



ASeTTs
Association for Services
to Torture and Trauma
Survivors

HAVE WE BECOME TOO FIXATED ON TORTURE? John Kleinig

**The United Nations Day in
Support of Victims of Torture**

ASeTTs Occasional Paper 2008



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Have we become too fixated on torture?

By John Kleinig

ASeTTS Occasional Paper 1

August 2008

ISBN 978-0-9805474-1-2

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Produced by the Association for Services to Torture and Trauma Survivors as part of United Nations Day in Support of Victims of Torture, June 26 2008 and the International Rehabilitation Council for Torture Victims (IRCT) "Let's erase torture" campaign.

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June 26th
The United Nations Day in Support of
Victims of Torture

HAVE WE BECOME TOO FIXATED ON TORTURE?

John Kleinig

The Association for Services to Torture and Trauma Survivors
(ASeTTS)

Occasional Paper 2008

***ASeTTS Vision** is for a more peaceful and just world where human rights are recognised, violations of human rights are challenged, and where there is support for people who have endured torture and trauma, and for their families.*



***Mission Statement:** ASeTTS aspires to be a leading organisation of recognised international excellence in:*

- *the provision and promotion of comprehensive & holistic services to people who have endured torture and trauma resulting from unjust persecution and violent conflict.*
- *continuous research & development into their needs, and*
- *service innovation & quality improvement.*

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ASeTTS
**Assisting Torture
and Trauma Survivors**

Introduction by Norma Josephs, CEO, ASeTTS

As an accredited member of the International Rehabilitation Council for Torture Victims (IRCT) ASeTTS participated in the IRCT's global campaign in recognition of the United Nations International Day in Support of Victims of Torture. The day reminds us that torture is a crime and provides us with an opportunity to stand united and voice our opinion against torture, a cruel violation of human rights. The 26th June was the day that the Convention Against Torture came into force. It was also the day that the United Nations Charter was signed - the first international instrument to embody obligations for Member States to promote and encourage respect for human rights.

ASeTTS, in partnership with the Centre for Human Rights Education at Curtin University and with support from Amnesty International WA organised a public lecture which was given by Dr John Kleinig.

Dr Kleinig holds professorial positions at the Centre for Applied Philosophy and Public Ethics in Canberra as well as City University of New York, USA and has published extensively on ethics and criminal justice issues.

Dr Kleinig's talk was titled "*Have we become too fixated on torture?*" His premise was that the other aspect of the UN Convention Against Torture which refers to "other cruel, inhuman or degrading treatment" has been somewhat neglected in terms of international outrage as we focus on torture. While the existence of torture should result in widespread disgust and legal sanctions, the impact of this focus may also legitimise other methods used to break down perceived "enemies" in the fight against terror because it is "not so bad" as it is not actually torture in terms of the Convention's definition. John refers to this as "torture lite".

To balance the very tough lecture about torture, two recipients of ASeTTS' Enrichment Fund Scholarship spoke at the event and shared with the audience how the scholarship had assisted them.

On behalf of ASeTTS' staff and community I would like to commend all those involved in this important event.

IRCT Statement for Global Reading on 26 June, 2008 - Read by Janet Holmes à Court, ASeTTS' Patron

Ladies and gentlemen,

For over a decade, the world has marked the 26 June as the occasion of the UN International Day in Support of Victims of Torture. On this day, thousands of individuals and organisations around the globe speak out against torture and insist that torture survivors' needs and rights be fulfilled.

Among those who raise their voice on this day are the treatment centres and programmes affiliated with the International Rehabilitation Council for Torture Victims – the IRCT. Today, on behalf of ASeTTS I am proud to read out this statement, which is being delivered by dozens of human rights defenders in many other countries across the world right now. It is a statement of global solidarity, to show that regardless of where we are, we raise a collective voice to say NO to torture. It is a statement in honour of those who have suffered under torture's cruel hand; and a reminder to us all that no matter where we live or work, there are torture survivors among us. Daily they show extraordinary courage as they attempt to heal from the physical and mental wounds of their experience.

"Let's erase torture" is the theme for the global 26 June campaign. With this theme, we're calling upon policy-makers as well as the general public to act to eradicate torture, and to assist survivors toward erasing the scars of torture from their bodies and minds.

Rehabilitation services – such as medical care, counselling, legal aid and social support – are a way to heal those scars. Within the IRCT's global membership of 139 treatment centres and programmes, each year more than a hundred thousand torture survivors and their families receive such services.

However, in spite of the vital services they provide, many of these centres struggle to find the resources to continue their work, and to extend their hand to those in need. But you can help by ensuring, in whatever capacity you are able, that they can keep their doors open. If you are a policymaker, you can help to prioritize rehabilitation services by passing legislation that supports survivors' rights to treatment and redress. If you are a donor, you

can financially support your local treatment centre or the IRCT. And as a citizen there are many ways you can offer your support - through donation of time, resources or money to your local centre or by speaking out about the importance of rehabilitation in your community.

Your efforts are important! Because sadly, torture is not a phenomenon that exists "somewhere else" – it is widespread in more than one hundred countries, and anyone can become its victim. The good news is that there are tools to help us wipe the slate clean and create societies without torture.

Among them is the United Nations Convention against Torture, which came into force on 26 June 1987. This convention commits the authorities in each and every country to actively prevent torture and to support survivors and their families when torture has taken place. Another key tool is the Convention's Optional Protocol, which obliges its signatories to establish mechanisms for independent monitoring places of detention – one of the primary places where torture occurs. Important as they are, many states have not ratified these instruments, and among those who have, some continue to systematically practice torture and ill-treatment.

Ladies and gentlemen,

As concerned citizens we must call upon our governments to ratify and abide by these and other international conventions, which aim to protect men, women and children from the awesome power of the state. Speaking out against torture – breaking the silence – is a vital first step to bring perpetrators to justice and to honour survivor's needs and rights.

Today, let us pay tribute to the dignity and strength of torture survivors everywhere. It is in their name that we issue the call "Let's erase torture" – so that all of us can live in a world where the man-made disaster called torture is wiped away.

Signed:

Desmond Tutu, Archbishop of Cape Town, South Africa

Abdel Hamid Afana, IRCT President

Brita Sydhoff, IRCT Secretary-General

Have We Become Too Fixated on Torture?

Dr John Kleinig

Exactly five years ago, on this day and occasion (the United Nations International Day in Support of the Victims of Torture), the US President George W. Bush issued a statement in which he asserted – and I quote – “The United States is committed to the worldwide elimination of torture and we are leading this fight by example.”¹

Something is dreadfully wrong with this picture. Although the president’s statement was made before the murky events of Abu Ghraib (in Iraq) and Bagram (in Afghanistan) became public, it was also made well after international complaints about the treatment of detainees at Guantánamo Bay. The President’s statement was also made well after the preparation of several influential US Executive memoranda that sought to secure all the supposed benefits of interrogatory torture by defining – or should I say redefining – “torture” so narrowly that relatively few options for the painful extraction of information were denied to interrogators.² As some of you may remember, in August 2002, a Memorandum to the President’s counsel, then Alberto Gonzales, stated that the infliction of pain did not amount to torture unless it was qualitatively similar in intensity to that “accompanying serious physical injury such as organ failure, impairment of bodily function, or even death.” In the case of mental harm, it was necessary that the threat or infliction of pain be such as to “result in significant psychological harm of significant duration, e.g., lasting for months or even years.” Moreover, as Australians are aware from the case of Mamdouh Habib³, by October 2001, there was already in place – should it have been needed, as the US authorities obviously thought it was – a system for outsourcing interrogations to countries and people well practiced in the use of torturous techniques.

Perhaps we should not have been surprised at this. Although the sixteenth century Renaissance helped to foster a new appreciation of the human body, not as the wayward container of an immortal soul but as deeply

integral to our human being⁴, the humans who came to this appreciation were pretty much the same as those who populated the earth before the Renaissance, and so they remained just as capable, should they have deemed the circumstances to require it, of inflicting the most terrible suffering and indignity on their fellows. No doubt it is true that those of us who have had the benefit of an upbringing in liberal democratic societies are not frequently confronted with state-sponsored torture inflicted for the purpose of punishment, terrorization, reprisal, the extraction of confessions, or even sadistic pleasure. Nevertheless, most – if not all – liberal democracies have resorted to torture when the stakes have seemed to warrant it. It was not in some primitive and barbarous past but only several decades ago, that the Holocaust took place in the very same society that had nurtured some of the greatest and noblest examples of human creativity, and the current crop of so-called “enhanced interrogation techniques” did not emerge after 9/11 out of nothingness but were honed only a few decades ago in Northern Ireland and Israel, and detailed in CIA manuals prepared for Latin America.

Although I am realistic enough to think that – unlike smallpox – we will never eliminate torture and its moral cognates from our social environment, I think there are a number of things that we may do to assist in its minimization. One of these, I will suggest, is that we – and here I mean those of us who enjoy the benefits and privileges of liberal democratic polities – turn some of our attention from torture and focus instead or as well on what is referred to in international documents as “cruel, inhuman, or degrading treatment.” Let me try to explain.

I begin with three observations that indicate our vulnerability to various kinds of political manipulation if we focus too narrowly on torture.

First of all, “torture” is a very graphic term, embedded in philological roots that focus our attention on its more dramatic representations, such as the rack and screw, electrocution, and disembowelment. It comes from the Latin word for twisting and evokes ideas of both the bodily twisting that often constitutes torture and the writhing that torture itself produces, and

so we tend to associate torture with very direct and painful physical invasions that distort the body. This image, I will soon suggest, enables us to be manipulated into discounting the moral seriousness of other things we may do to people to bend them our way or break them.

Secondly – and in some ways a related point – “torture ” is a term with unclear boundaries. The United Nations Convention Against Torture defines it in part as:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for [a variety of] purposes .”⁵

But what constitutes “severe” pain or suffering? A 1984 Memorandum stated, restricted to what it referred to as only “extreme” or “the most egregious” conduct? Is severity determined by the victim or

“Torture,” like “terrorism,” is a word to be captured for one’s own political purposes.

by some external criterion, such as the use of certain techniques or instruments, or the duration of their use, or their likely long-term consequences? And if we include, as the Convention does, mental suffering, does it qualify as torture if what appears to be menstrual blood is smeared on the bodies of devout Islamic detainees⁶, or if reprisals against one’s family are threatened,⁷ or if someone is injected with a so-called “truth serum” such as sodium pentathol?⁸ There is a lot of room for political manoeuvring. “Torture,” like “terrorism,” is a word to be captured for one’s own political purposes.

And thirdly, torture has historically been a descriptive term, not an evaluative one. As a concept, it is more like killing than it is like murder. It refers to the deliberate infliction of severe pain on those who have no power to resist its imposition. There is nothing in the traditional understanding of torture that marks it out as an act of cruelty or inhumanity, or as degrading. In past eras, torture was seen as an acceptable punishment option or as a legitimate strategy for extracting confessions. It is largely since the Renaissance, with its renewed

appreciation of the importance of the human body and its elevation of cruelty into the foremost of vices,⁹ that torture has come to be associated with a way of acting toward others from which we now recoil.

These three factors – its graphic associations, loose boundaries, and descriptive character – have, in the current debate, permitted a considerable amount of fudging so far as torture is concerned. Those opposed to the use of various interrogatory techniques on detainees in the so-called “war on terror” have laboured mightily to argue that various kinds of sensory deprivation (such as the elimination of light and sound sources), or sensory overloading (such as constant exposure to bright lights and loud noise), or the use of various forms of sexual or ritual humiliation, or enforced standing for long periods or the use of stress positions or some combination of these, constitute torture. In doing so they have attracted the scepticism or downright derision of those who want to argue that there is a big gap between having electrodes attached to one’s genitals and having to endure a lap dance, or between having one’s fingernails pulled out and standing in place for several hours.

On the other hand, those who have wanted to employ what they variously call “counter-resistance” or “enhanced interrogation techniques” or “moderate physical pressure” or who have wanted to discount what is done simply as “harsh treatment” – something that might legitimately be imposed on certain kinds of people (much as we might speak of sentencing someone to prison “with hard labour”) – these people have been able to exploit the traditional images associated with torture to confine it to certain extreme invasions of the person. That was the point of the August 2002 memorandum, and though it was later formally withdrawn after the damage was done, it has continued to be the contention of the Bush administration that the techniques it uses do not rise to the level of torture. And this has allowed an ongoing debate about whether what is called waterboarding (that is, the simulated experience of drowning) is a form of torture. Even though it has historically been included in catalogues of outlawed torture techniques, the current US

administration has wished to keep it as an interrogatory option.¹⁰

One attempt to create rapprochement between these opposing stances has been to draw a distinction between traditional torture and what has come to be referred to as torture-lite. Although the distinction has been used primarily by those who are opposed to the use of sensory deprivation and overload, sleep deprivation, sweatboxes, forced standing, and stress positions, the term has sometimes proved attractive to a few of those in favor of their use. Those opposed to the use of such techniques have wanted to employ it in order to assert the connection that such techniques have with torture at the same time as providing some acknowledgment that there is a *perceptual* difference between conduct traditionally associated with torture and the interrogatory techniques approved by the US administration. It is their hope that, by asserting the connection between such techniques and torture, the opprobrium now felt toward torture will transfer to those techniques. Those on the other side, however, focus on the associations that go with “liteness,” in the belief that torture-lite can be morally differentiated from full-blown torture, in the same way that we try to differentiate a safe beer or low-fat food product from its regular version. Torture-lite, it is suggested, does not have the unhealthy associations of full-strength torture.

When it comes to spelling out the distinction in greater detail, the proponents of torture-lite are often aided by considerations that alter what is seen as the moral psychology of torture.¹¹ One of the classic complaints about torture is that it has a brutalizing effect on those who inflict it or, alternatively, that torture makes psychologically extreme demands on those directly responsible for its imposition. Not many of us could bring ourselves to flay another person or to gouge out his eyes. But it does not take the same kind of resolve to turn the music up and leave bright lights on; it does not take too much effort to leave someone in a sweatbox or in a rigid standing position. Unlike traditional torturers, who directly inflict an immediate pain on their victims, the contemporary interrogator can often act indirectly: the pain – both physical and psychological –

frequently intensifies only gradually,¹² and the process is often overseen by psychologists who provide it with the cachet of professionalism.¹³ For the agent of torture-lite, the psychological difference can be quite considerable – just as there is a psychological difference involved when a soldier must use his bayonet to confront an enemy and when a bombardier presses a button to open the bomb hatch.¹⁴ Moreover, in the event that the effects are traumatizing, it is much easier for their implementer to avail himself of a “complete defence” by claiming that what was done was done in “good faith.”¹⁵

It is of course possible – even likely – that I am over-drawing the psychological gap between traditional torturers and modern-day harsh interrogators. Those of you who are familiar with Philip Zimbardo’s Stanford Prison Experiment in 1971¹⁶

“When we act cruelly toward another we violate a basic moral requirement to respect another’s integrity, and allow that person to control his or her own response to the world. “

or Stanley Milgram’s obedience experiments from the 1960s¹⁷ will know that it may not take too much to move someone who is capable of administering torture-lite to inflicting torture heavy – or even, alas, to persuade someone to inflict torture who showed no previous tendency to inflict it.

The critical question, however, is whether, whatever distinctions we may be able to draw between one kind of torture and the other, they will be of any *moral* significance. Does the fact that it *feels* different to inflict one kind of suffering rather than another make a moral difference to what we do?

Now, without denying that torture of the traditional kind is something that we should regard as beyond the moral pale, I want to suggest to you that we are wrong to give our attention to drawing fine-grained and disingenuous distinctions between it and so-called torture-lite. What I think we should be doing is focusing our attention on the broader category of which traditional torture is but one expression. And that is the morally

vested category of “cruel, inhuman, or degrading treatment.” The United Nations Convention Against Torture, which came into force on this day in 1987, has as its full title, The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. What makes for the evil of torture is that it is cruel, inhuman, or degrading, or all three. And what is egregious about the various strategies that constitute so-called “enhanced interrogation techniques” or torture-lite is that they too involve the use of cruel, inhuman, or degrading treatment, or all three. What makes torture wrong also makes wrong the use of these other techniques.

First, the use of enhanced interrogation techniques, no less than the infliction of traditional torture, is *cruel* insofar as they cause deliberate and gratuitous pain and suffering to another. The pain is not accidental to some other purpose, such as extracting a tooth, but is the very point of what is done to another as a means of realizing some purpose, whether it is extracting information or a confession. When we act cruelly toward another we violate a basic moral requirement to respect another’s integrity, and allow that person to control his or her own response to the world. The pain we deliberately inflict on another threatens to cannibalize that person’s consciousness, and to destroy his or her capacity to focus on anything but it and the conditions for its alleviation.

This violation of integrity is exacerbated in the case of both torture and the use of enhanced interrogation techniques because it also constitutes what Henry Shue calls an “assault on the defenseless.”¹⁸ In a boxing or wrestling match, the contestants may seek to cause pain to each other of a kind that will further their respective sporting goals. In the case of torture and enhanced interrogation techniques, however, not only is the pain suffered not something that is consented to, but there is, at least so far as its infliction is concerned, no contest. Physically, at least, the victim is completely within the power of the interrogator, and part of the interrogator’s purpose is to impress this on the interrogated person. Whether the interrogated person is subjected to intense heat or cold,

placed in a stress position, or deprived of sleep, he or she has no physical resources to resist what is being perpetrated on him or her.

Secondly, the use of such techniques can also constitute *inhuman* treatment because they reflect a disregard of what the humanity of others requires of us. Understanding ourselves as human carries with it a sense of how others may appropriately relate to or deal with us. We are creatures who exercise a certain agency or decision-making ability, one that is characterized by emotional and physical sensibilities, along with capacities for perception and reflection. And our relations with other human beings are to be governed by a recognition that what is appropriate to relations with us is also appropriate to our relations with them. But the interrogator who uses enhanced techniques or torture disregards, subverts, or tramples on such requirements of interpersonal engagement by seeking to eliminate the considered judgments and free agency of another or at least by coercively exploiting those capacities to get from them what they would otherwise be denied. The other person is not treated in a way that is reflective of treatment that is appropriate for those who possess the sensibilities of a human being.

And thirdly, the use of such techniques, no less than torture, is often *degrading*. The background to an understanding of degrading treatment is the idea of human dignity. What human dignity consists in is a complicated and much debated issue, though the appeal to human dignity has become the lynch-pin of most international human rights declarations, and in the Convention Against Torture it is put forward as its basic moral resource.¹⁹ I would suggest to you that there are two parts to the idea of human dignity. One refers to our capacity to be guided not simply by reason but by moral considerations. One of our very distinctive human abilities is to see the world not simply as posing challenges to be met by whatever means we can use, but through a lens that distinguishes acceptable from unacceptable ways of achieving those ends. The other part of the idea of human dignity is constituted by our actually living that out – by exercising that capacity for moral discernment in the way in

which we go about our lives. Degradation is a derogation from human dignity. We can of course degrade ourselves by casting aside the expectations that go with our capacity for virtue. But we can also degrade others by treating them in ways that cause them to give up the constituents of their dignity. Reducing another human being to one who can no longer control his bodily functions, to one who can no longer guide his actions according to his best judgment, or to pitiful whimpering or begging, is to degrade that person, and we know from accounts of those who have been subjected to various enhanced interrogation techniques as well as torture that they are often degraded in just those ways.

So there is, then, a very important moral synergy between the use of enhanced interrogation techniques and torture. If we are deeply troubled by torture we ought also and no less to be deeply troubled by enhanced interrogation techniques. Both run foul of the strictures we recognize against cruel, inhuman, or degrading treatment.

But is there, perhaps, something more to be said about torture that morally distinguishes it from other forms of cruel, inhuman, or degrading treatment?

Some commentators have thought so. David Sussman has recently suggested that in interrogatory torture the victim's body is used as an agent of self-betrayal, so that the torture victim thereafter feels alienated from his body.²⁰ But though that way of looking at torture may illuminate something about the devastation that torture often causes, it may be no less applicable to cases of torture-lite, in which a person's body or deepest self may also be exploited to cry out against him or her to accede to the interrogator's demands. It is not simple physical pain that makes certain techniques so destructive but the psychological impact that they have, and this can be brought about through threats and other psychologically invasive practices no less than through direct physical interventions.

But defenders of enhanced interrogation techniques will also argue that torture differs qualitatively from other forms of cruel, inhuman, or

degrading treatment by virtue of its *extreme* character. There is a continuum of cruelty, inhumanity, or degradation, they will say, and torture stands at the upper end of that continuum. The difference in *quantity*, it is claimed, is so great as to constitute a difference in *quality*. Though we may wish an absolute ban on torture, it is asserted that we have some moral leeway with impositions that are less extreme. Such a view may even be implicit in the UN Convention Against Torture, which singles out torture as something prohibited in all “circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency.”²¹ There is no absolute prohibition on other forms of cruel, inhuman, or degrading treatment.

There is little doubt in my mind that the internationally recognized absolute ban on torture (and the absence of an absolute ban on other forms of cruel, inhuman, or degrading treatment) is one factor that drives the current US differentiation of torture from those other forms of cruel, inhuman, or degrading treatment. For when – after narrowing the definition of “torture” and after revelations concerning abuses in US detention facilities and the use of enhanced interrogation techniques – Senator John McCain sponsored an amendment to the 2006 Department of Defense Appropriations Act that would have outlawed all cruel, inhuman, or degrading treatment, he was vigorously opposed by the White House until it became clear that support for the amendment was overwhelming.²² After it was passed, President Bush then issued one of his now notorious “signing statements,” in which he indicated that he would not allow the amendment to interfere with his judgment as Commander in Chief.²³

Were torture not absolutely outlawed, there might have been a greater willingness to see it and other forms of cruel, inhuman, or degrading treatment on some sort of continuum, with the more severe forms harder to justify and requiring more extreme circumstances before they could be sanctioned. That indeed is the way in which quite a few commentators would prefer to see it. What is commonly touted as the ticking bomb

scenario, in which a potentially devastating weapon has been set to go off imminently by a person whom the authorities have in custody, is often used to argue that even torture may occasionally be justified. But that is not an option the Convention recognizes, and so the strategy has been to narrow the definition of torture.

The result is that we have become transfixed by what is and what is not torture and have lost sight of the underlying values that make all cruel, inhuman, or degrading treatment deeply problematic. I do not, of course, wish to deny that we can make some differentiation among different kinds of cruel, inhuman, or degrading treatment and see some instances as being more seriously wrong than others. Just as some thefts are more serious than others and some assaults are more serious than others, I see no reason to deny that some acts are crueller, more inhuman, or more degrading than others. But the question to consider is how we are to make these differentiations. Is it by distinguishing certain graphic techniques from others, calling the former torture and the latter simply “enhanced interrogation techniques” or at worst “torture-lite”? Or do we measure them by the way in which they derogate from human dignity and impact on the ongoing life of the human person? That is not determined by a particular set of techniques – one that judges needles under nails as torture but confinement in a sweatbox as an enhanced interrogation technique. Yet this is precisely what the United States authorities have done and what many of us have to varying degrees bought into.

Let me briefly mention some of the troubling aspects to this concern with techniques. A simple but important one is that we can easily fail to appreciate how devastating a seemingly sanitized technique can be. There is a 2002 memorandum from William Haynes, the General Counsel of the US Department of Defense to the then Secretary of Defense, Donald Rumsfeld, asking for approval to use certain categories of “counter-resistance techniques,” including one that requires Guantánamo detainees to stand in position for up to four hours. Donald Rumsfeld’s signed approval is at the bottom of the memorandum, but he also took the

opportunity to add a handwritten notation: “I stand for 8-10 hours a day. Why is standing limited to 4 hours?” It is a terrible judgment on those who are given the responsibility to approve certain techniques that their comprehension of what enforced standing in position can do is so limited.²⁴ But as I mentioned earlier, a similar lack of comprehension may attach to those who use them, given the psychological distancing that can be involved.

Another problem concerns the fact that what the US classifies as Category II techniques – such as the use of stress positions, sleep and sensory deprivation, and so forth, those that were initially given a green light – can be used either singly or cumulatively, and they are much more potent if they are used cumulatively.²⁵ And so a technique that may be officially permissible and even appear tolerable on its own can have catastrophic consequences if combined with other officially permissible techniques. I mention this not as a theoretical possibility but as something that actually occurs. Being stripped, sexually humiliated, and confronted by snarling dogs is cumulatively worse than each on its own.

Yet another important reason for not focusing on techniques is that there is now – as we might have suspected – a body of empirical evidence showing that the psychological effects of using lower category techniques tends to be just as lasting and devastating as those associated with more traditional forms of torture.²⁶ And this is because what is most invasive about torture and its cognates is not mere physical pain, but the psychological impact that it may have. The psychological impact of confronting someone with simulated executions can be just as traumatic and lasting as using a thumb screw.

But there are also special worries associated with torture-lite that may not be applicable in the case of traditional torture. If you’ve had your nails pulled or eyes gouged or back flayed you carry the marks of your suffering, and in the important and difficult process of social rehabilitation your scars may evoke sympathy. If, however, you have suffered from techniques whose scars are mostly psychological, it may be

difficult to convince others of the horror of what you have gone through and so elicit the support that you need.

This brings me to an issue on which I wish to close. I have of course been talking mainly about the United States – about “them” not “us” – and it is tempting to see what has been occurring as something from which we Australians are distanced and

“...what stands between us and others is only a thin veneer and the absence of circumstances that would prompt us to perpetrate the same kinds of indignities as we see being justified in the name of the war on terror.”

over against which we can stand in some sort of judgment. But if there has been any implicit message in this lecture it is that what stands between us and others is only a thin veneer and the absence of circumstances that would prompt us to perpetrate the same kinds of indignities as we see being justified in the name of the war on terror.

Australia was built on the flayed backs of convicts and the degradation of its native peoples. And if we want to confront the present we have the recent shameful treatment of those who have sought unauthorized refuge in this country. I have no problem with a nation seeking to implement an orderly immigration system, any more than I have with a country seeking to respond to terrorism. But neither purpose warrants policies and practices that are cruel, inhuman, or degrading to those whose conduct we have not authorized.

One reason that I have sought to deflect attention from torture to cruel, inhuman, or degrading conduct is that otherwise we can too easily ignore our own complicity in treatment that falls short of international standards. This falling short is not restricted to the past – that is, for failings that we might seek to cover with the patina of benevolent ignorance – but applies no less to our current responses to problems within indigenous communities and with unauthorized refugees. And we should never forget the daily degradations perpetrated in some of our prisons. Although I have reason to think that, for the most part, Australia’s prisons are vastly better

than those in the United States, the hiddenness and power relations and sometimes the social conditions of prison life almost inevitably create opportunities for cruel, inhuman, or degrading treatment.

A few years ago, Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, published a Report, *Persecution to Prison*, on the health consequences of detention for asylum seekers. Not surprisingly, they found that many who sought asylum in the United States had already been damaged by experiences in the countries from which they had come, and putting them in detention centers pending determinations on their applications served only to exacerbate their problems as well as to precipitate additional ones.

And so on this international day in support of the victims and survivors of torture, we should not focus our attention exclusively on the distant horizons of Iraq, Afghanistan, or Guantánamo Bay, or for that matter, on the even more distant horizons of China or Egypt or Israel, but recognize that the flesh and blood that binds us all as members of the human family carries within it possibilities for our own cruel, inhuman, or degrading treatment of others, and that we must be ever vigilant to ensure that what we recoil from in others we do not perpetrate ourselves.

On a happier note, let us be grateful for and supportive of those groups – such as ASeTTS – that are engaged in the long and arduous task of helping to rebuild lives that have been broken not only by torture but also and as often by other forms of cruel, inhuman, or degrading treatment and punishment. It is not, as this day might otherwise encourage us to believe, just about “surviving” torture but, as Twilla and Mark Welch suggest, about “prevailing” over the experience of it.²⁷

Notes

I am grateful to a number of people for the direct and indirect influence they had on the preparation for this lecture. I mention, in particular, Louis Frankenthaler, Jessica Wolfendale, and Nick Evans.

1. President George W. Bush, Statement by the President on the United Nations International Day in Support of Victims of Torture (June 26, 2003) <<http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html>>.

2. Some of these memoranda are collected in Karen J. Greenberg & Joshua L. Dratel (eds.), *The Torture Papers: The Road to Abu Ghraib*, New York: Cambridge University Press, 2005, though others have emerged since then. The quotation comes from a long memorandum dated August 1, 2002, over the name of Jay S. Bybee (Assistant Attorney General), addressed to Alberto Gonzales (Counsel to the President), *The Torture Papers*, 172-217. The main author, however, was John Yoo. This Memorandum was later disavowed, and others were retracted, though only after strong protests. See Mike Allen & Susan Schmidt, "Memo on Interrogation Tactics Is Disavowed: Justice Document Had Said Torture May Be Defensible," *Washington Post*, June 23, 2003, A1; Press Briefing, White House Counsel Judge Alberto Gonzales, June 22, 2004 <<http://www.whitehouse.gov/news/releases/2004/06/20040622-14.html>>. See also the Memorandum for Commander SOUTHCOM, from Secretary Rumsfeld, 15 Jan. 2003 <<http://www.defenselink.mil/news/Jun2004/d20040622doc7.pdf>>. It is clear, though, that there has been continuing White House support for enhanced interrogation techniques. It was not until July 2007, in response to a US Supreme Court decision in 2006, that President Bush issued an executive order requiring that treatment of detainees conform to the Geneva Conventions Common Article 3. The evolution of US policy and practice is traced in Phillippe Sands, "The Green Light," *Vanity Fair*, May 2008 <<http://www.vanityfair.com/politics/features/2008/05/guantanamo200805>>.

3. *The Trials of Mamdouh Habib* (SBS, Dateline, July 7, 2004) (transcript <<http://www6.sbs.com.au/dateline/index.php?page=archive&daysum=2004-07-07#>>; Joint Press Release, Attorney-General The Hon. Daryl Williams AM QC MP and Minister for Foreign Affairs and Trade The Hon. Alexander Downer MP, Mamdouh Habib in United States Custody (Apr. 18, 2002) <<http://www.ag.gov.au/www/attorneygeneralhome.nsf/0/49DF56AF955E312CCA256B9F007F44FA?OpenDocument>>; <<http://www.foreignminister.gov.au/releases/2005/>>

joint_ruddock_habid_110105.html>. See also <http://en.wikipedia.org/wiki/Mamdouh_Habib>; <<http://news.bbc.co.uk/2/hi/asia-pacific/4214747.stm>>; <<http://www.washingtonpost.com/wp-dyn/articles/A51726-2005Jan5.html>>.

4. For a useful discussion, see Daniel Baraz, "Seneca, Ethics, and the Body: The Treatment of Cruelty in Medieval Thought," *Journal of the History of Ideas*, 59, no. 2 (1998): 195-215.

5. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1 <http://www.unhcr.ch/html/menu3/b/h_cat39.htm>.

6. See Maureen Dowd, "Torture Chicks Gone Wild," *New York Times*, January 30, 2005; "The Women of Gitmo," *New York Times*, July 15, 2005.

7. For the range of ways in which family may be used as an instrument of "torture," see Aviel Liner *Family Matters, Using Family Members to Pressure Detainees Under GSS Interrogation* <<http://www.stoptorture.org.il/en/node/1039>>.

8. See Linda M. Keller, "Is Truth Serum Torture?" *American University International Law Review* 20 (2005): 521-612.

9. Judith Shklar argues that it is not until Montaigne (1533-1592: "Of Cruelty") that cruelty is put forward as the chief of vices. See *Ordinary Vices*, Cambridge, MA: Harvard/Belknap Press, 1984, ch 1: "Putting Cruelty First." See also note 3 above.

10. Whatever the ultimate outcome of that debate, US authorities have been willing to use it on at least three high-profile detainees.

11. I am indebted to Jessica Wolfendale for some of the points that follow.

12. From the perspective of the victim of such techniques, there is uncertainty about how much worse it will get, an intensifying factor with respect to the suffering caused.

13. See *Review of DoD-Directed Investigations of Detainee Abuse* <<http://www.dodig.osd.mil/fo/Foia/DetaineeAbuse.html>>. See also Jane Mayer, "The Experiment," *The New Yorker* (July 11, 2005) <http://www.newyorker.com/archive/2005/07/11/050711fa_fact4>; David Luban, "Torture and the Professions," *Criminal Justice Ethics*, 26, no. 2 (2007): 2, 58-66.

14. A more subtle form of brutalization may, however, be institutionalized as forms of harsh treatment become entrenched. See Mental Health Advisory

Team (MHAT) IV. (2006). Operation Iraqi Freedom 05-07 Final Report. November 17. Office of the Surgeon Multinational Force – Iraq, and Office of the Surgeon General – United States Army Medical Command, 34-42 <http://www.armymedicine.army.mil/news/mhat/mhat_iv/MHAT_IV_Report_17NOV06.pdf>.

15. Memorandum to Alberto Gonzales (August 1, 2002), in Greenberg & Dratel, *The Torture Papers*, 175.

16. Stanford Prison Experiment <<http://www.prisonexp.org/>>. See also Craig Haney and Philip G. Zimbardo, “The Past and Future of U.S. Prison Policy: Twenty-Five Years After the Stanford Prison Experiment,” *American Psychologist*, 53 (1998): 709-27.

17. Stanley Milgram’s *Obedience to Authority: An Experimental View*, New York: Harper & Row, 1974; see <<http://www.stanleymilgram.com/milgram.php>>. See also Thomas Blass, “The Milgram Paradigm After 35 Years: Some Things We Now Know About Obedience to Authority,” *Journal of Applied Social Psychology*, 29 (1999): 955-978.

18. Henry Shue, “Torture,” *Philosophy & Public Affairs* 7 (1977-78): 130. See the sickening story of the torture of “the defiant detainee,” Habibullah, at the Bagram Collection Point in Afghanistan: Tim Golden, “In U.S. Report, Brutal Details of 2 Afghan Inmates’ Deaths,” *New York Times*, May 20, 2005.

19. The opening statements of the Preamble to the Convention read as follows:

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person

20. David Sussman, “What is Wrong with Torture?” *Philosophy & Public Affairs* 33, no. 1 (2005): 1-33.

21. Convention Against Torture, Art. 2.2.

22. HR 2863, Department of Defense Appropriations Act 2006, Sec. 8154, 8155.

23. See Erin Louise Palmer, "Reinterpreting Torture: Presidential Signing Statements and the Circumvention of U.S. and International Law" <<http://www.wcl.american.edu/hrbrief/14/1palmer.pdf?rd=1>>. See also the wikipedia article on signing statements: <http://en.wikipedia.org/wiki/Signing_statement>.

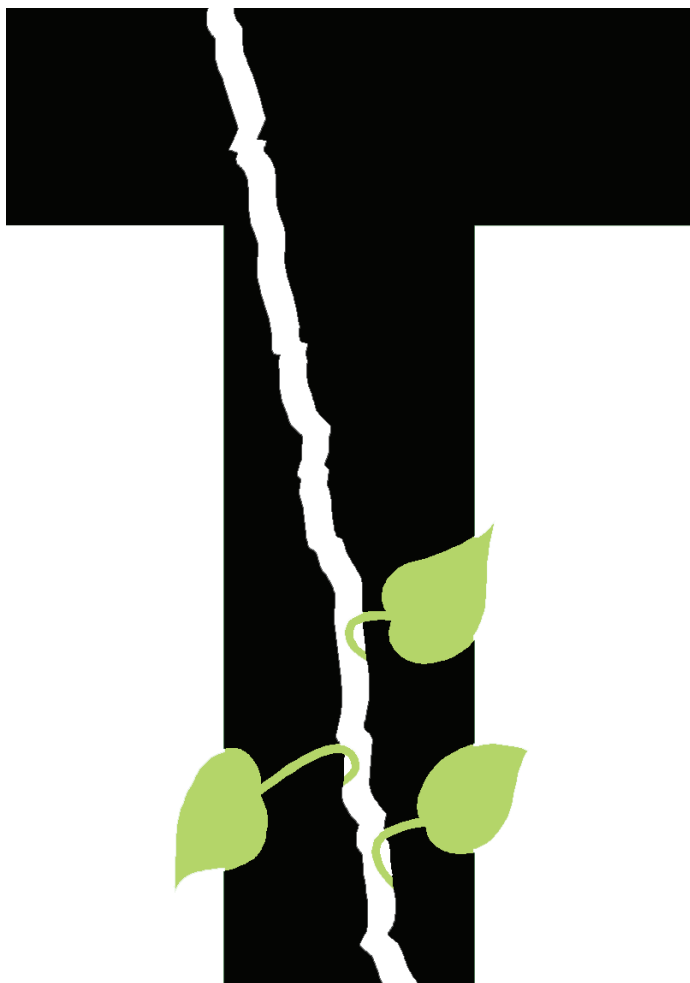
24. See Alfred McCoy, *A Question of Torture: CIA Interrogation, From the Cold War to the War on Terror* (NY: Henry Holt, 2006).

25. It remains somewhat unclear which techniques remain permissible. In part that is because the lists of permissible/impermissible techniques are, for the most part, not made public, but it is also because there is reason to think that approvals that may have been withdrawn have quietly reinstated.

26. See, most recently, Metin Başoğlu, Maria Livanou, and Cvetana Crno-barić, "Torture vs Other Cruel, Inhuman, and Degrading Treatment: Is the Distinction Real or Apparent?" *Archives of General Psychiatry* 64 (March, 2007): 277-85.

27. Twilla Racine Welch & Mark Welch, "Prevailing as a Psychotherapeutic Imperative for Victims of Torture" *Torture* 15, no. 1 (2005): 31-36.

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ISBN 978-0-9805474-1-2



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