At the time of the writing of this article (December, 2014), United States citizens are reeling from revelations concerning extra-judicial torture camps operated by the CIA. American Catholics who identify themselves as political conservatives find themselves in a difficult spot; conservative thinking associated with the United States Republican Party has - especially since September 11, 2001 - tended to justify the use of torture in the interrogation of suspects with connections to radical Islam on the premise that such extreme methods are necessary to save American lives from future terrorist attacks. However, this stalwart defense of torture flies in the face of statements found in the Catechism of the Catholic Church and of recent popes who rank torture among those offenses against human dignity which no Catholic can participate in without sin. These conservative Catholics must either distance themselves from this political position or else explain away Catholic teaching - or so the dilemma is framed.

It is not the purpose of this article to weigh in on the contemporary CIA controversy, nor to precisely nail down the level of theological certainty/authority of the statements of the modern pontiffs against torture. Rather, we hope to use the CIA controversy as an opportunity to explore the historical development of the Church's thinking on torture in order to shed light on some of the ethical considerations that are often neglected in contemporary discussions. As with many other discussions on modern moral difficulties, our study may reveal that the "difficulty" consists in framing the question in the wrong context.

I. Definition of Torture

Let us begin with a definition of torture. Initially, it seems that torture consists in inflicting pain for the sake of suffering; in other words, suffering is the desired primary effect of the action. This would set it apart from pain for the sake of some other end - like pain inflicted in the process of pulling out a bad tooth, or pain inflicted when removing a splinter. Therefore, torture consists of inflicting pain deliberately when pain itself is the primary end.

We see immediately that this definition suffers from two deficiencies: First, it could be argued that in certain cases of torture, suffering is not the primary end, but the information or confession the torture is supposed to elicit from the victim. However, even in these cases, we could still note that suffering is a deliberately desired end of the action; torture inflicted that did not intentionally cause some degree of suffering could hardly be called torture. Deliberately willed pain is always central to torture, whether it is the primary end or not. When we have authentic torture, the suffering is either the primary end or positively willed as integral to attaining the primary end.

The second problem is the question of severity. Even if we hold that torture consists in deliberate infliction of pain (often as the act's primary end) we find ourselves forced to classify spanking a child as torture. After all, the purpose of the spank is to deliberately inflict pain. Pain is the primary end of a punitive spank-session. But common sense tells us that a parent spanking a child does not constitute torture, despite the United Nations declarations to the contrary. If we are unwilling to admit that such mild disciplines are torture - or to postulate that torture is entirely subjective (that anyone is tortured who 'feels' they are being tortured), then we must
admit the question of degrees of severity. In other words, while all torture consists in the deliberately willed infliction of suffering, not all such actions constitute torture; it is only when the suffering exceeds a certain degree of severity that it becomes torturous. Western ethical tradition has grappled with the 'degree' question since the beginning of Christendom.

Therefore, our refined definition of torture is: An act in which a certain degree of suffering is deliberately inflicted and willed as the primary end of the action, or when not the primary end, is at least positively willed as integral to attaining the primary end.

We will keep this definition close at hand when navigating the interesting course this question has taken in the western tradition. Modern Catholic confusion on the subject is due to the general failure to understand the way torture was viewed within our tradition, which is vastly different from the manner in which it is discussed today.

II. A Necessary Distinction

Why is there confusion on the subject at all? Is not modern Magisterial teaching clear on torture? In fact, it is not that simple. The question is complicated by the undeniable fact that throughout much of the Church's history, torture was tacitly accepted by the Catholic Church and even sanctioned under certain circumstances by the Roman Pontiffs, as well as an Ecumenical Council. It has even been defended by some of the Church's greatest saints and moral theologians. Universal Magisterial opposition to torture is a relatively recent position.

Therefore, the question is not equivalent to that of, say, abortion, which has been universally and unequivocally condemned by popes, saints, theologians and councils since the beginning of Christianity. Like capital punishment, Catholic attitudes towards torture have shifted, even within the Magisterium. If we are to maintain that the Church's moral teaching has never changed, we need a much more refined understanding of the problem than simply taking Gaudium et Spes and the speeches of John Paul II as the last word on the subject. If we care about maintaining any kind of continuity with tradition, the attitudes of the previous Magisteriums must be accounted for and reconciled in light of modern statements. This is a discussion which, by its nature, is prone to over-simplification; it is also one in which over-simplification can get us hopelessly lost.

The most common and unfortunate over-simplification in this discussion is to lump all kinds of torture together into a single category. Catholic Tradition begins by making a very important distinction that never occurs in modern discussions, namely, the difference between torture administered for the purpose of obtaining a confession, and torture administered as punishment. In the former case, torture is being administered to a person under suspicion of committing a crime for the purpose of extracting a confession; or, if they are already known to be guilty, of getting them to reveal the names of their associates. This sort of torture was ubiquitous in the classical world and throughout the latter Middle Ages. The second type of torture is when suffering is administered to a person already found guilty of a crime for the purpose of punishing them. Sometimes the torture itself is the only punishment; sometimes the torture precedes the execution of the death penalty. For the sake of brevity, we will refer to the former sort as "extraction torture" and the latter sort as "punitive torture."
The modern critic will tend immediately to say, "Torture is torture. What difference does it make why it was administered?" But this is the first over-simplification we must do away with, for in the Catholic Tradition, this distinction makes a world of difference. Let us begin with extraction torture, which has had a more varied and controversial pedigree.

III. Extraction Torture: The Patristic Era

Torturing those accused to crimes in order to elicit a confession was universal in the ancient Roman Empire. Not only those accused by two or more persons were subject to torture, but even witnesses could be tortured to obtain testimony. It is hard to over exaggerate the ubiquity of torture in the Roman legal system. Not only did imperial law mandate torture for eliciting confessions from accused persons, but it also allowed private individuals to inflict torture on their slaves. Thus, torture was both a public and a private practice - and was subject to very little regulation other than custom.

Furthermore, the Romans had invented extremely refined methods of administering punitive torture. Roman crucifixion is a prime example, a punishment in which every element was meant to torture the offender while prolonging death. It was simply an unquestioned part of the pagan Roman world.

The only Christian mention of torture in the pre-Nicene era comes from the pen of Tertullian, who in De Idololatria argues that Christians cannot hold public office because it would require them to participate in practices contrary to the Gospel. Besides pagan sacrifices, torture is also listed as something no Christian could administer. [1] However, Tertullian's condemnation is of little value because it is found in the context of a radical pacifism that is fairly unique to him; in the same chapter he also says Christians cannot imprison criminals, serve on a jury, or make use of civil courts, positions no Christian today would advocate. In other words, it is difficult to say whether Tertullian's repudiation of torture is due to his belief that the practice is inherently wicked or because it would occur in the context of service to the Roman state, which he does believe to be incompatible with the Catholic Faith. Or, to put it more simply, it is uncertain whether he thinks torture is evil per se or per accidens.

Furthermore, we may question Tertullian's consistency on this point. In the Apology, his earlier masterpiece, Tertullian famously brags triumphantly at the presence of Christians in public offices: "We are but of yesterday, and we have filled every place among you—cities, islands, fortresses, towns, market-places, the very camp, tribes, companies, palace, senate, forum,—we have left nothing to you but the temples of your gods" [2]. Those Christians serving as magistrates would undoubtedly be required to administer torture from time to time, yet Tertullian sees their presence in the state as something to be proud of.

Though it does not serve as a commentary on torture per se, we could also note the early acts of the martyrs, such as those of Sts. Perpetua and Felicity, St. Agnes, St. Lawrence and so on. These acta offer no commentary on the practice of torture but record the types of tortures inflicted on the martyrs. It is interesting that in no act of any martyr (at least that we are aware of), do the Christian biographers ever condemn torture qua torture. For example, St. Barbara suffered
monstrous tortures, but her biographers do not condemn her persecutors for using torture; rather, they condemn them for torturing an innocent person. A similar theme is found in all the *acta* of the martyrs. The persecutors are not condemned for persecuting and using torture, but for doing so on people so eminently undeserving. The implication is that the late-Roman authors of the *acta* would not have had an objection if the victim was deserving. This is a very broad conjecture and should not rely to heavily upon it; still, it should be born in mind. [3]

It was Constantine himself who, motivated by Christian sensibility, first mitigated the Roman practices. In a series of laws issued between 315 and 321, he forbid masters from torturing and killing their slaves, protected prisoners from cruel treatment at the hands of their jailers, abolished the practice of branding certain criminals on the face, and even issued laws protecting children from severe abuse from their parents. [4] Essentially, the first Christian emperor by and large removed torture from the private sphere and imposed strict regulations on public torture - although Christian Roman legislation continued to allow state-sanctioned torture of various sorts into the 5th century.

St. Augustine cannot bring himself to admit the complete morality of torture, but neither can he see any way around it. Augustine is the first Christian author to examine the problem of torture directly, and his objections to it are quite interesting, as they hinge not on any offense against the dignity of the human person, but on whether or not torture is effective. In the City of God, Book XIX, St. Augustine is discussing how the human faculty of judgment is likely to err when truth is hidden and uses cases of judicial torture as an example. In doing so, he elaborates what will become the classical Christian objection to extraction torture. The quote is long, but worth citing in its entirety:

"What shall I say of these judgments which men pronounce on men, and which are necessary in communities, whatever outward peace they enjoy? Melancholy and lamentable judgments they are, since the judges are men who cannot discern the consciences of those at their bar, and are therefore frequently compelled to put innocent witnesses to the torture to ascertain the truth regarding the crimes of other men. What shall I say of torture applied to the accused himself? He is tortured to discover whether he is guilty, so that, though innocent, he suffers most undoubted punishment for crime that is still doubtful, not because it is proved that he committed it, but because it is not ascertained that he did not commit it. **Thus the ignorance of the judge frequently involves an innocent person in suffering.** And what is still more unendurable—a thing, indeed, to be bewailed, and, if that were possible, watered with fountains of tears—is this, that when the judge puts the accused to the question, that he may not unwittingly put an innocent man to death, the result of this lamentable ignorance is that this very person, whom he tortured that he might not condemn him if innocent, is condemned to death both tortured and innocent. For if he has chosen, in obedience to the philosophical instructions to the wise man, to quit this life rather than endure any longer such tortures, he declares that he has committed the crime which in fact he has not committed. **And when he has been condemned and put to death, the judge is still in ignorance whether he has put to death an innocent or a guilty person, though he put the accused to the torture for the very purpose of saving himself from condemning the innocent:** and consequently he has both tortured an innocent man to discover his innocence, and has put him to death without discovering it" [5]
This constitutes St. Augustine's case against torture. We have bolded some sections of the excerpt which shed light on where Augustine is coming from here; yes, torture is an injustice. Why? Because it is a fundamentally flawed legal methodology. It can neither ascertain guilt, nor is there certainty of the guilt of one who has confessed under torture. In supposing to save the judge from condemning the innocent, it rather makes it that much more likely that an innocent man will suffer. This is why extraction torture is condemned - not because it violated the human dignity of the subject, but because as a judicial method, it does not work.

Note also, however, that Augustine says that such judgment as "necessary", though their necessity is "melancholy and lamentable." In what sense is torture "necessary"? One would think, given Augustine's masterful exposé of the problems of extraction torture, that he would advise Christians against becoming magistrates, much like Tertullian? On the contrary, he says this is all the more reason why good and wise men must take up this duty. Quoting again from the same place:

"If such darkness shrouds social life, will a wise judge take his seat on the bench or no? Beyond question he will. For human society, which he thinks it a wickedness to abandon, constrains him and compels him to this duty. And he thinks it no wickedness that innocent witnesses are tortured regarding the crimes of which other men are accused; or that the accused are put to the torture, so that they are often overcome with anguish, and, though innocent, make false confessions regarding themselves, and are punished; or that, though they be not condemned to die, they often die during, or in consequence of, the torture; or that sometimes the accusers, who perhaps have been prompted by a desire to benefit society by bringing criminals to justice, are themselves condemned through the ignorance of the judge, because they are unable to prove the truth of their accusations though they are true, and because the witnesses lie, and the accused endures the torture without being moved to confession.

These numerous and important evils he does not consider sins; for the wise judge does these things, not with any intention of doing harm, but because his ignorance compels him, and because human society claims him as a judge. But though we therefore acquit the judge of malice, we must none the less condemn human life as miserable. And if he is compelled to torture and punish the innocent because his office and his ignorance constrain him, is he a happy as well as a guiltless man? Surely it were proof of more profound considerateness and finer feeling were he to recognize the misery of these necessities, and shrink from his own implication in that misery; and had he any piety about him, he would cry to God From my necessities deliver me. [6]

If we must live with torture, let us at least have just men administer it. Essentially, Augustine views extraction torture as a necessary evil, which a judge, even a just one, is compelled to engage in by virtue of the compelling good of society that has claimed him as a judge. Though Augustine admits that more sensitive souls of "finer feelings" would be repulsed at such work, and ideally resign their posts, nevertheless such posts and such actions are necessary for the good of society, however unfortunate this may be. But it is a reality of life - a reality which leads him to observe that "we must none the less condemn human life as miserable." It was a barbaric practice - and one fraught with difficulties and inconsistencies - but in this vale of tears, a necessary evil that could not be dispensed with.
We may think it a short-coming on Augustine's part that he seemed unable even in his imagination to conceive of a legal system without torture. But recall, for Augustine and all of the Fathers, the Roman legal system was all they ever knew; in fact, from their point of view, it was the only one in the whole known world - at least the only one of consequence. And Roman law was equated with civilization itself.

Moving out of the Roman and into the medieval era, we see that Christianity eventually begins to work its way throughout the legal codes of the late empire. The use of torture is greatly mitigated. Justinian's Digest - part of his massive Corpus Iuris Civilis that consisted of a codification of all Roman law up to the year 533 - contains this interesting statement on the application of extraction torture:

"It is declared in the Constitutions that torture should be considered neither as always trustworthy, nor as always untrustworthy. And as a matter of fact it is a fickle and dangerous business that ill serves the cause of truth. For there are not a few who are possessed of such powers of endurance, or such toughness, that they scorn the pain of torture, so that there is no way the truth can be wrung from them. Others, however, have so little resistance that they will make up any kind of lie rather than suffer torment; and that can lead them to keep changing their story, even incriminating others as well as themselves." [7]

It is noteworthy that, as of 533, imperial legislation has now adopted the position first enunciated by St. Augustine. Torture is of questionable value in extracting confessions. This decree probably contributed to the decline of extraction torture leading into the early medieval period.

IV. Extraction Torture: Early Medieval

Based on the works of Tertullian, we know that at least some Christian eschewed public service and so the legitimacy of torture was a non-issue; but Tertullian's comments in the Apology also reveal that other Christians did hold public office and as such would have had to administer torture. St. Augustine reflects what was probably the attitude of most thoughtful Christians on the matter in the early Christian empire: torture was a regrettable thing, not always trustworthy and for that reason unjust. Nevertheless, since the Christian empire adopted the legal system of pagan Rome almost in its entirety - lacking any legal framework of their own - it was inevitable that torture would pass into the Christian empire as well, though Augustine saw it as an evil per accidens and struggled with the problem.

Yet, as the empire collapsed and the shadows of old Rome grew longer, we see a decisive movement away from extraction torture in the early medieval period. The impetus for this was two-fold: on the one hand, the continued Christianization of Europe, which in all things emphasized mercy and leniency over rigidity; and on the other hand, the introduction of Germanic law, with its preference for fines over corporal punishment and oaths and ordeals in lieu of torture for ascertaining guilt.

The pivotal text of this era comes from the pontificate of Pope Nicholas I (r. 858-867), who in 866 issued a lengthy letter called the Ad Consulta Vestra. Dedicated to the newly converted
Prince Boris of Bulgaria, the document sets out norms for civil and ecclesiastical matters, essentially serving as a treatise to the newly converted monarch on how a Christian country ought to be run. The section on torture deserves to be quoted at length:

"If an [accused] thief or bandit is apprehended and denies the charges against him, you tell me your custom is for a judge to beat him with blows to the head and tear the sides of his body with other sharp iron goads until he confesses the truth. Such a procedure is totally unacceptable under both divine and human law, since a confession should be spontaneous, not forced. It should be proffered voluntarily, not violently extorted. After all, if it should happen that even after inflicting all these torments, you still fail to wrest from the sufferer any self-incrimination regarding the crime of which he is accused, will you not then at least blush for shame and acknowledge how impious is your judicial procedure? Likewise, suppose an accused man is unable to endure such torments and so confesses to a crime he never committed. Upon whom, pray tell, will now devolve the full brunt of responsibility for such an enormity, if not upon him who coerced the accused into confessing such lies about himself? However, let us not even call that a 'confession'; rather, such a one utters with his mouth what is not in his heart!..."

The pope will go on to recommend a more judicious manner of proceeding, centered on oathswearing rather than on torture.

The text of Ad Consulta Vestra is absolutely central to understanding the subsequent development of Catholic thought on torture. Nicholas condemns extraction torture as contrary to both human and divine law. Very strong words. But this is not the end of the argument. Notice the rationale the pontiff gives for condemning the practice. Torture in this case is said to be wrong because it is an ineffective and flawed legal procedure; it can neither insure the confession of the guilty, nor can it prevent the timid but innocent from making a false confession. Hence the pope calls it an "impious...judicial procedure." In other words, the practice is evil because it does not work; because it does not work, it is unjust - and legal structures that are fundamentally unjust are contrary to the common good and the law of God, who demands justice of human societies.

Note what is conspicuously missing from Pope Nicholas' condemnation: an argument against torture based on the dignity of the human person. Following St. Augustine before him, Nicholas does not seem cognizant of an argument grounded on the dignity of the human person - or if he does, it is of secondary importance to the primary objection that torture is wrong because it is a methodologically flawed legal procedure.

It was not that a person as a human being had a right not to be tortured based on his innate dignity; rather, it was that a person as a citizen had a right to just legal procedures.

This was the general civil sentiment throughout the Carolingian era, where torture had disappeared to such a degree that "no traces of it can be found". [9] Though we can always find exceptions if we look hard enough, it is safe to say that this was the state of things from the Carolingian era to at least the mid-12th century and possibly later.
V. The Rediscovery of Roman Law

Extraction torture was central to Roman law, and with the rediscovery of Roman law via manuscripts brought back from the Crusades and the emerging canonist movement, theorists again began discussing the liceity of torture. Pope Nicholas' decree stated that torture was fundamentally contrary to divine law because the procedure was unjust. But then again, all the writers of the first millennium had really known was Roman torture, which was exceptionally severe. Suppose the application of torture was surrounded with the appropriate safeguards. Suppose it could be wielded in a manner that was more or less trustworthy. If the practice were hedged about with the proper legal guidelines, the basis for its injustice would be removed and it would be permissible. All admitted there were accidental evils historically associated with torture; could these accidental evils be removed? Such was the thinking of the 13th century canonists, all heavily influenced by Roman law and possessing sharp legal minds.

We see this cautious allowance for torture in the famous bull Ad Extirpanda of Innocent IV, issued in 1252. The bull was issued in response to the killing of St. Peter of Verona, papal inquisitor in Lombardy, by a conspiracy of Cathars. Because the Cathar movement was not only heretical but also violent and well organized, the pope faced a dilemma similar to those today who struggle with terrorist cells within their country. Since a captured Cathar might have information on potential future plots, the knowledge of which could save lives, would it not be just to use physical compulsion to get this information from him?

Hence the background to Ad Extirpanda. The document is very cautious, and while it allows alleged conspirators to be "coerced" into revealing information, there are several restrictions. Torture can only be applied once. The inquisitor must already have evidence that makes the victim's guilt practically certain. Torture cannot permanently maim, cripple or kill the victim (it must stop short of "life and limb"). Later additions to the procedure will include the mandate that anything confessed under torture must be ratified by an oath freely given after torture. Thus, with these guidelines, Pope Innocent IV sought to remedy the inherent injustice of torture as described by Nicholas I and Augustine.

Is not Innocent IV in stark contradiction to Nicholas I? Not if we understand the arguments correctly. The first Christian millennium, exemplified by Nicholas I, said, "Torturing to extract information is ineffective and therefore an abuse of justice," to which the second Christian millennium and Innocent IV replied, "unless its application is guarded by the appropriate guidelines." To go from no torture to the pope permitting torture was a great leap, but understood properly it was a legitimate development of teaching grounded in the legal developments of the canonist movement of the 12-13th centuries.

Note, from a moral standpoint, this development would not have been possible had the original arguments against torture been grounded in the dignity of the human person; there is no room for "development" in the Church's condemnation of abortion since it is evil per se. But because the arguments from Augustine to Nicholas were based on the inefficiency of the method, it left room for development open: If torture can yield trustworthy results, it would be just, and hence permissible. Again, while the first millennium condemned the use of torture, they recognized no fundamental human right to not be tortured, and hence the development represented by Ad
Extirpanda was made possible.

We must also note that Ad Extirpanda was addressed to a very limited audience: the bishops and temporal rulers of Italy. Its narrow scope rules out any question of infallibility. Ad Extirpanda is certainly representative of the mind of the 13th century Church but falls short of being considered universally authoritative, even in its own day much less today.

VI. Thomas Aquinas

Unfortunately, the provisions of Ad Extirpanda were abused almost immediately. Magistrates could be very creative in their definitions of what constituted being tortured "once." It was very common for the accused to be tortured repeatedly, each time claiming the torture session was only "paused", but not stopped. Hence, five or ten bouts of torture over a week were counted as one continuous session. Furthermore, the bull allowed for the property of convicted heretics to be forfeited to the state, which created a political incentive for convictions and ensured the system would be abused. This last point in particular was one of the most regrettable aspects of the medieval Inquisition.

Furthermore, the secular arm was extraordinarily adept at constructing horrendously painful tortures without violating any of the Church's "guidelines." Case in point, the strappado, whereby the accused was hung from a ceiling beam by his arms, his feet left dangling a few feet off the ground. As the torture progressed, weights would be attached to his feet until at some point the shoulders would be pulled out of socket. Thus, while life or limb may not have been destroyed, we may surmise that the "spirit of the law" was often violated even if the letter was preserved. Of course, the "medieval torture chamber" was largely the creation of Victorian popularizers, but it is undeniable that torture was abused in the later Middle Ages.

Pope Innocent IV had envisioned the Church being able to maintain an equilibrium that had eluded the Romans. And why not? The great 13th century was the age of equilibrium. Abuses may come, but abusus non tollit usum. Around the same time Innocent IV was legislating extraction torture back into Catholic life, St. Thomas Aquinas was defending the practice under certain circumstances. Let us look at the relevant passages of the Summa.

In II-II, St. Thomas, while acknowledging that the grace of faith cannot be gained by compulsion, says that those who have already professed faith may be compelled to observe the promises they have made:

"Among unbelievers there are some who have never received the faith, such as the heathens and the Jews: and these are by no means to be compelled to the faith, in order that they may believe, because to believe depends on the will: nevertheless they should be compelled by the faithful, if it be possible to do so, so that they do not hinder the faith, by their blasphemies, or by their evil persuasions, or even by their open persecutions. It is for this reason that Christ's faithful often wage war with unbelievers, not indeed for the purpose of forcing them to believe, because even if they were to conquer them, and take them prisoners, they should still leave them free to believe, if they will, but in order to prevent them from hindering the faith of Christ."
On the other hand, there are unbelievers who at some time have accepted the faith, and professed it, such as heretics and all apostates: such should be submitted even to bodily compulsion, that they may fulfill what they have promised, and hold what they, at one time, received" [10]

So Aquinas admits that 'bodily compulsion' is legitimate, at least when applied to heretics. Remembering our original definition of torture as implying a certain degree of severity, the next logical question is what degree of bodily compulsion is acceptable? Where is the line crossed? Pope Innocent IV had stated that life of limb cannot be endangered. St. Thomas accepts this principle and fleshes it out further in his section on the limits of just corporal punishment. Here St. Thomas introduces the concept of "bodily integrity."

All things have natures created by God. Bodily integrity signifies that a being's body is sufficiently whole to be able to carry out those functions dictated by nature: eating, seeing, moving, working, etc. Thus, to wound or destroy bodily integrity is to damage the body in such a way that it can no longer fulfill the functions proper to its nature. In a very functional sense, it is "contrary to nature" to wound a person so he cannot act according to his nature.

With his grounding in natural law, Thomas sees it a morally evil to wound a person in such a way that their bodily integrity is destroyed (with some caveats, as we will see later). St. Thomas uses the word "maiming" to describe acts which destroy bodily integrity; he uses the example of cutting off a limb, but it could also be breaking an arm or leg, blinding somebody, or anything that leaves one permanently crippled. When a limb or member is permanently crippled, the ability of one to fulfill their natural ends is hindered and the act of punishment becomes evil.

We know from above that Thomas approved of torture at least in certain restricted cases; presumably he would not have disagreed with the rationale of Innocent IV in Ad Extirpanda. In II-II Q. 65 on the just limits of corporal punishment, he states that those punishments are legitimate which do not destroy bodily integrity: "Harm is done a body by striking it, yet not so as when it is maimed: since maiming destroys the body's integrity, while a blow merely affects the sense with pain, wherefore it causes much less harm than cutting off a member." [11] Presumably, then, this would be the limits of torture - it must not destroy bodily integrity.

Here we must pause and note the difference between Aquinas' thinking and the presumptions of modern Catholic morality, especially as relating to the concept of "the dignity of the human person."

St. Thomas takes a very functional view of human dignity. A man has dignity by virtue of being created in God's image. God has created man with a certain nature and ends intrinsic to that nature. In the question of corporal punishments, dignity is violated at the moment when bodily integrity is damaged, precisely because it impedes man from acting according to his nature. It follows that those forms of punishment or torture which do not destroy bodily integrity - St. Thomas gives the example of blows - do not violate the dignity of the human person. There is no inherent right to be free from bodily compulsion; only a just expectation that it should not pass certain degrees. In other words, torture is not intrinsically evil.
Modern Catholic ethics, on the other hand, takes the approach that bodily compulsion per se is *always* a violation of human dignity. For St. Thomas, torture becomes wicked when it destroys bodily integrity; the moderns replace the narrower concept of "bodily integrity" with the broader "human dignity" and state that every torture, simply by virtue of being bodily compulsion, violates this dignity. Therefore, it is intrinsically evil.

Again, our purpose is not to try to "justify" one position or another relating to modern instances of extra-judicial torture; indeed, St. Thomas' guarded language about compulsion and bodily integrity certainly do not imply that any government has the right to apply extra-judicial torture to anyone for any interest of state. But the line of thinking followed by Augustine, Pope Nicholas I, Pope Innocent IV and St. Thomas do demonstrate that, at least to the late 1200's, torture was not viewed as intrinsically evil. All debates on the subject centered on the question of degrees of severity and the integrity of the process.

**VII. Extraction Torture: To the Modern Period**

We have seen that despite the ideals of Aquinas and Innocent IV the practice of torture was abused in the late-medieval period. Complaints about these abuses led the Council Fathers at the ecumenical Council of Vienne (1311-1312) to take up the question and issue some disciplinary canons on the application of torture. The Council noted:

"The apostolic see has received many complaints that some inquisitors, appointed by it to suppress heresy, have overstepped the limits of the power given to them. They occasionally so enlarge their authority that what has been wisely provided by the apostolic see for the growth of the faith, oppresses the innocent under pretext of piety and results in harm to the faithful. The work of the inquisition will be the more successful the more solemnly, diligently and cautiously its investigations are prosecuted. We decree therefore, for the glory of God and the increase of the faith, that this work will be done by both diocesan bishops and by inquisitors appointed by the apostolic see. All worldly affection, hatred and fear shall be put aside, as also any seeking of temporal advantage. We decree that the bishops and the inquisitors may act independently of one another. They may summon, arrest or hold for safe-keeping, even securing those arrested hand and foot if it seems necessary. For this we hold them responsible. They may also inquire about those concerning whom inquiry seems right before God and just. The bishop, however, without the inquisitor, or the inquisitor without the diocesan bishop or his officer or the delegate of the chapter when the see is vacant, may not commit to harsh or close imprisonment, which seems more like punishment than custody, or subject anyone to torture or pronounce sentence on anyone, if they can have access to each other within eight days after seeking it; any contravention of this has no legal validity. If nevertheless the bishop, or the delegate of the chapter when the see is vacant, cannot or will not personally meet the inquisitor, or if the inquisitor cannot or will not personally meet either of the other two, the matter may be entrusted to their proxies or settled by counsel and consent through letters." [12]

The bolded sections demonstrate that the Council Fathers take it for granted that extraction torture is legitimate. They seek to mitigate abuses in its application and ensure the integrity of the process - hence the lengthy directives on the relation between the bishop and inquisitor. Mindful of the classical Christian understanding that torture is of questionable legal efficacy,
they seek to strictly confine its application within very fixed legal limits in order that it be free from abuses. Thus, inquisitors are warned to work "solemnly, diligently and cautiously" at their task. But ultimately these directives presuppose that the Council affirmed the legitimacy of torture itself. Following a now well-established tradition, their aim is to make sure to safeguard the integrity of the procedure.

It is objected that the canons of the Council of Vienne are merely disciplinary. Granted. But we are not here interested in establishing whether the Church has infallibility spoken in favor of torture or in discerning whether this canon if Vienne is still binding today. Clearly it is not. Rather, we are interested in the Church's historical attitude towards the practice at all levels, and from this angle it is irrelevant whether the canons are dogmatic or disciplinary. The fact is the Ecumenical Council assumes the legitimacy of torture, which means it could certainly not be evil intrinsically.

Despite Vienne's ruling, abuses of extraction torture did not abate. If anything, they became much worse during the period surrounding the Protestant Revolt. This is undeniable; even the great Hilaire Belloc, that most strident apologist for medieval Christendom, admitted that torture was abused during the late medieval period and even states that dissatisfaction over its abuse was one reason for the Protestant Revolt. He referred to its abuse as a kind of "religious reign of terror" and noted that "as moral authority weakened, mechanical restraint strengthened" [13].

Given this, we see a new development in the state of the question. The first millennium had said torture is unjust because the practice lacks fundamental legal integrity. The late middle ages, enamored by the discoveries of Roman law and with confidence in the powers of just legislation, had answered that it was possible to supply this integrity by applying the appropriate safeguards. Following the break-up of Christendom and with a more pessimistic assessment of human nature, the early modern theologians began to question whether such safeguards could ever be adequate; in other words, had the experiment of the late Middle Ages failed? Even though in theory torture could be safeguarded, in practice - dealing with fallible human beings motivated by greed, hatred or whatever - were the abuses witnessed in the late medieval period inevitable?

St. Alphonsus Ligouri, the most famed moralist of the post-Tridentine era, said no. He offers a qualified justification of the practice fully in line with tradition. Fr. Brian Harrison of the Roman Theological Forum, in his excellent article on the theological side of the question, says:

"In his *Theologia Moralis*, [Alphonsus] does not so much argue for, but rather, takes for granted, the ethical legitimacy of the practice as such, and concerns himself only with the procedures and restrictions which he thinks should be followed as safeguards against excessive cruelty and injustice. After all, he is scarcely alone in endorsing torture, and cites a total of ten earlier approved Catholic authors (de Lugo and others) whose teachings he synthesizes in this section of his own classic work. St. Alphonsus considers three questions: (a) Under what conditions can a judge proceed to have an accused person tortured (#202)? Answer: the judge may only "descend to torture" as a last resort, i.e., when full proof cannot be obtained by non-violent means; next, there must already be "semi-complete proof" (semiplenam probationem) of the accused's guilt arising from other evidence; and finally, certain classes of persons are to be exempt from torture, either because of their frailty or their great value to society: "men of great
dignity”, knights of equestrian orders, royal officials, soldiers, doctors [probably in the general sense of learned men] and their children, pre-pubescent children, senile old folks, pregnant women, and those who are still weak after childbirth. (b) To what extent may the accused be tortured (#203)? Answer: the more convincing the already-existing evidence for his guilt, the more severely he may be tortured, but – taking into account the varying estimated endurance-levels of different individuals – never so severely that "it is morally impossible for him to endure" the pain. If that level of cruelty is in fact reached, "the confession thus extorted will be involuntary and so must be considered legally null and void", even if the accused, for fear of further torment, subsequently ratifies his confession outside the torture chamber in the presence of the judge. (c) Whether one who has already been tortured may be tortured again (#204)? Answer: not if he refuses to confess during the first torture session (unless new independent evidence against him subsequently comes to light). In that case he must be set free. But if he confesses under torture, and then retracts that confession before the judge, he may be tortured again – and even a third time if the same thing happens after the second torture session. But if he confesses under torture a third time, and yet again subsequently retracts in the presence of the judge, he must be released. For the judge then must presume that his three confessions were all forced and involuntary – and therefore invalid" [14]

According to Fr. Harrison, St. Alphonsus "does not so much argue for, but rather, takes for granted, the ethical legitimacy of the practice as such, and concerns himself only with the procedures and restrictions which he thinks should be followed as safeguards against excessive cruelty and injustice." This sums up the development of the teaching most perfectly, and as noted, St. Alphonsus is able to cite ten other theologians who are in agreement with him. Fr. Harrison also mentions other theologians - though admittedly of a lesser tier - who argued against the practice absolutely.

Nevertheless, as we move into the modern period, public opinion tended to move against the practice, even if the Church's theologians still could justify it in theory. In 1816, Pope Pius VII - the same pope who had been kidnapped by Napoleon - published an edict asking for the abolition of extraction torture in all Catholic countries, although this was not universally heeded (as late as 1851, torture was still being practiced in the Kingdom of Naples). Pius also reinstated the Inquisition in Spain in 1814, only two years prior, which at that time was still legally permitted to use torture in its procedures. Given these two contradictory actions, it is difficult to understand the pontiff's complete thinking on the question. The most probable answer is that, though torture was still on the books in Spain during the early 19th century, by 1814 it had practically died out, and thus the restoration of the Inquisition was not synonymous with promoting torture.

We know that Pius' abolition of torture in Catholic countries did not constitute any sort of doctrinal condemnation of the practice, since Catholic theologians after Pius until Vatican II still considered it an open question. For example, as late as 1954 Cardinal Pietro Palazzini, a highly respected moral theologian, opined that the jury was still out on torture and that Catholic moralists could debate the issue in good faith. He noted St. Alphonsus' defense of the practice but also noted that a newly ascendant focus on "the dignity of the human person" within Catholic theological circles meant that "public opinion, which carries a certain weight among the various means of deciding on specific social goals, is today clearly against the use of torture." [15]
The Second Vatican Council's statements on the question are very interesting. Let us look at Gaudium et Spes 27, which lists torture among the list of offenses against human dignity:

"Furthermore, whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia or wilful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury. Moreover, they are supreme dishonor to the Creator" [16]

Given the fact that there is actually quite an abundance of historical evidence that the Church of previous generations did not share this view, it is fair to ask what Gaudium et Spes cites in support of this statement. In fact it does not cite anything. There is no citation of any theological or historical source in this section. Fr. Harrison, who researched the actual Council daybooks looking for the background of this passage, stated:

"This writer has been unable to find any record in the Acta of any discussion among the conciliar Fathers of this point, nor any explanations of it given by the relator for the schema. It seems to have been quite uncontroversial, with all the Fathers apparently just taking it for granted that torture is an abomination which deserves the Church’s condemnation" [17].

This is quite astounding given the complicated legal, theological, and moral nuances of the question expressed throughout the ages, not to mention the explicit legitimacy of extraction torture granted by the Ecumenical Council of Vienne and Pope Innocent IV, as well as St. Thomas Aquinas. But the Council Fathers of the Second Vatican Council seemed to have been comfortable with this sweeping novelty and did not feel the need to ground it in any previous legislation.

The same can be said of the 1992 Catechism of the Catholic Church. The CCC states:

"In times past, cruel practices were commonly used by legitimate governments to maintain law and order, often without protest from the Pastors of the Church, who themselves adopted in their own tribunals the prescriptions of Roman law concerning torture. Regrettable as these facts are, the Church always taught the duty of clemency and mercy. She forbade clerics to shed blood. In recent times it has become evident that these cruel practices were neither necessary for public order, nor in conformity with the legitimate rights of the human person. On the contrary, these practices led to ones even more degrading. It is necessary to work for their abolition. We must pray for the victims and their tormentors." [18]

This passage is even more puzzling. While the Church's acceptance of torture in the past is acknowledged, the Catechism states this was "regrettable" without commenting on the doctrinal or moral status of the historical Church's judgments. It goes on to proclaim them contrary to the dignity of the human person and cites no authority for its statement whatsoever - not even
Let us not be misunderstood; the *Catechism* is a "sure norm for teaching the faith" [19]; we are not suggesting it is not authoritative. However, its authority rests in that it sums up the Catholic Faith. But when no previous teaching is cited, it does suggest we are moving from Catholic Tradition into the realm of novelty - or perhaps of policy, things that are judgments of the prudential realm.

John Paul II and Benedict XVI have also condemned torture in their speeches, but as these are of very low authority (such as John Paul II's 1982 speech to the Red Cross in Geneva), we see them as valuable only in clarifying the thought of the pontiffs who uttered them, not in stating what the universal belief or practice of the Church is. It is unfortunate that Fr. Harrison's article, which we have cited several times, seems to grant these speeches a Magisterial authority far beyond what is warranted, which in turn colors his final conclusions.

We will sum up and crystallize the contents of our historical study of extraction torture in our conclusion. Now let us briefly turn back and look at the problem of punitive torture.

**VIII. Punitive Torture**

Extraction torture refers to torture for the purpose of eliciting a confession or information. Now we will examine punitive torture. Punitive torture refers to the practice of inflicting torment as punishment for a crime, sometimes on its own, sometimes immediately preceding execution. Examples would be flogging, beating, whipping, the English practice of hanging, drawing and quartering, and various other practices. This can also include manners of execution which are themselves torturous or particularly grueling, such as crucifixion, burning, or pressing.

Whereas extraction torture has a complex pedigree, punitive torture was constantly and universally upheld by the entire Christian world without exception.

And why not? Up until modern times, life itself was very hard. Regular people, honest men and women, were often one drought away from starvation. Even when food was abundant, life was very demanding physically. People died from things such as diarrhea, broken bones, fevers and all sorts of maladies that are considered minor today. For those who had committed heinous crimes, why should their punishment be easy to bear when life itself was so hard for most people? Death was a penalty, of course; but then again, death came to all men - and in those days, with more frequency and immediacy. For a punishment to really be punishing, it was not enough for a malefactor to die; he must really feel he is dying.

Christian thought seemed to have less problem with this for two reasons. First, the Bible itself permits punishments that are very painful. "Eye for eye, tooth for tooth, hand for hand, foot for foot" [20]. The *lex talionis* ("law of retribution") that forms the core of Old Testament penal justice contains some very painful punishments. Anyone today would consider amputation and penal blinding as forms of torture; yet they are commanded by God in Exodus. Not to mention that stoning, also commanded in the Law in multiple places, was not a quick and easy death. Many people forget that the Law also proscribed burning alive for some offenses. [21] All
of these would be considered torture today, and yet they were found in the Law and even commanded by God.

Now, some are quick to retort, "That is in the Old Testament. We are no longer under the Law." Of course. We are no longer under the Law. But these verses are cited not to argue that these particular laws are still in force as much to argue that such actions cannot be intrinsically evil, otherwise God could not have commanded them. God's nature does not change; neither do good and evil change. If God has commanded that someone be burned to death for a certain crime, then in some sense, in some way, this must be morally permissible under the appropriate conditions. Otherwise, God could have not commanded it, even in the Old Testament.

The presence of these torturous practices in the Scriptures is one reason why Christians of all ages saw no difficulty in the practice of punitive torture. The second reason lies in an *a fortiori* argument based in the acknowledged right of the state to put criminals to death. If the state has the authority to impose the greater punishment of death, it obviously has the authority to impose lower punishments less than death. The state has "perfect coercive power" and "can inflict irreparable punishments such as death and mutilation" [22].

Cardinal Palazzini, whom we have seen commenting on St. Alphonsus' justification of torture, notes the same point as late as 1954:

"The liceity of torture as afflictive punishment cannot be doubted, given the liceity of the death penalty and that of mutilation and whipping – both equally afflictive" [23].

Aquinas had taught that the state had "perfect coercive power". Because of this, the execution of a just sentence by the state for a grave crime was the one time when Aquinas agreed that bodily integrity could be destroyed - by "death and mutilation", as he stated above. We must appreciate the nuance of Aquinas' thought here. When looking at extraction torture, he seems to have agreed with Innocent IV that "life and limb" were the limits to what was permissible; this is not because of the inherent dignity of the person, but because in extraction torture often times the guilt of a party is not yet determined.

Punitive torture, on the other hand, is a whole different story. Here the guilt has been established, and the state, by virtue of its "perfect coercive power", is able even to exceed the boundary of life and limb to destroy bodily integrity in a punitive fashion. Hence, the state had the authority to not only put men to death, but to inflict "irreparable" punishments less than death, such as mutilation, severing of limbs, flogging, etc.

Nobody throughout Christian history really questioned this. The writer is not aware of any objection to the use of punitive torture prior to the Second Vatican Council. The Church has always insisted on clemency, on mercy over justice, and on mitigating punishments in particular cases, but historically the Church did not argue against particular forms of punishment or death as such.

Thus, the ubiquity of punitive torture throughout the Christian world. Burning at the stake. Pressing. Hanging, drawing and quartering. Crucifixion. Blinding was preferred by the
Byzantines. Every single kingdom for century upon century made liberal use of whipping or flogging. Long after extraction torture was abolished in many countries, flogging was still used in the military and navy as punishment until relatively recently. We will always find priests beside the victims, imploring the executioners for mercy and pleading for repentance from the condemned - but we do not see objections to punitive torture as such.

**IX. The Post-Conciliar Problem**

We began this lengthy study by noting that discussion of torture in Catholic history necessitated making distinctions that are often omitted, and to that end we introduced the distinctions between extraction-torture and punitive torture, between torture as such and the procedures and restrictions that safeguard torture, and between torture that does not destroy bodily integrity versus torture that does. We have seen that past Catholic theologians who have addressed this issue have found these distinctions to be very important.

The problem of the post-Conciliar era is a failure to make any of these relevant distinctions. From *Gaudium et Spes* to the Catechism to the impassioned speeches of John Paul II and Benedict XVI, what we see is a condemnation simply of "torture" without any qualification. This very clumsy - as if a pope were to simply condemn "all violence" without any further context or qualifications. Such a blanket condemnation would prohibit everything from war and murder right down to a twelve year old boy defending himself against a bully,a boxing match, or a mother spanking her child. This would be extremely problematic.

Were such an obviously silly statement to be made by a pope, we would rightly infer that some qualifications would need to be made if his teaching was not to be absolute gibberish. If one were to respond that the pope had not given us any distinctions and therefore we were not justified in making qualifications, we would have to respond that such qualifications are implied in the teaching, even if not explicitly spelled out, since the denial of any qualification would lead us into absurdity.

It would be simple to say, "Well, the modern Church has condemned all torture without qualification, and therefore we have no right to insist on qualifications." This might be the case - had the Church not taken such a nuanced and divergent position in the past. When Aquinas and Alphonsus, the Church's greatest theologian and moralist, as well as a Pope and an Ecumenical Council (Vienne), in addition to St. Augustine, the most important Church Father, as well as a plethora of lesser theologians and canonists throughout the centuries acknowledge that torture is licit in some circumstances, we cannot take the citationless passages of the post-Conciliar Church and the low-level pronouncements of John Paul II as establishing the contrary. We must insist on qualifications, because the Church always has - and if we do not, we compel the Magisteriums of the modern popes to contradict those of the earlier.

We could suggest that all previous pronouncements were simply disciplinary while the modern pronouncements are dogmatic and hence more binding; we find this errant, if nothing else because most modern pronouncements on the subject are not dogmatic and don't even possess Magisterial authority; *Gaudium et Spes* is a merely pastoral document that none other than Benedict XVI himself has suggested is embarrassingly dated [24]. Other modern condemnations
come from speeches and letters with almost no Magisterial authority. If some older statements do not bear sufficient authority, the same can be said of most modern pronouncements on the subject. The argument is a double-edged sword.

Or we can look for a way to harmonize the post-Conciliar and pre-Conciliar teaching by introducing some necessary and not unreasonable distinctions based on the Church's own statements. This we will endeavor, God willing.

X. Extra-Judicial Torture

The first blanket condemnation of torture without distinction occurs in *Gaudium et Spes*, the great pastoral paean to the modern world. Fr. Brian Harrison, theologian with the Roman Theological Forum whom we have already cited, notes that the pastoral nature of *Gaudium et Spes* suggests that its recommendations are meant to address the problems of the modern world in particular:

"The very title of the document, specifying that it intends to speak to the "contemporary" or "modern" world, invites a hermeneutic that limits the Council’s condemnation to those kinds of torture which have actually been going on in the 20th century – prescinding, that is, from more theoretical, less pastorally urgent, questions such as the status of corporal punishments in the time of Moses, possible differences between the Old and New Laws, whether torture is per se or only per accidentes immoral, and what degree of ill-treatment of the human person has to be reached before it can fairly be classified as "torture". Now, if we adopt a ‘pastoral’ hermeneutic of this sort, a new and important factor enters into the equation for purposes of moral evaluation – that of the (human) legality or illegality of torture" [25].

If *Gaudium et Spes* is limited in scope to the problems of the modern world - and this does not seem to be a stretch given the content of the document - then when it condemns torture it is primarily condemning torture as experienced and understood in the 20th century, not all sorts of theoretical cases dating back to ancient times.

But how does this help us? Is torture in the modern world significantly different than torture in the ancient, medieval or early modern periods to warrant introducing such a qualification? Again, quoting Harrison:

"Now, if we adopt a ‘pastoral’ hermeneutic of this sort, a new and important factor enters into the equation for purposes of moral evaluation – that of the (human) legality or illegality of torture"

All of the historical epochs we have examined have shared one thing in common: torture, whether extraction or punitive, was all a constitutive part of some legal code; it was out in the open, as it were - public. Innocent IV, Aquinas, Alphonsus and the others could not even reasonably speak about guidelines and regulations surrounding torture if it were not the subject of legislation. Torture was as much a part of these legal codes as speeding tickets and community service are in ours. This was true in the Christian epoch, but also in ancient Rome. Essentially, all torture even spoken about or legislated on by the Church was *judicial* torture - torture codified
into law by some sort of legitimate governing authority - and the prescriptions of who could be tortured, how and under what conditions were well understood by the public.

This is in great contrast with torture as experienced in the modern period. In the 20th century and beyond we deal not with judicial torture but with extra-judicial torture. Extrajudicial torture is defined as torture inflicted by the state or some other official authority, but carried out without legal process or supervision from a court or tribunal through a legal proceeding, often in private or secretly. The Soviet Union and National Socialist regimes made free and frequent use of torture; and yet one will search in vain for any statute regarding torture in the penal codes of Nazi Germany or the U.S.S.R. Usually extrajudicial torture is implemented as a form of political repression but is kept off the official books in the attempt to maintain legitimacy. All modern communist or dictatorial regimes that have used torture have done so in an extrajudicial manner. Torture was never the "law" in Mubarak's Egypt, Saddams's Iraq, Mao's China, Pol Pot's Cambodia, or Chile under Pinochet. But in all these cases it was ubiquitous as an extrajudicial reality. Indeed, its extrajudiciality is what made it such an effective tool of repression; when something occurs outside of a publicly recognized legal framework, then there is no possibility of appeal or redress. Legally, it never happened.

Of course, this is the current form of torture preferred by the United States via the practice of extraordinary rendition or the use of extraterritorial torture facilities.

Recall the objections of Augustine and Nicholas I; their main concern was not the "dignity of the human person", but that the legal procedures of the Christian commonwealth were just. They believed torture, as it existed in late Roman Empire, was unjust, but only per accidens. Aquinas, Innocent IV and the men of the 13th century believed it was possible to change those accidental qualities of the torture procedure to safeguard its justice. But neither Aquinas, nor Augustine nor any Catholic canonist, theologian, or saint would approve of torture occurring outside of any legal framework. The overriding concern of every Catholic who ever wrote on this before Vatican II was preserving justice; justice cannot be preserved in situation where torture is being carried out in the shadows with no public oversight and outside of legal procedure.

Aquinas, who allowed the use of torture on heretics, envisioned something integrated as part of a legal process; those who cite Aquinas in support of modern extrajudicial torture should understand that Aquinas would be horrified at the idea of torture being inflicted outside of the confines of the law.

Once we understand this important distinction of judicial versus extrajudicial torture, a remarkable consistency in the Church's teaching comes into focus, as this distinction is the golden key that unlocks the enigma presented by Gaudium et Spes and the modern pronouncements. Torture as part of the legal codes of any Christian nation has vanished long ago; for the Fathers of Vatican II (most of whom had lived through the brutality of the Second World War and may have come from any number of dictatorships depending on their point of origin), extrajudicial torture was the only kind of torture they ever knew. It was the only sort of torture that was a problem of the "modern world", and hence the only sort of torture they had in mind.
The 1992 Catechism, citing no prior authority, extrapolates this condemnation in a broad manner back on all prior epochs of Church history. Unfortunately, it fails to make any of the distinctions we have seen on this topic throughout Church History. It mentions that the Pastors of the Church were often "silent" about the use of torture, or even had recourse to it themselves, but fails to mention the more important fact that popes, saints, theologians and even ecumenical councils actually sanctioned and called for the practice under certain circumstances. The Church was not simply "silent" on the problem of torture; it endorsed it in many circumstances.

XI. Conclusion

So what of Christian history? Can we not adopt the statement of the Catechism that even though the Church once endorsed the practice of torture, "in recent times it has become evident that these cruel practices were neither necessary for public order, nor in conformity with the legitimate rights of the human person"? [26] To do so leads us into two equally untenable dead-ends.

On the one hand, it could lead us to affirm that what the Church held as moral in one age is no longer moral in another; in other words, that her doctrine has changed. Either the prior ages were right and torture is moral and the moderns are wrong, or torture has always been immoral and the prior generations were wrong. Either way there is a contradiction. Clearly this is untenable.

On the other hand, we could save the consensus of the prior ages by stating that, strictly speaking, torture is still ethically acceptable under certain conditions, but that the modern Church has adopted a "policy" against its use in practice. In other words, adopting the same position the Church has with regards to capital punishment; the state still retains the right to torture, but given "modern conditions", it never has a justification to use its right. In our opinion, this position is equally problematic because it is nothing other than the assertion that practice and doctrine can be in opposition. It is the Kasper Doctrine with a twist. Kasper says something doctrinally forbidden should be practically permitted; here we would have something doctrinally permitted but practically forbidden - in either case, we have a separation of doctrine and practice, something Cardinal Müller has rightfully noted as heresy. [27]

For this same reason, we also see it untenable to say that the historical Church approved torture in her "disciplinary" decrees but has opposed it doctrinally.

Regarding Catechism paragraph 2298, which cites no previous authority, this passage simply needs to be revised to make it more historically accurate and reflect the distinctions Catholic history has admitted about this topic. The passage as it stands is simply misleading. If it is argued that it is dissent to suggest a Catechism paragraph is wrong and must be changed, we point out that CCC paragraph 2358 on homosexuality was substantially changed between the 1st and 2nd edition. [28]

What, then, is the Church's teaching on the question of torture?

Any legal code must necessarily be just, or as just as possible. Unmitigated/unrestrained extraction torture, as existed in ancient Rome, is unreliable as a legal procedure and hence is
unjust. The Church's tradition, however, seems to admit that with appropriate legal safeguards - such as the provision that bodily integrity is not destroyed; mitigated-restrained extraction torture can be justified, though there has been lively debate on to what degree.

Following the excesses of the Reformation period, a minority of Catholic thinkers began to argue that it was not possible to sufficiently mitigate extraction torture so as to render it just and therefore argued on prudential grounds that the practice should be abandoned. This is similar to the situation by which kissing itself is not sinful, but a kiss between two teenagers can so easily slide into sin (passionate kissing, feeling, etc. etc.) that it is prudent to not allow teenagers to kiss at all.

Punitive torture, on the other hand, has always and universally been allowed. This flows a fortiori from the state's perfect coercive power; if the state can inflict death, the supreme penalty, it can inflict lesser penalties. While the Church has always urged clemency and mercy in particular situations, there is no tradition of Catholic theologians before the modern age of ever objecting to punitive torture.

Extrajudicial torture is always immoral, as it takes place outside of any legal framework. The context of a legal framework was what all Catholic thinkers presupposed when they discussed the subject. The exercise of torture outside of the framework of the legal process is inherently unjust and hence is intrinsically evil. It was always considered intrinsically evil. It is primarily extrajudicial torture that the Fathers of Vatican II had in mind, as this was the prevalent form of torture employed by the Soviet Union, Nazis and Communist countries around the world. If we take the Conciliar statements with this qualification in mind, it brings them into continuity with everything Catholic theologians have always said on the matter.

Understanding these distinctions means that one could also simultaneously affirm the permissibility of certain kinds of torture (punitive) while uniformly condemning the practices of the CIA, which are extra-judicial.

The long and short of it is that attempts to make blanket statements about torture qua torture are misguided and prone to end up in contradiction for the simple reason that Tradition does not address torture qua torture, just like we cannot make blanket statements about violence qua violence but only violence under a variety of categories (war, assault, corporal punishment, self-defense, etc.) In the eyes of tradition, putting a man on the rack to extract information, branding a convicted thief with a hot iron, flogging a prisoner, and executing a man in an extremely painful manner (e.g., burning) were all totally different things. To moderns, these are all simply "torture", but the Tradition did not view it this way, and if we hope to understand what the Tradition says to us, we have to accept its distinctions.

Incidentally, the attempt to ground opposition to all forms of torture in "the dignity of the human person" was not an argument known to tradition and leads to various difficulties. As we have mentioned above in our discussion of Ad Extribanda and Ad Consulta Vestra, it was only because objections to torture were not grounded in the dignity of the human person that any development of thought here was possible.
Ultimately we are called to temper all things with mercy and clemency, as well as bearing in mind our eternal destiny. St. Therese of Lisieux, when told that a poor criminal was about to have his head sliced off in the guillotine, did not use the occasion to reflect on the injustice of his punishment, but to pray that the condemned would repent before death. The body is important, but bodily concerns are not ultimate.

NOTES

[1] Tertullian, *De Idololatria*, 17
[3] A similar trait can be observed in the Fathers approach towards religious persecution itself; while they strongly protest the persecution of Christians, they do so not because they object to persecution, but because of whom is being persecuted. In other words, given the phrase "persecuting Christians", the patristic objection centers on the term "Christians" and not on the term "persecution."
[6] Ibid.
[8] Denzinger 648
[10] St. Thomas Aquinas, *STh*, II-II, Q. 10, art. 8
[11] ibid., Q. 65 art. 1
[12] Decree XXVI of the Ecumenical Council of Vienne
[13] Hilare Belloc, *The Crisis of Civilization* (TAN Books, Rockford, Ill., 1992), 78,86. He also says, "But later on, in the efforts to maintain spiritual authority, everywhere attacked and losing its moral sanction, the officers of the Church fell back upon increasing severity and frequency of restraint by fear...This evil, the association of violence and horrible punishment with the maintenance of orthodoxy, grew rapidly throughout the end of the decline; and nothing did more to provoke that violent outburst to follow, in which the unity of Christendom was broken asunder" (ibid., 86-87).
[16] *Gaudium et Spes*, 27
[17] Harrison, 2005
[18] CCC 2298
[21] Lev. 21:9, which proscribes death by fire for the daughter of a priest caught prostituting herself.
[22] St. Thomas Aquinas, *STh*, II-II, Q. 65, art. 2
[23] Harrison, 2005
The original 1992 Catechism paragraph 2358 says "The number of men and women who have deep-seated homosexual tendencies is not negligible. They do not choose their homosexual condition; for most of them it is a trial." The same paragraph in the 2nd edition issued in 2000 states, "The number of men and women who have deep-seated homosexual tendencies is not negligible. This inclination, which is objectively disordered, constitutes for most of them a trial."

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