

## A MORAL EVALUATION OF TORTURE AS A POLICY TOOL

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In the wake of the terrorist attacks of September 11, and the subsequent American “War on Terrorism,” intelligence agencies have been charged with the extraordinary task of preventing another attack. Because many interpreted the September 11 attacks to be a failure of the American government, specifically the intelligence community, many civil liberties have been sacrificed or restrained in an effort to improve the government’s ability to detect and prevent planned attacks. As a result, certain measures that have been typically unacceptable have become somewhat more tolerable. On many issues, ranging from immigration detentions to the trials of alleged terrorists, this has sparked a vigorous domestic and international debate between civil libertarians and more conservative hard-liners. However, on certain issues the debate has been muted. The torture of suspected terrorists in order to gain intelligence is one such issue that has lacked a robust public discussion in the United States. Although the use of torture is almost universally denounced as an absolutely illegal practice and is considered one of the most powerful taboos in the Western hemisphere, it is simultaneously one of the most legally convoluted, politically controversial, and morally complicated issues facing the United States and the world today.

The first part of this paper will explore the problematic definition of torture. In considering the question of how torture is defined, it is useful first to make the distinction between what a normal person might think of as torture, and what judicial bodies and international treaties have actually defined as torture. This disparity has created a line between measures that are degrading and inhuman, and measures that are actually torture. However, that is certainly not to say that the “line” is anything even remotely resembling a clear boundary between what is acceptable and what is unacceptable. To further complicate the matter, even the definitions of torture outlined by international courts and organizations, such as the United Nations, are intentionally vague and widely open to interpretation. This paper will attempt to clarify the difference between commonly held conceptions of what is torture, and what actually constitutes torture in the eyes of the domestic and international legal community.

The second part of this paper will analyze the current situation in the United States. Since the attacks of September 11, there has been incredible pressure on the government to produce actionable intelligence that will allow government officials to make decisions that will either dismantle the terrorist organizations or foil future attack plans. Furthermore, the exposure of the lack of human intelligence capabilities has resulted in an increasing focus on interrogations of terrorist suspects. With this background in place, the reports that American officials may be engaging in techniques that qualify as questionable at best, and qualify as illegal torture at worst, should not be completely surprising. However, the interrogation of the suspects in American custody is being conducted outside of the United States on bases in foreign territories such as Cuba, Afghanistan, and Diego Garcia. This is significant for two reasons: first, there is a controversy as to whether the United States' judicial system could have jurisdiction over these areas; second, the isolation and secrecy surrounding the bases makes it difficult to determine what exactly occurs during the interrogations. Although this makes an analysis of the current situation difficult, this paper will investigate the official and unofficial reports of both the present stated American policy and the present reality.

The third part of this paper will step back and examine the use of torture more abstractly. Should it be wrong if the United States is using torture in a limited capacity to obtain vital information from suspected terrorists? There is no clear answer to this question and there is a wide spectrum of beliefs regarding the use of torture. On the one extreme is the argument that terrorism is a brutal method that changes the fundamental rules of society; and therefore, it is necessary to combat the terrorists in any manner available. This "fight fire with fire" theory has been used as a response to terrorism by the French in Algeria, the British in Ireland, the Israelis, and the Sri Lankans. However, the general trend in the countries that have used torture seems to indicate that it can be an effective tool in the short-term, but a dangerous policy in the long-term. Despite this historical pattern, Alan Dershowitz has advocated the idea of judicially-issued "torture warrants" in his book, *Why Terrorism Works: Understanding the Threat and Responding to the Challenge*. This paper will further describe and analyze Dershowitz's self-proclaimed realist proposal, which he claims will actually protect civil liberties.

On the other end of the spectrum is the argument that torture should be universally banned and is an act that should never be perpetrated on any human being – it is a taboo that should never be broken. This taboo originated in the period of Enlightenment in the 18<sup>th</sup> century, and was advocated by most of the leading thinkers of the time. Although torture has continued to occur to this day, international organizations, such as Amnesty International and the United Nations, have worked to achieve the goal of

abolishing torture that was set forth by the thinkers of the Enlightenment. This paper will compare the morally absolutist beliefs against torture to the pragmatist arguments. Finally, in light of the definition of torture, the current situation in the United States, and the moral arguments regarding torture, this paper will prescribe a policy recommendation for American government officials.

### *The Complexity of Defining Torture*

At first glance, torture seems to be a phenomenon that is easily recognizable to the ordinary person – everybody has probably seen a movie in which a person was being tortured, the most famous being *The Battle of Algiers*. However, legally speaking, torture is one of the most convoluted and controversial definitional problems in the international community. In the modern era, specifically the international stage since World War II, the circumstances surrounding torture usually involves a state actor that secretly uses torture in an interrogation to obtain information from a suspect (Evans 24). Speaking generally, the state that is engaged in the interrogations is usually in such a position because it is facing some type of threat to the security of the nation, whether from a military or terrorist enemy. Consequently, in such a situation, the state officials will either have a different definition of torture itself or a different interpretation of the actions being taken against the suspects, than the international community or a supranational organization. As a result, it has been extraordinarily difficult for organizations, such as the United Nations, to develop comprehensive definitions of torture that cannot be manipulated by specific states that must interrogate suspects to gain information.

The first difficulty in establishing a definition of torture is that it is ineffective to simply list a catalogue of illegal offenses. The very nature of torture lends itself to the creativity of the torturer in obtaining whatever it is that he seeks from the victim – there are endless acts that can be done to torture a person. Therefore, it is necessary to develop a framework that is broad enough to encompass all acts that should be considered torture without actually listing each technique or offense. In 1975, due to the efforts of vociferous non-governmental organizations led by Amnesty International, the General Assembly of the United Nations adopted the Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (Nigel 20). The Declaration against Torture was an elaboration on the 1948 UN Universal Declaration of Human Rights, which simply stated in Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" ("Declaration"). The 1975 Declaration defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating him or other persons.... Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Although the 1975 Declaration against Torture provided a relatively coherent definition of torture, it did not adequately make the distinction between torture and other inhuman offenses (Rodley 76).

In December 1984, the United Nations General Assembly initiated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provided a specific definition of torture and also outlined briefly how not all mistreatment of suspects amounts to torture. Part 1, Article 1, Section 1 of the Convention states:

... the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to legal sanctions ("Convention").

The United States, along with 130 other countries that ratified the Convention, have agreed to abide by the definition of torture stated above ("Commitment"). The combination of the two United Nations definitions provides a general framework that is necessary to broadly define torture. This framework can be broken into three parts. The first part concerns the *nature* of the act – the act must inflict severe mental or physical pain on a person. Secondly, the perpetrator of the act must be a public official or another person acting in an official capacity on behalf of the state. Third, the purpose of the act must involve obtaining information or a confession, or punishment for a deed (Kellberg 31).

Although the Convention definition is very similar to the Declaration definition, there is one key difference: the framers of the Convention could not agree on a distinction between torture and inhuman treatment, so they omitted the qualifications of torture being a "deliberate" and "aggravated" form of inhuman treatment (Inglese 205). Although this definition of torture is considered to be the accepted standard in the international community,

each circumstance in which torture is alleged carries different interpretations of the definition. Therefore, the difficult task of defining torture in a declaration so that it applies to real world scenarios still exists.

The United Nations Committee on Human Rights, the European Court of Human Rights, and the European Commission of Human Rights have interpreted different definitions of torture throughout the past several decades. They have ruled that certain acts usually characterize torture, such as: being beaten with wooden or metal sticks, being forced to stand for days at a time, being starved, being buried alive, being electrically shocked, being hung by the arms behind the back, being nearly asphyxiated under water, and being physically mutilated (Rodley 85). Although these acts seem to be fairly obviously torture, even some on this list should not be considered torture under certain circumstances. For example, if a police officer beats a suspect with a nightstick, it would be inhuman and probably illegal, but it should not be classified as torture.

The notion of purpose has been considered in the decisions of European and International courts and commissions in interpreting the definition of torture. The Declaration and Convention against Torture refer to the purpose of obtaining information or confessions, of coercing the victim or a third party, or of punishing the victim or a third party. The addition of purpose in evaluating the definition of torture is somewhat helpful, but it still could potentially include many acts that are inhuman, but not torture. To further illuminate the difference, it is important to interpret the severity of the action. The Declaration and Convention against Torture contain the phrase, "severe physical or mental suffering." Unfortunately, determining what exactly constitutes "severe suffering" is the most controversial and difficult task in differentiating between inhuman treatment and torture.

The international case of *Ireland v. United Kingdom* is the most prominent example (and the most relevant to the current situation in the United States), to illustrate the obscurity in differentiating between inhuman treatment and torture. Ireland brought the case before the European Commission of Human Rights in 1972 and it was subsequently brought before the European Court of Human Rights. Ireland alleged that the treatment of Irish Republican Army (IRA) members in the United Kingdom was a violation of a number of provisions of the European Convention on Human Rights, including torture (Rodley 90). The United Kingdom admitted to the following five interrogation techniques, and the question was whether or not the UK had indeed engaged in torture:

- (1) Wall-standing: forcing the detainees to remain for periods of some hours in a 'stress position', described by those who underwent it as being 'spread-eagled against the wall, with their fingers

- put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers’;
- (2) Hooding: putting a black or navy colored bag over the detainees’ heads and, at least initially, keeping it there all the time except during the interrogation;
  - (3) Subjection to noise: pending their interrogations, holding the detainees in a room where there was a continuous loud and hissing noise;
  - (4) Deprivation of sleep: pending their interrogations, depriving detainees of sleep;
  - (5) Deprivation of food and drink: subjecting the detainees to a reduced diet during their stay at the center and pending interrogations (Rodley 91).

The European Commission ruled unanimously that the combined use of the previously listed five techniques constituted torture under the provisions of the Convention. The Commission based its ruling on the use of sensory deprivation due to its physical and mental effect on the breaking of a person’s will. In addition, the Commission stated that the purpose of the systematic nature of the five techniques was to obtain information from a suspect, and this clearly resembled the classic pattern of traditional torture (Rodley 91).

However, the European Court of Human Rights overruled the European Commission of Human Rights and stated that the five techniques were inhuman, but that they did not satisfy the criteria for torture under the provisions of the European Convention on Human Rights (Rodley 92). The European Court drew the distinction between inhuman treatment and torture based on the intensity of the suffering inflicted. The European Court conceded that the actions should be condemned on moral grounds, that they probably violated domestic laws, and that they were undoubtedly inhuman and degrading. However, the European Court argued that the five techniques did not inflict pain and suffering of the intensity and cruelty that was implied in the definition of torture under the European Convention on Human Rights decided in the *Ireland v. United Kingdom* case (Rodley 92). This decision evoked a passionate and outraged response from non-governmental organizations, such as Amnesty International. The Court essentially drew the distinction between inhuman treatment and torture on the basis of the sophistication of the techniques. In other words, the Court’s interpretation of the definition of torture did not include advanced psychological methods that had been designed to manipulate and break the human will. The *Ireland* case effectively created a broad spectrum by which to judge whether or not torture has been committed. Unfortunately, in creating this range, the European Court made it nearly impossible to determine the boundary between torture and inhuman treatment from that point forward.

The fact that the European Court’s ruling was seen by many nations and non-governmental organizations in the international community as legally flawed and politically motivated illustrates the important point that the definition of torture does not exist in a vacuum – interpretations of the definition of torture and of the treaties prohibiting it exist within the context of the international system and the forces governing it. The powerful state actors that are faced with complicated national security issues will inevitably define torture differently than idealistic and morally absolutist human rights organizations, such as Amnesty International, and even supranational bodies, such as the United Nations.

Considering the power and status of America, it is not surprising that the United States Senate changed the definition of torture in the course of consenting to the Convention against Torture. The Senate intentionally modified what amounts to mental suffering, and included a clause concerning the intention of an action:

The United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from:

- (1) The intentional infliction or threatened infliction of severe physical pain or suffering;
- (2) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality;
- (3) The threat of imminent death;
- (4) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the
- (5) Administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality (“Resolution”).

While this definition of severe mental pain or suffering does include the threat of death, the threat of harming third parties, and the threat of using mind-altering drugs, it does not include any of the five interrogation techniques employed by the British against members of the IRA. It is clear that the American interpretation of torture purposefully omits the use of sensory deprivation in the interrogation of suspects from the definition of torture.

As stated above, it is important to remember that even the accepted United Nations framework for identifying torture is open to a myriad of interpretations, and that nations that are in a position of power will have a less inclusive definition of torture than organizations that have a vested interest in human rights rather than national security. This paper has only explored the definitions of torture that have been developed through legal

and legislative bodies such as the United Nations General Assembly, international courts, and the United States Congress – it is a reality that each of these bodies is subject to manipulation and political pressures. Therefore, it is useful to recognize that while an act may not meet the criteria of a certain document in the legal sense, that does not necessarily preclude that act from being torture in the reasonably understood sense of the word.

### *The Current Situation in the United States*

The terrorist attacks of September 11<sup>th</sup> marked a turning point in world history and a fundamental change in many American policies. Following the attacks, the Bush administration immediately began prosecuting the “War on Terrorism,” in Afghanistan, Iraq, and on American soil. However, the war on terrorism is different than conventional wars in a number of ways. A war on any “-ism” is a battle against an ideology, a method, or both. Furthermore, the enemy in the war against terrorism is not a nation, it does not have a flag, it does not speak one language, it does not wear a uniform, and it is constantly moving and transforming. General information and military intelligence is valuable in any war, but it has never been as essential as it is in the campaign against terrorism. The United States entered the war against al-Qaeda and other terrorist organizations with relatively little knowledge about the structure, organization, methods, or members of the enemy. The lack of preparation for a war of this type, in combination with the absolute and immediate necessity of preventing another attack, has created a potentially dangerous atmosphere in terms of the way in which intelligence is gathered. Additionally, since the attacks of September 11<sup>th</sup> the general sentiment in America on many issues has been more accepting of strong-arm tactics as long as the ends justify the means. Finally, the United States government’s ability to invoke national security as an umbrella justification for secrecy and non-disclosure has further contributed to a situation in which intelligence may be obtained improperly, illegally, or immorally.

The majority of useful intelligence in the war on terrorism has been gathered from human sources that have been captured abroad, often in places like Afghanistan. The suspected terrorists have been captured by military personnel abroad, and they are brought to secret, restricted military bases such as Bagram US air base in Afghanistan, the island of Diego Garcia in the Indian Ocean, or the US Naval Base in Guantanamo Bay, Cuba (Gellman and Priest A1). The fact that the bases are technically on foreign soil has created a robust debate on the extension of US jurisdiction and the suspected terrorists’ right, or lack thereof, to due process. However, according to the Convention against Torture, the location of the bases has no bearing on the

legality of the methods of interrogation, so long as those in charge of the interrogation and those actually conducting the interrogation are US officials or are acting in an official capacity on the behalf of the US government.

Although the interrogations in these bases are highly secretive, *The Washington Post* published an article in December 2002, which quoted a number of American officials who had either employed or witnessed the techniques of interrogation being used against Taliban and al-Qaeda members (Gellman and Priest A1). The report stated that US officials selectively administered pain killers in the case of al-Qaeda member, Abu Zubaida, who was shot in the groin during his capture (A1). While the denial of pain killers is apparently an extreme and extraordinary occurrence, more common “stress and duress” interrogation techniques include: forcing suspects to stand or kneel for extended periods of time; placing black hoods or spray-painted goggles on the suspects; keeping the suspects in windowless cells that are brightly lit 24 hours a day; keeping the suspects naked while being questioned by a female officer; and, exposing the suspects to a sequence of extreme heat and extreme cold (A1). Furthermore, the article reports that US officials routinely beat suspects and throw them into walls when they first arrive in an effort to break down their resistance and set a tone of intimidation (A1). The treatment of suspected terrorists was summarized in a blunt statement by a US official involved in supervising the transfer of captives: “If you don’t violate someone’s human rights some of the time, you probably aren’t doing your job” (A1). In fact, the United States military initiated a criminal investigation into the death of two Afghan men in US custody at Bagram air base to determine whether either of the deaths was the result of trauma caused by physical abuse (A1).

To be fair, the interrogations are highly secretive and the interrogation centers are absolutely restricted to non-military personnel, so it is possible that *The Washington Post* article was falsified, exaggerated, or had quoted unreliable sources. But, assuming that the reports are accurate for the most part, the United States may be in violation of the international and domestic laws prohibiting torture. It is clear that physically beating a person before or during an interrogation, with the purpose of breaking their will and obtaining information, is considered torture and is, therefore, prohibited under international law and is illegal under American law. It would have to be proven that the beatings were severe enough to qualify as torture, but the report in the *Post* article suggests that they indeed are. Withholding painkillers is actually more difficult to assess. Since the wound was inflicted during a battle, it could be argued that it is not torture to fail to administer a drug to ease discomfort, as courts have recognized a difference between directly committing harm and allowing harm. It is even more questionable if the “stress and duress” techniques legally qualify as torture. According to the

US Senate definition of mental stress cited above and to the European Court's decision in the *Ireland v. UK* case also discussed above, the stress-inducing and sensory-depriving methods would not be considered torture.

The *Post* article also reported that the United States has been engaging in renditions, which means that the United States has transported suspects to other countries to be interrogated by their domestic intelligence agencies. The important point about these renditions is that the countries to which the suspects are sent are often known to use brutal or even torturous interrogation methods. The article reported that the CIA has sent prisoners to Jordan, Egypt, and Morocco, along with a list of questions that the agency wishes to have answered (A1). According to former CIA Inspector General, Professor Fred Hitz, and other US officials, the United States often has no knowledge of the actual circumstances of the interrogations, but has no scruples about using the information gleaned from them (A1).

International law prohibits the extradition of a person to a country where they will likely be tortured. Article 3 of the Convention against Torture states:

No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.... For the purposes of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights ("Convention").

It is important to note that the UN Convention only applies to torture, but not to cruel, inhuman or degrading treatment. (Although the UN does not prohibit refoulement in cases less than torture, other international bodies, such as the European Commission on Human Rights, have banned refoulement if cruel, inhuman or degrading treatment can reasonably be expected to occur.) An obvious point of contention regarding Article 3 is the interpretation of the phrase, "substantial grounds." The UN Committee against Torture has interpreted the standard to cover more than just a possibility of torture, but that it did not have to be "highly likely to occur" (Ingelse 304).

Since 11 September 2001 the United States has been guilty of violating this international law in at least two high-profile cases. In the first case, US operatives transferred al-Qaeda suspect, Mohammed Haydar Zammar, to Syria (Gellman and Priest A1). The transfer drew attention because Zammar held joint German and Syrian citizenship, and the German government vehemently protested the American action (A1). The second case involved a Syrian-born Canadian citizen named Maher Arar. Arar is a Canadian businessman who was detained at JFK airport in New York during his return to

Canada from a vacation in Tunisia (Brown and Priest A1). Arar was flown by US officials to Washington, and then to Jordan. He was then driven to Syria where he spent 10 months being tortured with electrical cables, tires, beatings, and extended periods of solitary confinement in a coffin-like cell (A1). Arar was interrogated regularly about being involved with al-Qaeda, and eventually signed a false confession to being trained in an al-Qaeda military camp in Afghanistan; he was finally released as a result of heavy diplomatic pressure from the Canadian government (A1).

One CIA official stated that Maher Arar is still suspected of having ties to al-Qaeda, but that there was not enough evidence at the time of his detention in the United States to hold him, and thus, he had to be deported. However, Arar could have been deported to Canada, rather than to Syria. Syria has a totalitarian regime that is well-recognized, internationally and by the US State Department, as a government that regularly employs torture in its prisons. If any country in the entire world fits the qualifications set forth in Article 3 of the Convention against Torture, Syria must be considered a state, "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Arar is now suing the governments of Jordan, Syria, and the United States under international law for human rights violations and the right not to be transferred to a state where there is a substantial possibility of torture (Brown A25).

Officials who defend the renditions claim that the suspects are not transferred to be tortured, because it is illegal and it often results in unreliable information. Rather, foreign intelligence agencies are used because they can relate to the suspects more than American interrogators can: they speak the language and the dialects of the suspects; they understand the culture more intimately; and they will be more likely than an American to form a relationship and gain the trust of the captive (Gellman and Priest A1). While this may be true to an extent, it does not change the fact that the United States has developed a dangerous, secret, and almost certainly illegal relationship with governments that have a well-documented history of torture.

*The Washington Post* article seemed to signal a demand for the opinion of the American people; the tone of the officials almost seemed to seek acceptance for actions that have historically been prohibited, denounced, and condemned by the United States. Moreover, the general sentiment of the American public, Congress, and the Supreme Court, has been a preference to allow interrogators to use whatever techniques necessary with the suspected terrorists as long as it remains behind closed doors. Prior to the attacks of September 11<sup>th</sup> the United States maintained a very condemnatory stance against nations that employed torturous techniques in interrogations. However, the terrorist attacks fundamentally changed the American stance in

some regards. Some top level officials such as the Secretary of Defense, Donald Rumsfeld, and the Secretary of State, Colin Powell, maintain that the United States has not violated the international agreements banning torture (“Ends”). While their interpretation of what constitutes a violation may be questionable, at least it is consistent with the American policy of the past.

However, other top level officials have deviated from this view and have espoused a profoundly different line of reasoning – one that a large percentage of the American public has seemed to embrace in the time since the terrorist attacks. In September 2002 at a joint hearing of the House and Senate intelligence committees, the then head of the CIA Counterterrorist Center (now current counterterrorism coordinator at the State Department), Cofer Black, stated in reference to the CIA’s flexibility in questioning suspected terrorists: “There was a before 9/11, and there was an after 9/11. After 9/11 the gloves come off” (Gellman and Priest A1). Although many people, especially Americans, may believe and agree with Mr. Black’s statement, international law has explicitly addressed this issue:

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability, or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment (“Declaration on the Protection”).

The United States has agreed to uphold and abide by this provision in the United Nations Declaration against Torture. Therefore, it is exceedingly clear that any argument that September 11<sup>th</sup> has somehow nullified the international rules banning torture is patently wrong – the provision plainly states that a “state of war ... or any other public emergency” cannot make torture acceptable as far as international and domestic law is concerned.

#### *Pragmatism versus Moral Absolutism*

Although the world has certainly experienced a profound change since the attacks of September 11<sup>th</sup>, international law banning torture has not: there are no exceptional circumstances in which torture is legal. Human rights groups and international organizations such as the United Nations have remained steadfast in their commitment to eradicate torture completely. The official stance of the United States is still that torture is both domestically and internationally illegal, and that suspects held in American custody are treated humanely in accordance with the law. However, if the reports are true, it seems that the United States has deviated from this policy, and it has done so without Congressional authorization, without legislation signed by

the President, and even without a vigorous public discussion. Therefore, it seems that the government, especially the CIA, is now using a method of interrogation that is at least on the borderline of being torture. In addition, the government seems to have adopted a policy of subcontracting interrogations to nations, such as Syria, that undoubtedly use torturous treatment to extract information.

Nevertheless, it is nearly impossible for the press or the general public to know what actually occurs behind the restricted walls of CIA interrogation centers like Bagram and Diego Garcia. It is difficult to even know what the American policy is, and it is therefore even more difficult to judge whether or not the government is in violation of the treaties, declarations, and conventions to which the United States is party. But, even if the United States is illegally engaged in using torture against terrorist suspects, should it matter? In other words, can torture be justified, at least morally, in certain circumstances? The commonly used theoretical example of such a circumstance is the “ticking-bomb” scenario. Basically, this is a situation when there is an imminent threat and there is a person in custody that has vital information that could prevent the attack or lessen the losses incurred. Moral absolutists, such as Amnesty International, would hold that torture is always wrong and that no human being deserves to be subjected to torture. However, many people would argue that torture may be justified in such a case. For example, if the September 11 plot could have somehow been detected and foiled as a result of intelligence obtained through the torture of an individual, it is fair to say that a very high percentage of Americans would believe that the torture was morally justifiable.

In order to argue that torture could be morally justifiable, it is necessary to show that it is effective. Many people claim that torture will only produce false confessions and misinformation, because the victims will say anything to make the pain stop. While it is certainly true that torture will cause people to admit to false accusations in certain cases, it is also true that torture will sometimes force people to give truthful information that they would otherwise not divulge. The most dramatic example occurred in 1995 when the Philippine authorities tortured an al-Qaeda operative for sixty-seven days until he revealed intricate plans to assassinate the pope, to crash eleven commercial airlines over the Pacific (killing approximately 4,000 innocent civilians), and to crash a private plane full of explosives into CIA headquarters (Brzezinski). In order to obtain the intelligence to prevent these three catastrophic events, the interrogators broke the man’s ribs, forced water into his mouth, and extinguished cigarettes on his genitals, among other tactics, for a period of 67 days (Brzezinski). While nine weeks of terribly painful torture is tragic, there would have been an incredible outcry if any of the aforementioned plots had occurred even though they were preventable.

Nevertheless, even if torture results in short-term victories such as the one in the Philippines, history shows that a policy of torture often leads to greater problems in the long run. Israel claims that intelligence obtained from interrogations using torture has prevented individual terrorist attacks; the junta in Argentina defeated its opponents by using tactics of torture; and, the French won the battle of Algiers by openly torturing and killing suspects. However, in the long-term, the Palestinians have lashed out at Israeli brutality with continued suicide bombings; the junta in Argentina was destroyed by an uprising of popular resentment; and, the use of torture in Algiers caused the terrorists to sink further underground, it divided the people in France, and it ultimately forced the French government to pull out of Algeria altogether (“Ends”).

In a situation where there are no other options, torture can produce intelligence that would save innocent lives. Harvard Law Professor, Alan Dershowitz, argues that a democratic nation must uphold the concept of accountability, and that it would be better for high-level officials, such as the President or a judge, to issue “torture warrants,” rather than leaving the decision to a relatively low-level military officer or CIA interrogator (Dershowitz 140). His rationale is straight-forward: “If it is necessary to torture in the ticking bomb case, then our governing laws must accommodate this practice. If we refuse to change our law to accommodate any particular action, then our government should not take that action” (153). Critics of Dershowitz’s ideas argue that torture can never be legitimized in such a fashion, because it would create a slippery slope in which torture would become commonly accepted and widespread, not just in the United States, but around the world.

It is clear that both pragmatists and moral absolutists wield powerful arguments either for or against the use of torture in certain circumstances, but regardless of which seems more compelling, the opening of a vigorous public discussion is of the utmost importance. It is absolutely unacceptable that the leading democracy in the world may be on the verge of adopting a policy of torture under the cloak of secrecy. I believe that torturing terrorist suspects may be necessary in certain cases to save the lives of innocent civilians, but the United States cannot simply pretend that it is not happening. American democracy is supposed to be built on a foundation of transparency and accountability, and thus, the absence of both a debate on torture and a clearly defined policy undermines free society even more than the act of torture itself.

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