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## Discussion On Whether Torture Can Be Morally Mandatory In Terms Of Terrorist Intelligence

In the 1982 article “The Case for Torture,” Michael Levin argues for why torture should be “morally mandatory” in a variety of situations related to terrorist intelligence. Levin’s strongest bottom line is that he believes torture should (and must) be used to “prevent future evils” as a means of national security. Rather than arguing for a specific situation, his essay is advocating for the general use of torture for a public that appears to have a negative perception of the use of torture during this time period (this is an assumption based on his opening statement suggesting that “It is generally assumed that torture is impermissible....regimes suspected of using it risk the wrath of the United States”). Some of the issues raised in this article that Levin argues against include the constitutionality of torture, individual human rights (of the terrorist vs. the innocent), the moral obligation of a country or authority to save innocents at all cost, assigning and asserting guilt to non-innocent parties, and the moral fear of a country becoming like its enemies (“...won’t ‘WE’ turn into ‘THEM?’ Questions like these are disingenuous...”).

One of the first issues raised in the article and in-class discussion was that of constitutionality: what human rights, under American law, are individual entitled to, and how torture is (or isn’t) a violation of those rights. Levin’s argument is made along the lines of terrorist choice, saying that when a terrorist chooses to put innocent peoples’ lives at risk, they are forgoing their constitutional rights: “What do we do? If we follow due process, wait for his lawyer, arraign him, millions of people will die. If the only way to save those lives is to subject the terrorist to the most excruciating possible pain, what grounds can there be for not doing so?”. Levin believes that in a situation where innocent lives are at stake, “millions of lives outweigh unconstitutionality,” appealing to morality to outweigh an individual human’s rights. The argument as heard in our class discussions against this is rooted in a slippery-slope argument: if we deny one individual’s human rights, what stops the government from denying other individuals rights, even “innocent” individuals? In Levin’s point, the dividing line is the choice to commit a terrorist act, but the slippery slope comes in the actual enforcement methods used by the government. Who decides what is defined as a terrorist act, and how can we know that that definition won’t be used against specific racial, cultural, or social minorities? This also bleeds into the issue of guilt.

The issue of proving guilt was brought up much more in discussion than in Levin’s article. Levin doesn’t make much of an argument about how proving guilt or assigning it would work in an actual bureaucratic sense, but rather leaves his argument to the effect of “Nonetheless, a line demarcating the legitimate use of torture can be drawn. Torture only the obviously guilty, and

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only for the sake of saving innocents, and the line between 'US' and 'THEM' will remain clear". Because he doesn't offer much in the way of an argument for this, the class discussion was centered around phrases like "obviously guilty," which becomes an issue of semantics. Those against it argued that for legal purposes, a phrase like "obviously guilty" would mean different things to different people, and could easily be corrupted to fit a particular political agenda or movement. Besides, how would a prosecutor, or someone protecting the right of due process of a criminal, prove or defend "obvious" guilt? An issue identified with this phrasing, and not with "found guilty beyond reasonable doubt" as would be used with a jury, is that with the word "obvious," the suggestion is that the guilt was found before due process, made on the assumption, and subjective to personal beliefs. Being "obvious" to a jury is a different concept than being presented and then reviewing, discussing, and reanalyzing the evidence, and then making a decision as a unified body. Levin himself acknowledges that the phrase "clear guilt" is difficult to define, but supports it by creating a brief hypothetical scenario in which the perpetrators of the attack is clearly visible to the victims: "Clear guilt' is difficult to define, but when 40 million people see a group of masked gunmen seizes an airplane on the evening news, there is not much question about who the perpetrators are".

One of the last issues brought up in our discussion has to do with how Levin presents his arguments for torture in the first place. Several classmates pointed out that Levin puts much focus on torture as "the only way" to "save innocent people," but never actually provides more in depth explanations of how and why torture would conceivably be the "only way" to find a solution in a terrorist situation. Levin says that "Some day soon a terrorist will threaten tens of thousands of lives, and torture will be the only way to save them," but the class had a problem with the vagueness of this statement. Others felt an issue with the fact that Levin created hypothetical scenarios to support his arguments, meaning he could modify whatever variables he wanted to better support his side, rather than use real situations and examples. Others also pointed out again that the issue of proven guilt rears back up with statements like Levin's, criticizing his anecdotal "proof" (the anecdote about four mothers and kidnappers). Levin does refer to this anecdote as a "hypothetical case," possibly suggesting that the other scenarios are not hypothetical; but if they are real scenarios, he does not provide citations or documentation for his audience, and some of the discussion posts felt this harmed his credibility, combined with the lack of detail for the question of "why torture".

One of my issues with Levin's arguments was more so how he made his arguments, rather than the actual arguments themselves. It felt disingenuous to me that Levin would open his argumentative essay using a "trick" to persuade readers to his side. I am referring to Levin's statement on page 1: "Once you concede that torture is justified in extreme cases, you have admitted that the decision to use torture is a matter of balancing innocent lives against the means needed to save them." I felt that Levin forces the reader to "concede" the first idea by opening his essay with a glorified Would You Rather – he asks the reader if they would choose

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to torture a terrorist if it would save a million people, and expectedly, many in our discussion post agreed with this statement, because Levin is appealing to their moralistic nature. He explicitly says so in the following paragraph: "Indeed, letting millions of innocents die in deference to one who flaunts his guilt is moral cowardice, an unwillingness to dirty one's hands." I felt that this was underhanded in a way, and as an argument, did not address those that did not agree and did believe that torture is never justified, ignoring another opinion on this debate. Though swaying an audience to your side is a goal of a persuasive essay, I felt that his hyperbole undermines the reality of the discussion and wasn't made in good faith.

## Work Cited

1. Levin, Michael. 'The Case for Torture.' The Little, Brown Reader. Edited by Marcia Stubbs, Sylvan Barnet, and William E. Cain, 11th ed., Longman, 2009, pp. 548-50.

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