
Defusing the 'ticking bomb': an argument against the use of torture

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The RSA is part of a consortium of progressive groups that holds lectures every Wednesday evening at Trades Hall in Carlton, Melbourne. (See 'lectures' at <www.rationalist.com.au> for more details.) The following article is based on Catherine McDonald's address to this group on 21 March 2007.

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it is American, Australian and British theorists who have promoted this argument. Like global warming sceptics, pro-torture pundits seek to persuade us that there is a serious debate to be had between two more or less evenly matched sides. In reality, however, all pro-torture arguments are logically flawed and morally implausible.

Pro-torture arguments arising from the ticking bomb case are invariably consequentialist. That is,

Suppose a bomb has been planted somewhere where it will kill many people if it goes off. Suppose we have the bomber in custody, and the bomber refuses to say where the bomb is. We have no other way of either locating the bomb or safely removing people from the vicinity of the bomb. Should we torture the bomber to locate the bomb?

This is in fact one variation of a number of problem scenarios known collectively in moral philosophy as 'emergency-case' scenarios.

Another variant concerns a kidnapped child who is in danger of dying if not located immediately, and where we have the kidnapper in custody but where the kidnapper will not reveal the child's location.

All of these cases have in common the following conditions: (a) the information required is time-sensitive; (b) we have in custody the person who has this information; (c) the person who has the information will not voluntarily provide us with the information; and (d) we have no other way of obtaining the information. As an exercise in first-year philosophy classes, the emergency-case scenario arguably serves some purpose, but outside the academy it is just tendentious.

The 'ticking bomb' scenario has only elicited serious torture supporters since an article was published about it by Alan Dershowitz shortly after the attack on the World Trade Center, and since the invasion in Iraq. It is perhaps not coincidental, then, that

they nominally justify torture under the principle that we are morally justified in doing whatever produces the best consequences or best outcome. 'Best' in this context is usually understood as being whatever produces the greatest amount of utility or satisfies the greatest number of interests.¹

Thus, pro-torture arguments go something like this: In circumstances where lives are at stake and we have no other means at our disposal, we may torture a person if doing so produces information that would save lives. Torture is an effective means of gaining information. The loss of benefit to the individual tortured is less than the loss of benefit to those who will die if we do not torture. Therefore, we are morally justified in using torture. Torture in these circumstances produces a net gain in benefit and therefore produces the 'best' outcome.

Such arguments also rely upon a sub-argument that is subsumed within the contrived details of the scenario itself. The implications of the sub-argument are that we *know* that the person we have in custody is responsible for the bomb (or kidnapping), and that they *know* where the bomb (or child) is located. In reality, this is a conceit.

In 2005, Jean Charles de Menezes was shot dead by British security forces who believed they 'knew' that he was a suicide bomber about to blow up a train

in the London underground. He turned out to be a young Brazilian man on his way to work as an electrician. In the real world, rather than the fantasy world of counterfactuals, and even with the best intentions, we cannot avoid error. Sometimes, innocent people would be tortured.²

However, my interest is in the substantive argument, so I shall leave the problem of torturing the innocent to one side.

Pro-torture arguments only get off the ground at all if in *fact* torture is an effective means of gaining information, and if in *fact* gaining information under torture does produce a net benefit.

Many opponents of torture have rightly focussed on rejecting the premise of this argument. There is a great deal of evidence to suggest that torture is not an effective means of gaining useful information. Some wits have observed that if torture produced reliable information then we would be obliged to reconsider our entire metaphysics, since thousands of people once confessed under torture to being witches and consorting with the devil.

We have large amounts of more recent historical evidence. The one most commonly cited is the French experience in Algeria. The use of torture by the French against the insurgency in Algeria changed a situation which was arguably militarily winnable into a complete loss. The use of torture undermined the morale and the chain of command of the French army. It undermined the civilian support for the military services and the French government. It also galvanised the insurgency into a highly organised resistance, where previously it had been scattered and poorly organised.

Less commonly cited, but perhaps more pertinent, is the example of Vietnam. Viet Cong prisoners were routinely tortured by members of the South Vietnamese army and their American allies. Again, the historical evidence is that the use of torture was actually strategically disastrous, for much the same reason as in Algeria. Many of the Viet Cong prisoners were tortured to death without providing any information, and the sight of prisoners being tortured did nothing for the public's support of the South's cause.

We also have examples such as the Guildford four,

who confessed under police torture to being IRA bombers. Their only actual crime was to be poor, Irish and in the wrong place at the wrong time. And we have more recent cases from Guantanamo Bay, where people have confessed to activities and associations that they simply could not have been involved in.³

In fact, there is a great deal of scholarly research into torture in the real world that shows all sorts of interesting things. For instance, the evidence indicates that there is a substantial difference in the behaviour of ordinary criminals compared to people with ideological commitments; that the innocent are much more likely to confess than the guilty; and that the



pool of potential torture victims tends to expand. The overwhelming conclusion of this research is that torture is not an effective means of gaining information. Indeed, in a recent empirical analysis of the effectiveness of torture by Darius Rejali, he suggests that in some cases torture is even less effective 'than flipping coins or shooting randomly into crowds'.

What is interesting is that promoters of torture never offer, or even seriously attempt to offer, actual evidence of the general effectiveness of torture in producing useful information.

They do sometimes cite individual cases. Dershowitz cites a German kidnap case reported in the media (and his only evidence for this case is media reports), where police sought a warrant to use physical force

on the suspect. But this is not an instance of torture, since the kidnapper was never actually tortured. Nor was there any evidence that the threat of force caused the kidnapper to reveal the child's location. The mere fact that one event occurred after the other does *not* establish a casual relationship. The child was already dead before the kidnapper was apprehended. It appears that the kidnapper was a young man who had previously been a friend of the family.

Another example favoured by Dershowitz is a case in the Philippines where the victim, having been tortured for more than a month, reportedly provided evidence of plans for a bombing campaign. Clearly this is not an emergency-case scenario, and there is in any case reason to believe that the details of this story are not as Dershowitz describes them.

The proponents of torture like to repeat these examples, or variations of these examples. Or they like to construct hypothetical situations based on similar details. What they do not offer is verifiable evidence that torture is generally effective. Whether or not there

napper as 'sneering and defiant and belligerent', while the kidnap victim is an 'innocent child'. We might call this the cute and cuddly factor versus the evil villain. We also see appeals to popular intuitions: 'Who would not be in favour of torturing the bomber to get the bomb's location? Very few.'⁴ This is a misleading question to pose to populations whose only experience of torture is the Hollywood version. In any case, appeals to popularity are not a legitimate mode of reasoning. These uses of rhetoric are merely manipulative.

Of more interest is a view that implicitly underlies all pro-torture arguments. It is: 'If torture wasn't effective, then governments wouldn't use it.'

This is simply a fallacy of reason. The only reason we have for believing governments and their agents only use 'effective means to ends' is our erroneous belief that torture is effective in these cases; and the only reason we have for believing that torture is effective is the fact that governments use it.

A simple example demonstrates the same fallacy.

Consider the proposition, 'If gamblers didn't win, they wouldn't gamble.' It might be tempting to believe this, but it is obviously false. Not only do many gamblers go on gambling whether or not they win, but some go on gambling even though they never win. In short, people gamble for all sorts of reasons — boredom, excitement and so on. Winning is only one form of motivation, and not always even the primary motivation. Sometimes it is not a motivation at all. In addition, people are frequently instrumentally irrational. They will go on seeking ends by means that they know will not work. So, some gamblers will attempt to gamble their way out of debts caused by their gambling.

Precisely the same objections may be levelled against 'effectiveness' claims regarding torture. Governments and their agents use torture for all sorts of reasons. They use it to terrorise the civilian population, to oppress their political opponents and so on. Nor do we have any good reason for believing that governments or agents are invariably instrumentally rational. It is a commonplace observation that human beings, including governments, have a tendency to repeat the same mistakes over and over again.

We are only tempted by such reasoning in the case of torture (in as much as we are tempted by it) because



are individual cases where torture victims have provided useful information, this would, regardless, not be sufficient to establish that torture is generally successful in terms of eliciting useful information. In order to establish this, torture proponents would need to provide numerous case studies that illustrate a general trend.

Instead, the proponents of torture rely upon a number of tricks of rhetoric that invite their audiences to engage in flawed reasoning. Florid and emotive appeals to the prejudices of their audiences are common. Thus, we have descriptions of the kid-

the audience for such arguments — that's us — rarely has any actual experience of torture. If we had no first-hand experience of gambling, we might be tempted to believe that gamblers only gamble if they win.

Thus, even though there is considerable evidence that torture is not an effective means for gaining information, we do not in fact need to lead this evidence. We need only to point out the fallacy of reasoning supporting the underlying assertion that torture wouldn't be used unless it was effective. The burden of proof lies with those who would adopt torture, and they have yet to provide it.

Leaving aside the false premise, if we were to accept, for the sake of argument, that torture reliably produces truthful information, the argument will only work if in *fact* torture generates a net benefit.

Here the torture supporters rely upon an 'immediate interest' account of benefit.⁵ Thus in the case of the ticking bomb we are invited to consider only the immediate interests of the bomber and the victims of the bomb. The net gain in 'benefit' may seem obvious in these cases. We simply count up the number of lives on each side of the equation.

But as an interpretation of the consequentialist principle, the 'immediate interest' account is implausible. Consider this logical implication of such a principle: Suppose there are a number of people who very urgently require transplant organs. If we kill one healthy person, we can harvest their organs and save a number of other lives. There is no other way for the people requiring organs to obtain them. If we simply count up the number of lives at stake, we appear to be justified in killing healthy individuals to harvest their organs. This action would generate a greater net benefit in terms of the immediate interests involved.⁶

In short, torture advocates wield a principle they do not really understand. Consequentialism is only plausible when it operates over 'reasonably foreseeable' consequences when measuring benefits against losses. In the case of the organ harvesting, there are obviously foreseeable, adverse consequences, not the least of which is a likely fall in the number of voluntary organ donors. Equally, few would bother with the cost and effort of education if our only concern was with immediate interests.

Admittedly, the concept of what is 'foreseeable' is somewhat ambiguous. Some people are apparently

exceedingly short-sighted, but short-sightedness in relation to consequences is not usually considered a virtue that we should encourage. Put simply, no plausible interpretation of the term 'foreseeable' is reducible to 'immediate' interests.

Under the measure of foreseeable consequences, torture could *never* generate a net benefit in the ticking bomb or other emergency-case scenarios. Torture simply generates too many adverse consequences, which affect the interests of too many other people.

In reality, under consequentialist reasoning we should measure: (a) the evil caused by the murders of bomb victims; against (b) the corruption of key social institutions, including the practice of law and medicine, the evil of mistakenly torturing people who are innocent, the ruination of torturers, the likelihood that torture will generate still further bombings and the number of lives likely to be lost in such bombings, the corruption of international laws and treaties,

and so on. These are all reasonably foreseeable consequences of legitimising the use of torture. Even if tens of thousands of lives were at stake in the ticking bomb case, this would not outweigh the foreseeable loss of benefit to literally millions of other lives.⁷

Finally, torture advocates insist that they are not in favour of the widespread use of torture, but only seek to justify torture in 'emergency' situations. This claim is risible. Prior to the invasion of Iraq, Tony Blair declared that England was only three minutes away from destruction. Equally, we are frequently told that the current 'War on Terror' presents us with problems never encountered before. This is despite the fact that bombing attacks on civilians by non-state operators date back at least as far as 1901. Every politician, every bureaucrat, every inept police officer thinks that their situation is unique and that they are justified in doing what would otherwise be impermissible. The 'emergency' nature of these arguments is simply a case of special pleading, and no moral theory, not even utilitarianism, countenances this.

The question then arises: how did such an obviously flawed argument get airplay at all? Why would anyone take such an argument seriously?

There are no doubt many answers to this question, but there is a curious feature in all variations of the ticking bomb scenario other than flawed reasoning and implausible application of moral principle:

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these scenarios all adopt a perspective that mirrors the perspective of actual torturers. That is, they are contrived so as to make it psychologically easier for us to accept the notion of 'justifiable' torture.

Contrary to popular opinion, sadists and psychopaths make extremely poor interrogational torturers. And contrary to Hollywood portrayals, ordinary people actually lack both the technical and psychological ability required by interrogational torture.



It is true that ordinary people can inflict horrendous violence and be induced to engage in sadistic torture. But the ability to inflict violence is not sufficient. In Afghanistan in 2002, US military police accidentally killed two detainees by beating them on the legs. The beatings unexpectedly complicated pre-existing coronary artery disease. Merely hooding people can cause fatal asthma attacks. Interrogational torture requires the controlled and calculated use of violence. It requires discipline and knowledge. It also requires emotional detachment from the victim.

Emotional detachment from the victim is not the default position for normal human psychology. Rather, torture requires that we overcome a very natural resistance to inflicting great physical injury and suffering on others. The Khmer Rouge manual on torture, for instance, warned against feelings of empathy or sympathy in the torturer. It urged: 'It is necessary to avoid any question or hesitancy or half-

heartedness of not daring to do torture, which makes it impossible to get answers to our questions from our enemies.' Equally, one Chilean torturer described the process involved in achieving emotional detachment: 'When you first start doing this job, it is hard...you hide yourself and cry, so nobody can see you.' Similarly, Nazi doctors arriving at Auschwitz: 'suffered initially at the selections, but it got to be routine — like all other routines in Auschwitz. Most SS doctors underwent an extraordinary individual psychological shift from revulsion to acceptance.'

It is relatively easy for an enraged person to be induced to commit acts of sadism, but having the stomach to torture people in cold blood is a capacity that must be acquired. There are two strategies of interest that are routinely used to achieve this level of detachment.

The first involves the ability of the torturer to move the moral responsibility for the *use* of torture elsewhere. A typical characteristic of actual torturers is a strong sense of duty. They rationalise their activities via appeals that they are merely 'following orders', or that 'it's unpleasant work but

someone *has* to do it', 'it's for the greater good', 'we are *forced* into it by the actions of our opponent', 'we must do whatever it takes to save society', and so on. On each occasion, it is purported that it isn't the torturer who is responsible for the decision to *use* torture: the torturer is merely the instrument of larger, nobler forces.⁸

The parallel with the ticking bomb example is, I think, fairly straightforward: it isn't us who are responsible for the decision to *use* torture; the use of torture is a *necessity* imposed upon us by extreme circumstances, time constraints and the refusal of the bomber or kidnapper to provide us with the information we need. In short, we are encouraged to shift the moral responsibility for the decision to use torture away from ourselves and towards the victim of torture.

It is, of course, a fallacy that we are forced to use torture. There is no causal relationship between the

act we seek to prevent and the use of torture, and there is no valid deductive argument that might compel us by force of reason. If we use torture, it is because we choose to do so. Nonetheless, emergency case scenarios encourage us to avoid a sense of individual responsibility by subsuming the decision under a generic principle and by situating the decision within a contrived timeframe.

The second strategy routinely used to induce detachment from the victim of torture is to dehumanise them. Dehumanising the victim makes torturing them psychologically easier. The less we recognise the victims as human, the weaker are the normal constraints of empathy and morality against treating them as sub-human.

Thus, torture victims are frequently deprived of clothing, often made to sit or stand in their own excrement and, as we discovered in the images from Iraq, made to perform degrading acts. In Abu Ghraib prison, one US soldier witnessing 'two prisoners being forced to...simulate oral sex' commented, 'Look what these animals do...' In other words, the victims' suffering and humiliation (caused solely by the torture) comes to be seen as evidence of their sub-human qualities — evidence that justifies treating them as sub-humans.

Some pro-torture arguments explicitly use this technique. Miller, for instance, uses an example that contains the salacious description of the prisoner being tortured 'kneeling on his hands and knees in his own urine'. Presumably we are meant to conclude that the prisoner is an animal who deserves the treatment that causes him to be kneeling in his own urine. Another pro-torture pundit describes individuals as 'sneering and foaming at the mouth'. Presumably we are meant to conjure up images of rabid dogs.

Often, however, pro-torture arguments dehumanise the potential victims of torture by literally removing any humanising detail. We are told nothing about the would-be bomber in the ticking bomb case, other than that he (and it is usually a 'he') is a 'terrorist' or 'fanatic'. A fanatic is by definition someone whose motivations are unintelligible to us. Empathy requires some sense of shared motivations, or at least motivations that we can understand. It is impossible to empathise with someone who is described only and simply as a fanatic.

That the victim of torture is usually a 'he' is also significant. Generally we are less likely to feel

sympathetic towards or empathise with males than females. However, the use of the male pronoun also allows us to avoid one of the implications of this argument. The favoured method of torturing females in the real world is rape. If the pro-torture argument actually worked, we would be justified in raping women.

Of course the use of the term 'terrorist' is the most loaded term in these arguments. But although torture advocates write page after page defining the concept of torture and sometimes listing torture techniques, none, as far as I am aware, attempt to define the term 'terrorist'. The 'terrorist's' motivation is a blank space, as we are never told what motivates them in these arguments, and so it is impossible to

envisage this argument from their point of view. If we leave aside the emotive appeals to the feelings of the relatives and friends of the bomb victims, we are left only with the point of view of the would-be torturer. We are intended to envisage the situation from the torturer's point of view.

Although we never know what motivates the 'terrorist' in these arguments, it is clear who we are supposed to imagine. The ticking bomb only ticks in London, New York, Spain or Sydney. It is never ticks in Iran or Palestine or even Algeria. It does

not tick in Vietnam.

But the soundness or otherwise of this argument does not depend upon the geographic location of the bomb. If the argument worked, it would work just as well for Hamas as it does for Israel; just as well for the government of Iran as the government of Australia.

While torture advocates never actually define the term 'terrorist', they seem to operate under the assumption that it is obvious anyone who threatens the lives of innocent civilians is a terrorist. This may be so, but it has implications. If we operate under this assumption, we are forced to concede that members of the French Resistance were terrorists; that Bomber Command in Britain was a terrorist organisation during World War II; that the government of Israel is a terrorist organisation; that the French and Spanish governments contain terrorists; and, yes, that the US government also contains terrorists. Arguably, all of these organisations have at one time or another targeted innocent civilians. Indeed, it may be difficult to find a government that has not.⁹

We are not, however, meant to come to this conclusion. It may be easy for us to *imagine* that

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torturing 'terrorists' is justified, if the 'terrorist' we have in mind is our enemy. It may be less easy to imagine that the Gestapo was justified in torturing members of the French Resistance, or that Iran is justified in torturing British soldiers. But this is the logical outcome of the pro-torture arguments.

Despite the often scholarly appearance of pro-torture arguments, their purpose is not to persuade us by reason. They have no rational argument. Their purpose is to play upon our ignorance of the reality of torture, to play upon our fears, and to encourage us to imagine avenging ourselves on the bodies of *our* enemies. Ultimately, their purpose is to insert the concept of 'justifiable torture' into the public discourse as a rationalisation for a particular political position, namely that of the current US administration.

Notes

- 1 Typically, such arguments are utilitarian, so that the best outcome is whatever outcome produces the greatest amount of utility. Sean Miller's argument, however, identifies the 'best' outcome as one that maximises the value of autonomy. His argument is nonetheless consequentialist and monist in respect to values. The structure of his argument is therefore the same as indicated here.
- 2 Bagaric and Clarke simply concede this point. Under the utilitarian argument, mistakenly torturing the innocent is merely an unfortunate consequence that is outweighed by the general usefulness of torture. Those who do not concede the point attempt to avoid this implication via the use of hypothetical situations and counterfactual arguments — literally arguments contrary to fact.
- 3 Ibn al-Shaykh al-Libi is favoured by torture advocates, but not only was he tortured over many months, it seems clear now that most of his confession was a fabrication.
- 4 Bagaric attempts to justify the claim that the majority of people would be in favour of using torture in the ticking bomb case by citing a survey conducted by CNN!
- 5 Usually, as in the case of Bagaric and Clark, this is a version of act-utilitarianism.
- 6 Oddly, Bagaric acknowledges that this is an implication of his principle but he does not address it as an objection. Presumably this is because he finds such an outcome acceptable.
- 7 Strictly, we should also count the loss of benefit to those who support the bomber. Utilitarianism does not distinguish between persons. The loss of benefit is a loss no matter who suffers it.
- 8 It is unsurprising that the producers of the television show *24* view the main protagonist as a patriot. Torturers do typically view themselves as patriots. The danger of this perspective

should be obvious given the history of this defence in World War II. The Nazi torturers also thought of themselves as patriots.

- 9 In cases where civilians are killed, governments often make a distinction between the intentional targeting of civilians and merely foreseeing that civilians will be killed. This defence is not open to torture advocates such as Bagaric and Clark. What matters under the utilitarian calculus are *outcomes*, not intentions.

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