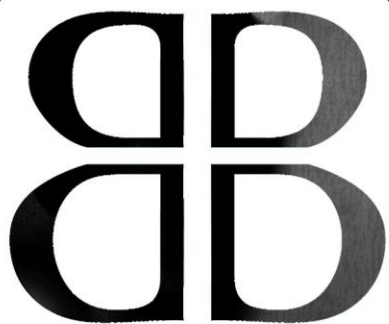


# Torture

A BIBLICAL CRITIQUE

*by* PHILLIP KAYSER, Ph.D.



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Torture: A Biblical Critique

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# Torture: A Biblical Critique

## A Biblical Critique

Phillip Kayser, Ph.D.



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## **Torture: A Biblical Critique**

Phillip Kayser, Ph.D.

*Abstract: I offer the following as a broad definition of human torture: “any deliberate infliction of pain or torment upon oneself or another human being that is not explicitly authorized by the Bible.” A more narrow definition is “the use of such pain or torment to gain information.” Though this booklet will argue against either form of torture, it is the latter definition that will be the primary focus of this booklet.*

### **Why Study This Subject?**

The subject of the torture of “terrorists” has been a hot topic in America ever since the abuses at Abu Ghraib hit the news. Unfortunately, though there has been much written on the subject, there has been very little Biblical exegesis. Christians have fiercely taken sides on whether the CIA and other agencies should ever be involved in the torture of “hostiles.” Others have fiercely taken sides on whether waterboarding and other interrogation techniques should even be defined as torture. There is no consensus on how to define torture. Nor is there a consensus on whether torture can be used, and if so, which forms of torture? Some have argued that the Bill of Rights only protects American citizens, while others argue that those are God-given rights that pertain to all humans, not just American citizens. As will be seen, this is an incredibly important topic with far-reaching ramifications. It is imperative that Christians be able to argue intelligently from the Scriptures. After all, those Scriptures claim to guide us in “all things that pertain to life and godliness” (2 Pet 1:3-4), and to be sufficient to make the man of God “complete, thoroughly equipped for every good work” (2 Tim. 3:16-17).

While most arguments in favor of torture have been purely pragmatic arguments, there have been some attempts to argue both for and against torture from the Bible. Some Christians have gone too far by arguing against all infliction of physical or mental pain, including the Biblical penalties of beatings (Ex 21:20; Deut. 25:3;

Prov. 20:30; 23:13-14; 26:3; Luke 12:47-48) and the Lex Talionis principle of civil law (Ex 21:24; Lev. 24:20; Deut. 19:21; 25:11-12)<sup>1</sup> and they have done so based on Christ's supposed overturning of all corporal punishment in Matthew 5:38-39.<sup>2</sup>

Others have gone too far in the other direction, arguing that these latter punishments are indeed a form of torture that justify the use of torture in our “war against terror,” with God Himself engaging in torture (Josh. 23:13; Ps. 89:32; Is. 10:26; Matt 8:29; 18:34; 22:13; 24:51; Mark 5:7; Luke 8:28; 12:45-48; Rev. 9:4-6; 18:6-8). However, we will see that even if this faulty definition of torture were to be accepted, such an interpretation would explicitly contradict at least fifteen Biblical principles. Before we can get into those Biblical principles, we need to try to define “torture.”

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<sup>1</sup> Keep in mind that (with the exception of murder) various crimes that called for the death penalty could also have what the Bible calls a “ransom” (Numb. 35:32-32), or a monetary penalty given to the victim. Thus, the equivalent monetary damages from the lost employment of a broken leg would almost always be substituted for the criminal who broke the leg actually getting a broken leg himself. Nevertheless, the threat of actual disfigurement of a criminal's body is implied as a possibility in the principle of *lex talionis*. The case of the woman who destroyed the testicles of the man fighting with her husband (Deut. 25:11-12) was given a penalty of equivalency (her hand was cut off). Since she had no testicles, this radical punishment helped to establish the monetary restitution that would be imposed upon her as a “ransom” should the victim choose monetary damages rather than pressing for the removal of her hand.

<sup>2</sup> For a thorough refutation of this position, see Phillip G. Kayser, *Is the Death Penalty Just?* at [www.BiblicalBlueprints.org](http://www.BiblicalBlueprints.org). This booklet deals with numerous arguments against corporal punishment, demonstrating that the New Testament upholds all Old Testament penalties as being just. As Hebrews 2:2 insists that every crime “received a just penalty.”



# Definition of Torture

## Secular Attempts at Defining Torture

Defining torture has proved to be a difficult task for humanists, though most people seem to recognize it when it exists. Both Amnesty International and the International Red Cross have said that it is impossible to define torture by listing prohibited practices, because “[h]owever great the care taken in drawing up a list of all the various forms of infliction, it would never be possible to catch up with the imagination of future torturers who wished to satisfy their bestial instincts; the more specific and complete a list tries to be, the more restrictive it becomes.”<sup>3</sup> They have also admitted that

Whether an act of ill treatment constitutes torture depends on a number of factors, including the nature and severity of the abuse. Both torture and ill treatment are prohibited in all circumstances by international law.”<sup>4</sup>

But international law has had difficulty defining torture in a way that is neither overreaching nor too narrow. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations in 1984 and entered into force in 1987. It sought to define 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

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<sup>3</sup> Jean S. Pictet, *Commentary on the Geneva Conventions of 12 August 1949, Volume III* (Geneva, 1960), p. 39, as cited by Lindsay Moir, *The Law of Internal Armed Conflict* (Cambridge: Cambridge University Press, 2002), p. 32.

<sup>4</sup> <http://www.amnestyusa.org/counter-terror-with-justice/reports-statements-and-issue-briefs/torture-and-the-law/page.do?id=1107981>

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.<sup>5</sup>

However, this definition has raised so many widely conflicting applications that it has ceased to be a helpful definition. We will use this definition of torture to illustrate the problems inherent in arriving at a humanistic definition of torture without the Bible.

First, Amnesty International has pointed out that acts of violence by private individuals should constitute torture, but this definition only criminalizes state sanctioned torture.<sup>6</sup> This problem is addressed tangentially by the phrase “with the consent or acquiescence of a public official or other person acting in an official capacity,” but it certainly does not have the force of a statement that criminalizes all torture, whether public or private. This fact can be easily verified by checking the names of signatory nations<sup>7</sup> against the list of nations that have torture with no government action against such torture.<sup>8</sup> The inclusion of some of these signatories would be laughable if the reality was not so tragic. Even in America there has been debate between various agencies, with the Board of Immigration Appeals arguing “that a person is not eligible for relief from torture by private groups or individuals that a government is unable or unwilling to control.

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<sup>5</sup> The full text of this Convention can be read at:

<http://www2.ohchr.org/english/law/cat.htm>

<sup>6</sup> See <http://www.amnestyusa.org/counter-terror-with-justice/reports-statements-and-issue-briefs/torture-and-the-law/page.do?id=1107981> as one of many documents that Amnesty International has advocating a further clarification of torture in this way.

<sup>7</sup> For a list of signatories and where each nation is at in the process, go to <http://www.hrweb.org/legal/catsigs.html>

<sup>8</sup> The following advocacy groups have done good work in researching the presence of persecution and torture in various countries: Persecution International Christian Concern - <http://www.persecution.org/>, Voice of the Martyrs - <http://www.persecution.com/>, Compass Direct News - <http://www.compassdirect.org/>, Christian Persecution Update India - <http://www.persecution.in/>.

(See Matter of S-V- (Interim Decision 3430 (BIA 2000).)”)”<sup>9</sup> The very fact that our law provides asylum for those undergoing torture highlights the difficulty of enforcing one interpretation of this law within our borders.

Second, both Amnesty International and the United Nations Committee Against Torture have demonstrated the utter inconsistency of the Convention’s definition of torture when it comes to the matter of abortion. Amnesty International complained against Nicaragua to the United Nations Committee Against Torture, arguing that when Nicaragua criminalized all forms of abortion in July of 2008, that country came into violation of the Convention Against Torture!<sup>10</sup> Given the gruesome nature of abortion,<sup>11</sup> one would think that Amnesty International would do everything in its power to stop abortion. On the contrary, Amnesty International described the denial of abortion “rights” to women as being torture of those women.<sup>12</sup> Sadly, the United Nations

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<sup>9</sup> Cited by Kristen B. Rosati, in “International Human Rights Treaties Can Make a Difference: U.S. Implementation of Article 3 of the United Nations Convention Against Torture,” published by the American Bar Association: <http://www.abanet.org/irr/hr/winter01/rosati.html>

<sup>10</sup> For the full text of this complaint to the United Nations Committee Against Torture, see Amnesty International, “The Impact of the Complete Ban of Abortion in Nicaragua: Briefing to the United Nations Committee Against Torture,” (London: Amnesty International Publications, 2009). The full document can be purchased from Amnesty International or downloaded for free at <http://www.amnesty.org/en/library/info/AMR43/005/2009/en> The United Nations Committee Against Torture generally agreed with Amnesty International’s assessment. This prompted Amnesty International to start pressuring Nicaragua to reverse its law. AI also sent out the following press release: “Nicaragua: Complete Ban On Abortion Violates Torture Convention,” which can be read at <http://www.amnesty.org/en/for-media/press-releases/nicaragua-complete-ban-abortion-violates-torture-convention-20090515>

<sup>11</sup> Numerous books have documented the horrific torture inflicted on the body of a baby when it is being aborted. The following videos leave one sickened at the level of torture that babies go through: 1. *The Silent Scream*, 2. *Hard Truth*, 3. *The Right to Kill*, 4. *Eclipse of Reason*, 5. *The Massacre of Innocence: The Occult Roots of Abortion*, 6. *Whatever Happened to the Human Race*. Most pro-life research papers and books can lead the reader to many other resources.

<sup>12</sup> Amnesty International states, “In Nicaragua the passage of the new law has intentionally caused physical and psychological suffering to women and girls in

Committee agreed. This illustrates the schizophrenic nature of any ethics that is divorced from the Bible. Any definition of torture that allows for abortions has lost its credibility.

Third, there is an inherent tension between the main body of the definition and the last qualifying sentence. The main body of the definition is so broad that it could theoretically rule out all acts of war as inflicting torture,<sup>13</sup> and some forms of military training as being torture.<sup>14</sup> The last sentence is perhaps an attempt to rule this out, though it is difficult to see how military training could be seen to fall under “lawful sanctions.” In any case, the last sentence of the definition has opened the door to virtually any form of torture since administrative laws of various agencies have been able to make virtually all torture technically “lawful.” The reason for this is that the Convention leaves the definition of “lawful sanctions” to

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Nicaragua, resulting in a breach of article 16 and, as discussed above, of article 1. The enactment of the law constitutes not only an omission to provide an essential medical service but also an active commission. When the legislature approved the ban on abortion, it denied essential medical services to women and girls, causing them severe physical and psychological pain and suffering, often for long periods of time. The law even causes women and girls to die, either as a result of being denied medical treatment during complications, as a consequence of unsafe abortions, or committing suicide in desperation as a result of the pain and suffering they experience.” Amnesty International, “The Impact of the Complete Ban of Abortion in Nicaragua: Briefing to the United Nations Committee Against Torture,” p. 21.

<sup>13</sup> Though the horror of nuclear, biological, and chemical weapons is often highlighted when discussing the ghastliness of war, conventional weaponry can also inflict torture on survivors for months and years after they have been hurt. Certainly chemical weapons such as choking agents (phosgene, chlorine), blister agents (nitrogen mustard, Lewisite), and nerve agents (Tabun, Sarin, VX) have been horrific in their infliction of pain. But every act of war could be criticized as necessarily inflicting torture, and highlights the importance of not declaring war needlessly. All infliction of pain must be biblically defined. This means that unbiblical wars involve nations in murder and torture.

<sup>14</sup> Consider cold-water training of Navy Seals, or Fort Bragg’s SERE course for aircrew, which used water boarding, excruciating stress positions, sleep deprivation, degradation, and other torture techniques to prepare soldiers for possible capture. Some of these instructors have become “torture teachers” to interrogators. Some who have survived normal bootcamp might think their training was torture too.

each country, and several countries have given a great deal of discretion to agencies to create their own policies.<sup>15</sup> The United

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<sup>15</sup> For example, in the USA, the Army Field Manual was amended on September 6, 2006 to expressly prohibit the following eight interrogation techniques as “cruel, inhuman, or degrading treatment”:

1. forcing the detainee to be naked, perform sexual acts, or pose in a sexual manner;
2. placing hoods or sacks over the head of a detainee; using duct tape over the eyes;
3. applying beatings, electric shock, burns, or other forms of physical pain;
4. waterboarding;
5. using military working dogs;
6. inducing hypothermia or heat injury;
7. conducting mock executions; and
8. depriving the detainee of necessary food, water, or medical care.<sup>82</sup>

However, the next year, despite an Executive Order barring the CIA from employing any of the following:

1. torture, as defined under the Federal Torture Statute (18 U.S.C. §2340);
2. cruel, inhuman, or degrading treatment or punishment, as defined under the McCain Amendment and the MCA;
3. any activities subject to criminal penalties under the War Crimes Act (e.g., murder, rape, mutilation);
4. other acts of violence serious enough to be considered comparable to the kind expressly prohibited under the War Crimes Act;
5. willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person, considering the circumstances, would deem the acts to be beyond the bounds of human decency, such as sexual or sexually indecent acts undertaken for the purpose of humiliation, forcing the individual to perform sexual acts or to pose sexually, threatening the individual with sexual mutilation, or using the individual as a human shield; or
6. acts intended to denigrate the religion, religious practices, or religious objects of the individual.

...the CRS Report for Congress said, “Certain interrogation techniques that have been the subject of controversy — waterboarding, hooding, sleep deprivation, or forced standing for prolonged periods, for example — are not specifically addressed by the Order. Whether or not such conduct is deemed by the Executive to be barred under the more general restrictive language of the Order, including that prohibiting ‘cruel, inhuman, or degrading treatment,’ remains unclear.” Such lack of clarity may be willful, but it further illustrates the problems that humanists face when they seek to deal in ethics without the advantage of God’s revelation.

States (in their reservations to the document) has explicitly redefined “sanctions” to include “any actions authorized by United States law” even if it applies to a person who has had no hearing in a court of law.<sup>16</sup> A simple glance at the current signatories to the Convention Against Torture<sup>17</sup> shows that this is not a theoretical problem in other countries either. Many of these countries engage in forms of horrific torture, but can justify them as “lawful sanctions.” On the other hand, many activists have been pushing Western nations into prohibiting all forms of spanking a child (however moderate the spanking may be), arguing that “consent or acquiescence” by the state to such spanking is a violation of the Convention.<sup>18</sup> Such widely divergent applications of this Convention make it clear that the definition is hopelessly inadequate.<sup>19</sup>

Fourth, the word “severe” does not have definition and has enabled prominent Americans to say that subjecting detainees to extreme temperatures, forced standing, stress positions, sleep deprivation,

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The above quotes were taken from Michael John Garcia, Legislative Attorney, American Law Division, “CRS Report for Congress: U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques,” Updated January 25, 2008, CRS-17.

<sup>16</sup> For the full text of the reservations filed by the United States of America, see [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en)

<sup>17</sup> <http://www.hrweb.org/legal/catsigs.html>

<sup>18</sup> See for example, Karen J. Greenberg & Joshua L. Dratel (eds), *The Torture Papers* (Cambridge: Cambridge University Press, 2005), p. 356.

<sup>19</sup> Other treaties have not been much more successful. For example, the International Covenant on Civil and Political Rights was signed by China in 1998, and the International Convention on Rights of the Child was ratified by China in 1992. When added to their ratification of the Convention Against Torture, one would expect the elimination of torture within the country. But such has not been the result. Under article 28 they do not recognize the competence of the Committee against Torture to investigate allegations of widespread torture within their boundaries. For an interesting analysis of the problems of applying the Convention Against Torture within China, see “Challenges and Problems on Chinese Work Against Torture: For Examination of the State Report of the People’s Republic of China on 41st Session of the Committee Against Torture” (Beijing: China Society for Human Rights Studies, September 30, 2008).

and water boarding is not torture.<sup>20</sup> Water boarding especially has been touted as a “safe” and effective way of getting information. After all, we use these measures on our own soldiers. Many scholars have contested the claim that it is safe,<sup>21</sup> and have pointed to examples of lasting psychological damage, extreme pain, lung damage, brain damage, and broken bones from struggling against restraints. The word “severe” defies definition, though admittedly the United Nations has declared those practices as a form of

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<sup>20</sup> This was the position taken by Judge Mukasey and White House Counsel Alberto Gonzales. Amazingly, both refused to distance themselves from the Bybee memo, which went even farther and stated that physical pain amounted to torture only if it was “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” It is sad that it would take a man like Senator Edward Kennedy to confront such actions. Though much of this was posturing, he said in part:

Waterboarding is a barbaric practice in which water is poured down the mouth and nose of the detainee to simulate drowning. The Nation's top military lawyers and legal experts from across the political spectrum have condemned this technique as a violation of U.S. law and a crime against humanity. Following World War II, the United States prosecuted a Japanese officer for engaging in this very practice, and that officer was convicted and sentenced to 15 years of hard labor. Waterboarding is torture. Period. Yet Judge Mukasey refuses to say so. His refusal was so extraordinary and unexpected that we asked the Judge a series of further questions to help us understand why an able, experienced lawyer would find it so difficult to agree that a practice used in the Spanish Inquisition was torture. But our questions were met with equivocation and evasion. Judge Mukasey ... would not even say whether it would be unlawful for enemy forces to subject Americans to “painful stress positions, threatening detainees with dogs, forced nudity, waterboarding and mock execution.” These extreme views are not only immoral and legally flawed, they also increase the risk that our own troops will be subjected to barbaric treatment.

Judge Mukasey could not even bring himself to reject the legal reasoning behind the infamous Bybee “torture memo.”

November 1, 2007. For transcript, go to:

<http://www.c-spanvideo.org/videoLibrary/clip.php?appid=595422964>

<sup>21</sup> See for example the “Open Letter to Attorney General Alberto Gonzales” at <http://www.hrw.org/en/news/2006/04/05/open-letter-attorney-general-alberto-gonzales>

torture.<sup>22</sup> Certainly the person who is being subjected to these painful procedures thinks they are so severe that he or she is willing to confess to anything rather quickly. But when top legal scholars can disagree on these practices, it makes one wonder if humanists can ever come to a consensus on the definition of torture.

Fifth, the first part of the definition has been interpreted by at least some to rule out self-defense with Tasers or other electric shock devices,<sup>23</sup> all corporal punishment<sup>24</sup> (beatings,<sup>25</sup> death penalty,<sup>26</sup>

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<sup>22</sup> See the *Report of the UN Committee against Torture: Thirty-fifth Session (14–25 November 2005), Thirty-sixth Session (1–19 May 2006)* at

<http://www.unhcr.org/refworld/docid/45c30bbf0.html>

<sup>23</sup> The United Nations Committee Against Torture declared the use of Tasers to be a form of torture in November of 2007. Certainly the Chinese and many other countries have used electric shock as a form of torture. Amnesty International has documented a number of cases of the abuse of Tasers -

<http://www.amnestyusa.org/document.php?id=1A01E91E134A327080256F190042408D&lang=e> However, it should be asked whether misuse of a weapon should completely outlaw such a weapon for self-defense. For US government responses on the use of electro shock devices, see <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2374865/>, <http://www.state.gov/g/drl/rls/68554.htm>.

<sup>24</sup> A number of UN documents seem to suggest that all corporal punishment should be forbidden. The Committee Against Torture, Forty-fourth Session, 26 May -14 May 2010 Report advocates stronger language against all corporal punishment within the state. See also CAT/C/CHN/4 27 June 2007, CAT/C/LKA/CO/2 15 December 2005, etc.

<sup>25</sup> The Army Field Manual explicitly lists any form of beating as a violation of the prohibition of torture. Michael John Garcia, Legislative Attorney, American Law Division, “CRS Report for Congress: U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques,” Updated January 25, 2008, CRS-20, footnote 92.

<sup>26</sup> Several nations see the death penalty as in violation of the Convention Against Torture. Others arbitrarily apply this definition of torture only to those who are 18 years or younger. See The U.N. Convention on the Rights of the Child, which prohibits the use of the death penalty for juvenile offenders and outlaws the sentence of life without possibility of parole for those under 18. The U.S. has signed the treaty, but not ratified it. See also the International Covenant on Civil and Political Rights, Article 6, adopted Dec. 16, 1966, entered into force March 23, 1976, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No.16) 52, U.N. Doc. a/6316 (1966).



hard labor,<sup>27</sup> or an optional literal application of *lex talionis*), as well as any punishment that would bring great mental anguish to a person (including the pain suffered from loss of position, shame, public rebuke, social ostracism, etc). It would be thought that the last sentence of the definition would protect such sanctions when applied to a person already convicted of a crime and receiving lawful penalties within a given country. However, as the Congressional Record shows, American law may “not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.”<sup>28</sup> But this begs the question on how exactly we should define torture. Humanists are all over the map on this question.

Sixth, the first part of the definition could at least theoretically rule out liberal ideas of incarceration in prisons, since it has been well documented that prisons almost guarantee the infliction of notoriously evil forms of psychological and physical abuse by guards and/or inmates.<sup>29</sup> It is hard to take people seriously when

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<sup>27</sup> Though it may be questioned whether this would ever be seriously considered as torture, the following complaint to the United Nations Committee Against Torture certainly makes that accusation: “Torture in Tibet: A Report Submitted to the United Nations Committee Against Torture on Violations by the People’s Republic of China Against the People of Tibet,” submitted by the Secretary, Department of Information and International Relations, Central Tibetan Secretariat, India, April, 2000. Likewise, many human rights organizations include solitary confinement and hard labor in their definition of torture. See for example, [http://www.hrea.org/index.php?doc\\_id=265](http://www.hrea.org/index.php?doc_id=265) This is why the United States Commission on International Religious Freedom has expressly excluded hard labor as a form of punishment. See [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=1671&Itemid=1&date=2010-09-01](http://www.uscirf.gov/index.php?option=com_content&task=view&id=1671&Itemid=1&date=2010-09-01)

<sup>28</sup> <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-57543/0-0-0-59216/0-0-0-59301.html>

<sup>29</sup> The high incidence of violence, homosexual gang rape, and other forms of physical and psychological abuse make America’s penitentiary system cruel and unusual punishment. Both civil agencies and private advocacy groups have documented this. See *Confronting Confinement: A Report of the Commission on Safety and Abuse in America’s Prisons*, (Washington, D.C.: Vera Institute of Justice, 2006). This government authorized report gives 126 pages of sobering statistics on how evil and twisted the prison system is. Prison is certainly an unbiblical concept.

they argue that our prison system is more humane than the Bible's punishments.

Seventh, the ambiguity within this definition has led the DOJ and the INS to give interpretations of torture<sup>30</sup> that have been at odds with the definitions used by the CIA.<sup>31</sup>

I bring up these issues to point out that without the inspired civil law of the Bible to judge our behavior, nations will continue to be

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<sup>30</sup> See for example one portion of the DOJ regulations relating to immigration courts, which states:

- The anticipated act must inflict severe pain or suffering, either physical or mental. Physical torture may include beatings, burns, electrical shocks, exposure to excessive light or noise, suspension, suffocation, prolonged denial of sleep, food, hygiene or medical assistance, rape, and a variety of other physical mistreatments. (See Gina Germain, "Convention Against Torture: New Implementing Legislation, Regulations and Policies," AILA'S ASYLUM PRIMER, A PRACTICAL GUIDE TO UNITED STATES ASYLUM LAW AND PROCEDURE, 2d ed. (2000).) Mental pain and suffering constitutes torture if it is prolonged and results from the infliction or threatened infliction of severe physical pain or suffering, administration of a mind-altering substance, the threat of "imminent death," or the threat that another person will be subjected to that harm.
- The act must be inflicted intentionally. An action that results in unanticipated or unintended severity of pain and suffering is not torture.
- The act must occur "in the custody or physical control of the perpetrator."
- The act must be 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."
- Torture "does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, "but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture."

<http://www.abanet.org/irr/hr/winter01/rosati.html>

<sup>31</sup> See Jennifer K. Harbury, *Truth, Torture, and the American Way: The History and Consequences of U.S. Involvement in Torture*, (Boston: Beacon Press, 2005). Though not endorsing the book, it is hard to avoid the conclusion that the CIA has been heavily involved in torture.

at a loss to know how to consistently prohibit what they intuitively know to be wrong. We need an objective standard by which to judge these debates.

## **A Biblical Definition of Torture**

I offer the following as a broad definition of human torture: “any deliberate infliction of pain or torment upon oneself or another human being that is not explicitly authorized by the Bible.” A more narrow definition is: “the use of such pain or torment to gain information.” Though this booklet will argue against any infliction of pain that violates these two definitions, it is the latter definition that will be its primary focus. These two definitions are a necessary consequence of the following Biblical data:

A woman who gets her ears pierced for earrings is deliberately inflicting temporary pain upon herself, but because this is authorized by the Bible (Ezek. 16:12), it does not fit the definition of torture. Circumcision was also a painful act, with debilitating pain lasting for several days (Gen. 34:25), but because it too was authorized by God’s Word (Gen. 17), we will not define circumcision as torture. Likewise, surgeries designed to restore a body to God’s normal order, though inflicting pain, had a Biblical and God-glorifying purpose and would not constitute torture. Likewise, the Biblical punishments mentioned in the first paragraph of this booklet do not constitute torture if they were inflicted by the jurisdictions authorized by God, on the crimes authorized by God, within the limits authorized by God, and after Biblical due process.

By way of contrast, surgeons who engage in willful body modification (such as splitting tongues, inserting horns under the scalp, performing sex change operations, etc) would fit the definition of torture whether the surgeon was asked to do it or not. Surgeons who perform abortions are indeed torturers and murderers. The painful scarification process that some African tribes inflict on the bodies of children is clearly forbidden in Leviticus 19:28 and would qualify as a prohibited act of torture. This same passage would also rule out all sadism and masochism, whether the person receiving the pain “enjoyed” the pain or not. Such torture is clearly demonic in origin (Deut. 14:1; 1Kings 18:28; Mark 5:5). Our bodies belong to God (1Cor. 3:16-19), and we need to ask God whether graffiti, pain, scars, or death may be

inflicted on humans. Even tattooing of prisoners for identification purposes would be forbidden (Lev. 19:28). Biblical law must define all issues related to pain inflicted on man.

The issue is not whether corporal or psychological pain may ever be inflicted upon humans. The Bible is quite clear that lawful wars of self-defense are situations where soldiers may indeed inflict pain and death upon the invading army. It is just as clear that corporal punishment may be inflicted upon criminals, with the death penalty being applied to murder (Gen. 9:6; Ex. 21:12-14; Lev. 24:17; Numb. 35:16-33; Deut. 19:11-13; 21:1-19; Matt 15:3-9; Luke 23:41; Acts 25:11), a just number of beatings being applied to certain criminals (Deut. 25:2-3; Prov. 18:6; 19:29; 20:30; 26:3), and the theoretical possibility that the lex talionis laws could be applied literally (Ex 21:24; Lev. 24:20; Deut. 19:21; 25:11-12).<sup>32</sup> Likewise, Biblical law was often severe enough that it produced legitimate fear (a form of psychological pain) that helped to discourage criminal behavior (Deut. 13:11; 19:20). So the issue is not whether it is Biblical to inflict pain. The issue is whether it is ever legitimate to engage in “any deliberate infliction of pain or torment upon oneself or another human being that is not explicitly authorized by the Bible.” And more to the point of this booklet, is it ever legitimate to inflict pain or torment upon anyone to gain information? The clear answer of Scripture is “No.”

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<sup>32</sup> See later discussion that clarifies the intent of this law being equivalent value when a “ransom” of monetary damages was awarded. Nevertheless, there could be theoretical situations where a ransom was not wanted or applied, and a literal application of an eye for an eye and a tooth for a tooth could be extracted from a criminal. See Phillip G. Kayser, *Is the Death Penalty Just?* At [www.BiblicalBlueprints.org](http://www.BiblicalBlueprints.org) For an in depth analysis of all the Biblical penalties for crimes. This present booklet will not address penology since its focus will be only on torture.

## The Biblical Prohibition of Torture

In Acts 23:3 Paul gave the standard Jewish interpretation of Deuteronomy 25:1-2. He said that it was not lawful for authorities to so much as slap a prisoner prior to a trial and conviction.<sup>33</sup> Of course, people might object that this was only a protection for a citizen, not an enemy combatant. But Scripture was quite clear that “One law shall be for the native-born and for the stranger who dwells among you” (Ex. 12:49). This did not preclude interrogation of hostiles on the field of battle (Judges 8:14) or offering mercy to hostiles who voluntarily gave helpful information – a kind of plea-bargaining (Judges 1:24-26). These situations were proper applications of the offer of peace to a city (Deut. 20:10-15) also being extended to any citizen of that city who defected. It is true that on the field of battle enemy soldiers knew that their fate was death (Deut. 20:10-15) unless they had worthwhile information to give. Since information was a weapon on the field of battle, an enemy who withheld information during the heat of battle could be considered to be armed and could be killed. This was why plea-bargaining was so powerful on the battlefield. Failing to plea bargain could mean death. But God never allowed torture to extract information. The following are the main Biblical arguments against the torture of any human, whether alien or citizen:

1. Paul declared the slapping of a prisoner prior to conviction under due process of law to be a violation of the law (Acts 23:3). If Paul was struck “contrary to the law,” then anything greater than a slap on the face should also be considered unlawful. This would be true whether the person was a “native-born” or “a stranger who dwells among you” since there must be “one law” for both (Ex. 12:49). This principle would rule out waterboarding.

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<sup>33</sup> If the prisoner was putting up a fight, that was an entirely different question and force could be used to subdue him. But that is simply because a captive was seeking to escape from custody.

2. Nicodemus argued that judging either an individual or a crowd of being an enemy of the state without having been convicted in a court of law was contrary to the law (John 7:47-53). Torture assumes the guilt of an individual without due process.
3. Arguing from the lesser to the greater, cruelty against animals was forbidden in the Bible (Gen. 49:5-7; Prov. 12:10); how much more so cruelty against humans (Gen. 49:5-7; Ex. 6:9; Ps. 71:4; 74:20)?
4. Biblical law governing the treatment of captives does not allow for torturing or killing them (2Kings 6:8-23). On the field of battle, an enemy can be killed, but once the *immediate* conflict has ceased, such prisoners cannot be treated inhumanely. Nor should people argue that we are in a perpetual state of emergency. We all know how the threat of danger can be perceived to be perpetual (even years after a proven attempt at attack has ceased). Can we treat a captured soldier who is now in America differently than God commanded the captured pagans in 2 Kings 6:8-23 to be treated (despite imminent threats from Syria)? That would violate centuries of Western war policies. The limits of any form of “roughing up” would be on the battlefield in face-to-face combat. Once the soldiers are in custody and off the battlefield, 2 Kings 6:8-23 kicks in and they should be treated well.
5. Though hostiles from an aggressor nation could be made into slaves for war reparations (Lev. 25:44-46; Josh. 9:23), all Biblical slaves (indentured servants) had basic God-given rights that would rule out torture: **A**) Beatings could only be inflicted on slaves for clear-cut punishment for documented disobedience (Luke 12:44-48). There is no evidence that slaves could be beaten to extract information from them. Keep in mind that “a child is no different from a slave” (Gal. 4:1). This means that any corporal punishment that is ungodly for a parent to inflict upon his child would also be ungodly to inflict upon his slave. This first principle would clearly rule out waterboarding. **B**) Second, slaves were always to be treated with respect, and not with cruelty (Lev 25:46,53). Interrogation techniques that are cruel or harsh should not be used. **C**) Scripture protected slaves with the *lex talionis* principle just as

it did any other citizen, and if permanent damage of any type was inflicted on such a captive (Ex. 21:20-27), he was to be let free (Ex. 21:26-27; Lev 24:19-22). Likewise, equivalent punishment was to be inflicted on the torturer: “as he has done, so shall it be done to him— fracture for fracture, eye for eye, tooth for tooth; as he has caused disfigurement of a man, so shall it be done to him... You shall have the same law for the stranger and for one from your own country; for I *am* the LORD your God.’ ” (Lev. 24:19-22).

6. Witnesses were required of the prosecution, but not of the accused (Deut. 19:15; Lev 5:1). This by itself rules out the use of torture because it is requiring a person to become a witness against himself. Only the accuser was forced to testify.
7. Torture violates the Biblical right of the accused to remain silent. This law is implied in Num. 35:30; Deut. 17:6; 19:15 and is explicitly affirmed by Christ’s silence in Mark 15:3-5; Matt. 27:14. This reinforces the previous point that the prosecution had the responsibility of bringing witnesses and that the accused did not.
8. The accused is treated as innocent until proven guilty (Deut. 25:1-2; Is. 43:9; Imp. Deut. 17:6; Acts 16:37; 23:3). This was one of the gross violations of the law that occurred at the trial of Jesus. He was mocked and beaten *prior* to trial (Luke 22:63-65). But modern torture of captured “suspects” is a similar violation of the principle of “innocent until proven guilty.”
9. Torture erodes the character and testimony of a nation (Deut. 4:6-8 *versus* Lam 4:3; Ezek. 34:4). God wanted the Gentiles to be jealous of the liberties that His law brought to Israel (Deut. 4:6-8), and declared his laws to be the “perfect law of liberty” (James 1:25; 2:12). However, through cruelty, Israel’s reputation was destroyed (Lam. 4:3; Ezek. 34:4). In a similar way, torture has ruined America’s grand testimony. Though not agreeing with much of his politics, Sen. John McCain was correct when he excoriated the forms of torture that have recently been perpetrated in America:

I don't mourn the loss of any terrorist's life. Nor do I care if in the course of serving their ignoble cause they suffer great harm. They have pledged their lives to the intentional



destruction of innocent lives, and they have earned their terrible punishment in this life and the next. What I do mourn is what we lose when by official policy or official neglect we allow, confuse or encourage our soldiers to forget that best sense of ourselves, that which is our greatest strength--that we are different and better than our enemies, that we fight for an idea, not a tribe, not a land, not a king, not a twisted interpretation of an ancient religion, but for an idea that all men are created equal and endowed by their Creator with inalienable rights.”<sup>34</sup>

10. Many commentators have pointed out that the torturer himself is dehumanized and that the “cruel man does himself harm” (Prov. 11:17 NASB). As Alexander Solzhenitsyn worded it, “Our torturers have been punished most horribly of all: They are turning into swine; they are departing downward from humanity.”<sup>35</sup>
11. All men are made in the image of God (Gen. 1:26-28; 9:6) and torture degrades that image (Deut. 25:3). Even after a trial and conviction, this image of God in man meant that no one could be given more than forty lashes in a beating because that would make him “degraded” (Deut. 25:3 NASB). It didn’t matter that a horrendous criminal might be thought to “deserve” more than that, this was the limit of degradation that was allowed in the Bible as punishment. Nor were there other forms of physical pain beyond beatings and capital punishment that were allowed for any one crime. Torture appeared to be off the radar of Biblical justice.
12. Even after capital punishment was inflicted, the body of a criminal had to be treated respectfully lest the land be defiled (Deut. 21:23). Certain forms of torture have flagrantly disrespected people’s bodies.
13. Authorizing torture trusts government with far too much power. Since civil government is made up of depraved individuals (Rom. 3:10-18), unrestrained power in the hands of such would be corrupting. We have seen what the power to

<sup>34</sup> Sen. John McCain, “Torture’s Terrible Toll,” *Newsweek*, November 21, 2005.

<sup>35</sup> Aleksandr Solzhenitsyn, *The Gulag Archipelago*, volume two, p. 613.

torture has done to degrade governments in even “civilized” countries. Why would we want that in America?

14. The New Testament says that “every transgression and disobedience [in the Old Testament] received a just penalty” (Heb. 2:2). To the degree that we deviate from God’s law, we deviate from justice. Since the Old Testament nowhere shows torture as a just use of civil force, to use it is to deviate from justice and to buy into pragmatism.
15. The Golden Rule – do unto others what you would have them do to you (Matt 7:12). No one would want to be tortured if captured by the enemy.

There simply is no Biblical evidence of coerced testimony authorized in the Bible. Even Achan, who jeopardized the safety of the entire nation and whom God had already tried and convicted, was only asked to give a voluntary confession in Josh 7:9-26. Thus Paul rightly protested when he was treated as guilty until proven innocent (Acts 16:37) and the trial of Christ (as much of a Kangaroo court as it was!) was stymied in their attempt to prove Christ guilty because he refused to give information despite torture. This however does not mean that a person cannot be condemned when he testifies to his own guilt. See for example 2Sam. 1:16 where David said, “Your blood be on your own head. Your own mouth testified against you when you said, ‘I killed the LORD’s anointed.’”

Many people object that water boarding is a safe form of information gathering and does not meet the criteria of torture. They also argue that so long as water boarding is not used on American citizens, it is proper to use. However, many of the principles already given apply here. Other questions that expose the problem with water boarding are these:

1. If water boarding is permissible for non-citizens, what is there about water boarding that makes it not acceptable to be used on citizens? Could it be used on a citizen who was suspected of being a terrorist? Do his rights vanish? Do citizens have more rights than non-citizens? I do not accept

the idea that the Constitution's Bill of Rights applies only to citizens. Those were rights that the citizens had before there was any nation of America or any citizens. They were seen as God-given rights that relate to humanity, not to US citizenship. The bottom line is that Scripture mandates that "one law shall be for the native born and for the stranger who dwells among you" (Ex. 12:49; Numb. 15:16).

2. If someone were to turn around and argue that waterboarding is indeed permissible even for citizens, under what Biblically defined circumstances? This author has searched in vain for such guidelines in the Scripture. Given the strong language against coerced testimony, the onus is on those who believe torture is acceptable to prove that the Bible allows for it. Furthermore, what would be the *limits* of psychological pressure and pain that could be used on citizens? If this is not defined Biblically, there really are no limits. How could you demonstrate that there is a logical stopping point? If you were the subject of water boarding (suspected of being a rightwing extremist), would you feel like your civil liberties were being abridged? Christians need to think Biblically on these issues and not argue that the end (of peace and safety) justifies the means (of torture).

## **Conclusion**

Based upon the Biblical evidence that we have examined, we conclude that torture should never be used by anyone to gain information. Not only is it not authorized for our war on terror, it is itself a hostile attack against God's social order and should be opposed by every citizen.





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- Cummings, Tim. *Ministerial Training: The Bible's Normative Pattern.*
- Davis, Andrew. *Written on Your Heart: An Approach to Extended Memorization of Scripture.*
- Elliot, Michael (Ed.). *Bible Acrostic: An Aid to Memorizing the Content of Every Chapter of the Bible.*
- Kayser, Phillip. *Biblical Romance: What Does the Bible Say About Courtship & Betrothal?*
- Kayser, Phillip. *The Canon of Scripture, Volume 1: Biblical Presuppositions.*
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# Torture: A Biblical Critique

Phillip Kayser, Ph.D.

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The United Nations, Solidarity International, and some human rights organizations have tried to define and rule out torture, but have been frustrated at how difficult it is to even define the term. Is abortion torture? Solidarity International surprisingly says “No.” But what is even more bizarre, that “human rights” organization has successfully brought a complaint before the United Nations against Nicaragua, claiming that this nation is engaging in torture against women on a massive scale by prohibiting all abortion! What is torture? Should our civil government ever engage in torture? How do we know? It is the contention of this author that apart from the infallible revelation of God in the Scriptures, no one can give a consistent answer. What are we to think of the practices of spanking, waterboarding, and corporal punishment? This booklet seeks to give a Biblically consistent answer to these and other questions.

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Founder and President of Biblical Blueprints, **Phillip Kayser** has degrees in education, theology, and philosophy. Ordained in 1987, he currently serves as Senior Pastor of Dominion Covenant Church, a conservative Presbyterian (CPC) church in Omaha, NE. He also serves as Professor of Ethics at Whitefield Theological Seminary and President of the Providential History Festival. He and his wife Kathy have 5 children and 9 grandchildren.



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