

# The Economist

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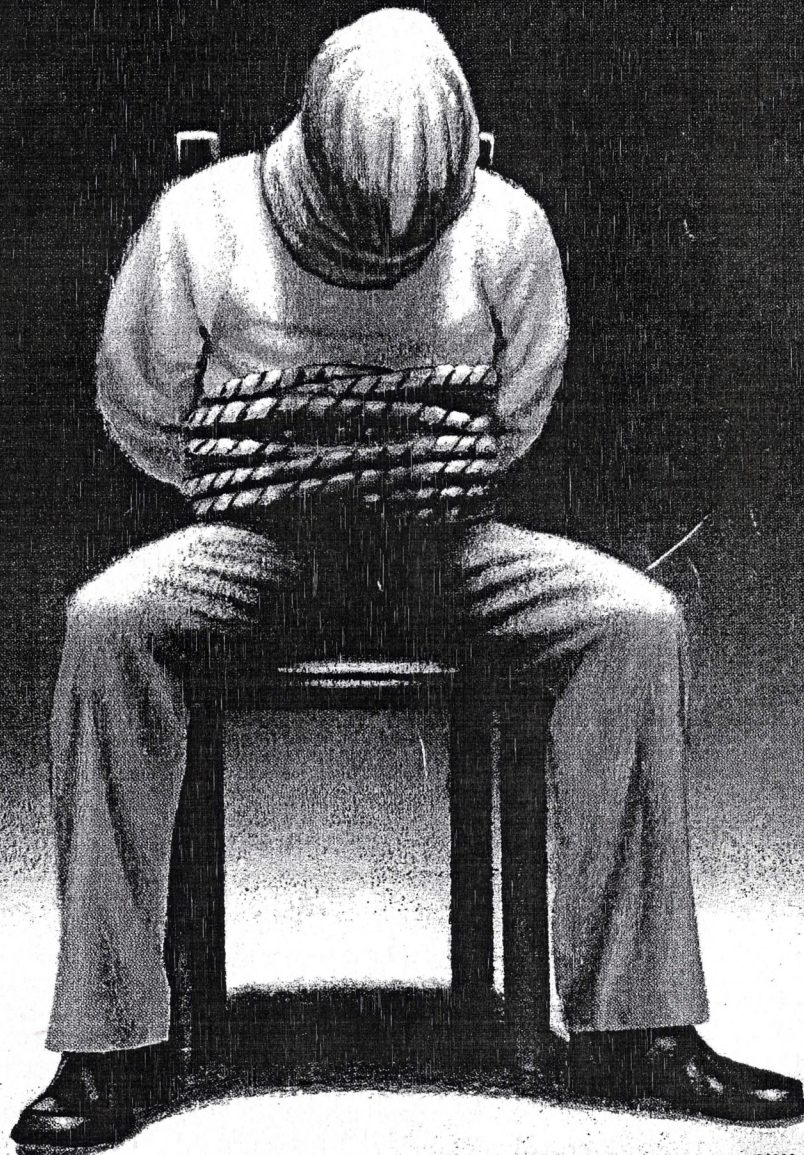
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# Is torture ever justified?



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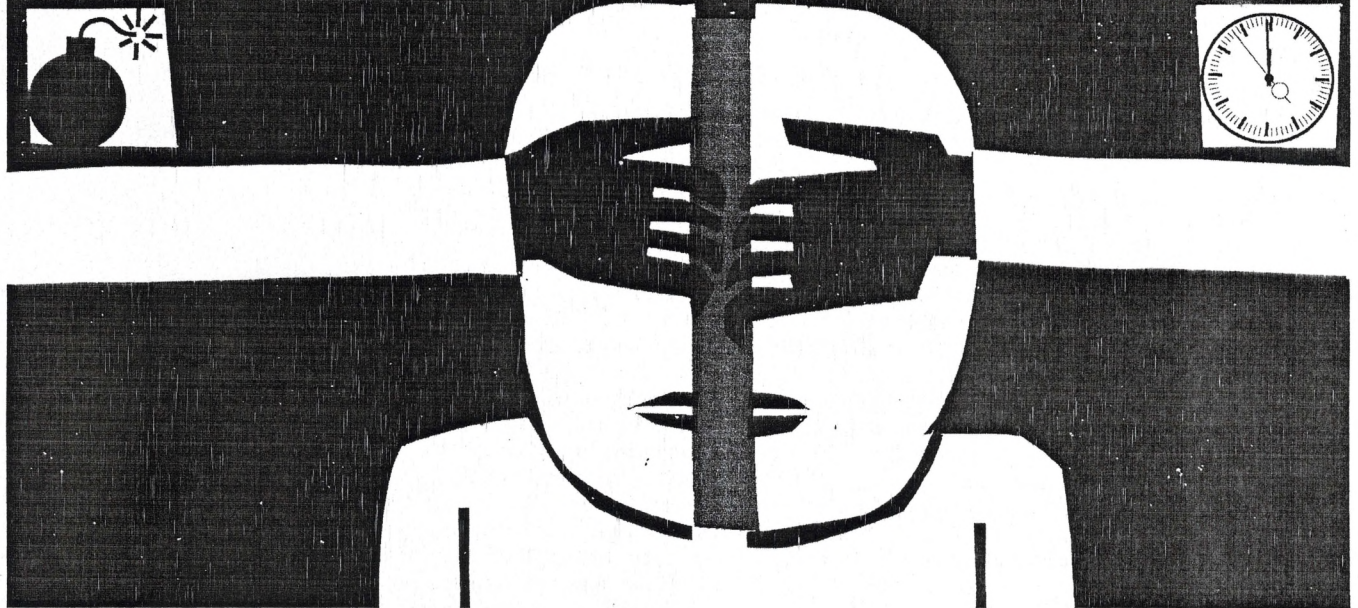


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## Ends, means and barbarity

**Torture has been outlawed in all circumstances everywhere. But global terrorism may be leading America to bend the rules**

THE reports have been emerging only slowly, but they are chilling. American intelligence agents have been torturing terrorist suspects, or engaging in practices pretty close to torture. They have also been handing over suspects to countries, such as Egypt, whose intelligence agencies have a reputation for brutality.

Some may shrug at this. More than a year ago, after all, the world was shocked by pictures of blindfolded and shackled al-Qaeda suspects being "processed" at the American naval base in Guantanamo Bay, in Cuba. They seemed to show that America would treat its terrorist prisoners just as nastily as it pleased.

That, however, was a different case. Those photographs were of prisoners under restraint, during transport, to prevent them attacking their captors. America had just suffered the world's most horrific terrorist attack, carried out by a group of determined suicides. Extreme precautions were justified. Since the arrival of those first inmates at Guantanamo, visits to the base by the International Committee of the Red Cross and by journalists accord with American denials that anyone is being tortured there.

Recent reports of the ill-treatment of prisoners held by America, or at America's behest elsewhere, are another matter. If, in

their efforts to defeat al-Qaeda, American officials are moving towards a policy of using torture on a systematic basis, or conspiring with other countries to do so by handing over suspects to them for interrogation in the full knowledge that torture will be used, this would be a remarkable and ominous reversal of policy.

### A cry for clarification

So far, American policy has been to eschew torture in even the most extreme cases, and to condemn openly its use not only by regimes of which America disapproves, such as Iraq and North Korea, but of allies as well, such as Saudi Arabia and Jordan. Senior American figures, from Donald Rumsfeld, the defence secretary, to Colin Powell, the secretary of state, have insisted that America is abiding by international agreements banning torture. Lower-level spokesmen, when asked about interrogation methods, continue to deny absolutely that America has breached such agreements.

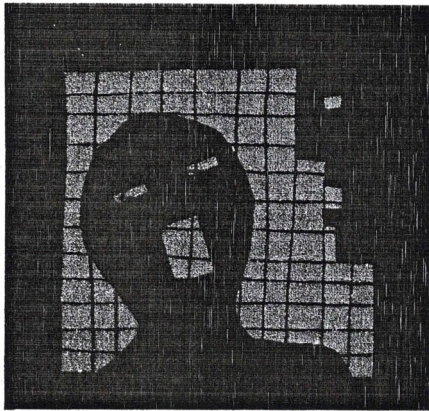
Unfortunately, that is not what American officials directly involved in interrogating terrorist suspects have been telling reporters. The most detailed account of these, a long article in the *Washington Post* at the end of December, quotes these officials as claiming that prisoners are being

subjected to a range of "stress-and-duress" techniques such as hooding, sleep deprivation, being held in awkward positions and, in some cases, denied painkillers for injuries. They are sometimes beaten, too. One official puts it bluntly: "If you don't violate someone's human rights some of the time, you probably aren't doing your job."

These interrogations are being conducted, claims the *Post*, at Bagram air base outside Kabul, Afghanistan's capital, and on Diego Garcia, an island in the Indian Ocean which the United States leases from Britain, putting it beyond the reach of American courts. In addition, officials are quoted as saying that many prisoners have been transferred to the intelligence services of other countries—Jordan, Egypt and Morocco are named—well-known for using brutal methods of interrogation.

Sometimes these transferred prisoners ("extraordinary renditions" in the euphemism), are sent with lists of specific questions that American interrogators want answered. Other transfers are made on a "don't ask, don't tell" basis, with American officials taking no part in directing or overseeing subsequent interrogations, but happy to receive any information gleaned from them. According to some officials, fewer than 100 captives have been involved in such transfers, but thousands have been arrested and held with American assistance in countries that are known for the brutal treatment of prisoners.

There seems little reason to doubt the veracity of the *Post* article. The newspaper's team of reporters claim to have spoken to ten current American security officials, some of whom have personally witnessed the handling of prisoners, as well as several former intelligence offi-▶



cials. More important, though the officials directly involved have spoken anonymously, they seem intent on sending a message: We are doing these things because we think we have to, and we want people to know.

After September 11th, similar anxiety was heard from officials at the FBI: in their desperation to get terrorist suspects to talk, they might, they admitted, have to use torture. That moment passed. This time, at least some American officials seem to be seeking absolution for violent interrogation methods which are illegal but which, reports the *Post*, they feel are "just and necessary". "They expressed confidence that the American public would back their view," says the newspaper.

It would probably be closer to the truth to say that the American public would rather not know. The reaction to these revelations, grave though they are, has been remarkably muted. Human-rights groups have issued condemnations, and other commentators have expressed dismay. But, so far at least, congressmen have not been demanding investigations.

### The argument of necessity

It is tempting to argue that torture is justified in rare cases. In America, the most notable exponent of this position is Alan Derowitz, a leading criminal-defence lawyer, who has argued, in cases of "ticking-bomb" urgency, for "torture warrants". In practice, however, attempts to use torture sparingly have quickly led to widespread abuse. The most relevant case is Israel, where the ticking-bomb rationale has been used to justify the "physical coercion" of terrorists during interrogations (Israel has always refused to call it torture). This practice has never been explicitly legalised, but received something close to legal sanction after a commission headed by a former Supreme Court justice recommended in 1987 that "moderate physical pressure" in interrogations should be allowed after psychological pressure had failed. For years after that, the Israeli Supreme Court declined to take torture cases. But the abuse of Palestinian prisoners be-

### Torture in history

## The sight of the rack

### Modern lessons from a famous terrorist case

**A**LTHOUGH Magna Carta expressly forbids it, torture has often been a part of judicial procedures in England. Under the Tudors and early Stuarts, its use increased. No rules governed it, other than the pity or discretion of the torturer. But it was understood to be justified especially in treason cases, and where time was of the essence.

Perhaps its most famous use in English history was to extract confessions from those involved in the Gunpowder Plot, the conspiracy in 1605 to blow up Parliament. Yet the extent of the torture applied was so far concealed at the time (guilt and distaste, even then, playing their part) that it is often unclear how much a plotter was made to endure. The best evidence remains the fact that something made defiant men talk.

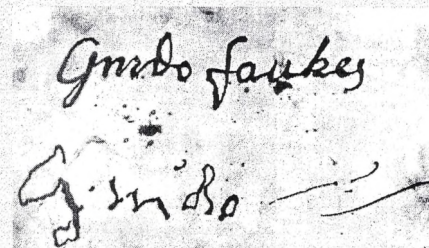
Guy Fawkes, the most famous conspirator—a Catholic zealot who had fought in "holy wars" abroad—was "examined" by William Wade, the lieutenant of the Tower of London, from November 6th onwards. King James I had asked Wade to use "the gentler Tortures" first. These included thumbscrews and manacles, by which a man was hung up by his wrists. On the 7th, Fawkes weakened so far as to admit his own name. He would not admit the names of his accomplices.

On the 9th, still showing "a most stubborn perverse humour", he was sent to the rack. One royal official said that "Fawkes was never on the rack, but only by his arms upright". (The mere sight of the machine, on which the rackmaster slowly stretched legs and arms to the point of dislocation, was often

enough to elicit confessions.) Others said he was "extremely racked". His signature, weaker and more wavering as he signed successive statements, suggests this was the case. Certainly, he started giving names.

The most important was that of John Gerard, a Jesuit priest. With this name, Wade could prove that the Society of Jesus was the brains behind the plot, and appropriate pressure could be applied to the chief Jesuit suspect, Father Henry Garnet. Yet the plot was not, in fact, a Jesuit conspiracy. On the contrary, their role was marginal. Torture had led Fawkes to produce a name that fed the false or wilful assumptions of the English government, but did not point to the truth.

Torture had also led Fawkes, a fanatic, to betray the cause to which he had devoted his life. Another lesson of his case is that even a man of the fiercest convictions, who knows without doubt that he is going to be executed, can be made to reveal information once the torturer gets to work. Hence the lasting appeal of it, even for authorities who think themselves enlightened.



Gradually ground down

came so widespread, and so routine, that in 1999 the Supreme Court unanimously ruled that the coercive methods employed by Shin Bet, the security service, were illegal. Nevertheless, according to human-rights groups, the regular torture of Palestinian detainees has continued.

Elsewhere, too, torture that seemed justified in special cases has come to be applied almost indiscriminately. During Algeria's revolt against France in the 1950s, torture became the primary method of interrogating Algerian prisoners. It was often accompanied by summary executions of prisoners whether they talked or not, according to General Paul Aussaresses, who carried out many of the interrogations and unabashedly described them in a book which caused an outcry in France. Argen-

tina's junta of 1976-83, facing a real terrorist threat from leftists and claiming to fight in the name of Christianity, routinely used torture which led to the execution of thousands of innocent people.

Does torture work in fighting terrorism? In the short term, it obviously can. After all, Guy Fawkes confessed (see box). Israeli security officials say they have prevented many terrorist attacks with information gleaned from coercive interrogations. The French authorities claim to have won the battle of Algiers, and the Argentinian junta defeated its leftist opponents. But these victories have come at a cost, and have limits. Harsh Israeli interrogations have not stopped the suicide bombings, and have left many Palestinians embittered. France's brutal methods ▶▶

▶ in Algeria divided the French themselves, and led a few years later to the granting of Algerian independence. Argentina's military dictators were toppled by popular resentment, and the country is still struggling to come to terms with the legacy of their anti-terrorism campaign.

If America does decide to employ torture systematically against al-Qaeda suspects, it would also have to take wider considerations into account. This decision would be a stark departure. Torture's prohibition has rapidly become one of the most universal features of international and domestic law. All the major human-rights agreements concluded since the second world war contain absolute bans on torture, with no exceptions. No domestic legal system officially allows it. Judging solely by the texts of laws and international agreements, torture is firmly beyond the pale, and torturers are outlaws.

### Wrestling with a taboo

And yet torture, of one sort or another, is also widely practised, and as many people may be being tortured today as at any time in human history. According to Amnesty International, the torture and ill-treatment of prisoners continue to be recorded in more than 130 countries, and are widespread or persistent in 70 of those. A stream of reports from Amnesty and other human-rights groups describe beatings, electric shocks, rape, floggings, suffocation and a horrific litany of other torments.

Despite this, it would be a mistake to believe that the taboo against torture is meaningless. In democratic countries it is generally observed, though overzealous policemen will occasionally lapse. The taboo against torture is also strongly and deeply supported by western public opinion. If America, covertly or openly, begins to use torture systematically against al-Qaeda suspects, there is bound to be a backlash, both at home and abroad. Many of the subjects might be innocent people, which would be morally repellent—and would hand a propaganda victory to Islamic extremists.

Another problem will be maintaining co-operation with America's European allies. Their hands may not be entirely clean either, but European governments take international treaties seriously and some, such as Britain and Spain, signed up to the many international prohibitions against torture even while facing determined domestic terrorists of their own.

Nevertheless, the threat posed by al-Qaeda is hard to exaggerate, and preventing more attacks is urgent. Intelligence, including information from suspects, is a primary tool for doing this. If a suspect will not talk, and does not succumb to the sophisticated psychological techniques of which the FBI and CBI were once so proud, is there no scope to apply more pressure?

### Truth serums

## False hopes

### Drugs cannot make you tell the truth

**S**IMPLE solutions to complex problems rarely succeed. Few problems today are thornier than trying to prevent terrorist acts. So pundits, in publications as various as the *Atlantic Monthly*, *Newsweek* and the *Wall Street Journal*, have been calling for the use of "truth serum" for interrogation of suspected terrorists. Alas, no such drugs are known to work.

Sodium pentothal, the trade name for thiopental, is the best-known of a class of barbiturates popularly supposed to act as truth serums. These drugs, commonly used in larger doses as anaesthetics, are thought to work by enhancing the brain's sensitivity to a depressant neurotransmitter known as GABA that is naturally present there. James Cottrell, the president of the American Society of Anaesthesiologists, says that although thiopental sometimes makes people talk more, it does nothing to ensure that what they say is truthful. Dr Cottrell does not believe that thiopental has any long-term adverse affects,

though Vincent Iacopino, acting director of research for Physicians for Human Rights, an American charity, cautions that it can be addictive.

Dr Iacopino says that drugs have been used in questioning to disorient prisoners, or to instil fear, but he does not know of any drugs that can force the truth to come out. Nonetheless, governments have certainly tried. Most recently, the Indian government is reported to have administered thiopental last June to seven Muslims suspected of causing the Gujarat train fire.

The legality of such methods of interrogation is less clear than their efficacy. A 1963 Supreme Court decision makes evidence obtained from drugged suspects inadmissible in American courts, and drugs cannot be used on prisoners-of-war under the 1950 Geneva Convention. However, the Convention Against Torture is less clear on the matter, and America's CIA and Pentagon refuse to say whether they use such drugs.

There may be. The definition of torture in international treaties is either so broad as to rule out even normal interrogation methods widely accepted in democracies, or vague enough to allow some practices which might seem harsh. For example, the Convention Against Torture of 1984 states that torture "does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." In the case of potentially dangerous and suicidally determined terrorist suspects, a lawyer might argue, this allows the stress involved in some physical restraints, as well as bright lights, prolonged interrogations, mild sleep deprivation and the withholding of some creature comforts.

Judges have had few opportunities to

draw clear lines about what is, or is not, allowed under international treaties. One of the most interesting rulings has been that of the European Court of Human Rights in 1978, concerning the treatment of suspected IRA prisoners by the British authorities. A majority of judges found that it was not torture to be made to stand spread-eagled against a wall for hours, to be hooded, to be deprived of sleep, to be given short rations or to be subjected to continuous loud noise. They nonetheless found such practices "inhuman and degrading", and therefore in breach of the European Convention on Human Rights. What is clearly ruled out is the direct infliction of physical pain, or the threat of it. "Truth serums", on which some pin their hopes, have an ambiguous standing under these treaties, but are in any case deemed ineffective (see box).

One tactic, however, is clearly forbidden in both domestic and international law: handing over suspects to someone else to torture. This is explicitly ruled out in the Convention Against Torture. Moreover, no court in any democratic country, including the United States, would agree to send a defendant to another country if it were known that he would be tortured there. America, therefore, seems already to be allowing its frustration to lead it to bend, and probably break, the law. Hard though the choice is, it would be good if America stopped. ■

