



Allowing Torture Will Not Make Us More Secure

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Torture is a plague: a ravaging, painful and despicable plague that still, after centuries and centuries, haunts our planet. Just consider the facts. In a study released as part of a global campaign against torture carried out by AI activists worldwide in 2000 and 2001 we noted that torture is reported to occur in 150 nations around the world. That is more than $\frac{3}{4}$ of the world's states. In $\frac{1}{2}$ of those countries torture was widespread, pervasive and systematic. In 50 of those countries children were tortured. 50. Think about that ... children.

We, and many groups, have said therefore that this is the time when governments should resolutely commit themselves to doing everything possible to eradicate and abolish torture – within their own borders and in other states. Through law reform, political action, public education and much more.

And while it is a formidable, daunting challenge, there is much to build on in that effort. Torture is universally banned in major human rights treaties and the international level – the UN – and regional level – bodies such as the OAS, Council of Europe and AU. In fact there are a number of specific human rights treaties which deal solely and specifically

with the issue of torture – most notably the UN Convention Against Torture. And not just internationally – nationally – countries the world over have banned torture in their constitutions and other laws. They have also enacted laws making it clear that individuals who commit torture will face justice. And increasingly governments recognize that the responsibility to bring torturers to justice transcend borders – such that a Canadian court must be prepared to bring a Malaysian torturer to justice, a Malaysian a Zimbabwean, and a Zimbabwean court a Canadian torturer. That is, the wonderful, powerful principle of universal justice that was affirmed for instance by the British House of Commons in its 1999 Pinochet decision and which stands at the heart of the International Criminal Court. Justice in the face of torture is a shared global duty.

Splendid treaties, strong constitutions, and new judicial institutions, laws with global reach: it all sounds very promising. But the numbers, the prevalence of torture, and the wrenching individual stories, bring us very much down to earth. There is a wide, wide gap between the promises governments have made to end torture and the reality of torture in prisons, in war, in homes around the world.

Given that gap, the new debate about torture and security is all the more worrying.

At a time when efforts should be redoubled to close the gap between the promise and the reality of a torture-free world, governments have seized on the post September 11th security environment as an opportunity to advance the argument that torture might occasionally be justified.

Reports have emerged, with alarming frequency, that a range of post September 11th detainees have been subjected to torture or certainly, at the very least, serious ill-treatment – in Iraq, in Afghanistan, in Guantanamo Bay, within the U.S. itself. And now, closer to home, we have cases such as Maher Arar’s and the disturbing unanswered questions as to whether Canadian law enforcement agencies may have been in any way complicit in his rendition from the United States to face torture in Syria; as well as the case of Hassan Almrei and others held under Canada’s notoriously flawed and unfair immigration security certificate process, who face deportation to countries where they are almost certain to be tortured.

The response to torture allegations in this era of new security has varied. Often it has been to deny and dismiss the allegations – which is an age-old defense to accusations of human rights violations. Other times it has been to distinguish it as something other than torture. For example, listen to the following:

The most efficient technique is to break down a detainee’s defenses then build up his trust. The first step is achieved through a combination of physical discomfort and psychological disorientation. A captive might be subjected to extreme heat or cold, deprived of light or dark, made to squat in painful positions, questioned and fed at irregular intervals, kept awake for hours on end. Most important is confinement or isolation, divorced from all that is familiar.

That's Time magazine earlier this year – an interview with a retired FBI agent speculating as to techniques that might have been used in interrogating suspected al-Qaeda operative Khalid Sheik Mohammed. The distinction drawn seems to be that it is okay because it does not involve actual physical torture.

But beyond denying, beyond distinguishing, in these past 2 years there have been growing suggestions that society should simply bite the bullet and recognize that in some circumstances torture is a necessity. To the extent that Alan Deschowitz, Harvard professor and celebrated criminal defense lawyer, has proposed the idea of creating a judicially authorized torture warrant – which would allow torture in limited, exceptional cases, under court supervision. Even here in Canada we continue to see unwillingness on the part of our government and our judges to take a firm stand against torture in an immigration context, as I noted earlier, exhibiting instead a willingness to deport to torture when security concerns have been put on the table.

And regrettably that position was at least partially endorsed by our Supreme Court in early 2002 in the Suresh judgment, which stopped short of requiring full compliance with Canada's international obligations not to deport anyone, anyone to torture, by leaving open an undefined window of extraordinary circumstances which would justify such action when sufficiently pressing security concerns were at stake.

The argument of course is a variant on the scenario whereby police have someone in custody, who is thought to have planted a bomb somewhere which is poised to explode, likely killing many passers-by. Wouldn't it be better to use a bit of torture to get the information about the bomb's location and thus save lives? Today it is the al-Qaeda scenario. Someone is in custody, thought to have al-Qaeda links. What if torture would result in information that helps crack an al-Qaeda cell and thus thwart a terrorist attack? We don't necessarily like torture – but might it sometimes serve a greater common good?

The answer quite simply --- absolutely not!

No, we cannot allow it. And we must resist any movement in this direction. We must resist for any number of reasons, 3 of which I would like to touch on.

1. Torture is wrong, and its ban is without exception for good reason.
2. Where would we ever draw lines?
3. The theory that this helps in law enforcement is simply fallacious and flawed.

Let me take these in reverse order.

It is fallacious. I am not a law enforcement expert. But those who are have said repeatedly that you do not get good, reliable information by trying to beat it out of people. You may have the wrong person or even if you do not, most people will say anything to bring the horror of torture to an end. They will say anything, finger anyone. And more likely than not, it will not be the truth. In some instances the torture may strengthen the resolve of the person being tortured not to provide any information, not to

cooperate in any way – a martyr’s complex of sorts. The end result may well be to detract law enforcement officers from solid, reliable policing and intelligence work – the kind of work that would give rise to good leads and reliable information.

So, point 1 – torturers don’t help enhance security, they simply torture.

Where do we draw the line? Allowing any torture is to take the first step down a long, slippery slope. Where would it stop? If we can torture the suspected terrorist, can we torture someone who might know where the suspected terrorist is hiding? His sister? Neighbour? Someone who shares his political views? Religion? Comes from the same country? Someone who knows a person, who knows a person, who knows a person, who knows the suspect’s sister? The reality is that the line simply does not get drawn. When torture is excused, or allowed, its use does not remain confined and limited. Quite the contrary, its use grows and expands. Behind the rhetoric of fighting terrorism, waging a war, or routing out criminals, the ugly tentacles of torture reach out and claim more and more victims.

So, point 2 – Once we allow torture it knows no bounds.

But let me come to my final point – which is, I believe, the most important.

Quite simply we must resist any attempt to justify or legalize torture because we must. When international human rights documents like the UDHR were drafted 50 years ago they put it clearly

Article 5: No one shall be subjected to torture

No one. No how. No way. It does not go on to qualify that with “except”, “unless” or “this does not apply when...” And every human rights treaty that followed these simple words from 1948 has taken the same firm stand. No one.

Because torture, by its very nature, destroys the basic sense of physical and mental integrity that lies at the heart of human dignity, that is at the foundation of the very notion of fundamental human rights. And this must hold even when societies are faced with threats such as terrorism. To respond to terrorism with the terror of torture does not take us to a better, more secure world. Instead it simply fuels and continues the horrifying cycles of violence and revenge which lead to war and spark acts of torture. We remain trapped in a world which meets violence with violence. A world which creates more victims, more resentment, more fear.

So point 3 – torture, of anyone, anywhere demeans us all and breeds greater insecurity not enhanced security.

Now is the time, not to consider opening up exceptions to the ban on torture. Now is the time, more than ever, to double, to triple our collective, global efforts to bring it to a

global end. That is the strategy that will ultimately give us the secure – and just – world we all crave.