**THE “TICKING BOMB”: A SPURIOUS ARGUMENT FOR TORTURE**

Q What’s your definition of the word ‘torture’?

The President: Of what?

Q The word ‘torture.’ What’s your definition?

The President: That’s defined in U.S. law, and we don’t torture.

Q Can you give me your version of it, sir?

The President: Whatever the law says. (Bush 2007; and see Sands 2008.)

**Introduction**

Even the most cynical “realists” among the world’s politicians rarely defend torture, at least in public, however much they order others to use it. More usually, they “redefine” it as requiring ‘a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of body function’ (Bybee 2002, 120) and so claim to be authorizing only “enhanced” interrogation techniques.

The attempted justification of torture, however, is something the politicians usually leave to their lapdogs, the philosophers and lawyers who claim to find convincing arguments for it – at least in some circumstances. (For detailed analysis, see Brecher 2007; Rejali 2009.) But their arguments are at best erroneous and at worst intellectually corrupt. In promoting what is a spurious set of arguments that purport to justify torture in circumstances of extreme emergency, the advocates of interrogational torture in “ticking bomb” cases are lending their intellectual weight to the acceptance, legitimation and normalization of torture quite generally. Whether intentionally or not, their arguments serve the politicians’ – and the torturers’ – purposes.

Here’s something typical of the genre. In ‘Torture in principle and in practice’, McMahan insists that while he is opposed to torture, nevertheless it’s morally justifiable *in extremis*. He opens his piece with the welcome incantation, ‘[T]hose of us who oppose torture…’ (McMahan 2008, 91). But just a few lines later, he says he ‘will argue that the moral justifiability of torture in principle is virtually irrelevant in practice…’ (McMahan 2008, 91). So what exactly does it mean to be ‘opposed to’ torture, if you think it’s also sometimes morally justifiable? But that’s not all. How is it possible for a serious thinker, which McMahan certainly is, to make the substantive claim he does here, namely that although torture is (in his view) morally justifiable, the fact that it is justifiable ‘is virtually irrelevant in practice’? McMahan thinks that the circumstances in which it really is morally justifiable will be very rare. But that’s not the point. Even if such cases were extremely rare, they wouldn’t remain rare, as the slightest acquaintance with the history of torture makes clear. Torture’s being even rarely morally justifiable would be all too relevant, not least to the politicians who want it used.

In some cases perhaps, the judgement of the advocates of torture is clouded by an intellectually hysterical acceptance of the terms of the so-called war on terror. Even so, one might nonetheless have expected them to notice that the entire “War on Terror” is itself presented as a response to extreme emergency and at least to reflect on their argument in light of that fact. Perhaps, on the other hand, and unlike McMahan, some actually approve of torture as a weapon beyond the interrogation chamber in a war on terror that can know no bounds, but are embarrassed to admit it. Perhaps they prefer to take intellectual shelter in what may seem to be a respectable argument about torture in extreme emergencies only. Those are all matters for the advocates of interrogational torture to answer.

My first task here (section 1) is to show, at least in outline, that the basis of their “extreme emergency” argument – the so-called ticking bomb case -- is ill-founded. I focus on the “ticking bomb” scenario because it offers my opponents’ strongest argument (and if even the strongest argument for torture fails, then any use of torture is *always* wrong); and because it is this argument which has the greatest ideological power and the biggest purchase on public opinion. Having dismissed the fantasy of the “ticking bomb” story, I shall go on (section 2) to argue that, even if you remain unconvinced that the story is no more than fantasy, the consequentialist argument for using torture *in extremis* fails precisely on account of the likely social and political consequences of its use. In section 3 I shall briefly discuss a genuine case where torture was considered (but not used) as a means of gaining urgent information; and argue that even in that genuine case and even if torture might have been effective, its use remained unjustified. Finally, in section 4, I shall say a little about what torture is and why it is the worst thing that human beings do to one another.

Of course, unless you are a consequentialist about right and wrong, the pro-torture argument doesn’t even get off the ground. But that’s not good enough: proponents of interrogational torture would argue that the ticking bomb scenario shows that you’re wrong not to be a consequentialist about morality. So the argument needs to be answered in its own terms.

**1 The “Ticking Bomb”**

Imagine there’s good reason to think that someone’s planted a bomb somewhere in a city, but no one knows where -- except one person, who is already in custody, but who won’t say where or when it’s going to go off. The bomb is ticking. Should the person be tortured? People like Allhoff (2012), Dershowitz (2002), Posner (2004) and Walzer (2003) think they should be: torture is the last and only way of possibly preventing hundreds, or thousands, of deaths and terrible injuries and so it has to be used.

This “ticking bomb” scenario, however, makes (at least) four central assumptions, none of which holds up. First, it’s assumed that the police, security forces or interrogators know their captive has the information. But that’s extraordinarily unlikely (though not impossible, as the Giefgen case shows – see below). Dershowitz relies on anecdote: he claims, to cite just one example, that ‘There is little doubt that some acts of terrorism – which could have killed many civilians – were prevented’ in Israel (Dershowitz 2002, 140). So does Walzer (1973, 60); so do the other proponents of interrogational torture. But bombers are likely to be careful planners, and “the authorities” are unlikely to be sufficiently well informed to be certain that their suspect really does know about the bomb. Second, how does anyone – apart from the bomber -- know that time really is running out, so that there really is no time for more subtle interrogational techniques? That can be no more than a suspicion, at best. It can’t be something “the authorities” *know*. The claim that torture is necessary, therefore, is false: all that can be claimed is that it may be necessary and that we cannot know in advance whether it is or not. And that makes a difference, inasmuch as it dispels the air of “necessity *in extremis*” about the scenario. Third, since the torture is only interrogational, not punitive, what would the captive be likely to do? Obviously they’d lie to buy time. Remember that once the bomb goes off, there is no longer any question of torture -- otherwise it would of course be punitive, not interrogational, torture.

Fourth, and crucially, the argument depends on the assumption that torture would in fact work. Again, and unsurprisingly, nearly all the evidence here is anecdotal: people have assured me that someone has assured them that torture has saved lives; others that there is no such evidence. Given that an adequate set of objective empirical studies has to remain unavailable, two points can be made. The US *Field Manual*, like others the world over, prohibits interrogational torture on grounds of its ineffectiveness (Casebeer 2003; Pachecco 1999, 30; Rose 2004, 95). Are not the military more likely to know what they are talking about than the lawyers and philosophers? Certainly Dershowitz, the most thorough of interrogational torture’s defenders, is systematically confused about this. He offers as his central example a 1995 case where a plot to ‘assassinate the pope and to crash eleven commercial airliners … into the Pacific’ was probably prevented when ‘[F]or sixty-seven days, intelligence agents beat the suspect…’ (Dershowitz 2002, 137; cf. Franklin 2009). So much for the “urgency” of the case! As for effectiveness in cases of real urgency (see section 3) consider waterboarding, the method most often claimed to be effective. First, if it were so effective, then wouldn’t the captive say just anything to stop it (and remember that the torture would stop while their story was checked out)? Ken Loach’s film, *Route Irish*, makes the point brilliantly. The fact, furthermore, that the Americans waterboarded Khalid Sheikh Mohammed some 183 times and Abu Zubaydah 83 times (Shane 2009) obviously casts serious doubt on its interrogational effectiveness. One of the very few attempts actually to set out what empirical evidence there is, or is claimed to be, is Franklin’s (Franklin 2009): but I confidently leave readers to judge for themselves the quality and credibility of its purported arguments.

The “ticking bomb” story remains a fantasy, the terms of which are in serious tension, if not in contradiction, with one another.

**2 Consequences of Interrogational Torture**

Suppose, though, that these considerations fail to persuade you. Then, since all arguments for interrogational torture claim that the consequences of not torturing are worse than the consequences of torturing, we need carefully to think about those consequences; and to think about them rather more carefully than the defenders of torture appear to manage.

First, and most obviously, interrogational torture needs professional torturers. In fact, it needs especially skilled professional torturers, just because time is claimed to be of the essence and the so-called suspect has to remain able actually to *give* the information needed. But once torture were normalized like this, and professional torturers were treated rather like professional bomb disposal people, we would be living in a world where their services were likely to be ever more called upon, and in more and more different contexts: suspected murderers, drug-traffickers, rapists, perhaps even tax-evaders – as the (highly conservative) *Economist* (2003) long ago pointed out. In fact, the (especially) American use of torture in the past decade has already pushed us a long way down this road, as was all too predictable (eg Kreimer 2003, 291). Even before that, this escalation had already been experienced as a result of the quasi-legality of torture in Israel from 1987-1999. In these twelve years, the use of torture had rapidly spread beyond any interrogational setting. That’s why the Israeli Supreme Court withdrew the “necessity” defence against the charge of torture in 1999 – however hypocritically (Allen 2005; Biletzki 2001; Parry & White 2002, 757-60).

The question of the need for professional torturers to carry out the highly specialized work of the extraordinarily urgent interrogational torture allegedly necessitated by a “ticking bomb” raises an important and much broader issue about how arguments for such torture – and also arguments about many other public policy issues – are presented. They all too often start, and Dershowitz himself is explicit about this, with the question, “What would you do if…?” (Dershowitz 2002,133). For example, commenting on the British army’s “interrogation techniques” in the north of Ireland -- which were in 1971 eliciting at least some disquiet in the UK -- the philosopher Anthony Quinton wrote:

I do not see on what basis anyone could argue that the prohibition of torture is an absolute moral principle. … Consider a man caught planting a bomb in a large hospital, which no one dare touch for fear of setting it off. It was this kind of extreme situation I had in mind when I said earlier that I thought torture could be justifiable. (Quinton 1971, 758)

He immediately points out two difficulties; but he doesn’t register their impact on his argument. First, he rightly notes that ‘any but the most sparing recourse to [torture] will nourish a guild of professional torturers, a persisting danger to society much greater, even if more long-drawn-out, then anything their employment is likely to prevent’(Quinton 1971, 758); and second, that ‘If a society does not professionalise torture, then the limits of its efficiency make its application in any particular extreme situation that much more dubious’ (Quinton 1971, 758). But these limits simply rule such an application out, just because the “ticking bomb” scenario requires precisely that efficiency which the *amateur* torturer couldn’t bring to it. Or consider Michael Walzer, North American liberalism personified: ‘I would do whatever was necessary to extract information in the ticking bomb case -- that is, I would make the same argument after 9/11 that I made 30 years before’ (Walzer 2003). Unless Walzer has been trained to torture, this really is an extraordinarily stupid remark. The question that needs to be asked is this: “What would you require *someone else* -- a professional torturer -- to do *on your behalf*?”; and furthermore, not as a supererogatory or altruistic act, but as the practice of their profession.

Nor is this only a matter of the professional skill required. Even if I could do it, what *I* would do, or think I would do, in a particular situation is irrelevant to the question of what ought to be done. What you or I might do, for example, if someone attacked a friend on the street is one thing. What it would be right or wrong for you or me to do is another: they may or may not coincide. That is precisely why societies have legal structures rather than relying on vigilantism. The apparently innocent question, “What would you do if…?”, is no basis for social and political policy. It is an invitation to think about what is morally right or wrong; it is not an invitation to base your judgement about that on guesses about your own likely response, or attempted response, *in extremis*.

To return to the central issue: is it not likely that torture’s being a recognized western weapon would lead to more, not to fewer, terrorist acts and to more, rather than fewer, volunteers for “suicide bombing” (Richardson 2006)? Isn’t this what has actually happened since 2001? The people who planted bombs on London trains and buses in 2005, for instance, cited as their motivation the UK’s role in the occupation of Iraq, with its attendant atrocities. Sympathy for such acts would also probably increase, again as perhaps it has over the past decade: for after all, countries that torture can hardly claim the moral high ground (Rose 2004, 72). Why should an Assad, a Mubarak, a Sri Lankan, Chinese or Moroccan government – or anyone else – give up their weapon of mass terror – torture -- if traditional powers, and in particular the USA, not only use it, but try to present it as morally justified?

And what about the training of the torturers? They need, after all, to have ‘[S]pecial classes … where new torturers are shown what torture looks like, either in filmed demonstrations or even live demonstrations on actual prisoners’ (Crelinsten 1995, 49) or on people –sometimes children – picked up in the favelas (Haritos-Fatouros, 1995). (For details, see Wolfendale’s detailed analysis of torture training (Wolfendale 2006).) Recognizing the profession of torturer *as* a profession means recognizing also their training, just as in the case of the professions of education, law and medicine (Gray 2003). But even that’s not all. The expertise of doctors and psychologists is indispensable if torture is to be at its most effective, as the American Psychological Association knows to its cost: it took its members several years to force through a statement saying that assisting in torture was antithetical to its professional values and responsibilities (Welch 2008). You might think such a statement superfluous; but unhappily it isn’t (Bloche and Marks 2005; Medact 2011).

Finally, among the various consequences of regarding interrogational torture as morally justifiable are two that are unavoidable because they don’t depend on the contingencies of the real world. They are, if you like, logical consequences. First, it would be a moral duty incumbent on all able citizens to assist and/or to facilitate such assistance: for if interrogational torture is justified on account of the consequences, then anyone refusing their expert help in the service of the greatest happiness of the greatest number would be morally culpable. To have an expectation of public officials that they use torture if “necessary” is hypocritical unless you are prepared at least to assist, at most to undergo, the requisite training. Pacifists, for example, can’t reasonably ask others to kill, or to be trained to kill, on their behalf.

Second, if it really is the consequences of an action that determine its rightness or wrongness, then surely other people besides the “captured terrorist” can be tortured in order to avoid a catastrophe. Without apparently understanding the importance of the point, Dershowitz himself actually recognizes this problem for his argument. He says that ‘… torture sometimes works. Jordan apparently broke the most notorious terrorist of the 1980s, Abu Nidal, by threatening his mother’ (Dershowitz 2002, 249, n.11). Quite so. However, his attempt to rescue his position from its own logical implications is ludicrous. Purporting to recognize the need to avoid arguing that ‘anything goes as long as the number of people tortured or killed does not exceed the number that would be saved’, he then suggests that we need ‘other constraints on what we can properly do’, which ‘can come from rule utilitarianisms [sic] or other principles of morality, such as the prohibition against deliberately punishing the innocent’ (Dershowitz 2002, 146). But if rule utilitarianism rules out torturing people such as a suspect’s mother or children on the grounds that following the rule, “Torture anyone so long as it works”, has overall negative consequences, then it rules out torturing the so-called suspect too. Why? Because, in consequentialist terms, effectiveness in achieving the “best possible” outcome is all that *can* matter. As for bringing in non-consequentialist principles: consequentialism – in which terms the whole argument is made – insists that there are none. That’s what makes consequentialism *consequentialism*.

The consequences of permitting interrogational torture would be – and in many ways already are – morally and politically disastrous.

**3 A Real Case**

As I’ve already suggested, the “ticking bomb” fantasy, like any other, is no basis for public policy. So here’s a real case in which the question of interrogational torture did in fact arise. In 2002, the police in Frankfurt, Germany, actually knew that it was Magnus Gäfgen who had kidnapped Jakob von Metzler, the 11-year old son of a banker, and was holding him as ransom. They had collected conclusive evidence from Gäfgen’s apartment and had also watched him pick up the ransom money left by his father. But he refused to say where the boy was, only that he was locked up somewhere (and thus would slowly die unless he were found in time) (BBC News 2003). The police chief concerned ‘ordered his men to threaten Gäfgen with violence to force a statement’ (Schroeder 2006, 188). The threat was not carried out; it turned out that the boy was already dead; and the ramifications of the case continue (Evans 2011). Still, assuming that an adequately skilled torturer could have been found in time, should Gäfgen have been tortured to force him to tell the police where the boy was? No. Why not? Because (for consequentialists) the consequences, as I have outlined, would be even worse than the boy’s death. It was too late: the catastrophe was no longer avoidable. That, after all, is what the real world is like.

And if someone objects that in the real world of political responsibility it’s sometimes necessary to get one’s hands dirty to avoid catastrophe, as Walzer famously has (Walzer 1973; 2003; and compare Posner, 2004, above) then they need to have the obvious pointed out to them: there is more than one way of getting your hands dirty. Not torturing Gäfgen – not torturing anyone, in any circumstances -- is one of those ways. So the notorious insistence of some lawyers and academics that ‘[N]o one who doubts’ that interrogational torture is justifiable ‘should be in a position of public responsibility’ (Posner 2004, 295) can be turned back against them.

**4 What Torture Is And Why That Matters**

Torture is the worst thing we do to each other. A torturous society —the sort of society increasingly legitimized since September 2001 – is the worst society we can create (Brecher 2011). Why?

Here is an account of torture -- not a definition, which is neither possible nor desirable (Brecher 2007, 3-6; Bush 2007) -- but a description:

The subject of judicial or interrogational torture is ‘broken’ when, and only when, he has become so distraught, so unable to bear any more suffering, that he can no longer resist any request the torturer might make. The tortured then ‘pours out his guts’. (Davis, 2005, 165)

The capacity of the tortured person to act, that is to say, to think and then to *do* something, rather than just to *behave* in response to external “stimuli”, is broken. And because what makes us persons, rather than some other sort of being, is precisely our capacity to act, to do things, it follows that the person being tortured has, in their own eyes, ceased to be a person. That after all is exactly what the torturer is trying to achieve. It’s worth pausing here to emphasise that this is also why interrogational torture -- as contrasted with torture used to intimidate, terrorize, punish or dehumanize –- has to require extraordinary skill. The torturer has to get the person they are torturing to ‘pour out [their] guts’, but to do so in that precise moment just before the response to ‘any request the torturer might make’ becomes just that, an unthought response, rather than an action. Otherwise they are no longer *able* to give the torturer what they want, namely a genuine answer to the question, “Where’s the bomb?” But what could be a more complete negation of a person than to break them, to make simply an object of them? Dershowitz crassly assumes, as do many others, that ‘[P]ain is a lesser and more remediable harm than death’ (Dershowitz 2002, 144). From that, he argues that, since ‘nonlethal torture’ is less bad than death, and since the death penalty is widely accepted, torture short of torturing to death must also be justified (Dershowitz, 2002, 148; 155; and cf. McMahan 2008, 91). But to end a person’s life, terrible as it is, is not on a par with making them into something that is not a person, whether temporarily or permanently. Perhaps it’s their commitment to a consequentialist view of morality, a view that assumes we can measure all harms on a single scale, and demands that we do so, that prevents these supporters of interrogational torture from understanding this simple fact. Of course, it’s also why you might object to consequentialism as an account of right and wrong: if it’s a theory in terms of which torture might even *conceivably* be justified, then that shows that it must be a mistaken theory.

Let me finish by emphasising what torture actually is. I’ll do so in the unsurpassable words of Jean Améry, an anti-Nazi resistance fighter who eventually committed suicide some 35 years after being tortured by the Gestapo:

Only in torture does the transformation of the person into flesh become complete. Frail in the face of violence, yelling out in pain, awaiting no help, capable of no resistance, the tortured person is only a body, and nothing else besides that. (Améry 1980, 6)

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