
Moral And Ethical Grounds For Non-Lethal Torture Legislation

Today, many citizens, political figures and academic scholars alike argue about the ethical and moral grounds of torture. Some are against the brutal, extreme and highly potential abuse inflicted on torture victims that often go along in the use of torture interrogation tactics while others say it is acceptable under extenuating circumstances. One such case many argue would fall under extenuating circumstances is the ticking-time bomb argument in which a terrorist is tortured in order to extract information of a pre-set bomb positioned in a civilian area. This paper will examine and argue against Alan Dershowitz's proposal on torture in his article "Should the Ticking Time Bomb Terrorist be Tortured?". Dershowitz, an American lawyer and academic scholar, proposes that in regards to torture, there should be only the use of judicially sanctioned non-lethal torture that forces a terrorist suspect to disclose information that could possibly prevent an imminent and large-scale terrorist attack. He argues that by legalizing and labeling torture, as only under extreme circumstances, one would be effectively putting limitations on the frequency as well as the severity of the use of torture. I will argue against Dershowitz's justifications for the use of (judicially sanctioned) torture that would better protect the rights of torture victims and against the use of torture at all. This paper will justify the arguments against Dershowitz from both a legal and moral objectionable standpoint.

Following the September 11 attacks and throughout the War on Terror, an international military campaign launched by the United States government in response to the attacks, the ticking-time bomb argument has been used repeatedly by both academic scholars and political figures to justify a legalized, state-sponsored program of torture. In 2004, CBS published photographs that publicized human rights violations against detainees committed by United States Army personnel and the Central Intelligence agency in Abu Ghraib, a prison in Iraq. These photographs and evidence of abuse once again brought up the question of whether torture on detainees will ever truly be justified in the war against terrorism and the commitment to security and peace. Dershowitz's proposal states that law enforcement officials would be allowed to torture a terrorist suspect after first obtaining a judicial warrant from the court. While Dershowitz is generally against the use of torture, he argues that people are allowed to resort to it under the ticking time bomb scenario. Judicially sanctioned torture is Dershowitz's middle ground solution for lessening the use of torture against terrorist suspects. This judicial warrant would be a sort of checks and balances for the use of torture in making sure that officials have a probable cause that proves that the detainee has knowledge of where the bomb is located, is reluctant or refuses to disclose the location and that there is immediate, life-threatening danger to the public's safety. Furthermore, if the official warrant were to be signed off, the detainee would then be subjected to painful, yet non-fatal and a specific method of torture. With all the legal proceedings, the guarantee that torture should be used and in a specific way secures and protects the rights of a torture victim by prohibiting the abuse of torture tactics and preventing the mistake of inflicting torture on an innocent detainee. In leaving the decision up to an official judge, the decision making process would be examined and evaluated by a relevant official of high intelligence that is bound to uphold the law and can be held publically accountable for their decisions in court.

There are many flaws in Dershowitz's legal reasoning's for having judicially sanctioned torture.

He first attempts to remedy the possibilities of torturing the wrong person or torturing one for the wrong reasons by basing the reason for torture solely on a hypothetical circumstance in which the detainee in question is already guilty of having knowledge as well as withholding it. This reason right off the bat goes against a fundamental, democratic, legal value of presuming ones innocence until proven guilty. His second attempt at remedying that particular problem is to place the decision making process of issuing the torture warrant into the hands of a judge. Judges are yes, in a high position of power and with that comes great responsibilities, but they are also prone to making mistakes, having biased judgments and would now have to hold the psychological and emotional toll of having to deal with moral and ethical dilemmas that come from making decisions permitting torture. Since Dershowitz's ticking time bomb argument is time-sensitive, people (the judges) are more susceptible to being swayed into thinking and acting irrationally if there is limited time in gathering evidence and making decisions and especially if it assumed that there are lives that are at stake. While one of the main focuses of Dershowitz's proposal is the protection of the rights of torture victims, he is not taking into account the legal hypocrisies the legalization of torture has on the democratic values of the government as well as the burden that would befall the officials deliberating over and handing out the final decision of the torture warrants.

Dershowitz' justification for the legalization of torture in order to protect torture victims is a moral and ethical hypocrisy. One cannot protect human rights by still allowing for the infliction of torture. Philosopher Immanuel Kant argued that torture improperly uses people as a means to achieve an end, therefore torture violates human dignities because humans should always be treated as an end and never as a means. Torturing a suspected terrorist would violate their autonomy, which is the basis for human dignity, a universally fundamental right. This outcome is the exact opposite of protecting the rights of a torture victim. The problem is that the person is a victim of torture in the first place. The problem is torture itself.

With the war on terror putting a spotlight on the legal and moral debate on the use of torture, Dershowitz's argument for a judicially sanctioned, non-lethal form of torture is both morally and legally unjustifiable. Dershowitz's argument is flawed based on the various factors in the decision-making process of a torture warrant that can be swayed based on the human nature and emotional state a judge has in the moment. He also violates the due process of law in attempting to make torture a legal practice in order to better protect torture victims from being violated. His reasoning's as well as methods to back of his reasons are both flawed on that account. While Dershowitz claims that his argument would help to minimize the use of torture itself and protect detainees and suspects of mistaken identity, he does not seem to take into account the democratic legal values of human rights and the dignity that would violate a torture victim in the first place. Overall, Dershowitz;'s ticking time bomb argument in favor of legally instating and judicially sanctioned torture warrant has no realistic value and solid argument in favor of protecting the human rights of torture victims as well as in the continuation of torture practice on detainees at all.