

Torture as An Ethical Problem

ETİK BİR SORUN OLARAK İŞKENCE

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Summary

Some specified norms are virtually absolute, and therefore usually escape the need to be balance. The prohibition of torture is of this kind, where this action is defined as the gratuitous infliction of pain and suffering. Torture is defined as the conscious infliction of physical or psychological pain on a person in order to punish or terrorize him or her.

Physicians can be involved in torture in either active or passive ways. If a physician does not examine a patient properly or does not examine him or her at all, or examines a detained or sentenced patient in the presence of an authority figure, letting the patient wear a blind fold and/or handcuffs during the examination, ignores or just fails to notice the signs of torture in the examination, or writes inappropriate reports, can be charged with passive involvement. Physicians' attempts to remove the signs of torture at any time during the patient's interrogation indicates an apparent involvement in torture. A physician can be charged with active involvement in torture when he/she provides help for the continuation of torture, or discloses information about his/her patient's medical problems or uses his/her medical knowledge in order to provide the torturers with clues to invent new and effective methods for torture. There is no moral difference between active or passive involvement in torture.

A physician can face different kinds of ethical dilemmas during an encounter with torture victims. The major dilemmas include; a physician can be forced to choose between his/her life and his/her obligation to protect the torture victim; between his/her responsibility to protect the patient's life and restore health and to contribute to the continuation of the torture, when the treatment helps the torturer to attain his/her objectives; and the best interest of third parties and the torture victim in cases where torture seems to be justifiable. All of the international declarations and ethical codes emphasize the moral responsibility of the physician not to be involved in torture. But these theoretical texts are far from being practical and applicable solutions to the problem.

Health, by definition, is hampered by torture, because torture irreversibly damages a person for a life time. Therefore, torture itself is a phenomenon which physicians must try to eradicate as a moral duty.

Key Words: Torture, Physicians' duties, Ethics

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Özet

Bazı belirli normlar neredeyse kesindir ve bu nedenle bunları dengelemeye gerek kalmaz. Acının ve ıstırabın sebepsiz bir ceza olarak kullanılması biçiminde tanımlanan işkencenin yasaklanması bu normlar grubu içinde yer alır. İşkence, bir insana, onu cezalandırmak veya yıldırma için, bilerek fiziksel ya da psikolojik açıdan acı çektirmek olarak tanımlanır.

Doktorlar aktif ya da pasif olarak işkence olayı içinde yer alabilirler. Eğer bir doktor, hastasını uygun bir biçimde muayene etmezse ya da onu hiç muayene etmezse; gözaltında ya da hükümlü bir hastayı bir otoritenin varlığında muayene ederse, hastanın muayene sırasında göz bağı ve/veya kelepçe takmasına izin verirse, muayene sırasında işkencenin izlerini görmezlikten gelirse veya farketmezse, ya da gerçek dışı raporlar yazarsa işkenceye pasif katılımı suçlanır. Doktorların hastanın sorgusu sırasında, herhangi bir zamanda, işkencenin izlerini gidermek girişimleri, işkenceye açık olarak katılımı gösterir. Eğer bir doktor işkencenin devam etmesi için katkıda bulunursa, işkencecilere yeni ve etkili işkence yöntemleri icat etmekte kullanacakları ipuçları sağlamak için hastasının tıbbi problemleri hakkındaki bilgileri açıklarsa ya da tıbbi bilgi birikimini kullanırsa, işkenceye aktif katılımı suçlanır. İşkenceye aktif ya da pasif katılım arasında ahlaksal olarak hiçbir fark yoktur.

Bir doktor işkence kurbanlarıyla olan görüşmeleri sırasında farklı türlerde etik ikilemlerle karşılaşabilirler. Bu ikilemlerin en önemlileri; bir doktor işkence kurbanını koruma yükümlülüğü ile hayatı arasında; tedavi işkencecinin amaçlarını elde etmesine yardımcı olduğunda, hastanın hayatını koruma ve sağlığını düzeltme sorumluluğu ile işkencenin devamına katkıda bulunma sırasında ve işkencenin haklı çıkarılabilir görüldüğü durumlarda üçüncü kişilerle işkence kurbanının çıkarları arasında seçim yapmaya zorlanabilir. Bütün uluslararası bildirgeler ve etik yönergeler doktorun işkenceye katılmamak biçimindeki ahlaksal sorumluluğunu vurgular. Ancak bu kuramsal metinler bu alandaki problemler için uygulanabilir ve pratik çözümler sunmaktan çok uzaktırlar.

Tanımlı gereği sağlık, işkence tarafından ortadan kaldırılır; çünkü işkence bir insana yaşam boyu geri döndürülemez zararlar verir. Bu nedenle işkence, doktorların ahlaksal ödev olarak ortadan kaldırmak zorunda oldukları bir olgudur.

Anahtar Kelimeler: İşkence, Hekimlerin ödevleri, Etik

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Torture can be defined as any kind of life-threatening stress. The stress of torture begins in the minute it conceptually appears in the mind (1). If we quote a more detailed definition of torture from the British Medical Association's well-known book, "Medicine Betrayed", torture, which is considered an assault on human dignity by one or more persons, by the individual's own initiative, or according to the orders of an authority, torture is then the conscious, systematic and cruel infliction of physical or psychological pain, either to make a person to give information or to confess a crime, or for another purpose (2). The United Nations defines torture in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Part 1 Article 1 as follows; "... the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

According to Beauchamp and Childress, some specified norms are morally absolute, and therefore usually escape the need to be balanced. The prohibitions of torture is of this kind, where this action is defined as the gratuitous infliction of pain and suffering (3).

Practicing medicine involves both a privilege and an obligation. Medical skills are taught with the best intentions. But learning medical skills must be balanced with education about moral obligation as well. Otherwise, these skills may be misused. Some actions totally exceed the codes of medical ethics. A physician's involvement in torture is one of those actions (2). The aim of this article is to explore and discuss the ethical responsibilities and attitudes about torture in physicians and other health care professionals.

Torture, that is someone inflicting physical or psychological pain on a person in order to punish or terrorize him or her, is as ancient as human history (4). It is reported that torture is presently used in 98 countries, in almost the two-thirds of the world, mostly in countries governed by dictatorships (5). In some of these countries, torture is being systematically practiced. According to the latest data, there are 30 countries of this kind (5). It is important to distinguish between countries where torture is systematically practiced and countries in which it is only an exception. In countries where it is an exception, every witness to torture, including physicians, can hope to receive help from the police, the judicial system and/or any other authority. But in countries where the systematic use of torture is the case, there is either no or little help from the authorities, because the authorities approve of the torture.

To say that, torture is being used only to get information, is a widespread false belief. This false belief is so pervasive that the torturer, the victim, and the ones who do not directly participate in it, - but know that it does exist- share this belief. Those who know about torture but do not participate in it, are so numerous that they create a public opinion which justifies torture if the information desired is a matter of life and death. The following example is a narrative, generally used for the moral evaluation of torture, and contains the major ethical dilemma about this subject.

An arrested terrorist confessed that he had put a highly explosive bomb in one of the schools in the city (or you have this information somehow). But he refuses to tell you in which school he has placed the bomb and the exact location of it in the school. You have a very limited amount of time to obtain this information, let's say a few hours. This example, and similar others, is put forth in order to claim that torture is morally justifiable under certain circumstances. When we work on such cases using utilitarian perspective, as we do most of the time in medicine, this approach not only permits us to practice torture, but it obliges us to do so as well (3). This obligation can not be approved morally, so we can say that the utilitarian approach makes a mistake in solving this problem. It must be emphasized that the use of torture to obtain information in mat-

ters of life and death is quite rare in countries where torture is systematically used anyway on a regular basis.

Generally torture has at least three main purposes: to obtain information, to destroy the victim's psychological equilibrium, and to terrorize society. Obtaining information from a victim means that the torturer forces the victim to confirm or to confess to knowledge of the information which is already known. Although the physician's involvement in torture is forbidden, it is possible to discuss some medical methods for obtaining information. In countries where torture is systematically practiced, the ones who try to justify it usually claim that getting information is the main purpose of torture. But this is not actually; so it appears to be a detail. In these countries, torture gradually becomes a routine practice and is used even on ordinary criminals. The destruction of the psychological equilibrium of the individual is the most tragic outcome of torture. In these cases, the main aim is to make the individual vulnerable. Most of the authors who primarily comment on torture and criticize it claim that the destruction of the individual is the main purpose of the torture.

Is torture a public health problem or not? This is one of the recent debates regarding torture. This debate stems from the last reason given for the existence of torture, namely, terrorizing society. It is apparent that forcing society to live with the threat of torture, whose why and when are not known, will destroy the general organisation of society and primarily its psychological stability. When torture is examined from this perspective, it is obvious that physicians are obligated to eradicate it. Torture also causes emigration, and this can upset the stability of other societies which are officially free from torture.

In countries where torture is systematically practiced, the practice has become a sector of society. Its underlying components consist of the torturers, the legal system and its members, and physicians. When we analyse the torturers, we can distinguish between the ones who adopt and force torture as a policy, and others who invest in this field or provide knowledge and equipment as an ultra-structure for the sector. We can distinguish them from the torturers who directly apply the methods

of torture in the infrastructure. The juridicial system is an organisation in society obliged to cover the loss of the injured party and includes compensation procedures in the society. A judiciary which does not fulfill this obligation when torture is the case, a judiciary which does not compensate the loss of the torture victim, must be considered a component of the sector of torture. Generally the situation of the judiciary in countries where torture is systematically practiced is characterised by the insufficiency to compensate for the losses experienced by torture victims, either because it is pre-empted by torturers or because it is under political pressure.

Torture as a sector cannot survive without the help of the physicians' supportive reports. Both the torturer who directly takes part in torture and the ones who make them apply it, deny its existence. As we mentioned above, violence and torture avoid the need for a balance of values and are absolutely bad, wrong, and undesirable. The physician is the one who will clarify whether the torture exists or not, by his or her professional knowledge and report. There are some problems in this sector of society. Physicians can play a crucial role in destroying torture by exploiting these problems (6).

Medicine, as a profession, contains the detailed rules of conduct relating to the various aspects of the profession, including situations where physicians effect individuals' rights. The relationship between physicians and patients, either detained or sentenced, exist within a field of medical conduct in which the rules are the most accurate and strict. This is understandable, as these patients are restricted and denied freedom and many rights which are under the protection of the state for free citizens. Torture is not limited to the physical abuse of the victim, but it is an attack on human dignity (2). All international declarations emphasize the moral responsibility of the physician not to be involved in torture. This moral obligation was expressed very clearly in the Tokyo Declaration of the World Medical Association in 1975. This obligation is a very strict one for medicine and is completely out of discussion. Some authors try to argue that the duty of doctors to not to be involved in torture is consistent with the term "doctor" (7,8). The basic moral principle of medicine is to respect the pa-

tient's right to live in accordance with human dignity, and to help him or her use these basic rights with the help of the knowledge that medicine provides (9). Undoubtedly torture means the violation of this basic moral principle. If there is a consensus about the definition of health, such as "total well-being of an individual both physically, psychologically and socially" torture damages its existence for a life time. As a result, it becomes a medical problem. Therefore torture itself is a phenomenon which physicians should try to eradicate (10). Because of this fact, medical ethics suggests that physicians in countries where torture does not exist have the responsibility to help physicians in countries where torture does exist (2).

We can study the aspects of torture connected with physicians on the following case.

"I told them that I had had urinary problems for years. Yet they did not let me take my drugs with me when they took me from home. This information did not change their attitude towards me. In spite of this knowledge, they threw cold water on me and forced me to lie down on the ice-cold stones. I was exposed to cold air during this time. They did not let me go to the toilet. After awhile I lost consciousness. When I came round, I found myself in a place like an infirmary. I stayed there for two days and was treated. During this time there was continuously blood in my urine and a severe pain in my kidneys. The doctor, who was responsible for the ward, told me that my situation was very critical. I could possibly die, if I were not treated. Two days later the color of my urine began to get better. My torturers took me from the infirmary, although the doctor had disagreed with them and told them that my situation was still critical. The torture began again. When I became worse and was taken to the same doctor again, I begged him not to treat me, I had no power to bear this torture anymore".

This type of case is very commonly found in texts about torture and it is narrated accordingly.

Firstly, it is important to clarify the ways physicians are involved in torture or contribute to it. When a physician or a health care professional turns from being an innocent spectator, who does not know whether torture exists or not, into a component in the ongoing brutality, is a point which needs to be defined. According to the law, every de-

tained individual should be examined immediately. If a physician does not examine a patient properly or does not examine him or her at all, this will constitute their first contribution to torture. Physicians should accept the main value of medicine for the detained or the sentenced individual, that is, seeing these individuals as ordinary patients, and acting accordingly towards them. Every assistance the physician offers ordinary patients should also be valid for these individuals, as well. Therefore, examining a detained or sentenced patient in the presence of an authority figure, letting a patient wear a blind fold and/or handcuffs during an examination, or obeying informal or oral requests of the persons who are in charge of the prisoner, are some of the conditions of medical contributions to torture.

A physician turning a blind eye to the signs of torture in an examination, and an attempt to remove them at any time during the patient's interrogation represents an apparent involvement in torture. Every report written by a physician during the examination of an arrested person must be original. It is a must to follow the necessities of science and to be neutral. Honesty and neutrality are the only ethical codes for the scientific approach, but we have doubts about neutrality towards torture as a virtue. Sometimes it causes an act which supports the torturer (11). Physicians appear to be morally unjustifiable when they use standard printed forms instead of original reports, or when their signatures and names are illegible, or when they abstain from informing their patients about their identity. A physician can be accused of direct involvement in torture when he or she provides help to prolong the torture.

Frequently the torture victims are exposed to excessive torture which they cannot bear physically and sometimes this can threaten their lives. If a physician treats a patient in this condition without a guarantee that the patient will be safe from torture after the treatment, this treatment will end up contributing to another and more excessive period of torture. So this kind of treatment is accepted as involvement in torture. In the same way, if a physician discloses information about a patient's medical problems or uses his or her medical knowledge in order to provide the torturers with the clues to improve new and effective methods for torture, he or she will be accused of involvement in torture.

Undoubtedly direct involvement is rare. But because of the lack of knowledge and sensitivity, and negligence, and also because of the fear and coercion felt by physicians indirect contribution is frequent in the above mentioned countries, especially in countries where torture is systematically being practiced. Actually, there is no difference between a physician's active or passive contributions to torture, from an ethical perspective. In both situations, the primary contributive function of medicine to torture does exist, namely in providing an illegal, inhuman and unethical practice with a false scientific justification.

Although it can be claimed that a physician's moral position against torture is very clear, it is still possible to talk about some ethical dilemmas which he or she faces. In this article three ethical dilemmas which a physician can experience in regard to torture will be discussed. First of all, a physician can be forced to ignore the signs of torture because of the threat and the coercion that is applied. Almost none of the physicians are willingly involved in or contribute to torture without oppression from an authority. Some physicians who identify with the purposes of the torturers are exceptions to this statement. In countries where torture is systematically practiced, the physicians are being forced to cooperate by coercion or by the threat of being tortured themselves. In such situations a physician comes to a point of choosing between his or her life and virtue. There are some suggestions for dealing with this kind of dilemma. For instance, in Turkey, a physician can give a report according to the directives of the authority, if he or she feels pressured. But he or she is obliged to inform the Turkish Medical Association within 24 hours about the report and being under pressure. It is unethical for a physician to tolerate conduct which he or she knows to be ethically unjust. This is so, even if he or she learns of this situation coincidentally. Physicians have a positive responsibility towards the "bad". It can be called an "obligation of notification" (2). The procedure we mentioned above is based on this moral obligation. When the Turkish Medical Association receives this information, it does its best to organize a new examination for the torture victim by a physician free from pressure, and to prepare an alternative report. Even if it does

not manage to do so, the Turkish Medical Association has an opportunity to declare and to warn the court about the invalidity of the present report. Also, international associations of physicians support the physicians who work under coercion while preparing reports for torture victims. But these solutions are still far from being radically effective.

The second ethical dilemma appears when a torture victim's health situation is severely damaged by torture. In this situation the physician faces a dilemma between his responsibility to protect the patient's life and restore their health, and to contribute to the continuation of the torture by treating the patient. On the one hand he or she must offer medical aid to the patient according to the principles of respect for life. It is the primary duty of a physician. On the other hand, treating the patient can mean the continuation of the torture. This is against both the principle of non-maleficence and the respect for human dignity. In order to overcome this dilemma there are many suggestions in the international legal texts which attempt to regulate the conduct of physicians. Almost all are theoretically appropriate, but in this situation hardly effective, and applicable in practice. According to these texts, a physician should reject treatment to the patient, unless he or she receives a guarantee that the patient will not be tortured anymore, after the treatment. But this suggestion is not much help in the dilemma previously mentioned. How can a physician trust the guarantee he or she receives, and what will happen if he or she does not receive it. This is almost always the case in most of conduct. In these situations it is crucial to take a patient's wishes into consideration. Some of the patients refuse treatment because of the probability that the torture will continue. Sometimes they consent to a treatment which will not totally cure them, but will only sustain their life. And sometimes they ask for complete treatment. In any case, a physician should ask for the patient's consent, and act accordingly.

Lastly, the third ethical issue is a physician's decision-making process in the situations where torture is said to be justifiable. In those situations, a physician should make a choice between the principles of professional ethics and his or her own values and attitudes, in order to determine the basis of

their conduct. The principles of medical ethics have been established by using the profession's definition and basic aims as a framework. This definition and these aims are the main reasons that the profession has such status in society. Therefore, a physician who is encouraged to base his or her decisions freely on personal professional knowledge and opinion during his or her medical practice, cannot be as free in this situation, in deciding whether to act accordingly or not. He or she can only make a request to the authorities to apply the ethical principles of medicine freely. It can be claimed that a physician's justification of torture is a matter of individual morality not a matter of professional ethics; so it can be discussed only in those terms. But the attitudes towards torture as a physician has to be determined by the ethical discourse of the profession.

When we evaluate torture as a phenomenon according to a medical ethics perspective, we conclude that its contemporary theoretical framework is based on strong arguments. Now the problem is, how to overcome the difficulties we face during the application of this theoretical framework to the practice and to make it function accordingly. Actually, it is quite hard to take appropriate action that conforms to this theoretical framework, especially under the threat of torture or coercion. All practical suggestions about the most effective and appropriate behavior in these real situations are helpful.

I here quoted the World Medical Association's Tokyo Declaration which was adopted by the 29th World Medical Association's Assembly in 1975. It is of paramount importance for all medical ethics work on torture.

1. The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.

2. The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the abil-

ity of the victim to resist such treatment.

3. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened.

4. A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive whether personal, collective or political shall prevail against this higher purpose.

5. Where a prisoner refuses nourishment and is considered by the doctor as capable of forming an unimpaired and rational judgement concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgement should be confirmed by at least one other independent doctor. The consequences of the refusal of nourishment shall be explained by the doctor to the prisoner.

6. The World Medical Association will support, and should encourage the international community, the national medical associations and fellow doctors to support the doctor and his or her family in the face of threats or reprisals resulting from a refusal to condone the use of torture and other forms of cruel, inhuman or degrading treatment (12).

Also The Declaration of Hawaii emphasizes the same obligations for psychiatrists. There are many other codes and declarations relevant to the one mentioned above such as The United Nation's Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982) and The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (12); Amnesty International's Declaration on the Role of Health Professionals in the Exposure of Torture and III-treatment (1996) and the Principles for Medical Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment (1996) (13,14).

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