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Torture (book review)

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Book Notes

Torture: A Collection. Ed. Sanford Levinson. New York: Oxford University Press, 2004. Pp. 319. \$29.95, cloth.

In the wake of the terror attacks of September 11, 2001, torture has been debated as a method of handling suspected terrorists and preventing future violence. The topic of torture presents a significant moral, legal, and political challenge. The treatment of detainees at the Abu Ghraib prison in Iraq and rumors of abuse of prisoners at Guantánamo Bay, Cuba have implicated America's armed forces and government contractors in a global human rights controversy. In addition, the United States has sent some suspected terrorists to allied countries that engage in torture. Although the use of such methods has been recognized as a tool of last resort in some unofficial circles, the absolute ban on torture required by the Convention Against Torture, which the United States ratified a decade ago, remains intact.

Written before the May 2004 allegations of torture in Iraq and Afghanistan, the essays in *Torture: A Collection* wrestle with the wisdom of America's absolute ban on torture and what it means for societies to reject torture in any and all circumstances. Although some of the eighteen essayists argue that torture as a policy must be rejected as morally indefensible and legally unjustifiable, others make an ethical case for the use of torture in exceptional circumstances. Editor Sanford Levinson, a Professor at the University of Texas Law School, divides the essays written by leading lawyers, philosophers, and political and social scientists into four sections: "Philosophical Considerations," "Torture as Practiced," "Contemporary Attempts to Abolish Torture Through Law," and "Reflections on the Post-September 11 Debate About Legalizing Torture." As a note of interest, Levinson and the contributors agreed that all of the royalties from the book will go to the Torture Abolition and Survivors Support Coalition.

The essays grapple with nearly all facets of the issue: definitions of torture, legal history of torture, distinctions between torture and interrogation, political implications of torture, effectiveness of coercive techniques, and laws regarding the use of torture. "Philosophical Considerations" includes a classic essay by Princeton ethicist Michael Walzer. Explaining a state's "problem of dirty hands," he discusses why leaders normally loyal to moral principles are willing to "dirty their hands" when confronted with extreme circumstances. In "Torture as Practiced," another essayist presents the history of secret, illegal, and tacitly sanctioned torture practice in the United States, Europe, and South America. "Contemporary Attempts to Abolish Torture Through Law" examines case law in Israel, whose Supreme Court outlawed coercive inter-

rogation in 1999, and explores the interpretation of the U.N. Torture Convention and the European Convention on Human Rights. The fourth and final section, "Reflections on the Post-September 11 Debate About Legalizing Torture," is a kind of interlocutory debate among Alan Dershowitz, Richard Posner, Elaine Scarry, and Richard H. Weisberg. This last section is arguably the most compelling. Dershowitz argues that torture can be an acceptable option in an extreme situation, such as the interrogation of a captured terrorist who has knowledge of a "ticking bomb."

Dershowitz argues that the normative case against torture remains strong but that, in the face of emerging threats and current practices (torture is practiced in more than 100 countries today), state prohibitions will inevitably soften. He suggests that torturous interrogation should be explicit and controlled. Rejecting absolute opposition to torture, he raises the possibility of torture authorized by a judicially issued "torture warrant." Critics counter that even contemplating such regulation can serve to legitimize torture. For Posner, it is better for America to continue observing the country's "perhaps overly strict rules . . . trusting executive officials to break them when the stakes are high enough to enable the officials to obtain political absolution for their illegal conduct." Dershowitz answers: "[B]etter to legitimate and control a specific practice that will occur than to legitimate a general practice of tolerating extralegal actions so long as they operate under the table of scrutiny and beneath the radar screen of accountability."

Some of the essays in *Torture: A Collection* recount personal experiences. Ariel Dorfman, who experienced first-hand the oppressive practices of Chilean dictator Augusto Pinochet, argues in the Foreword that civilized countries require a prohibition against torture in all circumstances. "If it were done to you and those you love, one by one by one, wouldn't you want that practice abolished? I am still waiting. I believe many of us are still waiting for an answer to that question."

In any event, the practice of torture under international law remains as illegal as slavery and genocide. With unusually aggressive tactics being adopted in even the most torture-averse countries, *Torture: A Collection* questions whether and how torture should be exposed and regulated. The comprehensive review offered in this book advances the discussion by presenting an important assessment of the moral legitimacy of torture in extreme cases and evaluating whether the technique should continue receiving legal sanction in all cases. The considered opinions of Jean Bethke Elshtain, Oren Gross, Miriam Gur-Arye, Oona A. Hathaway, John H. Langbein, Fionnuala Ní Aoláin, Mark Osiel, John T. Parry, Henry Shue, and Jerome H. Skolnick, along with the other essayists, demonstrate that reasonable scholars committed to human rights can reach diverse conclusions.

—Amos Jones