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SPECIAL EMPHASIS ON THE TICKING TIME  
BOMB CASE STUDY**

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## **TORTURE IS NEVER JUSTIFIED: WITH SPECIAL EMPHASIS ON THE TICKING TIME BOMB CASE STUDY**

Nihshank Upadhyay<sup>1</sup>

"Torture is never justified, no matter who the victim is or what the circumstances are. It is a cruel and inhuman practice that has no place in the civilized world." - Kofi Annan. No one "shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment," according to Article 5 of the UDHR and it resonates with Article 7 of the ICCPR<sup>2</sup> which seeks to prevent and prohibit the same. The use of torture by state agents is typically directed toward a specific aim and used to further 'more important goals'<sup>3</sup>; This is akin to the notion that **dehumanization** might be a part of genocidal plans. For instance, a government may frequently utilize torture to terrorize its people and suppress dissent or other anti-government behaviour. Torture is categorically forbidden. This is consistent with Amnesty International's claim that torture can be seen as a "**price of dissent**,"<sup>4</sup> a distressingly common terror tactic used by oppressive authoritarian regimes to uphold a particular power structure or ideology and guarantee the rule of those in power. Historical examples like Stalin's Soviet Union, Nazi Germany, and Maoist China serve as stark and tragic illustrations<sup>5</sup> of the widespread and systematic use of torture. They underscore the need for international human rights standards<sup>6</sup> to prevent such atrocities in a century marked by numerous instances of such brutality. In light of these standards, this research essay has a **three-**

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<sup>2</sup> Juratowitch, B. (2008). Torture Is Always Wrong. *Public Affairs Quarterly*, 22(2), 81–90. <http://www.jstor.org/stable/40441483>

<sup>3</sup> Sullivan, C. M. (2014). The (in)effectiveness of torture for combating insurgency. *Journal of Peace Research*, 51(3), 388–404. <http://www.jstor.org/stable/24557487>

<sup>4</sup> Conrad, C. R., & Moore, W. H. (2010). What Stops the Torture? *American Journal of Political Science*, 54(2), 459–476. <http://www.jstor.org/stable/25652217>

<sup>5</sup> Twiss, S. B. (2007). Torture, Justification, and Human Rights: Toward an Absolute Proscription. *Human Rights Quarterly*, 29(2), 346–367.

<http://www.jstor.org/stable/20072802>

<sup>6</sup> Lippman, M. (1979). The Protection of Universal Human Rights: The Problem of Torture. *Universal Human Rights*, 1(4), 25–55. <https://doi.org/10.2307/761784>

**fold purpose.** I start by addressing the problems with torture. We would then look at justifications for torture, particularly the ticking bomb case study. Finally, we would then go on to show why the arguments, even if they might seem pertinent on the peripheral, fall flat when closely scrutinized.

### **I. ILLEGAL, IMMORAL AND INEFFECTIVE**

Torture is ineffective<sup>7</sup>, leading to false confessions, create hatred and resentment, radicalizing the survivors and communities forever. Testimonies from experts have shown that rather than obtaining the truth, torture is more likely to have the opposite effect, making it more difficult to resolve conflicts peacefully and combat extremism. Former US Government counterterrorism officer Mark Fallon emphasized the drawbacks<sup>8</sup> of utilizing torture during interrogations. He stressed that torture **not only produces false information but also has the opposite effect**, resulting in poor policies and judgments at the highest levels of government that have led to the loss of life. Fallon's comments, which were presented at a high-level torture session at the UN General Assembly in New York<sup>9</sup>, highlighted the fact that torture is unethical, illegal, and ineffective when used in interrogation techniques.

There have been a series of judgements highlighting the degrading and inhuman treatment people have to go through as a part of the torture<sup>10</sup>. When Ahmed Selmouni<sup>11</sup> was being held by the police in 1991, he reported being assaulted. The applicant had suffered "severe" agony as

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<sup>7</sup> <https://www.ohchr.org/en/stories/2017/10/torture-during-interrogations-illegal-immoral-and-ineffective>

<sup>8</sup> Johnson, D. A., Mora, A., & Schmidt, A. (2016). The Strategic Costs of Torture: How "Enhanced Interrogation" Hurt America. *Foreign Affairs*, 95(5), 121–132. <http://www.jstor.org/stable/43946963>

<sup>9</sup> Kelly, T. (2009). The UN Committee against Torture: Human Rights Monitoring and the Legal Recognition of Cruelty. *Human Rights Quarterly*, 31(3), 777–800. <http://www.jstor.org/stable/40389967>

<sup>10</sup> Blakeley, R. (2007). Why Torture? *Review of International Studies*, 33(3), 373–394. <http://www.jstor.org/stable/40072183>

<sup>11</sup> Selmouni versus France (28 July 1999)

a result of acts of physical and emotional abuse, according to the court, and these actions were extremely cruel and serious. It discovered breaches of Articles 3 (which forbids torture and cruel treatment) and 6 para, 1 (*which guarantees the right to a speedy trial*). This is the **first instance of France** being accused of violating Article 3. Another significant judgement is that of "The former Yugoslav Republic of Macedonia" up against El-Masri. (December 13, 2012). Herein the Court determined that "the former Yugoslav Republic of Macedonia"<sup>12</sup> was accountable for his mistreatment and torture, both while he was still inside the nation and after his unlawful "*rendition*" to the US authorities. Nils Melzer, the UN Special Rapporteur on torture, expressed serious concerns about Israel's Supreme Court decision related to the 2007 Assad Abu Ghosh case<sup>13</sup>. Despite using coercive "*pressure techniques*" on the Palestinian inmate, the verdict shields security officials from criminal inquiry. Melzer fears that this creates a risky precedent that would undermine the international ban on torture and effectively give people "*permission to torture*". He urges Israel's government at all levels to take into account both **its responsibilities to other nations** and the **widespread opposition to such actions**. The Supreme Court here accepted the use of coercive tactics but maintained that they didn't constitute torture. Melzer vehemently disagrees with this position, contending that any method that causes enough pain to compel a confession or collaboration constitutes torture, as was the case in that case.

When dealing with suspects, especially under pressure, science and history have demonstrated the **unreliability of evidence obtained by torture**. When examining the terrorist Anders Breivik, Nina Holm Andersen<sup>14</sup>, an expert in investigative interrogation, emphasized the

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<sup>12</sup> El-Masri v. The former Yugoslav Republic of Macedonia [GC], 2012, § 195

<sup>13</sup> UN News. (2018). UN expert alarmed at Israeli Supreme Court's Ruling. <https://www.ohchr.org/en/press-releases/2018/02/un-expert-alarmed-israeli-supreme-courts-license-torture-ruling>

<sup>14</sup> UN News. (2017). Empathy, not torture, most effective: Norwegian investigator. <https://news.un.org/en/audio/2017/10/633862>

importance of empathy above sympathy. She emphasized the need of providing suspects with a safe and comfortable environment since doing so will encourage them to provide more reliable information<sup>15</sup>. In order to stop abusive behaviour and enhance the dependability of information obtained during interrogations, Andersen suggested the use of Investigative Interviewing Model<sup>16</sup>, which places a focus on open inquiry, meticulous preparation, and systematic questioning techniques.

## II. BENTHAM AND THE ‘TWO CIRCUMSTANCES’

Long before the contemporary international human rights movement emerged, Jeremy Bentham spoke about the idea of torture<sup>17</sup> and when it may be justified in his works from the middle of the 1770s until 1780. According to him, the fact that torture may be terminated right away after serving its intended purpose sets it apart from other forms of punishment. This, in contrast to punishment, which frequently includes the danger of administering more punishment than required, is a benefit of torture, in Bentham's opinion. He contends that there are two circumstances<sup>18</sup> in which torture may be justified: first, **when someone is forced to do something that is unquestionably within their power to do, and their suffering will continue until they comply**, making it unlikely that they are innocent; and second, when someone is asked to do something that is likely within their power, although they may suffer, the public interest in their compliance **outweighs the risk of an innocent person** suffering. Arguably the most popular thought experiment of the

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<sup>15</sup> King, R. R. (1996). Reputation Formation for Reliable Reporting: An Experimental Investigation. *The Accounting Review*, 71(3), 375–396.

<http://www.jstor.org/stable/248294>

<sup>16</sup> Locander, W., Sudman, S., & Bradburn, N. (1976). An Investigation of Interview Method, Threat and Response Distortion. *Journal of the American Statistical Association*, 71(354), 269–275. <https://doi.org/10.2307/2285297>

<sup>17</sup> Twining, W. (1975). The Contemporary Significance of Bentham's Anarchical Fallacies. *ARSP: Archiv Für Rechts- Und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy*, 61(3), 325–356. <http://www.jstor.org/stable/23679151>

<sup>18</sup> Alston, G., (2012) Norm Regression: The Norm Against Torture' in International Human Rights. 1<sup>st</sup> Edition, 238-267.

utilitarian perspective of Bentham, especially the second circumstance can be seen in the ‘Ticking Bomb Example’<sup>19</sup>.

### III. THE TICKING BOMB: UTILITARIAN PERSPECTIVE

As evident the moral debate surrounding torture is a complex one and philosophers, policymakers have argued in favour of the legality of torture frequently citing the different versions of the ticking bomb scenario. Attributed to Bentham and well articulate by Henry Shue in 1978<sup>20</sup>, the ticking bomb example is a hypothetical scenario where a fanatic has planted a covert nuclear device in Paris (or for any place for that matter) with no time for evacuations. The only way to avert a terrible tragedy is to torture the perpetrator until they reveal the device's location and it is disarmed.

The moral decision seems clear-cut from a utilitarian perspective<sup>21</sup>: if torturing one guilty person may save the lives of many innocent people, then it becomes morally required to use torture. In contrast to deontological ethics, which may enforce categorical prohibitions against harming individuals for the sake of a greater good, this utilitarian viewpoint does not hold any absolute moral obligations. According to utilitarians, any action can be ethically acceptable **as long as it is consistent with the utilitarian goal of promoting general well-being**.

### IV. ASSUMPTIONS AND THE DEBUNKING

By questioning the fundamental premises of the Ticking Bomb Scenario<sup>22</sup>,

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<sup>19</sup> Luban, D. (2005). Liberalism, Torture, and the Ticking Bomb. *Virginia Law Review*, 91(6), 1425–1461. <http://www.jstor.org/stable/3649415>

<sup>20</sup> Shue, H. (1978). Torture. *Philosophy & Public Affairs*, 7(2), 124–143. <http://www.jstor.org/stable/2264988>

<sup>21</sup> Henschke, A. (2014). Taking Terrorism, Ticking Time-Bombs, and Torture Seriously [Review of *Terrorism, Ticking Time-Bombs, and Torture: A Philosophical Analysis*, by F. Allhoff]. *Human Rights Quarterly*, 36(2), 478–486. <http://www.jstor.org/stable/24518064>

<sup>22</sup> Kim, S.L (2005). Hypothetical Torture in the “War on Terrorism”. *Journal of National Security Law & Policy*. [https://jnslp.com/wp-content/uploads/2010/08/04\\_Scheppele\\_Master\\_c.pdf](https://jnslp.com/wp-content/uploads/2010/08/04_Scheppele_Master_c.pdf)

it becomes clear that any real-world "exception" allowing for torture would have considerably wider ramifications. This is due to the fact that decisions are made in the actual world with variable degrees of ambiguity and insufficient knowledge. By disproving these presumptions, it becomes clear that the proposal under consideration would constitute a new norm that would sanction torture, which would be a serious violation of morals and human rights. It effectively subscribes to the "**ends justify the means**" school of thought, which is in line with the moral standards of the terrorists it strives to eradicate. Article 2 of the Convention Against Torture (CAT) stipulates that torture is forbidden in all situations, without exception<sup>23</sup>, and in a plain and unmistakable manner. This clause emphasizes the **prohibition's absoluteness and non-negotiable character**, stressing that no circumstance, even the Ticking Bomb Scenario or any other ostensibly acceptable explanations, may justify or excuse the use of torture.

The process of disproving these presumptions also highlights how little the pure Ticking Bomb Scenario<sup>24</sup> adds to a thorough analysis of the torture debate. It brings up various issues: First of all, determining the precise amount of imminence that authorizes torture is difficult because in a real-world setting, determining the urgency of an oncoming assault becomes a subjective assessment. Second, it is imprecise to estimate the number of lives at risk high enough to justify torture. Third, it is impractical to assume that the person in prison is the offender with knowledge that may be used to take action. Fourth, **it may be unreasonable to expect correct information within the needed timetable** from a tortured person since it might result in disinformation and misdirection.

Policymakers who use situations like the Ticking Bomb Scenario to

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<sup>23</sup> Wolfendale, J. (2006). Training Torturers: A Critique of the "Ticking Bomb" Argument. *Social Theory and Practice*, 32(2), 269–287. <http://www.jstor.org/stable/23562087>

<sup>24</sup> Bufacchi, V., & Arrigo, J. M. (2006). Torture, Terrorism and the State: a Refutation of the Ticking-Bomb Argument. *Journal of Applied Philosophy*, 23(3), 355–373. <http://www.jstor.org/stable/24355182>

support the use of torture<sup>25</sup> in dire situations use moral justifications, framing their heinous actions as moral necessities due to the lives that could be saved, according to Bandura's 2016 book "Moral Disengagement: How People Do Harm and Live with Themselves". By contrasting the option to torture with the catastrophic effects of a future terrorist strike, this argument, which **Bandura refers to as an advantageous analogy**, establishes the moral justification of torture. Aside from using euphemism terminology to downplay the harshness of the deed, torture is also often referred to as "*enhanced interrogation*."

## V. PROMISING ALTERNATIVES

Recalling the Ticking Bomb Scenario, let's envision a scenario in which persuading a prisoner to provide crucial information is the difference between defusing a bomb and saving many lives<sup>26</sup>. What steps should we take if we realize that using torture to get this information is ineffective? According to recent studies, non-coercive interrogation tactics can be more effective than coercive ones at persuading people to provide information. Strong interpersonal skills and the **use of rapport-building tactics** are essential components in conducting successful interrogations, according to professional military and intelligence interrogators<sup>27</sup>. According to a different research, non-coercive tactics, in particular rapport-building approaches, raise the possibility that prisoners would divulge important information, do so earlier in the interview, and give more thorough replies.

**Non-coercive tactics** are also seen to be more successful<sup>28</sup> with

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<sup>25</sup> Zahora, J.. "Between Sovereignty and Biopolitics: The Case of Enhanced Interrogation Techniques." *Perspectives* 22, no. 2 (2014): 87–109.

<http://www.jstor.org/stable/24625254>.

<sup>26</sup> Hannah, M. (2006). Torture and the Ticking Bomb: The War on Terrorism as a Geographical Imagination of Power/Knowledge. *Annals of the Association of American Geographers*, 96(3), 622–640. <http://www.jstor.org/stable/4124436>

<sup>27</sup> Newbery, S. (2015). *Interrogation, intelligence and security: Controversial British Techniques*. Manchester University Press. <http://www.jstor.org/stable/j.ctt1mkbczd>

<sup>28</sup> Lauritzen, P. (2013). *The Ethics of Interrogation: Professional Responsibility in an Age of Terror*. Georgetown University Press. <http://www.jstor.org/stable/j.ctt2tt6qg>

uncooperative people because they take psychological factors into consideration. Interviewers may be able to open up more productive communication channels by avoiding severe pressure that leads prisoners into psychological detachment and acknowledging the mental fortitude associated with strong convictions. The ICCPR's Article 10 stresses the humane treatment<sup>29</sup> of those who are deprived of their liberty, including those who are being held while they await trial. This clause underscores the need of treating people with dignity, especially while they are being held for security reasons or while an inquiry is ongoing. These results suggest a more moral and efficient method of information extraction<sup>30</sup>, albeit additional study is required, particularly in the context of terrorist interrogations.

To conclude **even when used as a desperate last resort, torture calls into question** our humanity and the values that support a just and civilized society. Individuals who support torture might believe that who oppose it are naive moral absolutists who live in ivory towers and ignore the complexity of real-world situations. They contend that by upholding the strict rule on torture, absolutists limit individuals working in the field's capacity to resolve challenging security issues. This argument, however, disregards the wider ramifications of using torture, both ethically and practically. The actual world is obviously complicated, but it is precisely those trying circumstances that make defending the fundamentals of human rights and international law so important. In the words of Former UN High Commissioner for Human Rights Louise Arbour<sup>31</sup> "*The true test of a society's commitment to justice is how it treats those in its custody, even*

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<sup>29</sup> Christopher Harland. (2000). The Status of the International Covenant on Civil and Political Rights (ICCPR) in the Domestic Law of State Parties: An Initial Global Survey through UN Human Rights Committee Documents. *Human Rights Quarterly*, 22(1), 187–260. <http://www.jstor.org/stable/4489272>

<sup>30</sup> Vrij, A., Meissner, C. A., Fisher, R. P., Kassin, S. M., Morgan, C. A., & Kleinman, S. M. (2017). Psychological Perspectives on Interrogation. *Perspectives on Psychological Science*, 12(6), 927–955. <https://www.jstor.org/stable/48596960>

<sup>31</sup> Arbour, L. (2008). Message from Louise Arbour: United Nations High Commissioner for Human Rights. *Refugee Survey Quarterly*, 27(3), 13–15. <http://www.jstor.org/stable/45054328>

*the most heinous criminals."*