

The policy context of torture: A social-psychological analysis

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Abstract

Acts of torture are conceptualized as crimes of obedience, which are inevitably linked to crimes at higher levels of the hierarchy, where orders are issued, policy is formulated, and the atmosphere conducive to acts of torture is created. The present analysis suggests several conditions under which torture becomes an instrument of State policy and the authority structure of the State is fully utilized to implement that policy: the perception by State authorities that the security of the State is under severe threat — which, at the macro-level, can justify torture and, at the micro-level, contribute to its authorization; the existence of an elaborate and powerful apparatus charged with protecting the security of the State — which, at the macro-level, may lead to the recruitment and training of professional torturers as part of that apparatus and, at the micro-level, contribute to the routinization of torture; and the existence of disaffected ethnic, religious, political, or other groups within (or under the control) of the State that do not enjoy full citizenship rights — which, at the macro-level, may lead to their designation as enemies of the State and appropriate targets for torture and, at the micro-level, their dehumanization.

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The abuses of Iraqi prisoners by US soldiers at Abu Ghraib that came to light in the spring of 2004 have brought the issue of torture — particularly in the context of armed conflict or in the fight against terrorism — again to the centre of the international agenda. It is quite legitimate to consider these events as part of an assessment of the Iraq war and of US policy in the region, but it would be a serious mistake to assume that torture is a peculiarly American phenomenon or that it can be adequately understood as a consequence of the special features of the Iraq war. Abu Ghraib is hardly the only or even the most extreme case of torture in the world. To the contrary, torture is widely practiced in many parts of the world; moreover, it is endemic to autocratic States and is far less prevalent in democratic ones. Abu Ghraib serves as a reminder, however, that even democratic States may resort to torture when a particular set of social conditions is in place. The purpose of this article is to explore the general social conditions conducive to torture, wherever it may occur.

Central to my argument is the view that an adequate explanation of torture requires going beyond the characteristics of the individual perpetrators or even of the situations in which the torture is practiced, and focusing attention on the larger policy context in which the practice of torture is embedded. In the case of Abu Ghraib, for example, the findings of the investigative reporter, Seymour Hersh¹ — the same man, incidentally, who broke the story of the My Lai massacre and its cover-up,² which was the starting point of the work by Lee Hamilton and myself on crimes of obedience in the early 1970s³ — make it evident that the abuses were part of a systematic process. They took place in the context of interrogation and were apparently designed to “soften up” prisoners for questioning by intelligence officers. No doubt, some of the perpetrators engaged in these actions with a greater degree of initiative and sadistic enjoyment than others, but they were operating in an atmosphere of pressure to produce intelligence information from prisoners presumed to be guilty. Whether or not some of the specific abuses and acts of torture were directly ordered, indications are that they were expected, condoned, and encouraged by higher officers. Commanding officers along the different tiers of the hierarchy have been accused, at the least, of exercising insufficient oversight of the conditions of detention and procedures of interrogation that prevailed in Abu Ghraib and other military prisons for suspected terrorists.

In the months following the exposure of the Abu Ghraib abuses, it has become increasingly evident that the treatment of the Abu Ghraib prisoners

- 1 Seymour Hersh, “Torture at Abu Ghraib”, *The New Yorker*, Vol. 80, No. 11, 2004, pp. 42-47; Seymour Hersh, “Chain of command”, *The New Yorker*, Vol. 80, No. 12, 2004, p. 38-43.
- 2 See Seymour Hersh, *My Lai 4: A Report on the Massacre and its Aftermath*, Vintage Books, New York, 1970; Seymour Hersh, *Cover-up*, Random House, New York, 1972.
- 3 Herbert C. Kelman and Lee H. Lawrence [V. Lee Hamilton], “Assignment of responsibility in the case of Lt. Calley: Preliminary report on a national survey”, *Journal of Social Issues*, Vol. 28, No. 1, 1972, pp. 177-212; Herbert C. Kelman and V. Lee Hamilton, “Availability for violence: A study of U.S. public reactions to the trial of Lt. Calley” in: Joseph D. Ben-Dak (ed.), *The Future of Collective Violence: Societal and International Perspectives*, Studentlitteratur, Lund, Sweden, 1974, pp. 125-142.

was not an isolated occurrence, nor was it simply the product of decisions and actions (or inaction) at the local level. Similar patterns of abuse, linked to aggressive interrogation techniques, occurred in prisons elsewhere in Iraq, and — going back to 2002 — in Afghanistan and Guantánamo Bay. Numerous documents show that the techniques and practices revealed in Abu Ghraib had “migrated” from Guantánamo and Afghanistan and that they were authorized or justified at various points by high-ranking officials in the Pentagon and the White House.⁴ For example, memos circulating in upper echelons of the administration authorized harsh interrogation techniques; defined torture so narrowly that many forms of painful, debilitating, and degrading treatment became permissible; and suggested that the Geneva Conventions did not apply to “unlawful combatants.”⁵ The mistreatment of prisoners revealed by the various reports, particularly given the context in which it occurred, has all the earmarks of physical and mental torture. And, indeed, the accounts presented in these reports are highly reminiscent of what is known about the conditions that have given rise to torture so often in the past anywhere in the world.

The crime of torture

Despite the fact that torture is a crime under the UN Convention against Torture, adopted by the General Assembly in 1984,⁶ and other relevant international frameworks, and is similarly defined in the national legal codes of many of the UN’s member States, it is a practice that is widespread throughout the world. Some instances of torture constitute “ordinary” crimes, i.e., crimes committed in violation of the expectations and instructions of authority. Torture would be an ordinary crime in this sense if it were carried out by individual officials at their own initiative and in disregard of the policies and orders under which they function. Similarly, officials could be charged with torture as an ordinary crime if they used means of pressure in excess of what was legally permitted.

The essential phenomenon of torture, however, is that it is not an ordinary crime, but a crime of obedience: a crime that takes place, not in opposition to the authorities, but under explicit instructions from the authorities to

4 For relevant documentation, see Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, New York Review Books, New York, 2004; and Steven Strasser, *The Abu Ghraib Investigations: The Official Independent Panel and Pentagon Reports on the Shocking Prisoner Abuse in Iraq*, PublicAffairs, New York, 2004.

5 The most recent disclosures were in documents obtained and released by the American Civil Liberties Union, including FBI reports that describe severe abuses of prisoners and highly coercive methods of interrogation, going back to Guantánamo Bay in 2002. Some of the FBI agents submitting these field reports expressed the belief that the tactics they observed (and considered both objectionable and unproductive) had high-level approval, coming from the Pentagon and/or the White House. Cf. Kate Zernike, “Newly released reports show early concern on prison abuse”, *New York Times*, 6 January 2005, pp. A1 and A18.

6 J. Herman Burgers and Hans Danelius, *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1988, pp. 177-8.

engage in acts of torture, or in an environment in which such acts are implicitly sponsored, expected or at least tolerated by the authorities. Lee Hamilton and I have defined a crime of obedience as “an act performed in response to orders from authority that is considered illegal or immoral by the larger community.”⁷ Torture is clearly considered illegal and immoral by the international community; it is prohibited by international declarations and conventions that have been unanimously adopted by member States of the United Nations. Yet it is the authorities of these very States that order, encourage or tolerate systematic policies or sporadic acts of torture.

When does an ordinary crime become a crime of *obedience*? It is often the case — in acts of torture as much as in other gross violations of human rights — that the perpetrators engage in the action willingly, enthusiastically and with varying degrees of innovation. But “the fact that a criminal action serves various personal motives or is carried out with a high degree of initiative and personal involvement does not necessarily remove it from the category of crimes of obedience,”⁸ as long as the action is supported by the authority structure: as long as the perpetrators believe and have good reason to believe that the action is authorized, expected, at least tolerated, and probably approved by the authorities — that it conforms with official policy and reflects what their superiors would want them to do.

Recognizing torture as a crime of obedience immediately directs our attention to the other side of the coin: to the crimes of authority that invariably accompany crimes of obedience. For every subordinate who performs acts of torture under official orders or with the encouragement or toleration of the authorities, there is a superior — or typically an entire hierarchy of superiors — who issue the orders and who formulate the policies that require or permit these acts of torture. Higher-level superiors may in fact not have issued specific orders to engage in torture, but they are the ones who formulate the policies, create the atmosphere and establish the framework within which officials at intermediate levels of the hierarchy translate general policy directives into specific acts of torture.

The fact that crimes of obedience take place within a hierarchical structure makes it especially difficult to pinpoint responsibility for them. The question, however, is not “who is responsible?” — the actual perpetrator or the authority — but “who is responsible for *what*?” When the question is framed that way, it becomes clear that both ought to be held responsible.

The torturers themselves are properly held responsible for the actions they perform and the harm they cause, even if they are acting under superior orders. Since the adoption of the Nuremberg Principles after World War II, which have been incorporated into the military codes of all Western States, superior orders cannot be used as an absolute defence for criminal actions on the part

7 Herbert C. Kelman and V. Lee Hamilton, *Crimes of Obedience: Toward a Social Psychology of Authority and Responsibility*, Yale University Press, New Haven and London, 1989, p. 46.

8 *Ibid.*, p. 50.

of subordinates. The UN Convention against Torture specifically applies this principle to torturers when it states that: “An order from a superior officer or a public authority may not be invoked as a justification of torture.”⁹ Subordinates have the obligation to evaluate the legality of orders and to disobey those orders that they know or should have known to be illegal.

Superiors, for their part, have the obligation to consider the consequences of the policies they set and to oversee the ways in which those policies are translated into specific orders and actions as they move down the ladder. The authorities’ obligation of oversight makes the defence of ignorance of or lack of control over the actions of subordinates generally unacceptable, since they are expected to know and to control what their subordinates are doing. Of course, more often than not, torture does not result from negligence at the top, but from deliberate policy — or perhaps deliberate inattention at the top to the way in which policy is carried out below.

The policy context of torture

Conceptualizing torture as a crime of obedience implies that it must be understood in the context of the policy process that gives rise to it and of the authority structure within which this policy is carried out. I thus look to the policy process and the authority structure to identify the major determinants of acts of torture as well as the major correctives against these practices. In doing so, I do not minimize the role of individual and cultural differences.

With respect to individual differences, I am sure there is a certain degree of self-selection of individuals who gravitate to the role of torturer. Moreover, those operating within the role vary in the amount of enthusiasm, diligence and innovativeness that they bring to the task. Differences in personality and background doubtless play an important part in determining who becomes a torturer and who acts out that role eagerly and with evident enjoyment. But a focus on structural factors helps us understand why many, perhaps most, torturers are not sadists but ordinary people, doing what they understand to be their jobs. I might add that individual differences in readiness to engage in torture may be related as much to people’s orientation toward authority as they are to their propensity toward aggression or their sense of compassion.¹⁰

Cultural differences, particularly differences in political culture, certainly also play an important role. Thus, Berto Jongman¹¹ shows that human rights violations, including torture, are much more likely to occur in non-democratic than in democratic societies, and in countries at low levels rather than high levels of development. Democratic countries are less likely to practice torture precisely because of the nature of their policy process and authority structure. But torture does occur

9 Burgers and Danelius, *op. cit.* (note 6), p. 178.

10 See Kelman and Hamilton, 1989, *op. cit.* (note 7), chs. 11 and 12.

11 Berto Jongman, “Why some States kill and torture while others do not”, *PIOOM Newsletter*, 1991, Vol. 3, No. 1, pp. 8-11.

even in highly developed democratic societies, usually in the context of counter-terrorist activities or armed conflict, as the experiences of Guantánamo Bay and Abu Ghraib well illustrate. There are social conditions under which democratic cultures that ordinarily respect human rights may sanction torture, just as there are social conditions under which ordinary, decent individuals may be induced to take part in it. Thus, while individual and cultural factors are important determinants of torture, they operate in interaction with the policy process and the authority structure that ultimately give rise to the practice.

The use of torture as an instrument of policy

Torture has been practiced by non-State entities or agents, such as guerrilla groups or liberation movements, but it is primarily a phenomenon linked to the State. The emergence or reemergence of torture as an instrument of policy in the twentieth century is directly related to the nature of the modern State. In particular, as Edward Peters¹² argues in his historical study, torture arises from the combination of two features of the modern State: its vast power and its enormous vulnerability to State enemies, internal and external. The power of the modern State rests in the extent to which it affects all aspects of the life of its citizens and the resources that it can mobilize to control its population. The vulnerability of the modern State stems from the high degree of interdependence of the political, economic, and social institutions required to run a modern society and the resulting ease with which social order can disintegrate and the political authorities can lose control when their legitimacy declines in the eyes of their population, or when they confront terrorism and insurgency.

The conditions conducive to the rise of torture as an instrument of State policy are the authorities' perception of an active threat to the security of the State from internal and external sources; the availability of a security apparatus, which enables the authorities to use the vast power at their disposal to counter that threat by repressive means; and the presence within the society of groups defined as enemies of or potential threats to the State (see adjoining table).

The Policy Context of Torture

CONDITIONS CONDUCTIVE TO THE USE OF TORTURE AS AN INSTRUMENT OF POLICY	SOCIAL PROCESSES FACILITATING TORTURE	
	<i>At Level of Policy Formation</i>	<i>At Level of Implementation</i>
<i>Perception of a Security Threat</i>	Justification of a policy of torture	Authorization of acts of torture
<i>Existence of a Security Apparatus</i>	Development of professional torture cadres	Routinization of torture practices
<i>Presence of Groups Defined as Enemies of the State</i>	Exclusion of target groups from protection of the State	Dehumanization of targets of torture

12 Edward Peters, *Torture*, Basil Blackwell, New York and London, 1985.

The recourse to repression is particularly likely in situations in which opposition represents a challenge to the legitimacy of those in power and thus a fundamental threat to their continued ability to maintain power, such as States in which the rulers' *legitimacy* rests on a unitary, unchangeable ideology (political or religious), or States run by a ruling clique with an extremely narrow population base (in socio-economic and/or ethnic terms) but with the support of military forces. However, torture may also be used, sporadically or sometimes systematically, by democratic regimes that find themselves in charge of ethnically distinct populations or subpopulations that do not accept their rule — such as Israel in the occupied territories or Britain in Northern Ireland.

When State authorities resort to torture, they can often point to a history of violence directed against the State: in the form of insurgency, guerrilla operations, or terrorist acts. To be sure, torture may at times be applied to individuals whose only crime is political or religious dissent, or even mere membership in a religious or ethnic community that does not fit into the ruling group's scheme of things. Still, the occurrence or perceived threat of violence against the State is central to the rationale for a policy of torture.¹³

Given the centrality of the threat of violence in the rationale for a policy of torture in modern times, it is not surprising that torture is particularly likely to occur in the context of war or armed conflict. Although my analysis so far has focused on torture within the State, aimed at repressing domestic groups or populations whom the authorities perceive as internal threats to the security of the State or as agents and allies of external enemies of the State, it is equally applicable to situations of war and occupation, in which torture may be used against members or suspected supporters of the enemy camp. The use of torture in war situations — often directed at civilians, as well as at military personnel — has become more probable as war has moved from the classical clash between organized armed forces to a clash between whole populations, in which civilian groups are often specifically targeted.¹⁴ Torture in this context may be used as part of State policy of control and repression of the population and as an instrument of interrogation or psychological warfare. The conditions conducive to the use of torture in situations of armed conflict are identical to those outlined in the table. Once again, democratic regimes are not immune to the use of torture under these conditions, as the US actions in Afghanistan and Iraq so clearly illustrate.

Social processes facilitating a policy of torture

At the level of policy formation, there are three important points at which the perceived threat to the security of the State provides the rationale for a policy of

13 Wolfgang S. Heinz, "The military, torture and human rights: Experiences from Argentina, Brazil, Chile and Uruguay", in Ronald D. Crelinsten and Alex P. Schmid (eds.), *The Politics of Pain: Torturers and their Masters*, COMT, University of Leiden, Leiden, The Netherlands, 1993, pp. 73-108.

14 Martin Shaw, *War and Genocide: Organized Killing in Modern Society*, Polity Press, Cambridge, UK, 2003.

torture and the power of the State enables it to implement that policy: in establishing the purpose and justification of the torture; in recruiting the agents or perpetrators of the torture; and in defining the targets of the torture (see table).

First, the essential justification of torture, as has already been proposed, is the protection of the State against internal and external threats to its security — which often means the maintenance in power of those more or less narrow elements of the population that have gained control of the State apparatus. The practice of torture is justified by reference to the particular doctrine of the State's legitimization: maintaining law and order or stability, or the rule of “the people” whom the State claims to embody, or the rule of God, or the survival of Western civilization, or the integrity of national institutions. In war situations, of course, the justification for taking up arms, generally couched in terms of defence against threats to national security and to the vital interests of the State, also covers whatever steps are deemed necessary — including torture — to achieve the military objectives.

Second, the agents of torture are defined as a professional force with a significant role in protecting the State against internal threats to its security. The power of the State allows it to mobilize the necessary resources to establish a torture apparatus. A central component of that mobilization process is the recruitment of a cadre of torture practitioners through the development of what is in effect an organized profession — a profession that is wholly owned by the State, operates within the State's internal security framework and is dedicated to the service and protection of the State. Like other professionals, torturers undergo a rigorous process of professional training, socialization and indoctrination to prepare them for their roles.¹⁵ Typically, this process includes torture resistance training, which acclimatizes them to cruelty.¹⁶ (In war situations, it might be noted here, acclimatization to violence and cruelty is a daily occurrence, requiring no specialized training.) Another element of the professionalization of torture is that it has become an international enterprise. Torturers from different parts of the world come together in international meetings at which they share information about training procedures and torture techniques.

Third, the targets of torture are defined as enemies of the State who constitute serious threats to the State's security and survival. For that, as well as for other reasons, such as their ethnicity or ideology, they are placed outside the protection of the State. In the modern State, individual rights in effect derive from the State. Thus, to be excluded from the State — to be denied the rights of citizenship — is tantamount to becoming a non-person vulnerable to arbitrary treatment, to torture, and ultimately to extermination. Targets of torture in the

15 H. Radtke, “Torture as an illegal means of control”, in Franz Bockle and Jacques Pohier (eds.), *The Death Penalty and Torture*, Seabury Press, New York, 1979, pp. 3-15; Janice T. Gibson, “Factors contributing to the creation of a torturer”, in Peter Suedfeld (ed.), *Psychology and Torture*, Hemisphere Publishing Corporation, New York, 1990, pp. 77-88.

16 Radtke, *op. cit.* (note 15); see also Ronald D. Crelinsten, “In their own words: The world of the torturer”, in Ronald D. Crelinsten and Alex P. Schmid (eds.), *The Politics of Pain: Torturers and their Masters*. COMIT, University of Leiden, Leiden, The Netherlands, 1993, pp. 39-72.

context of armed conflict are, by definition, placed in the category of enemies, who are not entitled to the protection of the State. In principle, enemy combatants and civilian populations are protected against torture and other violations of their human rights by the Geneva Conventions.¹⁷ In practice, people categorized as enemies in a war situation are vulnerable to being targeted for torture.

Social processes facilitating participation in torture

The three points at which the security concerns and power of the State contribute to a policy of torture at the *macro-level* — i.e., the justification for torture, the agents of torture, and the targets of torture — can be linked to three social processes that facilitate participation in torture at the *micro-level*: the processes of authorization, routinization and dehumanization, which I distinguished in my earlier analysis of sanctioned massacres and other crimes of obedience.¹⁸ The justification of torture as a means of protecting the State against threats to its security helps to *authorize* the practice; the development of a profession of torturers as part of the State's security apparatus helps to *routinize* the administration of torture; and the designation of the targets of torture as enemies of the State who are excluded from the State's protection helps to *dehumanize* the victims (see table, right-hand column). These three social processes contribute to weakening the moral restraints against engaging in torture and other gross violations of human rights: authorization absolves individuals of the responsibility to make personal moral choices on the basis of standard moral principles; routinization enables them to ignore the overall meaning of the tasks they are performing and eliminates the opportunity to raise moral questions; dehumanization excludes the victims from the perpetrators' moral community, making it unnecessary to relate to them in moral terms. These three processes are mediated to a significant degree by the torturers' relationship to the State.

The role of authorization is strengthened by the fact that torturers, typically, are not just acting within a hierarchy in which they are expected to obey — and have indeed been trained to obey without question¹⁹ — but are participating in an action that represents a *transcendent mission*. They have come to share the view of the authorities that the task they are engaged in serves a high purpose that transcends any moral scruples they might bring to the situation. They have come to see themselves as playing an important part in an effort to protect the State: to ensure its security and continued integrity, to maintain law and order, or to keep alive the fundamental values of the State that are being subjected to a merciless onslaught by ruthless enemies who are intent on destroying

17 *Geneva Convention relative to the Treatment of Prisoners of War*, 12 August 1949; *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 12 August 1949.

18 Herbert C. Kelman, "Violence without moral restraints: Reflections on the dehumanization of victims and victimizers," *Journal of Social Issues*, Vol. 29, No. 4, 1973, pp. 25-61; Kelman and Hamilton, 1989, *op. cit.* (note 7).

19 Gibson, *op. cit.* (note 15).

it. This view of the purpose of the proposed torture as part of a noble effort, in which the perpetrators are prepared to play their role despite any moral reservations and feelings of repugnance they might have, greatly enhances the legitimacy of the enterprise.

An additional element of the torture situation that contributes to its perceived legitimacy is the participation of medical professionals, who often play an active role by evaluating victims' physical capacity to go through the process, by making sure that the torture does not go beyond the point of causing the victim to die, and by performing other functions.²⁰ Incidentally, the role of physicians in interrogations that are tantamount to torture has also been noted in connection with Abu Ghraib.²¹ The justification of torture as a necessary means of ferreting out "the truth" also helps to surround it with an aura of legitimacy, as does the legal context in which it often takes place. One of the common uses of torture is as an adjunct to judicial proceedings, where it is designed to obtain evidence to be introduced into trials. This practice goes back to the early uses of torture — in the Roman period and in the Middle Ages — as a central part of the process of producing a confession, which was deemed necessary to establish the guilt of the accused.²²

The routinization of torture is enhanced by the establishment of torturers as a professional group, which contributes to normalizing and ennobling their work. Torturers come to see themselves as performing a job, as doing their duty. It is a job that often involves hard work, that can lead to promotion and other rewards, that may offer opportunities to demonstrate innovativeness, that one can excel in and become expert at. Above all, it is a job that one can be proud of, because it provides a significant service to the State and often carries with it membership in an elite corps.

The torture process itself also shows signs of considerable routinization. It usually involves a series of steps, clearly identified and following each other in regular sequence. The different torture techniques, as well as the different torture chambers, are typically designated by special names, often with a euphemistic or ironic quality. These names are not so much designed to hide the reality of what is actually taking place as to give expression to a professional culture with its own rituals and language.²³ The procedures used by torture organizations — including a variety of psychological techniques — are often quite sophisticated. All of this helps to give the work an aura of professionalism, which allows the torturer to perceive it not as an act of cruelty against another human being, but as the routine application of specialized knowledge and skills.

20 Stephen V. Faraone, "Psychology's role in the campaign to abolish torture: Can individuals and organizations make a difference?", in Peter Suedfeld (ed.), *Psychology and Torture*, Hemisphere Publishing Corporation, New York, 1990, pp. 185-193. See also Jean Maria Arrigo, "A utilitarian argument against torture interrogation of terrorists", *Science and Engineering Ethics*, Vol. 10, No. 3, 2004, pp. 543-572.

21 See, for example, M. Gregg Bloche and Jonathan H. Marks, "When doctors go to war", *The New England Journal of Medicine*, Vol. 29, No. 1, 6 January 2005, pp. 3-6.

22 Peters, *op. cit.* (note 12).

23 Radtke, *op. cit.* (note 15).

In dehumanization, too, the State is an important part of the equation, going back, in fact, to the early history of torture. In the Roman legal system, torture — as a means of obtaining confessions — was originally applied only to slaves and foreigners, but not to citizens.²⁴ In contemporary practice torture victims are, or are treated as, non-citizens. The main source of their dehumanization is their designation as enemies of the State, who have placed themselves outside the moral community shared by the rest of the population. They are described as terrorists, insurgents or dissidents who endanger the State and are bent on undermining law and order and destroying the community. The view of torture victims as non-citizens who are not entitled to the protection of the State was evident in interviews that Heinz²⁵ conducted with “masters of torture” in Latin America: once they identified guerrillas as Communists, they saw them as foreign agents and thus, in effect, as “denaturalized.” Furthermore, torture increased when guerrillas began killing military officers and their families, because they came to be seen not only as outsiders who are not entitled to the community’s protection, but also as dangerous elements against whom the community had a right to protect itself.

A central assumption in the contemporary practice of torture — just as in the early days, when it was used as a systematic part of criminal legal procedures — is that the victims are guilty. The torture apparatus operates on the assumption that those who are brought in for torture are guerrillas, insurgents or terrorists who have committed and/or are about to commit dangerous crimes against the State. Thus, torture is designed only to punish the guilty, to warn their accomplices and, most important, to elicit the truth from them. Indeed, torture is often justified on the grounds that it is the only way to elicit information necessary for the protection of the State and its citizens — such as information about the identity and whereabouts of terrorist leaders or about planned terrorist operations — that the torture victims are presumed to have in their possession.

A contributing factor to the dehumanization of torture victims is the fact that, even when they are citizens of the State that tortures them, they often do not belong to the ethnic or religious community of the torturers and the dominant segment of society. This has been the case for Kurds in Iraq, for Bahais in Iran, for Palestinians in Kuwait and in the Israeli-occupied territories, for Irish Catholics in Northern Ireland or for Bosnian Muslims in the former Yugoslavia, to mention only a few. In many cases the victims’ ethnic or religious identity is itself the primary reason for their vulnerability to torture. In other cases, ethnic or religious identity is a factor in dissent or insurgency. In all cases, it facilitates exclusion and dehumanization, thus removing one of the constraints against torture and other serious violations of human rights.

24 Peters, *op. cit.* (note 12).

25 Heinz, *op. cit.* (note 13).

Conclusion

The conditions conducive to the use of torture are endemic to the autocratic security State. Part of the answer to torture thus clearly points in the direction of democratization: torture is much less likely to take place in States governed with the consent of the governed and accountable for their policies and actions. However, even Western democratic societies are not invulnerable to the conditions that tempt State authorities to adopt torture as a policy instrument and enable them to implement a policy of torture: the perception of fundamental threats to the security and integrity of the State; the existence of bureaucratic organizations charged with ensuring State security, staffed by professionally trained security specialists and allowed to operate with greater secrecy and less accountability than is customary in democratic societies; and the presence of foreign, poorly integrated or non-citizen elements within the population that can easily be seen as outside the contract that obligates citizens and State to one another in a democratic polity. The said conditions are particularly likely to arise in the context of armed conflict — whether civil or international — in which the threat to the State is readily personified in an internal or external enemy bent on violence and destruction; when combined, they can override the constraints and bypass the scrutiny, imposed by democratic values and institutions, that usually stand in the way of gross violations of human rights in democratic societies. These, then, are the conditions that must be addressed, wherever they manifest themselves, as we struggle against the practice of torture and develop approaches to bring about its worldwide abolition.