

Is Torture Ever Legally Permissible? — Review on Maureen Ramsay *Can the Torture of Terrorist Suspects Be Justified?*

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Abstract

This study rigorously explores the intricate legal, ethical, and operational dimensions involved in utilising torture in post-9/11 counter-terrorism strategies, pitting the unrelenting prohibition of torture against the pragmatic necessities of national security. It delves into the academic question of whether torture is morally permissible under extreme conditions, particularly in ‘ticking bomb’ scenarios, and assesses the effectiveness of torture in obtaining viable intelligence. Through detailed analysis, this study seeks to contribute to the dialogue on the need to harmonise national security objectives with the need to comply with human rights and legal norms, thereby enriching policy development and academic debate.

Keywords: torture, counterterrorism, human rights, national security, legal ethics, moral dilemmas, intelligence gathering, international law, Consequentialism

Following the 9/11 attacks, there has been an urgent need to critically examine the legality and morality of torture, particularly in the context of national security and counterterrorism. The aftermath of these attacks marked a paradigm shift in global politics and security strategies. This has brought the contentious issue of torture against terror suspects into the limelight, sparking a global controversy and prompting intense debates across legal, ethical, and societal spheres. This point in time has not only questioned the established norms of international law and human rights, but has also raised significant ethical questions about the conduct and limitations of state power in extreme circumstances. The following discussion explores the complex and diverse perspectives surrounding this critical issue, including moral dilemmas, legal intricacies, and the pragmatic demands of national security. It is important to analyse and comprehend the multifaceted nature of this issue.

In 2006, Dr. Maureen Ramsay published a paper titled ‘Is Torture Justified for Suspected Terrorists?’ in *The International Journal of Human Rights*. The study unequivocally concludes that torture of suspected terrorists is absolutely prohibited under any circumstances and cannot be rationalized or justified. The article critiques academic debates that suggest torture is morally acceptable in certain catastrophic situations to prevent a greater calamity. The article argues against the view and identifies two types of proposals for implementing ‘principled’ torture by legally permitting or justifying ‘informal’ torture. However, the article contends that both proposals are inadequate in limiting the amount of torture, increasing accountability, holding those responsible for misconduct accountable, or maintaining the prohibition on torture. The article challenges the commonly accepted notion that torture can be justified on consequentialist grounds, even if the stakes are high. Additionally, it notes that torture serves not only to extract information but also to dominate and degrade the victim, breaking the will of both individuals and groups. The article argues that the debate surrounding the moral acceptability of torture is often limited to a narrow perspective that fails to acknowledge the purpose and uniquely wrongful nature of torture. Furthermore, this perspective creates a misleading and polarizing choice between respecting

human rights and preventing terrorism¹.

International law and human rights treaties firmly prohibit torture. The Universal Declaration of Human Rights establishes a global understanding of freedom, justice, and peace based on the inherent dignity and equal rights of all individuals. The United Nations Convention Against Torture (UNCAT) explicitly prohibits torture under any circumstances, including war or other public emergencies. This legal framework asserts that torture is a violation of fundamental human rights and emphasizes the sanctity of human dignity. The absolute nature of these prohibitions reflects a global consensus on the inadmissibility of torture, highlighting its role as a fundamental breach of human rights.

There are differing opinions in the debate on the use of torture, particularly in the areas of national security and counterterrorism, especially in extreme situations such as 'ticking time bombs'. Dr. Maureen Ramsay strongly supports the absolute prohibition of torture. She rejects consequentialist views that allow for ex post facto justification or prior authorization of torture. Consequentialist views argue that torture may be justified if its use has less detrimental consequences than not using it. This hypothetical situation is often discussed in counterterrorism debates, where a known terrorist has planted a bomb that is about to explode, and torture is considered a means of obtaining information to prevent a catastrophe. Some scholars, notably Alan Dershowitz², have argued in favour of conditionally permitting the use of torture. Dershowitz proposes the use of torture warrants in critical situations, introducing a regulated and transparent approach to a traditionally secretive and unaccountable practice. Although highly controversial, he embodies the consequentialist view that the serious consequences of inaction may justify the use of ethically questionable methods. This perspective challenges not only the absolute moral and legal prohibition of torture but also triggers a complex debate about the balance between individual rights and collective security. It raises critical questions about the extent to which democratic societies should protect their citizens.

The use of torture to extract reliable information raises moral and legal dilemmas, as evidenced by various case studies. Historical instances have shown that torture often fails to produce actionable intelligence, which has led to debates about its effectiveness. A well-known instance is the implementation of torture during the Iraq War, particularly at Abu Ghraib prison. This approach did not produce any significant intelligence gains and caused considerable harm to the global reputation and relationships of the United States.

Based on factual cases, Dr. Maureen Ramsay concludes that the assumption that torture can be applied is not a realistic possibility. The revelations of torture and detainee abuse at Abu Ghraib, documented in photographs that became public in 2004, showed a shocking level of mistreatment by U.S. military personnel. The forms of abuse included physical and sexual abuse, torture, rape, sodomy, and murder. These actions were a direct violation of the United Nations Convention Against Torture and the Geneva Conventions, which set standards for the humane treatment of prisoners of war. The fallout was immediate and widespread, eliciting global condemnation and raising questions about the effectiveness and morality of such tactics.

The Abu Ghraib scandal is a critical case study in the debate over the efficacy of torture in gathering intelligence. Reports and investigations following the scandal indicated that the harsh techniques used did not result in any significant intelligence breakthroughs that could justify their use. The use of torture damaged the credibility and moral authority of the United States, fuelled anti-American sentiment, and became a propaganda tool for terrorist organizations. This arguably undermined the broader goals of the War on Terror.

Dr. Maureen Ramsay stated that in extreme hypothetical scenarios, losses may be overlooked. The incident at Abu Ghraib also highlighted the moral cost and psychological impact on both the victims and the perpetrators. The detainees who were subjected to torture experienced severe physical and psychological trauma, which had long-lasting effects on their well-being. The involvement of military personnel in acts of torture resulted in legal consequences, career-ending penalties, and, in some cases, psychological distress. This situation reflects Michael Walzer's concept of 'dirty hands,' where individuals may find themselves committing morally reprehensible acts for perceived greater goods, leading to profound moral and ethical consequences³.

Indeed, the broader societal implications of the Abu Ghraib scandal are significant. The incident challenged the moral standing of the United States as a proponent of human rights and democracy, sparking a global debate about the use of torture and its place in modern warfare and counterterrorism strategies. The scandal has raised critical questions about the oversight of military and intelligence operations, the training and conduct of

¹ Maureen Ramsay, (2006). 'Can the torture of terrorist suspects be justified?' *The International Journal of Human Rights*, 10(2), pp. 103-119.

² A. M. Dershowitz, (2002). *Why Terrorism Works: Understanding the Threat, Responding to the Challenge*. New Haven, CT: Yale University Press, pp. 131-163.

³ M. Walzer, (1973). 'Political Action and the Problem of Dirty Hands'. *Philosophy and Public Affairs*, 2(2), p. 161.

personnel, and the extent to which a democratic nation should go in its efforts to combat terrorism.

In conclusion, the Abu Ghraib case highlights the intricate relationship between legal, moral, and practical factors in the discussion of torture's acceptability. It is a clear reminder of the potential repercussions when ethical limits are violated in the interest of national security. The historical evidence indicates that the use of torture not only fails to yield significant intelligence gains but also inflicts severe moral and ethical damage, undermining the very principles and values it purports to protect. This case reinforces the argument for upholding the absolute prohibition of torture as a legal and moral imperative in both national and international contexts.

Dr. Maureen Ramsay argues against the prior authorization and ex post facto justification of torture. She believes that legalizing torture through strict conditions does not reduce torture or promote accountability. The moral implications of torture extend far beyond the immediate impact on victims, as it fundamentally violates an individual's rights and dignity, leading to lasting psychological and physical trauma. Condoning torture can have significant societal consequences, as it can erode the moral fabric of a society, damaging its ethical foundations and international standing. Michael Walzer's concept of 'dirty hands' provides a philosophical framework for understanding these complex ethical situations. According to Walzer, political leaders may engage in morally questionable acts for a perceived greater good. However, decisions of this nature carry long-term implications for legal and moral standards, posing serious ethical dilemmas.

The case of Israel's use of torture against Palestinian suspects illustrates the risks of normalizing torture. This practice was initially justified as a counterterrorism measure but became widespread and routine. The broad interpretation of scenarios like the 'ticking bomb' can lead to systemic abuse. The Israeli case serves as a warning, demonstrating how exceptions to the prohibition of torture can become a routine practice that undermines the principles it seeks to uphold.

Dr. Maureen Ramsay introduced the views of three scholars. The debate is complicated by the nuanced positions of scholars such as Henry Shue, Oren Gross, and Richard Posner. Shue argues that although torture should never be legalized, it might be justified in rare situations¹. His perspective is similar to justifications for civil disobedience, where the individual, or in this case, the torturer, must justify their actions in a public trial, convincing their peers of the necessity of such extreme measures. Gross argues that public officials may need to act outside the legal framework in exceptional circumstances, even if it means facing legal consequences². He proposes that such actions could be excused post facto under certain conditions, reflecting a pragmatic approach to exceptional situations. Posner, on the other hand, recommends maintaining the legal prohibition against torture but allowing for non-enforcement in extraordinary circumstances³. This approach relies on executives to make decisions in high-stakes situations, potentially allowing officials to avoid political accountability for their actions later.

These perspectives reveal the multifaceted nature of the torture debate. They highlight the tension between upholding absolute legal and moral standards and addressing practical challenges posed by extraordinary threats. While advocating against routine torture, these scholars recognize the moral and legal weight of such decisions in extreme situations, reflecting on the real-world implications of legal and moral principles.

In synthesizing these viewpoints, it is clear that the debate over torture involves not only legal statutes or abstract moral principles but also real-world implications of these laws and principles. The positions of Shue, Gross, and Posner suggest a landscape where legal norms may conflict with national security imperatives, highlighting the need for a rigorous legal framework and robust public discourse. This discourse is important for navigating the complex moral and legal terrain, ensuring that measures taken in the name of national security do not undermine the core values they aim to protect.

Dr. Maureen Ramsay's perspective on the permissibility of torture appears biased. The topic presents a dynamic interplay of legal, moral, and practical considerations. While international law and human rights treaties firmly condemn torture, the moral dilemmas and the real-world effectiveness of torture in extreme situations like the 'ticking bomb' scenario continue to fuel debate. Upholding the absolute prohibition of torture aligns with international law and preserves the moral and ethical standards that form the foundation of civilized societies. However, when facing national security challenges, it is imperative to explore and adopt strategies that respect

¹ J.T. Parry, (2004). 'Escalation and Necessity: Defining Torture at Home and Abroad', in S. Levinson (ed.), *Torture: A Collection*, Oxford: Oxford University Press, p. 60; H. Shue, 'Torture', in Levinson, p. 17.

² O. Gross, (2004). 'The Prohibition on Torture and the Limits of the Law', in Levinson (note 4), p. 238.

³ J.T. Parry, (2004). 'Escalation and Necessity: Defining Torture at Home and Abroad', in S. Levinson (ed.), *Torture: A Collection*, Oxford: Oxford University Press, p. 60; H. Shue, 'Torture', in Levinson, p. 17.

human rights and dignity. It is essential to recognize that the erosion of these fundamental values in the name of security poses a profound threat to the essence of humanity and justice.

Considering the historical evidence, legal mandates, and moral arguments, there is a strong inclination towards upholding the absolute prohibition of torture. History has repeatedly shown the dire consequences of normalizing torture, both for the individuals subjected to it and for the societies that permit it. The use of torture is prohibited by international treaties such as the United Nations Convention Against Torture, which reinforces the standpoint that torture violates human rights. Additionally, the use of torture represents a profound disrespect for human dignity, which is a core principle of ethical conduct and human rights.

The challenge lies in balancing national security and human rights. Counterterrorism strategies and measures must be evaluated for effectiveness in mitigating threats and compliance with human rights standards. It is important to recognize that sacrificing human rights in the name of national security can lead to a perilous slope, undermining the fundamental principles of justice and freedom that counterterrorism endeavours strive to safeguard.

In the context of counterterrorism, it is crucial to adopt approaches that effectively address security concerns while respecting human rights. This multifaceted strategy includes intelligence gathering, law enforcement, diplomatic efforts, and socio-economic measures, all conducted within the boundaries of human rights laws and principles. Success in counterterrorism should be measured not only by the prevention of immediate threats but also by the long-term preservation and promotion of human values and dignity.

Moreover, it is important to promote a global discussion on counterterrorism that prioritizes human rights. This discussion should involve not only governments and security agencies but also civil society, human rights organizations, and the international community. By doing so, we can develop more comprehensive, humane, and effective approaches to addressing the complex challenges of terrorism.

In conclusion, the absolute prohibition of torture is not only a legal obligation but also a testament to human dignity, ethical conduct, and the adherence to the rule of law. This position goes beyond simply avoiding cruel practices; it reflects a deeper understanding that the real strength and integrity of a society are not determined by its ability to use force or intimidation, but rather by its unwavering commitment to justice, fairness, and respect for the inherent value of every individual. In the complex and often unclear realm of national security and counterterrorism, it is crucial that we firmly hold onto these core values. They are not just abstract ideals, but the fundamental pillars upon which peaceful, equitable, and just societies are built and sustained. By abandoning these principles, we not only risk eroding our moral compass but also the very essence of what constitutes a civilized and humane community. As we face the numerous challenges posed by security threats, we must constantly remind ourselves that genuine security is based on upholding human rights and preserving human dignity. These values strengthen a society against fear and uncertainty and pave the way for a future based on respect and justice for all.

Dr. Maureen Ramsay's research is clearly highly instructive. The legalization of torture, whatever the procedural limitations imposed, does not change the fact that it is a degradation of human rights protection and respect. For it has been proved by a wealth of case law that torture itself, as a violation of human rights, is unacceptable and does not contribute to the reduction of crime, conflict or even war. Worse still, it does not contribute to solidarity among human beings or to the resolution of conflicts of interest between peoples and nations. Torture was once considered a symbol of uncivilization and a contempt and denial of human rights. Regardless of the manner in which it appears, it is unacceptable in a modern society that advocates freedom, equality and human rights. Human rights, as rights inherent in human beings to the extent that they are human beings, should be a supreme right to which few other interests can challenge.

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