TORTURE – CLOSING THE PANDORA’S BOX

The Refutation of the applicability of the Utilitarian Argument Regarding Torture
In light of the “Ticking Bomb” scenario

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Submitted to: Central European University, Department of Legal Studies

In partial fulfillment of the requirements for the degree of Masters of Law in Human Rights

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Budapest, Hungary
2009
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Abstract

The recent emergence of the facts of torture has sparked the international debate on the permissibility of the torture as a tool in intelligence gathering. The proponents of such views rely on the utilitarian justification under the “Ticking Bomb” scenario.

In this thesis I consciously avoid criticizing the Utilitarian Justification as a standalone theory, but instead I focus on providing reasons why the Utilitarian theory is not applicable to the practice of using the torture during the interrogations at all.

The thesis takes extensive use of the literature concerning the theoretical background of the arguments forming the numerous views on torture presented in this work, thus establishing the theoretical framework of the different justifications of using torture as the interrogational practice.

For the better understanding of the utilitarian theory in the first chapter of this thesis a wide variety of sources are analyzed, focusing on the most frequently used example of the “Ticking Bomb” scenario.

The thesis continues by focusing on “Ticking Bomb” scenario as the quintessential tool in the arsenal of the proponents of using torture for intelligence gathering, stating the three fundamental reasons why the “Ticking Bomb” scenario is not applicable to the practice of torture as an interrogational tool.

For this the issue of the probability of the “Ticking Bomb” scenario and its utility as policy forming tool is extensively analyzed.
The next issue that is addressed in this thesis concerns the reliability of torture as the interrogational practice. For this the thesis makes use of the numerous declassified documents and witness reports to form a comprehensive view on the efficiency of torture.

Finally the thesis analyzes recent spike in occurrence of torture in U.S. interrogation facilities in Guantanamo and Abu Graib and by providing the reports and the witness accounts it addresses the difference between the regulations enacted the administration and their application into the practice. By such analyses the third concluding feature of torture, the self aggrandizing nature of violence is uncovered.

By addressing all of these issues I reach the conclusion that “Ticking Bomb” argument together with its theoretical underlying are not applicable to the practice of torture as an interrogational tool.
1. Introduction

1.1 Brief History of Torture

Michel de Montaigne wrote “nature herself, I fear, attaches to man some instinct for inhumanity”. Unfortunately that is true to some point. According to Nietzsche and Foucault, during the history of humanity there has been no real prohibition on torture in juridical context, it has been applied by the victors to the defeated for the purposes to humiliate the looser and to demonstrate ones power. From the mid XIV Century to the end of the XIX Century torture was regularly practiced by armies and judicial systems and was accepted even by the churches.

True as Nietzsche and Foucault have been, nowadays torture has been outlawed completely. The punishment by torture has ultimately been replaced by the imprisonment with the principle of “out of sight and out of mind.”

Only recently the mankind has adopted a mostly united approach of prohibiting torture in all of its forms, in fact today the prohibition on torture is one of the most heavily

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enforced in the international law. Never the less it is reluctant to go away. Time and time again during the armed conflicts the torture manifests itself from the new perspective. The today’s emergence of torture resulted from the so called “War on Terror.”
2. Definition of Torture

Today there is no shortage of international legislation prohibiting torture. U.N. Convention against torture states - “No exception circumstances whatsoever whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.” The torture has been also prohibited by each and every of the four Geneva conventions after the WWII. The Common Article 3 of the Geneva Conventions mandates that the prisoners are to be treated humanely, prohibiting “cruel treatment and torture… outrages upon personal dignity, in particular, humiliating and degrading treatment.” Moreover, additional guarantees have been provided by the Third Geneva Convention to the persons considered prisoners of war.

In light of such a robust legislation one would think that torture has been dealt with and as an occurrence it is done for. But the reality has been quite different. In the real world the torture has all but gone away, instead it took refuge in the twilight of intelligence gathering, the grey area of activities of the intelligence agencies, where Human Rights

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7 Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 (“Third Geneva Convention”), Arts. 4(A)(1), (3), (4) and (6)"
considerations meet with the interests of national security. The temptation to use a shortcut and “extract” the useful information has all but gone away.

The use of torture on the massive scale has always been attributed to the authoritarian states which used it for the reasons of terror and evidence gathering but the new emergence of torture is different since it is attributed primarily to the liberal states, which is in itself surprising, because in essence the torture is and should be fundamentally incompatible with liberal ideology.

Torture represents tyranny, a tyranny in microcosm, at its highest level of intensity\textsuperscript{8} and nothing stands further from the values of liberalism than torture.

Perhaps the answer to such reasoning is in that to some libertarians, the application of torture for the purposes of intelligence gathering does not appear as a carrier of state tyranny, but instead it is merely a “necessity,” motivated solely by the looming catastrophe. Under this justification comes the issue of the protection of vital state interests and national security, in fact for ones who view the issue of torture under this paradigm the using torture in intelligence gathering represents nothing more than a measure of self-defense\textsuperscript{9}.

\textsuperscript{9} Ibid, p. 1439
3. The Debate on Torture

3.1 The Theoretical Background

3.1.1 Consequentialist Reasoning

I this chapter I review the various justifications and refutations of torture for the reason to reach the conclusive view of underlying theoretical struggle that occurs whenever the issue of torture arises. This chapter lays a theoretical background for consideration of torture and “Ticking Bomb” scenario.

Under the reasons of justification of torture there is everlasting fundamental crush of ideas, of fundamental theories of thought and morality in which the Consequentialism and countering it, the Deontological reasoning take the main part.

The basic idea of Consequentialism as a theory is the dependence of the ethic status of the proposed action upon the actual consequences of the action disregarding other justifications,\(^{10}\) such reasoning is particularly strong in the Utilitarian Consequentialism which in itself is a cluster of moral theories based on principle of maximizing welfare.\(^{11}\)

Consequentialists view the morality aspect of the action through the practical consequences it might have. In light of the issue of torture, the good, particularly the saving of the lives of the innocent people is weighted against the negative drawbacks of the application of torture such as doing harm to the alleged terrorist.

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The first work on Consequentialist reasoning and torture can be attributed to Cesare Beccaria in his work “On crimes and punishments,” in which the author advances the argument that application of torture as a consequence favors strong victim over the weak.

The recent proponents of the idea of utilitarianism include Michael Waltzer, and Michael Ignatieff, with the work, *The Lesser Evil: Political Ethics in an Age of Terror* and Sanford Levinson, ed. *Torture: A Collection.*

Michael Waltzer who is in essence a categorical moralist, mostly counters the determinations of the Consequentialism, since the theory in itself does not include the judgments that are based on the absolutist moral principles and values, but notes that in the case of exceptional circumstances such as “supreme emergency” in which the deepest values and the collective survival of the state is under imminent danger, one has to abandon the traditional moral reasoning and resort to Consequentialism. Michal Waltzer is not alone in his position, similar views have been expressed also by Henry Shue.

Michael Ignatieff takes more dissociated approach and argues that despite the reasoning of the proponents of “moral judgement” when the society is faced with the moral dilemma of torture under “supreme emergency,” the action is predetermined to be of utilitarian nature: “we have to face terrorists who control weapons of mass destruction …

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most bets—and gloves—would be off.17” Although he does not cite himself to this reasoning and reiterates this position as the probable course of action for the general public in his more recent publications.18

Some writers go a bit further like Jean Bethke Elshtain19, Richard A. Posner20 and John T. Parry21 arguing the permissibility of torture in the situations that fall short of the “supreme emergency” argument of Michael Waltzer.

But nobody goes as far as the A. Dershowitz,22 who argues that torture is necessary for the proper functioning of the law enforcement agencies in cases of the ticking bomb scenario and should be regulated by the judiciary system issuing the torture warrants23.

3.1.2. Deontological Reasoning

18 Michael Ignatieff, "Moral Prohibition At a Price" in Roth, Worden, and Bernstein, eds. Torture: Does It Ever Make Us Safer?
Countering the utilitarian view is the deontological, non-consequential moral theory, which at its absolute states that some actions are wrong regardless of the consequences of them - “Fiat justitia, pereat mundus” “Let there be justice, though the world may perish”. The objection lies in that in certain cases the theory dictates the actions that may be contrary to moral judgment, the proponents of which state that once principles have price all that is left is bargaining.

Deontologism and in particular Kantian Deontologism is an approach which seeks to create universal rules for the morality of human action. Kantian Deontologism singles out two basic tenants of the deontology by which the essence of this theory is best portrayed. The first tenant of the deontology is to “Act as though the maxim of your action were by your will to become a universal law of nature” and the second is to “Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.”

In regards to torture the first tenant states that the torture cannot be justified as one would not want to make this principle universal and be used on ourselves. Under the second reason torture is wrong because it addresses the persons as a sole means for getting information. Thus, Deontological argument is not acceptable to the notion of torture and provides strong ground for moral argument.

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Naturally the debate on torture has a significant moral dimension. Under the debate whether to use or discard torture, there is also a fundamental crash of Moral theories. The aforementioned Deontological argument is countered by the considerations of Moral pluralism, the anti-monistic theory stating that any theory taken in isolation is a flawed one, and that no theory as good as it could ever be can’t accommodate all the possible cases that can occur in the real world scenario and the only way to achieve a system comprehensible to every case is to add all of their features together. Thus we should adapt dualistic code and in cases of extreme urgency allow Torture.

It is this dichotomy – one between Absolutism and Consequentialism, human rights and national security, Deontology and Moral Pluralism, necessity and permissibility of torture that defines the modern dilemma facing the liberal democracies in fight against terrorism.

The most famous for the justification of torture and the use of the “Ticking Bomb” is the Utilitarian argument.

### 3.2 Utilitarian Theory

The most popular Consequentialist theory is Utilitarianism, which strives for long-term maximization of human happiness, the overall good, sometimes not excluding and even dictating the actions that may be harsh, cold-hearted and sometimes immoral. In essence of utilitarianism lays the cold minded calculation of possible outcomes, according to each individual situation. Regarding this Bernard Williams has noted, a hardcore utilitarian “will
have something to say even on the difference between massacring seven million, and massacring seven million and one.\textsuperscript{26}

Utilitarian theories are further to be distinguished by the amplitude in difference of application of calculability and acceptable consequences.

The basis for Utilitarian Theory is simple and it lays within the slogan “The greatest happiness of the greatest number\textsuperscript{27}, which encapsulates all utilitarian theories which have been developed by English Utilitarian Philosophers Jeremy Bentham, Henry Sidgwick and John Stuart Mill in the 18\textsuperscript{th} and 19\textsuperscript{th} centuries.\textsuperscript{28}

The Utilitarian theory paves way for the “necessity” justification, by which it is justifiable in an emergency to break the law, if doing so will make possible to avoid a greater harm than in case of obeying it\textsuperscript{29}. It is precisely this view that is expressed in Bybee memo\textsuperscript{30}, which stated that under the extreme circumstances, the permissibility of enhanced interrogation cannot be doubted.

It is the same justification involved in Israeli court decision on the GSS investigations, which denied to sanction the torture, emphasizing that the judges should be committed not only to protection of democracy from the terrorists, but also to protection of the democracy from the means that the states want to use against terrorism,\textsuperscript{31} although also

\textsuperscript{28} Ibid.
\textsuperscript{30} The memorandum prepared by United States Department of Justice's Office of Legal Counsel (OLC) dated August 1, 2002 signed by Jay S. Bybee, Assistant Attorney General regarding the interrogation practice by the U.S. Armed Forces.
noting the possibility of the “necessity” defense for the interrogators post-factum,\(^\text{32}\) which essentially meant that interrogators had the possibility to fall back on “necessity” argument as the justification for their actions whenever they overstepped the limits of the law and engaged in torture.

The opinion expressed by the Israeli court is surprisingly similar to the M. Walzer’s “The Dirty Hands”\(^\text{33}\) justification, which highlights the paradox of action that is justifiable, but at the same time is morally wrong\(^\text{34}\). Under this justification what the interrogator does is “simply what has to be done” in order to bring the best outcome,\(^\text{35}\) thus sometimes in defense of the democracy one has to take action that is not compatible with the democracy’s fundamental commitment to dignity\(^\text{36}\) and the rule of law, taking the blame onto oneself and possibly being prosecuted for such conduct. In such cases the interrogator has to balance the risks to dignity and security to address a particular case of threat\(^\text{37}\).

The so called “Dirty Hands” argument stems from the works of Jeremy Bentham,\(^\text{38}\) which is by some called the purest of choice-of-evils utilitarian’s, who has stated the issue in rather straightforward manner:

“For the purpose of rescuing from torture a hundred innocents, should any scruple be made of applying equal or superior torture, to extract the requisite information from the mouth of one criminal, who having it in his power to make known the place where at this time the enormity was practicing or about to be practiced, should refuse to do so?


\(^{34}\) Ibid p.161

\(^{35}\) S. Lukes, “Liberal Democratic Torture” p. 5 British Journal of Political Science Issue 36, pp. 1–16 (Cambridge University Press, 2005) DOI:10.1017/S0007123406000019


\(^{37}\) Ibid, p.12–13

\(^{38}\) J. Bentham, (15 February 1748 – 6 June 1832) A. prominent English jurist, philosopher, and legal and social reformer.
To say nothing of wisdom, could any pretence be made so much as to the praise of blind and vulgar humanity, by the man who to save one criminal, should determine to abandon a 100 innocent persons to the same fate?"³⁹

The utilitarian argument has gained quite a lot of support to the point that some call it “fanatical” to deny this argument.⁴⁰

The supporters of this theory argue that those who suggest out ruling the torture in life or death situations are simply mistaken, some go as far as suggesting that the opponents of torture are obliged to take the responsibility themselves in extreme scenarios⁴¹ and that in rare cases⁴² the torture should be regarded as a lesser evil.⁴³ The argument as I mentioned before is further expanded by the suggestion that torture be authorized by torture warrants but in general must be prohibited.⁴⁴

On the other hand there is no shortage also of the criticism directed at utilitarian theory, as by many it is regarded as too permissive and in the same time too restrictive in the terms of possibilities one can actually encounter in the real world.⁴⁵

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The core of the criticism is not surprisingly channeled at the “Ticking Bomb” argument as it is the argument most often used by the Utilitarians as the universal Swiss knife of justification of interrogational torture.

Numerous articles have been published on this issue, but in most cases the reviews start with “Ticking Bomb” scenario and end it there, although with some notable exceptions. In the next chapter I am going to address what is the bulk of the utilitarian argument for torture - “The Ticking Bomb” scenario.

4. The Refutation of the Utilitarian Argument for Using Torture

4.1 The “Ticking Bomb” Scenario

4.1.1 The Notion of the Ticking Bomb Scenario

The core of the utilitarian argument on torture, or should I call it a spearhead of the reasoning allowing torture, is the so-called “Ticking Bomb” scenario, where the person under interrogation is in possession of the valuable information concerning the location of the “Ticking Bomb,” which is about to explode in near future and if provided, the information about the whereabouts of the bomb could save thousands. The line of argument can be easily traced here, it’s simple, plain and logical and therefore easy to come under influence of.

It is easy to be seduced by the simplistic examples that may look compelling but actually misrepresent the world which we live in. Austrian-British philosopher Ludwig Josef Johann Wittgenstein once wrote that confusion arises when we become bewitched by a picture. It is true that “once the value of entertainment enters discussion, it too often drives out other values, especially reasonableness, relevance, and even understanding.”

Let’s have a look at the “Ticking Bomb” hypothetical more closely. The first thing that strikes me as astounding is the sheer number of key aspects that are tidier than in any such crisis that is likely to emerge in real world scenario. The core attribute of the

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47 Ibid, p. 1441
“Ticking Bomb” scenario is that it rests of the several assumptions which taken together justify its outcome.

The first assumption of the “Ticking bomb” scenario is that there is the certain knowledge of ongoing plot of bombing. It also assumes that the suspect holds the necessary information. These are by far not the only assumptions on which the “Ticking Bomb” argument relies on, but even these two raise significant doubts about the likelihood of such scenario, since most of the torture is conducted precisely because there is very little or no knowledge about the information that the alleged terrorist may hold.

The third assumption is that not only that torture will work, but it will also result in the highly credible intelligence. This assumption tricks the viewer into thinking that the pain always results in confessions, but it ignores the complex intricacies of the human mind, the likelihood of deception, false confession and reluctance of succumbing to torture, which has been demonstrated numerous times. The Chapter 4 gives more insight about the reliability of the information gained under the interrogations using torture.

Finally the scenario states that the information provided will result in averting the looming catastrophe.

All of these assumptions render the chances of occurrence of the ticking bomb scenario non-existent. Here I could have written “low” or “next to non-existent,” but from my opinion what renders this scenario as impossible is the issue of the perfect knowledge on what it constantly relies on, since in the real world, there is no such thing as the perfect knowledge. “Perfect Knowledge” makes the “Ticking bomb” hypothetical too artificial to occur. Messy aspects of reality like uncertainty and probability in the “Ticking bomb” scenario are not taken into account and moreover, they are completely ignored.50

50 H. Shue, quoted in Case Western Reserve Journal of International Law, p.233Vol. 37 Issue 2/3; ISSN 00087254 , AN 22005941 (2006)
Indeed, “\textit{what makes the ticking bomb scenario improbable is the notion that in a world where knowledge is ordinarily so imperfect, we are suddenly granted the omniscience to know that the person in front of us holds this crucial information about the bomb’s whereabouts.}”\textsuperscript{51}

4.1.2 The Alleged Cases of the “Ticking Bomb”

The proponents beg to differ and offer the examples of the cases to match the “Ticking Bomb” hypothetical.

In one such case Philippine agents have allegedly thwarted an al-Qaeda plot to bomb eleven U.S. airlines and assassinate the Pope,\textsuperscript{52} but the details of this case are pointing to another direction. It turns out that a Pakistani bomb maker involved in this case has been tortured for weeks, well before the police had the information about the plot: “\textit{agents hit him with a chair and a long piece of wood, forced water into his mouth, and crushed lighted cigarettes into his private parts... His ribs were almost that his captors were surprised that he survived...}”\textsuperscript{53}

This argument alone renders the above mentioned claim of attributing this case to the “Ticking Bomb” scenario quaint. Naturally the question arises, what if there was no al-

\begin{footnotesize}
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 Qaeda plot at all? Would they torture him to death? The sources indicate that actually the
discovery of documents in suspect’s home following the fire, was what actually tipped the
police off54 and the application of torture during the interrogation had nothing to do with it.

The proponents also point to the Landau commission55 findings in 1995, which
stated that torture was used to foil a massive terrorist attack over the Pacific, but what the
proponents do not state is that Landau Commission did not itself investigate the matter itself
and simply accepted the Israeli Security Forces Insistence that torture was actually an
effective tool in such situations56.

4.1.3 The refutation of the “Ticking Bomb” Scenario

The “Ticking Bomb” scenario is nothing more than a product of idealization and
abstraction.57 By idealization it omits the negative consequences of torture and with the
abstraction, it disregards the numerous possibilities that can occur contributing to solving the
problem, in short “Idealization adds sparkle, abstraction removes dirt.”58

D. McGary, “Al-Qaeda in plot to assassinate Pope”, Times Online, 11 Nov. 2002 Available at
http://www.timesonline.co.uk/tol/news/world/article826923.ece Accessed on 11/10/2009;
55 The commission headed by the former Supreme Court President Moshe Landau enacted to investigate
allegations of torture against the General Security Service (GSS) (Information available at
http://www.mfa.gov.il/MFA/Government/Law/Legal%20Issues%20and%20Rulings/Israel-
56 M. D. Evans , R. Morgan, Preventing Torture: A Study of the European Convention for the Prevention of
Torture and Inhuman or Degrading Treatment or Punishment. p. 47. (Oxford University Press, USA. January
Social, Political, and Legal Philosophy; July 1988, Vol. 98 Issue: 4 (1988) ISSN: 00141704; 1539297X.
37, numb 2/3 ISSN 0008-7254
The Ticking Bomb scenario gives a very misleading example to derive analogies concerning the reality. The whole idea of the permissibility of the torture discourages the viewer to think outside of the box and to explore alternative ways of gaining information which do not cause Human Rights violations. It gives the illusion that the success of the war on terror depends on the quality of intelligence, disregarding the fact that a lot more is dependent on political action and foreign policy considerations.\(^{59}\)

In fact I argue that the justification by the Ticking Bomb scenario actually undermines the war on terror. The war that should be waged by stepping outside the framework and exploring alternative ways of gaining information and establishing policies that will contribute to the overall development of the effected regions, rather than accepting the torture as “necessity,” which it obviously is not. Artificial cases make bad ethics and cases like this have the sole purpose to make the torture debatable.\(^{60}\)

In a world of uncertainty and imperfect knowledge\(^{61}\) the torture seeks to solve the problem by exercising violence. It also assumes that the information by resorting to torture will not only be certainly gained, but also will be of good value, but in fact the information extracted by torture is known to be at best unreliable.\(^{62}\)


4.2 Lost Knowledge - The Problem with the “Extracted” Intelligence

4.2.1 False Positives

The extraction of information by the use of torture is much harder than it may seem at first. Whereas the application the torture on some people results in immediate confession, although not necessarily a truthful one, there is also a counter reaction to torture - the rigid resistance to it, that is a rather complicating factor for the interrogator, constant humiliation and abuse rarely give a valuable intelligence.

An FBI former counter-terrorist interrogator Dan Coleman remarked about the interrogation of the naked Muslim fundamentalist detainee: “He’s going to be ashamed, and humiliated, and cold. He’ll tell you anything you want to hear to get his clothes back. There’s no value in it.” The claim of false confessions is further straightened by empirical evidence.

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In the case the former British ambassador to Uzbekistan, Craig Murray reported that the detainees rendered to Uzbekistan by US and UK were making confessions under torture, namely the partial boiling and the information gained had no value whatsoever - “We are selling our souls for dross” reported the ambassador, countering the claim of British Foreign and Commonwealth Office that it made use of this information.

In another case three British officers have made the confession under torture that they were trained in Al-Qaeda camps, however the British intelligence produced conclusive evidence that at that time, there when they were supposed to be in Afghanistan, they actually never left the British soil.

Similarly the Soviet historians estimate that during the period of 1936-1939 the Soviet regime arrested 5% to 10% of the entire population. Under torture, sleep deprivation and isolation almost everyone confessed, thereby providing justification for such actions.

On the same issue of false confessions U.S. Senator John McCain has argued: “If you inflict enough physical pain on someone, they will tell you anything they think you want to know” and that may not be necessarily the truth.

The reason behind this phenomena is the known as the “cognitive failure model of truth telling” in case of which, overwhelming physical and mental stress create a state of disorientation, under which the subject is unable to maintain self-interest and becomes suggestible or overly compliant under stress to the point of omitting the true cascade of events.

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69 Ibid, p. 217-218
Unreliable intel was the cause of the detention of British citizen Martin Mubanga, who was subjected to sensory deprivation, stress positions and was racially and sexually abused. All of this happened because an Australian prisoner, David Hicks incriminated him under interrogation.

4.2.2 Sturdy Negatives - Resistance to Torture During the Interrogation

Interestingly there are lots and lots of completely opposite reports that the persons under interrogation did not confess even after repeated drowning, crushing of joints and such.

The reason for such behavior lies within psychology of the human behavior. There are several issues take into account. Naturally people react hostilely against those who constrain their freedom (Reactance Theory), they become more hardened and dogmatic when are confronted with the possibility of their mortality (Terror Management Theory) and they may even dissociate and distance themselves from the reality to protect themselves from pain and awareness of their situation (Traumatic Stress Theory).

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71 Ibid.
All of these factors are natural reactions of the human being to torture and intensive pain stimuli that severely complicates the process of interrogation and impairs the possibility to extract credible intelligence.

During the years of North Vietnamese torture of American POW’s, Commander James Stockdale estimated that only under 5% of his 400 fellow airman who were captured by the North Vietnamese forces have succumbed to torture. This is by far not the only case.

The process of the decolonization of Algeria from France was marked by the bloody conflict – The Algerian War (1952-1962), which was one of the most merciless colonial struggles known to happen in 20th Century. Today it is with the domain of public knowledge that French forces extensively utilized torture on members of Algerian Armed Forces.

A French General Paul Aussaresses, the chief intelligence officer in the Battle for Algiers (1955-1957) in his memoirs described the terrorists dying under torture with the secrets or either exasperating him to the point of murdering them himself.

General Jacques Masu, the commander of French forces and at the time a fierce proponent of using torture during the interrogations in 1992 stated that torture in Algeria served no “necessary or useful purpose.”

The U.S. Air Force interrogator Paul Copher commented regarding this fact that he preferred to interview terrorist suspects “before any heavy handed ex-Turkish farmer slapped them around.”

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Similarly FBI personnel stationed in Guantanamo were of the opinion that the military's so called enhanced interrogation methods “were not effective or produced the intelligence that was unreliable.” FBI agents further noted that such actions severely complicated their task and would have a distinct negative impact on investigations and intelligence gathering to be conducted by them.

There is no strong evidence of the widespread utility of torture for the extraction of the intelligence and in fact some reportedly “successful” cases run counter to the time constrains that “Ticking Bomb” argument prescribes. The declassified memo from the FBI official in Guantanamo states the coercion did not produce any different result as regular interrogation: “nothing more than what FBI got using simple investigative techniques.

For example the case Mohamed al-Kahtani reportedly the twentieth hijacker, who was turned away by customs agent at Orlando airport and later captured in Afghanistan had resisted the harsh interrogation techniques that were administered on him with the assistance of military doctors. Only after months of almost daily torture he allegedly gave the information about his meetings with Osama Bin Laden.

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One of the notorious facts about the war on terror was the unreliable intelligence that has plagued the company for years and was the biggest contributor to starting it in the first place.

Al-liby, an al-Qaeda operative, was interrogated by both the U.S. and Egypt, in the latter he was subjected to torture,\(^85\) under which he made a confession that Iraq has been training the members of al-Qaeda in chemical and biological warfare. This “groundbreaking” testimony was used as the basis of allegations that Iraq was preparing to provide al-Qaeda with weapons of mass destruction, the claim that the recent history has showed was remarkably off point.

His confession has even been emphasized in the speech of Colin Powell at the U.N. Security council which justifying the military operation in Iraq\(^86\).

It is astounding how much of the damage was done by the unreliable intelligence in this single case alone.

In the January of 2004 Al-libi has recanted his statement, stating that the sole reason he made the confession was that he was too afraid to be further abused by the interrogators\(^87\).

Moreover the theory of “prompt confession under torture” runs counter to everything known about the interrogation. Any interrogation starts well before the actual encounter of the detainee with the interrogator. In fact the actual result is fully dependent on the critical phase of the interrogation - the information gathering, that is conducted before the interrogation.

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\(^{85}\) “No torture no Exeptions” article available at http://www.washingtonmonthly.com/features/2008/0801.torture.html


\(^{87}\) “No torture no Exeptions” article available at http://www.washingtonmonthly.com/features/2008/0801.torture.html
The cultural factor, motivation, counter-interrogation training and the psychology of the terrorist all have to be taken into account in that that the detainees are all diverse\textsuperscript{88}.

It is well documented that in the war with terror, some of the most interesting and productive interrogations were conducted without torture under the free will of the detainees. The interesting part is that such information was gathered from multiple sources including both highs and low of the structure of terrorist network.

One of the more interesting cases was of Khalid Sheikh Mohammed the alleged mastermind of the attack on the World Trade Center\textsuperscript{89}.

Just before his apprehension by the U.S. Forces, Khalid Sheikh Mohammed gave an extensive interview to the Al-Jazeera correspondent, in April 2002 in which he shared with the answers to some of the key questions that the U.S. intelligence still had about the plot of 9/11\textsuperscript{90} such as the destination of the third plane, the one that crashed in a field in the Pennsylvania, the park of the terrorists in that case turned out to be the Capitol building. He also shared with the abandoned plan to crash the airliners into the American nuclear facilities and explained how they communicated with Osama Bin Laden while he was hiding in Afghanistan. \textsuperscript{91}

Interestingly enough after the apprehension he was still tortured by waterboarding many times. The CIA has presented their own summary of his interrogation to 9/11 commission. The report matched almost exactly with the information that was provided during the interview voluntarily.

\textsuperscript{89} A. Danchev \textit{“Like a Dog!”: Humiliation and Shame in the War on Terror”} p.266. Available at http://www.polisci.upenn.edu/theoryworkshops/danchevpaper.doc Accessed on 11/10/2009
\textsuperscript{91} Ibid
The new information included the several new plots such as getting control of a plane over the pacific to crash it into a skyscraper, a plan to send al-Qaeda operative to conduct attacks in U.S, a plot to smuggle explosives into New York to target gas stations, railroad tracks and a bridge in New York.\textsuperscript{92}

While at first all of this may sound convincing, actually there is no indication that it was more than just a regular chitchat at the table among the local terrorist brotherhood. From all of these confessions only one had been verified to have a shade of credibility of being actually developed, was a plan of bringing down Brooklyn Bridge with the gas cutter in 2002. The investigation has uncovered that an Ohio trucker Iyman Faris, who worked for Khalid Sheikh Mohammed had actually investigated such possibility, but to grasp the importance of this endeavor one only needs to say that it is similar to trying to demolish the Empire State Building with a firecracker. It is of high possibility that such high profile terrorist as Khalid Sheikh Mohammed would have probably never remembered this single case during the interview.

Although one aspect of what he remembered puzzled the investigators. The detainee supposedly has made the confession under torture about murdering Wall Street Journal reporter Daniel Pearl in Pakistan in 2002, but according to other sources there is no evidence in this case even remotely points to Khalid Sheikh Mohammed, nor did he mention anything about it in the interview with al-Jazeera which was conducted within three month period. What is more probable is that knowing that evidently he was going to be sentenced to execution, he decided to put the blame on himself thereby freeing some of the militants jailed in Pakistan.

\textsuperscript{92} Ibid
In another example Ali Abdul Saoud Mohamed, an al-Qaeda operative, who took part in 1998 bombings of the U.S. embassies in Kenya and Tanzania was apprehended by the FBI’s special unit dedicated to prosecution of the Osama Bin Laden.

Ali Mohamed was fully expecting to be tortured at once. Instead he was assured that he would not be hurt and was offered the protection for the family93. As a result, Ali Mohamed has provided as Jack Cloonan the special agent assigned to the team notes “a gold mine” of information about al-Qaeda’s operatives94. He reiterates that this was not by far the isolated case, in every case in which this the suggestion was raised it “stunned” the detainees and they were more obliged to cooperate.95

The information mounted and soon the FBI agents were even in hold of the information about many of the ongoing operations of al-Qaeda, including the surveillance on embassies in London and around the world, also about the key figures of the terrorist network96. Still, those terrorists who were won over with humane methods in 90’s, even to this day supply the law enforcement forces with reliable intelligence that is used to counter al-Qaeda.

Similarly, in 1943 Military interrogator Marine Major Sherwood F. in his report about the interrogation of Japanese prisoners of war has stated, that despite as some may think that only the sternest measures would make the detainees from the hardened Japanese military talk, but if fact it was not the case, as the aggressive methods often backfired and “made the prisoner “ so conscious of his present position and that he was a captured soldier vs. enemy

93 Ibid
94 Ibid
95 Ibid
96 Ibid
intelligence” that it “played right into the hands” of those who were determined not to give away anything of military importance.”

The striking irony of the happening is that this simple truth is outlined in bold in the US Army Intelligence field Manual, (FM35-52) which states that the “experience indicates the use of prohibited torture is not necessary to gain the cooperation of interrogation sources” and that it is a poor technique that gives unreliable results, but the fact is that military interrogators in Guantanamo and Abu Graib have been instructed to disregard the manual and act under different rules. The new legal paradigm that has been emplaced instead rendered quaint the “old” reasoning of not engaging in torture. That is how the simple truth outlined in the manual became a lost knowledge of the past.

The next chapter will demonstrate the essence of torture. The most extreme and inherent characteristic of it, which renders the whole endeavor of tinkering with it meaningless and a very dangerous undertaking: The notion that once it is applied, it becomes a downward spiral with no going back.

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4.3 Torture Spreads

4.3.1 The new era of the War of Terror

Amnesty international in its report points out that torture is never limited to single isolated case:

“We have not found a single state which tortures ‘only once’, or only in a few extreme cases. Whenever and wherever torture and cruelty are accepted as legitimate tools of government ‘in extreme circumstances’ they become widespread – the means used become increasingly extreme and the circumstances in which they are used increasingly less so.”

We have all seen the dehumanized images of the torture victims from the Guantanamo and Abu Graib bases, the piles bodies of the living humans being stuck on top of each other in agony, but what we are about to look into are the actual events that took place earlier, the developments that ultimately lead to the incidents in interrogation bases that were so widely publicized.

The gruesome images of the September 11 2001 marked a new era in the history. The tragedy of the massive loss of life on the scale that the world has never seen before has marked the beginning of the new era.

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The shocked and enraged public demanded swift action against the threat from the government and thus the so called era of “War on Terror” began. This war was different from all others. There was no regular army to fight with and the U.S. Army had to counter an immensely strong and well financed hidden networks and cells of terrorists having a worldwide reach.

Such kind of effort required robust intelligence. In fact the outcome of this war was entirely dependent on the value and amount of intelligence thus the focus shifted to locating such sources.

The U.S. government instituted the system of the interrogation techniques called sarcastically the “Torture Lite”, the 3 tier system of measures that were designed to stress and coerce the detainees.

4.3.2 Establishing a New Legal Framework - “When the gloves came off”

“All I want to say is that there was before 9/11 and after 9/11. After 9/11 the gloves came off” - State Department official Cofer Black.100

As early as December 2002, the Washington Post reported that US agents at Bagram military detention facility used interrogation techniques euphemistically named ‘Stress and Duress’ and ‘Torture Lite.’101 The same has been reported by other human rights

groups such as “International Committee of the Red Cross (ICRC).” The U.S. administration at that time stated that these incidents were very rare and were rather isolated from the common practice although numerous investigations conducted by both the government and NGO’s have proven that this in fact was an authorized practice.

Naturally the so called enhanced interrogation could not have started without the appropriate legal background. The application of numerous international treaties and conventions of which the U.S. was the signatory had to be diminished, with the new legal framework in order for the interrogations to commerce.

It all began with the January 25, 2002 memo of the Attorney General Alberto Gonzales to U.S. president G.W. Bush that stated that “The war on terror is a new kind of war...this new paradigm...that...renders obsolete Geneva’s strict limitation on questioning of enemy prisoners and renders quaint some of its provisions.”

Gonzales noted that Geneva Conventions did not apply to the members of the Al-Qaeda and the Taliban since they were determined as “unlawful combatants.” According to the memo this would make the interrogations conducted by the U.S. military much more affective and would lessen the possibility of their prosecution of the interrogators.

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In a memo dated February 6th 2002\textsuperscript{105} then the U.S. President George W. Bush has endorsed the prohibitions of Geneva Conventions, although mentioning wrongly as the U.S. Supreme Court held 4 years later,\textsuperscript{106} that Taliban and al-Qaeda prisoners were not entitled to such protections of Common Article 3.\textsuperscript{107}

The memo regarding the enhanced interrogations written by Assistant Attorney General Jay S. Bybee to House Counsel Alberto Gonzales regarding that practices under consideration specifically mentioned that they did not amount to torture\textsuperscript{108}. The memo defined torture only as the pain that is equivalent to the “serious physical injury such as an organ failure impairment of a bodily function.”\textsuperscript{109} He also argued that the prohibition of torture could be overridden and if it was authorized by the president in a status of the commander in chief. The president in this way would also avoid the prosecution by the justice department. Referring to and contradicting this document, the UN High Commission for Human Rights stressed that ‘there can be no doubt that the prohibition on torture and cruel, inhuman and degrading treatment is non-derogable under international law.’\textsuperscript{110}

The final step for the abolishment of the prohibition of torture and the enactment of the new legal framework was made in a memorandum of by Defense Secretary Donald H. Rumsfeld.\textsuperscript{111}

\textsuperscript{105} Memorandum from President G.W. Bush to the vice president et al., February 7, 2002. Available at http://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf accessed 11/10/2009
\textsuperscript{109} Ibid

32
Attached to the memorandum were a legal opinion by a staff judge advocate in Guantanamo Lieutenant Colonel Diane Beaver, the request for approval of the new methods by the army head of interrogation in Guantanamo Major General Mike Dunlavey, the memorandum from the commander of the U.S. Southcom\textsuperscript{112} General Tom Hill and the last but not least was the list of eighteen techniques of interrogation in three page memorandum written by Lieutenant Colonel Jetal Phifer.\textsuperscript{113}

On the basis of Donald Rumsfeld’s approval, the alleged twentieth hijacker, al-Qahrani was subjected to almost around the clock interrogation, which destroyed him both mentally and physically. At times his heartbeat fell to 35 beats per minute and he had to be revived in prison’s hospital\textsuperscript{114}, moreover his behavior gave out the symptoms of psychological trauma. He was reported to be talking to non-existing people, hearing voices and being in the corner for hours on end.\textsuperscript{115}

The abovementioned techniques of interrogation were revised in 2003 January 15 and finally in April of 2003, a memo was issued by the office of the U.S. Defense Secretary, which stated that additional methods of the interrogations were allowed and they should be requested and authorized on case by case basis\textsuperscript{116}. More specifically, the use of stress positions, deprivation of light, hooding and exploitation of individual phobias (such as the fear of dogs) were no longer out of bounds.\textsuperscript{117}

\textsuperscript{112} The department that is responsible for all U.S. military activities in Central America
The approval caused the international backlash. The UN Special Reporter on Torture condemned the use the methods approved, sighting that “the jurisprudence of both international and regional human rights mechanisms is unanimous in stating that such methods violate the prohibition on torture and ill treatment.”\textsuperscript{118} The Human Rights Watch reported that the U.S. had itself denounced the same methods when they were used by other countries.\textsuperscript{119}

Despite the criticism the foundation of the new legal framework was laid and investigators quickly started to turn it what later became gruesome reality. The important and interesting part here is that the Bush administration had taken a different approach to the problem. Instead of authorizing outright torture, the U.S. Government decided to take the “middle ground” and authorize the measures using which it regarded as not constituting torture.

4.3.3 Putting the Theory Into the Action

The establishment of favorable legal framework went hand in hand with the actual development of the methods of “Torture Lite”. As a starting point the investigators turned their attention to the Joint Personnel Recovery Agency’s (JPRA) run program code named SERE (Survival, Evasion, Resistance and Escape), a program being under careful monitoring and considered highly dangerous.


The main goal of this program was to train the personnel to withstand humiliation, stress positions, mental duress to prepare them of what to expect from being captive by the enemy. From the experience accumulated the investigators came up with the “JTF GTMO Standard Operating Procedure”\textsuperscript{120}.

As we can see as the time went by the administration allowed harsher and harsher methods to extract the intelligence from the detainees, paying less attention to the Human Rights point of view every time. In the end, the methods authorized became numerous and were classified by the severity:

- Category I methods involved mostly yelling and deception.

- Category II included twelve techniques. Those were humiliation and sensory deprivation, stress positions, document falsification, isolation up to 30 days, interrogation outside of interrogation booth, deprivation of light and auditory stimuli, hooding during the transportation, twenty hour interrogations, removal of religious and other comfort items, switching away from hot rations to meals ready to eat (MRE), removal of clothing, forced grooming, using of individual phobias such as fear of dogs.

- Category III included mild non injurious physical contact, use of scenarios to convince the detainee of imminent death, exposure to temperature

variations and waterboarding, which involves placing the victim on the flat surface with the head tilted to the floor and putting the soft tissue on the face of the victim to constrain the vision and breathing. After this the water in large quantities was poured on the head of the victim creating the sense of suffocation. The victim experiences the sensation of drowning, struggle, breath-holding, panic, swallowing vomiting and taking water into the lungs and is unable to breathe.121

Regarding the practice of waterboarding the director of the Bellevue Hospital Center/New York University Program for Survivors of Torture Allen S. Keller emphasized at the confirmation hearing, that when using this technique there was a serious risk of death from drowning and also a high risk of heart attack or of causing the damage to the lungs.122

On November 8, 2007 Malcolm W. Nance a former US Navy survival instructor and a counter-terrorism specialist, who taught at the Navy's abovementioned Survival, Evasion, Resistance and Escape (SERE) program testified to members of Congress that the method constituted torture and was harsh to the point to be useless, as the detainees would say anything to stop it.

On one occasion he has voluntarily subjected himself to this technique, on which he commented afterwards:

“\textit{In my case, the technique was so fast and so professional that I didn’t know what was happening until the water entered my nose and throat. It then pushes down into the trachea and starts the process of respiratory degradation. It is an overwhelming experience}\textit{.}”

that induces horror and triggers frantic survival instincts. As the event unfolded, I was fully conscious of what was happening: I was being tortured.\textsuperscript{123}

Despite of its harshness or perhaps for the reason of it, the method received a warm welcome in the detention facilities. The C.I.A interrogators have used it extensively. The reports indicate that in one separate scenario waterboarding was used 266 times on two detainees presumed to be members of Al-Queda.\textsuperscript{124} In the single month of the August 2002 according to Justice Department legal memorandum waterboarding was put to use 83 times against Abu Zubaydah, but even this shocking number bleaks with the comparison to Khalid Shaikh Mohammed case, who has been tortured with waterboarding exactly 183 times\textsuperscript{125}.

The details provided above are no doubt gruesome, but they do not portray the actual chaos and the gruesome details of what was going on in the U.S. Interrogation facilities. Unfortunately there is no other way to portray what happens when one unleashes torture. The reader has to excuse of the graphic details provided in the next chapter.

4.3.5 Through the Looking Glass... is the Reality of Torture

Abuses at the U.S. detention facilities were rampant. The torturers were overstepping the “Torture Lite” guidelines on regular bases. The instances of withholding the pain medications\textsuperscript{126}, putting lit cigarettes in detainee’s ears and daily beatings were a regular

\textsuperscript{125} Ibid
occurrence. On one occasion the FBI agent who was present at one of the interrogations wrote:

“The A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night”.

In some cases the interrogators have shown remarkable “creativity” in designing new ways of torture. For example the interrogation log released under the FOI Act of the detainee number 063, Mohammed al-Qahtani, the alleged twentieth hijacker, describes in detail the daily horrors of detention at Guantanamo base from which it is evident that behind the sadistic acts committed by the interrogators stood more than just the desire to extract information from the detainees:

11 December 2002

“Detainee was reminded that no one loved, cared or remembered him. He was reminded that he was less than human and that animals had more freedom and love than he does. He was taken outside to see a family of banana rats. The banana rats were moving around freely, playing, eating, showing concern for one another. Detainee was compared to the family of banana rats and reinforced that they had more love, freedom, and concern than he had. Detainee began to cry during this comparison”.


128 The freedom of information legislation act of the United States. Signed into law on September 6th, 1966
20 December 2002

“Detainee offered water—refused. Corpsman changed ankle bandages to prevent chafing. Interrogator began by reminding the detainee about the lessons in respect and how the detainee had disrespected the interrogators. Told detainee that a dog is held in higher esteem because dogs know right from wrong and know to protect innocent people from bad people. Began teaching the detainee lessons such as stay, come, and bark to elevate his social status up to that of a dog. Detainee became very agitated. 129”

The FBI personnel that was stationed in Guantanamo base has numerous times appealed to the decisions of the interrogators. One such email released under the FOIA states:

“On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated and defecated on themselves and had been left there for 18–24 hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. When I asked the MP’s what was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved. 130

The other email states:

“The interrogator then shouted “down” and the two detainee escorts pushed the detainee to the floor. When I say pushed to the floor I mean they pushed in the back of the detainee’s knees with their knees, taking the detainee to his knees. Then holding the detainee by his upper arms they slammed his upper body to the floor. This series of motions was all

130 Supra (Note 61) A-154: FBI e-mail describing interrogations at Guantánamo, August 2, 2004.
done in one swift movement, so that the detainee went from a standing position to a prone position all at once. The detainee was slammed to the floor in this manner seven or eight times. The detainee was being slammed to the floor so hard that I was concerned for his safety. The force with which the detainee hit the floor was, in my estimation, adequate to cause severe internal injury.”

The incidences of torture were in some cases so gruesome that it resulted in fatalities. Detainee number 28, Manadel al-Jamadi, notoriously dubbed by the military personnel as the “Ice Man,” the alleged supplier of the explosives involved in Baghdad bombings, has died in custody from “blunt force injuries to the torso complicated by compromised respiration.” The death came shortly after his arrival, apparently in shower room. The body was left packed with ice in showers overnight. The following morning it was removed via stretcher, but during the night the corpse was discovered by two members of the Military Police, namely Corporal Charles Graner and Specialist Sabrina Harman, who did not miss the “opportunity” to photograph themselves with the mutilated corpse. This fact alone tells tales about the conduct and the degradation of the mental state of the interrogators of the facility who considered the detainees as mere vegetables, particularly “carrots,” which they were called for their orange jumpsuits. The instances of death of the detainees were not limited to this case alone.

In December of 2002 the interrogators at Bagram Collection Point in Afghanistan killed one of the prisoners by attaching him by his wrists to the wire ceiling above his cell and

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133 Ibid
beating his legs repeatedly.\textsuperscript{135} The investigation concluded that the death resulted from multiple injuries to head, neck, arms, and leg caused by a blunt object.\textsuperscript{136}

Six days later the interrogations resulted in death of another prisoner, the autopsy’s result was the same as in the previous case.\textsuperscript{137} Notably, this time one of the interrogators believed that the person was innocent.\textsuperscript{138}

The same fate was shared by Abed Hamed Mowhoush, whose death resulted from the application of the “sleeping bag technique” and a “stress position.”\textsuperscript{139} The documents release under the Freedom of Information Act describe one “substantiated” incident in which interrogators in Al-Mahmudiya, Iraq, electrocuted one prisoner and set another’s hands on fire.\textsuperscript{140} In all, eight people have been tortured to death in U.S. custody.\textsuperscript{141}

Considering all these atrocities, in the environment where each individual action was authorized from the top and strict subordination standards of the military such mode of conduct clearly does not fit. The question of how the military personnel at Abu-Ghraib came to use these methods is one that, even after more than three years after the publication of the photographs, has still not been answered.\textsuperscript{142} Uncovering the real reason behind the Human Rights violations in the detention facilities is specifically the purpose of the next chapter.

\textsuperscript{136} Supra (Note 61) A-185–186: Final report of postmortem examination, December 8, 2002.
\textsuperscript{140} Supra (Note 61) A-273–274: USMC alleged detainee abuse cases, June 16, 2004.
\textsuperscript{141} A. Danchev “Like a Dog!”: Humiliation and Shame in the War on Terror” p.274. Available at http://www.polisci.upenn.edu/theoryworkshops/danchevpaper.doc Access on 11/10/2009
4.3.6. The Reason Behind

In late 2002 Al-Qahtani was stripped naked, paraded in front of women interrogators, was made to wear women’s underwear on his head, led around on a leash, and forced to perform a series of “dog tricks.” As surprising as it might seem during the whole ordeal the interrogators believed that they were acting within existing guidance.

When the boundary to the forbidden turns invisible it is being exploited to the utmost and yet “how does one allow it, yet still control it?” Every army has its share of people who tend to be more cruel and abusive than others and loosening the restrictions risks the dehumanization of not just the tortured, but the torturers. Martin Luther King Jr. frequently said that the greatest victims of segregation were the white people, whose souls were deformed by their own hatred.

What in theory can be the carefully calibrated interrogation technique may become outright sadistic torture in the real world scenario. Not many can realistically make a distinction between permitted “grabbing, poking, and pushing” and the banned “punching slapping and kicking.” One cannot hope that people involved in such borderline actions will exercise perfect self control and restraint.

In fact it turns out to be just the opposite, quite surprising even for the Defense Secretary Donald H. Rumsfeld. When asked by Lt. Gen. Schmidt about the permitted methods, he reiterated “My God, you [want to] know did I authorize putting a bra and

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144 Supra (Note 61) A-117: Schmidt-Furlow Report.
145 M. Bowden, *The Dark Art of Interrogation* p.74 Atlantic Monthly (10727825); Oct2003, Vol. 292 Issue 3, p51-76, ISSN:10727825
underwear on this guy’s head? 147” Lt. Gen. Schmidt answers: “No, you didn’t say it Sir. But just under that broad technique that was the application. Well, where in there was the throttle? 148”

The files obtained by the New York Times describing the interrogation policies indicate the failure of the command structure to teach the interrogators what actions were permissible or prohibited regarding the treatment of the detainees. 149 The documents show that despite numerous requests for clarification from the Guantanamo Staff Judge Advocate regarding the interrogation practices, no training was offered. 150

The interrogators were simply left without guidance and under pressure to produce the evidence and use even more aggressive measures. 151 But the problem is that the decision maker and the torturer are not the same person. In fact the decision about the ticking bomb scenario is made a lot higher in the chain of command. In would be gullible to presuppose that the interrogators inhibit a world of loving kindness or equal concern and respect for all human beings. Without the clear guidelines the tyranny is innate to the interrogators job with nothing to hold it under control. 152

One example discussed in Schlesinger Commission report 153 fits the Guantanamo base example perfectly. The experiment which took place in Stanford prison became famous primarily for its outcome.

150 Ibid
In the experiment the two groups of males were instructed to simulate the prison guards and inmates in a mock prison. Interestingly in a few days the persons involved began acting as they indeed were the actual prisoners, being depressed and enraged.

As for the second group who at first were totally aware that their power was given to them in arbitrary manner began have changed their conduct dramatically over the few days. Subsequently the second group started ignoring the arbitrary nature of their guardsmanship. Soon after the first abuses began to manifest themselves and over time they became more severe and frequent.154

It took only five days before a guard who initially described himself as a pacifist to resort to shoving greasy sausages down the throat of a prisoner who refused to eat.155

In less than a week the guards were placing bags over the prisoner’s heads making them strip and sexually humiliating them in ways reminiscent of the Abu Graib.156 Only seven days into the experiment the organizers had to halt the project because of the rampant and severe abuses of the prisoners. The persons involved in this experiment told later the use of the power was self-aggrandizing and self-perpetuating.

This example demonstrates the corrupt nature of violence is that it generates to even more violence over time.

Mark Osiel writes about the Argentinean military in the Dirty war, that many of the interrogators initially had doubts about using their methods until they were assured by the priests that they were going the “right thing,” but by the end of the war hardened young officers were placing bets about who would be most proficient in their skill. In case of torture usually the escalation is the rule not the aberration.

To counter this phenomenon an American lawyer Alan Dershowitz has suggested the system of torture warrants. The next chapter analyzes the proposal and demonstrates the argument of torture warrants suffers from the same human factors that accompany the use of violence and torture described in previous chapter.

4. 3.7 Countering the Spread of Torture: Torture warrants

The theory of the “Ticking Bomb” seems even more attractive when it is subsidized by the suggestion to authorize torture by the torture warrants.

The proponents of using torture recognize the possibility of the slippery-slope with using torture as an interrogation method. It is argued that since there is supposedly no way to avoid torture, it should be regulated in as detailed way as possible.

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161 Ibid
162 Ibid
As an exception, with the underlying reasoning, the regulation of the field by the permissive law is better than being left uncontrolled or under the supervision of the executive branch or the military involved in committing such acts.165 The decision making part is left to the judiciary,166 which authorizes the practice by issuing the “Torture Warrants.”167

The argument seems interesting because it essentially claims to be the counter to the expansion of the practice of torture, but there are lots of reasons for doubt.

The main problem of the proposition of the “Torture Warrant” concept is that it is not devoid of the same issues that accompany the “Ticking Bomb” scenario in general. As in the case of the former it is expected that interrogators will refer to this sinful shortcut more and more over time.168 There is a notion of willingness of officers to lie and serve what they think is a public good.169

The current practice is that the officials who provide the judges with the information are employing measures not always being in coherence with the word of law. It is done to persuade the court by trying to aggregate the actual cases in order to reach the guilty verdict. It is surely to be expected that the people who will be in charge of the highest profile cases will do the same only with possibly one exception of making the cases look even

167 Ibid
grimmer than regular for the accused. Moreover, the judges can come under public pressure to issue such warrants for the reasons of public safety, the courts may turn out to be reluctant to contradict to the executive branch as it happened for example in the cases of Algerian prisoners.

The argument that the use of the torture warrants will also raise the accountability of interrogators is also doubtful. The reason behind this is the policy within the army, the sheer notion of the leniency and military impunity that traditionally surrounds such institutions. Given the current situation, despite the rising number of accuracies of acts of torture only a small fraction of the people involved in such action have been actually brought to justice and even in those cases they well rather low ranking officials 70% of which did not even get sentenced.

In the end the “Torture Warrant” argument runs counter to the paradigm under which it is offered. The judicial decision, given a proper review, takes time and it is exactly what the enforcement agencies supposedly do not have in hypothetical “Ticking Bomb” situations.

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172 P. Vidal-Naquet, Torture: cancer of democracy p. 120–134. (Harmondsworth: Penguin, 1963) ASIN: B0000CLOMS

The torture that took place in Guantanamo and Abu-Graib bases was not the coincidence, the Bush administration has downplayed what has happened at the interrogation facilities, by stating that the atrocities committed in Guantanamo and Abu Graib prisons were committed by a “few bad apples,” but for all I know that is not true. Abu Ghraib is not a few bad apples—it is the apple tree. The practice of routinely pushing and pressuring the investigators for swift extraction of the intelligence, the lack of the clear guidelines of what constitutes torture and the inherent intricacies of the nature of the human bear the responsibility.

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Conclusion

The main goal of this thesis was to demonstrate the deeply rooted flaws of the “Ticking Bomb” argument, which effectively render the notion of the utilitarian argument pointless. Despite of the robust nature of the underlying theoretical reasoning of the “Ticking Bomb” scenario it is not applicable to the interrogation practice.

There is a difference between ignoring the truly catastrophic case and focusing our attention elsewhere designing general rules and policies. The argument of the “Ticking Bomb” is provided precisely for the reason to deter the Human Rights advocate from such reasoning and fortunately it is flawed in many ways.

Being based on the assumptions that simply can’t exist in the real world, it demonstrates its inapplicability as a policy forming tool in the intelligence gathering practice. It ignores the notion of torture as an ineffective tool for gaining the credible intelligence, which results either in false confessions or in the outright pointless torture, by assuming that the torture can be isolated by torture warrants the ticking bomb argument contradicts to the basic tenants of the human behavior of exercising violence as I have demonstrated by the example of comparing the enacted policy of “enhanced interrogation” to the actual practice at the U.S. interrogation facilities.

The violence by its definition cannot be isolated to a few cases as it is claimed by the proponents of the “Ticking Bomb” scenario as it ignores the fact that the use of violence is a downright spiral and if allowed to exist it tends to spread and aggravate itself to form the horrific pictures of Abu Graib, Guantanano and many others.
Despite the flaws of the “Ticking Bomb” scenario I think that for a Human Rights oriented person it actually may be of a good value in that it profoundly demonstrates the limits of the values and Human Rights principles that we so dearly hold on to. By its very divergence from the real world, it provides us with the knowledge that we have not reached its imagined limits in reality. Given a proper thought “Ticking Bomb” scenario is not to weaken should straighten the commitment in protection of the Human Rights principles.
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