Public Policy and the Use of Torture

Eric Baker

Quaker Peace & Service

in association with Amnesty International

When Friends Peace Committee sent Eric Baker to Cyprus in 1958 one of his most useful and, in the event, significant contacts, was with Peter Benenson, a lawyer who had attended trials in Cyprus and other countries either as legal observer or defence counsel. Their exchange of views convinced them that a public protest must be made on behalf of those who suffered imprisonment and worse, merely for expressing a belief. Peter Benenson wrote a Penguin Special (*Persecution 1961*) for which Eric did the research. They also gathered together other interested and influential people to support a call for amnesty for political prisoners. On May 28th 1961 the protest was launched in an article by Peter Benenson appearing in *The Observer*, with the headline 'The Forgotten Prisoner'. Within the year Amnesty International came into being as a permanent organisation.

As the library of information grew, Eric Baker began to note the ever-increasing reference to the use of torture on prisoners. This he made his special interest and among much else took a responsible part in planning for the Conference for the Abolition of Torture held in Paris, December 1973.

It was this concern he brought to Yearly Meeting at York in 1974, believing that, in it, Friends would see an echo of their historic response towards human suffering and helplessness wherever and whenever it occurs. For him it summed up the depth and fullness of his Quaker convictions and bore out his passionate desire to succour the oppressed and to gain recognition for that of God in everyone.

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Preface

Eric Baker was one of the founders of Amnesty International in the spring of 1962, along with Peter Benenson and Sean MacBride. From then until his sudden death in 1975, Eric Baker was a leading figure in the British and international movement of Amnesty International.

In 1972 AI decided that torture had become so systematic a practice of governments that a special campaign, report, conference and programme were essential. Eric Baker was the heart, the soul and the brains behind this decision. He never ceased to be shocked and incensed by physical brutality and the systematic use of psychological or other violence against a human being. He never forgot his--and our--responsibility as human beings to protect others and ourselves against torture, the repression of political or religious views and the death penalty.

When Eric Baker wrote the following essay in 1975, the United Nations General Assembly was treating the subject of torture and went on to pass a declaration against it.

In the period since the General Assembly adopted the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture, 1975. see Appendix) Amnesty International has taken action on torture in more than 60 countries where government officials inflicted violent measures on persons in custody with the deliberate intention of causing them extreme physical suffering.

The methods, institutions and patterns of torture vary widely. The phenomenon is not restricted to any particular geographical region or political ideology. The victims include men and women, children and old people, political and ordinary criminal prisoners, people engaged in or allegedly engaged in armed opposition struggle and people who have not used or advocated violence. Methods of torture include beatings, mutilations and the use of well-elaborated techniques and equipment, both ancient and modern in conception, sometimes designed to make the subsequent verification of torture difficult. Deaths under torture have

been common. Torture has taken place in time of war or other emergency and in time of peace and apparent stability. Some governments, including governments which did not themselves practise torture, have forcibly repatriated people to countries where they have been tortured.

Most of the states where torture has been practised in the recent period have not only consented to the terms of the Declaration against Torture, but are also parties to international conventions forbidding torture. Many have similar provisions in their domestic legislation. Virtually every government proclaims that torture is illegal. It is practically unknown for any government to defend the use of torture, although occasionally definitions conflict as to what constitutes torture. In a number of countries legislation permits the application of punishments (for example, floggings, amputations, lapidation) which by international standards may be regarded as torture.

A number of governments have systematically co-operated in the illegal abduction, torture and murder of real or suspected opponents by extra-governmental entities. To Amnesty International's knowledge, the number of victims of such crimes by government sympathisers or agents has in recent years been much higher than the number of victims of similar crimes by anti-governmental forces.

In a smaller number of countries, psychiatric and medical personnel, in collaboration with police and security officials, have misused methods of psychiatric treatment against persons forcibly confined to psychiatric hospitals for political rather than authentic medical reasons. In many cases of this type powerful drugs, often drugs which are also used for the benefit of patients in acceptable psychiatric practice, have been applied to inmates of psychiatric hospitals in such a way as to cause severe suffering and put the victim's health at risk.

Prisoners have often been tortured for the purpose of punishing or taking revenge on them, for the purpose of intimidating them or a broader public, to force them into co-operating with the authorities and, to judge by the gruesome quality often found in the recent practice of torture, for the sadistic pleasure of their captors.

However, torture is carried out most commonly to obtain information or self-incriminating statements from the victims during the period of interrogation after arrest. In a number of

countries torture of political suspects during interrogation has been *routine* practice.

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Eric Baker played a unique role in placing the morally repugnant practice of torture before international public opinion for world-wide condemnation. The United Nations and other inter-governmental organisations have this issue on their agendas today, the newspapers now accept documented allegations and reports on the subject of torture, and organisations like Quaker Peace and Service and Amnesty International are working internationally and systematically against torture, all to a large degree because Eric Baker refused to let the issue be ignored in the late 1960s and early 1970s. The small progress since the time when Eric wrote this essay leaves much work to be done. But Eric made a lasting contribution in initiating a humane work for the protection of human rights and in bringing many others into the struggle against one of humanity's contemporary barbarities.

Martin Ennals,
retiring Secretary General of
Amnesty International

1 Introduction

To speak or to write on the subject of torture is, at the outset, to encounter peculiar difficulties. Even within oneself, feelings of revulsion and incredibility combine to form an effective barrier to rational consideration. So far from being surprising, it is entirely understandable that some find the topic so repellent that they flatly refuse to consider it.

However, if torture is an evil – and it is the view of the writer of this essay that it is an unqualified evil – then rational discussion is a necessary preliminary to its eradication. To draw an analogy from another field: cancer has not yet been overcome but there would not have been the progress which has been achieved if revulsion at the manifestation of the disease had been allowed to cloud the clinical consideration of its aetiology. Indeed, the analogy is closer than might at first appear, for, just as cancer unchecked can destroy the body physical, so – there is grim evidence to suggest – given the requisite conditions, torture unchecked can go far towards destroying the body politic. If it is to be brought to an end then rational discussion has as much part to play as emotional revulsion. Moreover, such is human psychology that 'revulsion from' can all too easily be converted into 'support for'. A second reason for entering into a discussion of a thoroughly distasteful subject is that unless an effective critique is developed rapidly, there is the possibility that the arguments which are beginning to be advanced for the use of torture will come to command a substantial measure of public support. T. S. Eliot's comment that

> "There is only the fight to recover what has been lost and found and lost again."

is so far a true description of human experience that it must also be heeded as a warning that in the battle to establish civilised behaviour there is never more than a temporary respite.

The second difficulty which has to be faced at the outset of this discussion is that of definition. In one sense, "torture" is whatever one feels to be torture. For some husbands, wives and children, the conditions of their family life may be torture; for some students, the prospect of examinations may induce feelings of terror which for them are torture . . . the list is endless. Even if

the term is restricted to the use of physical duress, a great deal may depend on the physiological make-up of the individual as is noted by the Parker Committee (a Committee of Privy Counsellors appointed to consider authorised procedures for the interrogation of persons suspected of terrorism in 1972) when considering the converse situation: "What would be intolerable for a man in poor health might amount to no more than inconvenience for a fit man."

One authoritative definition has, in fact, been put forward by the International Committee of the Red Cross. Torture, it says, is "the infliction of suffering on a person in order to obtain from that person or from another person confessions or information". While this definition rightly points to two of the purposes for which torture is used, there is also a third which is equally common – to terrorise a population into submission. Although omitted from the Red Cross definition, this last is so significant that, although torturers are usually careful not to leave public traces of their handiwork, in the latter stages of the Colonels' regime in Greece, students and others were sent out into the streets of Athens with the marks of their tortures still on them in the expectation, apparently, that the mere evidence of what they had suffered would serve to subdue others.

There is one further shortcoming in the Red Cross definition: it does not adequately distinguish between the occasional beating up in a police station and the use of torture as a deliberate act of administrative policy by governments and guerrilla forces.

For the purpose of this essay, therefore, a somewhat fuller definition of torture is proposed which, while making no claims to lexicographical exactitude, will perhaps be operationally adequate. By "torture", then, will be meant:

(i) the infliction of physical or mental suffering for the purpose of breaking the will of another person,
(ii) the employment of this process with the effective – even though only tacit – approval of government/guerrilla forces.

It will be noted that this has in common with von Clausewitz's well-known definition of war ("War, therefore, is an act of violence intended to compel our opponent to fulfil our will") its isolation of a single purpose: to compel another, contrary to his own desire, to do what his torturer wishes him to do. The significance of concentrating on this element will become clear when considering the various euphemisms with which the British government described the events in Northern Ireland in August 1971.

2 Four Contemporary Attitudes

Any serious discussion of this topic has today to contend with four 'diversionary' arguments. These are the arguments of

i) historical remoteness
ii) geographical remoteness
iii) moral revulsion
iv) reluctant acquiescence.

i) Historical remoteness

The first, most general and entirely honest reaction to any mention of torture is one of utter incredulity that it should be regarded by anyone as a topic for serious consideration. It is a phenomenon of history and, like the gladiatorial shows of the Roman arena, to be remembered only when we judge it necessary to remind ourselves of what should never have been. It happened a long time ago and the human race has now grown out of it in the same way that it has grown out of slavery. It was this happy conviction which allowed the Oxford don who compiled the article on "Torture" for the ninth edition of the Encyclopaedia Britannica to declare that "Torture is now only of historic interest".

Putting on one side the rejoinder that even slavery is today far from dead, it is worthwhile recollecting that even as late as the end of the eighteenth century torture was still practised in one of the most "civilised" countries of Europe. In 1769 Voltaire wrote indignantly of a France which, after it had been abolished both in England and in Russia, still employed torture as a judicially ordained punishment – and not only for the poor and defenceless; the Chevalier de la Barre had the misfortune to offend the Capuchins; the judges ordered him to be tortured in order to extract from him the full list of his 'crimes'.

> "Les Romains", commented Voltaire, "n'infligèrent la torture qu'aux esclaves, mais les esclaves n'étaient pas comptés pour des hommes . . .Les nations étrangères jugent de la France par . . . nos danseurs de l'Opéra qui ont de la grâce . . . ils ne savent pas qui'il n'y a pas au fond de nation plus cruelle que la francaise."

It is rather more difficult to dismiss torture as being historically remote in face of the decision of the Russian government to

re-introduce it under Stalin in 1939.[1] But, nonetheless, it is possible to argue that Stalin, Hitler and Mussolini belonged to a period of historical regression which the Second World War was fought to abolish and that, therefore, what they did was on the further side of the "great Divide".

ii) Geographical remoteness

If all else fails, however, in face of the uncomfortable fact that so far from being an historical – though prolonged – aberration, torture still exists in South Vietnam, South America and South Africa (for instance), serious discussion can still be avoided on the grounds that these are countries so far removed from the experience of the ordinary man that he is prepared to expect torture to be as much part of their culture as the punishment of thieves by mutilation which was practised in the law of a few Islamic countries. These are, to the popular mind, remote corners of the earth which have remained as yet inaccessible to us.

Regrettably, however, this comfortable line of escape is no longer available. In December 1973, Amnesty International, in its *Report on Torture*, listed over sixty countries in all five continents which were known either to be practising torture, or to have done so within the post-war period.

iii) Moral revulsion

Having thus been obliged to recognise the inescapable conclusion that torture is as much a contemporary phenomenon as an ancient or medieval one, the third temptation is to dismiss the need for rational discussion by the simple denunciation of the practice as being under all circumstances so totally repugnant to all the basic values of human life that civilised men and women have no alternative and no inclination to do anything other than

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1 *Khruschev Remembers*, André Deutsch, 1971. A full account of Stalin's use of torture is given in "Khruschev's Secret Speech" (Appendix 4) in the course of which (pp. 585-6) he quotes Stalin's telegram of January 20th 1939 to the heads of NKVD organisations and others, of which the final sentence reads:

> "The Central Committee of All-Union Communist Party (Bolsheviks) considers that physical pressure should still be used obligatorily, as an exception applicable to known and obstinate enemies of the people, as a method both justifiable and appropriate".

to reject it out of hand and to refuse under any circumstances to have any part of it. The case, after all, has been put clearly and succinctly in the Universal Declaration of Human Rights, that compendium of all the aspirations and ideals for which the world fought from 1939-45.

> "Art. 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Again, however, the testimony of the *Amnesty Report* and, indeed, of official documents demonstrates unequivocally that men (and women) of undoubted education are prepared at least to justify and indeed sometimes to take part in torturing others.

iv) **Reluctant acquiescence**

Thus arises the fourth and final temptation. It is the most subtle because it can follow in the wake of the total rejection of torture as being under all circumstances immeasurably reprehensible. It is the more dangerous because it arises out of experience which appears to provide moral justification for what otherwise would appear unthinkable. The experience is that of being faced by an enemy who is believed to be likely to succeed by reason of greater unscrupulousness. The justification of torture – albeit with the greatest reluctance – on the grounds of ineluctable necessity is the temptation which appears to be most successful in seducing the politically sophisticated and the politically naive alike. Its success lies in reducing the consideration of torture to the same universe of discourse as, say, sewers – not to be mentioned in polite conversation. Their existence is taken for granted but never discussed except under the necessity of some technical occasion. To treat them as unfortunate technical necessities is to remove from any discussion concerning them any sense of personal involvement. At a distance they thus become more "manageable". To discuss torture in this way as no more than one among a number of strategies available to a government is to assimilate it to the levying of income tax or, at the worst, to the maintenance of the prison system which everyone knows not only to be unpleasant but to be meant to be unpleasant.

The fact that in influential quarters this argument seems to have met with considerable success is good reason for subjecting it to careful examination.

3 Putative Grounds for the Justification of Torture

One of the reasons for proposing torture as a subject of discussion is that, although in recent years it has been practised in more and more countries, very little has been written about it unofficially (nonetheless there is, of course, a great deal of more or less substantial testimony from the victims). Professional monographs such as Brigadier Kitson's,[2] while placing great emphasis on the need to gather information whether of 'low' grade or 'high' grade, is totally silent about those methods of gathering it which are widely reported to be used in situations such as those he mentions, while around the police and Service centres in the (apparently) several countries in which officers are trained in the methods of eliciting information by physical duress, there has been created an almost impenetrable barrier of silence.

However, there have been two situations in recent times in which torture has been both used and, to some extent, justified in public: in Algeria under General Massu and in Northern Ireland in the early days of internment.

It is worthwhile considering these two dissimilar events in some detail since both exhibit one significant feature of the circumstances under which torture has recurred in this post-war era. The French government in Algeria and the British in Northern Ireland both became deeply embroiled in a war with guerrillas. In Northern Ireland the fact that the war was civil, rather than international, indicates that the government had already lost control of part of the population. In the eyes of the Arabs of Algeria the metropolitan government had never been legitimate, and for (some of) the Catholics (and, later, Protestants) in Northern Ireland, the metropolitan government had ceased to be legitimate. It could no longer rely upon them for that co-operation in maintaining political and social stability which it had previously enjoyed. Deprived thus of the active – or, more frequently, tacit – support on which government must rely, the French and the British respectively had to consider whether the problem which the situation

2 *Low Intensity Operations*, F. Kitson, Faber, 1971.

presented was any longer amenable to a political solution or whether it had acquired a supervening military dimension.

The Algerian Case

For the French the moment came with the massacre by the Front de Libération Nationale (FLN) of 71 men, women and children at Philippeville on August 20th 1955.[3] Up to that moment, although torture had occurred, it had been furiously forbidden by Jacques Soustelle, the Governor General: "J'interdis qu'on torture. Il faut que les responsables soient punis." The sight of the victims of Philippeville, however, and the realisation that he now faced an urban guerrilla war, caused Soustelle to change his position. The climax came some seventeen months later when, following a series of bomb explosions in Algiers causing wholesale loss of life, the FLN announced a general strike. On January 7th, 1957, the Resident Minister, M. Lacoste, ordered General Massu to take complete control of the department of Algiers in order not only to break the strike, but to put an end to urban terrorism.

In his subsequent account, *La Vraie Bataille d'Alger*, Massu with commendable frankness, calls it by its proper name: "Je n'ai pas peur du mot", he says.

Its purpose was clearly to gather information quickly: "utilisé pour le renseignement immédiat". The cadres on whom he was able to draw were initially those who had learned the methods of interrogation in Indo-China where small units of French soldiers, virtually isolated from headquarters, had to rely on their own efforts to gather quickly from the peasants the information they needed about the probable movements of the enemy in their locality.

Massu found a similar situation in Algeria:

> "Il s'agissait d'obtenir le renseignement opérationnel urgent, dont dépendait la vie d'êtres innocents, délibérément sacrifiés par la FLN à son objectif."[4]

3 *Torture et les Pouvoirs*, Lauret et Lassière, Balland, 1973, p. 336.
4 *La Vraie Bataille d'Alger*, J. Massu, Plon, 1972.

His "justification" for the use of torture falls under several heads:

(i) While he does not hide the fact that the French used torture in Algeria (and in Indo-China), the 'pression physique' which it involved was in no way as cruel as that employed by the FLN. By the savagery of the guerrillas (noses and lips cut off), he claims that his men were nothing more than 'choir boys'. "Nous sommes restés bien en deçà de la loi lévitique 'oeil pour oeil, dent pour dent'."

(ii) the purposes for which it was used were solely the extraction of information, whereas the FLN used torture to terrorise "leurs frères récalcitrants".

(iii) the interrogators were discriminating in their use of torture, suiting the degree to the individual circumstances. He speaks of "douleurs physiques dont la violence était gradée pour aboutir à l'aveu".

(iv) the interrogators themselves were carefully chosen for their "qualités morales . . . et de leur sang froid" and were trained in the skills of interrogation by these methods just as they were skilled in other military methods such as parachuting.

(v) the methods themselves had effects which were only temporary and not degrading. To reassure himself of this, Massu submitted himself to the most common form of torture, that by electricity – and encouraged his officers to do likewise.[5]

(vi) Nevertheless, he realised that interrogation of this kind was "un métier dangereux moralement" and for that reason arranged that the regiment involved should spend tours of duty alternately in Algiers and in the Djebel.

(vii) His final justification for the use of torture is that it yielded the information which saved lives. Of the several paragraphs in which he returns to this theme, let the following stand as the classic apologia:

5 Of course we know that the effects of torture are by no means temporary.

> "Voilà pourquoi la torture a continué à être autorisé par une cruelle nécessité . . . pour l'indispensable nécessité du renseignement visant à éviter des drames cent fois plus atroces dont seraient victimes les innocents".

It would be beyond the scope of this essay – and, indeed, beyond its purpose – to set beside Massu's defence of the use of torture in Algeria, the accounts of those who found themselves the objects of his interrogators' attentions. He defines torture as "une violente douleur physique, qu'on fait subir à quelqu'un", and his attitude throughout this chapter has almost the thoughtfulness of a clinician prescribing for a patient's condition and regretting that the prescription may be unpleasant. "En général", he remarks, "ces traitements sont condamnables". Nevertheless, it is as well to remember the human misery which this regretful comment covers. The effect on the French themselves more than a decade later was demonstrated when, at a conference on torture organised in the Palais de Justice in Paris, leading lawyers were still bitterly regretting what France had allowed herself to be betrayed into.

To condemn Massu as being cynically hypocritical would probably be unwarranted. As a soldier, he had been given a job to do and he did it by the methods he knew. To his mind his motives and those of his political masters were whole worlds away from those of the Nazis with whom, to his fury, he found himself compared. Though the methods might, in fact, be similar, the intention was wholly different. To save innocent lives was his purpose, not to terrorise or to "liquidate" – and therein lay the vital difference, in his view.

That the torturer/interrogator should emphasise his own motive rather than the suffering of the victim is, perhaps, natural. The respectability with which the practice can be clothed and the lengths to which it can be taken were demonstrated in the public discussion which followed the discovery of the methods of "interrogation in depth" which were used in Northern Ireland in the autumn of 1971.

The Northern Ireland Case

The events leading up to the introduction of internment in Ulster are set out in the Introduction to the Compton Report.[6] As in Algeria, there was the denial by the guerrillas of the government's legitimacy, the intention of the IRA "to intimidate the population by brutal terrorism and so prevent any co-operation with the government, the police or the courts of law", and the consequent conviction on the part of the government that it could no longer depend on the tacit support of the majority of the population.

None of this would, of course, justify the use of torture and it is noteworthy that throughout the Compton Report, not only is there no reference to torture but that Sir Edmund and his colleagues reject even the term "brutality" which figured in their original terms of reference. Postponing for the moment the question of whether General Massu, at least, would have made any bones about calling the methods used in N. Ireland "torture" *tout court*, it is instructive to examine the paragraph in which the Committee of Enquiry distinguishes "physical ill-treatment" from "brutality" and which comes at the conclusion of findings in which it was not disputed that the men had been kept standing at the wall for periods of up to 43½ hours:

> "105. Where we have concluded that physical ill-treatment took place, we are not making a finding of brutality on the part of those who handled these complainants. We consider that brutality is an inhuman or savage form of cruelty and that cruelty implies a disposition to inflict suffering, coupled with an indifference to or pleasure in the victim's pain. We do not think that happened here."

As with General Massu, it is not the victim's suffering which is the significant criterion, but the motive in the mind of the interrogator. The furthest which the Committee was prepared to go was in their comments on the floor exercises which the detainees were compelled to undertake (e.g. "sitting with arms outstretched for 10-15 minutes"). Of these the Committee took the view that

6 Report of the Enquiry into Allegations Against the Security Forces of Physical Brutality in Northern Ireland arising out of events on 9th August 1971.

what was intended were "exercises devised to counteract the cold and stiffness of which the arrested persons complained" and commented that they were perhaps needlessly prolonged.

Following the findings of the Compton Committee, the UK Government, while underlining that the Report rejects "any suggestion that the methods currently authorised for interrogation contain any element of cruelty or brutality", nevertheless went on to set up the Parker Committee, whose subsequent Report on the ". . . authorised procedures for the interrogation of persons suspected of terrorism . . ." must surely be one of the most remarkable documents ever to come from the pen of a one-time Lord Chief Justice.

In fact, the Report is two reports, each of which, starting from the same facts, arrives at totally different, not to say opposed, conclusions. The majority report, signed by Lord Parker and Mr. Boyd-Carpenter reaches the conclusion that techniques such as those used in Northern Ireland and "any new techniques which may in the future be developed" would be legitimate if certain safeguards were observed. In his minority report Lord Gardiner (one-time Lord Chancellor) comes to the conclusion that not only were the methods used in Northern Ireland illegal but that they should never be legalised.

The lengths to which Lord Parker and Mr. Boyd-Carpenter were prepared to go were extraordinary. One of their main recommendations was that the responsible Minister should lay down "guide-lines" for the conduct of interrogation by these methods. These "guide-lines," however, have a number of curious features. It should not be expected, for instance, that the interrogator should always comply with them – although he should report any departure from them. Furthermore, they should remain secret – one consequence of which would be that neither the victim nor his legal advisors would be able to judge whether the interrogator had exceeded his guide-lines at any point. Finally, and most significantly, if, in carrying out his duties according to instructions, the interrogator were to render himself liable to prosecution for criminal assault, then the law must be changed to protect the *interrogator* – not the victim! Surely a most extraordinary conclusion for an eminent jurist to arrive at.

At this point the two Privy Councillors (who had no experience of being involved in urban guerrilla warfare) had arrived at a conclusion more extreme than that of General Massu,

who had at least made no pretence that he was dealing with anything other than torture and made no claim that it should be legalised.

Be that as it may, it is interesting to compare the grounds on which Lord Parker and his colleague justified the treatment they described, with those put forward by Massu:

(i) There is the same reference to the experiences of these methods of interrogation gained in previous colonial wars (Palestine, Malaya, Kenya etc.) but there is no attempt to justify the cruelty involved in these methods of torture by reference to those of the guerrillas.

(ii) There is little reference to the possibility of suiting the degree of duress to the individual victim although there would clearly be no point in continuing after the man had, in the expressive French phrase, been compelled "cracher le morceau".

(iii) Although there is explicit reference to the training of Service personnel to practise (and resist) "interrogation in depth", nothing is said of the methods by which they are controlled.

(iv) Whereas Massu is blunt and to the point in calling what he is dealing with by its proper name, the authors of the majority report find themselves in some difficulty. Beset by an even greater sense of delicacy than that which had affected Sir Edmund Compton, they found themselves unable to decide whether the actions they were considering amounted to "discomfort", "hardship", "humiliating treatment", or "torture". Indeed, having recognised the dilemma, they pass on, leaving it unresolved.

The safeguards consist mainly of laying down the "guide-lines" of which a Minister of HMG "must have full knowledge" and the application of interrogation subject to such safeguards only with his express approval. An additional safeguard is that a doctor "with some psychiatric training" should be on hand to observe the *oral* interrogation and to indicate when it is "being pressed too far"; he should not, however, have any responsibility for stopping it.

(v) Finally, as in Algeria, the ultimate justification offered is that the circumstances of guerrilla warfare are more urgent than those of 'normal' warfare and, therefore, different standards must apply. Lord Parker and his colleagues

conclude definitively, "If information is to be obtained, time must be of the essence of the operation". Following this line of argument, it is not surprising that several paragraphs of the majority report are devoted to listing the amount of guerrilla ammunition, information, etc. which were obtained as a result of this brief experiment with "interrogation in depth".

The imagination *staggers* at the effort of conceiving what might have been the consequences for the body politic in the UK had the recommendations of Lord Parker and his colleagues been accepted. *Fortunately*, Mr. Heath and his government accepted instead the views of Lord Gardiner, and the use of the methods of "interrogation in depth" on a civilian population was brought to an end – although recent correspondence has confirmed that these same methods continue to be perfected within the Services.

4 Discussion of the Putative Grounds

(a) Moral Considerations

At the outset, there are two points to be made concerning the argument presented by Lord Parker. The first, being as much legal as moral, might appear, it is true, somewhat out of place. However, it has hitherto been so important a principle of English law that it may be said to have become also a principle of English morality viz. that, although accused, a man must initially be accounted innocent unless and until his guilt has been proved. It is remarkable that nowhere in his Report does Lord Parker make any reference to this dictum or show that he had considered its relevance to the matter before him. It is sufficient that a man (or woman) may be thought to possess information. Nothing more is required to justify the application to him of methods of interrogation which, under any other circumstances would be called torture. Indeed, it is remarkable that England was saved from this not by the leader of the legal profession, but by the elected politicians!

The second point to be made initially arises from a consideration of both the Compton and the Parker Reports. Sir Edmund Compton and his colleagues argued that interrogation by the methods referred to in the Directive was not only not torture, but did not even amount to 'brutality' or 'cruelty' although they might be characterised as 'physical ill-treatment'. A reading of the *Joint Directive on Military Interrogation in Internal Security Operations Overseas* would seem to substantiate entirely Sir Edmund Compton's argument since it emphasises the prohibition against, and indeed, the ineffectiveness of torture on at least three occasions.

However, it has to be noted that what is presented in the Parker Report is clearly labelled 'Extract' and there is no indication of the nature of the paragraph seven which is omitted. Moreover, since the title of the directive indicates that it is to be applied in territories overseas, it is not clear why it is used in justification of actions taken in Northern Ireland which is part of the United Kingdom.

The most significant aspect of the affair, however, is that the Lord Chief Justice of England was prepared to regard the Directive as sanctioning acts which the ex-Lord Chancellor declared illegal and for which the British government was subsequently adjudged in its own courts to be liable for civil damages. One paragraph in the Directive is particularly relevant:

> "8. To obtain successful results from interrogation the actual and instinctive resistance of the person concerned to interrogation must be overcome by permissible techniques. This will more easily be achieved by sustained interrogation in an atmosphere of rigid discipline."

During the 1971 interrogations, Mr. Auld was compelled to stand at the wall for a total period of 43 hours and Mr. J. Clarke for 40 hours, treatment which would, presumably, be regarded as coming within the scope of the final sentence of paragraph 8. Nonetheless, in December 1974, the Ministry of Defence and the former Northern Ireland Government were jointly ordered to pay damages of £16,000 to Mr. Auld and of £12,500 to Mr. Clarke for the treatment they had received.

In terms, therefore, of the operational definition of torture suggested on page 7 a strong case could be made out for the argument that there is no difference between what General Massu calls torture and what the Compton Committee (perhaps aware of the consequences of using that particular term in view of the total prohibition of torture by all relevant international instruments) prefers more circumspectly to refer to as "physical ill-treatment".

Assuming that the two are identical, it is now necessary to examine the justification for the employment of these "special methods" as we have seen them put forward by apologists from both sides of the Channel. The arguments can be reduced to two:

a) it is essential to elicit information quickly in order to save lives;

b) the means employed, while involving duress, can be adjusted to individual circumstances.

The need to elicit information quickly

Despite the protestation of Lord Parker that:

> "We do not subscribe to the principle that the end justifies the means. The means, in our view, must be such as not only comply with the Directive but are morally acceptable taking into account the conditions prevailing."

There can be little doubt that the argument which he and his colleague employed here is that the means, however unpleasant, are justified by the end (hence the reference to the "valuable information" which had been elicited, the list of ammunition discovered etc.). The argument is an ancient one, invoked endlessly from the Biblical "It is expedient for us that one man should die . . ." to that offered for the dropping of the atomic bomb on Hiroshima and Nagasaki. It is the argument that the lesser evil must give way to the larger good. Put in this general form, it is clearly a Benthamite argument. Indeed, in a little known paper, recently edited by Prof. Twining and his wife,[7] Bentham does indeed consider that torture may be justified on just these grounds:

> "It ought not to be employed, save where the safety of the whole state may be endangered for want of that intelligence which it is the object to procure."

At this point it is necessary to spend a little time considering the validity of this philosophical justification. Although the cool and detached approach of the philosopher may seem to consort ill with the suffering and terror of the actual victim of torture, the fact remains that if the philosopher is called in defence of the practice, then his defence must be examined critically and on his own terms.

Quite apart from the difficulty of being certain that the victim does in fact possess the information sought for and that he is not, in fear, 'confessing' something which is quite untrue – (and one remembers the grim remark of Beria in Russia: "Let me have him for one night and I'll have him confessing he's the King of England!")[8] the first question to be put to this proposed defence of torture is one which is entirely in the spirit of Benthamism itself. For Bentham's merit was that he brought the mind of a shopkeeper to the problems of jurisprudence and of penology and examined every proposal for its measure of cost-benefit - *is it*

7 "Bentham on Torture", W. L. and P. E. Twining. *Northern Ireland Legal Quarterly*, Autumn 1973, Volume 24, No. 3.

8 See 1. Also, see *The Black Death* by P. Ziegler, Penguin, 1971 (page 104).

effective? Clearly, the answer of some of the most, as well as of some of the least sophisticated of men is that as a method, it is. Equally clearly, others of like calibre are firmly convinced that it is not. To some extent, of course, the answer, as with any Utilitarian calculus, depends on what enters into the calculations. It is notorious, for example, that Bentham himself, never got further than a discussion of the 'simple' pleasures and pains and thus was unable to satisfy a later generation of Utilitarians who, from their own experience, had drawn the lesson that some pleasures (and, by the same token, some pains) were not simply more pleasurable than others, but that, irrespective of the amount of pleasure, they were more noble (and thus, presumably, some pains would be more degrading).

To Bentham's mind, and apparently to those of his eminent successors who wrote the Reports to which this essay has referred in some detail, it is sufficient that the victim has, under duress, yielded useful information; this in itself is sufficient justification of the methods used.

Put thus pragmatically, the force of the argument cannot be denied. Nor can it be countered by pointing to the fact that torture may yield either no information or false information, or to the experience of interrogating teams during the War which elicited information from their prisoners by methods more reminiscent of the country house-party than of the torture chamber.

A more powerful argument, and one entirely in accord with a Utilitarianism which endeavours to take into account the complexities of all human situations, would be one which pointed to the fact, on the one hand, that neither individuals nor nations which use such methods can remain unaffected by them and, on the other, that the history of post-war colonialism has demonstrated that almost everywhere that torture has been used it has failed in its purpose of securing the hold of the metropolitan country on its colonies.

To all such arguments, the politician and the soldier have one short answer – the "exigencies of the situation". The Joint Directive puts the situation curtly thus:

> "Persons arrested or detained during Internal Security Operations or in near emergency situations are likely to be valuable sources of intelligence. They may be the only sources of information at a time when it is urgently required."

The problem is one which has frequently faced one senior colonial administrator. Lord Caradon gave a paper at the Amnesty Conference on the Abolition of Torture (Paris 1973) in which he outlined what he called "The Dilemma of the Interrogator". He recalled that in Palestine and, later in Cyprus, when faced by guerrilla warfare, the temptation to use torture to extract much-needed information from prisoners was very powerful. Nevertheless, he not only set his face firmly against it, but demonstrated that he would go to considerable lengths to ensure that torture was not used by troops under his command.

In the end, therefore, if the arguments for the use of torture are to be resisted, it cannot be by methods which involve the calculations of advantages and disadvantages (unless both are to be of a complexity and subtlety foreign to the Benthamites of politics and the army). The counter argument must start from that point of axiomatic principle which both Bentham and Mill recognised had to be accepted or rejected – but could not be argued about.

The fundamental grounds for rejecting torture (or "interrogation in depth") as a means of eliciting information from the unwilling is not that it is inefficient (for it may, in the short-term be very efficient) but that it denies to the other the respect which is his due as a human being. (Indeed, this is shown in some of the methods by which the actual torturers are trained, which aim to remove from their minds any recognition of respect for individuals.)

To speak of respect for those who may – or may not have been involved in the slaughter of other human beings may be thought to be carrying delicacy to bizarre extremes. Nevertheless, (quite apart from the fact that this respect is the plain intention of the Geneva Conventions on the protection of prisoners of war and others – to be discussed more fully later), it is a sober truth that such moral progress as the human race has made has been in proportion to the extent that it has allowed its desire for quick, cheap results to be restrained by its respect for the helpless. For the victim of torture is helpless and isolated in the face of men who are not only more numerous but who can depend on the protection of the state itself. The abolition of slavery, of chimney-sweep boys, of capital punishment . . . whatever the reform proposed, it has always been met by the cry (from those who were themselves unlikely to suffer what they were advocating) that the foundations of social stability

and security were being attacked. But society has, in the event, profited from the enhanced contribution which has followed the liberation of whole groups. Kant's principle that men should never be treated as means but only as ends in themselves, may be subject to dispute and qualification in the ordinary course of events but there comes to a society as to an individual a moment when it is imperative to declare a final and irrevocable "NO".

> "He means, for instance, 'this has been going on too long', 'so far and no further', 'you are going too far', or again, 'there are certain limits beyond which you shall not go'. In other words, his 'No' affirms the existence of a borderline."[9]

It is deplorable that in situations where there is a temptation to torture the civilised restraint which originally banished torture from the practices of European governments has broken down. What is urgent is that it should be rebuilt with all speed. Fortunately, the foundation is still there - in international law.

(b) **Moral Considerations of International Law**

If the abolition of torture could be achieved by international fiat alone, then it would several years ago have been universally prohibited, for, not only is there no international legal instrument which expressly allows torture, but in fact, every relevant instrument expressly forbids it in the most categorical terms.

The Universal Declaration of Human Rights may not itself be a 'law', but it has, in the words of one competent commentator, come to be regarded as "part of the law of the United Nations".[10] Article 5 has already been quoted, and its terms are repeated in the Covenant on Civil and Political Rights which gives binding legal effect to the intentions of the Declaration.

More recently, two resolutions against torture have been passed by the General Assembly, the first of which (Resolution 3059, November 2nd 1973) "Rejects any form of torture . . ." and the second (Resolution 3218, November 6th 1974) follows this up by requesting Member States to supply information about measures for safeguarding persons within their jurisdiction from

9 *The Rebel*, Albert Camus, Penguin, 1962 (page 19).

10 *The Principles of Public International Law*, I. Brownlie, OUP, 1966 (page 463).

being subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also requested the 5th UN Congress on the Prevention of Crime and the Treatment of Offenders to develop an international Code of ethics for police, and invited WHO in co-operation with UNESCO to draft an outline of principles of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading forms of treatment or punishment. A third resolution, this time of the Subcommission on the Prevention of Discrimination and Protection of Minorities (Resolution 7, August 1974) allows non-governmental agencies in consultative status with ECOSOC to submit "any reliably attested information".

To some extent, the effectiveness of these Resolutions and Conventions lies in the future; of more immediate interest are the European Convention on Human Rights and the four Geneva Conventions usually known as the Red Cross conventions.

The European formulation which, in Article 3 repeats the UN formula (Article 5 of the Universal Declaration for Human Rights) almost word for word, is of particular interest since it was the clause prohibiting torture which the Scandinavian countries and the Netherlands invoked against Greece in 1968. It was their failure to answer the charge satisfactorily which led the Colonels to pre-empt the expulsion of Greece from the Council of Europe by withdrawing from it.

It is this same clause (among others) which the Government of Ireland has invoked against the UK Government in respect of the treatment of the detainees in Ulster in 1971. The importance of this clause is that it is one of those which governments are not allowed to derogate from even in times of emergency. Thus, to Lord Parker's argument that the exigencies of the occasion might demand the use of torture, the European Convention (which entered into force in 1955 and to which the UK is a signatory) returns an emphatic rejection. There are no circumstances under which the use of torture is anything other than illegal.

This prohibition is repeated in Article 3 of the Fourth Geneva Convention ("Relative to the Protection of Civilian Persons in time of War") which reads as follows:

"Conflicts not of an international character

In the case of armed conflict not of an international character

occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

i. Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by . . . detention or any other cause, shall in all circumstances be treated humanely . . .

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture . . ."

Any further comment on a categorical statement of such a nature is scarcely necessary.

* * * * *

In sum, then, the situation is that by all its statements the international community has declared itself against – and at least in Europe has bound itself to prohibit – torture. But in the majority of the member states of the UN – including some of those in Europe – torture is in fact practised with the approval and under the protection of the government (and, in N. Ireland, by guerrilla forces). Furthermore, there has been at least one attempt by eminent legal authority to argue for legislative protection not of the torturer's victim, but of the torturer himself. It is perhaps, therefore, not too much of an exaggeration to suggest that we have arrived at one of the crucial cross-roads of civilisation. The way backwards leads to the re-introduction of a barbaric system of administrative control which most of Europe had abandoned at least two centuries ago. The way forward leads to a re-inforcing of the restraints on cruelty and a firm regard for the individual which have slowly enhanced the level of "civilised living".

The only excuse for having embarked on a deliberately restrained and, in the proper sense of the word 'academic' discussion of this subject is the conviction that civilised habits, however frail, will in the end re-assert themselves and that through

the process of rational discussion. Perhaps the last word should be with John Stuart Mill:

"If civilisation has got the better of barbarism when barbarism had the world to itself, it is too much to profess to be afraid lest barbarism, after having been fairly got under, should revive and conquer civilisation."[11]

Eric Baker
February 1975

11 *On Liberty*, John Stuart Mill (Chapter 4 ad fin).

DECLARATION ON THE PROTECTION OF ALL PERSONS FROM TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The United Nations General Assembly adopted on 9 December 1975 a Declaration condemning any act of torture or other cruel, inhuman or degrading treatment as "an offence to human dignity". Under its terms, no State may permit or tolerate torture or other inhuman or degrading treatment, and each State is requested to take effective measures to prevent such treatment from being practised within its jurisdiction.

The Declaration was first adopted and referred to the Assembly by the Fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Geneva in September 1975. In adopting the Declaration without a vote, the Assembly noted that the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Assembly has recommended that the Declaration serve as a guideline for all States and other entities exercising effective power.

The text of the Declaration follows:

Article 1

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be con-

demned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article 3

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

Article 8

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at

the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

Amnesty International's Campaign for the Abolition of Torture

During 1973 Amnesty International launched a worldwide Campaign for the Abolition of Torture. The Campaign is devoted to raising public awareness of the use of torture and to promoting effective international, regional and national means to stop it. Efforts are also being made to establish codes of ethics for jurists, doctors, police, military personnel and others who may become involved in the torture process.

Amnesty International's efforts have contributed to an historic UN Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975) (see Appendix) and have succeeded in rescuing specific victims of torture, when details have been known in time, by means of telegrams and letters from participants in Amnesty International's 30,000-member worldwide Urgent Action network.

The following publications by Amnesty International are only a selection of items that contain information about torture and ill treatment. In most cases, the information about torture and ill treatment is given in the context of all Amnesty International's concerns about the particular country, including prisoners of conscience, unfair trials for political prisoners and the use of the death penalty.

Testimony on Secret Detention Camps in Argentina (February 1980) Original: Spanish.

Report of Amnesty International Mission to the Federation of Malaysia 18 November-30th November 1978.

Report of an Amnesty International Mission to Singapore 30 November-5 December 1978 (1980).

Imprisonment of Trade Unionists in 1978 in Tunisia (February 1979).

Political Imprisonment in Uruguay (June 1979).

Report of an Amnesty International Medical Seminar "Violations of Human Rights: Torture and the Medical Profession" Athens, 10-11 March 1978 (August 1978).

Prisoners of Conscience in the USSR: Their Treatment and Conditions (April 1980).

Human Rights Violations in Zaire (May 1980).

Amnesty International Report on Torture (second edition, 1975). Although out of print, this report can be obtained from libraries.

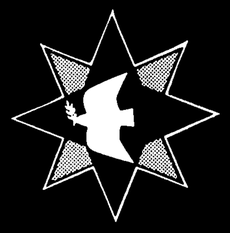
Quaker Abolition of Torture Campaign

Quaker Peace and Service is privileged to have the opportunity of publishing this pamphlet in association with Amnesty International as a tribute to the life and work of Eric Baker.

Eric Baker was largely responsible for alerting the Society of Friends to the cancer of torture, especially by his address to London Yearly Meeting in 1974. It was mainly through his persistence and concern that the issue was subsequently considered by the Friends World Committee for Consultation at its Triennial conference held at Hamilton, Ontario, Canada in July 1976. The Conference declared itself "utterly opposed to torture, and determined to spare no effort to bring it to an end".

Those who knew Eric feel sure that he would have wanted this publication used also as a means of promoting the current and future efforts of Amnesty International and Friends to abolish torture. During the past year, through its Abolition of Torture Group, **Quaker Peace and Service** has undertaken a number of activities. It has organised a Seminar for about 60 Friends and an adoption/support programme for prisoners who are thought to be tortured or are under threat of torture. It has helped raise questions in Parliament and has continued correspondence with the Government regarding its policy of giving training to military personnel to resist interrogation in depth. It has encouraged government support for the Draft Convention on Torture by initiating a seminar for government officials and representatives of non-governmental organisations at the Foreign and Commonwealth Office. Finally, it has started to try to promote the concern for the abolition of torture more widely, especially through the churches.

Needless to say, we are very aware that our efforts are small in relation to the problem. We need more concerned people to help us and we need to deepen our own commitment. We hope that this pamphlet may serve to inspire others to join us in our campaign to end what has aptly been described as "a spiritual sickness of our age".



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