

## An appraisal of interrogational torture in liberal democracy

Chidiebere Obi, Uchenna Ezeogu

Department of Philosophy, Nnamdi Azikiwe University, Awka, Nigeria

### Abstract

The idea of torture has long been prohibited by; the Geneva Conventions, The U N convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. So many other international treaties have placed absolute prohibition on torture and it has been championed by countries that claim to be liberal democracies, yet we still see and notice traces of torture in almost all the liberal democratic countries. Could it be that torture is a necessary evil that cannot be avoided? Why the ban on torture? Can torture ever be justified; why and why not? Are liberal democratic principles compatible with the idea of torture? Is there any contradiction in punishing those who choose to break the law in order to protect the state? The question of torture has posed serious challenge to liberal democracies. We shall in this research consider why in spite of various bans on torture by most liberal democracies, it's still very much prevalent. The paper suggests that given to extenuating circumstances, interrogational torture maybe permissible.

**Keywords:** Torture, Interrogational Torture, Liberal Democracy, Terrorism

### Introduction

Interrogational torture as an act has generated series of debates amongst scholars, especially during the post 9/11 terrorist attack in the United States. It seems as if pro torture group are gaining much ground. Torture, especially U.S.-sanctioned torture, or any other liberal democracy is a very difficult discussion topic. Based on the fundamentals of liberal democratic states, it is expected of them to eschew or avoid torture, even amidst extra ordinary circumstance. Torture has constituted a major debate, both in the time past and in our contemporary time.

Various international conventions have placed absolute ban on torture, and these bans were championed by liberal democratic states. The springboard of the ban argument has been to uphold the dignity of the human person. Since torture dehumanizes man and reduces him to a mere object or a means to an end, almost all liberal democracies were signatory to the ban on torture.

But with the recent advancement in terrorist attack, especially the 9/11 terrorist attack on America, the debate on torture was brought to life again. David Luban (2005) thus puts it:

Torture used to be incompatible with American values. Our Bill of Right forbids cruel and unusual punishment, and that has come to include all forms of corporal punishment .... Americans and our government have historically condemned states that torture; we have granted asylum or refuge to those who fear it. The Senate ratified the Convention against Torture, Congress enacted anti-torture legislation, and judicial spoke of the dastardly and totally inhuman act of torture. Then came September 11, less than one week later, a feature story reported that a quiz in a university ethics class, gave four choices for the proper U. S. response to the terrorist attacks: (A). execute the perpetrators on sight; (B.) bring them back for trial in the United States; (C.) subject the perpetrators to an

international tribunal; or (D.) torture and interrogate those involved. Most students chose A and D<sup>[1]</sup>.

This is a clear picture of what became the view of most liberal democracies. For R. M. Berger and J. Ross, (2007) "we thought the word was gone.... We thought 'torture' belong to a foreign language.... We were wrong<sup>[2]</sup>." This questions the stance of liberal democracies, which has laid more emphasis on the importance of human dignity and individual right. Joe Moloney (2010) while quoting Christopher Tindale states that there are three types of torture: interrogational, deterrent and dehumanizing torture<sup>[3]</sup>. The purpose or intent in each event determines the type of torture in question. Interrogational torture has a specific goal which is to extract information from an individual. Deterrent torture aims at discouraging people from particular behavior. While the third type of torture is referred to as dehumanizing torture.

For the purpose of this research, our main focus shall be on the first type of torture; which is interrogational torture. Can interrogational torture be compatible with the basic commitments of liberal states? Using ethical principles, we shall be looking at the compatibility or justifiability of torture in liberal democracy. Let us therefore consider the meaning of torture, and more specifically interrogational torture. It was previously presumed that the subject of torture has become historical interest as far as Europe is concerned, but with the recent waves of terrorism it has come to life again. What is most remarkable is not that torture is used, but that it is being defended. It is the aim of this research to look into what seems to be a justifiable torture, or the kind of torture allowed by liberal democracies.

### The torture debate

Here, effort will be made to consider both the arguments for and against torture. The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment states:

The term torture means 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 or a third party information or confession, punishing him for an act he or a third person has committed, or is suspected of committing, or intimidating or coercing him or a third person, or for a reason based on discrimination of any kind, whether such suffering is inflicted by or at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity [4].

Further, there is no acceptable justification that releases countries from their obligation to refrain from the use of torture. Article 2 (2) of the Convention states that: “No exceptional 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 of torture” [5].

Arguments on the permissibility and non-permissibility of torture were given more attention after the 9/11 terrorist attack on US; the increased rate of terrorism and other serious crimes against humanity. That is to say that prior to these developments, people all over the globe had seen torture as an evil against the human person and as such should never be condoned. Sequel to this, many international charters prohibiting torture was established.

One of the reasons for prohibition of torture is the unreliability of the pieces of information elicited from the tortured. This is because according to Peters, the great Roman Jurist Ulpian noted in the third century A. D. that information obtained through torture was not to be trusted because some people are “so susceptible to pain that they will tell any lie rather than suffer it” [6].

Indeed, after extensive historical study, Langbein concludes that, “[h]istory’s most important lesson is that it has not been possible to make coercion compatible with truth [7].”

*The New York Times* once reported that:

The Bush administration based a crucial prewar assertion about ties between Iraq and Al Qaeda on detailed statements made by a prisoner while in Egyptian custody who later said he had fabricated them to escape harsh treatment . . . after he was secretly handed over to Egypt by the United States in January 2002, in a process known as rendition [8].

This point was corroborated by one CIA operative who partook in torture during the Vietnam War: “we had people who were willing to confess to anything if we would just stop torturing them” [9]. Due to this unreliability of intelligence gotten from torture, some argued that strategically useful information is best obtained from prisoners who are treated humanely, and that information obtained through torture has produced faulty intelligence [10].

The above arguments on the unreliability of information elicited from torture have being countered by many cases where information gotten from victims of torture was useful in saving thousands of lives. For example, defending the CIA’s programme of enhanced interrogation, former US Attorney General Michael Mukasey wrote an op-ed titled “The Waterboarding Trail to Bin Laden”. The intelligence that led to the raid, Mukasey asserted,

...began with a disclosure from Khalid Sheikh Mohammed (KSM), who broke like a dam under the pressure of harsh interrogation techniques that included waterboarding. He loosed a torrent of information — including eventually the nickname of a trusted courier of bin Laden [11].

In the words of a US Army intelligence sergeant while reflecting on his effort to get information from captured Al Qaeda and taliban fighters:

in all of the soul-searching over the [Abu ghraib] scandal and the effort to understand what interrogators do, there has been a familiar refrain — the adage that harsh treatment of prisoners only produces bad intelligence, that a tortured prisoner will say anything to stop the pain . . . I know many experienced and fine interrogators who believe that tenet of interrogation doctrine wholeheartedly. But I don’t find it particularly persuasive . . . our experience in Afghanistan showed that the harsher the methods we used — though they never contravened the [geneva] Conventions, let alone crossed over into torture — the better the information we got and the sooner we got it [12].

It was also claimed that “torture enabled the French to gather information about future terrorist strikes and to destroy the infrastructure of terror in Algiers [13].”

Another argument in support of the unreliability of information from torture is that such information can be placed under *act of man* and not *human act*. In his work: *The elements of Philosophy*, William Wallace argued that “what makes an act performed by human being be distinctively human is that it is voluntary in character, i.e., an act in some way under the control or direction of the will, which is proper to man” [14]. He went further to say that “some acts that humans perform are done also by animals, e.g., vegetative acts and perception and of emotion. When a person does such acts they are called acts of man” [15]. Deducing from this, one can argue that intelligence/information gotten from torture should not be relied on simply because it was not voluntarily given and should be taken as act of man.

The above argument can be faulted because one may argue that the better yardstick for measuring torture is its pragmatic impact or its purpose. Did torture serve its purpose at the end? Assuming that the purpose of torturing someone is to get information that will be used in saving thousands of lives and at the end this was achieved, who asks whether it was an act of man or human act? Dogs sometimes can help detect traps or bombs and still their (dogs) actions are grouped under *acts of man*. Who asks whether it was the will of the dog to be used in such assignments or not? The fact remains that the dog’s action was useful. Even though it is morally wrong to compel someone to do things involuntarily, but when it is clear that the person has stooped too low thereby reducing himself to level that the only way of making him talk is to compel him, then, it is encouraged to do so for higher end.

Another fundamental reason why torture is prohibited by many international conventions is its violation of the rights enjoy by the human persons who are naturally dignified. Due to the endorsement of the notion of human rights universalism by all states at the World Conference on Human Rights in Vienna, 1993, all states were expected to prohibit torture and

other inhuman treatments which are in tandem with the inviolability of the dignity of the human person.

Condemning the act of torture and its threat to human rights, Louise Arbour, UN High Commissioner for Human Rights, on Human Rights Day, 7 December 2005 states that:

The absolute ban on torture, a cornerstone of the international human rights edifice, is under attack. The principle once believed to be unassailable the inherent right to physical integrity and dignity of the person is becoming a casualty of the so-called 'war on terror' [16].

Mathuna captures this; "the gradual erosion of individual rights and human dignity will further undermine the fundamentals upon which a society is built. Torture plays a key role in this erosion of core values [17]." US Army Colonel Tony Pfaff says; "respecting human dignity means giving people the kind of treatment they deserve, but prohibitions against torture, cruel, inhumane, and degrading treatment are based on the idea that there are some kinds of treatment no one deserves [18]."

Arguing against the above condemnation of torture on the basis of human right and dignity, Ronald Dworkin argued that in cases of rights conflict, we should look not at the explicit formulation of the right but rather to the values that suggested the right in the first place [19]. Corroborating this view, Fritz Allhoff held,

"So, if individuals have a right to life, it is because life itself is something that is valuable and worth preserving. Given a conflict then, where the violation of one person's right (to life, let's say), could prevent the violation of five other persons' right to life, the values that suggested the right to life would suggest violating the one in order to prevent violation of the five [20]."

Scholars that argued in support of torture, always have recourse to 'ticking-bomb scenario'. According to Richard H. Corrigan, 'ticking-bomb scenario' can be seen as:

...a hypothetical situation that supposes definite devastating consequences for a large number of innocent people, if nothing is done to prevent the imminent detonation of a terrorist bomb. The authorities have in their custody a detainee who is aware of the location of the explosive device, but he refuses to co-operate in the provision of information essential to its discovery and disarmament. The question is: would the authorities be morally justified in the use of torture to ensure that the catastrophic explosion is averted [21].

Having seen the arguments for and against torture, we will now consider the application of interrogational torture in liberal democratic states.

### **The dilemma of torture in liberal democracy**

It's important to note that even though that virtually all the countries in the world are signatories to the above prohibitions on torture, some countries are yet to criminalize the act of torture. In Africa for example, out of the 54 African Countries only 9 have criminalized torture in their local legislations. These are Algeria, Burundi, Cameroon, Egypt, Equatorial Guinea, Madagascar, Mauritius, Tunisia and Uganda [22].

Liberal democracy is a system that preaches rule of law, equality, freedom and respect for human rights but as many had argued; the traces of torture in liberal democratic states

could be referred to as a contradiction to what liberal democratic system stands for. The fundamental question to ask is: how can liberal democracies cope in the face of modern terrorism? The acceptance of torture within liberal democracy has been anchored on the need to protect the state from all forms of terrorists' threat and attack. Hence, some liberalists have argued and defended torture by positing a ticking bomb scenario. An agent of the state whose primary responsibility is to protect the state, in accordance with the dictates of the law, in recent times is faced with the challenge of protecting the state and be law abiding even when the both conflicts. Has the recent waves of terrorism succeeded in destroying democratic principles?

In the words of Senator John McCain in (2005) 151 U S Congress Record, "it is not about who they are; it is about who we are." Implying that, the fact that one has no respect for human dignity, does not necessarily imply that such a person dignity should not be respected. In the present contemporary changes, should a nation remain firm to its stand on certain moral issues even when such stance seems not to be working or should there be change in order to adapt to the changes? The dilemma is that, liberal democracy forbids any form of torture, but recent terrorists' tactics have proved that unless something urgent is done to curb terrorism; a time will come when the entire universe will be at the mercy of terrorists. How do we handle the enemy who has no regard for his life and that of others? Sit and pamper him, or use force on him? Alison Brysk had argued that individual rights to liberty are trampled by the collective right to security [23].

According to Peter Chalk, since the late 1960s when terrorism emerged as a significant feature of domestic and international political life, liberal democracies have been struggling with the problem of how to respond in a manner that is consistent with their own norms of legitimacy and acceptability. One of the key foundations of the modern liberal democratic state is the requirement that the government of the day safeguards the security of its citizens by enacting and enforcing laws which are designed to protect their interests. Given the fundamental threat that terrorism poses to any liberal democratic society living under the rule of law, it is generally accepted that such policies must, as a basic principle, respond to acts of terrorism in a firm manner [24]. But does the state run a risk of undermining its own legitimacy and creating a situation far worse than the one it is attempting to counter? In a democratic setting is it possible for torture and law to go together? Practice of torture and advocacy for torture signal a crisis for Liberal democracy.

The major problem with the idea of torture in liberal democracy is that if we uphold absolute ban on torture, how firm is our conviction that no circumstance can warrant the torture of another human being? And if torture is permitted, what should be the limit? Is there no possibility for abuse? To what extent would a liberal democratic state conveniently uphold the rule of law, the dignity of human person and at the same time condone torture? All these have constituted great dilemma to modern liberal democratic states, as scholars, policy makers, and politicians are turned apart on the issue. Each has its moral, political and legal consequences.

### **Evaluation**

The debate on torture seems to be difficult, since it involves dealing with real life situations and certain ideal principles

which are conflicting. Should a country rigidly hold to its principles even when the real life situation proves that holding onto such will lead to loss of innocent lives? Or should the security threat which countries face change their stance on certain ideal principles? How perfect is manmade law, considering the imperfect nature of man? Is law made by man all-encompassing or will there always be room for improvement? A proper reflection on all these questions will shape our thought on the problem in question.

It is the intention of this article to argue that since man has fallible nature, it suffices to say that there will always be room for improvement in whatever that involves man. No law made by man should be seen as absolute, bearing in mind the epistemological nature of man and the changing nature of man and his universe. The 21<sup>st</sup> century has witnessed advancement in terrorist attacks and threats, should countries especially liberal democratic countries stick to the old rules or adapt to the changing situations? Logically I would like to posit that, if man has fallible nature, then sticking to the old rule which is manmade may not be the solution. But how do we adapt to the changing circumstances of our time without violating certain fundamental principles upon which human social existence is anchored?

This will lead us to the issue of treating man as a human person, who has respect and dignity. Do all human beings deserve respect and dignity? What makes man a being with inviolable dignity and respect? From the religious angle it has been argued that it is the image of God in man. Does this image perpetually reside in man? Are there conditions when man seems to exist without the reflection of this image? In such a situation should such a person still be seen as a carrier of such image? Moving from the popular statement; 'as a being is so it acts', what then is the nature of a terrorist, a reflection of God's image or not? If a reflection of God's image, is his activity as a terrorist compatible with the image of God which he possesses? It amounts to a negation to ascribe the image of God to one who does not possess it. If a man exists without a reflection of this image, should such a person still be entitled to the dignity and respect due to those who possess this image? The major challenge is how do we dictate that a man from his behavior is without the reflection of this image? Who is qualified to make such assessment? What are the yardsticks or criteria for assessing it? Again, considering the fallible nature of man, is there no possibility for abuse? What influence does torture have on the culture of the people and to the torturer?

There has been great complexity with the idea of torture in liberal democracy. Deducing from the argument so far posited, it is important to note that accepting any of the extreme positions in the torture debate may not be ideal. It is the position of this paper that torture should remain prohibited but not absolutely prohibited. Extra-ordinary circumstances need extra-ordinary means and methods to be resolved. Torture should be allowed when necessity demands such, but certain constraints should be established to checkmate abuses.

### Conclusion

Since terrorism in this our modern time could be said to have gone nuclear, it is important to apply flexibility in issues involving terrorism. It is important to understand the dilemma which a state agent faces in trying to maintain his constitutional duty of protecting the state and at the same time

not violating the constitution even when the only tool that may be at his disposal will be that which will breach the constitution. Torture out of necessity especially in 'ticking bomb scenario' may be viewed as a justified illegality.

This will to some extent serve as deterrent to perpetrators of terrorist acts. When a terrorist knows that under no condition will reasonable force be applied on him as a matter of necessity, he will be more willing to accomplish his mission. Absolute ban on torture may take man back to Hobbesian state of nature. The evil of torturing a guilty terrorist is far more outweighs the evil of allowing the death of innocent lives just because one wants to maintain certain principles within a liberal democratic state.

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