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The Argument for Torture

By Sam Vaknin

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I. Practical Considerations

The problem of the "ticking bomb" – rediscovered after September 11 by Alan Dershowitz, a renowned criminal defense lawyer in the United States – is old hat. Should physical torture be applied – where psychological strain has failed – in order to discover the whereabouts of a ticking bomb and thus prevent a mass slaughter of the innocent? This apparent ethical dilemma has been confronted by ethicists and jurists from Great Britain to Israel.

Nor is Dershowitz's proposal to have the courts issue "torture warrants" (Los Angeles Times, November 8, 2001) unprecedented. In a controversial decision in 1996, the Supreme Court of Israel permitted its internal security forces to apply "moderate physical pressure" during the interrogation of suspects.

It has thus fully embraced the recommendation of the 1987 Landau Commission, presided over by a former Supreme Court judge. This blanket absolution was repealed in 1999 when widespread abuses against Palestinian detainees were unearthed by human rights organizations.

Indeed, this juridical reversal – in the face of growing suicidal terrorism – demonstrates how slippery the ethical slope can be. What started off as permission to apply mild torture in extreme cases avalanched into an all-pervasive and pernicious practice. This lesson – that torture is habit-forming and metastasizes uncontrollably throughout the system – is the most powerful – perhaps the only – argument against it.

As Harvey Silverglate argued in his rebuttal of Dershowitz's aforementioned op-ed piece:

"Institutionalizing torture will give it society's imprimatur, lending it a degree of respectability. It will then be virtually impossible to curb not only the increasing frequency with which warrants will be sought – and granted – but also the inevitable rise in unauthorized use of torture. Unauthorized torture will increase not only to extract life-saving information, but also to obtain confessions (many of which will

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then prove false). It will also be used to punish real or imagined infractions, or for no reason other than human sadism. This is a genie we should not let out of the bottle."

Alas, these are weak contentions.

That something has the potential to be widely abused – and has been and is being widely misused – should not inevitably lead to its utter, universal, and unconditional proscription. Guns, cars, knives, and books have always been put to vile ends. Nowhere did this lead to their complete interdiction.

Moreover, torture is erroneously perceived by liberals as a kind of punishment. Suspects – innocent until proven guilty – indeed should not be subject to penalty. But torture is merely an interrogation technique. Ethically, it is no different to any other pre-trial process: shackling, detention, questioning, or

bad press. Inevitably, the very act of suspecting someone is traumatic and bound to inflict pain and suffering – psychological, pecuniary, and physical – on the suspect.

True, torture is bound to yield false confessions and wrong information, Seneca claimed that it "forces even the innocent to lie". St. Augustine expounded on the moral deplorability of torture thus: "If the accused be innocent, he will undergo for an uncertain crime a certain punishment, and that not for having committed a crime, but because it is unknown whether he committed it."

But the same can be said about other, less corporeal, methods of interrogation. Moreover, the flip side of ill-gotten admissions is specious denials of guilt. Criminals regularly disown their misdeeds and thus evade their penal consequences. The very threat of torture is bound to limit this miscarriage of justice. Judges and juries can always decide what confessions are involuntary and were extracted under duress.

Thus, if there was a way to ensure that non-lethal torture is narrowly defined, applied solely to extract time-critical information in accordance with a strict set of rules and specifications, determined openly and revised frequently by an accountable public body; that abusers are severely punished and instantly removed; that the tortured have recourse to the judicial system and to medical attention at any time – then the procedure would have been ethically justified in rare cases if carried out by the authorities.

In Israel, the Supreme Court upheld the right of the state to apply 'moderate physical pressure' to suspects in ticking bomb cases. It retained the right of appeal and review. A public committee established guidelines for state-sanctioned torture and, as a result, the incidence of rabid and rampant mistreatment has declined. Still, Israel's legal apparatus is flimsy, biased and inadequate. It should be augmented with a public – even international – review board and a rigorous appeal procedure.

This proviso – "if carried out by the authorities" – is crucial.

The sovereign has rights denied the individual, or any subset of society. It can judicially kill with impunity. Its organs – the police, the military – can exercise violence. It is allowed to conceal information, possess illicit or dangerous substances, deploy arms, invade one's bodily integrity, or confiscate property. To permit the sovereign to torture while forbidding individuals, or organizations

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from doing so would, therefore, not be without precedent, or inconsistent.

Alan Dershowitz expounds:

"(In the United States) any interrogation technique, including the use of truth serum or even torture, is not prohibited. All that is prohibited is the introduction into evidence of the fruits of such techniques in a criminal trial against the person on whom the techniques were used. But the evidence could be used against that suspect in a non-criminal case – such as a deportation hearing – or against someone else."

When the unspeakable horrors of the Nazi concentration camps were revealed, C.S. Lewis wrote, in quite desperation:

"What was the sense in saying the enemy were in the wrong unless Right is a real thing which the Nazis at bottom knew as well as we did and ought to have practiced? If they had no notion of what we mean by Right, then, though we might still have had to fight them, we could no more have blamed them for that than for the color of their hair." (C.S. Lewis, *Mere Christianity* (New York: Macmillan, paperback edition, 1952).

But legal torture should never be directed at innocent civilians based on arbitrary criteria such as their race or religion. If this principle is observed, torture would not reflect on the moral standing of the state. Identical acts are considered morally sound when carried out by the realm – and condemnable when discharged by individuals. Consider the denial of freedom. It is lawful incarceration at the hands of the republic – but kidnapping if effected by terrorists.

Nor is torture, as "The Economist" misguidedly claims, a taboo.

According to the 2002 edition of the "Encyclopedia Britannica", taboos are "the prohibition of an action or the use of an object based on ritualistic distinctions of them either as being sacred and consecrated or as being dangerous, unclean, and accursed." Evidently, none of this applies to torture. On the contrary, torture – as opposed, for instance, to incest – is a universal, state-sanctioned behavior.

Amnesty International – who should know better – professed to have been shocked by the results of their own surveys:

"In preparing for its third international campaign to stop torture, Amnesty International conducted a survey of its research files on 195 countries and territories. The survey covered the period from the beginning of 1997 to mid-2000. Information on torture is usually concealed, and reports of torture are often hard to document, so the figures almost certainly underestimate its extent. The statistics are shocking. There were reports of torture or ill-treatment by state officials in more than 150 countries. In more than 70, they were widespread or persistent. In more than 80 countries, people reportedly died as a result."

Countries and regimes abstain from torture – or, more often, claim to do so – because such overt abstention is expedient. It is a form of global political correctness, a policy choice intended to demonstrate common values and to extract concessions or benefits from others. Giving up this efficient

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weapon in the law enforcement arsenal even in Damoclean circumstances is often rewarded with foreign direct investment, military aid, and other forms of support.

But such ethical magnanimity is a luxury in times of war, or when faced with a threat to innocent life. Even the courts of the most liberal societies sanctioned atrocities in extraordinary circumstances. Here the law conforms both with common sense and with formal, utilitarian, ethics.

II. Ethical Considerations

Rights – whether moral or legal – impose obligations or duties on third parties towards the right-holder. One has a right AGAINST other people and thus can prescribe to them certain obligatory behaviors and proscribe certain acts or omissions. Rights and duties are two sides of the same Janus-like ethical coin.

This duality confuses people. They often erroneously identify rights with their attendant duties or obligations, with the morally decent, or even with the morally permissible. One's rights inform other people how they MUST behave towards one – not how they SHOULD, or OUGHT to act morally. Moral behavior is not dependent on the existence of a right. Obligations are.

To complicate matters further, many apparently simple and straightforward rights are amalgams of more basic moral or legal principles. To treat such rights as unities is to mistreat them.

Take the right not to be tortured. It is a compendium of many distinct rights, among them: the right to bodily and mental integrity, the right to avoid self-incrimination, the right not to be pained, or killed, the right to save one's life (wrongly reduced merely to the right to self-defense), the right to prolong one's life (e.g., by receiving medical attention), and the right not to be forced to lie under duress.

None of these rights is self-evident, or unambiguous, or universal, or immutable, or automatically applicable. It is safe to say, therefore, that these rights are not primary – but derivative, nonessential, or mere "wants".

Moreover, the fact that the torturer also has rights whose violation may justify torture is often overlooked.

Consider these two, for instance:

The Rights of Third Parties against the Tortured

What is just and what is unjust is determined by an ethical calculus, or a social contract – both in constant flux. Still, it is commonly agreed that every person has the right not to be tortured, or killed unjustly.

Yet, even if we find an Archimedean immutable point of moral reference – does A's right not to be tortured, let alone killed, mean that third parties are to refrain from enforcing the rights of other people against A?

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What if the only way to right wrongs committed, or about to be committed by A against others – was to torture, or kill A? There is a moral obligation to right wrongs by restoring, or safeguarding the rights of those wronged, or about to be wronged by A.

If the defiant silence – or even the mere existence – of A are predicated on the repeated and continuous violation of the rights of others (especially their right to live), and if these people object to such violation – then A must be tortured, or killed if that is the only way to right the wrong and re-assert the rights of A's victims.

This, ironically, is the argument used by liberals to justify abortion when the fetus (in the role of A) threatens his mother's rights to health and life.

The Right to Save One's Own Life

One has a right to save one's life by exercising self-defense or otherwise, by taking certain actions, or by avoiding them. Judaism – as well as other religious, moral, and legal systems – accepts that one has the right to kill a pursuer who knowingly and intentionally is bent on taking one's life. Hunting down Osama bin-Laden in the wilds of Afghanistan is, therefore, morally acceptable (though not morally mandatory). So is torturing his minions.

When there is a clash between equally potent rights – for instance, the conflicting rights to life of two people – we can decide among them randomly (by flipping a coin, or casting dice). Alternatively, we can add and subtract rights in a somewhat macabre arithmetic. The right to life definitely prevails over the right to comfort, bodily integrity, absence of pain and so on. Where life is at stake, non-lethal torture is justified by any ethical calculus.

Utilitarianism – a form of crass moral calculus – calls for the maximization of utility (life, happiness, pleasure). The lives, happiness, or pleasure of the many outweigh the life, happiness, or pleasure of the few. If by killing or torturing the few we (a) save the lives of the many (b) the combined life expectancy of the many is longer than the combined life expectancy of the few and (c) there is no other way to save the lives of the many – it is morally permissible to kill, or torture the few.

III. The Social Treaty

There is no way to enforce certain rights without infringing on others. The calculus of ethics relies on implicit and explicit quantitative and qualitative hierarchies. The rights of the many outweigh certain rights of the few. Higher-level rights – such as the right to life – override rights of a lower order.

The rights of individuals are not absolute but "prima facie". They are restricted both by the rights of others and by the common interest. They are inextricably connected to duties towards other individuals in particular and the community in general. In other words, though not dependent on idiosyncratic cultural and social contexts, they are an integral part of a social covenant.

It can be argued that a suspect has excluded himself from the social treaty by refusing to uphold the rights of others – for instance, by declining to collaborate with law enforcement agencies in forestalling

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an imminent disaster. Such inaction amounts to the abrogation of many of one's rights (for instance, the right to be free). Why not apply this abrogation to his or her right not to be tortured?

Deflate Objections In 15 Seconds

By Joseph Plazo

Does this symphony sound familiar?

You are too!

Am not!!

You are TOO!

AM NOT!

YOU ARE ALSO!!

AM NOT!!

Familiar? It's how kids argue. I'm sure you've tried this mode of arguing decades back.

Children, when pointed out that they are "xxx", tend to retaliate that their accuser is also "xxx" The accuser then balks, because people hate having their arguments thrown back at them. It's human nature and this demonstrates the Reflexivity Principle of Argumentation.

By applying a belief statement back to the person asserting it, we test the applicability of that belief within an equitable context. By equitable context, I mean that what's good for the Gander should also be good for the Goose. This determines the universality of the statement. If, by throwing an argument back to its issuer, we observe a resistance, then this could indicate a presence double standards. This surely makes the argument IRRATIONAL, and NON-UNIVERSAL.

Let's see this in play.

She says, " You're always with your officemates. Obviously you don't like me anymore"

To counter this with Reflexivity , you apply her argument back to her by saying, "My dear, you spend at least 3 hours a day with your friends after work. Does this imply that you love me less now as well?"

She will then see the irrationality of her argument.

Let's try another.

Mark says, "The Bush Administration wastes so much time bickering, debating and arguing. Obviously

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this country is going nowhere. Such a waste of time!"

So you come to the good ole US of A's defense by saying, "I see.... so shall I assume that your business will never prosper either? Your Board spends a lot of time deliberating and debating. I observed that you, as Chairman, even seem to enjoy this and you goad them on! Now despite all that bickering, your company grows 10% per annum. Mark, I'm sure you're already aware of the value of

debate. Healthy deliberation illuminates multiple avenues of action. That's what your Board does. That's what the Bush administration accomplishes."

Okay, let's put this to practice. Someone brave, come to the front; volunteer 10 arguments.

Then let's have someone else come up with ten counter arguments using this principle.

Have fun!

A master of manifestation to his associates, Joseph R. Plazo offers intense executive coaching so people can find jobs and build careers.

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