

Gandalf as torturer:

the ticking bomb terrorist and due process

in J.R.R. Tolkien's *The Lord of the Rings*

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Even readers who believe that Professor Tolkien's books should never have made it to the big screen will grudgingly admit that director Peter Jackson skillfully adapted *The Lord of the Rings* to the cinema. Finding both critical acclaim and popular appeal, the films have grossed over one billion dollars, captured several Academy Awards and packed theatres worldwide. Even those undevoted to the lore of Middle-earth were drawn to the films, apparently in large part because of the story's moral clarity -- the uplifting triumph of good over evil. When the first movie opened only three months after the terrorist attacks of September 11, 2001, that message could not have been more timely. "Lest we have any doubts," one commentator wrote, "we can see the poisonous fruit produced by the forces of Mordor in the rubble of the World Trade Center."¹

Central to these themes and to the films' popularity is the heroic multi-race Fellowship of the Ring: four hobbits, two men, one elf, one dwarf and one wizard. Their mission is clear. Deliver the Ring to Mordor, destroy it and save civilization. The Fellowship represented the "Free peoples of the World,"² arrayed against Sauron and his evil forces. Although Tolkien says little explicitly about the governing systems of the Free Peoples, we assume from what we read that their societies were based on natural rights and the law of free will, and that their political systems adhered to the principle that government could not infringe upon the rights of the people without due process of law. This, after all, was what they were fighting for.

But what happens when these societies face a threat like Sauron? Tolkien's broad answer, unfolding throughout the trilogy, is to fight with all possible means but fight with honour, upholding the laws and morals that Sauron seeks to crush. Compare Eomer burning the slain orcs on the plains of Rohan (a crude burial, perhaps, but at least dignified) with Sauron's army flinging the decapitated heads of Gondor's soldiers over the walls of Minas Tirith. It is a familiar theme in heroic literature: when good races struggle against ruthless evil, they fight with honour and integrity because to do otherwise would be to become that which they fight against. "If any of the Wise should with this Ring overthrow the Lord of Mordor," says Elrond at the Council, "he would then set himself on Sauron's throne, and yet another Dark Lord would appear."³

But the good-versus-evil dichotomy is less clearly defined than Tolkien or Peter Jackson would have their readers or moviegoers believe. A closer look at the text shows the leaders of the West acting in ways entirely adverse to the central

tenets of their societies. They may abridge their values only in the face of Sauron's imminent threat, but we should not blithely accept such justifications without closer inspection. And that examination forces us to confront a disquieting question, particularly apt in our modern day struggle against global terror: Can a moral society justifiably defend itself by arguably violating the very principles that it seeks to uphold?

Who violates the values of the Free Peoples? None other than Gandalf himself, by torturing the one creature in Middle-earth that everyone loves to hate: Gollum.

The torture of Gollum

Gollum, whose real name was Smeagol, was born in approximately 2430 (Tolkien does not provide the exact date), along the banks of the Anduin River, about 500 miles east of Hobbiton. In 2463, when he was 33 years-old⁴, Smeagol was playing along the banks of the Anduin when his cousin, Deagol, found the Ring in the riverbed. Already ensnared by the Ring's influence, Smeagol strangled Deagol to death and took the Ring. Under the Ring's power, and weak-willed, Smeagol became crooked and malicious. His fellow hobbits called him Gollum because of a gurgling sound he made in this throat. He was banished from the clan and exiled himself deep in the Misty Mountains, vanishing from knowledge for hundreds of years.

Gollum survived for centuries because the Ring greatly extended his life. But in 2941, almost 500 years after he murdered Deagol, Gollum lost the Ring deep inside the tunnels of the Misty Mountains. There it was recovered, quite by accident, by Bilbo Baggins, who then "won" the Riddle Game and made off with the Ring. "Thief!, thief! Baggins!" Gollum cried, "We hates it forever!" The rest of Gollum's life became a quest to recover the Ring. For the next 75 years, he travelled across Middle-earth, hunting for Baggins.

As Gollum searched, key events were unfolding in Middle-earth. In 3001, Bilbo turned 111 and, after his long-expected party, reluctantly surrendered the Ring to Frodo. Gandalf, meanwhile, was becoming increasingly concerned about the Ring and was determined to learn its history. He enlisted Aragorn's aid and gave him specific orders: find Gollum, question him about the Ring and bring him to the elves of Mirkwood.

Sometime between 3009-3017 Gollum was captured by Sauron⁵. In Mordor's dungeons he was tortured mercilessly, until, under duress, he told Sauron's servants that the Ring was held by "Baggins" in a place called the "Shire." In 3017,

1. John G. West, THE LORD OF THE RINGS AS A DEFENSE OF WESTERN CIVILIZATION in CELEBRATING MIDDLE EARTH 27 (John G. West Jr., Ed., 2003).

2. J.R.R. TOLKIEN, THE LORD OF THE RINGS 268 (Harper Collins Publishers 1994) (1954) (hereafter "TOLKIEN").

3. Id. at 261.

4. Id. at 1062 (Appendix B, "The Tale of Years") (hereinafter "Tale of Years"). Unless cited otherwise, all dates are drawn from the Tale of Years.

5. Id. at 1065.

Gandalf as torturer

Sauron released Gollum with a specific order: find the Ring and return it to Mordor.

Enter Aragorn, who had been searching in vain for Gollum for years. He captured him in the Dead Marshes outside of Mordor shortly after his release by Sauron. Not surprisingly, Gollum would say nothing to Aragorn – a perfect stranger who attacked and bound him without cause – so Aragorn put a halter on his neck, gagged him, “tamed him by lack of food and drink,” and marched him to Mirkwood Forest, 600 miles to the north. The journey lasted at least several months across Middle-earth’s roughest terrain. Reaching northern Mirkwood toward the end of 3017, Aragorn delivered Gollum to King Thranduil, who agreed to imprison him. For Gollum, a better prison than Mordor perhaps, but prison still⁶.

As Aragorn marched Gollum north, Gandalf was in Minas Tirith reading Isildur’s scrolls hoping to learn more about the Ring. His research convinced him of his long-held hunch: Frodo possessed the One Ring. He left Minas Tirith, riding north, presumably to the Shire. But while en route he received word that Aragorn had captured Gollum and had delivered him to the Wood Elves, so he changed course immediately and made for Mirkwood.

Once there he finally questioned Gollum, who had now been imprisoned for at least several months by that time. Predictably, Gollum balked at revealing anything, let alone his knowledge of the Ring. This went on for some time – exactly how long, days, weeks or months, Tolkien does not say -- until, as Gandalf described it:

*I endured him for as long as I could, but the truth was desperately important, and in the end I had to be harsh. I put the fear of fire on him, and wrung the true story out of him, bit by bit, together with much sniveling and snarling.*⁷

Exactly what it meant to put the “the fear of fire on” Gollum, we do not know. But we know, at least, that Gandalf was “harsh,” that he “wrung” information out of him “bit by bit,” until at last, after “sniveling and snarling,” Gollum told the whole story. We know also that Gandalf was one of the most powerful figures in Middle-earth, and his adversary was small, wretched and powerless. Gandalf needed information. He was going to get it.⁸

Whatever the technique, the interrogation proved fruitful because Gandalf learned about Gollum’s role in the Ring’s

legacy, and that Sauron knew that the Ring had been found and was held by a hobbit named “Baggins” in the Shire.

Gandalf left Gollum festering in prison and hurried to the Shire, arriving at Bag End on April 12, 3018. There he told Frodo of Sauron’s growing strength, confirmed that Frodo’s ring was the One Ring by tossing it into the fireplace and reading the inscription, and then put into motion events that would lead to the Fellowship of the Ring and the quest for Mount Doom.

Gollum, meanwhile, escaped from the Wood Elves and made his way west, again searching for the Ring. In January, 3019, he picked up the Fellowship’s trail just outside Moria. For the next six weeks he shadowed them from a distance, until the Fellowship was broken at the Falls of Rauros, where Gollum followed Frodo and Sam across the river and into Eryn Muil. He attacked Frodo to get the Ring, but the hobbits overpowered him and made him swear by the Ring to guide them into Mordor itself.

One month later, inside the Cracks of Doom, the very heart of Sauron’s realm, Gollum finally seized the Ring from Frodo. Holding it aloft, he danced wildly on the edge of the abyss and then “stepped too far, toppled, wavered for a moment on the brink, and then with a shriek he fell. Out of the depths came his last wail Precious, and he was gone.”⁹

It was March 25, 3019. Gollum was 589-years old.

The torture debate

The debate about the use of torture goes back centuries. Immanuel Kant opposed it as part of his categorical imperative against improperly using people as a means for achieving noble ends, Voltaire generally opposed it except in some cases and Jeremy Bentham supported it in some instances.¹⁰ Though long an issue debated among philosophers and practiced only in the shadows, the terrorist attacks of September 11, 2001, and the events at Abu Ghraib prison brought the issue to the forefront for western democracies and forced a difficult question: can a rights-based society ever use torture to protect itself from attack?

In the sixteenth century, Anglo-Saxon law allowed the limited use of non-lethal torture, supervised by judges, in order to secure the evidence necessary to obtain guilty verdicts under the rigorous criteria for conviction at the time¹¹. But as the legal system relaxed its requirement of proof, torture was no longer sanctioned by the state and, over time, liberal societies prohibited it, at least in name, because it was morally indefen-

6. Id. at 247. Although both Aragorn’s “arrest” and harsh treatment of Gollum, and King Thranduil’s imprisonment of Gollum without cause (he had broken no Elvish law), are concerning, I have focused on Gandalf alone in this essay.

7. Id. at 55.

8. Gandalf was one of the Istari, or Wizards, sent to Middle Earths to unite and counsel the Free Peoples in their struggle against Sauron. See ROBERT FOSTER, THE COMPLETE GUIDE TO MIDDLE EARTH 273-74 (1971). The Istari “possessed great skill of body and mind; their powers were focused through their staffs.” Id. at 274.

9. TOLKIEN, *supra*, at 925.

10. See IMMANUEL KANT, CRITIQUE OF PRACTICAL REASON AND OTHER WORKS ON THE THEORY OF ETHICS 46 (Thomas Kingsmill Abbot trans., 6th Ed. 1909); JOHN LANGBEIN, TORTURE AND THE LAW OF PROOF 68 (1977) (discussing Voltaire);

11. ALAN M. DERSHOWITZ, WHY TERRORISM WORKS 149-150 (2002) (discussing Kant, Voltaire and Bentham).

DERSHOWITZ, *supra* note 11, at 156. In the sixteenth century a conviction required either the testimony of two eyewitnesses or the confession of the accused himself. Circumstantial evidence, no matter how compelling would not do. Id.

12. DERSHOWITZ, *supra* note 11, at 124.

13. Id. at 140.

14. Id. at 155; see also Chanterelle Sung, Torturing the Ticking Bomb Terrorist: An Analysis of Judicially Sanctioned Torture in the Context of Terrorism, B. C. Third World L. J. 199 (2003) (book review) (arguing against use of torture because, among other reasons, it violates the nature of human dignity).

sible. "Most civilized people do not even want to think about torture as a matter of degree," writes Alan Dershowitz in his book *Why Terrorism Works*, "[t]orture is torture, and it is an unspeakable evil, regardless of its specific nature or precise meaning."¹² For rights-based nations, torture is a "violation of core civil liberties and human rights,"¹³ the "very idea of deliberately subjecting a captive human being to excruciating pain violates our sense of what is acceptable."¹⁴

Giving these sentiments the force of international law, the United Nations General Assembly, in 1984, adopted the Geneva Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Without exception, it outlawed all forms of torture, which it defines as:

*[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes of obtaining from him or a third person information or a confession.*¹⁵

But the signatories to the U.N. convention must also face today's very real threat of catastrophic nuclear, biological or chemical terrorism. Surely, we ask, even rights-based societies may defend themselves against such extreme threats, even if they must resort to extreme means.

Officially, at least, western democracies do not forthrightly answer the question. But the September 11 attacks might have produced a consensus about when torture is morally justified: the so-called "ticking bomb" terrorist case.

In the "ticking bomb" scenario, the government has captured a terrorist who knows that a nuclear bomb is set to explode in a major city. The terrorist knows the location of the bomb and how to defuse it. In such an extreme case, many agree that the government is justified in torturing the terrorist to force him to talk. The argument is utilitarian: the benefits that flow from the limited use of torture far outweigh its costs. One terrorist will feel pain, it is acknowledged, but millions of innocent lives will be saved. In that case, and that case alone, most would agree that non-lethal torture is justified.¹⁶

This hypothetical is not so far-fetched. On September 11, 2001 President Bush (or, more accurately perhaps, Vice President Cheney) faced an analogous situation when he ordered the Air Force to shoot down the 4th hijacked airplane, which was apparently heading for Washington, D.C. Although the order was not carried out, it was issued on a similarly utilitarian principle – we would knowingly accept the deaths of the passengers to save many more people on the ground – a strategy that was almost universally supported.¹⁷

Thus our framework for evaluating Gandalf's treatment of Gollum. The Free Peoples, like western society today, should not permit torture except in the most extreme cases, a so-called "ticking bomb" scenario for the Free Peoples of Middle-earth.

Was Gandalf's torture of Gollum justified?

Measured against the standards of the U.N. Convention, there can be little doubt that Gandalf tortured Gollum. By his own admission he intentionally inflicted "severe pain or suffering" to "obtain[] from [Gollum] information or a confession."¹⁸ Although Tolkien glides over the details of what actually happened inside Gollum's prison cell, Gandalf's own choice of words -- "fear of fire," "harsh," "wrung the true story out of him," "bit by bit," "sniveling and snarling" -- make a compelling case. Indeed, when Gandalf described his interrogation of Gollum to Frodo and the Council he likely minimized the severity of his treatment his captive, both out of self-interest and because there were more pressing matters on the Council's agenda. Still, one has little difficulty imagining the scene: The tall wizard descending down the prison's dark halls towards Gollum's cell. The Elvish guards snapping to attention as he approaches and opening the cell's heavy wooden door. Gollum covering his eyes from the light and then springing to the far corner on all fours. Gandalf slowly stepping in, caped, dark and menacing. And the interrogation begins.

The question then is not whether Gandalf tortured Gollum; the question is whether that torture was justified given that Gandalf was leading a fellowship of societies that should prohibit torture except in the most extreme cases. Did Gandalf face a "ticking bomb" scenario where many would perish imminently if he did not extract from Gollum the fact that Sauron knew the Ring was in the Shire?

Certainly if the Ring fell into Sauron's hands the result would be catastrophic. Empowered by the Ring he would soon dominate Middle-earth and hundreds of thousands would perish or be enslaved. But was the threat imminent? Consider first the timeline. Gandalf tortured Gollum in 3017, likely toward the end of the year. He then traveled immediately to the Shire, arriving in Hobbiton on April 12, 3018. There he confirmed with direct evidence what he had long known through circumstantial evidence: that Frodo possessed the One Ring. He counseled Frodo to take the Ring expeditiously to Rivendell and, although he prodded him to leave ("we must do something, soon"), he did not press him to leave immediately. Indeed, when Frodo proposed departing in the fall of that year, Gandalf easily acquiesced ("Very well . . . I think

15. "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," ("Convention Against Torture") adopted by the United Nations General Assembly, December 10, 1984, and in effect since June 26, 1987, after it was ratified by twenty nations, including the United States.

16. DERSHOWITZ, *supra* note 10, at 142-149. Dershowitz argues that the "ticking bomb" terrorist should be tortured, but that the process should be governed by a "torture warrant" authorized by a judge. Although I argue that the September 11 attacks may have produced a consensus, I am well aware that the issue is controversial and complicated. Many argue that to allow torture even in the "ticking bomb" case begins a slide down the slippery slope where lines become very difficult to draw. How catastrophic must the threat be to justify torture? 1 million lives? 100,000? 1,000? How much pain is justified? May we torture the terrorist's mother in order to elicit information? His children? The questions are many, valid and beyond the scope of this essay. beyond my ability to answer. For purposes of this essay, I assume only a general consensus in the "ticking bomb" scenario outlined above.

17. An interesting contrast is the recent case of an American officer in Iraq who used non-lethal torture against an Iraqi detainee to foil a planned attack against American soldiers. The officer twice fired his gun away from the detainee to intimidate him into talking. The tactic worked and the plan was foiled. But the Army took a dim view of the officer's actions and filed criminal charges against him. Rowan Scarborough, *Army Files Charges in Combat Tactic*, WASH. TIMES, October 29, 2003. The decision was apparently based on the Army's perception of the risk – a handful of Army officers – versus its policy against torture. But what if the detainee had had information regarding an attack on 100 officers? 1,000? Presumably the Army at some point would have argued that the officer's tactic was justified.

18. Convention Against Torture, *supra* note 15.

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that will do – but it must not be any later”) even though he knew that Sauron would soon send his servants to the Shire to search for the Ring. And it was not until September 25, 3018 – almost six months later, and perhaps close to a year following the torture of Gollum -- that Frodo actually set off from Bag End.¹⁹

The argument will certainly be made that “imminence” is a relative concept. A year in Shire may translate to a month in our world. But even assuming that Gandalf’s time frame represented an imminent danger to Middle-earth, a more fundamental principle compels us to conclude that Gandalf did not face a “ticking bomb” scenario that would justify torturing Gollum.

The “ticking bomb” scenario, on which justifiable torture is

based, presumes two prerequisites: (1) the likelihood of a catastrophic event – like Sauron regaining the Ring and slaughtering the Free Peoples of Middle-earth; and (2) that event will occur quickly unless something is done to stop it. But there is a third prerequisite, so implicit that it is taken for granted: The torturer has no less intrusive means of gaining the information. When the FBI agent is about to inject a needle into a terrorist’s neck to get him to talk, for example, we assume that the agent does not have another way to find the bomb and defuse it in time. If he did, the torture would obviously be unjustified and morally repugnant.

In this case, as Gandalf walked down the dark hallways towards Gollum’s prison cell, he not only had other means of getting the information he sought, *he already knew the infor-*

19. To be fair, when Gandalf acquiesced to Frodo’s proposed fall departure, he did not yet know that the Nazgul had in fact already left Mordor and were moving west. This he learned in late June from Radagast the Brown on the borders of the Shire. Gandalf was greatly concerned, and sent a letter to Frodo (which reached him months late because of Butterbur’s incompetence) advising him to “leave Bag End soon, and get out of the Shire before the end of July at the latest.” TOLKIEN, *supra*, at 166. (emphasis added). Again, even knowing that the Nazgul were headed for the Shire did not cause Gandalf to advise Frodo to leave immediately; he still thought Frodo had at least one month (until the end of July) before he needed to set out.

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mation he sought before the torturing began. In fact, Gandalf was merely seeking confirmation that Frodo possessed the One Ring (information which, it should be pointed out, Gollum could not actually provide). But by the time the torture of Gollum was underway, Gandalf's circumstantial knowledge of the Ring's whereabouts was overwhelming. He knew the other Rings of Power were accounted for: the Nazgul kept the nine for the men; the Seven were taken or destroyed by the Dwarves; and the three were held by the elves.²⁰ Moreover, he knew the One Ring's distinctive characteristics: Frodo's ring looked like the Ring as described by Saruman ("round and unadorned, as it were one of the lesser rings"); it had the power to make its wearer invisible and the usually generous Bilbo was unusually reluctant – even angrily so – to release it.

But most importantly, Gandalf's own investigation had confirmed it to a certainty. Remember, as Gandalf and Aragorn were searching for Gollum, the wizard "thought again of a test that might make finding Gollum unneeded. The ring itself might tell if it were the one."²¹ Recognising that Isildur's scrolls might hold the key, he raced to Minas Tirith and started to research. Even as Aragorn was marching Gollum north to Mirkwood, Gandalf unearthed the key scroll, upon which Isildur had described the Ring as "precious" to him and had copied the words inscribed on the Ring itself:

One Ring to rule them all, One Ring to find them, One Ring to bring them all and in the Darkness bind them.

As Gandalf himself said, "When I read these words, my quest was ended."²² He now *knew* that Frodo possessed the One Ring and that all Middle-earth was in peril. He would certainly make one final test – tossing the Ring into Frodo's fireplace to read the inscription – but the conclusion was foregone.

Not surprisingly, Gandalf immediately left Minas Tirith²³ and headed north, presumably to the Shire to make the final test and counsel Frodo. But, as the facts show, Gandalf, informed that Aragorn had captured Gollum and was being detained by the Wood Elves, detoured to Gollum's prison to being his inquisition.

Would the Fellowship's ultimate triumph have concluded in any other way had the torture of Gollum not taken place?

Assume, for a moment, that either that Aragorn had not captured Gollum or that Gandalf chose, perhaps in a moment of conscience, not to "wring the true story out of" Gollum. In either case, Gandalf still would have ended up at Bag End counseling Frodo. And, although his knowledge of the Ring would have been less complete -- he would not have known, for example, how Gollum came to possess it -- he almost certainly would have counseled Frodo exactly the same way he did in 'A Shadow of the Past' (the second chapter of *The Fellowship of the Ring*).

Gandalf, even without the intelligence he gleaned from

Gollum, would have told Frodo that his was the One Ring; that it could not stay in the Shire; and that he should make for Rivendell soon. Remember, by this time Sauron had openly declared himself in Mordor and would soon attack Osgiliath. Gandalf certainly knew that Sauron's offensive was close at hand and that the Ring needed to be dealt with quickly. In short, Gandalf's diversion to Mirkwood and torture of Gollum changed nothing. Indeed, it could be argued that Gandalf's actions actually delayed the beginning of the quest by several months. Absent the torture, Gandalf still would have rushed to the Shire and put into motion what would become the Fellowship of the Ring, the quest for Mount Doom and the victory of the West.

Sceptics will point out that Gollum did provide Gandalf with a crucial piece of information: Sauron knew that the Ring was in the Shire and had dispatched the Nazgul to Frodo's doorstep. But as we have seen above, even with that knowledge, Gandalf did not press Frodo to leave the Shire immediately. And in any case, years before he tortured Gollum, Gandalf knew that Sauron was searching for the Ring. When the White Council met for the last time in 2953 – sixty four years before the torture – the gathered wizards "learned that [Sauron] was seeking ever more eagerly for the One."²⁴ While it is true that Sauron did not know exactly where it was, surely his web of spies (Saruman, who knew about Gandalf's interest in the Shire, chief among them) made that only a matter of time. Gandalf's concern about the Ring began as soon as Bilbo found it in 2941: that it was the One Ring, that Sauron would seek it and that he could not be allowed to find it.²⁵

Remember too that even before the Council of Elrond, Gandalf knew that the Ring would have to be destroyed in Mordor itself. "It may be your task to find the Cracks of Doom," he told Frodo in Bag End, "but that quest may be for others: I do not know."²⁶ In short, Gollum's information was helpful, but only marginally so.

Conclusion

We ought to conclude that Gandalf the Grey or Gandalf the White was also, once, Gandalf the Torturer. A harsh conclusion to be sure, particularly for the leader of the Free Peoples against Sauron, but facts are stubborn things. The facts make clear that when Gandalf opened Gollum's cell, the wizard did not face a "ticking bomb" scenario either because the threat was not imminent or, more fundamentally, because he already knew enough to set the Fellowship into motion. He knew where the "ticking bomb" was and how to defuse it without Gollum's involuntary aid.

Does this diminish Gandalf and his comrades' lifelong struggle and ultimate victory against Mordor? Perhaps not. But it makes us all subtler analysts about the lines between good and evil and forces us, as September 11, 2001 and the 'War on Terror' has, to think more carefully about how we may uphold our values as a society and still justifiably protect ourselves from catastrophic threat.

20. TOLKIEN, *supra*, at 243-44.

21. *Id.* at 245.

22. *Id.* at 246.

23. *Id.* at 247. 24. *Id.* at 244.

25. See *Id.* at 13 (Gandalf "thought it important, and disturbing, to find that the good hobbit had not told the truth [about how he came to possess the Ring] from the first: quite contrary to his habit."); *id.* at 245 (Gandalf describing his growing concern about the Ring in 3001, seventeen years before the Fellowship was formed: "Whence came the hobbit's ring? What, if my fear was true, should be done with it.")

26. *Id.* at 65.