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STATE TORTURE

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Just two months after the 9/11 attacks in New York City and Washington DC, Fox TV broadcast the first of their series “24”. The main protagonist is Jack Bauer (played by Kiefer Sutherland), an agent of the Los Angeles Counter Terrorism Unit. The first episode, which was filmed before 9/11, focuses on a terrorist attempt to blow up a plane and assassinate a Democratic presidential candidate. But the series’ main theme is torture. Suspects are electrocuted, beaten, cut with knives, burned, and suffocated; their families are threatened with execution. In this series, torture works: the suspects almost always confess. The series won an Emmy Award for Outstanding Drama Series and had a weekly audience of 15 million views. Millions more bought the DVDs.

Although not the first to depict torture as necessary in the fight against a pernicious enemy, “24” is a typical example of a trend within film and television drama since 9/11. While in earlier films – such as the 1976 Marathon Man, starring Dustin Hoffman – the hero was a victim of torture, more recent representations present the hero as a perpetrator of torture. The Bauer character is a morally dedicated, self-sacrificing officer of the people, hell-bent only on safeguarding democracy. Who would not torture a terrorist if it would save hundreds of innocent lives? In “24”, torturing caricatured villains is portrayed redemptive and ennobling for the “good guys”. As Bauer reiterates in various ways throughout the series: “I don’t wanna bypass the Constitution, but these are extraordinary circumstances”.

In the first five series of “24”, there were 67 scenes of torture. In terms of the number of torture scenes “24” is extraordinary, however torture as entertainment has flourished in recent years. In Threat Matrix, for example, the plot hinges on questions of the necessity of torture and there are courtroom scenes in which a human rights observer based at Guantánamo Bay is undermined and another witness is asked whether he would continue objecting to torture if he were able to prevent 9/11. Torture is “the price we pay so we can sleep at night”, viewers were informed. It is routine in programmes such as Hawaii 5-O and NCIS Los Angeles to threaten to ship suspects off to “GITMO”; The Agency was made with the support of the CIA; and crime dramas such as Law and Order, Without a Trace, Bones, and Lie to Me regularly feature torture scenes. In other words, the needs of national security have become a common theme in a range of television and filmic genres. Torture has also devolved to “ordinary citizens”, rather than primarily trained members of the security forces. Even when Bauer is supposed to be acting as a representative of the Counter Terrorism Unit, he is effectively “going rogue” to rectify what he regards as inadequate responses by the government. Indeed, five of the eight series of “24” show Bauer working independently of the CTU. The series encourages a neoliberal approach to fighting terrorism in which we all become “citizen torturers”.

I don’t think we should underestimate the role of series such as “24” in lowering the bar to torture. At least some research has shown that when students were shown films that showed effective uses of torture, they not only became more favourable to such practices but also more willing to publicly express their support (in the form of petitions to Congress, for example) for official legitimization of such practices. Contrary to expectations, even programmes that showed torture to be ineffective did not reduce support.



This should not surprise us. After all, even legal experts have made use of TV programmes such as “24” in arguing in favour of torture (one example is John Yoo, Deputy Assistant Attorney General of the US and author of the 2002 Torture Memo, which briefed the CIA, Department of Defense, and the president that acts of torture were legally permissible). Ubiquitous torture scenes in “24” were regarded as dangerous by U.S. Army Brigadier General Patrick Finnegan, the dean of the United States Military Academy at West Point. Finnegan even asked to meet the creators of “24” in order to impress upon them the damage their series was doing to the image of the US internationally. Along with three of the most experienced military and F.B.I. interrogators in the country, Finnegan warned that the cadets he taught at West Point (and who would later be deployed to Iraq and Afghanistan) were imbibing a wrong view of what was legal in war. The cadets loved “24”, he told reporter Jane Mayer, and would tell him “If torture is wrong, what about ‘24?’”. These cadets believed that Bauer’s actions were patriotic and necessary. A similar concern was expressed by former West Point law professor Gary Solis. He observed that “Jack Bauer is a criminal. In real life, he would be prosecuted”, yet Solis found it almost impossible to convince his students that they should not do “Whatever it takes” (Bauer’s catchphrase). Solis complained that “I tried to impress on them that this technique [torture] would open the wrong doors, but it was like trying to stomp out an anthill.”

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In “24”, Bauer embodies three aspects of torture-debate in the contemporary period. First, the return of torture in western democracies in the late twentieth century; second, changes in the form of torture, including the shift in British and American torture literature to “torture light”; third, the problematic use of “ticking bomb” arguments. I conclude with some reflections on how opponents of torture can counter the current trend.

What is “torture”? This is a highly contentious question that I don’t have time to explore in the next 40 minutes. While admitting that the definition is based on a particular western construction of law and has been astutely criticized by many scholars, I will be following the definition given by the United Nations Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment and Punishment. According to this Convention, torture is

“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 [sic] 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”.

Importantly, according to this definition, torture is an activity undertaken by state authorities and it includes psychological as well as physical harms. The main aims of torture include “harvesting” information, eliciting confessions, spreading terror, and exerting power over groups perceived to threaten the state or its citizens. It involves a range of practices, which have changed over time. The medieval “rack” has been replaced by electrical shocks; psychological forms of torture and “stress positions” have been substituted for more bloody cruelty. Because they do not necessarily leave a physical mark, the latter kind of practices have grown: in part, this has been due to increased international surveillance by human rights organizations.

The revival of torture in film, television, and the mass media is mirrored in real-life torture carried out by western governments. Although state torture was officially outlawed in France in the 1780s and in Europe during the nineteenth century, in the late twentieth and early twenty-first centuries, it has returned as an instrument of state policy. For many commentators, this is surprising, especially given that the reintroduction of torture during the Second World War as well as by authoritarian regimes in the postwar years was routinely reviled by commentators on both the political Left and Right.

Why was torture rejected from the eighteenth century and why, in liberal democracies, has it been recently revived? Again, these questions have generated a huge literature but, generally, scholars have drawn attention to four shifts. In the eighteenth century, opposition to torture tended to focus on broad assumptions about “civilized values”,



its inefficacy, and the way it brutalized torturers. Torture was increasingly regarded as unreliable; it was thought to be used too indiscriminately; it was unjust, because innocent people were much more susceptible to the pain than “hardened criminals”. According to this argument, the enlightenment interest in the individual and his or her Rights followed the rise of a new sensibility. Increasing respect for the bodily integrity of other people both forged and advanced a sentimental sympathy for the human lot. Torture was antithetical to enlightenment values and especially those held by liberal democracies. Enlightenment discourse insisted that torture was a relic of “medieval barbarism” (as historian Henry C. Lea put it in 1866) and “atrocious and barbarous”, in W. E. H. Leaky’s words.

Other scholarship has turned instead to explanations based on the introduction of new forms of discipline, changing norms around legal proof, and notions of pain. Most famously, Michel Foucault argued that state authorities increasingly recognized that there were more effective ways to create docile populations (to “discipline”) than torture. John Langbein points to changes in the law. The formidably high standards of legal proof that were required to convict criminals and traitors in earlier periods (in which there had to be an eyewitness or confession) were relaxed. This meant that wrong-doers could be punished for their crimes without the need for a forced confession. Finally, historians such as Lisa Silverman draws attention to the role played by ideas about pain in the torture debates. Prior to the eighteenth century, pain fulfilled a positive function, both in terms of individual redemption and in rites of communal purification. For the community, trial by ordeal and agonising punishments in public were sacrificial rites, often accompanied by festivals to celebrate the community’s recovery from injury. By the eighteenth century, such ideas were in decline. Pain was secularized and no longer viewed as a way to “the truth”.

The problem with these four arguments is that they don’t help us explain why there has been a revival of torture from the late twentieth century in countries such as the US and UK. Indeed, these four theories would predict an increased abhorrence to torture in recent times. To explain this, we need to pay attention to significant shifts in the nature of modern wars, especially the dramatic rise in “three-block wars” as well as unconventional and counter-insurgency armies, the growth in the number of prisoners of war, and conflict on “home soil”. Unlike the “world wars” of the early and mid-twentieth century in which individual soldiers who had been taken prisoner possessed little information that could be of value to the opposing side, the opposite was the case with prisoners in counterinsurgency conflicts and the “war on terror”. “Three-block wars” (that is, wars in which, within a three-block radius, soldiers were expected to fight insurgents, control riots, and spread peace) not only increased the value of individual intelligence but also blurred the identity of “the enemy”. Although it is important to observe that the pro-torture debates began in the US prior to 9/11, it is nevertheless true that with the movement of terroristic violence to the “homeland”, torture was increasingly seen as necessary. Combined with the incredible expansion of technologies and techniques of surveillance, the ability to potentially identify actors who might either have information or be useful to terrorise in advance of any attack was increasingly plausible.

In response to these shifts opponents of torture have employed a very different arguments when compared to their predecessors. Twentieth-century torture debates have focused more on human rights and the psychological costs to victims. “Trauma” has become the catchword; therapy, the solution. Increased awareness that torture is authorised by the highest state officials, activists have also increasingly moved attention away from issues of national criminal justice systems towards higher authorities – that is, international law. The codification of torture in international law was most notable in the 1948 Universal Declaration of Human Rights.

Nevertheless, torture has seen a revival. The Spanish government tortured members of ETA; in Northern Ireland, the British government targeted IRA suspects; in the detention facilities in Abu Ghraib and Guantánamo Bay, torture was openly practised and defended. President Trump has repeatedly promised to reinstitute torture as official government policy. He boasted that his administration would bring back “a hell of a lot worse than waterboarding”. For opponents of such a politics, the ban on coercive interrogations that was signed by President Obama in 2009 and 2015 contains an important loophole that could be exploited by Trump. The Obama ban limited interrogation methods to those tactics mentioned in the Army Field Manual; it also mandated a review of that manual every three years. However, Appendix M of the Army Field Manual allows practices such as solitary confinement, sensory deprivation, and denial of sleep. As Adam D. Jacobson warns, it is “conceivable that tactics



could be added to the Manual that would contravene the intention of, but stay within” the law. Even without a change in the Manual, extended use of the currently acceptable tactics would constitute torture.

More worryingly: pro-torture policies are endorsed by a large proportion of the American population. In 2016, 63 per cent of Americans (and 82 per cent of Republicans) agreed with the proposition that “torture against suspected terrorists to obtain information about terrorist activities” could be sometimes or often justified. Complicity in torture goes even deeper. As A. W. McCoy explained in *A Question of Torture: CIA Interrogation from the Cold War to the War on Terror* (2006), anyone searching for the causes of torture practices at Abu Ghraib need to point fingers at

“the brilliant scholars who did the psychological research, the distinguished professors who advocated its use, the great universities that hosted them, the august legislators who voted funds, and the good Americans who acquiesced, by their silence, whenever media or congressional critics risked their careers for exposés that found little citizen support”.

What used to be unspeakable is now being voice in mainstream fora. Indeed, the defense of torture is no longer viewed with abhorrence. Its pros and cons are widely debated – something that would be inconceivable if the subject was genocide, for example. Some critics of this trend have even argued that the very act of debating whether torture is legitimate or not is a form of collusion. As philosopher Slavoj Žižek explained, discussions that “do not advocate torture outright, [but] simply introduce it as a legitimate topic of debate, are even more dangerous than an explicit endorsement of torture”. The “mere introduction of torture as a legitimate topic allows us to entertain the idea while retaining a pure conscience”. The mass circulation of torture images and rhetoric has dulled their political impact, becoming rapidly assimilated into a society already saturated with spectacle. In the words of popular radio show hosts, Rush Limbaugh (a close friend of the co-creator and executive producer of “24”) referring to photographic evidence of the abuses at Abu Ghraib,

“You know, if you look at – if you, really, if you look at these pictures, I mean, I don’t know if it’s just me, but it looks like anything you’d see Madonna or Britney Spears do onstage. Maybe I’m – yeah. And get a NEA [a National Endowment for the Arts] grant for something like this. I mean, this is something that you see onstage at Lincoln Center from an NEA grant. Maybe on *Sex and the City* – the movie”.

Immediately after the revelations at Abu Ghraib, men and women posted photographs of themselves on the internet “doing a Lynndie”. Detailed internet instructions on “doing a Lynndie” starts with the phrase: “Find a victim who deserves to be ‘Lynndied’”, “Make sure you have a friend nearby with a camera ready to capture the “Lynndie”, “Stick a cigarette (or pen) in your mouth and allow it to hang slightly below the horizontal... tilt your upper body slightly forward but lean back on your right leg. Make a hitchhiking gesture with your right hand and extend your right arm so that it's in roughly the same position as if you were holding a rifle. Keeping your left arm slightly bent, point in the direction of the victim and smile”. The smile is important: it bestows individuality and agency in contrast to the degraded and objectified “victim”.

If this popular art can be dismissed as trashy snap-shots, this excuse does not hold when we turn to so-called “high art”. High fashion photographers (such as Steven Meisel in the September 2006 Italian issue of *Vogue*) adopted poses from this War on Terror, including ones drawn explicitly from the torture in Abu Ghraib.

Far much greater importance is the fact that torture is routinely justified reputable legal circles. The distinguished lawyer and civil libertarian Alan Dershowitz even defended the use of torture on the grounds of human rights. In his words, “we cannot reason with them [terrorists]... but we can – if we work at it – outsmart them, set traps for them, cage them, or kill them”. It is no coincidence that he employs a language more typically used to refer to the abuse of animals: the tortured are no longer fully human. He proposed allowing judges to issue “torture warrants”, which would license authorities to torture individuals (he called them “cunning beasts of prey”) suspected of concealing information about terrorist acts. The individualist, self-sacrificial torturer (such as Jack Bauer) would be replaced by objective judges. And the needle under the fingernail would, of course, be sterilised.



Dershowitz is unfortunately not alone. Michael Ignatieff was formerly the Director of the Harvard University Carr Center for Human Rights and leading member of the Liberal Party of Canada. In [The Lesser Evil: Political Ethics in an Age of Terror](#) (2004), though, Ignatieff publicly accepted torture on political realist grounds: it was the “lesser evil”. The first sentences in his book declared that “When democracies fight terrorism, they are defending the proposition that their political life should be free of violence. But defeating terror requires violence. It may also require coercion, deception, secrecy, and violation of rights”. Although Ignatieff did not want torture to become a “general practice” within democracies, he argued that “permissible duress might include forms of sleep deprivation that do not result in harm to mental or physical health, and disinformation that causes stress”.

This so-called “torture lite” (that is, exposure to heat and cold, use of drugs to confuse prisoners, forcing prisoners to stand for days, and subjecting them to “rough treatment”: more on this soon) was also supported by the Jean Bethke Elshtain, formerly Professor of Social and Political Ethics at the University of Chicago’s Divinity School and member of President Bush’s Council on Bioethics. Elshtain argued for an uncompromising, absolute condemnation of terrorist acts but turned into a utilitarian when she assessed torture practices committed by Americans.

The organisers of a symposium entitled “Torture: When, If Ever, Is It Permissible”, hosted by the University of San Francisco, even invited Janis Karpinski, the former U.S. Commander of the military police brigade that oversaw Abu Ghraib while torture was taking place in its cells, to give the symposium’s keynote lecture. Two speakers from the Deakin Law School (Melbourne, Australia) garnered the headlines, though, when they insisted that torture was not only legitimate, but necessary. Mirko Bagaric and Julie Clarke’s justification for torture was eventually published in the [University of San Francisco Law Review](#) (2004-5), under the provocative title, “Not Enough Official Torture in the World? The Circumstances in which Torture is Morally Justifiable”. For them, Dershowitz’s proposal to issue “torture warrants” on the pragmatic grounds of “harm minimization” (that is, that allowing torture to take place under regulated conditions would reduce the total amount of suffering in the world) did not go far enough. Rather, they pointed out that “torture is indeed morally defensible, not just pragmatically desirable”. They pleaded for “dispassionate analysis”. If the “propriety of torture” is to be seriously considered, its “pejorative connotation” has to be ignored. For them, the relevant variables include the number of lives at risk, the immediacy of the harm, the availability of other means to acquire information, the level of wrongdoing of the agent, and the likelihood that the agent actually possesses the relevant information. They sneered at those who declared that all persons have a right not to be tortured. “How can we distinguish real from fanciful rights?” they asked. If rights are in conflict, which ones should take priority? For them, even the right to life was not sacrosanct.

Bagaric and Clarke argued for “hedonistic act utilitarianism”, in which the morally right action is “that which produces the greatest amount of happiness or pleasure at the least amount of pain or unhappiness”. They tackled head-on one of the most famous objections to utilitarianism – that of Henry John McCloskey in [Meta-Ethics and Normative Ethics](#) (1969). McCloskey set up a hypothetical situation in which a U.S. sheriff was faced with the choice of either framing an African-American man for rape or risking loss of life as a result of serious race riots that the sheriff predicted would occur if the African-American was not framed. For McCloskey, this case demonstrated what was wrong with utilitarianism: it justified framing the innocent man. Significantly, McCloskey was an Australian atheist, writing during the U.S. Civil Rights Movement. He assumed that his readers would also accept that it was wrong to frame a man simply because of the colour of his skin. In contrast, Bagaric and Clarke were writing in a very different socio-political context – that of war in Afghanistan and Iraq, and President George W. Bush’s first term in office. “Bad as it seems”, they contended,

“framing the African-American, imprisoning the innocent, and torturing the terrorist are certainly no more horrendous than the decisions history has shown we have made in circumstances of monumental crisis.... The decisions we do actually make in a real life crisis are the best evidence of the way we actually do prioritize important, competing principles and interests. Matters such as rights and justice are important, but, in the end, are subservient to and make way for the ultimate matter of significance: general happiness”.

Furthermore, they continued, “punishing the innocent and torturing the culpable is, in fact, no worse than other activities we condone”. To squeamish people who fret about “slippery slopes”, they calmly remarked that the



“floodgates are already open”. The lawful use of torture would not necessarily lead to its propagation, they maintained, and “promulgating the message that the ‘means justifies the end’ [sometimes] [sic] is not inherently undesirable. Debate can then focus on the precise means and ends that are justifiable.” Critics of such an approach might observe that, in this line of argument, the “state of exception”, or the temporary suspension of the law, has become the law.

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Most of these debates have come from American and Australian legal scholars and commentators. It is important, however, not to fall into the trap of thinking in terms of “American exceptionalism”. Britain has its own history of torture, stemming largely from counter-insurgency operations in Palestine, Malaya, Kenya, Cyprus, British Cameroons, British Guyana, Aden, Brunei, Malaysia, and the Persian Gulf.

But torture has also been very much “closer at hand”, most notably in Northern Ireland at the peak of the “Troubles” when there were fears that Northern Ireland was on the brink of a civil war. Torture practices followed the introduction of internment without trial from 9 August 1971. On the first day alone, more than 340 Republicans were arrested. An “intelligence research unit” at Maresfield (Sussex) put on a course on sensory deprivation, as well as other topics, for the Royal Ulster Constabulary. The interrogative techniques (known as the “five techniques”, that is, food deprivation, sleep deprivation, hooding, noise bombardment, and forced standing) learnt at this unit were then used against prisoners suspected of IRA involvement. Fourteen detainees were subjected to the “five techniques” in Hut 60 at Ballykelly airfield in County Derry (this was the “Special Interrogation Centre”): the torturers were twenty RUC Special Branch officers.

When the torture became publicly known, the government commissioned first the Compton report and then the Parker Inquiry. The Compton Report decreed that the physical treatment of the men constituted “a measure of ill-treatment” but had not been “carried out with a view to hurting or degrading the men”. Similarly, the majority report of the 3-person Parker Inquiry (signed by the two privy counsellors Lord Parker and Boyd-Carpenter) concluded that there was “no reason to rule out these [five] techniques on moral grounds”, adding that “it is possible to operate them in a manner consistent with the highest standards of our society”. Lord Gardiner’s minority report, however, condemned this approach. Gardiner insisted that torture was likely to result in lasting distress and had contributed no intelligence that could not have been got in other ways. Gardiner believed that the forms of interrogation used by British interrogators during the Second World War – that is, the use of informers and hidden microphones – had been more effective. In his words,

“The blame for this sorry story, if blame there be, must lie with those who, many years ago, decided that in emergency conditions in Colonial-type situations we should abandon our legal, well-tryed and highly successful wartime interrogation methods and replace them by procedures which were secret, illegal, not morally justifiable and alien to the traditions of what I believe still to be the greatest democracy in the world”.

Gardiner’s minority report, in conjunction with moral outrage both in Northern Ireland and internationally, divided Ted Heath’s Conservative government. In Cabinet, Home Secretary Reginald Maudling argued that it was important to remember that

“the lives of British soldiers and of innocent civilians depended on intelligence. We are dealing with an enemy who had no scruples and we should not be unduly squeamish over methods of interrogation in these circumstances”.

The key question was: when does “ill-treatment” tip into “brutality” or torture? Reluctantly, the Prime Minister, Edward Heath, accepted Lord Gardiner’s minority report. The motive for his decision was two-fold: first, to prevent the case being taken to the European Human Rights Commission and, secondly, because the government was preparing “to initiate a radical change of policy in Ulster – direct rule – which necessitated concessions being made to Catholic opinion”. On 2 March 1972, Heath announced that the “five techniques” were to be banned. Psychiatrists testified to the extreme, long-term harm that had been inflicted on the torture victims and, by 1976,



all fourteen men had received financial compensation. The damage had been done: revelations of the abuse had led to increased support for and membership of the IRA.

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I have spent some time detailing the case of Northern Ireland, in part because it shows powerful British jurists and politicians defending torture, but also because it is a textbook example of the use of what some people have called “torture lite”, the coy term for “enhanced interrogation”. The term refers to a range of techniques that, unlike traditional forms of torture, do not physically mark the victim's body. These techniques draw heavily on psychological knowledge. Indeed, psychology pervades the entire 1963 KUBARK Counterintelligence Interrogation manual, the CIA's instruction book for its operatives. The manual claimed that it hoped to “bring pertinent, modern knowledge to bear” upon interrogation practices, a strategy that will bring “huge advantages” compared to “a service which conducts its clandestine business in eighteenth century fashion”. It was, KUBARK insisted, “no longer possible to discuss interrogation significantly without reference to the psychological research conducted in the past decade”, although “every effort has been made to report and interpret these findings in our own language, in place of the terminology employed by the psychologists”. The manual maintained that it was “a waste of time and energy to apply strong pressures on a hit-or-miss basis if a tap on the psychological jugular will produce compliance”. What was spelt out were torture techniques similar to those used on suspected IRA prisoners in Northern Ireland: isolation, noise bombardment, stress positions (such as forced standing or kneeling), extreme heat or cold, sleep deprivation, and personal humiliation. All of these were justified on the grounds of the latest research in psychology.

“Torture lite” has proven rhetorically effective. It distinguished “uncivilised”, “sadistic” torturers (who took pleasure in their powers to bruise, wound, and batter) from “respectable” ones (who conscientiously employed the latest psychological techniques to humiliate and degrade). These civilized torturers were professionally trained; their “work” was framed in terms of the interests of democracy; they were often supported by medical personnel. Since there was a carefully delineated “chain of command”, their role could be spun as “anti-terrorist officers” or “security agents”, never “torturers”. Public consciences were more easily soothed into turning a blind eye to what was being done “in our name”.

The consciences of those who perpetuated “torture lite” were also comforted by the idea that their acts were necessary for a greater goal. They, too, were lulled into a sense of legitimacy: they observed rules and their work was overseen by experts, including white-coated physicians and psychologists. Thomas Nagel's concept of “moral phenomenology” is useful here. “Moral phenomenology” observes that the way a person feels about carrying out a particular action affects how he morally assesses that act. An “employee” who is “gathering intelligence” or conducting an “interrogation” feels himself to occupy a morally different position to a “savage thug”.

Perhaps equally important was the way “torture lite” breaks the physical and temporal relationship between the torturer and his victim. After all, the torturer need not physical touch the victim and much of the suffering occurs when the torturer is out of the room. In “torture lite”, in other words, the victim becomes an active participant in her own abuse. The CIA's interrogation manual, KUBARK Counterintelligence Interrogation (1963), regarded this as its chief advantage. They boasted that “whereas pain inflicted on a person from outside himself may actually focus or intensify his will to resist, his resistance is likelier to be sapped by pain which he seems to inflict upon himself.” The manual then included a quotation from an unreferenced source that reads:

“In the simple torture situation the contest is one between the individual and his tormenter (... And he can frequently endure). When the individual is told to stand at attention for long periods, an intervening factor is introduced. The immediate source of pain is not the interrogator but the victim himself. The motivational strength of the individual is likely to exhaust itself in this internal encounter.... As long as the subject remains standing, he is attributing to his captor the power to do something worse to him, but there is actually no showdown of the ability of the interrogator to do so.”

This was what literary critic Elaine Scarry meant when she argued that



“Just as the interrogation, like the pain, is a way of wounding, so the pain, like the interrogation, is a vehicle of self-betrayal. Torture systematically prevents the prisoner from being the agent of anything and simultaneously pretends that he is the agent of some things. Despite the fact that in reality he has been deprived of all control over, and therefore all responsibility for, his world, his words, and his body, he is to understand his confession as it will be understood by others, as an act of self-betrayal”.

Perpetrators felt less responsible while victims felt more responsible for their suffering, thus narrowing the moral distance between perpetrator and victim.

The diminutive phrase “torture lite” also implies that the actions involved are less painful or damaging. Witnesses might even express a “covert disdain” towards people tortured in these ways. They might also admire torturers for having nobly submitted to a self-denying ordinance. The idea that “torture lite” is less effective and causes less suffering is contrary to the evidence, however. Rather, it is often more effective than the use of brutal, physical force. In the KUBARK Counterintelligence Interrogation manual, the CIA reminds readers that “pain inflicted on a person from outside himself may actually focus or intensify his will to resist” while “his resistance is likelier to be sapped by pain which he seems to inflict on himself.” Standing in a stress position for up to twenty-four hours, for example, can cause blisters, ankles to swell to twice their size, kidneys to fail, heart rate to soar, blackouts, and hallucinations. A study of the fourteen suspects in Belfast in 1971 who had been subjected to the “five techniques” revealed that they had been extremely traumatized, sometimes experiencing “a state of psychosis, a temporary madness with long-lasting after-effects”. A 2007 study published in the Archives of General Psychiatry and involving 279 torture survivors concluded that the long-term psychological aftereffects of those who suffered “torture lite” (specifically isolation and forced standing) were not “substantially different from physical torture in terms of the extent of mental suffering they cause, the underlying mechanisms of traumatic stress, and their long-term traumatic effects”. Instead, the factor that was most highly correlated with severe traumatic stress was not whether a torture method was physically violent, but the victim's distress and feelings of helplessness.

In the longer term, “torture lite” presented victims with serious problems in eliciting sympathy from their community and even Human Rights organisations. As Darius Rejali pointed out in Torture and Democracy (2007), “when torturers turn to covert torture, they deliberately induce a breakdown in one's ability to show one's pain to others, stripping their words of the marks that give the speaker credibility”. Not only does this make it incredibly difficult for victims to give witness to what was done to them, but it also enabled governments to deny the veracity of witness statements.

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If the first crisis of torture is denial (psychological violence and “torture lite” are less brutal), the second is the pernicious use of “ticking bomb” arguments. Bob Cochran, a co-creator of “24”, admitted that “Most terrorism experts will tell you that the ‘ticking time bomb’ situation never occurs in real life, or very rarely. But on our show it happens every week”. What used to be debated only in philosophy classrooms is now mainstream, thanks in part to popular culture such as “24”.

The “ticking time bomb” scenario first appeared in Jean Lartéguy’s bestselling novel The Centurions (1960), which was written during the French occupation of Algeria. The novel tells the story of a hero who tortures a female Arab dissident and thus discovers a plot to explode a series of bombs all over Algeria. The hero has a limited amount of time to prevent this from happening. The novel was important in easing the consciences of French liberals about the torture being carried out in Algeria “in their name”.

Proponents of the “ticking time bomb” defence of torture never tire of inventing different, extremely fantastical, scenarios, but most boil down to the situation described in Lartéguy’s novel. A bomb has been placed in an unknown location. If the bomb goes off, hundreds of civilians, including children, will be killed. It is impossible to know which public space should be evacuated. The terrorist is in custody but is refusing to talk. Time is running out. Should the authorities use non-lethal torture to get information that will save innocent people?



It is a compelling scenario and has been one of the most pervasive arguments in favour of torture. However, as scholars like Donatella di Cesare and Bob Brecher argue, the “ticking time bomb” argument is as unrealistic and implausible as the TV series “24”. It assumes too many things, including knowledge of an attack, the arrest of the right suspect, the effectiveness of torture in getting the required information in time, and that torture will cease once the information has been received. Even if an actual terrorist has been apprehended, why should he give correct information? Pain and/or distress might actually incapacitate the tortured person, making him suggestible or simply incapable of distinguishing lies from truth. What if the person is actually innocent? How can he prove it? Innocent people often lie in order to escape the pain. For example, after months of torture in Guantánamo Bay, British detainee Shafiq Rasul confessed to having known Osama bin Laden and Mohammed Atta. He was later exonerated by MI5 who found evidence that he had been working in a branch of Curry’s electrical store in the West Midlands at the time.

The fundamental problem with the “ticking time bomb” justification is that it doesn’t work. Even the 2014 Senate Torture Report concluded that torture never resulted in credible evidence. There have not been any cases where a ticking time bomb has been thwarted by torture. Torture advocates continue to point to the 1995 brutalisation of Abdul Hakim Muradin in the Philippines to prove the value of torture in limited circumstances. However, in the case of Murad, the useful information was all gathered within the first few minutes after his arrest. In other words, the “trap” in the ticking time bomb argument is that it presents an extremely compelling hypothetical scenario as though it were “empirical evidence”. In fact, “it has never actually occurred. On closer inspection, this ‘realism’ is pseudo-realism”.

“Ticking bomb” or not, torture is counterproductive. Between 1987 and 1994, for example, official statistics from the Israeli General Security Service reported that 23,000 Palestinians were interrogated and most of these were tortured: but there was no diminishing of terrorism. Indeed, using torture in these circumstances could increase terrorism – as it did in the early 1970s in Northern Ireland. This was also one of the lessons of the French during the battle of Algiers: although technically they were victorious, their use of torture so discredited their power that they lost the war. Furthermore, once torture is accepted in limited cases, it spreads. As one expert noted, she could not find “a single example of authorities who used torture only in ticking bomb cases”.

But the central problem has been summed up by Jessica Wolf. She explained that

“I am just not interested in the permissibility of torture in any possible world or hypothetical example. I am interested in the actual arrangements needed for even isolated instances of torture to occur. Because the ticking bomb argument is used in debates about the permissibility of torture on terrorism suspects in this world, supporters of the ticking bomb argument cannot rely on purely hypothetical cases to support their claims. Moral arguments about the use of torture must take into consideration what permitting torture involves in reality, not in a purely hypothetical example. That torture might be justified in a hypothetical example in a hypothetical world gives absolutely no reason to think that it can be justified (or legalized) in this world”.

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The consequences of these arguments are not “academic”. According to Amnesty International, in 2016 at least 122 countries tortured people. The legitimisation of torture has practical consequences, most obviously for men, women, and children who found themselves incarcerated as suspected terrorists in Guantánamo Bay or off-shore in Diego Garcia, a British territory in the Indian Ocean. So-called ““extraordinary rendition”, where terrorist suspects are handed over to authorities in countries (such as Egypt, Jordan, Morocco, Saudi Arabia, Syria, and Pakistan) where torture is known to be used, is a common way that citizens in western democracies have been allowed to “turn a blind eye” to their government’s actions. As one American official explained, “We don’t kick the shit out of them. We send them to other countries so they can kick the shit out of them”.

The startling fact is that torture and democracy are no longer seen as antithesis. In the words of Omar Rivabella in *Requiem for a Woman’s Soul*, people “torture in the name of justice, in the name of law and order, in the name of the country, and some go so far as pretending they torture in the name of God”. There has been what Donatella



di Cesare calls the “democratization of torture”. People actually get accustomed to barbarian ways. Even Simone de Beauvoir – an ardent opponent of torture during the French-Algerian War – admitted that “in 1957, the burns in the face, one the sexual organs, the nails torn out, the impalements, the shrieks, the convulsions, outraged me”. But, by the “sinister month of December 1961, like many of my fellow men, I suppose, I suffer from a kind of tetanus of the imagination.... One gets used to it”.

What can be done? There is no easy answer to this question, but some responses are more likely to be effective than others. Detailed cataloguing of the gruesome effects of physical and psychological violence has not been shown to cause sympathy to flow towards victims. Nor has it resulted in calls for perpetrators to be held accountable. Indeed, because witnessing pain make political claims, accounts that linger over fractured minds and bodies are more likely to result in listeners turning away.

Equally problematic are arguments that we need to pay more attention to the torturers’ rhetoric and rationales in an attempt to better forge instruments to undercut their beliefs and actions. Attempts to “make sense” or ask why particular people act with such incredible brutality is also to play the perpetrator’s game of meaning-making. Problematically, this also risks deflecting attention away from the sufferer. In other words, providing torturers with personal motives for their cruelty “enables the torturer’s power to be understood in terms of his own vulnerability and need”. It risks placing perpetrators in the position of victims.

Although it is important to continue to fight for legal reform and support for international conventions against torture, it is also the case that they have not been successful in preventing abuses. Indeed, as we have seen, some of the top international lawyers are at the forefront of pro-torture rhetoric. Unfortunately, it also doesn’t seem that rational arguments against torture — that it doesn’t work, is immoral, is uncivilised, is illegal, is counterproductive, for example — have made any difference to the extent of the practice. Torture is part of a “frame of meaning”, through which its proponents see the world. Indeed, arguing against it may even cement their fears and anxieties.

However, there are ways we can respond. The first is the one just mentioned by Jessica Wolf: a refusal to countenance fantastical scenarios such as the “ticking time bomb”, and an insistence on focusing on real crises in the real world. Justin Clemens and Russell Grigg argue that

"One of the most disturbing aspects of this “debate” is that it is not and cannot be a debate at all. On the contrary, as soon as one believes that this issue can be debated and discussed just like any other, one is already lost. Once one starts arguing in such a fashion, then all that can be expected is the escalating intensity of claim and counter-claim, a slippage from legal and political concerns to moral problems of affect, the proliferation of distinctions without difference (for example, those allegedly “clear eyes reexaminations” of the evidence which insist on discriminating between, say, “sleep deprivation and amputation or burning of some other horror”... and a concomitant occlusion of the real issues at stake. It is not that such distinctions may not have their place; it’s that they do not have a place here, other than as obscurantist rhetoric.

Second, the most fundamental flaw to the “ticking time bomb” scenario is almost never mentioned: it is premised on the idea that time is short. However, the fact is that preparing for torture (even in a “ticking time bomb” context) is in fact extremely time consuming and expensive. The whole ticking time bomb scenario relies on the state having already invested considerable time and money in training people to be effective torturers. After all, in order to made even a real terrorist confess, torturers need to be experts in interrogative techniques. Years of training and preparation are needed to make effective torturers.

An argument can be made, therefore that it might be more effective to use this time to develop other, non-torture responses, such as “techniques that require cultural awareness, linguistic competence, and self-mastery on the part of the interrogators”. Vittorio Bufacchi and Jean Maria Arrigo note that

Among other examples of social skills methods, Islamic cleric have replaced official interrogators by reformulating the religious commitments of some terrorists. Terrorists duped by their colleagues have



cooperated with their captors when their exploitation was made evident to them. Chronically ill terrorists and badly wounded suicide bombers have become cooperative following successful medical treatment... Innovative military strategists have recently stressed the need for an “effective counter-narrative” to Al Qaeda’s “foundational myth” of “the warriors of God” against the “infidel West”.

The third is a more basic point: a commitment to opposing torture is one that each of us can make. Citizens need to hold their governments to account for their actions – even in cases where the actual torture takes place in other parts of the globe. Each of us possesses proclivities, skills, and spheres of influence that enable us to make a difference in our own local contexts. Wherever we are situated – as homemakers, academics, labourers, shopkeepers, secretaries, publishers, journalists, civil servants, teachers, entertainers, novelists, artists, lawyers, doctors, scientists, unemployed, and so on – we can make a difference globally.

One of the (many) reasons for the silence of citizens concerning torture of suspected terrorists is fear. When the critic, Susan Sontag argued that “metaphors and myths... kill”, she was referring to the way the stigmatized word “cancer” incited fears that discouraged sufferers from seeking medical help and thus hastened their death. Similarly, the label “terrorism” was used by governments and other official agencies to incite fears that could then be used to justify speedy and potentially counterproductive military operations. In other words, the word “terrorist” is so frightening in itself that it deflects attention from the serious consideration of foreign policy and incursions into civil liberties at home. As Bethami A. Dobkin expressed it in Tales of Terror (1992), the term “terrorist” was “more than a descriptor of political violence”. It was also “a functional term that warrants certain strategic responses and precludes others.” The panic that resulted from terrorist fears diverted attention from the “causes of political violence and have united public support for reactionary policies.” In other words, the public hysteria over terrorism increased “support for direct military action in foreign conflicts” which directly contributed to the growing terrorist risk. Edward Said adopted a similar position in “The Essential Terrorist” (1988). According to Said, the invidious use made of the word ‘Terrorist’

“has spawned uses of language, rhetoric and argument that are frightening in their capacity for mobilizing opinion, gaining legitimacy and provoking various sorts of murderous action. And it has imported and canonized an ideology with origins in a distant conflict, which serves the purpose here of institutionalizing the denial and avoidance of history. In short, the elevation of terrorism to the status of a national security threat (though more Americans drown in their bathtubs, are struck by lightning or die in traffic accidents) has deflected careful scrutiny of the government’s domestic and foreign policies”.

Authoritarian versus egalitarian responses to perceived threats represent contrasting meditations on what it means to be human. The dystopia of Bauer’s “24” is not, in fact, the world in which we live.