Torture: A Collection

Bryn D. Powell

University at Buffalo School of Law (Student)

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/bhrlr

Part of the Human Rights Law Commons, International Law Commons, and the Military, War, and Peace Commons

Recommended Citation

Available at: https://digitalcommons.law.buffalo.edu/bhrlr/vol11/iss1/7

This Book Review is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Human Rights Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.
TORTURE: A COLLECTION

EDITED BY SANFORD LEVINSON
PP. 319. $29.95.

Bryn D. Powell*

Torture is one of the most widely condemned practices in the world. To date, over 130 countries, including the United States, have committed to the United Nations' absolute ban on torture.1 Despite this widespread prohibition, recent events, such as the prisoner abuse in Abu Ghraib prison, use of "stress and duress" tactics in Afghanistan, detention of terror suspects at Guantanamo Bay, and the deportation and subsequent interrogation torture of Maher Arar by the Syrian government, have challenged the notion that torture is a relic of the past. Torture: A Collection attempts to reconcile this paradox by examining the philosophical, historical and legal context of torture and providing an animated and well-organized debate regarding whether torture should be legalized in the United States.

Although Levinson compiled Torture: A Collection before the prisoner abuse at Abu Ghraib surfaced in May 2004, it nonetheless remains a relevant and thought-provoking work. It is composed of seventeen essays from such noted scholars as Alan Dershowitz, Richard A. Posner, Elaine Scarry and Michael Walzer. These often conflicting essays are organized around four central themes: "Philosophical Considerations," "Torture as Practiced," "Contemporary Attempts to Abolish Torture through Law," and "Reflections on the Post-September 11 Debate about Legalizing Torture."

The first section of Torture: A Collection, entitled "Philosophical Considerations," frames the underlying question that is weaved throughout Levinson's work: Should torture be a tool legally available to political leaders? In three divergent essays, Levinson presents a range of answers to this question. Henry Shue argues against any legalization of torture in his essay entitled "Torture" and makes it clear that there are very rare and un-


likely cases that would warrant use of any form of torture by a government. Although Bethke Elshtain’s work “Reflection on the Problem of ‘Dirty Hands’” also condemns the notion of legalizing torture, she is less adamant in her approach and does not entirely eliminate the possibility of using “torture lite” techniques such as coercive interrogation, should a “ticking bomb” situation arise. These two views are juxtaposed with Michael Walzer’s essay “Political Action: The Problem of Dirty Hands” that argues that inherent in political leadership is the notion that leaders must “dirty [their] hands.” Walzer therefore asserts that the price political leaders must pay for using torture is the moral guilt for their conduct.

_Torture: A Collection_ moves from the philosophical to historical perspective in “Torture as Practiced.” Although readers with a background in history and criminal procedure may be able to skim over the essays in this second section, John H. Langbein’s “The Legal History of Torture” and Mark Osiel’s “The Mental State of Torturers: Argentina’s Dirty War” provide well-written analyses of the practice of torture in Europe (as distinguished from England) and by Alfredo Astiz’s death squads in Argentina. In addition, Jerome H. Skolnick furthers the notion set forth by Langbein and Osiel that torture has been condoned far longer than it has been condemned in “American Interrogation: From Torture to Trickery.” Skolnick achieves this point by showing the prevalence of torture in United States’ interrogation techniques, thereby dispelling any myths that torture is a strictly foreign phenomenon.

The third section of _Torture: A Collection_ evaluates the ways in which torture is legally prohibited and the relative effectiveness of these prohibitions. “The Promise and Limits of the International Law of Torture” by Oona A. Hathaway is the most disturbing essay in this section. She claims that empirical evidence illustrates that there is no direct relationship between countries that commit themselves to anti-torture laws and decreased levels of torture in those countries. One reason that Hathaway cites for this lack of a direct relationship is the poor enforcement of the United Nations Convention Against Torture at both the international and domestic level. On a more general note, many of the essays in this section highlight the problem with proscribing torture while it remains difficult to differentiate between what constitutes torture (which is absolutely banned) and cruel and unusual treatment (for which there is an exception).

_Torture: A Collection_ ends with the controversial section “Reflections on the Post-September 11 Debate about Legalizing Torture.” Central to these reflections is Alan Dershowitz’s essay “Tortured Reasoning” that asserts that although torture should not be used by the United States, the
fact that it is used and tolerated is unacceptable. Dershowitz calls for increased accountability on the part of the government, namely through judicial oversight in the form of torture warrants. Under Dershowitz’s approach, torture warrants could be obtained from Courts only in rare “tick- ing bomb” cases. The other commentators in this section clearly disagree with Dershowitz, with Richard A. Posner leading the way with a slippery slope argument that legalization will only result in more regular occurrences of torture. Similarly, Richard H. Weisberg’s “Loose Professionalism, or Why Lawyers Take the Lead on Torture,” analogizes lawyers like Dershowitz, who admit that torture is used and so attempt to work within that faulty paradigm, to Vichy lawyers who condoned racial and religious discrimination during World War II. In “Torture, Terrorism, and Interrogation,” Posner suggests that rather than legalize torture, the more appropriate solution to limit torture would be for the present ban on torture to acknowledge exceptions in extreme circumstances.

*Torture: A Collection* ultimately leaves the question of whether legalization of torture is an appropriate measure, up to the reader. But whatever your personal stance may be, it will be difficult not to find Levinson’s work provocative and particularly relevant in our post-September 11 world. That being said, one legitimate criticism of *Torture: A Collection* is that it was published after evidence of prisoner abuse at Abu Ghraib surfaced but it fails to address the role that increased media coverage may have had on the United States’ torture policy. It is also important to note that while *Torture: A Collection* does provide an international perspective on torture (primarily in the first three sections), the book ultimately critiques post-September 11 United States policy. Supplemental reading is suggested for readers who are interested in a more comprehensive examination of torture policies.