Torture

by: Rabbi Jeremy Rosen

There is no word in the Bible that means "torture" the way we use it nowadays. Modern Hebrew uses the word "inui". But that is used in the Bible to describe what we do to ourselves when we fast on Yom Kippur. Hardly a defiance of the Geneva Convention, unless being deprived of a Krispy Kreme is torture! It is also used to describe slavery in Egypt and that might well have included torture, but not necessarily. The great Rabbi Lowe of Prague described the whole of Exile as "inui."

The Hebrew word for cruelty, "tza'ar", is nearer to what we mean by "torture". Cruelty to animals, for instance, is "tza'ar ba'alei chayim". Under no circumstances are we allowed to torment animals. It is banned as one of the Seven Noachide Commands, fundamental laws that apply to everyone.

There is another word, "oness", compulsion, which is also the Biblical word for rape. In Jewish Law anything achieved as a result of compulsion is negated, invalid. This is why the forced converts to Christianity under the Inquisition were held blameless and allowed to slot gently back into Jewish communities when the opportunity arose.

There is a Talmudic principle that says we do not rely on a person's own testimony against himself (in the absence of any other evidence). "A person cannot incriminate himself." "Confessions" under oness, would not be acceptable. So under Jewish Law judicial torture would never be tolerated. The only pressure brought to bear to clarify events in the absence of witnesses was the Oath. You might call it psychological pressure at a time when people really feared to take the Lord's Name in vain, but this is in contrast to judicial torture being the norm in Europe until just a few hundred years ago.

So why is there no discussion in the Talmud on the merits of or the moral abhorrence of torture? After all, three thousand years ago life was cruel and vicious. Casual reading of the books of Samuel or Kings confirms that kings and their courts got up to all sorts of unsavory business, as indeed did the last of the Maccabee kings. But we need to look at Torah legislation, itself, rather than at those who betrayed it.

One reason that "torture" is not an issue is that Biblical and Talmudic law is very definite about the immorality of any harm or damage done to a person. Whole chapters are devoted to "chavala", physical assault, and the necessary compensation.

I have seen it argued that the Lex Talionis ("an eye for an eye", etc.) is proof of sanctioned torture. That's rubbish on two counts. Firstly, it is unlikely that "an eye for an eye" was ever taken literally in Jewish Law, because on either side of it in the Torah, the laws talk about financial (not physical) compensation. Besides, when we discuss torture we are not talking

about a judicial system of clearly laid down crimes and punishments. Torture is when a possibly innocent person is harmed physically, for either religious or political reasons.

Torture seems almost to be endemic in human nature. The Romans were certainly no strangers to the practise. For them it was a natural tool to scare and cow rebellious natives or colonies and indeed entertain citizens in the circuses. And the Medieval World positively reveled in torturing for political, religious and social reasons. Look at the long list of unspeakable things they did to human bodies—burning, stretching, cutting, gouging.

Yet Judaism as a religious system has never ever tolerated torture.

(One might argue for one exception—a husband who refuses to give a divorce to his wife may be beaten until he agrees! Rabbeynu Tam, who lived in France in the 12th century, effectively put an end to it, probably on the grounds that being surrounded by a violent Christian society he wanted to distance Judaism from anything vaguely similar. There is more than one Jewish woman alive today who regrets that decision!)

The argument in favor of torture is usually most simplistically put like this. You have someone who knows that a bomb will go off and kill thousands. Isn't it worth torturing him to save a catastrophe?

According to Jewish Law one may, indeed, even kill someone who represents a clear and present danger to your life. The Talmudic principle is, "If someone comes to kill you, get there first and kill him." This justifies a pre-emptive strike. But torture is a different issue.

Once you tolerate the idea of torture, then every sadist or Nazi doctor will argue that, for the greater good of mankind, you can experiment on defenseless victims. (See the film 'The Constant Gardener' to get an idea what our modern civilization is still capable of.) Judaism has never accepted the principle that "the end justifies the means". Every life is precious and the Talmudic debate over the Biblical case of Sheva Ben Bichri (II Samuel 20:1), who rebelled against King David, confirms that you may not hand an innocent person over to certain death to save the lives of others.

And the fact is that under torture a person will say whatever he thinks you want to hear. It is rarely reliable. There was the case of the Marrano Doctor Lopez who confessed under torture to plotting to kill Queen Elizabeth. He hadn't. And she felt so bad she gave his widow a pension. And what about all those Russians who confessed to Stalin they had been traitors when on the contrary they were loyal acolytes?

If someone really does have information, there are nowadays lots of chemical and psychological ways of getting him to talk, without having to torture or set the dogs upon him.

I am bitterly disappointed that I cannot find important rabbinic responsa on torture. Neither can I recall hearing, or seeing in print, any major Orthodox rabbi denouncing it unequivocally and explicitly. Are we to bury our heads in

the sand and think it's none of our business?

Torture deprives not only the victim, but also the torturer, of his humanity. No sensitive, ethical human can tolerate inflicting pain on another. It is our moral and religious obligation to speak out against it. This is the clear and totally unqualified position of our religious tradition.

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