

Punishing physicians who torture: A work in progress*

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Abstract

Background: There are only a few anecdotal accounts describing physicians being punished for complicity with torture or crimes against humanity. A fuller list of such cases would address the perception that physicians may torture with impunity and point to how to improve their accountability for such crimes.

Methods: We performed a multilingual web search of the records of international and national courts, military tribunals, medical associations (licensing boards and medical societies), medical and non-medical literature databases, human rights groups and media stories for reports of physicians who had been punished for complicity with torture or crimes against humanity that were committed after World War II.

Results: We found 56 physicians in eight countries who had been punished for complicity with torture or crimes against humanity. Courts punish crimes. Medical societies punish ethics violations. Fifty-one physicians (85%) had been punished by the medical associations of five countries. Eleven (18%) had been punished by domestic courts.

International courts had imprisoned two (3%) physicians. Several were punished by courts and professional associations. There are open cases against 22 physicians.

Conclusions: Punishments against physicians for crimes against humanity are becoming institutionalized. Medical associations must lead in shouldering responsibility for self-regulation in this matter.

Physicians have supervised torture ever since medieval “Torture Physicians” certified that prisoners were medically capable of withstanding the torture and of providing the desired testimony. Revelations of sadistic medical experiments on prisoners during World War II turned the world against physician torturers and led to the “Doctor’s Trial” at Nuremberg, a trial that held physicians accountable for crimes against humanity.¹

This paper describes the largest case series of physicians who have been punished for abetting torture or other crimes against humanity committed after World War II. We wanted to: 1) describe and categorize the hearing procedures, 2) identify the roles of punished physicians, 3) categorize acts for which physicians are punished, and 4) describe the political cultures in which punishments arise. Our larger aim was to learn whether punishments against physicians for abetting torture or crimes against humanity occur under sufficiently diverse environments as to inform generalizable public policy to punish and perhaps to deter this kind of medical misconduct.

Key words: torture, human rights, ethics medical, prisons, military medicine, war

*) For a currently updated list of physicians punished for torture or crimes against humanity see Dr. Miles’s website: www.ahc.umn.edu/bioethics/facstaff/miles_s/home.html

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Methods and limitations

There is no comprehensive list of physicians who have been punished for abetting torture or crimes against humanity. We searched for punishments against acts that took place after World War II. We included acts that the materials defined as government-sponsored torture, murder, kidnapping, genocide, or crimes against humanity, etc. We did not search for physicians who were involved in making biological or chemical weapons of mass destruction. We searched for four kinds of hearing venues: international courts, national criminal courts, military tribunals, and “medical associations” (a term that includes “licensing boards” and “medical societies”). In that extraordinary tribunals were sometimes convened to prosecute these crimes, we defined a “court” as a body that had the power to imprison, court martial, order defendants to pay damages to victims or their survivors, or to revoke a government pension. Each “case” had a formal charge and a completed hearing that ended in a punishment. We define a case as being “in progress” from the time that an indictment, summons or arrest warrant was issued until the end of the hearing. We note cases where a proceeding was mooted by a physician defendant’s death. We do not include cases ending in acquittal or the many instances where general amnesties precluded charges being brought against physicians for abetting torture. However, we do include cases in which physicians were found culpable and subsequently excused by general amnesties or pardons. We did not tabulate cases involving nurses, midwives, psychologists, and medics.

We searched online in the medical and non-medical literature and media in European languages, Westlaw, Lexis Nexis, the European Court of Human Rights (HUDOC) database, University of Minnesota

Human Rights Library, WorldCat and Trial-Watch. Relevant citations were backtracked. We contacted human rights organizations and torture treatment centers in the United States, Europe, and Latin America and searched their on-line archives. We used the Google translator to identify relevant material from foreign medical associations and news media in French, German, Portuguese, Spanish, Greek, Turkish, and Hebrew. A person competent in that language reviewed all translations. An Excel spreadsheet of cases and supporting citations is available on line www.ahc.umn.edu/bioethics/facstaff/miles_s/home.html.

This is qualitative research. Case materials varied in completeness and usually described, rather than specified, charges and punishments. Variations in legal codifications, the licensing authority of medical societies, and the independence of courts and medical associations from executive or legislative control were barriers to a precise tabulation of findings.

This is a convenience sample and not an exhaustive compilation. Some cases have not been discovered. Our imperfect search methods were biased to western languages and to organizations and news media in worldwide web archives. We saw references to the practice of sealing punishments from public records. For every punished physician, we saw several more who gave self-incriminating testimony against colleagues usually in exchange for immunity or amnesty. For every punished physician, human rights groups have named many more and were working to have them held accountable. We did try contacting many organizations for additional information but because of short resources and possibly an intimidating political environment, received no information beyond that which we had already located.

Results

In 1975, Greece became the first country to punish a physician for torture committed after World War II. As of mid 2009, we have found 56 physicians in eight countries who have been punished for torture or crimes against humanity. See Figure 1. Of these, 46 (82%) had been punished by medical societies or licensing bodies of five countries. Ten (22%) have been convicted and usually imprisoned by national courts in four countries (Argentine and Chilean medical associations have punished two of these). International courts imprisoned two (4%) physicians from former Yugoslavia. In addition, we have found open cases against 18 physicians. Fifteen of these are undergoing their first hearing, two more died after charges were filed. Nine are facing criminal charges after being punished by a medical association (an Argentinean physician died awaiting trial). A South African physician was acquitted by a criminal court and is now in a licensing board hearing. An unpunished Argentinean physician is facing two trials in domestic and international courts. (Figure 1 shows the activity of ongoing cases).

Although medical associations and criminal courts punish the same acts, (i.e., torture, murder, kidnapping, falsifying death certificates, etc.), the grounds for civil or criminal punishments differ. Medical associations punish violations of medical ethics. For example, Uruguayan associations condemned medical complicity with torture and affirmed the World Medical Association's Declaration of Tokyo against physician complicity with torture. They then convened a Medical Ethics Court that rejected the idea that military and civilian physicians had different ethical duties with regard to the treatment of prisoners and expelled thirteen physicians.^{2,3} Argentina convened a medical ethics conference at a university that sym-

bolically censured three physicians for violating the Hippocratic Oath, the National Code of Ethics, and international medical ethics standards.⁴ The Ministry of Health dismissed a fourth physician from Directorship of Emergency Services at a hospital although he continued to work as a clinician. Civilian medical organizations levy diverse punishments including public and private censure, modest fines, revocation of awards, suspension or revocation of licenses, or expulsion from the association.

Courts prosecute crimes. Most charges include murder, kidnapping (e.g., falsifying birth certificates of the newborns of murdered prisoners), or falsifying public records (e.g., death certificates). "Torture" per se is rarely indicted because it is rarely a codified crime. In late 1999, a Spanish judge, Baltazar Garzón, invoked universal jurisdiction and the right of extradition to charge members of the Argentine armed forces, including three physicians, with crimes against humanity. These warrants have survived court challenges; trials are getting underway. With one exception, military tribunals have not held physicians accountable for torture. After the Greek junta fell, Dr. Dimitri Kofas was court martialed and imprisoned for "dereliction of duty" by supervising prisoners under torture.⁵ Criminal courts impose fines of varying sizes or imprisonment (for up to life). We could not find a pattern of punishments relative to the gravity of the abuses. The death penalty has not been sought although a Chilean military physician who had been expelled from the medical association was assassinated, apparently for being a physician-torturer.⁶ We saw references to several civil suits against torturers but only one seems to have resulted in an award. That Brazilian court revoked the pension of a military physician and ordered him to pay damages to a victim's family.⁷

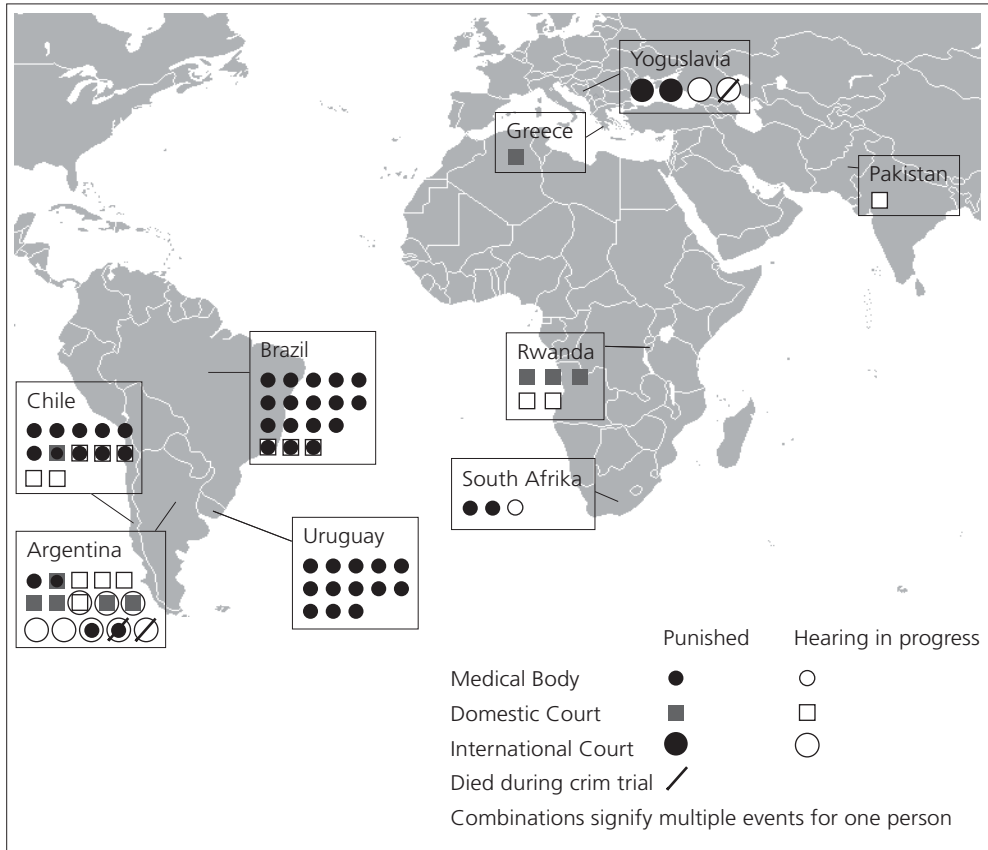


Figure 1. Physicians sanctioned for torture and crimes against humanity

A different kind of prosecution arises when domestic or international courts hear cases about mass atrocities where the defendant physician held a senior *non-clinical* government position. In such cases, the charges refer to mass crimes (e.g., genocide, or mass murder) rather than crimes against named individuals. An international court imprisoned two physicians and is trying a third for their governmental roles during genocide in the former Yugoslavia. Rwandan *gacaca* courts have imprisoned three doctors

(two clinicians and one government official) for abetting crimes against humanity. Two more Rwandan physicians, both former government officials, are under trial.

Very few physicians who torture are ever identified. Of those identified, few are subject to hearings. Regional medical boards in Rio de Janeiro and São Paulo Brazil received allegations against 110 physicians and had opened proceedings against forty by 1996.⁸ As of now, Brazil's medical associations have punished 17 physicians. The Chilean Col-

lege of Medicine says that more than 80 physicians participated in acts of torture; ten have been punished.³ It is estimated that more than 200 Argentinean physicians collaborated with torture; six have been punished.³

In addition to the formal system of hearings and punishments by courts and medical associations, South American human rights groups have developed an important system of denouncing. As one group's name, "Si no hay Justicia, hay Escrache!" (If there is no Justice; Denounce!) implies, these groups shame alleged torturers who have not faced hearings. These human rights groups have websites with photographs of the alleged torturer. They summarize his military service, name the victims and post the home and work addresses and phone numbers of the alleged torturer. Many such websites focus on physicians, citing the betrayal of medical, often specifically Hippocratic, ethics. These groups hold demonstrations at alleged torturers' homes.

Our source material does not provide systematic information about the motivations of the punished physicians. During their hearings, most physicians denied knowingly participating in atrocities. Some cited patriotism, military duty or a national emergency. A few said that they were afraid of being tortured, a plausible claim in South America where physicians tortured their colleagues and medical students.³ Brazilian psychiatrist, Amílcar Lobo, who admitted overseeing the torture of 500 prisoners, offered this chilling defense, "man has used torture and assassination for thousands of years and permitted it as long as it is socially organized. It is but an instant between the Inquisition's torture and murder of the Jews and the Nazi regime's similar actions forty years ago. This is human nature; I am not ashamed to be part of it."⁹

Discussion

Civil and criminal mechanisms to hold physicians accountable for complicity with torture and other crimes against humanity have been built in a handful of countries on three continents. The many hearings that are currently "in progress" suggest that physician accountability is moving from innovation to institutionalization. The common features of the development of these institutions are worth noting.

National development of these institutions can be understood as being at one of several "steps."

Step I: Nations like Libya or North Korea suppress discussion of physician complicity with torture.

Step II: Nations like the Egypt, the United States, the United Kingdom, the Philippines, or Venezuela condemn physician complicity with torture in principle but have not punished government physicians who collaborated with it.¹⁰⁻¹⁴

Step III: Nations like Greece or South Africa have focused on a symbolic physician or incident.

Step IV: Nations like Argentina, Brazil, Chile, or Uruguay have created systems to regularize punishing physicians for torture and crimes against humanity.

These national differences are steps, not types, in that they suggest a progression and targets by which to measure the success of human rights work as nations move from Step I to II and then to III and IV. The punishment of physicians for crimes against humanity committed in their capacity as senior *non-clinical* government officials, as exemplified by the current trial of Radovan Karadzic of the former Yugoslavia is a somewhat different matter.

Governments shelter their physicians who abet torture. Armed Forces are hostile to punishments.¹⁵ Some governments re-

quire cases to be screened by courts sympathetic to the military. Others grant general amnesties, excuse actions that were under orders, or institute retroactive statutes of limitations that preclude cases from being filed.¹⁶ Some governments obstruct hearings against their physicians. In 1984, Uruguay's Defense Ministry barred military doctors from testifying at civilian medical boards' torture investigations. In 1985, it barred access to prison medical records.¹⁷ In Brazil, the military government exempted military doctors from discipline by regional medical boards and overturned punishments by licensing boards.⁸ Chile and Turkey set up government-controlled medical associations to abrogate accountability to civilian medical societies and their codes of ethics.^{18,19} Some physicians are allowed to continue to practice in government or military medical centers after their licenses have been revoked.³

Institutions for punishing physicians for torture arise from civil society. Typically, the press or groups (e.g., Argentina's Mothers of the Plaza de Mayo) compile evidence of atrocities and mobilize public support for accountability.¹⁶ Early activists, including physicians, are often threatened, sued for slander or for defaming the state, forced into exile, arrested, tortured or killed.¹⁹⁻²¹ In one ironic prosecution, Turkey fined Dr. Tufan Kose \$100 for "concealing torture" because he would not surrender records of examinations of torture survivors to the police.²² Complaints against government officials, including physicians, are rejected.²³ It is difficult to accumulate evidence. The prisons are secret. Government records are destroyed. Modern torture is often designed to minimize scars. Survivors are often blindfolded and are psychologically traumatized. Corpses are often mutilated, burned, or disposed of at sea.

The delay between crimes, complaints

and punishments varies with how long it takes torturing regimes to lose power and for civil society to reorganize. In Greece, a cataclysmic rejection of torturing regimes enabled courts to promptly punish torturers, perhaps pre-empting punishments by medical associations. In Uruguay, Chile and Brazil, where the power of juntas more slowly ebbed, medical societies acted despite the resistance of governments. The Chilean Medical College could not act until repressive controls were relaxed.⁹ Medical associations' responses however are often tempered by their political affinities with torturing regimes. For eight years, the South African Medical and Dental Council dismissed or tabled complaints against the doctors who neglected Steven Biko as he died of torture in 1977.²⁴ It still has not punished any of the many other physicians who collaborated with torture during the Apartheid era. Brazilian medical associations were initially reluctant to address medical complicity with torture. Today, they have opened a working relationship with a human rights group. The Regional Medical Council of Sao Paulo Brazil accepts that amnesty has a limited role in truth finding but asserts, "Amnesty is only legitimate for benefiting the victims of torture. It may not be used to protect torturers."²⁵ A swifter response is possible when leaders are brave and civil society, including the international human rights and medical community, urges action and creates some protective scrutiny. The Uruguayan medical association expelled Dr. Saiz Pedrini within a year for falsely certifying that Dr. Rozlik had not died of torture. Different nations highlight different kinds of physician misconduct. Chilean and Uruguayan physicians were largely punished for torture and murder. Brazilian physicians were largely punished for falsifying death certificates. Argentine

physicians who issued false birth certificates to transfer the newborns of soon-to-be murdered women prisoners to soldiers were prosecuted for kidnapping.

These national histories show the importance of the medical profession to the practice and deterrence of torture.³ Torturing regimes need physician accomplices to design methods that minimize scars, to keep alive those who are supposed to survive, and to conceal the cause of death of those who die.^{26,27} Perhaps half of torture survivors report seeing a physician supervising their torture.²⁸ Even as physicians are integral to modern torture, the medical profession is a steward of norms that oppose the abuse of prisoners. Many medical associations and human rights groups, for example, cite the Hippocratic Oath in condemning medical complicity with torture. In these norms, the medical profession and its associations, even those that have regulatory roles such as licensing, belong less to governments that torture than to civil society where the opposition to torture is generated.

These national histories suggest how medical associations might more effectively deter medical complicity with torture and perhaps torture itself.^{29,30} In that torture is a government activity, it is incumbent on medical societies to shoulder the defining responsibility of a profession, self-regulation in the service of fundamental moral aspirations. Most torturing regimes eventually fall and those nations often return to more civil conduct. During times of civil society, medical associations should assert that complicity with torture is a punishable breach of medical ethics for which accountability will endure even if investigations must be deferred until a torturing regime loses power.³¹ However, Uruguay, Brazil, Chile and Argentina show that such anticipatory steps are neither

a prerequisite for punishments nor an excuse for inaction. In those nations, medical associations creatively articulated standards and established procedures after physician complicity with torture was discovered.

International medical organizations should go beyond condemning medical complicity with torture to nurturing stronger forms of accountability by national medical communities.^{32,33}

In that torture is a government activity, governments may be expected to play a minor role in holding torturing physicians accountable. We have shown that the impetus for holding physicians accountable arises from civil society including human rights groups, medical associations and the informal denouncing organizations. Courts enter late and punish few. International courts focus on senior government officials and not on prison staff, such as physicians who carry out torture. In the United States, California has passed a resolution asking medical boards to inform licensees that complicity with torture violates laws.³⁴

The natural history of efforts to sanction physicians for torture suggests a new attainable human rights effort. A principal problem facing the nascent effort to end physician impunity for torture is the lack of knowledge that such efforts are occurring at all. Figure 1 is surprising. The diversity of sanctions as well as the interplay of courts, licensing boards, membership medical societies and human rights groups is unexplored territory. A comprehensive web-based archive of cases where physicians have been judged guilty of complicity with torture would greatly assist the development of these institutions and it would be a caution to governments and physicians that currently have good reason to believe that physicians who torture will go unpunished. Such an archive should contain

durable links to primary source documents. The maintenance of such an on-line archive would be a commendable activity by a human rights organization, torture survivor treatment network or possibly the World Medical Association. By contrast, the unsuccessful effort to establish an independent “International Tribunal for Investigation of Torture” to hear evidence and make findings regarding physicians and lawyers who participated in torture suggests that it will be difficult to establish, fund, sustain, and empower a new international institution of that nature.³⁵

Dr. Miles will continue to update this list of physicians who have been punished by courts or medical boards for complicity with torture or crimes against humanity. For example, there are new developments in Rwanda and Chile as this paper is going to press. An updated Excel sheet, map, and graphics will be maintained at Dr. Miles website, www.ahc.umn.edu/bioethics/facstaff/miles_s/home.html. Dr. Miles solicits information about new cases of confirmed punishments. Pdfs and URLs of links to authoritative media or human rights organizations accounts, court records, or licensing boards are greatly appreciated. All submissions will be independently verified before posting. The confidentiality of persons submitting information is assured: their names will not be published. Please communicate with Dr. Miles with any questions at miles001@umn.edu

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