some use the word “terrorism” narrowly so that it does not refer to military actions authorized by sovereign governments while others use it broadly enough to include governmentally authorized bombing of nonmilitary targets with the intention of undermining their enemies’ morale and breaking their will to fight. I will show that a similar phenomenon occurs with the use of the word “torture.” As defined above, the term refers to two distinct types of acts. I will argue that in the proper sense (that is, as picking out a specific type of human act), the word “torture” should only be used to refer to acts of mutilation or acts that attempt to reduce the detainee to a subhuman, dis-integrated state, for the ulterior purpose either of interrogation, deterrence, revenge, punishment, or sadistic pleasure. Henceforth, though, the focus of the paper will be on *interrogational* torture. I will first examine some frequently made responses to the question. I will then explain how torture should be defined, argue that it is intrinsically immoral, and distinguish from it other kinds of acts that are sometimes also called “torture.”

## II. SOME COMMON BUT INADEQUATE RESPONSES

There are three common but inadequate responses to our question. First, there is often a merely emotional response, or reliance upon a simple moral

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3. The United Nations Convention’s definition of torture is longer and (even though it is not concerned only with interrogational torture) its definition is in one sense narrower. Since it is interested strictly in the international legal issues surrounding torture, it focuses on severe infliction of pain that is state ordered or approved. It defines torture as follows: “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.” United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for Signature, Dec. 10, 1984, art. 1, para. 1, <http://www.hrweb.org/legal/cat.html>.

intuition, to back up an affirmation that all torture is intrinsically immoral. Sometimes this intuitionist approach is supplemented by a purported argument: torture violates the *dignity* of a human person and is therefore inherently immoral.

This latter point may be true, but it is a *conclusion*, not an argument. Dignity is not a quality possessed by persons that can be directly apprehended by an intuition. “Dignity” simply refers to that in persons which makes it such that we ought to respect them and care for their fulfillment. To say that an act violates a person’s dignity is really another way of saying that it is morally wrong or unjust. Moreover, the intuition that all torture is morally wrong contradicts intuitions by others that torture should be permissible in extreme circumstances—for example, in the ticking bomb scenario. So, it will not do to try to argue that torture is wrong because it violates the dignity of the human person; that argument begs the question.<sup>4</sup>

A second response is the utilitarian position. Plainly, if act-utilitarianism<sup>5</sup> were correct then one could not morally exclude torture, however defined. Indeed, the ticking bomb scenario often is used in order to appeal to explicit or implicit utilitarian assumptions on the part of the listener or reader. For example, suppose we have captured a terrorist who knows the location of a nuclear bomb that will go off within two hours (and so no time to evacuate the city), and he refuses to talk. Would it not be morally permissible in this one type of case to torture him?

However, I believe utilitarian arguments, even for actions that might prevent the destruction of whole cities, are profoundly misguided. There *are* intrinsically immoral acts, and they ought not to be done for the sake of avoiding even horrendous consequences. If it is true that torturing a person is intrinsically morally evil, then even if it appeared that doing so were the only way to obtain information about the whereabouts of a nuclear weapon planted in a populous area, one ought not to do it. One ought not to do evil that good (in this case, avoiding a terrible evil) may come from it.<sup>6</sup>

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4. *The Catechism of the Catholic Church* (2297) states that torture violates human dignity, but it does not present this as an argument.

5. What *rule* utilitarianism would say about this issue is not clear, so I will not pursue that question. Some have argued, from basically rule utilitarian grounds, to the general inadmissibility of torture. But—I think because of the inherent limitations in rule utilitarianism—they find it difficult to uphold an absolute prohibition when considering ticking bomb scenarios.

6. On utilitarianism: John Finnis, *Moral Absolutes, Tradition, Revision, and Truth* (Washington, DC: Georgetown University Press, 1991); John Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality, and Realism* (New York: Oxford University Press, 1987); Mark C. Murphy, *Natural Law and Practical Rationality* (New York: Cambridge University Press, 2002), 198-208; Patrick Lee, *Abortion and Unborn Human Life* (Washington,

A third gravely mistaken approach is the “dirty hands” defense. According to some, it *is* morally evil to torture, but sometimes one *ought* to do that which is morally evil. One ought to be willing to “dirty one’s hands” for the sake of saving thousands of people.<sup>7</sup>

This view may be simply incoherent. Yet, I think it is lent some plausibility by a widespread assumption (held by some Kantians as well as others) that moral goodness is a type of willing that is evaluated independently of how the will is related to real human goods. Some Kantians seem to hold that the only intrinsic good is the moral good, and a morally good act is one done for the sake of moral “purity.” That position invites the objection (spelled out in the “dirty hands” defense) that human lives, society, and so on *are* goods we cannot reasonably fail to protect, and therefore we ought sometimes to sacrifice our moral purity for them.

However, while moral goodness is a distinct good, it is not the only one. What is more, moral goodness consists in choosing in accord with a love of and respect for all of the other basic goods (such as life, health, understanding, society, self-integration, and so on).<sup>8</sup> Thus, moral goodness just *is* the love or respect for all of the basic human goods (involving active pursuit of some basic goods and openness to all) in oneself and in others, and so it is incoherent to hold that it might be reasonable to sacrifice one’s moral goodness out of concern or respect for other basic goods.<sup>9</sup>

### III. INTENTIONAL MUTILATION IS ALWAYS MORALLY WRONG

The first positive point I propose is that intentional mutilation, such as cutting off fingers, or searing with hot irons, is certainly intrinsically morally wrong. Not only life but also bodily integrity and health are basic human goods. Intentionally to damage bodily integrity or health is intrinsically morally wrong.

One might object as follows: it is permissible to kill an enemy combatant, but killing is worse than, or at least as bad as, mutilation, and so some forms of mutilation are morally permissible. One might support the argument further by saying that, while most POWs are as such noncombatants (since they have been taken off the fighting field), nevertheless, one who has information about

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DC: Catholic University of America Press, 1996), Ch. 5.

7. An example of this argument is: Henry Shue, “Torture,” *Philosophy and Public Affairs* 7 (1978) 124-43.

8. Here is not the place to defend this basic position. See, for example, the references *supra*, note 6.

9. See John Finnis, *Fundamentals of Ethics* (Washington, DC: Georgetown University Press, 1983), Ch. 5.

the location of a bomb or a plan that will kill thousands of lives, perhaps noncombatant lives, remains a combatant. It is morally permissible to kill combatants, and so it is morally permissible to maim or mutilate a terrorist in order to stop an attack or foil a plan.

In reply, first, one should note that if this objection were correct then it would justify the most grisly torture imaginable on detainees who are likely to conceal important information: flaying, burning, slow dismemberment and so on.

Second, the central problem with this argument is that even a detainee with potentially life-saving information, and who is involved in a plan to kill innocent people, is a human being, a person, and not a lab rat or an insect. And so it remains morally wrong to choose precisely to damage or mutilate such a person. The reason why it is permissible to kill enemy combatants is, not that they have ceased to have basic rights, or that their lives are no longer intrinsic goods which morally demand respect, but because their death is (or can be ) a side effect of the use of force to stop an attack.<sup>10</sup> So, their being enemy combatants—if that is true—would not, in my judgment, morally justify intentionally damaging a basic human good. The deaths and injuries even to enemy combatants during war are, in my judgment, morally justified only as side effects of stopping the aggression.<sup>11</sup> By contrast, in mutilating (as a way of torture), the damage to a basic human good is a means directly intended, not a side effect.

#### IV. INTENTIONAL DIS-INTEGRATION OF THE DETAINEE'S PSYCHO-SOMATIC UNITY IS ALWAYS MORALLY WRONG

Often, torture has involved a complex set of activities, prolonged over a long period of time, involving several degrading and mentally debilitating practices, and (of course) very severe pain. The reason for this is clear. If the detainee is committed to his cause or his country, then physical coercion alone is generally not sufficient to induce him to divulge important information. This is why torture techniques often involve a set of actions which as a sum

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10. This point, of course, is controversial. An individual is morally entitled to use force to stop an attack, say, against his family, even if he foresees that this force will also result in the death of the assailant. Likewise, a nation can use force to stop the aggression of another nation or group upon it. The soldier's actions are part of this communal act of stopping the force of the aggressor nation or group. Hence a soldier, even when shooting directly at the head or midsection of an enemy soldier, can rightly view his action as stopping part of the force of the nation's or group's communal force, and the combatant's death as a side effect.

For a defense: Germain Grisez, *The Way of the Lord Jesus*, vol. 2, *Living a Christian Life* (Chicago: Franciscan Press, 1993), 474-475, 891-911.

11. See Finnis, Boyle, and Grisez, *supra*, note 6, 309-318.

are aimed not simply at increasing discomfort or physical pain, but rather, at “breaking” the detainee, in the sense of reducing him to a state of “dis-integration.”<sup>12</sup> That is, torture often aims at isolating the individual from any moral support of friends, causing profound disorientation, attempting to destroy even the remnants of a healthy self-image, causing profound disharmonies among the various aspects of the self, including the self as bodily and the self as intentional agent, and, if possible, causing an utter lack of hope. In short, often the aim is to reduce what is originally a self-determining subject, to the level of one who will do whatever it takes to stop the torment. The aim is to “break” the detainee, in this full sense.<sup>13</sup> It is generally said by ex-POW’s that every person has his breaking point, a point at which finally he cannot help but say whatever is necessary to stop the pain (physical and mental). At that point, it is generally recognized, he is not morally responsible for his actions.

The torment, then, need not be entirely, or perhaps even chiefly, physical in nature. The purpose of using a hood (instead of a band to cover only the eyes) is to deprive the detainee of his self-image and to give him the sense of suffocating. The purpose of prolonged sleep-deprivation is to produce profound confusion and disorientation; the purpose of contorted positions is, in part, to produce a feeling of dependence on the captors.<sup>14</sup> In other words, what is important to assess is the whole set of actions together. Their aim (in torture) is literally to *dis-integrate* the various aspects of the detainee—the body and psyche, cognition and volition, bodily self from physical locale (or sense of locale), self from community, the present self from his long-term commitments and hopes, and so on. The various harmonies among the aspects of the self and of the self to other people and places—these harmonies help the detainee to protect his secrets. The aim, then, is, if necessary, to destroy those harmonies. But that means that in this type of act, the intention of the torturer is directly contrary to a basic human good, namely, the basic good of self-integration, and probably also against the basic good of bodily integrity.

The unity or harmony among the different aspects of the self is a basic human good. It is clear that such harmony is sometimes an ultimate reason for

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12. Cf. Seumas Miller, “Torture,” *The Stanford Encyclopedia of Philosophy* (Spring 2006 Edition), ed. Edward N. Zalta, <http://plato.stanford.edu/archives/spr2006/entries/torture/>.

13. David Sussman includes this aim as an essential component in torture. See David Sussman, “What’s Wrong with Torture?” *Philosophy and Public Affairs* 33 (2005) 1-33; Miller, *supra*, note 12, also includes it in his definition. I agree. Physical mutilation is on a continuum with this more complete form of dis-integration.

14. Requiring detainees to assume stress positions, if done to induce discomfort, rather than as part of a set actions to “break” the detainee, would be a different type of act, and would not (I believe) qualify as torture.

action: one may choose to rest, for example, or to simplify one's schedule, just for the sake of harmony among one's various pursuits or harmony between the physical and the psychic aspects of oneself. What is generally referred to as "insanity" seems to be a privation of self-integration. Of course, one might argue that this psycho-somatic unity, and other harmonies, are really aspects of the basic good of health, but I believe physical health should be distinguished from this broader harmony. Still, if I am mistaken in this, that does not affect the general argument, for then torture aimed at "breaking" the detainee (in the full sense) would violate the basic good of health (broadly understood) instead of the basic good of self-integration.<sup>15</sup>

If one has viewed films of confessions made by prisoners having undergone such torture—a famous example is the "confession" by Joseph Cardinal Mindszenty, after being tortured and drugged by the Communists in 1949—one can see that the person has been reduced to a state where he is functioning at a sub-human, almost animal-like level (because his behaviors are easily strictly controlled by his captors).<sup>16</sup> Clearly, someone in that type of condition suffers the deprivation of a basic human good; this is not just a condition where one is in pain or experiencing fear (though these are included). Rather, "breaking" the detainee seems to consist in bringing the detainee to that type of condition.<sup>17</sup>

Seumas Miller holds that the detainee's loss of control over his body, and the torturer's gaining control over it, is an essential aim of torture:

At the very least the torturer is intentionally exercising control over the victim's body and his attendant physical sensations, e.g. extreme pain. Indeed, in an important sense the victim's body and attendant physical sensations cease to be his own instrument, but rather have become the instrument of the torturer. Moreover, by virtue of his control over the victim's body and physical

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15. What is usually referred to as the good of integrity is distinct from what is focused on here. "Integrity" usually refers to *moral* goodness. Here I am focusing on the harmonies among the other aspects of the self, such as the bodily and the conscious, the sense to the past of one's hopes for the future, and so on, which might be included under what one generally views as psychological health.

16. I recall seeing a film of Cardinal Mindszenty's public confession, however, I do not now know where it might be available. For a written account of Mindszenty's treatment: Joseph Vecsey as told to Phyllis Schlafly, *Mindszenty the Man* (St. Louis: Cardinal Mindszenty Foundation, 1972), Chs. 7-10.

17. It should be noted that the term "breaking the detainee" or "breaking the will of the detainee" need not always refer to bringing the detainee or prisoner to the deprived state I have described. These terms *could*, in some circumstances (though I think rarely) be used by an author to refer simply to changing the detainee's mind or will by somewhat rough measures. I am using these terms to refer to bringing the detainee to such a deprived state that his actions are no longer carrying out free or morally responsible choices.

sensations, the torturer is able to heavily influence other aspects of the victim's mental life, including his stream of consciousness; after all, the victim can now think of little else but his extreme suffering and the torturer. In short, torturers who torture human beings do so with the (realized) *intention* of substantially curtailing the autonomy of their victims.<sup>18</sup>

The points Miller makes are important. But I think his choice of the word "autonomy" in the last sentence is incorrect. As Miller defines it, torture violates not just autonomy, but the integration of the different aspects (the rational and the animal, for example) of the person, and it does so intentionally.<sup>19</sup> The argument here is not simply that this type of act is a violation of the autonomy of the detainee. It would not be intrinsically wrong if only autonomy, at least autonomy in the sense of liberty (absence of restrictions on one's external actions),<sup>20</sup> were concerned. Autonomy as liberty is not itself a basic human good, and thus it is permissible directly to intend to deprive a person of autonomy in this sense—otherwise imprisonment as punishment would be immoral, given that, as I hold, basic human goods ought not to be intentionally harmed. The problem is not that this type of act is coercive; the problem is that it aims directly at dis-integration, and usually physical damage—that is, these privations are not usually side effects but are directly intended.<sup>21</sup>

One might wish to place certain humiliating activities in a different category. For example, what should one say about forcing the detainee to engage in degrading and humiliating acts, for example, forcing detainees to make sounds like farm animals, or leashing them like dogs? I do not see an

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18. Miller, "Torture," *supra*, note 12.

19. Miller, *supra*, note 12, helpfully distinguishes between "breaking the will" of the victim minimally and doing so maximally. Breaking the will of the victim in the maximal sense involves a destruction of autonomy or control over actions in *all* areas, a *complete* self-abnegation of the victim to the torturer. Breaking the will in a minimal sense "is causing that person to abandon autonomous decision-making in relation to some narrowly circumscribed area of life and for a limited period." If "breaking the will" in this minimal sense includes the aim to reduce the detainee to a "dis-integrated" state, then it also involves an intention contrary to the basic good of self-integration.

20. Mortimer Adler, *Freedom: A Study of the Development of the Concept in the English and American Traditions of Philosophy* (Albany, NY: Magi Books, 1968); Germain Grisez, *Beyond the New Morality*, 3rd ed. (Notre Dame, IN: University of Notre Dame Press, 1988); Robert P. George, *Making Men Moral*, (NY: Oxford University Press, 1995).

21. Thus, the fact that detainees who have engaged in terrorist activities do not qualify as combatants legally protected by the Geneva conference, or by other international agreements excluding torture and cruel, inhumane, and degrading treatment, is irrelevant to the moral argument presented here. It is not their status as POWs that grounds our obligation not to intentionally reduce them to a "dis-integrated" state, but the fact (if the argument is correct) that doing this to them involves choosing contrary to a basic good in them.



argument that morally excludes all such actions in every circumstance. However, it is not clear that such actions would be effective as means of interrogation, except as part of a whole pattern of actions aimed at “dis-integration.” Moreover, it seems to me that such actions are likely to induce in the interrogators feelings of cruelty and to encourage them to regard the detainee as sub-personal, and so (for this reason among others) should not be allowed.

This point about “dis-integration” can provide a clear rationale for what the Israeli Supreme Court concluded in 1999. The Israeli court argued that some acts that cause discomfort are inherent in the nature of the investigative procedure. Thus, cuffing for the purpose of safety, and to avoid eye contact with the detainee, as part of the “mind game” involved in trying to get him to talk, is permissible. But cuffing that is designed to cause excruciating pain is not (I would add, not because causing excruciating pain is in itself wrong, but because this particular type of causing of pain is likely to be effective only as part of a complex set of acts designed to “break” the detainee, in the full sense). Covering the detainees’ eyes is justified for the purpose of safety, but a complete hood, for the purpose of suffocating or giving the feeling of being suffocated (said the Israeli court) is not.<sup>22</sup> On sleep deprivation, the court said this:

The suspect, subject to the investigator’s questions for a prolonged period of time, is at times exhausted. This is often the inevitable result of an interrogation, or one of its side effects. This is part of the ‘discomfort’ inherent to an interrogation. This being the case, depriving the suspect of sleep is, in our opinion, included in the general authority of the investigator . . . . The above described situation is different from those in which sleep deprivation shifts from being a ‘side effect’ inherent to the interrogation, to an end in itself. If the suspect is intentionally deprived of sleep for a prolonged period of time, for the purpose of tiring him out or ‘breaking’ him—it shall not fall within the scope of a fair and reasonable investigation.<sup>23</sup>

In short, according to the Israeli court—and on this point I think it is correct—a political government lacks the authority to aim precisely at reducing the suspect or detainee to a sub-human or animal-like state. I hold that a political state lacks that authority because doing so involves intending the damaging or diminishing of basic human goods.

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22. Supreme Court of Israel, “Judgment Concerning the Legality of the General Security Service’s Interrogation Methods (September 6, 1999),” in *Torture, A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 174.

23. *Ibid.*, 176.

## V. INTENTIONAL INFLICTION OF PAIN IS NOT ALWAYS MORALLY WRONG

So far, I have concluded that intentional mutilation and intentional reduction of the detainee to a state of “dis-integration” are morally wrong. In fact these two seem to exist on a continuum: in torture as defined there is an intention to disrupt, harm, dis-integrate, whether physically and/or psychosomatically. The intention to mutilate and the intention to cause “dis-integration” do not belong to distinct types of human act, but are, different ways of carrying out the same type of intention. However, there is an act that is distinct from these that is sometimes included within the class of acts of torture, but I think mistakenly so. This act is the intentional causing of pain without intending real damage or harm, whether physical or psycho-somatic. Pain is not in itself an intelligible evil. Evil as such is the privation of a good, but pain is not a damage to a basic human good. Rather, it is a type of sensation. Pain sensations are functions of the nervous system and as such not inherently destructive—though, of course, they are usually connected to an injury, because they normally are sensations of an actual or impending injury.

Moreover, there seem to be many instances of intentionally causing pain that are not morally bad. It seems (at least to many people) that spanking young children is not necessarily morally wrong. Again, a dentist might probe the cavity in a tooth in order to cause pain so as to identify the place where the decay is.<sup>24</sup> The pain is not a side effect; it is the precise means by which the end is attained. Physicians act likewise: an orthopedist may twist one’s leg to find out where the knee will hurt in order to determine whether one’s problem is a torn ligament or a damaged cartilage.

So, directly intending pain is not in itself immoral, and it might be thought to be morally right intentionally to cause severe pain in a detainee, not in order to “break” him, but as a means of persuading him to divulge important information.

To evaluate this proposal, we must first get a clearer idea of what physical pain is. The most thorough analyses of physical pain have shown that pain is a complex experience which essentially includes a cognitive component, and is usually followed by a negative affective reaction—both are, or are realized in, physical states.<sup>25</sup>

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24. Robert G. Kennedy, “Can Interrogatory Torture be Morally Legitimate?” Paper presented at Joint Services Conference on Professional Ethics, Washington, D.C., January 30-31, 2003, <http://www.usafa.af.mil/jscope/JSCOPE03/Kennedy03.html>.

25. Michael Tye, “A Representational Theory of Pains and Their Phenomenal Character,” *Philosophical Perspectives* 9 (1995) 223-39, 333; Michael Tye, “On the Location of Pain,” *Analysis* 62 (2002) 15-153; Bennett W. Helm, “Felt Evaluations: A Theory of Pleasure and

These components are usually fused together so that what is referred to as “pain” is often the complex experience including both the sensation and the affective, aversive reaction. As Murat Aydede points out:

Normally, the affective and sensory dimensions of what might be called ‘the total experience of pain’ are somewhat fused together to give the phenomenological impression that we experience a singularly homogeneous quality of pain. . . . This is the basis of the illusion that pain is essentially and singularly that horrible, awful, abhorrent feeling.<sup>26</sup>

So pain is not in itself bad. What is bad is the object of certain pains, not the pain itself.<sup>27</sup> When one says that pain is bad, what one usually means is simply that it is repugnant,<sup>28</sup> to one degree or another.<sup>29</sup> However, this repugnant aspect of the pain experience—that horrible, awful, abhorrent feeling—is part of the healthy functioning of an animal when he or she is injured (or experiencing a bodily change tending toward injury), and thus it is not bad in the sense in which death, sickness, loneliness, broken promises, and so on, are bad.<sup>30</sup> Pain is not itself a damage or a harm. Rather, *given that* an injury has occurred or a change that threatens injury, pain is part of the functioning of an animal in accord with its design, part of his healthy functioning. Of course, it

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Pain,” *American Philosophical Quarterly* 39 (2002) 13-30; G. Lynn Stephens and George Graham, “Minding Your P’s and Q’s: Pain and Sensible Qualities,” *Nous* 21 (1987) 395-405.

26. Murat Aydede, “The Analysis of Pleasure Vis-à-vis Pain,” *Philosophy and Phenomenological Research* 61 (2000) 537-570, 552. Joseph Boyle and Germain Grisez have convinced me that the negative affective reaction to the sensation should not be included in the definition of pain. The argument in this paper, however, would not be changed if pain were defined in a more inclusive sense.

27. Cf. Germain Grisez, *God: A Philosophical Preface to Faith* (South Bend, IN: St. Augustine’s Press, 2004), Ch. 19. Also see my “The Goodness of Creation, Evil, and Christian Teaching” *The Thomist* 64 (2000) 239-270, and “Evil as Such is a Privation, Reply to John Crosby” forthcoming in *American Catholic Philosophical Quarterly*.

28. One *could* mean (though rarely) that a pain is dysfunctional; but that would mean the pain is disordered, that is, that the pain sensation has a privation in it.

29. This point is supported by the experience of patients with frontal lobotomies, or people under the influence of cocaine, who report that they feel pain that does not hurt, that is, they feel what they usually feel when they say it hurts badly, but they do not find the experience repugnant. See Murat Aydede, *supra*, note 26, and the references to the scientific literature there. Evidently these patients experience the cognitive component of pain without its affective response (note that the affective response is both physical and conscious).

30. So, if by “bad” one means *repugnant* or *aversive*, then it is correct to say that pain is “bad.” But in that same sense one might say that broccoli is “bad” and yet add that it is *really* good for us.

is not *simply* a good, since it is the sensation of an actual or impending injury.<sup>31</sup>

There seem to be three types of pain. First, some pains involve some localized tissue damage but do not involve a harm to the animal-organism as a whole. For example, in doing sit-ups or weight-lifting to develop one's muscles, one experiences pain. And one intends to do so since only if there is a bit of pain has one exercised sufficiently—one intends the pain as a sign. Similarly, if one moderately spansks a young child, the child feels pain but there is no overall physical damage done to him (one could debate whether spanking causes mental traumas but that is irrelevant here). Second, pain may be a sensation of a bodily change that is only an impending but not yet actual harm. For example, intense heat or cold are painful before they actually cause damage. Third, pain is often the sensation of a bodily change that actually is a harm. The first two types of pain occur without real damage being suffered: either because the change in the body being sensed (and reacted to) is not yet an injury, or the injury (say, slight tearing of muscle tissue) is not detrimental to the organism as a whole.

In sit-ups or weightlifting some tissue is damaged and that is what one feels, but this slight damage to the muscle tissues is actually advantageous for the person (as an animal-organism) as a whole—it spurs the muscles to rebuild larger or more strongly. Likewise in the child's being spanked some tissue is damaged, but usually children are spanked on the behind where there is enough fatty tissue so that pain receptors are exercised but there is no significant damage to muscle tissue, and the child (as a physical animal-organism) as a whole is not harmed. Likewise, the dentist probing the cavity to find the point of decay intends pain but not harm. The harm is already present and he is causing the nerves to act as they have been designed, namely, to inform one of a wound and press one to do something about it. Thus, sit-ups, lifting weights, perhaps spanking, and the dentist or physician intentionally causing pain, need not be immoral because, although in such cases pain is intended, harm is not intended.

Given these points, the following proposal should be considered. Suppose the military or the police could cause intense pain without causing, and thus without intending, real damage. Suppose an electrical device could be implanted in a key spot in the nervous system (probably in the spinal cord), that could directly stimulate those neurons whose stimulation (conveying of electric potential) caused the experience of pain. That is, the pain would not be caused by damaging the part of the body in which it was perceived; rather,

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31. For a book-length, illuminating discussion of this issue see: Frank T. Vertosick, Jr., *Why We Hurt, The Natural History of Pain* (New York: Harcourt, 2000).

the sensation of pain would be directly caused without, or with minimal, damage (and if there were damage it would be a side effect). This seems to be not just theoretically but also practically possible. The purpose would be, not to “break” the detainee in the full sense (which *is* intrinsically immoral) but to motivate the person being interrogated to choose to reveal the information. Would it be morally right in some circumstances?

I do not see why not, if done for a short period of time. The reason for the restriction to a short period of time is that it seems that a *prolonged* use of such a procedure would obtain the information only by means of eventually “breaking” the detainee (so that the harm to self-integration would be directly intended). That is, one could see that “breaking” the detainee (in the full sense) would be necessary as a means of bringing about one’s end, and so it would be intended. Except for a problem about a near occasion of sin—which I explain below, in the conclusion—I do not see that such a procedure would necessarily be immoral if done for a short period of time: no basic good would necessarily be directly attacked, it would not necessarily be unjust, and a good end would be intended.

However, I seriously doubt whether this procedure—done for a short period, done not in order to “break” the detainee, but only in order to provide motivation—would be very effective. Pain *by itself* does not seem effective in the military situations envisaged in the current debate about what should and should not be allowed in the interrogation of suspected committed terrorists. This is why *prolonged* beating, and *prolonged* deprivation of sleep, together with other methods (hooding, forcing the detainee to stand or sit for hours or days in contorted positions), plus other activities, have been resorted to.<sup>32</sup> In such actions, however, it seems that there is a complex set of actions designed to reduce the detainee to a “dis-integrated” state.<sup>33</sup>

Nevertheless, application of pain, together with other “mind games” or forms of trickery—not in order to reduce the detainee to a “dis-integrated” state, but to persuade him to divulge information, or to induce him to do so inadvertently—would seem not only morally permissible, but perhaps also effective in some cases. I conclude that intentionally causing severe pain for short periods of time, perhaps joined with mind games and trickery, but not

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32. It should be noted that a new U.S. Army manual bans torture and degrading treatment of prisoners, specifically forbidding forced nakedness, hooding, beating prisoners, sexually humiliating them, threatening them with dogs, depriving them of food or water, performing mock executions, shocking them with electricity, burning them, and a technique called “water boarding” that simulates drowning. See the news report of this at, for example: <http://www.cbsnews.com/stories/2006/09/06/terror/main1976599.shtml>. These prohibitions have also been applied to interrogations performed by the C.I.A.

33. Often, no doubt, this motive would also be mixed with sadistic urges.

intending to “break” the detainee (in the full sense), is *not* intrinsically immoral.<sup>34</sup> Moreover, considered as a human act, this is an essentially distinct type of act from intentional mutilating or bringing the detainee to a state of “dis-integration,” and so this type of act is *not* torture.

#### VI. OBJECTION: MORAL CORRUPTION OF THE DETAINEE?

It might be objected that in applying pain (and mind games and trickery, perhaps) to motivate a detainee to divulge information about his plans or his comrades, we are trying to induce him to violate his conscience, malformed as it is, and inducing someone to violate his conscience is morally wrong. Indeed, it might be argued, if we “broke” (in the full sense) the detainee, then his divulging of information would not be a freely chosen act and so would not violate his conscience (as malformed as it is). But, by avoiding the intention to “break” the detainee, we are doing something worse, namely, scandal in the strict sense, that is, inducing someone to do something immoral.

It is true that it is immoral for A to intend that B commit an immoral act, for example, adultery or perjury, even though A may not intend precisely the other’s moral corruption. That is, there is a difference between:

P<sub>1</sub>: A intends the *immorality* of B’s act, or B’s *moral corruption* as a means toward an end; and

P<sub>2</sub>: A intends that B perform an immoral act, but the *act*, and not precisely the *immorality* of the act or the *moral corruption*, is the means toward A’s end.

An example of P<sub>1</sub> might be choosing to morally corrupt an enemy agent as a means of making it easier to persuade him to betray his comrades. This is intrinsically immoral, for to intend, either as an end or as a means, the privation of a basic good is (as argued above) always is immoral, and moral goodness is, of course, an instance of a basic human good.

But P<sub>2</sub> also is intrinsically immoral. It would be wrong, for example, to induce Smith to commit adultery even if Smith’s moral corruption is not precisely what one intends. Suppose Smith is an enemy agent and one

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34. Whether water-boarding is torture in the proper sense is not clear. It seems to be a very effective practice for obtaining desired information, but it does not seem to cause at least any long-lasting harm. One might at first think that it is an instance of mock execution, but it does not cause the detainee really to think that he will die. One might argue that it does not reduce the detainee to a “dis-integrated” state, because the process seems to be effective so quickly. It seems to bring about in the individual an almost intolerable *feeling* of impending harm or even death. On the other hand, one might argue that being in such a state *is* being in a severely “dis-integrated” state. If the first argument is correct then I think it is not torture and that it is (in some cases) morally permissible. If the second argument is correct, then it is torture and it is morally wrong. I am not sure which argument is correct.

employs an attractive young woman to get him to commit adultery so that he can be easily and quietly taken into custody. This would be wrong even though the precise moral wrongness of the act would not be intended. Similarly, one might argue, to choose that someone make a choice that violates his conscience also is immoral, even though one need not intend precisely the moral corruption involved in his act.

However, the reason why inducing someone to commit adultery is intrinsically wrong is that the choice to commit adultery is intrinsically wrong, and to choose that someone make a choice with a moral privation in it is intrinsically wrong. If one wills that an immoral choice be made—even if one wills that the choice be made *by someone else*—then one wills the content of that choice. So, if one wills that someone choose to commit adultery, then one cannot will merely the physical components of that act. Although one does not choose the privation itself (as one would if one chose to morally corrupt him as a means of gaining his collusion), still, the privation in the act of will that one chooses that someone else make, also inheres in one's own choice.

However, adultery is an objectively immoral act; but the choice to divulge information about terroristic plans or the whereabouts of a bomb meant to kill innocent people is *not* objectively immoral. Of course, the detainee's choice *may* violate his conscience, but its violating his conscience (unlike the choice of adultery in the case of inducing someone to choose adultery) is not the content of one's act. Also, its violating his conscience need not be intended: all one need intend is that he divulge the information. He may divulge the information because: (a) although it does violate his conscience he chooses to do so for the sake of avoiding pain, (b) he realizes that it actually is his duty to do so, (c) he is now uncertain what his duty is and he does not see a good reason to continue putting up with the pain, (d) he judges that he is entitled to make choices analogous to "living to fight another day," or (e) he performs an act of spontaneous willing without any act of choice, that is, he spontaneously wills to do the act without first deliberating, without first comparing the option of doing this with other options.<sup>35</sup> So, since any of (b) through (e) would bring about one's end, it follows that one need not intend (a), that is, that he violate his conscience. In other words, one need only intend that he divulge the information—its violating his conscience, if that occurs, would be a foreseen possible side effect, not directly willed.<sup>36</sup>

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35. Germain Grisez, *Way of the Lord Jesus*, vol. 1, *Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983), 416; id., *The Way of the Lord Jesus*, Vol. 3, *Difficult Moral Questions* (Chicago: Franciscan Press, 1993), 896-7.

36. I owe the argument here to a comment from John Finnis on an earlier draft of this paper. Thanks also are due to Germain Grisez, Chris Tollefsen, Peter Ryan, S.J., Gerard Bradley, and Robert P. George, for clarification of this issue.

Moreover, if someone thinks that the choice to kill innocent people to further one's political aims is morally right, then this erroneous conscience may very well be—in fact, probably is—a *culpably* erroneous conscience. For the knowledge that intentionally killing innocent women and children is morally wrong is surely one of those truths one arrives at naturally and with little effort.<sup>37</sup> But if the detainee's conscience is culpably darkened, then allowing him to continue to act in accord with this erroneous conscience would only make his conversion to the truth about the human good, and other important truths, say, truths of faith, even more difficult. So, allowing him to act in accord with his conscience would actually *not* help his moral integrity, but rather the reverse.<sup>38</sup>

## VII. CONCLUSIONS

I have concluded the following: (1) Torture should be defined as: violent physical acts upon a detainee, with the intention of mutilating the detainee or bringing him to a subhuman or animal-like state in which he will inevitably do whatever it takes to stop the torment. (Mutilation and reduction of the detainee to a state of “dis-integration” are on a continuum, the first being severe physical harmful disruption and the second severe psycho-somatic harmful disruption, so mutilation and psycho-somatic “dis-integration” form a single moral object, not two distinct ones.) (2) Torture is intrinsically immoral, because it involves intentional harm to a basic human good. (3) Intentional causing of severe pain, for short periods of time (combined perhaps with mind games and trickery), without intending physical harm or intending to reduce the detainee to a state of “dis-integration,” is not torture, and is not intrinsically immoral.<sup>39</sup> (4) Application of severe pain for *prolonged* periods of time is probably morally wrong, since it is likely to be effective only by means of first reducing the detainee to a “dis-integrated” state.

It also should be noted, however, that there is an especially acute problem here of placing oneself into near occasion of sin and the likelihood of scandal in the strict sense (leading others into sin). In war and especially in wars against terrorists, there is a real temptation to view the detainee as sub-human or as a positive evil in a Manichean fashion. Coercive interrogation offers the investigator the opportunity to wallow in his (partial) victory. So there is a

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37. On this point see St. Thomas Aquinas, *Summa theologiae*, I-II, q. 19. a. 5.

38. I am grateful to John Finnis for indicating this point to me.

39. These conclusions do not exclude practices of causing discomfort (uncomfortable temperatures, for example, and/or loud and repulsive music), together with methods of trickery (for example, “good cop-bad cop” routines). These methods, however, should not (at least just by themselves) be classified as torture.



temptation to demean in a profound way the captured enemy, to savor the enemy's subjection, powerlessness, and one's own power over him. So, although this consideration does not show that every act of intentionally causing severe pain to a detainee would be objectively immoral, the problems of (to use the convenient labels of theological moralists working in a natural law tradition) "near occasion of sin" and "scandal in the strict sense" are especially acute. It sometimes is justifiable to enter into what generally is a near occasion of sin, but one must modify it so as to minimize risk.<sup>40</sup>

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40. Germain Grisez, *Living a Christian Life*, *supra*, note 10, 221-224.

