
Execution as Torture

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At one time, torture—the deliberate infliction of pain—was a common element of state-administered punishments. For centuries, officials used their creativity and ingenuity to contrive the most brutal, painful and dehumanizing techniques for punishing and killing fellow human beings. Prisoners were boiled, burned, roasted on spits or slowly dismembered in the course of executions. For the purpose of extracting confessions, prisoners were stretched on the rack, crushed by the “leg screw,” covered with inflammable substances and burnt limb-by-limb, maimed, or castrated.

As societies became more modern and more “civilized,” such methods were viewed as barbaric and were abandoned. In Great Britain, torture was banned more than 300 years ago, when the English Declaration of Rights barred “cruel and unusual punishments.” Shortly after the United States Constitution was written, more than 200 years ago, the prohibition of cruel and unusual punishments was incorporated into the document. Today, in instruments such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, state use of torture is universally condemned.

Although virtually all states have abandoned and condemned the use of torture, a substantial minority continue to employ the death penalty. The idea that capital punishment is not torture is based on the historical assumption that there are humane ways of executing people. The search for ever more humane methods of execution began at least as early as the eighteenth century and the birth of the guillotine. The guillotine was proposed as more humane than existing methods of execution because it was supposed to terminate life more swiftly and efficiently. Dr. Guillotin, the inventor of this new death machine, explained to the National Constituent Assembly of France in 1789, “The criminal shall be decapitated and this will be done solely by means of a simple machine: it falls like thunder; the head flies off; blood spurts; and the man is no more!”

The tension between an abhorrence of torture and an enthusiasm for the death penalty has been most acute in the United States. It has led to repeated, and in our opinion, fruitless, efforts to follow the path set by Dr. Guillotin: using science and technology to find a humane, that is, quick and painless, way to kill prisoners. These efforts have taken the U.S. from hanging to electrocution to lethal gas to lethal injection. Although our focus here is on execution methods, we acknowledge that other aspects of U.S. death penalty practice, particularly the prolonged incarceration of prisoners on death row, also arguably constitute torture.

In 1888, New York became the first state to adopt electrocution as the formal method of execution. In his message to the legislature advocating the change from hanging to electrocution, the governor said, “The present mode of executing criminals by hanging has come down to us from the dark ages, and it may well be questioned whether the science of the present day cannot provide a means for taking the life of such as are condemned to die in a less barbarous manner.” The electric chair was supposed by the legislature to be a humane method of execution.

For execution by the electric chair, the prisoner is shaved. A metal skullcap-shaped electrode is attached to the scalp and forehead over a sponge moistened with saline. Additional curved electrodes are moistened with conductive jelly and bound to the prisoner’s legs. The prisoner is strapped into the electric chair and blindfolded. The “jolt” of 6–12 amps at 2000–3000 volts lasts a few seconds. The current surges and is then turned off, at which the body is seen to relax. The doctors wait a few seconds for the body to cool down and then check the heart. If it is still beating, another jolt is applied.

William Kemmler, who was to be the first victim of the electric chair, challenged the constitutionality of execution by electrocution all the way to the Supreme Court. The Supreme Court found nothing unconstitutional in the method and cited the opinion of the New York Court of Appeals finding that “the application of electricity to the vital parts of the human body, under such conditions and in the manner contemplated by the statute, must result in instantaneous, and consequently in painless, death.”

Is death by electrocution humane, painless, rapid, and dignified? Technology and science cannot hide the reality that this method of execution is no less barbaric than any other methods of state killing. The jolt causes a violent movement of the limbs that may result in dislocations or fractures. The tissues swell. The prisoner urinates and defecates, steam or smoke rises from the body and there is a smell of burning. At *post mortem*, third-degree burns with blackening between the electrodes and the skin of the scalp and legs are seen. The swollen tissue may have burst. The brain under the electrode is hot and congested; it may be denatured and it is often charred. Death by electrocution could be due to asphyxia; if so several seconds or minutes could elapse during which the condemned person could be conscious.

Kemmler’s execution should have raised questions about how humane electrocution really is. A reporter described the execution as follows:

After the first convulsion there was not the slightest movement of Kemmler’s body ... Then the eyes that had been momentarily turned from Kemmler’s body returned to it and gazed with horror on what they saw. The men rose from their chairs impulsively and groaned at the agony they felt. ‘Great God! He is alive!’ some one said; ‘Turn on the current,’ said another ... Again came that click as before, and again the body of the unconscious wretch in the chair became as rigid as one of bronze. It was awful, and the witnesses were so horrified by the ghastly sight that they could not take their eyes off it ... Blood began to appear on the face of the wretch in the chair. It stood on the face like sweat ... An awful odor began to permeate the death chamber, and then, as though to cap the climax of this fearful sight, it was seen that the hair under and around the electrode on the head and the flesh under and around the electrode at the base of the spine was singeing. The stench was unbearable.

This experience with the first execution by electric chair apparently did not cause doubts about its humaneness and, over the course of the next 90 years, the electric chair became the principal method of execution in the United States. Did the technology improve and make such executions more humane? Unfortunately, death by electrocution is still plagued by botched executions involving unanticipated problems and prolonged agony for those condemned. Here is one eyewitness account of Alabama's electrocution of John Louis Evans on April 12, 1983:

At 8:30 p.m. the first jolt of 1900 volts of electricity passed through Mr. Evans' body. It lasted thirty seconds. Sparks and flames erupted from the electrode tied to Mr. Evans' left leg. His body slammed against the straps holding him in the electric chair and his fist clenched permanently. The electrode apparently burst from the strap holding it in place. A large puff of grayish smoke and sparks poured out from under the hood that covered Mr. Evans' face. An overpowering stench of burnt flesh and clothing began pervading the witness room. Two doctors examined Mr. Evans and declared that he was not dead. The electrode on the left leg was refastened. At 8:34 p.m. Mr. Evans was administered a second thirty second jolt of electricity. The stench of burning flesh was nauseating. More smoke emanated from his leg and head. Again, the doctors examined Mr. Evans. The doctors reported that his heart was still beating, and that he was still alive. At this time, I asked the prison commissioner, who was communicating on an open telephone line with Governor George Wallace, to grant clemency on the grounds that Mr. Evans was being subjected to cruel and unusual punishment. The request for clemency was denied. At 8:40 p.m., a third charge of electricity thirty seconds in duration was passed through Mr. Evans' body. At 8:44 p.m. the doctors pronounced him dead. The execution of Mr. Evans took fourteen minutes.

This account is one in a long line of horrific executions by electrocution. In 1990, Jesse Tafero was killed by electrocution in Florida. He was still apparently breathing after the first two jolts of electricity coursed through his body. His head caught fire, literally burning him to death. Wayne Robert Felde was electrocuted in Louisiana in 1988. His head had been so badly burned that chunks of flesh had come off, revealing the skull bone. During Wilbert Evans's 1991 execution in Virginia, the media witnessed his body lunge forward as blood spurted from his nose and eyes. Nancy Nunnally, a spokeswoman for the Oklahoma Corrections Department, explained, "People don't realize it, but the electric chair can take eleven minutes to kill people. The first shock knocks you unconscious but then it would just cook you. You would literally fry." In recent years, despite the Supreme Court's long-standing acquiescence in execution by electrocution, prisoners have challenged electrocution as cruel and unusual punishment. In 1999, the Court agreed to hear a constitutional challenge to Florida's use of the electric chair, thereby signaling the possibility that the Court might finally find the electric chair to be cruel and unusual punishment. But rather than defend its use of the electric chair, Florida joined the overwhelming majority of death penalty states by adopting lethal injection as its preferred method of execution. At present, there are only two states using the electric chair as their exclusive method of execution.

In 1921, Nevada became the first state to adopt lethal gas as a method of execution. As was the case with the electric chair, lethal gas was seen as more

humane than older execution methods. Rejecting a challenge to the use of lethal gas, the Nevada Supreme Court said,

For many years animals have been put to death painlessly by the administration of poisonous gas. Gas has been used for years by dental surgeons for the purpose of extracting teeth painlessly ... The revulsion on the part of many to the idea of execution by the administration of gas is due to an erroneous impression. The average person looks upon the use of gas with horror, because of the experiences incident to the late war. They forget that there are many kinds of gas, ranging from the harmless nonpoisonous tear gas, which may be used for the quelling of a mob, and the ordinary illuminating gas, which may produce painless death, to the highly poisonous gas which sears and destroys everything with which it comes in contact. It may be said to be a scientific fact that a painless death may be caused by the administration of lethal gas ... We think it fair to assume that our Legislature, in enacting the law in question, sought to provide a method of inflicting the death penalty in the most humane manner known to modern science ... and it would indeed be not only presumptuous, but boldness on our part, to substitute our judgment for theirs, even if we thought differently upon the matter.

A striking fact is that, aside from the Nazi Holocaust, American prisons are the only place where cyanide gas has been and continues to be used to deliberately kill human beings.

For execution by gassing, the prisoner is strapped to a chair in front of a pail of sulfuric acid, in an airtight chamber. The prison officials withdraw from the chamber, sealing the door behind them. A lever on the outside is used to drop crystals of sodium cyanide into the pail. The prisoner is instructed to breathe in. A sufficient concentration to constitute a lethal dose would take several seconds or minutes to accumulate; depending on how hard the prisoner tries to avoid inhaling. Most prisoners try to hold their breath, and some struggle. It would cause acute difficulty in breathing, asphyxia and possible pain in the stomach. The resultant hypoxia would cause the condemned to have spasms as in an epileptic fit, visible if he or she were not bound firmly. Strapping down the prisoner would prevent the appearance of spasms, but not their occurrence.

The idea that such an execution, even when conducted properly, is humane is an absurdity. As is the case with electrocution, executions in the gas chamber are also frequently botched, making them even more agonizing for the prisoner. Howard Brodie, a journalist who had witnessed three previous executions, described the 1967 execution of Aaron Mitchell in California.

Brodie reported that Mitchell was dragged struggling and screaming into the death chamber. Once he had been strapped down and sealed inside the chamber, the signal to release the deadly gas was given. Brodie explained how when "the gas hit him his head immediately fell to his chest. Then his head came up and he looked directly into the window I was standing next to. For nearly seven minutes, he sat up that way, with his chest heaving, saliva bubbling between his lips. He tucked his thumbs into his fist and, finally, his head fell down again." The prison records show that it took 12 minutes for Mitchell's heart to stop beating.

A similar scene occurred during Mississippi's 1983 execution of Jimmy Lee Gray. Several witnesses reported that Gray had convulsions for eight minutes; that he gasped 11 times during that period; and that he repeatedly struck his head on a pole behind him when struggling in the gas chamber. The visible

nature of the pain and suffering of those executed by gassing is clearly a problem for the advocates of the “humane” execution.

In recent years, execution by lethal gas has been challenged as equating to cruel and unusual punishment. In 1996, a federal court of appeals held that California’s use of the gas chamber was unconstitutional. The court based its decision on the following findings by the lower court:

[I]nmates who are put to death in the gas chamber at San Quentin do not become immediately unconscious upon the first breath of lethal gas ... [A]n inmate probably remains conscious anywhere from 15 seconds to one minute, and ... there is a substantial likelihood that consciousness, or a waxing and waning of consciousness, persists for several additional minutes. During this time ... inmates suffer intense, visceral pain, primarily as a result of lack of oxygen to the cells. The experience of “air hunger” is akin to the experience of a major heart attack, or to being held under water. Other possible effects of the cyanide gas include tetany, an exquisitely painful contraction of the muscles, and painful build-up of lactic acid and adrenaline. Cyanide-induced cellular suffocation causes anxiety, panic, terror, and pain.

While the case was pending, California switched to lethal injection as its preferred method of execution. At present, all states that used lethal gas have switched to lethal injection as the exclusive or alternative method of execution.

In 1977, Oklahoma became the first state to adopt the latest invention in the science of humane killing, the lethal injection machine. Just as the electric chair was invented as a modern and humane replacement for hanging, and the gas chamber was touted as more humane than the electric chair, so lethal injection has emerged as the humane execution method. In the United States, virtually all executions are now by lethal injection. All but two states have adopted lethal injection as the exclusive or preferred method of execution.

Lethal injection as a method of execution has become popular because it is perceived as a medical procedure. It has the appearance of being more “scientific” and “clinical” than electrocution or gassing. And since the prisoner is sedated before they are killed and there is no obvious damage to the prisoner’s body from the process, the impression given is that they simply “go to sleep.”

The equipment includes intravenous lines, prescription drugs, a hospital gurney and medical technicians. But of course, it is a medical procedure without a doctor. The American Medical Association has taken the position that it is a violation of medical ethics for a physician to participate in an execution in any way, including: “selecting injection sites; starting intravenous lines as a port for a lethal injection device; prescribing, preparing, administering, or supervising injection drugs or their doses or types; inspecting, testing, or maintaining lethal injection devices; and consulting with or supervising lethal injection personnel.”

In execution by lethal injection the prisoner is bound supine to a trolley and a trained nurse or technician injects the vein in the angle of the elbow. If the prisoner’s veins are difficult to inject, or if she or he does not cooperate, or if there are problems due to drug addiction, then the procedure becomes very difficult. After the cannula has been passed successfully into the vein, three substances are injected: sodium thiopentone (a rapidly acting anesthetic), pancuronium bromide (a muscle relaxant to paralyze respiration) and potassium

chloride (to stop the heart). The subject becomes unconscious within 10–15 seconds. Death is the result of anesthetic overdose as well as respiratory and cardiac arrest. The prisoner urinates and defecates, but the convulsions or spasms that would naturally occur are hidden by the first and second dosages of drugs that paralyze the prisoner.

Though widely regarded as a painless and clean procedure, lethal injection also has a history of botches and human suffering. Texas has made full use of this humane and modern alternative to the electric chair and since 1977 has executed more people than any other state. The inventor of the lethal injection machine, Fred Leuchter, admitted that “about 80% of these [Texas] executions have had one problem or another. In the final analysis, it looks disgusting.” The prisoners routinely choke, cough, spasm and writhe as they die.

In March 1984, James Autry was executed by lethal injection. It was reported that he took at least ten minutes to die and throughout much of that time was conscious and complaining of pain. In May 1989, an incorrect mix of lethal drugs caused Stephen McCoy to choke and heave throughout his execution. In December 1988, the intravenous line carrying a lethal injection into the arm of Raymond Landry sprang a leak, spraying technicians and witnesses with the fatal drugs. The tube had to be reinserted while Landry was half-dead. And in 1995, it took Virginia prison officers 40 minutes to insert the intravenous needle into the body of Richard Townes.

Given the problems with lethal injection, why has the method become the consensus method of execution in the United States? Don Cabana, a former death row prison warden answers: “The increasing use of the lethal injection as a means of capital punishment is nothing more than an attempt to sanitize the whole process. It makes society feel better to put a person to sleep than it does to electrocute or gas them. In some ways, I find lethal injection to be more objectionable and reprehensible than all the other methods. No matter how ‘humane’ an execution we devise, it is still a violation of human dignity.”

The history of the death penalty in the United States is synonymous with the elusive or illusory search for a humane method of killing people. Society’s rejection of torture has precipitated efforts to find a humane execution method. The guillotine in the eighteenth century, the electric chair in the nineteenth century and the gas chamber in the early part of the twentieth century were all devised to give the illusion of progress. Inevitably each of these methods of execution was exposed as being nothing more than a sophisticated form of cruel and painful punishment, and eventually abandoned.

Yet still today, with the lethal injection machine, the myth that technological progress has made it possible to carry out humane executions refuses to die. Technological innovations cannot change reality. The lethal injection machine is not different from the guillotine. Like electrocution or gassing, death by lethal injection is nothing more than the latest technological innovation of a practice that will never be humane, painless, rapid or dignified. Capital punishment, whatever the method used, is, quite simply, a legitimized form of torture.

RECOMMENDED READINGS

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- Hood, R. 1990. *The Death Penalty: A Worldwide Perspective*. Oxford: Clarendon Press.
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