

The Weekly Standard

The Truth about Torture

It's time to be honest about doing terrible things.

by Charles Krauthammer

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DURING THE LAST FEW WEEKS in Washington the pieties about torture have lain so thick in the air that it has been impossible to have a reasoned discussion. The McCain amendment that would ban "cruel, inhuman, or degrading" treatment of any prisoner by any agent of the United States sailed through the Senate by a vote of 90-9. The Washington establishment remains stunned that nine such retrograde, morally inert persons--let alone senators--could be found in this noble capital.

Now, John McCain has great moral authority on this issue, having heroically borne torture at the hands of the North Vietnamese. McCain has made fine arguments in defense of his position. And McCain is acting out of the deep and honorable conviction that what he is proposing is not only right but is in the best interest of the United States. His position deserves respect. But that does not mean, as seems to be the assumption in Washington today, that a critical analysis of his "no torture, ever" policy is beyond the pale.

Let's begin with a few analytic distinctions. For the purpose of torture and prisoner maltreatment, there are three kinds of war prisoners:

First, there is the ordinary soldier caught on the field of battle. There is no question that he is entitled to humane treatment. Indeed, we have no right to disturb a hair on his head. His detention has but a single purpose: to keep him hors de combat. The proof of that proposition is that if there were a better way to keep him off the battlefield that did not require his detention, we would let him go. Indeed, during one year of the Civil War, the two sides did try an alternative. They mutually "paroled" captured enemy soldiers, i.e., released them to return home on the pledge that they would not take up arms again. (The experiment failed for a foreseeable reason: cheating. Grant found that some paroled Confederates had reenlisted.)

Because the only purpose of detention in these circumstances is to prevent the prisoner from becoming a combatant again, he is entitled to all the protections and dignity of an ordinary domestic prisoner--indeed, more privileges, because, unlike the domestic prisoner, he has committed no crime. He merely had the misfortune to enlist on the other side of a legitimate war. He is therefore entitled to many of the privileges enjoyed by an ordinary citizen--the right to send correspondence, to engage in athletic activity and intellectual pursuits, to receive allowances from relatives--except, of course, for the freedom to leave the prison.

Second, there is the captured terrorist. A terrorist is by profession, indeed by definition, an unlawful combatant: He lives outside the laws of war because he does not wear a uniform, he hides among civilians, and he deliberately targets innocents. He is entitled to no protections whatsoever. People seem to think that the postwar Geneva Conventions were written only to protect detainees. In fact, their deeper purpose was to provide a deterrent to the kind of barbaric treatment of civilians that had become so horribly apparent during the first half of the 20th century, and in particular, during the Second World War. The idea was to deter the abuse of civilians by promising combatants who treated noncombatants well that they themselves would be treated according to a code of dignity if captured--and, crucially, that they would be denied the protections of that code if they broke the laws of war and abused civilians themselves.

Breaking the laws of war and abusing civilians are what, to understate the matter vastly, terrorists do for a living. They are entitled, therefore, to nothing. Anyone who blows up a car bomb in a market deserves to spend the rest of his life roasting on a spit over an open fire. But we don't do that because we do not descend to the level of our enemy. We don't do that because, unlike him, we are civilized. Even though terrorists are entitled to no humane treatment, we give it to them because it is in our nature as a moral and humane people. And when on rare occasions we fail to do that, as has occurred in several of the fronts of the war on terror, we are duly disgraced.

The norm, however, is how the majority of prisoners at Guantanamo have been treated. We give them three meals a day, superior

medical care, and provision to pray five times a day. Our scrupulousness extends even to providing them with their own Korans, which is the only reason alleged abuses of the Koran at Guantanamo ever became an issue. That we should have provided those who kill innocents in the name of Islam with precisely the document that inspires their barbarism is a sign of the absurd lengths to which we often go in extending undeserved humanity to terrorist prisoners.

Third, there is the terrorist with information. Here the issue of torture gets complicated and the easy pieties don't so easily apply. Let's take the textbook case. Ethics 101: A terrorist has planted a nuclear bomb in New York City. It will go off in one hour. A million people will die. You capture the terrorist. He knows where it is. He's not talking.

Question: If you have the slightest belief that hanging this man by his thumbs will get you the information to save a million people, are you permitted to do it?

Now, on most issues regarding torture, I confess tentativeness and uncertainty. But on this issue, there can be no uncertainty: Not only is it permissible to hang this miscreant by his thumbs. It is a moral duty.

Yes, you say, but that's an extreme and very hypothetical case. Well, not as hypothetical as you think. Sure, the (nuclear) scale is hypothetical, but in the age of the car-and suicide-bomber, terrorists are often captured who have just set a car bomb to go off or sent a suicide bomber out to a coffee shop, and you only have minutes to find out where the attack is to take place. This "hypothetical" is common enough that the Israelis have a term for precisely that situation: the ticking time bomb problem.

And even if the example I gave were entirely hypothetical, the conclusion--yes, in this case even torture is permissible--is telling because it establishes the principle: Torture is not always impermissible. However rare the cases, there are circumstances in which, by any rational moral calculus, torture not only would be permissible but would be required (to acquire life-saving information). And once you've established the principle, to paraphrase George Bernard Shaw, all that's left to haggle about is

the price. In the case of torture, that means that the argument is not whether torture is ever permissible, but when--i.e., under what obviously stringent circumstances: how big, how imminent, how preventable the ticking time bomb.

That is why the McCain amendment, which by mandating "torture never" refuses even to recognize the legitimacy of any moral calculus, cannot be right. There must be exceptions. The real argument should be over what constitutes a legitimate exception.

Let's Take An Example that is far from hypothetical. You capture Khalid Sheikh Mohammed in Pakistan. He not only has already killed innocents, he is deeply involved in the planning for the present and future killing of innocents. He not only was the architect of the 9/11 attack that killed nearly three thousand people in one day, most of them dying a terrible, agonizing, indeed tortured death. But as the top al Qaeda planner and logistical expert he also knows a lot about terror attacks to come. He knows plans, identities, contacts, materials, cell locations, safe houses, cased targets, etc. What do you do with him?

We have recently learned that since 9/11 the United States has maintained a series of "black sites" around the world, secret detention centers where presumably high-level terrorists like Khalid Sheikh Mohammed have been imprisoned. The world is scandalized. Black sites? Secret detention? Jimmy Carter calls this "a profound and radical change in the . . . moral values of our country." The Council of Europe demands an investigation, calling the claims "extremely worrying." Its human rights commissioner declares "such practices" to constitute "a serious human rights violation, and further proof of the crisis of values" that has engulfed the war on terror. The gnashing of teeth and rending of garments has been considerable.

I myself have not gnashed a single tooth. My garments remain entirely unrent. Indeed, I feel reassured. It would be a gross dereliction of duty for any government not to keep Khalid Sheikh Mohammed isolated, disoriented, alone, despairing, cold and sleepless, in some godforsaken hidden location in order to find out what he knew about plans for future mass murder. What are we supposed to do? Give him a nice cell in a warm Manhattan prison, complete with Miranda rights, a mellifluent lawyer, and his own

website? Are not those the kinds of courtesies we extended to the 1993 World Trade Center bombers, then congratulated ourselves on how we "brought to justice" those responsible for an attack that barely failed to kill tens of thousands of Americans, only to discover a decade later that we had accomplished nothing--indeed, that some of the disclosures at the trial had helped Osama bin Laden avoid U.S. surveillance?

Have we learned nothing from 9/11? Are we prepared to go back with complete amnesia to the domestic-crime model of dealing with terrorists, which allowed us to sleepwalk through the nineties while al Qaeda incubated and grew and metastasized unmolested until on 9/11 it finished what the first World Trade Center bombers had begun?

Let's assume (and hope) that Khalid Sheikh Mohammed has been kept in one of these black sites, say, a cell somewhere in Romania, held entirely incommunicado and subjected to the kind of "coercive interrogation" that I described above. McCain has been going around praising the Israelis as the model of how to deal with terrorism and prevent terrorist attacks. He does so because in 1999 the Israeli Supreme Court outlawed all torture in the course of interrogation. But in reality, the Israeli case is far more complicated. And the complications reflect precisely the dilemmas regarding all coercive interrogation, the weighing of the lesser of two evils: the undeniable inhumanity of torture versus the abdication of the duty to protect the victims of a potentially preventable mass murder.

In a summary of Israel's policies, Glenn Frankel of the Washington Post noted that the 1999 Supreme Court ruling struck down secret guidelines established 12 years earlier that allowed interrogators to use the kind of physical and psychological pressure I described in imagining how KSM might be treated in America's "black sites."

"But after the second Palestinian uprising broke out a year later, and especially after a devastating series of suicide bombings of passenger buses, cafes and other civilian targets," writes Frankel, citing human rights lawyers and detainees, "Israel's internal security service, known as the Shin Bet or the Shabak, returned to physical coercion as a standard practice." Not only do the techniques used "command widespread support from the Israeli public," but "Israeli prime ministers and justice ministers with a variety of political

views," including the most conciliatory and liberal, have defended these techniques "as a last resort in preventing terrorist attacks."

Which makes McCain's position on torture incoherent. If this kind of coercive interrogation were imposed on any inmate in the American prison system, it would immediately be declared cruel and unusual, and outlawed. How can he oppose these practices, which the Israelis use, and yet hold up Israel as a model for dealing with terrorists? Or does he countenance this kind of interrogation in extreme circumstances--in which case, what is left of his categorical opposition to inhuman treatment of any kind?

But let us push further into even more unpleasant territory, the territory that lies beyond mere coercive interrogation and beyond McCain's self-contradictions. How far are we willing to go?

This "going beyond" need not be cinematic and ghoulish. (Jay Leno once suggested "duct tape" for Khalid Sheikh Mohammed. See photo.) Consider, for example, injection with sodium pentathol. (Colloquially known as "truth serum," it is nothing of the sort. It is a barbiturate whose purpose is to sedate. Its effects are much like that of alcohol: disinhibiting the higher brain centers to make someone more likely to disclose information or thoughts that might otherwise be guarded.) Forcible sedation is a clear violation of bodily integrity. In a civilian context it would be considered assault. It is certainly impermissible under any prohibition of cruel, inhuman, or degrading treatment.

Let's posit that during the interrogation of Khalid Sheikh Mohammed, perhaps early on, we got intelligence about an imminent al Qaeda attack. And we had a very good reason to believe he knew about it. And if we knew what he knew, we could stop it. If we thought we could glean a critical piece of information by use of sodium pentathol, would we be permitted to do so?

Less hypothetically, there is waterboarding, a terrifying and deeply shocking torture technique in which the prisoner has his face exposed to water in a way that gives the feeling of drowning. According to CIA sources cited by ABC News, Khalid Sheikh Mohammed "was able to last between two and 2 1/2 minutes before begging to confess." Should we regret having done that? Should we

abolish by law that practice, so that it could never be used on the next Khalid Sheikh Mohammed having thus gotten his confession?

And what if he possessed information with less imminent implications? Say we had information about a cell that he had helped found or direct, and that cell was planning some major attack and we needed information about the identity and location of its members. A rational moral calculus might not permit measures as extreme as the nuke-in-Manhattan scenario, but would surely permit measures beyond mere psychological pressure.

Such a determination would not be made with an untroubled conscience. It would be troubled because there is no denying the monstrous evil that is any form of torture. And there is no denying how corrupting it can be to the individuals and society that practice it. But elected leaders, responsible above all for the protection of their citizens, have the obligation to tolerate their own sleepless nights by doing what is necessary--and only what is necessary, nothing more--to get information that could prevent mass murder.

GIVEN THE GRAVITY OF THE DECISION, if we indeed cross the Rubicon--as we must--we need rules. The problem with the McCain amendment is that once you have gone public with a blanket ban on all forms of coercion, it is going to be very difficult to publicly carve out exceptions. The Bush administration is to be faulted for having attempted such a codification with the kind of secrecy, lack of coherence, and lack of strict enforcement that led us to the McCain reaction.

What to do at this late date? Begin, as McCain does, by banning all forms of coercion or inhuman treatment by anyone serving in the military--an absolute ban on torture by all military personnel everywhere. We do not want a private somewhere making these fine distinctions about ticking and slow-fuse time bombs. We don't even want colonels or generals making them. It would be best for the morale, discipline, and honor of the Armed Forces for the United States to maintain an absolute prohibition, both to simplify their task in making decisions and to offer them whatever reciprocal treatment they might receive from those who capture them--although I have no illusion that any anti-torture provision will soften the heart of a single jihadist holding a knife to the throat of a captured American soldier. We would impose this restriction on

ourselves for our own reasons of military discipline and military honor.

Outside the military, however, I would propose, contra McCain, a ban against all forms of torture, coercive interrogation, and inhuman treatment, except in two contingencies: (1) the ticking time bomb and (2) the slower-fuse high-level terrorist (such as KSM). Each contingency would have its own set of rules. In the case of the ticking time bomb, the rules would be relatively simple: Nothing rationally related to getting accurate information would be ruled out. The case of the high-value suspect with slow-fuse information is more complicated. The principle would be that the level of inhumanity of the measures used (moral honesty is essential here--we would be using measures that are by definition inhumane) would be proportional to the need and value of the information. Interrogators would be constrained to use the least inhumane treatment necessary relative to the magnitude and imminence of the evil being prevented and the importance of the knowledge being obtained.

These exceptions to the no-torture rule would not be granted to just any nonmilitary interrogators, or anyone with CIA credentials. They would be reserved for highly specialized agents who are experts and experienced in interrogation, and who are known not to abuse it for the satisfaction of a kind of sick sadomasochism Lynndie England and her cohorts indulged in at Abu Ghraib. Nor would they be acting on their own. They would be required to obtain written permission for such interrogations from the highest political authorities in the country (cabinet level) or from a quasi-judicial body modeled on the Foreign Intelligence Surveillance Court (which permits what would ordinarily be illegal searches and seizures in the war on terror). Or, if the bomb was truly ticking and there was no time, the interrogators would be allowed to act on their own, but would require post facto authorization within, say, 24 hours of their interrogation, so that they knew that whatever they did would be subject to review by others and be justified only under the most stringent terms.

One of the purposes of these justifications would be to establish that whatever extreme measures are used are for reasons of nothing but information. Historically, the torture of prisoners has been done for a variety of reasons apart from information, most

prominently reasons of justice or revenge. We do not do that. We should not do that. Ever. Khalid Sheikh Mohammed, murderer of 2,973 innocents, is surely deserving of the most extreme suffering day and night for the rest of his life. But it is neither our role nor our right to be the agents of that suffering. Vengeance is mine, sayeth the Lord. His, not ours. Torture is a terrible and monstrous thing, as degrading and morally corrupting to those who practice it as any conceivable human activity including its moral twin, capital punishment.

If Khalid Sheikh Mohammed knew nothing, or if we had reached the point where his knowledge had been exhausted, I'd be perfectly prepared to throw him into a nice, comfortable Manhattan cell and give him a trial to determine what would be fit and just punishment. But as long as he had useful information, things would be different.

Very different. And it simply will not do to take refuge in the claim that all of the above discussion is superfluous because torture never works anyway. Would that this were true. Unfortunately, on its face, this is nonsense. Is one to believe that in the entire history of human warfare, no combatant has ever received useful information by the use of pressure, torture, or any other kind of inhuman treatment? It may indeed be true that torture is not a reliable tool. But that is very different from saying that it is never useful.

The monstrous thing about torture is that sometimes it does work. In 1994, 19-year-old Israeli corporal Nachshon Waxman was kidnapped by Palestinian terrorists. The Israelis captured the driver of the car used in the kidnapping and tortured him in order to find where Waxman was being held. Yitzhak Rabin, prime minister and peacemaker, admitted that they tortured him in a way that went even beyond the '87 guidelines for "coercive interrogation" later struck down by the Israeli Supreme Court as too harsh. The driver talked. His information was accurate. The Israelis found Waxman. "If we'd been so careful to follow the ['87] Landau Commission [which allowed coercive interrogation]," explained Rabin, "we would never have found out where Waxman was being held."

In the Waxman case, I would have done precisely what Rabin did. (The fact that Waxman's Palestinian captors killed him during the Israeli rescue raid makes the case doubly tragic, but changes nothing of the moral calculus.) Faced with a similar choice, an

American president would have a similar obligation. To do otherwise--to give up the chance to find your soldier lest you sully yourself by authorizing torture of the person who possesses potentially lifesaving information--is a deeply immoral betrayal of a soldier and countryman. Not as cosmically immoral as permitting a city of one's countrymen to perish, as in the Ethics 101 case. But it remains, nonetheless, a case of moral abdication--of a kind rather parallel to that of the principled pacifist. There is much to admire in those who refuse on principle ever to take up arms under any conditions. But that does not make pure pacifism, like no-torture absolutism, any less a form of moral foolishness, tinged with moral vanity. Not reprehensible, only deeply reproachable and supremely impracticable. People who hold such beliefs are deserving of a certain respect. But they are not to be put in positions of authority. One should be grateful for the saintly among us. And one should be vigilant that they not get to make the decisions upon which the lives of others depend.

WHICH BRINGS US to the greatest irony of all in the torture debate. I have just made what will be characterized as the pro-torture case contra McCain by proposing two major exceptions carved out of any no-torture rule: the ticking time bomb and the slow-fuse high-value terrorist. McCain supposedly is being hailed for defending all that is good and right and just in America by standing foursquare against any inhuman treatment. Or is he?

According to Newsweek, in the ticking time bomb case McCain says that the president should disobey the very law that McCain seeks to pass--under the justification that "you do what you have to do. But you take responsibility for it." But if torturing the ticking time bomb suspect is "what you have to do," then why has McCain been going around arguing that such things must never be done?

As for exception number two, the high-level terrorist with slow-fuse information, Stuart Taylor, the superb legal correspondent for National Journal, argues that with appropriate legal interpretation, the "cruel, inhuman, or degrading" standard, "though vague, is said by experts to codify . . . the commonsense principle that the toughness of interrogation techniques should be calibrated to the importance and urgency of the information likely to be obtained." That would permit "some very aggressive techniques . . . on that small percentage of detainees who seem especially likely to have

potentially life-saving information." Or as Evan Thomas and Michael Hirsh put it in the Newsweek report on McCain and torture, the McCain standard would "presumably allow for a sliding scale" of torture or torture-lite or other coercive techniques, thus permitting "for a very small percentage--those High Value Targets like Khalid Sheikh Mohammed--some pretty rough treatment."

But if that is the case, then McCain embraces the same exceptions I do, but prefers to pretend he does not. If that is the case, then his much-touted and endlessly repeated absolutism on inhumane treatment is merely for show. If that is the case, then the moral preening and the phony arguments can stop now, and we can all agree that in this real world of astonishingly murderous enemies, in two very circumscribed circumstances, we must all be prepared to torture. Having established that, we can then begin to work together to codify rules of interrogation for the two very unpleasant but very real cases in which we are morally permitted--indeed morally compelled--to do terrible things.

Charles Krauthammer is a contributing editor to The Weekly Standard.

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Elected leaders, responsible above all for the protection of their citizens, have the obligation to do what is necessary--and only what is necessary, nothing more--to get information that could prevent mass murder.

These exceptions would be reserved for highly specialized agents who are experts and experienced in interrogation, and who are known not to abuse it for the satisfaction of a kind of sick sadomasochism. They would be required to obtain written permission for such interrogations from the highest political authorities in the country.

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