



4.4 Is Torture Ever Justified?

Terrorism and Civil Liberties

The Economist

Why We Chose This Piece

In the early months of 2009, a continuing debate about the place of torture in democratic societies took place between President Obama and the officials of his new administration on the one hand, and the defenders of George W. Bush's administration, in particular former vice president Dick Cheney, on the other. Obama insisted that protection of civil liberties is central to who we are, that only when we respect the rights of all can we be truly secure, as our bad treatment of prisoners helps strengthen recruitment of enemy combatants against us, and that in any case, torture has never been proved an effective way to get reliable information. Cheney argued just the opposite and said that we face a direct choice—that what he called “enhanced interrogation techniques” were necessary to keep us safe and by refusing to engage in them and by bringing some transparency to our previous use of them, Obama was risking the security of the nation.

Although this Economist article was written in 2007, when Bush still had a year and a half to serve, it captures the issues at stake nicely. Can a debate such as this one ever be settled conclusively? How?

In every war, information is a weapon. In a “war against terrorism,” where the adversary wears no uniform and hides among the civilian population, information can matter even more. But does that mean that torture can sometimes be justified to extract information?

The answer in international law is categorical: no. As laid down in treaties such as the Geneva Conventions, the UN Convention against Torture and the International Covenant on Civil and Political Rights, the ban on torture or any cruel, inhuman or degrading treatment is absolute, even in times of war. Along with genocide, torture is the only crime that every state must punish, no matter who commits it or where. Defenders of this blanket prohibition offer arguments that range from the moral (torture degrades and corrupts the society that allows it) to the practical (people will say anything under torture so the information they provide is unreliable anyway).

The September 11th attacks have not driven any rich democracy to reverse itself and make torture legal. But they have encouraged the bending of definitions and the turning of blind eyes. There is a greater readiness among governments that would never practise torture themselves to use information which less squeamish states have obtained—through torture.

Selection published: September 22, 2007

Source:

CLUED in to Politics,
by Christine Barbour
and Matthew J. Streb,
3rd. edition,
CQ Press, 2010

Start with definitions. Most civilised people squirm at the thought of putting suspected terrorists on the rack or pulling off toenails. What if that prisoner knew the whereabouts of a ticking bomb—maybe a biological, chemical or even nuclear one? Wouldn't a little sleep deprivation, sexual humiliation or even water-dunking be justified to save hundreds and perhaps thousands of lives? Whatever the law says, a lot of people seem to think so.

In a BBC survey of 27,000 people in 25 countries last October, more than one out of three people in nine of those countries, including America, considered a degree of torture acceptable if it saved lives. Opposition was highest in most European and English-speaking countries. . . . Another poll in 2005 by the Pew Research Centre found that nearly half of all Americans thought the torture of suspected terrorists was sometimes justified.

Two Republican presidential hopefuls, Rudy Giuliani and Mitt Romney, support the "enhanced" interrogation of suspects in the event of an imminent attack. Dick Cheney, America's vice-president, recently suggested that "dunking" a terrorist in water to save lives was a "no-brainer." The ensuing uproar led him to backtrack, claiming that he was not, of course, referring to "water-boarding," or simulated drowning, a technique regarded as tantamount to torture and banned in the American army's own interrogation manual.

One objection to allowing moderate physical pressure is the difficulty of knowing where to draw the line. If stress positions and sleep deprivation do not work, do you progress to branding with red-hot irons and beating to a pulp? And can you rely on interrogators to heed such distinctions? It is the danger of a slippery slope that makes opponents of torture insist on a total ban.

Israel is the only country in modern times to have openly allowed "moderate physical pressure" as a "last resort." Since interrogators used such methods anyway, it was argued, passing an explicit law would at least make it possible to set out some limits. But in 1999, citing the slippery-slope argument, Israel's Supreme Court ruled that torture could never be justified, even in the case of a ticking bomb. It went on to outlaw techniques such as sleep deprivation, exposure to extremes of hot and cold, prolonged stress positions, hooding and violent shaking.

In the 1970s Britain used similar techniques against suspected terrorists in Northern Ireland. These were banned in 1978 following a case brought by the Republic of Ireland to the European Court of Human Rights. Although not torture, such methods did amount to inhumane treatment, the court ruled. In 2002 the International Criminal Court for ex-Yugoslavia in The Hague decided that prolonged solitary confinement constituted torture. Such rulings did not prevent America from resorting to such harsh techniques when interrogating suspects in Afghanistan, Iraq and Guantánamo Bay, however. Former detainees in those places have spoken of severe beatings, water-boarding, excruciating stress positions, mock executions, sleep deprivation and much else besides.

Administration lawyers argued that since al-Qaeda and its Taliban allies were not a state party to the Geneva Conventions they were not covered by its ban on torture and other maltreatment. True, America had ratified (in 1988) the Convention against Torture, but that applied only to acts carried out on American soil, they said. And though America's own 1994 federal statute against torture did cover acts by Americans abroad, this applied only to full-blown torture, not lesser abuses.

In the notorious "torture memos" drawn up by the Department of Justice and the Pentagon in 2002 and 2003, the same lawyers sought to restrict the normal definition of torture—"severe pain or suffering"—to extreme acts equivalent to "serious physical injury, organ failure, or even death." Furthermore, as a wartime commander in chief whose main duty was to protect the American people, the president had the power to override both domestic and international law, they argued. After being leaked in 2004 most of these memos were "withdrawn," though not the one on the president's wartime powers.

Mr Bush and his colleagues have always said that America neither authorises nor condones torture. "We don't do torture," the president famously said. But Mr Bush has been vaguer about the grey area between torture and more moderate pressure. Soon after suspected terrorists were first sent to Guantánamo in January 2002 he said that America's armed forces would treat the detainees "humanely" in a manner "consistent with the Geneva Conventions"—but only "to the extent appropriate and consistent with military necessity."

Not until the Supreme Court's ruling in Hamdan in 2006 did the administration accept that all detainees, wherever held, were protected by Common Article 3 of the Geneva Conventions, which bans all forms of cruel, inhuman or degrading treatment as well as torture. The 2005 Detainee Treatment Act, incorporating an amendment by Senator John McCain, already prohibited such treatment by American soldiers anywhere in the world. But it did not apply to the CIA.

Yet it is the CIA that has been responsible for the "extraordinary rendition" of suspects to clandestine prisons in third countries for "enhanced" interrogation (whether by that country's agents or the CIA itself) amounting at times, many suspect, to torture. The programme's existence was not officially confirmed until Mr Bush announced last year the transfer to Guantánamo of the last 14 "high-value" detainees then being held in so-called "black sites" around the world. Of some 100 suspected terrorists believed to have been "rendered" over the past six years, 39 remain unaccounted for, Human Rights Watch, a New York-based lobby, says.

In July this year Mr Bush set out new broad guidelines for interrogations under a resumed CIA programme. He says the newly authorised techniques now comply fully with the Geneva Conventions' ban on "outrages upon personal dignity, in particular humiliating and degrading treatment" as well as torture. Even if true (which is hard to know because the details have not been disclosed), the programme itself with its enforced disappearances and black sites, which even the International Red Cross is not allowed to visit, violates basic tenets of international law.

Even if a country bans torture, how should it treat information that others have extracted this way? In 2004 Britain's Court of Appeal ruled that information acquired through torture was admissible as evidence in court. David Blunkett, then Britain's home secretary, welcomed the ruling. Although the government "unreservedly" condemned torture, he said, it would be "irresponsible not to take appropriate account of any information which could help protect national security and public safety." But the ruling was later overturned by the House of Lords.

A separate question is whether governments should use information extracted under torture by others for counter-terrorist purposes, even if it is not admissible as evidence. Most probably agree with Mr Blunkett that it would be irresponsible not

to. But a case can be made that this is, in effect, condoning the use of torture by allies.

Britain has also run into trouble when trying to deport suspected foreign terrorists against whom it has not got enough evidence to secure a conviction in court. Under international law, a country must make sure that the person it wishes to expel is not in danger of being tortured or subjected to other abuse in the receiving country. In 2005 the UN's special rapporteur on torture criticised Britain for relying on "diplomatic assurances" that deportees would not be tortured. Charles Clarke, who had succeeded Mr Blunkett as home secretary, retorted that the rights of the victims of the London Tube bombings that year mattered more than those of the perpetrators. The UN should "look at human rights in the round," he said, "rather than simply focusing all the time on the terrorist." Fine—except that no British court had convicted these suspects as terrorists.

To date, 144 countries have ratified the Convention against Torture. (The hold-outs include such usual suspects as Sudan, North Korea, Myanmar and Zimbabwe, but also India.) And yet, the UN's special rapporteur told the Security Council in June, torture remains widespread. Amnesty International noted cases of state-sponsored torture or other inhumane treatment in 102 of the 153 countries included in its 2007 report. The worst offenders were China, Egypt (both of which are parties to the convention), Myanmar and North Korea, along with several African countries. America's transgressions are trivial by comparison. The worry, argues Kenneth Roth, director of Human Rights Watch, is that when America breaks the rules it encourages others to do the same.

Why does torture endure? Part of the reason, argues Michael Ignatieff, a Canadian writer, may be that it is at times motivated not so much by a desire to extract vital information but by something baser, such as an urge to inflict pain, exact revenge, or even just for fun. That seems to have been part of the motivation of the Americans who abused prisoners in Abu Ghraib, for example. But torture may also endure because it sometimes works.

Many critics of torture claim that it is ineffective as well as repugnant. Since people will say anything just to stop the pain, the information gleaned may not be reliable. On the other hand, if people do say anything under torture, you might expect some of what they say to be true and therefore—if those being tortured really are terrorists—useful to the authorities. Torture certainly helped induce Guy Fawkes to betray his co-conspirators after they had tried to blow up King James I and the British Parliament on November 5th 1605.

Asked recently about the CIA's use of enhanced interrogation in secret prisons, George Tenet, the CIA's director until 2004, replied that the agency's widely condemned rendition programme had saved lives, disrupted plots and provided "invaluable" information in the war against terrorism. Indeed, while denying the use of full-blown torture, he said that the programme on its own was "worth more than the FBI, the CIA and the National Security Agency put together have been able to tell us."

Mr Ignatieff, for his own part, sees no trumping argument on behalf of terrorists that makes their claims to human rights and dignity prevail over the security interests—and right to life—of the majority. Yet he continues to advocate a total ban. "We cannot torture, in other words, because of who we are," he says. He knows that many will disagree.

Consider the source and the audience.

- *The Economist* is an international newsmagazine, with a clear free-market, free-trade bent that usually manifests itself as a more conservative-libertarian point of view. How might that affect an article that, though about a general issue, is clearly focused on the behavior of the United States?

Lay out the argument, the values, and the assumptions.

- This article doesn't make its own argument about torture, but it tries to illuminate the strands of several arguments that are already out there. What is the argument made by those who blur the definition of torture? What value do those people put a priority on?
- What argument is made by people who say that we cannot torture because of "who we are"? What value do they prioritize?
- Is there any middle ground here, or are there any shades of gray? What are they?

Uncover the evidence.

- What sorts of evidence does *The Economist* provide? What kind of evidence would you need to show that torture "works?"
- Does the "who we are" argument require any evidence?

Evaluate the conclusion.

- *The Economist* carefully refrains from drawing a conclusion in this piece. What conclusions do you draw based on what you have read? Is torture ever justified? Can we torture and remain true to ourselves?

Sort out the political implications.

- The United States has clearly engaged in activities that its critics define as torture and that even its friends say enters a gray area. How has that changed how we are viewed in the world? Does it make us stronger or weaker in the war on terror?