

# The Ticking Bomb and the Justification of Torture

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## The Ticking Bomb and the Justification of Torture

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### **Is the “ticking bomb” metaphor a convincing argument in favour of torture under extreme circumstances?**

In the post 9/11 environment society has been consumed by the question of whether torture is acceptable under extreme circumstances. The “ticking bomb” metaphor was regularly employed by various figures in the US as an argument to justify the use of torture in interrogations during the term of the Bush Administration. It is an argument that has been used to justify torture in a set of very extreme and detailed circumstances. This paper will argue that the “ticking bomb” metaphor does not provide a convincing argument to justify the use of torture under extreme circumstances. First, definitions of torture and the “ticking bomb” metaphor will be provided. Second, this essay will discuss the use of torture by the US in the War on Terror. Third, the arguments for the use of torture under extreme circumstances, and the flaws of allowing torture under extreme circumstances will be addressed.

The two most important concepts for this paper are torture and the “ticking bomb” metaphor. The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as;

any act by which severe pain 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 (United Nations 1997).

Torture is prohibited in any circumstance under a variety of international laws, conventions, and norms. It is spelt out in not only the UN Convention against Torture, but also the Covenant on Civil and Political Rights, the law of armed conflicts, and the Geneva Conventions (Ip 2009: 36). The prohibition of torture is further enshrined in domestic laws of many of the countries who have ratified these treaties.

However, the “ticking bomb” metaphor is used to justify torture in certain extreme situations. The concept of the “ticking bomb” was first conceptualised in a fiction novel written by Jean Larteguy in 1960 (Kovarovic 2010: 254). It describes a scenario whereby the torture of a suspect is considered necessary to obtain information to prevent a future catastrophic event from occurring (Kovarovic 2010: 254). The scenario is usually described as one where terrorists have planned an attack that is going to occur very soon and a large number of people will be killed unless the authorities obtain critical information from the source they have captured (Ip 2009: 40). It is essentially torture that has been sanctioned by the state in exceptional circumstances (Bufacchi and Arrigo 2006: 354). Torture is still considered to be wrong in these circumstances, but it is viewed as a necessary or lesser evil (Ip 2009: 40). Proponents of the “ticking bomb” scenario argue that “torture may be wrong...but mass murder is worse, so the lesser evil must be tolerated to prevent the greater one” (Roth 2005: 197).

The justification for the use of torture under exceptional circumstances gained popularity following the events of 9/11 and the subsequent War on Terror. The use of torture by states is by no means a recent phenomenon. For millennia it has been an instrument for criminal investigation (Pokempner 2005: 160). In 2002 Amnesty International

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documented numerous incidences of “state-sponsored torture or severe abuse in over 100 countries” (Bufacchi et al. 2006: 356). Torture is employed by both democratic and authoritarian regimes.

The most significant state to flout international law regarding the application of torture in the post 9/11 world is the US. The US is notable because Washington has long been an outspoken proponent of human rights and is one of the most powerful global actors. The disregard by the US for international law, which it has ratified has undermined international humanitarian law (Roth 2005: 184). The US has often positioned itself as a defender of human rights and used its diplomatic power to pressure other states into complying with international human rights obligations also, although it was selective in those it pressured. However, now the US has openly been implicated in human rights abuses relating to torture these states are less likely to halt their own actions, and indeed use it as an excuse. In Egypt, Mubarak’s government defended its use of torture by referencing US practices (Roth 2005: 186). Human rights actors also hesitate to look to the US for support in their endeavours in other parts of the world because it effectively discredits them by association (Roth 2005: 186). In fact, the violation of international human rights laws by the US undermines democracy and the idea that it will provide positive change to non-democratic states, “when the most vocal governmental advocate of democracy deliberately violates human rights, it undermines democratically inclined reformers and strengthens the appeal of those who preach more radical visions” (Roth 2005: 188).

The Bush Administration not only violated international law regarding torture, but attempted to redefine the laws and the definitions of torture to legitimise its actions. In the post 9/11 period the Bush Administration justified torture through a number of ways. These included “defining torture so narrowly as to render its prohibition meaningless, suggesting bogus legal defences for torturers, or claiming that the president has inherent power to order torture” (Roth 2005: 185). To circumvent both international and US domestic laws prohibiting torture the US government “began to create off-shore, off-limits, prisons such as Guantanamo Bay, Cuba, maintained other detainees in “undisclosed locations”, and without any legal due process sent terrorism suspects to countries where information was beaten out of them” (Brody 2005: 147). The US administration attempted to justify its use of torture in most situations by asserting that the War on Terror was one of extreme circumstances where the end justified the means at all times (Roth 2005: 195).

The “ticking bomb” argument for torture does not allow for the use of torture routinely. It is only arguing for the use of torture as a tool in extreme circumstances. It is an argument that challenges the notion that torture is morally wrong at all times (Wisniewski 2009: 18). Supporters of the “ticking bomb” argument contend that it is in fact morally wrong to not torture a suspect for intelligence that could stop an attack that will potentially cost the lives of many people. It is a cost-benefit situation (Ginbar 2008: 23). The cost of hurting one individual through torture – an individual who is guilty of conspiring in a terrorist plot according to the “ticking bomb” scenario and thus unworthy of humane consideration – is considered to be outweighed by the benefit of saving many lives. Many security officials in the American government during the Bush Administration followed this logic; they believed torture as an interrogation method was necessary to protect America from a catastrophic terrorist attack. It was necessary to allow torture to stop a greater catastrophe (Roth 2005: 197).

The flaws in the “ticking bomb” argument are numerous. The most obvious of these is that the scenario itself makes a number of assumptions that are unlikely to occur in reality. At the very least they are unlikely to occur simultaneously. It implies that the authorities are already aware that an attack is going to occur in a very short amount of time and torture is the only option, in reality a situation is hardly going to be so black and white (Ip 2009: 53). It also implies that the person captured is involved in, and has knowledge of, the event that is about to occur and will part with that information. In reality it might be more likely that the prisoner imparts falsified information to satisfy the torturers because they do not actually know anything, or in other cases the individual may have been trained to withstand torture and do not impart any information at all (Kovarovic 2010: 253). Realistically, in situations where one captures someone with links to a terrorist organisation they may not possess any knowledge of the imminent attack (Ip 2009: 53). The scenario also makes the assumption that torture is always successful and will provide results. It relies on the assumption that “torture not only makes people talk, but makes them speak the truth” (Ip 2009: 53). There is no way to know how a person will react to extreme psychological and physiological stress. Empirical evidence suggests that “more times than not the information gathered under torture is the wrong information, being the result of a false confession” (Bufacchi et al 2006: 361). The fact that “between 1987 and 1994, the Israeli

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General Security Service officially interrogated 23,000 Palestinians, torturing the great majority, yet terrorism flourished" (Bufacchi et al. 2006: 361) suggests that torture does not succeed in stopping terrorist events from occurring. It also implies that no one will move the hypothetical bomb to another time or place, because of the capture of the suspect (Felner 2005: 33). This is not likely to occur in a terrorist attack involving a cell of multiple people. The scenario also implies that an interrogator is able to gain vital information in a very short time period. This is a fallacy. The idea of torture as an interrogation method is one where the subject's resistance is broken down over months rather than hours. This is emphasised by the fact that counter-interrogation training involves teaching an individual to withstand torture for at least 24 hours so that their colleagues are able to alter their plans before the individual imparts valuable information (Bufacchi et al. 2006: 361).

Another argument against the ticking bomb approach is that allowing torture in exceptional circumstances can become routine practice. This is the slippery-slope argument. This argument is most demonstrated by the example of Israel. In 1987 Israel legalised torture as an interrogation method under a "ticking bomb" scenario where torture was considered the only way to gain important information. It was legislated in this instance by the Landau Commission, which looked into reports of widespread torture of Palestinian captives by Israel's General Security Service. While condemning the torture of captives, the Landau Commission decided that the use of force was unavoidable in situations where a terrorist attack could be stopped, and lives saved in the fight against terrorism (Felner 2005: 30). The Commission then stretched the definition of the concept to include the need to prevent the possibility of an event occurring (Felner 2005: 34). This is also evident in the use of torture by the US during the War on Terror, although in this case the "ticking bomb" scenario was always loosely applied. During the War on Terror the use of torture started with the torture of high-value Al-Qaeda detainees captured by the CIA who they believed held intelligence on future attacks on the US, and then became more prevalent in Guantanamo and then in Iraq in the search for intelligence (Ip 2009: 57).

In Israel the attempt to curb torture by legitimising it in certain circumstances failed entirely. Torture became embedded within routine interrogation methods and it was reported that those tortured were not only those responsible for a "ticking bomb" or even those with links to terrorism, but also those who challenged the status quo. This included political activists, students suspected of being pro-Islamic, sheiks and religious leaders, people involved in Islamic charities, siblings and relatives of people wanted for crimes, and Palestinians whose professions meant they had the ability to prepare explosives (Felner 2005: 40). The Israelis discovered that by attempting to control torture they ended up "legitimizing torture and making it easier to extend it into a routine practice" (Felner 2005: 42). This led to a total ban of torture in 1999.

The application of torture under extreme circumstances which leads to the widespread routine use of torture also contributes to the disintegration and effectiveness of a society's institutions. It leads to the corruption of values that a state is said to stand for. This can be seen in the US where the widespread use of torture and attempted justification of it under the "ticking bomb" metaphor has eroded its image as a democratic human rights defender. This is also demonstrated in the case of Algeria. During the war in Algeria torture was institutionalised as a form of repression and led to the erosion of the entire judicial system and rule of law in that state (Bufacchi et al 2006: 366). In fact the use of torture by the French army in Algeria contributed to the loss of the Algerian war because it discredited the war effort in the eyes of other supporters (McCoy 2006: 24). The use of torture in even extreme circumstances would corrupt every institution involved in it. It would "profoundly corrupt the culture of medical, scientific, police, military and legal institutions" (Hunsinger 2008: 232).

The arguments for the "ticking bomb" metaphor are weak. It is a situation that has too many probabilities that are unlikely to occur in reality to justify the use of torture to gain information to stop a hypothetical terrorist attack. It ignores the fact it is possible to garner important, life-saving information from terrorist groups without resorting to such morally abhorrent methods. Although the CIA and other organisations within America supported the use of torture, the FBI did not. They instead advocated a "patient, non-coercive, rapport-building approach to interrogation" (Ip 2009: 30). Its approach, which did not violate international human rights laws, succeeded in gaining vital information to avert multiple terrorist attacks. The use of torture on the other hand had dubious results. The motivation for the War in Iraq was based on evidence given by Ibn al-Libi who was captured after 9/11 and flown to Egypt under extraordinary rendition to be tortured for intelligence. Intelligence the CIA obtained through torture

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included assertions that Al-Qaeda were learning to make biological and nuclear weapons, or weapons of mass destruction, in Iraq (Hunsinger 2008: 234). This information was proved to be false, proving once again that intelligence gained under torture is unreliable.

The “ticking bomb” metaphor has been employed on numerous occasions to justify the use of torture in extreme circumstances. Evidence from Israel and the US suggests that the use of torture becomes widespread and routine behaviour when it is first legitimised for extreme circumstances. The “ticking bomb” metaphor is a particularly terrible justification for the application of torture in extreme circumstances because it is a hypothesis that relies on a number of probabilities that are unlikely to occur in reality. Of particular importance is that there is no evidence that the application of torture will provide true evidence to stop a “ticking bomb”, whereas non-coercive methods that are strictly within the limits of international human rights law, and raise no ethical or moral considerations have yielded positive results. The “ticking bomb” metaphor is an unrealistic and wholly unconvincing argument in favour of torture that relies on assumptions that do not stand up to scrutiny in the real world.

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