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Israel's Example

By Sadiq Reza

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Is it ever right to torture a captured terrorist -- for instance to obtain information about a future attack that could result in the deaths of American civilians? While the public, the press and politicians debate this issue in light of recent disclosures about how the United States has interrogated captured Iraqis, Afghans and al Qaeda operatives, a look elsewhere in the Middle East is instructive. A few years ago Israel's High Court of Justice considered this question with respect to Palestinian terrorists and Israeli civilians. Its answer? Almost never.

▼ **ADVERTISING** In 1987, after Israel's General Security Service (GSS) came under fire for trying to cover up two incidents of abuse by its agents -- the beating death of two Palestinians who had been arrested for hijacking a civilian bus and the extraction of a false confession of spying from an Israeli -- a body called the Landau Commission was formed to investigate GSS interrogation methods. That commission concluded not only that the GSS employed "coercive" methods of interrogation but also that those methods were essential to Israel's security. Obtaining information from captured terrorist suspects to prevent further attacks was necessary to protect Israeli citizens, the commission said, and effective interrogation requires "moderate physical pressure" when nonviolent methods fail.

What the commission meant by "moderate physical pressure" was not publicly disclosed, but the approval expressly covered existing GSS practices, the nature of which were revealed over the next several years.

Those practices included "shabach" -- binding the prisoner to a small chair that is tilted forward so he cannot sit stably, covering his head with a sack and playing loud music; "qambaz," or the "frog crouch," in which the suspect has to crouch on the tips of his toes for five-minute intervals; and more pedestrian methods, such as violent shakings, excessive tightening of handcuffs and sleep deprivation.

Brain damage and permanent disability, along with death, were among the results of these methods.

Israel's high court rebuffed challenges to these practices until 1999, when it ruled on complaints brought by two Israeli public interest groups and six individuals who had faced GSS interrogations. In two of the individual cases, the court acknowledged the government's assertion that the interrogations, employing methods described above, resulted in information that thwarted planned terrorist acts. Nevertheless, the court declared all of the methods unlawful, given their proven harm to life or limb and their infringement of "human dignity."

"The State of Israel has been engaged in an unceasing struggle for both its very existence and security, from the day of its founding," began the Israeli high court's opinion, but "[a] democratic, freedom-loving society does not accept that

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investigators use any means for the purpose of uncovering the truth." The "destiny of democracy" is often to fight "with one hand tied behind its back," the opinion eloquently concluded, and "not all practices employed by its enemies are open before it."

One can oppose Israel's policies in the West Bank and Gaza and still applaud this stand by its high court -- and learn from it. Surely the U.S. interest in combating terrorism is no greater than that of Israel. Nor is our commitment to democracy any less staunch or robust. True, the court left open the possibility that an interrogator who used force against a captured terrorist to get information to prevent an imminent attack -- the hypothetical "ticking bomb" scenario -- might be able to avoid criminal liability under the standard criminal-law "necessity" defense. Israel's parliament, the Knesset, can also overrule the court with legislation authorizing force in interrogations. (It has not done so.) And regrettably, human rights groups allege that the banned interrogation methods have returned, particularly since the start of the second intifada in September 2000. But even with these caveats, the court's decision remains a powerful testament to the essential moral dimension of democracy and its core principle that security is subordinate to, indeed meaningless without, dignity.

We know that force in interrogations -- whether employed by U.S. captors or by foreigners to whom we send detainees for its use -- yields unreliable information. We also know it endangers Americans captured abroad. Let us decide too that it is anathema to our concept of democracy, as it is to Israel's.

The writer, an associate professor at New York Law School, will be a visiting researcher at Harvard Law School's Islamic Legal Studies Program this fall.

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