

# Torture and the Church

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In the *United Nations Convention Against Torture*<sup>1</sup>, defines torture as:

“...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.”

And commits the signatories to preventing torture for any reason:

## Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

However torture has been a practice of which the Church has at times approved and at other times failed to condemn, even though at times it has been critical of the practice.

Tertullian, of the third century, condemned committing torture as unworthy for a Christian. Tertullian argues that it would be morally impossible for this man to satisfy both the Gospel's demands and those of Roman law, for that would require him to abstain not only from all public pagan sacrifices, oaths, etc., but also from "sitting in judgment on anyone's life or character, . . . neither condemning nor fore-condemning; binding no one, imprisoning *or torturing no one*".<sup>2</sup>

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<sup>1</sup> United Nations *CONVENTION AGAINST TORTURE and Other Cruel, Inhuman or Degrading Treatment or Punishment* Accessed from: <http://www.hrweb.org/legal/cat.html>

<sup>2</sup> Tertullian *De Idololatria*, 17 cf. Brian W. Harrison TORTURE AND CORPORAL PUNISHMENT AS A PROBLEM IN CATHOLIC THEOLOGY *Living Tradition* no. 119, *Roman Theological Forum*, September 2005, Accessed from: <http://www.rtforum.org/lt/lt119.html>

Emperor Constantine, during the years 315-321, issued laws prohibiting the torture and killing of slaves by their masters, . . . safeguarding children from major physical abuse by their parents; and protecting convict prisoners from cruel treatment, including abolition of the practice of branding them on the face, 'which is formed in the image of heavenly beauty'.<sup>3</sup>

While St Augustine in the 5<sup>th</sup> Century concedes that a man of "profound considerateness and finer feeling" would personally shrink from involvement in torture, his bottom line is that the judge who *does* agree to accept this terrible responsibility is . . . "guiltless".<sup>4</sup>

The Emperor Justinian in the Sixth Century expressed some discomfort about torture:

"It is declared in the Constitutions that torture should be considered neither as always trustworthy, nor as always *untrustworthy*. And as a matter of fact it is a fickle and dangerous business that ill serves the cause of truth (*etenim res fragilis est et periculosa, et quae veritatem fallat*). For there are not a few who are possessed of such powers of endurance, or such toughness, that they scorn the pain of torture, so that there is no way the truth can be wrung from them. Others, however, have so little resistance that they will make up any kind of lie rather than suffer torment; and that can lead them to keep changing their story, even incriminating others as well as themselves."<sup>5</sup>

Pope Innocent IV formally approved torture" in a papal bull or law on heresy known as *Ex Tirpanda* in the Thirteenth Century:

"26. The head of state or ruler must force all the heretics whom he has in custody, provided he does so without killing them or breaking their arms or legs, as actual robbers and murderers of souls and thieves of the sacraments of God and Christian faith, to confess their errors and accuse other heretics whom they know, and specify their motives, and those whom they have seduced, and those who have lodged them and defended them, as thieves and robbers of material goods are made to accuse their accomplices and confess the crimes they have committed."<sup>6</sup>

St Thomas Aquinas, though he would have been aware of Pope Innocent VI's Papal Bull and of Aristotle's treatment of the topic of torture, makes no comment on Aristotle's contention that "evidence under torture is not trustworthy, the fact being that many men whether thick-witted, tough-skinned, or stout of heart endure their ordeal nobly, while

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<sup>3</sup> Warren H. Carroll, *The Founding of Christendom* (Front Royal, VA: Christendom College Press, 1985), p. 540.

<sup>4</sup> St Augustine *The City of God*, 19: 6

<sup>5</sup> *Digest*, 48: 18, article 23 cf. Brian W. Harrison TORTURE AND CORPORAL PUNISHMENT AS A PROBLEM IN CATHOLIC THEOLOGY *Living Tradition no. 119, Roman Theological Forum*, September 2005, Accessed from: <http://www.rtforum.org/lt/lt119.html>

<sup>6</sup> Pope Innocent IV – Bulla 'Ad Extirpanda' [AD 1252-05-15] English translation available at [http://www.documentacatholicaomnia.eu/01p/1252-05-15,\\_SS\\_Innocentius\\_IV,\\_Bulla\\_'Ad\\_Extirpanda',\\_EN.pdf](http://www.documentacatholicaomnia.eu/01p/1252-05-15,_SS_Innocentius_IV,_Bulla_'Ad_Extirpanda',_EN.pdf)

cowards and timid men are full of boldness till they see the ordeal of these others: so that no trust can be placed in evidence under torture". However he does approve compulsion of unbelievers, presumably by torture:

"On the other hand, there are unbelievers who at some time have accepted the faith, and professed it, such as heretics and all apostates: such should be submitted even to bodily compulsion, that they may fulfil what they have promised, and hold what they, at one time, received".<sup>7</sup>

The Second Vatican Council, in *Gaudium et Spes*, n. 27 taught:

"All offenses against life itself, such as murder, genocide, abortion, euthanasia and wilful suicide; all violations of the integrity of the human person, such as mutilation, physical and mental torture, attempted psychological coercion (*quaecumque humanae personae integritatem violant, ut mutilationes, tormenta corpori mentive inflicta, conatus ipsos animos coercendi*); all offenses against human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the trafficking in women and children, degrading working conditions where people are treated as mere tools for profit rather than free and responsible persons: all these things and others of the same sort (*haec omnia et alia huiusmodi*) are truly disgraceful [or 'shameful', or 'appalling' – *probra quidem sunt*<sup>38</sup>], and while they poison human civilization, they debase the perpetrators more than the victims (*magis eos inquinant qui sic se gerunt, quam eos qui iniuriam patiuntur*) and utterly contradict the honor due to the Creator (*Creatoris honori maxime contradicunt*).

Pope John Paul II in *Veritatis Splendor* n. 80 teaches:

"Now, reason testifies that there are some human acts which are seen to be "non-ordainable" to God, since they are radically incompatible with the good of the person (*omnino dissident a bono personae*) created in His image. These are acts which in the Church's moral tradition are called "intrinsically evil" (*intrinsece malum*). They bear that character always and *per se*, that is, because of their very object, independently of the circumstances and of the purpose of the one committing the act. . . . Vatican Council II, in treating of the respect due to the human person (*de obsequio quod humanae debetur personae*), mentions numerous examples of such acts. [The Pope then cites in full *GS* #27 paragraph 3 above, including its denunciation of torture.]"

The *Catechism of the Catholic Church* teaches at n 2298:

"In times past, cruel practices were commonly used by legitimate governments to maintain law and order, often without protest from the Pastors of the Church, who themselves adopted in their own tribunals the prescriptions of Roman law concerning torture. Regrettable as these facts are, the Church always taught the

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<sup>7</sup> St. Thomas Aquinas *Summa Theologica*, IIa IIae, 10, 8c.

duty of clemency and mercy. She forbade clerics to shed blood. In recent times it has become evident that these cruel practices were neither necessary for public order, nor in conformity with the legitimate rights of the human person. On the contrary, these practices led to ones even more degrading. It is necessary to work for their abolition. We must pray for the victims and their tormentors.”

However some, such as Brian Harrison, still argue the condemnation of torture by the Church in the above documents falls short of describing torture as intrinsically evil or always and everywhere a crime. Harrison writes:

...there remains the question – nowadays a very practical and much-discussed one – of torture inflicted not for any of the above purposes, but for extracting *life-saving information* from, say, a captured terrorist known to be participating in an attack that may take thousands of lives (the now-famous ‘ticking bomb’ scenario). ...this possible use of torture is not mentioned in the *Catechism*. If...the infliction of severe pain is not *intrinsically* evil, its use in that type of scenario would not seem to be excluded by the arguments and authorities we have considered so far. ... My understanding would be that, given the present *status questionis*, the moral legitimacy of torture under the aforesaid desperate circumstances, while certainly not *affirmed* by the magisterium, remains open at present to legitimate discussion by Catholic theologians.<sup>8</sup>

Nevertheless the use of torture as punishment or as a means of forcing persons to reveal information that may be necessary to prevent greater harm, seems not to be consistent with a Christian understanding of morality. We do not accept that evil may be done in order to achieve good. Further in the so-called “war on terror” we would seem to have sold out the very principles that we espouse in opposing terrorism. Torture is itself a form of terrorism. By engaging in torture we would have lost the battle for hearts and minds making ourselves no better than those whom we oppose. If through torture we achieve a victory, to what point?

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<sup>8</sup> Brian W. Harrison  
“TORTURE AND CORPORAL PUNISHMENT AS A PROBLEM IN CATHOLIC THEOLOGY” *Living Tradition* no. 119, *Roman Theological Forum*, September 2005, Accessed from:  
<http://www.rtforum.org/lt/lt119.html>