

Preface

For unrelated reasons, I started writing this book on January 21, 2009, the day after President Barack Obama was inaugurated as the 44th President of the United States. Obama's inauguration marked the end of President George W. Bush's unpopular presidency, a presidency whose hallmarks were 9/11 and the associated military responses in Iraq and Afghanistan. Were anything else to associate as strongly with the Bush Administration and its so-called "war on terror", it would be the economic decline of the administration's closing months; this latter owes in no small part to the former. As Bush headed back to Texas, I wondered whether his legacy could possibly be repaired, whether the ensuing protection against further terrorist attacks or the liberation of future generations of Iraqis could redeem him under American or international judgment. I suspect not, that the costs borne in pursuit of these objectives will be insuperable toward resurrecting any sort of esteem for his eight years in office.

The attacks of September 11, 2001 irrevocably changed Bush's presidency, as well of the lives of most Americans. That day is one of the worst we can imagine; almost 3,000 lives were lost under the destructive power of four airplanes. I remember living in California and being awakened by the phone just after 6:37 am PST, minutes after American Airlines flight 77 hit the Pentagon. My parents lived about a mile away from the crash site, and phones were out for several distressing hours. They turned out to be safe, unlike the 189 people killed in the crash. Were there to be a silver lining in the attacks, Americans were brought together in a mutual support; as striking as some of the scenes of destruction was Bush hugging then-Senate Majority leader—and Democrat—Tom Daschle before Bush's September 20 address to a joint session of Congress.

Bush's response to 9/11 was swift and unequivocal. Operation Enduring Freedom (Afghanistan) was launched in less than a month. Within two months, the USA PATRIOT Act—decried by critics as a violation of civil liberties—was passed into law. Operation Iraqi Freedom began in March 2003, only a few weeks after the creation of the Department of Homeland Security. And, from the outset of

Operation Enduring Freedom, captives were taken to a detention facility in Guantánamo Bay, Cuba, a facility at which they were denied due process as well as various Geneva Convention protections. At the time of writing, Guantánamo houses 215 detainees—more than were killed in the Pentagon attack—and 775 have been sent there since October 2001.

Allegations of prisoner mistreatment have abounded for as long as captives have been held at Guantánamo. There have been confirmed cases of waterboarding, and so-called stress and duress tactics have been employed; these include wall-standing, hooding, noise exposure, sleep deprivation, and food and drink deprivation. Behavioral science consultation teams (BSCTs) were tasked with the development of detention and interrogation strategies, generating outcry regarding the professional codes of ethics that the associated physicians and psychologists were ostensibly violating. Things got worse in April 2004 with revelations about prisoner abuse in Abu Ghraib. It was little coincidence that Major General Geoffrey Miller was sent to run this facility in 2003 after previously running Guantánamo; part of his mission—under Secretary of State Donald Rumsfeld’s directive—was to increase the intelligence production of those detained in Iraq.

It is under this milieu that Obama came into office, replacing an unpopular president who perhaps over-zealously responded to the 9/11 attacks. With a mere two days of his inauguration, he signed an executive order to have Guantánamo closed within a year—which has yet to happen almost a year and a half later—and reiterated the mantra that the US does not torture. This executive order is as much symbolic as it is substantive, especially as the population at Guantánamo continues to dwindle. To wit, it is Obama’s public rebuke of the Bush presidency, a rebuke meant to close an unpalatable chapter in American history and to restore the status of ‘American’ both domestically and internationally.

But what is it, exactly, that Bush was supposed to have gotten so wrong? 9/11 was an absolutely horrible event and, since it, there has not been another successful terrorist attack on US soil. Or, depending on whether we think the Fort Hood shootings were terroristic—and I am inclined not to—

such an attack took place under Obama's Administration and not Bush's. In any case, the unassailable fact is that the Bush Administration kept us safe from terrorism since 9/11; this is probably even more striking if we consider the ill-will that his military incursions surely generated. The question, then, is not whether his strategies worked—in some relevant sense, they did—but rather whether they were necessary and/or justified. In other words, could we have otherwise been safe? Or is our safety worth the costs that have been incurred?

These questions are too complicated for me to answer and, regardless, require more empirical facility than a philosopher would be able to offer. In all of this, though, there is a core philosophical question: what are we able to do to protect ourselves? Or, to put it another way: how far can we go to disarm terrorist threats? In both public debate and public consciousness, this question is particularly acute when we consider the moral status of interrogational torture. If such torture is necessary for the abrogation of some terrorist threat, would that torture be justified? This book considers that question and, in short, answers in the affirmative. The central contention is that lesser harms are always preferable to greater harms and that torture, while bad, could nevertheless be the lesser harm in exceptional cases. And, furthermore, this 'could' need not be that of wild philosophical fantasy, but rather is able to gain traction in the real world.

The philosophical debate on torture is, to my mind, severely misguided. On my desk right now, I have five books dedicated to the moral status of torture and *every one* of them features some nefarious-looking chair, either occupied by a bound detainee or else tantalizingly inviting one.¹ With few exceptions, this iconography is emblematic of a discourse that places the significant moral locus of torture on the person being tortured. We are resounded by platitudes about how torture violates the

¹ Matthew Alexander with John R. Bruning, *How to Break a Terrorist* (New York: Free Press, 2008); Mirko Bagaric and Julie Clarke, *Torture: When the Unthinkable Is Morally Permissible* (Albany, NY: State University of New York Press, 2007); Bob Brecher, *Torture and the Ticking Bomb* (Malden, MA: Blackwell Publishing, 2007); Sanford Levinson (ed.), *Torture: A Collection* (Oxford: Oxford University Press, 2004); and Darius Rejali, *Torture and Democracy* (Princeton, NJ: Princeton University Press, 2007). The fact that Alexander and Brecher's books carry the same principal image further evidences this formulaic approach.

rights of the tortured, how it compromises his dignity, and so on. Interrogational torture, though, is not primarily about the tortured: it is about the lives threatened by terrorist attacks. If there were no terrorist attacks, there would be no (good) reason to torture. Approaching the torture debate with a premium on the lives of innocents—rather than the rights of suspected terrorists—recasts it in a morally significant way. And this is true whether torture is even very likely to be effective insofar as a moderate—or even low—chance of saving a significant number of lives might well be one of which we should avail ourselves.

For these reasons, I think it is critical to approach the morality of torture within the context of terrorism; absent this context, we should simply not torture. Much of the literature, however, treats the issues in precisely the vacuum that I want to avoid. To that end, the structure of this book is quite straightforward. Part I is about terrorism: what it is; why it is bad; and how the contemporary advent of terrorism challenges traditional norms. These first three chapters lay the foundation for the rest of the book insofar as they delineate the context in which the question of torture becomes most poignant.

Part II then turns to the philosophical underpinnings of torture. Chapter 4 asks what torture is and why it is (intrinsically) wrong; whatever else I go on to say about torture, it is important to acknowledge that torture constitutes a moral wrong. That said, it is still an open question whether torture could be the lesser of two wrongs, one of which is ineluctable. That question gives rise to the infamous ticking time-bomb scenarios in which we are asked whether torture would be justifiable if it would surely save myriad lives that would otherwise be lost. Chapter 5 explores the methodological underpinnings of ticking time-bomb thinking, arguing that some of the standard criticisms thereof are unwarranted. That chapter, though, is completely methodological; the point is merely to critically explore the way in which ticking time-bomb cases appear in the debate. Normative questions are still left: even if ticking time-bomb cases have some legitimate role in our moral discourse, should we

torture in those cases? That is the topic of Chapter 6, in which a variety of moral approaches to torture are considered.

Everything in these middle chapters is purely philosophical insofar as no engagement with the real world has yet been made. That engagement becomes the focus of Part III, starting with empirical objections to torture. In particular, people have argued that torture does not work, that it requires institutions, that the (unjustified) incidence of torture would spread, that there are better alternatives to torture, or that ticking time-bomb cases are never actually realized. Chapter 7 considers these and other criticisms against torture. If we are going to allow for torture in exceptional cases, then something should be said about how this would legislatively or judicially authorized; this is the focus of Chapter 8. Ultimately I prefer the necessity defense to high-profile proposals involving torture warrants, but other possibilities are also discussed. Finally, Chapter 9 concerns the limits of torture. In a manuscript that defends the moral permissibility of torture, it bears emphasis that this defense only applies to exceptional cases and is highly circumscribed. Lest my position ultimately be misunderstood, this last chapter provides an important close to the book.

In some sense, this book started shortly after 9/11: I remember watching an interview with Alan Dershowitz on CNN and, shortly thereafter, I wrote my first paper on torture.² This paper was published while I was still in graduate school, but it was an odd direction to take insofar as my dissertation and other work had to do with meta-ethics and philosophy of biology; the interest in torture really did not connect up with any prior interests or training. From that first paper through the next near-decade, the moral status of interrogational torture has become a core element of my research agenda. An

² Ultimately it was published as Fritz Allhoff, "Terrorism and Torture," *International Journal of Applied Philosophy* 17.1 (2003): 105-118. Chapter 6 of this book is a much improved and much expanded version of that paper.

important part of that agenda has been discussing these ideas with others; I am grateful for their discourse and for pressing me to strengthen my own views.

Various presentations have generated valuable feedback, including ones given at: The City College of New York (2003); Loyola Marymount University (2003); The Australian National University (2005); Australasian Association of Philosophy (Sydney, Australia; 2005); American Society of Bioethics and the Humanities (Washington, DC; 2005); University of Michigan (2005); Association of Practical and Professional Ethics (Jacksonville, FL; 2006); Western Michigan University (2006); Western Michigan University (2008); International Intelligence Ethics Association (Baltimore, MD; 2008); University of São Paulo (São Paulo, Brazil; 2008); The Australian National University (2008); Australian Association of Philosophy (Melbourne, Australia; 2008); Association for Professional and Practical Ethics (Cincinnati, OH; 2008); University of Utah (2009); American Society of Bioethics and Humanities (Washington, DC; 2009); and Western Michigan University (2010). In all cases, I thank my interlocutors for their comments and challenges.

In Spring 2009, I led a graduate seminar entitled “War, Terrorism, and Torture.” In the seminar, we read and discussed the literature on which much of this book is based; the seminar also occurred during the months in which I started writing. It is hard to overstate what a great opportunity it was to have a few hours a week dedicated to these topics, particularly when those hours were spent with such strong students. In addition to the opportunity to engage the literature, the students also provided insightful commentary on earlier drafts of some of this book’s chapters. For their participation and dialogue, I thank: Christopher Boss, David Charlton, Nicolas Frank, Vishal Garg, Donald Kinnee, Joseph Lamia, Timothy Linnemann, Nicholas Sars, Joseph Spino, and Nathan Stout.

In February 2010, Vishal Garg helped me to organize a workshop at Western Michigan University wherein we had dedicated sessions for the chapters of the book; this was a tremendously valuable opportunity to get detailed feedback on the manuscript. Commentators were assigned to various

chapters, and I thank Christopher Boss, David Charlton, Michael Davis, Jeremy Wisniewski, Jessica Wolfendale, and Vishal for the criticisms they developed on their respective chapters. This workshop was funded by the Center for the Study of Ethics in Society, the Department of Philosophy, the College of Arts and Sciences, and the Office of the Vice President for Research; I thank all these units for their support and Vishal for his organization.

Sample chapters and a book proposal were vetted by three anonymous reviewers for the University of Chicago Press; I thank them for their referee reports [as well as for their comments on the final manuscript.] At the Press, I also thank the Faculty Board for its support of the project, including the opportunity to pursue an unpopular thesis. Elizabeth Branch Dyson was my point of contact at the Press, and I appreciate her conversation and patience. [The production process was coordinated by XX, who I thank for XX.] Finally, I thank Vishal for his conscientious copy-editing of the penultimate version of the manuscript.

After spending so much of my life reading books, it was humbling to realize how difficult it was to actually write my first. The whole process was such a valuable one in terms of intellectual growth and development, but those mentioned above made it so much more rewarding. I must single out Elizabeth for her eternal positivity. And I also want to acknowledge my then-fiancée and now-wife, Jenna Praner, for her constant emotional support. Between figuring out how to write a book and the tumult of its central thesis, Jenna was subjugated to long walks, a barrage of querulous discussions, and never-ending consternation; throughout, I appreciate her partnership and love.

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