HISTORY OF TORTURE

M Peel, Medical Foundation for the Care of Victims of Torture, London, UK

Introduction

Colloquially speaking, torture is the deliberate infliction of severe physical or psychological pain. As such, it includes domestic and elder violence, child abuse, and criminal torture following kidnapping. It encompasses physical forms of torture such as beating, burning, cutting, and suspending. Psychological torture includes threats, humiliation, mock execution, and witnessing others being tortured. Torture may have a sexual component which ranges from enforced nudity to rape. It is usually associated with detention, legal or otherwise, and conditions are often appalling, adding to the trauma. The Rome Statute of the International Criminal Court (article 7.2e) uses the phrase "in the custody or under the control of the accused" to demonstrate that torture can be committed beyond a situation of simple detention. The irony is that the perpetrator is usually someone who has a duty to protect the victim.

Because of the victim's powerlessness, torture always has a psychological component, and often a physical component. The psychological pain is also frequently associated with losing the ability to trust, and a belief in the world as a just place, as well as feelings of guilt when others are tortured as well. Sometimes perpetrators intend to destroy the psyche of the victim, but the psychological damage is often an unintended consequence of creating fear through physical abuse.

For the purposes of forensic medicine, the term is generally restricted to situations in which the torture is perpetrated by a person acting on behalf of a state (the perpetrator, known as a state agent) or a *de facto* state. A *de facto* state is, for example, a rebel group in effective control of territory, that assumes the authority to arrest, detain, and punish. The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (UNCAT) requires that, to fall within the definition of torture, the act must be committed by or with the consent of a public official, even where that consent appears to be implicit – for example, where state officials "turn a blind eye," or fail to investigate an offence. The act must be deliberate and aimed at that individual, rather than an act of random violence. There are no circumstances in which a state can justify torture, even in an emergency, which is why states are keen to deny allegations.

International conventions also stress that the act must be purposeful. UNCAT says that it must be for such purposes as obtaining a confession, punishing, intimidating, or coercing that person or a third party. The phrase "such purposes as" means that this list is not exhaustive. The Inter-American Convention to Prevent and Punish Torture 1985 uses the phrase "or for any other purpose." Purpose means that the state had a reason for committing the offence. It must not be confused with the motive of the individual perpetrator. For example, rape in detention by guards is a form of torture. The motive (of the perpetrator) will probably be a mixture of power, lust, and a desire to humiliate, whereas the purpose (of the authorities) in condoning the act is generally to intimidate or coerce the victims and others. Acts causing severe pain and suffering that do not have this purpose may still be considered by courts to be inhuman and/or degrading treatment.

Torture in the Past

Early History of Torture

Plato surmises that the earliest societies were communities that settled into an agricultural life. They were attacked by warrior tribes who, on defeating the community, set themselves up as its oligarchic rulers. They defined the class structure with themselves at the top, and slaves, mostly those who had been defeated in war, at the base. As Greek society developed, independent judges were called on to adjudicate in disputes between families, and rules of evidence were established. Someone from a free family had a reputation and status to lose, and so his word could be trusted (as could, to a lesser extent, her word). However, the evidence of a slave was considered to be unreliable, and had therefore to be extracted under torture.

This rationale continued into the early Roman times, when it slowly became extended in two ways. First, the scope of those who could be tortured was extended to the lower grades in society who were not slaves. Second, anyone could be tortured in cases of alleged treason. As the power of the state became centralized in a single person, the crimes of treason and lèse-majesté (disrespect to the ruler) became merged, and a wide range of accusations were permitted to be investigated using torture, irrespective of the social status of

the accused. Thus, torture also began to be used to intimidate those who might otherwise dissent against totalitarian rule.

Methods of torture included beatings with rods and whips, the use of primitive frames in which major joints were distended, and the crushing of individuals under piles of stones. Roman law distinguished between *quaestio*, which was the criminal judicial process, incorporating torture, and *tormentum*, the aggravated death penalty, although in practice the difference between these two was not clear. It was recognized that slaves often died during the *quaestio* (perhaps to prevent them retracting the statement once the torture was over), but this was not the purpose of the exercise.

Jurists have been aware of the unreliability of information gained from torture at least since the time of Aristotle. Lawyers are recorded variously as saying, on the one hand, that information gathered through torture was reliable if the torture had been conducted "properly," and on the other hand, that under torture all but the strongest would give whatever information the interrogator wanted to hear – and that the strongest would die rather than give out the wanted information. The *Digest of Justinian*, a third-century collection of older jurisprudence, states:

> It was declared by the imperial constitutions that while confidence should not always be reposed in torture, it ought not be rejected as absolutely unworthy of it, as the evidence obtained is weak and dangerous, and inimical to the truth; for most persons, either through their power of endurance, or through the severity of the torment, so despise suffering that the truth can in no way be extorted from them. Others are so little able to suffer that they prefer to lie rather than to endure the question, and hence it happens that they make confessions of different kinds, and they not only implicate themselves, but others as well.

Medieval and Renaissance Periods

At the beginning of the twelfth century in Europe, criminal accusations and disputes were settled by oath, ordeal, and trial by combat, on the grounds that God would ensure the success of those in the right. As judicial systems developed, means were required of providing objective proof of guilt, either for a judge sitting alone or alongside a jury. Although there were other "partial proofs," the only conclusive proof was either from two eyewitnesses or a confession. In this context, confession became the most important proof, "the queen of proofs," in both canon and lay courts, especially when the penalty was death – which was the case in a large number of crimes.

Torture therefore returned to the legal arena, although less so in England than in the rest of Europe. It was used principally on the accused rather than witnesses. Confessions were supposed to be voluntary, not coerced, and should be repeated outside the torture room (but with the threat of further torture if the confession was retracted). Torture could be used to show that the accused had information that could be known only by the criminal. A credible threat of torture helped priests "persuade" people of the importance of confession before a good Christian death. Again there was a class divide. Those whose oaths could be trusted did not need to undergo torture, only those of low social class or with a bad reputation. It was not thought to be unjust to cause severe physical pain to someone on a mere accusation, as God would help the just to resist. Anyway, it was believed that, as the victim had brought him/herself to the attention of the authorities, he/she must have done something wrong, so the pain of torture was not completely undeserved.

Nevertheless, there was disquiet. Many quoted St Augustine, who in the fourth century had written in *The City of God*:

> What shall I say of torture applied to the accused himself? He is tortured to discover whether he is guilty, so that, though innocent, he suffers most undoubted punishment for a crime that is still doubtful, not because it is proved that he committed it, but it is not ascertained that he did not commit it ... For if he has chosen ... to quit this life rather than to endure any longer such tortures, he declares that he has committed the crime which in fact he has not committed.

The psychological aspect of torture has always been recognized, with grandiose machines being made in classical times intended as much to frighten as to hurt. This was systematized in the Spanish Inquisition, which started in 1478. There were four separate stages. In the first, the victim was threatened with torture and the intended means described. In the second stage he/she was shown the torture equipment. In the third, he/she was attached to it. Only in the fourth stage was the equipment used.

The legal constraints on torture were well known, but it was also recognized that they were in practice largely ignored. A lot depended on the character of the judges, who were highly variable. That torture was an effective way of gaining confessions was acknowledged, but the quality of those confessions was unclear. Guy Fawkes, accused of instigating the English gunpowder plot against James I and parliament, was tortured in 1605–1606. The change in his signatures before and after the torture testifies to the physical and psychological damage done to him. He confessed and named his co-conspirators. Recent historical study suggests that, although they were

definitely the people that the Lord Chancellor wanted to prosecute, not all of them were likely to have had any significant role in the conspiracy.

Enlightenment Thinkers

The "abuse" of torture by the *anciens régimes* of Europe was one of their great criticisms during the enlightenment. Torture had been used to intimidate, oppress, and to gain false confessions. There were many cases published in which the crime confessed could not have been committed by the accused, or had not even happened at all. The church was no longer considered to have the right to punish heresy, witchcraft, and other religious crimes. Torture was considered to be the greatest human rights abuse by writers such as Cesare Beccaria in 1764. The abolition of torture was one of the great successes of this period. Governments abolished torture as other means of investigation replaced confession, and new, less severe forms of punishment augmented the death penalty and mutilation. In 1874, Victor Hugo announced that "torture has ceased to exist." Sadly, officially sanctioned torture was to return to Europe within less than 50 years.

Other Societies

Throughout the centuries torture has not been confined to Europe. For example, ancient Egyptian and Persian societies used violence to discourage rebellion. Although Islamic law does not recognize the validity of confession obtained by coercion, the Ottoman empire employed torture throughout its existence. In Japan there were prescribed forms of torture to gain confessions in criminal cases until they were abolished in 1879.

Torture in the Recent Past

Widely accepted allegations of torture have been widespread since the end of the Second World War. It has been said that the prohibition of torture under international human rights law is so widely accepted because virtually every nation state has accused another of the practice. Some of the best-documented examples are described below. However, there are many other examples worldwide that have not been so well documented, because they have not occurred in situations where there was such democratic accountability.

Anticolonialism and Algeria

It had become recognized, especially in England, that torture was principally a political device and not a legal one. As states became more powerful in the nineteenth century, the political control of the police became stronger in many countries. Although this was often done in the name of "the people," there was blurring about what was in the best interests of the state, the people, and the ruling elite, with the elite often deciding, and suppressing those who disagreed. Torture returned during the First World War, and reached a zenith under totalitarian regimes, especially those of Hitler and Stalin, where torture was used to gain confessions that were politically expedient, without any interest in their veracity.

After 1945 the United Nations (UN) had determined to abolish torture again from the world. The Universal Declaration of Human Rights (1948), the Geneva Conventions (1949), the International Covenant on Civil and Political Rights (1966), UNCAT (1984), as well as a number of regional human rights conventions, all prohibit torture, and every member state of the UN accepts this principle. However, as has been the case throughout history, there remains a huge gap between the legal constraints on torture and the practice on the ground.

Torture was also used by most colonial governments to suppress local opposition. This came to light in Algeria in the mid-1950s, in reports by victims such as Henri Alleg, whose testimony was endorsed by the writer and philosopher Jean-Paul Sartre. Official accounts explained (as always) that the events were an aberration by individuals, and in particular, foreign individuals. Most notably the Wuillaume report (1955) declared that the cruelty (e.g., beatings, electric shocks, forced distension of the stomach) was not "excessive." This was all challenged, and it became clear that the torture was widespread and officially sanctioned. In his memoirs, 20 years after the events, General Jacques Massu acknowledged the torture but argued that it was necessary because of the exceptional nature of the situation.

Many commentators pointed out the large gap between humane treatment of detainees and torture. This is important because any deliberate move to treat detainees harshly ("ill treatment" rather than "torture") is nevertheless likely to end in extreme abuses. Torture starts by dehumanizing the victim, and almost immediately it dehumanizes the perpetrators as well. Reports from countries such as Greece at the time of the Colonels (1967–1974) show how military recruits were themselves humiliated and tortured in order to desensitize them to torturing others. Perpetrators always create myths that their victims are subhuman. Ultimately, torture dehumanizes the society that condones it.

Latin America

In the 1960s and early 1970s military dictatorships were established in many of the countries of Central

and South America, including Argentina, Brazil, Chile, El Salvador, and Uruguay. In these countries, abduction and torture by the authorities were systematic, and the term "disappearance" came into existence to describe those who had died during the process and whose bodies were hidden. Those who survived were often left physically and psychologically damaged by their experiences. As always, although those who justified the acts claimed that they were necessary to gain information to protect the state (or at least its rulers), the clear purpose was to intimidate any potential opposition.

Considerable state resources were put into designing and equipping clandestine detention centers, in order to maximize their impact. Training of security agents was extensive. Healthcare professionals were often involved in the torture. Experiences and techniques were shared, notably at the US-sponsored School of the Americas, which was based in Panama until 1984.

Techniques included a range of devices using electricity, including metal bedframes (*la parilla*), and modified electrical cattle prods (*picana eléctrica*). Different forms of suspension were used, and both "wet" and "dry" asphyxiation. *Teléfono* was the simultaneous slapping of both ears with the intention of permanently damaging the eardrums. Victims were often naked, with the ever-present threat of sexual assault, and beatings and electric shocks were often applied to the genitals. Rape, mostly of women but also of men, was regularly reported.

UK versus Ireland and the "Five Techniques"

In the mid-1970s, the UK government was accused of ill-treating detainees in Northern Ireland as part of the process of interrogation. Specifically, they acknowledged that they used five techniques together to try to disorientate them. These were:

1. wall-standing: forcing detainees to remain for periods of some hours in a "stress position," described by those who underwent it as being "spread-eagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers"
2. hooding: putting a black or navy-colored bag over the detainee's head and, at least initially, keeping it there all the time except during interrogation
3. subjection to noise: pending interrogation, the detainee was held in a room where there was a continuous loud and hissing noise
4. deprivation of sleep: pending interrogation, the detainee was deprived of sleep
5. deprivation of food and drink: subjecting the detainee to a reduced diet during his/her stay at the center and pending interrogations.

In the subsequent case at the European Court of Human Rights, the court noted:

> The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3 [of the European Convention on Human Rights]. The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.

Although at this time the court said that these techniques were inhuman and degrading but not torture, it is important to note that in 1999 the Court (in *Selmouni* v. *France*) said:

> [T]he Court considers that certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.

From a forensic perspective, the significance of this case is that several medical examinations of the complainant showed new injuries that supported his allegations of ill treatment in the police station. The court described the duty of care in custody in this way:

> The Court considers that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused.

Israel and "Moderate Physical Pressure"

In 1987 the Israeli Government set up the Landau Commission to investigate the methods of interrogation used by the General Security Service. They said that it was acceptable to use "moderate physical pressure" to gain information considered necessary to preserve public safety. Such methods were described by the Commission but were never made public. Accounts sent to UNCAT (the Committee) by those who had been interrogated included the following methods, which were neither confirmed nor denied by Israel:

1. restraining in very painful conditions
2. hooding under special conditions
3. sounding of loud music for prolonged periods
4. sleep deprivation for prolonged periods
5. threats, including death threats
6. violent shaking
7. using cold air to chill.

In 1998 the Committee concluded that these methods, together or, under certain circumstances, separately, did indeed constitute torture. The following year the Israeli government passed a new basic law, proscribing such practices, although there are still criticisms that the law has not been properly implemented.

Current Situation

After the coordinated torture of the later part of the Cold War came the mindless brutality that set the context for most torture in the 1990s. In many countries of Africa civil wars were fought over control of natural resources, with one or both sides killing, torturing, and destroying more or less randomly. Guerrilla wars were fought, for example, by the Tamils in Sri Lanka and the Kurds in Turkey, where the state suppressed entire ethnic minorities rather than just the fighters. Then there were countries such as Algeria and the former Zaire, where unpopular governments were using the state security system simply to maintain power.

Most torture comprised beatings, suspension, burns with cigarettes, cuts with bayonets, and electric shocks. Sexual assault and rape of men and women were commonplace. Healthcare professionals were rarely involved. In its annual report for the year 2000, Amnesty International described torture as occurring in 166 of the 193 member states of the UN, with sporadic incidents in other countries. The principal purpose was to intimidate those protesting against repressive regimes, although extortion by police and soldiers was another important driving force.

At the time of writing, the nature of torture seems to be changing again. After the destruction of the World Trade Center on September 11, 2001 came the "war on terror of global reach," and the return of torture and certain techniques of ill treatment as a means of attempting to gain information. This was called by its proponents "torture lite," meaning the use of psychological pain, and sometimes physical pain, designed to come just under the point at which it would breach international proscriptions of torture. Alleged methods included disorientation by exposure to prolonged periods of bright artificial light and loud sounds, irregular provision of food and drink, and the forced adoption of uncomfortable postures for prolonged periods. These are very similar to those criticized in the cases of the UK and of Israel. Medical attention for wounds was delayed. Threats were made against family members, including children. Complex deceptions were enacted, and there were credible threats (perhaps fulfilled) of transfer to the authorities of a state where violent torture was commonplace.

Conclusions

Torture has existed for several thousand years. It has been repeatedly heralded as a way of gaining confessions and information, which it is. However, what is cynically or negligently overlooked is that the confessions and information gained by torture are unreliable. The physically and psychologically strong die before giving out useful information, while the weak confess to anything, even though they probably know nothing. Torture is not an effective means of gaining truthful confessions or information, but a means for insecure governments to maintain control. It often leads to significant psychological disability, and sometimes permanent physical disability as well. There is no legal, moral, or even practical justification for torture.

See Also

Human Rights, Controls and Principles; **Torture:** Physical Findings; Psychological Assessment; **War Crimes:** Pathological Investigation

Further Reading

Basoglu M (1992) *Torture and its Consequences: Current Treatment Approaches*. Cambridge, UK: Cambridge University Press.

British Medical Association (2001) *The Medical Profession and Human Rights: Handbook for a Changing Agenda*. London: Zed Books.

Peel M, Iacopino V (2002) *The Medical Documentation of Torture*. London: Greenwich Medical Media.

Peters E (1996) *Torture: Expanded Edition*. Philadelphia, PA: University of Pennsylvania Press.

United Nations High Commissioner for Human Rights (2001) *The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (The Istanbul Protocol)*. Geneva, Switzerland: United Nations.