

INTRODUCTION

Ryan Goodman and Mindy Jane Roseman

“What’s past is prologue...”¹

The involvement of health professionals in severe human rights and humanitarian law violations is unfortunately nothing new. It is a phenomenon common to many societies and to periods of national crisis. Among the most notorious cases are from Nazi Germany, apartheid South Africa, Argentina, Chile, the Soviet Union/Russia, and Turkey.² The widespread and repeated nature of this problem has led to the development of important international legal and ethical codes on the subject. Such formal codes are, however, notoriously insufficient. In addition to those instruments, the struggle to end such violations requires understanding human behavior and institutional pressures, and building formal and informal structures to guard against the descent into inhumanity.

More than sixty years after the founding of the modern human rights era, we are again faced with claims that health professionals supported and participated in cruel and degrading practices, perhaps even torture. Medical doctors trained in fields such as forensic medicine, internal medicine, and psychiatry, and Ph.D.s trained in fields such as psychology, have reportedly advised and assisted in coercive interrogation methods. Health professionals may have also been involved in maintaining inhumane detention conditions and illegal forced feeding. While these allegations against health professionals do not rival the most severe abuses that have occurred in other countries, that is not the proper yardstick for ensuring the protection of fundamental human rights. That U.S. health professionals have been implicated in systematic abuses of detainees—amounting to no less than grave breaches of the Geneva Conventions—demands considered reflection which would benefit from interdisciplinary analysis.

¹ William Shakespeare. *The Tempest*. II.i.253.

² See e.g., Robert Jay Lifton, “Doctors and Torture,” *New Eng. J. Medicine* (2004): 415-16; Eric Stover, *The Open Secret: Torture and the Medical Profession in Chile* (1987); Richard J. Bonnie, “Soviet psychiatry and human rights: reflections on the report of the U.S. delegation. (London 1989: Proceedings of the Second International Conference on Health Law and Ethics),” *Law, Medicine & Health Care* (Spring-Summer, 1990):123-131; L. Justo, “Argentina :torture, silence, and medical teaching” *British Medical J.* (2003):1405; S. Pincock, “Exposing the horror of torture,” *The Lancet* (2003):1462-1463.

It is important to focus on professionals and their networks to gain a better understanding of the causes and prospects for preventing human rights violations. Torture, for example, is generally defined through legal and ethical doctrines. Its practices, however, often involve psychologists, psychiatrists, and other physicians in overseeing its application.³ Historically, physicians have been called in to monitor the vital signs of detainees during the course of interrogations and torture; and psychologists have advised interrogators on sensory deprivation techniques.⁴ Indeed, health professionals have worked at the origin of both the perpetration and prohibition of such practices.

A focus on the role of health professionals provides impetus not only to examine coercive interrogation but also to examine medical practices such as forced feedings. In this collection we consider these two domains—interrogation and forced feedings—to better understand whether legal, ethical and social institutions failed and, if so, how they might be repaired.

With the generous support of the Skirball Foundation, the Human Rights Program at Harvard Law School convened scholars and practitioners with diverse perspectives and methodologies to address the involvement of health professionals in interrogations and forced feedings. The meeting was held at the end of January 2008 at Harvard Law School.

The purpose of the Harvard workshop was to examine the institutional and structural pressures operating on health professionals within the military and intelligence services, as well as the role of individual agency and responsibility. The primary goals were to identify gaps and conflicts between relevant international laws and ethical norms and to develop interventions to strengthen adherence to legal and ethical frameworks. Participants in the workshop came from a variety of disciplines—law, ethics, medicine, psychology, sociology—and from both the military and civilian sectors. They represented diverse experiences including in Iraq, Israel, South Africa, Turkey, and the United States. The workshop culminated in this edited collection, and while the chapters included in this volume reflect the contributors' own points of view, we believe they reflect the range of views expressed at the workshop.

³ See David Luban, "Torture and the Professions," *Crim. Just. Ethics* 2 (2008): 58-65.

⁴ See Alfred McCoy, *A Question of Torture* (Henry Holt, 2006).

Organization of the Book

We have organized the chapters into three sections. The first section—entitled “The Constraints of Contexts”—focuses on cultural frameworks and social situations that both enabled and restricted the behavior of health professionals, particularly those in the military. The chapter by Stephanie Erin Brewer and Jean Maria Arrigo analyzes situational factors with respect to health professionals working in overseas field operations. They discuss, in part, various techniques that have been used to erode the moral autonomy of health professionals in such settings, including the government’s use of screening devices to admit cooperative health professionals, and the manipulation of psychological pressures to dehumanize detainees in the mind of health professionals. Jonathan H. Marks examines structures at the macro-level which contributed to detainee abuse—such as fear that was shaped by sociocultural frames defining the security threat after 9/11. He also analyzes social structures at the “mezzo” level, which he describes as organizational and community perspectives that encompass local situational and systemic factors that influence behavior. Finally, Marks addresses the individual level. Here he borrows from recent research on cognitive biases that lead physicians to make mistakes, and he applies those findings to the realm of detainee mistreatment. Leonard Rubenstein, in his chapter, analyzes the professional training and self-perceptions of health professionals as part of the root causes of the abuses, focusing on the ethical concepts of beneficence and non-maleficence. Rubenstein examines the role that the U.S. Department of Defense may have played in creating a culture of ethical irresponsibility by health professionals, and he contends that widespread reform must address the structural subordination of medical ethics to detention policies

The second section of the book—“Ethical Quandaries and Policy Positions”—emphasizes normative frameworks that relate to interrogation and forced feeding. Edmund Howe engages in a wide-ranging ethical analysis of health professionals’ participation in coercive interrogations and forced feeding. He derives ethical lessons, for example, by comparing health professionals’ involvement in coercive interrogation with cases in which health professionals perform roles that do not serve the interests of patients (e.g., psychologists who assist criminal investigations; psychiatrists who evaluate criminal defendants for insanity). In the context of forced feedings, he evaluates the competing interest of protecting life and he compares the

situation of Guantánamo detainees with inmates inside U.S. prisons who may be subject to forced feeding. Stephen Soldz closely examines the evolving position of the American Psychological Association on allowing participation in coercive interrogation. He contends that material self-interest, in part, influenced the decision-making of the professional organization, and he considers ways to address the erosion of independence of the profession. Soldz concludes by addressing steps that individuals and organizations could take to confront abuses committed by members of their professions, and he proposes the creation of a Health Provider Truth Commission. James Welsh discusses the rules on forced feeding as set forth in international medical ethics and international human rights and humanitarian law. Welsh's close analysis includes a discussion of jurisprudence from the European Court of Human Rights and the International Criminal Tribunal for the former Yugoslavia, which provides a backdrop for his discussion of the evolution of Amnesty International's policy on hunger strikes. The last chapter in this section, written by Yoram Blachar and Malke Borow, discusses perspectives of the Israel and World Medical Associations on ethical issues raised by the "dual loyalty" predicament of health professionals who serve both the military and individual patients. Blachar and Borow stress the importance of dual loyalty and suggest moving beyond the positions adopted by national and international medical associations to help physicians navigate the moral ambiguity that exists in real world situations of detention and interrogation.

The last section of the book—"Operational Guidelines"—considers the implementation and monitoring of ethical and legal codes in practice. Scott Allen and Hernán Reyes discuss their professional experiences directing and visiting sites of detention and the associated ethical and legal challenges in dealing with hunger strikes. They map out a clinical management process for physicians treating detainees, as well as analyze the issue of dual loyalty, drawing on the guidance provided by the World Medical Association's Malta Declaration. Colonel Steven Kleinman discusses his own professional experiences training interrogators and evaluates the effectiveness of coercive interrogation techniques. He refers, for example, to the work of research psychologists suggesting that coercive interrogation techniques amplify personal and environmental stressors which diminish individuals' capacity to recall detailed information fully and reliably. Kleinman also discusses the long traditions of U.S. interrogators who have rejected coercive techniques

in past wars.

Together, the three sections in this volume are intended to support the work of health professionals, with an aim of identifying and remedying gaps—in legal, ethical, and social institutions as well as individuals' behavior—that can lead to abuse. The end result, we hope, will be a collection of work used to strengthen institutions that will continue to undergo significant stress in the treatment of detainees especially during periods of national emergency and armed conflict.