

Jewish Law And Torture

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Special To The Jewish Week

The use of torture during wartime strikes us as conduct hard to accept and easy to condemn. The torture of prisoners denies their basic human dignity, encourages a downward ethical spiral among our own soldiers, and calls to mind our long history of vicious suffering as Jews.

Yet, the truth is that wartime entails the general suspension of our ethical sensibilities. In war, each side seeks to kill the soldiers, military support staff, and political leadership of its enemy. And with the battlefield widened by the modern military-industrial complex, even civilian deaths have become a sad (but sometimes necessary) part of combat. Warfare entails conduct that is not morally ideal, and recognizing this is extremely vital.

Furthermore, the current discussion about the morality of torture continues to be badly framed by the immoral conduct of U.S. soldiers at the Abu Ghraib prison in Iraq three years ago. There, prisoners were tortured for entertainment by U.S. troops, unrelated to any valid military objective. It is easy to denounce this form of torture, and it is proper to do so.

However, this is very different from a serious conversation about torture in the Jewish tradition during wartime, which poses several harder and more complex questions: In what situations may torture be used in the course of war to extract vital information that cannot otherwise be obtained? Might brutality be a legitimate way to punish those who have engaged in warfare against the community, so as to persuade others to cease their actions? And most importantly, how much of Jewish law and ethics are suspended during wartime?

Consider three challenging, real-world cases:

During World War II when the Free French Forces of the Interior continued to fight German occupation forces in France, Germany refused to treat members of the French Army as combatants — even though they wore insignia, carried their arms openly, and were in touch with both the Allies and the French provisional government in Algeria. The Germans subjected French captives to summary execution despite formal protests by the provisional government in exile. The French threatened reprisals, and when the executions did not stop, they shot 80 German prisoners under their control, which they had “borrowed” from the British. Only then did the killings of French soldiers cease. The only other alternative would seem to have been the wholesale death of many French soldiers.

So too, consider the problem in the Vietnam War of convincing captured North Vietnamese officers to share information with American intelligence. This was a difficult task, but American officers found that the single most effective way to get such captives to surrender information was to take five prisoners up in a helicopter and ask one of them a question. If he refused to answer, he was summarily pushed out of the helicopter and the next prisoner was questioned. This method, however brutal it seems to us civilians, produced the needed results.

Finally, consider the case of the captured al Qaeda operative who might have vital information that he would not voluntarily relinquish. Is abusing the Koran in his presence permissible? What about interrogation by menstruating women soldiers? Moderate physical shaking? Hooding for extended periods of time? Even water torture in the hands of a team of skilled professionals who believe that this process will extract information of value and save the lives of others would seem permissible in a time of war.

These are the hard questions torture poses. In a recent monograph published by the Center for Jewish Studies at Queens College as well as a forthcoming chapter in an Orthodox Forum volume, I have shown that torture is permissible

and consistent with halacha in all situations where there is a proper, thoughtful military chain of command (the higher up a decision goes, the more thought tends to be put in) and no other reasonable alternative is available. The basic argument is that the wholesale suspension of the sanctity of life that occurs in wartime also entails the suspension of such secondary human rights issues as the notion of human dignity, the fear of the ethical decline of our soldiers, or even the historical fear of our ongoing victimhood.

Furthermore, the protection of our own soldiers and civilians undoubtedly trumps the claims of human dignity by those who seek to do us evil. International law, which Jewish law generally expects its adherents to obey, is limited in its scope to those who pledge themselves to its obedience. Neither Hezbollah nor Hamas nor al Qaeda are signatories to the Geneva Convention and do not conduct themselves in accordance with its provisions. They certainly do not treat prisoners they capture in accordance with its requirements (as shown by the recent murder of two captured American soldiers in Iraq). Thus we are not required as a matter of international law to treat their prisoners in accordance with the

convention on the treatment of prisoners.

In sum, according to Jewish law and ethics, torture in the context of war is no more problematic than death itself, and is permitted by the general license to wage war. There is no logical reason that halacha would categorically prohibit duly authorized wartime torture as a method for acquiring information otherwise not available, in order to save lives in the future. Of course, not all conduct permitted as a matter of Jewish law is wise or prudent; the consideration of which policies work in what settings is fundamentally not a question of Jewish law or ethics, but one for military and political leadership.

We all pray for a time when the world will be a peace — but until that time arrives, Jewish law directs the Jewish state and the American nation to do what it takes (no more, but no less, either) to survive and prosper ethically in the crazy world in which we live. ■

Michael J. Broyde is a law professor at Emory University and rabbi of the Young Israel synagogue in Atlanta. He has authored, co-authored and edited numerous works in Jewish law and law and religion, including the forthcoming “The Bounds of Wartime Military Conduct in Jewish Law: An Expansive Conception” (City University of New York/Queens College).

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