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Stem Cells and Torture

Gilbert Meilaender

ABSTRACT: Arguments in support of torture as an instrument of policy often trade on the view that it is necessary to deal with great and imminent threats, or necessary even to ensure a society's survival. The structure of such arguments is not unlike the structure of moral arguments that have been used to justify embryo-destructive stem cell research. This essay uses the example of limits on research to think through complications in arguments about torture. In each case we are forced to reflect upon whether how we live or how long we live is of greater moral importance.

LET'S START WITH STEM CELLS. That may seem a strange place to begin thinking about torture, but many bioethical issues are at least as controversial and disputed as is torture. Among the most controversial in recent years has been research that destroys embryos in order to procure stem cells for use in regenerative medicine. Those who oppose embryonic stem cell research, have, in my view, made the right moral choice. The logic of that choice is worth examining, however, before we turn more directly to the issue of torture, for it is a choice that comes with certain costs.

It is still much too soon to say for sure whether the promise for regenerative medicine that some see in embryo-destructive research will be fulfilled or will turn out to be a dead end. Perhaps other approaches—for instance, using induced pluripotent stem cells or altered nuclear transfer—will make better scientific progress without the destruction of embryos, thereby demonstrating that at least sometimes we can have our cake and eat it too. But perhaps not. Maybe these other approaches will fail to cure or ameliorate suffering from serious degenerative diseases,

and embryo-destructive research will, in fact, turn out to be the “gold standard” its defenders often call it.

Even if things were to turn out that way, it would not mean that opponents of embryonic stem cell research had been wrong. It would simply mean that they had accepted the cost to which their moral beliefs committed them. They do not think that good results are the only—or even the most important—factor in determining how we ought to live. However fervently and sincerely they may hope that we find ways to relieve the condition of those who suffer, they do not take the further moral step of concluding that not any and every avenue to that good end may be used. If this means that some suffering that could be relieved is not, then that is the cost, however regrettable, that a commitment to act rightly will sometimes exact.

This distinction, between what we *do* and what we *accomplish*, marks one of the fault lines in moral reasoning, and it re-emerges time and again in bioethical argument. This was seen clearly and stated directly and forcefully when bioethics first burst upon the scene in this country. Thus, in *The Patient as Person*,¹ one of the classic early works in bioethics, Paul Ramsey underscored the fundamental moral point: “There may be valuable scientific knowledge which it is morally impossible to obtain. There may be truths which would be of great and lasting benefit to mankind if they could be discovered, but which cannot be discovered without systematic and sustained violations of legitimate moral imperatives.”

Embryonic stem cell research itself could not at that time have been on Ramsey’s radar, prescient though he was in many ways. However, the ethics of medical research more generally surely was. A subject that received sustained attention in those early years of bioethics, it was the topic of a long and complicated chapter in *Patient as Person*. The thread that holds together the chapter’s complications is the moral stance that

¹ Paul Ramsey, *The Patient as Person: Explorations in Medical Ethics* (New Haven CT: Yale Univ. Press, 1970).

I have noted. The fact that both researchers and subjects are human persons “places an independent moral limit [independent, that is, of all possible good results flowing out of the research] upon the fashion in which the rest of mankind can be made the ultimate beneficiary of these procedures.” That independent limit is the requirement that research subjects be able to give and actually do give a free and informed consent to their participation. If they cannot, the research ought not be done, however beneficial for others it might be—or so Ramsey believed.

Similar themes were sounded at that time by the Jewish philosopher, Hans Jonas, once described by Ramsey as “a person to me of exemplary moral wisdom.” In “Philosophical Reflections on Experimenting with Human Subjects,”² a profound article that continues to repay careful study, Jonas considered the claim that a society “could not afford” to forego research that might improve and save lives—and could not, therefore, be too insistent on moral limits that would impede such research. His reflections on that sort of claim, a claim that might come all too readily to the lips of any of us, are bracing. “Of course” a society can afford to lose members through death. If diseases “continue to exact their toll at the normal rate of incidence..., society can go on flourishing in every way.”

To make medical progress through human experimentation is surely desirable. Yet, Jonas wrote, such improvement is “an optional goal” and “has nothing sacred about it.” What, then, *is* sacred? Each individual person, any one of whom we might be tempted to misuse in the cause of progress for others.

We should not, however, make Jonas’s position simpler than it was. Improving society through research is always desirable but also always optional. Hence, such research is subject to what Ramsey called independent moral limits. They may retard our progress, but society can afford this, and indeed morally must afford it. But what if the issue is not

² Hans Jonas, *Philosophical Essays: From Current Creed to Technological Man* (Chicago IL: Univ. of Chicago Press, 1980), pp. 105-35.

improving but, more starkly, preserving society? Jonas was prepared to acknowledge that there are “examples of what, in sober truth, society cannot afford.” It cannot afford to let an epidemic “rage unchecked.” Some epidemics are acute—as, for example, the Black Death was. Others are public calamities of a more chronic kind—as, for example, “the life-sapping ravages of endemic malaria” may be. Of these possibilities Jonas wrote: “A society as a whole can truly not ‘afford’ such situations, and they may call for extraordinary remedies, including, perhaps, the invasion of private sacrosanctities.” Jonas did not think of this as a matter of numbers alone, since, as he noted, there is also a sense in which society cannot afford a single injustice or violation of rights. Still, there might be cases “critically affecting the whole condition, present and future, of the community” that could constitute something like a state of emergency in which disaster could be averted only through “extraordinary means” of experimentation—means otherwise forbidden.

Think now of our more recent disputes over embryonic stem cell research. However great the promise of such research for relief of suffering and prevention of death, the fact that we continue to suffer and die is not an emergency. If we take to describing that sad fact of life as a crisis or emergency, there will be no end to what we might contemplate doing in the cause of medical progress. Our desire to *accomplish* good results will have swamped any moral limits on what we *do* in pursuit of that goal. And, more generally, this should make us wary of the martial language—a “war on cancer”—still all too common in our thinking about medicine.

The policy for federal funding of embryonic stem cell research adopted by then President Bush attempted both to recognize necessary moral limits and acknowledge complexities. That policy, which permitted funding of research only on stem cell lines derived from embryos destroyed prior to the President’s decision, aimed at acknowledging the good of research, but in a way that would not encourage further destruction of embryos. From the standpoint of opponents of the research, it ran the moral risk of complicity in an evil deed. From the

standpoint of proponents of the research, it incurred considerable moral cost, because of the limits that it put in place. At least in my mind, there was considerable wisdom in the policy. We should acknowledge independent moral limits on how we pursue the goals we desire, and, therefore, we need not hesitate to argue that research in regenerative medicine ought to proceed by means that do not destroy the tiny human beings we all once were: embryos. But there will be costs—moral costs—to such a choice, for medical progress in regenerative medicine may be slower than it could be. What we accomplish, or decline to try to accomplish, does matter morally.

The logic of that choice, as well as its complexities, should not be forgotten as we turn now to reflect upon torture. Even here, though, I begin rather far away from our current disputes. There is a brief but fascinating discussion of torture in Helmut Thielicke's *Theological Ethics*.³ To appreciate its significance we must keep in mind the difficulty—shared by Thielicke—that a certain kind of contemporary Lutheran theology has had with offering any moral guidance and direction.

Why should it be so hard? Because even the very “best” of us never reach a point at which we can with confidence seek God's judgment upon our behavior. If the best and the worst of us are equally sinners before God, it may seem beside the point to distinguish better from worse actions. (To give him his due, we should note that Thielicke was better than his theory during the years of the Nazi regime.)

If the point of theological ethics is not to distinguish better from worse actions, what is its point? It is to direct us away from our own, always tainted, attempts to distinguish right from wrong and to direct us toward reliance on God's mercy. Or, in Thielicke's rather more passionate language, the point of theological ethics is to uncover our Babylonian hearts and shatter any illusions that we might lay claim to

³ Helmut Thielicke, *Theological Ethics*, translated by William H. Lazareth (Philadelphia PA: Fortress Press, 1966).

being righteous. In the dark of night, all cats are gray, and what really counts is our justification before God, a justification that depends not a bit on anything we do, but entirely on God's grace.

Whatever power there may be in such a theological vision—and there is some, as any reader of Thieliicke knows—it will have difficulty saying of any deed that its very doing is incompatible with righteousness before God. How very striking, therefore, that in certain “confrontations with transcendence” Thieliicke himself found examples of “limits which cannot be transgressed,” instances in which there is only one course of action compatible with righteousness before God. This may be an inconsistency in his thinking; if so, it is a felicitous and instructive inconsistency.

The first example of such a limit is the invitation to accomplish some great good through blasphemy. My concern, though, is with his second example of “direct confrontation with transcendence.” This happens when the personhood of another human being, “the bearer of an alien dignity” and “the direct representation of transcendence,” is at stake. “Of man's personhood too we may say, figuratively [as the prophet reports the LORD says of Israel], ‘He who touches it touches the apple of God's eye’.”

How might we thus touch the apple of God's eye? And what might tempt us to do so? Thieliicke has in mind circumstances “in which everything (the fate and success of our movement, perhaps the lives of our companions, wives, children, and even our very nation) depends upon the obtaining of certain information. In such cases the question inevitably arises whether we may obtain this information by means either of torture or of procedures of interrogation involving the use of certain truth drugs.” For the moment, I leave torture undefined. That Thieliicke can group these two means of acquiring information together helps us see what he thinks is at stake, what he means by a “confrontation with transcendence.”

In torture we seek to overcome another person's conscientious resistance to our will. We aim to “break the conscience which is

commanding him to keep silence.” This differs from what Thieliicke calls “temptation by desire,” which seeks to work “by way of the man’s own decisions.” Nor can torture be equated with coercion, with an attempt to force a decision out of the person. Torture seeks to inflict pain severe enough to eliminate the ego, to bypass “the sphere of decision altogether.” It seeks, we might say, to turn the person—a subject—into an object, a thing.

Seeing this, we can understand why Thieliicke groups torture with the use of a truth serum, which does not inflict pain but attempts to bypass the sphere of decision. His fundamental category is not torture but dehumanization. Temptation and coercion attack—but without bypassing or subverting—the person, and they may sometimes be permitted or, even, required. Torture and truth serum bypass—we might say, “thingify”—the person, taking away “the personal right to decision.” But if the human person is a representation of transcendence, it is the transcendent that has then become our target. A Christian “owes to the world,” Thieliicke writes, “the public confession that he is one who is committed, ‘bound,’ and hence not ‘capable of [just] anything.’ If we make ourselves fundamentally unpredictable, i.e., if as Christians we think that torture is at least conceivable—perhaps under the exigencies of an extreme situation—we thereby reduce man to the worth of a convertible means, divest him of the *imago Dei*, and so deny the first commandment. This denial can never be a possible alternative.”

In his *Apologia Pro Vita Sua*, John Henry Cardinal Newman wrote: “The Catholic Church holds it better for the sun and moon to drop from heaven, for the earth to fail, and for all the many millions on it to die of starvation in extremest agony, as far as temporal affliction goes, than that one soul, I will not say, should be lost, but should commit one single venial sin, should tell one willful untruth, or should steal one poor farthing without excuse.”⁴ I am not certain that I want to agree with

⁴ John Henry Cardinal Newman, *Apologia pro Vita Sua* (New York NY: W.W. Norton, 1968).

either Newman or Thielicke, Or, at least, I want to think later about distinctions analogous to those raised by Hans Jonas with respect to medical experimentation. However, it is, to say the very least, instructive to find Thielicke, whose brand of Lutheranism always flirts with antinomianism, insisting that, at least in this instance, what we *do* counts for more than what we *accomplish*, and insisting upon it in a way as relentlessly demanding as Newman's.

It is important that we acknowledge just how demanding it is—important, that is, to acknowledge the cost of giving moral priority to doing rather than accomplishing. “Saints should always be judged guilty until they are proved innocent,” Orwell wrote of Gandhi, and Orwell's own inclination was to think of the saint's demanding standards as, finally, “anti-human.” We may disagree with him, but we should be willing to count the cost of doing so.

Thus, while it may be paradoxical to hear former Vice-President Cheney now calling for full disclosure of the beneficial results of enhanced interrogation methods used in secret during his tenure in office, he is quite right to do so. If we wish to renounce those tactics, we should estimate as best we can the cost of doing so. Even those who reject all utilitarian calculations should not deny the truth in utilitarianism: namely, that consequences do matter.

Or again, it is far too easy an exercise in cost-counting to say with confidence that torture never works. And there are, in fact, persuasive counter-examples. It worked for the French in Algeria (though it is useful to remember that, in the longer run, they lost that struggle), and it has worked on occasion for Israeli authorities. Probably it would always be hard to predict whether torture would work in a given instance, but that is different from the far less persuasive claim that it never extracts useful or reliable information.

It is those holding political office who must pay special attention to consequences. Indeed, that's why they hold office: to focus on what will, within the limits of their power, secure the well-being of the fellow citizens whom they serve. They may—and sometimes should—authorize

us to do what none of us ought to do in our purely private capacities. They may authorize us, that is, to aim to kill those who do injustice or who threaten our life or way of life. It is possible, I know, to argue that what I have called aiming to kill is, in fact, aiming only to defend against or deflect evildoers, and that death of the enemy is not our aim, but that seems unpersuasive as a description of some of the actions that governments rightly authorize. Even more important, it comes close, at least from a religious perspective, to losing the point of government altogether.

Government may punish—and even, in certain circumstances, kill—not because it is itself “lord” of life and death, but because it is the authorized agent of the God who is that Lord. But there are always limits on how government should carry out its retributive and punitive purposes. Even in the extreme case of war we see such limits in the firmly entrenched rule (which is moral, and not just legal) that we may not take aim at non-combatants. We might have good reason to target civilians, thinking thereby to break the enemy’s will to resist, and the United States has sometimes done this—notably in the bombing of German cities and in the use of the atomic bomb against Japan (not to mention General Sherman’s march to the sea). But those actions, however laudable the cause they served and whatever good results they may have accomplished, undermine our sense that war as a human activity should be a test of strength, not of will.

Hence, what a terrorist does is quite different from what a soldier does. The essential feature of the terrorist’s action is that it deliberately (and, generally, at random) targets civilians. Terrorists do so simply to instill fear, and, as Michael Walzer has written, “in its modern manifestations, terror is the totalitarian form of war and politics.”⁵ It recognizes no limits on the violence that can be enacted in a good cause, and it subsumes individuals entirely into their political communities—treating

⁵ Michael Walzer, *Arguing against War* (New Haven CT: Yale Univ. Press, 2004).

us as if we belonged to those communities to the whole extent of our being.

Our obligations to captured terrorists are not, therefore, quite the same as our obligations to captured soldiers, to whom “benevolent quarantine” is owed. (This is a point about our moral, not our legal, obligations. If the Geneva Conventions do not recognize such a distinction, they miss something of moral importance.) The quarantine of terrorists need not be so benevolent. Indeed, once we begin to think about the difference between a captured soldier and a captured terrorist, we really should be puzzled about what we owe the terrorist.

After all, a captured terrorist may not only have carried out an attack in the past. We may have good reason to believe he is planning an attack still to be carried out in the future. If we caught him in the act of doing it, we could kill him in order to protect his innocent victims. Now that we have caught him before that next act—but have not caught all others engaged with him in planning it—can we do nothing to him to protect the innocents at whom the plans he knows and shares are taking aim? Government authorities may surely prey upon his desires and weaknesses in seeking information from him. Likewise, he may be coerced in a variety of ways, using such coercion to “motivate” him to cooperate. But subjecting him to experiences that simply break his will, that turn him into a thing no longer able to decide (in response to either temptation or coercion) is a different matter entirely.

No rule can precisely tell us when we have crossed the line that separates justified temptation or coercion from actions (whatever we call them) that are not justified. Clearly, the issue is not only infliction of pain. Enforced nudity, not in itself necessarily painful, nonetheless “thingifies” a person. Being slapped, even hard, does not (or so it seems to me). Being forced to sit in one’s urine or feces “thingifies” a person. Being forced to listen for long periods of time to loud (and perhaps offensive) music does not, or so it seems to me. None of these should be done to a captured soldier, but perhaps some of them could legitimately be done to this captured terrorist. Part of our problem is that we—as a

people—have had as much difficulty sustaining an honest conversation free of posturing about this question as about the question of stem cell research. It may turn out, in fact, that some political leaders now quite vocal in condemning torture were themselves informed about and approved various forms of enhanced interrogation—which, if true, would be contemptible.

If no rule can quite tell us when we have transgressed a line that should not be crossed, that does not mean there is no such line. Still, when that terrorist who has engaged in one assault and knows of another soon to take place, that terrorist whom we might well have shot had we caught him in the act—when he is captured, might our political leaders find it necessary to cross that line?

To return to the stem cell analogy for a moment, suppose that what was needed was not an entire industry devoted to the use and destruction of embryos in an ongoing program of research, but, instead, just three specific embryos. Produce and destroy them, and we position ourselves for continual progress in the war against degenerative diseases. Draw back, and we forgo all such good results. It is a hypothetical with no purchase on reality, of course, but I have often wondered what my answer to it would be.

In theory, my answer ought to be clear. If human beings were simply members of our species, it might sometimes make sense to sacrifice one or another of them for the sake of the species as a whole. But human beings are not just members of the species or parts of a whole. Each human being is a “someone” who belongs to no earthly community to the whole extent of his being. That is why we are not interchangeable. The “value” of one thousand people may be more than that of one, but the thousand are not more than one in personal dignity.

Thus, the answer should be clear. As Hans Jonas observed, society can afford to regard medical progress as optional if the price of such progress is infringing upon the “sacrosanctity” of human life. But Jonas also believed there were some things which “in sober truth, a society cannot afford.” Writing about medical research, his example was an

epidemic raging unchecked. It is not silly to think of terrorist activity—which intends, after all, to undermine all settled social life by returning us to something rather like Hobbes’s state of nature—as a political parallel.

Epidemics may, Jonas observed, be acute (the Black Death) or chronic (endemic malaria). He was writing about medical experimentation, and he seems to mean that in the face of an acute epidemic, a society—in order to survive—might have to conscript research subjects. To do so violates our sense that people should be used as research subjects only with their consent. It transgresses that moral boundary in a time of emergency because, so it seems, society cannot afford not to do so. It is a boundary I can imagine myself crossing in dire circumstances. The captured terrorist still conspiring (if only through silence) in plans for further, imminent attacks is the political equivalent of an acute epidemic. And those who hold political office may have to step out into a moral no-man’s land in deciding what society can or cannot afford in the face of that threat.

Would I authorize that the captured terrorist be slapped around? Yes. Deprived of sleep for a time and disoriented? Yes. Water-boarded once? Now I begin to suspect that it is corrupting to try to answer that question in advance, as if there were a policy that we could formulate to protect ourselves in a moral no-man’s land. But the answer must, I think, turn on whether doing it once would be more like an attempt at coercion, which is still a test of strength, or whether from the start it would aim to thingify the captured terrorist, trying to bypass altogether his capacity to decide. That brings us, however, to Thielicke’s other, very different, example: not the infliction of pain, but the use of truth serum. Would I authorize it in this circumstance? Perhaps again it is corrupting to try to answer that question in advance, but to the degree one can, I suspect the answer is yes. But, then, why not just three embryos—were that, by hypothesis, all that were needed? In each case wrong, but very little harm, is done.

These questions and reflections have all grown out of Jonas’s sense

of what a society can or cannot afford in the face of an acute epidemic that threatens its very ability to survive. Should we, perhaps, question that line of thinking? Why should it not be true of societies as much as individuals that how they live counts for more than how long? Is there anything sacred about the survival of our community—or any community? Surely not.

Saying that does not, however, solve the problem faced by those in political authority. For, even if the continued survival of our society is not the highest moral good, they have been placed in authority precisely to see to the security and well-being of the society that they serve. It is, at the very least, as Zachary Calo has noted, paradoxical “to propose that the community perish so that its laws might be upheld.”⁶ What choice have political leaders in the face of such an acute threat? If they will not or cannot step into the moral no-man’s land, they must probably resign—unless large numbers of us insist that they remain in office. But, of course, those who replace them may have fewer scruples and—as in Jesus’s story about the house swept free of a demon into which seven yet more evil demons then enter—“the last state of that man becomes worse than the first.”

What if we face not an acute but a chronic epidemic? My own sense is that this is quite a different matter, and Jonas was too quick to lump them together. It is one thing—perhaps never to be done and perhaps always wrong—to step into a moral no-man’s land in the face of an acute emergency. But if the crisis continues indefinitely, it ceases to be an emergency and becomes everyday life. Not three embryos destroyed just once, but an ongoing industry of embryo-destructive research, with which we make our peace on the ground that we do this in the face of the ongoing crisis of human suffering. We should reject the notion of a “war” against disease; it will turn out to justify transgressing most moral boundaries that present themselves.

⁶ Zachary Calo, essay in *Symposium: Torture Justifiable?* (Valparaiso IN: Valparaiso Univ. School of Law, 2009).

And, likewise, we should reject the notion of a “war” on terror. Waterboard that captured terrorist once? Well, I’m not sure we have a rule to cover the question. Waterboard him fifty or a hundred times? Surely not. That is no longer a test of strength, but of will. It is emergency as a permanent condition of life and moral no-man’s land as settled policy. And it grows out of a deep moral dis-ease. We need to learn again that it is not within our power to make ourselves, our society, or those we love secure. How easily we forget that our society and its way of life are fragile and delicate flowers. They are always at risk.

On October 22, 1939, at the Church of St. Mary the Virgin in Oxford, C.S. Lewis preached at evensong. To anxious undergraduates, many of whom would soon face death, and all of whom must have wondered what they were doing studying mathematics or metaphysics at a time when their nation was in mortal peril, Lewis said: “If we had foolish unchristian hopes about human culture, they are now shattered. If we thought we were building up a heaven on earth, if we looked for something that would turn the present world from a place of pilgrimage into a permanent city satisfying the soul of man, we are disillusioned, and not a moment too soon.”⁷ Life, and our shared way of life, are always fragile and insecure. That is not a crisis; it is human history. And during our share of that history it will always be true that how, rather than how long, we live should be our central concern.

⁷ C.S. Lewis, *The Weight of Glory and Other Addresses* (New York NY: Macmillan, 1988).