

**nick flynn/sam harris email exchange on torture
2006-2007**

[note: harris's responses redacted at his request]

from: nick flynn <nickflynn@mac.com>
date: 25 feb 2006

dear sam harris,

I'd like to send you a letter I'm drafting for PEN which concerns you.

nick flynn
www.nickflynn.org

From: Sam Harris <sam@samharris.org>
Date: 27 feb 2006 7:10 PM

Here I am, Nick. Fire away.

Best,
Sam

from: nick flynn <nickflynn@mac.com>
date: 28 feb

sam,

fire away? is that a military metaphor?

I wonder if luban has countered yr torture argument to yr satisfaction?
he seems to deal with reality in a way you skate over.

that's a skating metaphor.

I've decided to let the PEN board read my letter first, then I'll send it to
you. or fire it at you, if that's how you like it.

nick

from: Sam Harris <sam@samharris.org>

date: 1 mar 2006 7:52:54 AM PST

[redacted]

Best,
Sam

from: nick flynn <nickflynn@mac.com>

date: 1 mar 2006

sam,

yr giving up on yr collateral damage argument that easily? perhaps there's hope yet. we can talk about the finer points of luban/ticking bomb at some point, but so as not to keep you in suspense, my letter to PEN deals with my discomfort at having my name linked to a writer who advocates the use of torture. I'm sure you figured that out already. I wrote PEN because not only did they link us with our twin awards, but the award is an endorsement, and I'm having lots of trouble being part of an organization that endorses a book that advocates torture. can you see the difficult position I'm in?

do you know the sheepfucker joke?

a man walks through his village with a friend, points to the school, says I built that school, but does anyone call me michael the schoolbuilder? then he points to the church, says, I built that church, but does anyone call me michael the churchbuilder? but you fuck one sheep....

sam, I was excited when I first heard of yr book, engaged with yr arguments when I heard you on the radio, and I find much in yr book to praise. but, come on, this torture thing. you call out hypocrisy, you do close readings of sacred texts, but does anyone call you sam the hypocrisy smasher, sam the sacred text reader? but you advocate one little torture...

so, I'm asking PEN to help me find a way through this. you got any ideas (that don't involve torture?)

nick

from: Sam Harris <sam@samharris.org>

date: 2 mar 2006

Nick --

[redacted]

Sam

from: nick flynn <nickflynn@mac.com>

date: 2 mar 2006

sam,

actually, the people I hang with do take a stand against collateral damage. millions of people in the world were against us ever getting into iraq, and I was certainly one of them.

I'm not sure how to address yr firmness on advocating the use of torture. as I read luban (this months harpers has a good reprint) and the hundred or so responses to yr huff post blog, it seems the many holes in yr argument have been amply revealed, yet you seem content to simply repeat that you havent heard any good rebuffs. that could go on indefinitely, and I have no desire to become part of it. but as I listen to the radio and read the papers, it's more and more clear that fuzzy, abstracted, generalized arguments like yours lead to straight to abu ghraib. and since you have proposed it (torture is still considered a war crime, in most of the world, remember), then it's up to you to tell us how you propose to administer it. exactly how. and a list of those who fit yr "narrowly defined circumstances," (you've said osama, and sheikh muhammad, I assume there's more), and who makes up the list, and how we will stay within it. if you cannot be

precise in this, if you cannot name exactly how you propose to administer your torture, and who will administer it, and who will decide it is time, then of course such a proposal leads straight to abu ghraib.

sam, do you really want to be sitting at alberto gonzales's table? do you really want to go down as the guy who advocated torture early on? I just can't believe you want that. it's not to late. come on back over to our side.

nick

below are a couple quotes from yr book I've passed on to PEN:

“Given what many of us believe about the exigencies of our war on terrorism, the practice of torture, in certain circumstances, would seem to be not only permissible but necessary.” (p199).

“Some propositions are so dangerous that it may even be ethical to kill people for believing them.” (p.52).

from: Sam Harris <sam@samharris.org>

date: 2 mar 2006, at 11:49 PM

Nick --

[redacted]

Sam

from: nick flynn <nickflynn@mac.com>

date: 2 mar 2006

sam,

first off, I want to thank you for engaging in all this with me. as I said in the PEN letter, I am just trying to come to some peace with it all. as

for the PEN letter, it's really not much more than what I've sent you. actually less. the whole point is I'm considering giving back my award.

as for huffpost, it's really not that hard to sort through, and the response to the torture piece didnt seem, to me, like people screaming, but also trying to engage you. yr post on islam, though, that did provoke a few comments that felt like screaming, I'll admit. the luban in harpers, that's the piece that distills it all best, I think. I'd assume you'd want to at least clearly argue his points, if you don't agree.

as for the quote lifted--it's PEN, after all, they gave you an award, they already read the whole book. and just in case they didnt, I simply quote those two lines without much comment, and acknowledge that they are taken out of context, and urge them to read the whole book. if I'd quoted all of 52-53, I think my point would have actually been stronger.

I understand if you dont want to lay out the day by day of yr torture scenario, but it does seem that that's the hole in yr argument that needs to be filled. is charles graner yr ideal torturer? do we only bring him in for the big guys, or can he practice on a few of the "rather scrofulous young men" at Guantanamo? it really isnt fair, as we've seen at Abu Ghraib, to propose a change in policy, then expect reservists to carry it out, without specific guidelines.

these are real questions, whether you can answer them or not, I still hope you'll consider getting up from Alberto's table. I'm quite serious about that. nothing would make me happier than for you to come out against torture. it will redeem you and your book, which, as I said, has much to praise in it.

and so you know, I'm only sharing yr responses with my girlfriend, at this point, just so that I can have a dialogue with someone about how to proceed.

nick

from: Sam Harris <sam@samharris.org>
date: 3 mar 2006

Nick --

[redacted]

Sam

from: nick flynn <nickflynn@mac.com>
date: 8 mar 2006

sam,

things got busy, but I had an idea—with yr permission I'd forward yr thoughts on luban to luban, and allow him to comment.

it seems we're at an impass, as I'm still unconvinced, and yr still unbending. it's hard to understand why you require empirical evidence in every instance except when it comes to the results of opening the gates to torture, which would seem to have been revealed in the recent past to have enormously damaging repercussions. ethically, if there is a call to violence, one should be held responsible for the consequences.

have you read mayer's piece "the memo" in 27 feb new yorker?

nick

from: Sam Harris <sam@samharris.org>
date: 9 mar 2006

Nick --

I have no problem with you forwarding my remarks to Luban and would be happy to hear his commentary (if he gives any)—provided

that you do not edit my text, and you emphasize in your cover note that my remarks were the product of an informal email exchange between us.

Otherwise, I'm done.

Sam

~

[one and a half years later]

from: nick flynn <nickflynn@mac.com>

date: 1 nov 2007

dear sam,

I'm hoping to finish up this book I've been working on for the past couple years, and was wondering if I could get your permission to use some excerpts of the email exchange we had regarding torture about a year ago. it's not completely necessary for the book, as I'll mostly just quote my side, but it might be freeing to be able to have yr response on occasion.

the book is, tangentially, about u.s. torture policy, about the response to the release of the abu ghraib photos. this past summer I travelled to istanbul to meet with ex-detainees of abu ghraib, some of the men and women I met were those depicted in the photos. I was there as an observer, invited by a team of lawyers who are gathering testimonies. an eye-open, I wish all americans could meet these people.

I hope this finds you well. I know the military commissions act of 2006 supported your "defense of torture," and perhaps that felt like a victory of sorts, but if your position has changed, I would welcome that news.

Nick

from: Sam Harris <sam@samharris.org>

date: 1 nov 2007

Hi Nick --

You are welcome to reference the following page on my website, which contains some of what I wrote in our email exchange. If you quote from it, please give the URL in your references.

http://www.samharris.org/site/full_text/response-to-controversy2/

Best,
Sam

from: nick flynn <nickflynn@mac.com>

date: 2 nov 2007

hi sam,

Thanks for your response. Listening to the radio now, lots these days on waterboarding. Below I've attached a response to yr collateral damage argument that perhaps you missed. It's from david glazier, who served 21 years as a navy surface warfare officer and is now teaches law. I'll also attach a brief culling of responses to yr huffpost piece which address yr collateral damage argument as well.

I read your piece, again—it is a much more measured version of what's in yr book or yr “in defense of torture” post. Obviously I hope to use some of yr more inflammatory remarks from those places, but I will attempt to clear them with you before publication, and if your position has changed I will incorporate that as well. For example: “it has become ethical to kill people for their beliefs”, or that gitmo contains “only rather scrofulous young men caught in the act of trying to kill us” (when even the pentagon acknowledges that 90+% of the detainees are guilty of nothing) and your advocating such techniques as the “strapado” (aka “Palestinian hanging”).

It seems you have now shifted yr attention to osama and waterboarding, apparently having realized that the case of ksm is a little more problematic when it comes to torture, since it has been revealed that he was giving far more actionable intelligence before the cia stepped in and began their enhanced techniques. You, like many torture advocates, now prefer waterboarding, a technique, as you likely know, that was used by the khmer rouge, the Nazis, and the soviets (and now gonzales, cheney et al)—tough company. The Nazis considered it a tier three torture, after beatings and electrocution. Advocating waterboarding seems a rather difficult position for someone like yourself who professes to be an advocate of “civil discourse.” It’s in the news a lot these past few days—I’d love to see an op-ed from you defending mukasy’s nomination.

I will try to cobble together something you can digest that will pierce yr belief, which seems to border on faith, that a little judicious torture will make the world safe, in spite of reams of evidence to the contrary, readily and abundantly available since yr polemic appeared. I have sifted through lots of it, I assume you have as well, though that you remain unconvinced does suggest a certain level of blind faith that I find ironic, given your atheistic stance. To take a sophistry like the ticking bomb and build a belief system from it, especially in the face of the real-life results of putting it into practice, seems strangely rigid. As a “thought experiment” it is on par with the old “if you knew that baby will grow up to be the next hitler are you morally and ethically justified in bashing it’s brains out.” The ticking bomb, as you know, is based on epistemological evidence—it is about the limits of what one can know. I realize “Harris’s Law” says only if we have osama in custody would it be ethical, though you also allow someone who looks like osama into the mix, and I do wonder who it is that will decide who is osama and who merely might be osama. I believe I asked you in our email exchange how certain you would have to be that it was osama—would 50% be enough? Would it be okay to bring in “osama’s” kids and threaten to torture them? Who would decide all this? This, I believe, is Luban’s (et al) point. Bowman, on the other hand, is an anti-Dershowitz, so it surprises me that you side with him. Bowman is content for the torture to go on in the shadows, which is

essentially the view of the Cheney/Gonzales' military commission act.

As for the collateral damage = torture conceit, here's something you might have missed: **[reattached below]**

from: nick flynn <nickflynn@mac.com>

date: 21 dec 2007

Dear Sam,

I don't know if you read the last bit of information I sent, where your collateral damage argument was taken apart, but I wanted to let you know that the book I've been working on will be published sometime next year, with an excerpt appearing in Esquire in January. The book is not finalized, and I would love to include a postscript where I can say that you have synthesized all the information that has come out in the last several years, since you wrote your "In Defense of Torture." I would, obviously, be thrilled if you were to have shifted your position, and would welcome you, and your considerable skills, as a force on the side against torture.

I look forward to hearing from you.

Nick

from: Sam Harris <sam@samharris.org>

date: 21 dec 2007

These are my most recent thoughts on the matter (perhaps slightly extended since you last read them). If you have something that actually addresses these points, feel free to forward:

http://www.samharris.org/site/full_text/response-to-controversy2/

from: nick flynn <nickflynn@mac.com>

date: 22 dec 2007

dear sam,

I notice that on yr site you've tried to address the "ethical to kill others for their beliefs" statement. I'm still not fully convinced with yr defense of that statement, but it is encouraging that you've tried to soften it.

As for the collateral damage = torture conceit, I sent this before and would love for you to comment on it, whether one-on-one or on yr site. I also sent a selection of responses to yr huffpost piece which take apart yr collateral damage argument quite well, I feel, but wont bother to send again, unless you lost them for some reason. It still feels intellectually dishonest of you to claim that no one has come up with anything to counter yr collateral damage argument unless you directly address these arguments.

I have the sense that yr tendency will be to dismiss Glazier in the same way you dismiss the Luban piece, by claiming that he does not address the ethical issues, merely the pragmatic issues. The third section of Luban's piece is all about ethical issues—it is the fourth section where he goes into the pragmatic details. Glazier is also speaking in ethical terms, through the lens of the law. Unless you have another definition of ethics?

here is the piece I sent, one more time:

[Marty Leiderman]: John [Yoo] also confesses to the Gazette that he just doesn't understand why torture is prohibited: After all, "death is worse than torture, but everyone except pacifists thinks there are circumstances in which war is justified. War means killing people. If we are entitled to kill people, we must be entitled to injure them. **I don't see how it can be reasonable to have an absolute prohibition on torture** when you don't have an absolute prohibition on killing. Reasonable people will disagree about when torture is justified. But that, in some circumstances, it is justified seems to me to be just moral common sense. How could it be better that 10,000 or 50,000 or a million people die than that one person be injured?" Good thing, isn't it, that the person responsible for the Bush

Administration's construction of the absolute prohibition on torture (one enacted without a single dissenting vote and that even the President ostensibly approves, by the way) is someone who thinks it's unreasonable? UPDATE: In response to John's oh-so-reasonable logic—"War means killing people [so] if we are entitled to kill people, we must be entitled to injure them"—Professor Dave Glazier writes with the following. [Dave actually knows quite a bit about the laws of war -- he served twenty-one years as a Navy surface warfare officer before going to law school—but in this case, his remarks reflect basic propositions that even Deputy Attorneys General at OLC should be familiar with]:

[Dave Glazier]: One of the most fundamental problems with Yoo's logic is that he is simply ignorant of the law of war. Yoo clearly believes that war is essentially a lawless regime, subject only to a few treaties he knows of. In his view, if you can distinguish your situation from those covered by explicit treaty language, then you get to do what you want. What Yoo fails to recognize is that war is far from a lawless regime.

A telling point is to examine international law treatises from the 18th and 19th centuries. Typically a full half to two-thirds of those tomes are devoted to the law of war. And the scope of coverage of the law of war has also significantly expanded during the Twentieth Century.

The most important point in this massive body of law is that war is *not* legally about killing. It is about compelling an enemy to submit. To achieve this it is lawful to incapacitate the enemy's military forces and damage or destroy valid military objectives. But you can *never* kill or further injure an enemy who offers to surrender or who is already incapacitated by illness, wounds, or previous capture. The people Yoo wants to "wound" are already incapacitated, and to inflict any further harm on them is a war crime. To argue that we could have killed them, so to mistreat them a bit should be OK, is totally contrary to every fundamental principle of the law of war. We could kill or wound

them *only* when they were combatants at large and there was a military necessity to disable them from conducting further military operations against us. As soon as they were incapacitated, they became protected under both longstanding customary principles, enforced through literally thousands of war crimes convictions post-WWII, and the more familiar law of war treaties.

[Leiderman]: I would only partially quibble with (or clarify) one thing Dave writes -- that to inflict "*any* further harm" on incapacitated combatants is a war crime. I suppose that depends on what Dave means by "any further harm." What is plain, however, is that "cruel treatment and torture" (i.e., at least several of the CIA "enhanced" techniques) are absolutely prohibited under Common Article 3, and that torture and assault are also made unlawful under the U.S. criminal code.

hope this finds you well. the offer is still open for you to come over from the side of bill o'reilly, gonzales, yoo, addington, krauthammer, coulter, et al.

chuck schumer, by the way, has repudiated torture openly and publicly--check his website. you might want to note that when you mention him.

we're all trying to work through this shit.

nick

ps This was tacked onto the end of my last letter, if you'd care to comment: Sam, your response to controversy piece seems to contain a couple contradictions: first, the harris law is limited to osama, and elsewhere you justifying torturing anyone you think is osama; second, you can't have it bowden's way (done in secret) and also have torture administered like the death penalty. I'd appreciate if you could clarify which world you are proposing.

from: Sam Harris <sam@samharris.org>

date: 22 dec 2007

Hi Nick --

[redacted]

Sam

from: nick flynn <nickflynn@mac.com>

date: 23 dec 2007

dear sam,

here are two responses to your collateral damage=torture proposition that I culled from huffpost, the first two I stumbled upon. I do find it interesting that you hear shrieking where I hear reasoned response—the title of my esquire piece, by the way, is “the ticking is the bomb.” I’ll also include a couple pieces from other thinkers on this, including a paragraph from glazier, which clearly deals with ethics.

ethics 101:

[first huffpost response]

The flaw in your argument is simply that you are basing the morality of torture on a comparison to the morality of collateral damage in modern warfare. It is a comparison of apples and oranges. Why not make a comparison between negligent manslaughter and 1st degree murder? Both result in death and the odds are that the negligent manslaughter may result in more gruesome details than the intended murder. But we don't hold them to be even remotely equivalent in moral terms because of the absence of intent in one set of circumstances and the over arching importance of that intent in the second set of circumstances.

Collateral damage is, of course, an inevitable result of warfare, but that does not mean it is an intended result. If it is intended it is called a war crime and people are punished for it. Torture is always, by any definition I know of, an intended action. You don't accidentally torture

someone. So your argument, while it may be good for organic gardens, doesn't really hold water.

The inevitability of collateral damage is why civilized nations do not engage in pre-emptive wars of choice and why the United States has surrendered any claim to being a civilized nation (at least till the next election).

On a more practical level, torture is outlawed by international treaty, a treaty that we have signed onto and Congress has passed implementing legislation for. Any argument for torture has to take into account the fact that our engaging in torture as a matter of national policy would put us in direct conflict with our international obligations. I don't think our international standing can take any more hits right now.

[second huffpost response (mgoltsman)]

Sam Harris' entire argument hinges on the idea that if we accept collateral damage even though it is bad, then we must accept torture even though it is bad. He thus invokes the logical fallacy of false analogy. Whether one bad thing (war? abortion? psoriasis?) is acceptable has nothing to do with whether another bad thing (cancer? racism? Geraldo?) is also acceptable. Some of the other posters, notably rbenjamin, effectively take apart his argument for torture, but the method of his argument is flawed in any case.

[some other thinkers on ethics]

bruce jackson, counterpunch [I sent you this whole piece, here's one line in case you didn't get to it]: "In real life situations, practical perspective is always primary, or should be.

glazier: . . . you can *never* kill or further injure an enemy who offers to surrender or who is already incapacitated by illness, wounds, or previous capture. The people Yoo [sam, feel free to insert your name here] wants to "wound" are already incapacitated, and to inflict any further harm on them is a war crime. To argue that we could have killed them, so to mistreat them a bit should be OK, is totally contrary to every fundamental principle of the law of war. We could kill or

wound them *only* when they were combatants at large and there was a military necessity to disable them from conducting further military operations against us. As soon as they were incapacitated, they became protected under both longstanding customary principles, enforced through literally thousands of war crimes convictions post-WWII, and the more familiar law of war treaties.

luban: [on ticking bomb scenerio] I am inclined to think that the path of wisdom instead lies in Holocaust survivor David Rousset's famous caution that normal human beings do *not* know that everything is possible. As Williams says, "there are certain situations so monstrous that the idea that the processes of moral rationality could yield an answer in them is insane" and "to spend time thinking what one would decide if one were in such a situation is also insane, if not merely frivolous."

elaine scarry: I assume you've read her response to dershowitz /ticking bomb? If not I will be glad to forward it.

finally, when I place these two quotes of yours side-by-side I am confused:

- a. If he breaks the law Abu Ghraib-style, he will go to jail for a very long time (and interrogators will know this too). [response to controversy]
- b. "Given this state of affairs—in particular, given that there is still time to prevent an imminent atrocity—it seems there would be no harm in dusting off the *strapado* and exposing this unpleasant fellow to a suasion of bygone times." [p193, end of faith]

there seems a contradiction here: the strapado you advocate for on the one hand is exactly the abu ghraib style type torture you seem against on the other. You don't really believe that what went on at abu ghraib was anything different from what the cia does in their black sites? unless you mean that whatever happens is okay, as long as it is out of sight?

Again, thanks for engaging me in this. And I am sorry if at times I have appeared to be shrieking.

nick

ps, may I use this blurb for my book?

“I must say, my interaction with [Nick Flynn] has also seemed symptomatic of this derangement of moral intuition.”

—sam harris, author of “in defense of torture”

from: Sam Harris <sam@samharris.org>

date: 23 dec 2007

[redacted]