

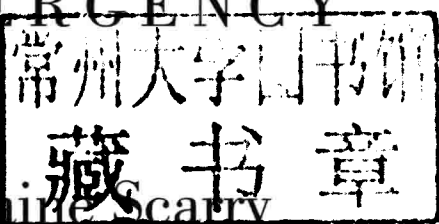
THINKING
IN AN
EMERGENCY



ELAINE
SCARRY

THINKING
IN AN
EMERGENCY

Elaine Scarry



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THINKING
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AMNESTY INTERNATIONAL GLOBAL ETHICS SERIES

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In December 1948, the UN General Assembly adopted the United Nations Declaration of Human Rights and thereby created the fundamental framework within which the human rights movement operates. That declaration—and the various human rights treaties, declarations, and conventions that have followed—are given life by those citizens of all nations who struggle to make reality match those noble ideals.

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P R E F A C E

As a child growing up in the high hills of South India, Rae Langton used to walk to school side by side with a friend. So did all the other children. They could be seen each day moving two by two along the pathways in a long undulating line, chattering, laughing, holding hands. The children called it walking “in croq” because collectively they moved like a crocodile toward their shared destination.

Overnight this practice changed. Walking in croq was suddenly prohibited. The flow of schoolchildren could still be seen each day as they made their way across the terraced hillside, but now they moved in single file or in atomized clusters of two or three.¹

Walking two by two in a line was construed to be a form of assembly, and the right of assembly—as well as India’s other fundamental rights—had been suspended as of midnight, June 25, 1975. The mountain town of Ooty is 2,000 kilometers from the seat of government in Delhi, but Prime Minister Indira Gandhi’s act had entered directly into the texture of the schoolchildren’s lives. The children of this town were not privy to the severe abuses and injuries that would now take place: the

cutting of electricity to opposition newspapers, the imposition of severe censorship once the electricity was restored, the detaining of thousands of persons without charge and without release of their names, the involuntary sterilization of many who were detained.² But despite their separation from the site of grave injury, the children had a physical sign in their environment that some profound change had just come about.

The abridging of rights and laws more often lacks any sensory manifestation. Persons who are not themselves directly injured often do not even know that any substantive change in the laws has taken place. If at the moment that President George W. Bush secretly authorized torture the residents of the United States had been required to begin walking in single file, the enormity of the legal change might have been easier to grasp. They would be concretely aware that their shared legal universe had changed, and perhaps they would suspect that somewhere somebody else might be paying a heavy price for the change.

What about the profound legal change that comes about once a country acquires nuclear weapons that allow the executive of that country to kill many millions of people in a foreign land? If at the moment the change was initiated the residents of that country had been henceforth required to walk backward wherever they went, they would be steadily aware that a major alteration had occurred. The sustained discomfort of walking backward would surely trouble them on their own behalf. It would almost as surely prompt them to worry about the enormity of the far-heavier price that some unseen population might eventually pay for the mysterious change.

It is not the case that any of the eight nuclear nations have required their populations to walk backward physically, even

though that is precisely what those populations have been asked to do legally, morally, and spiritually. Nuclear weapons—their possession, threatened use, or use—reenact on a vast scale the structural features of torture. Both torture and nuclear weapons inflict their injuries without permitting any form of self-defense; both inflict their injuries without obtaining any authorization from their own legislatures or populations; both starkly nullify even the most minimal requirements of a contractual society; both destroy the foundational concept of law.

Thinking in an Emergency is a reminder of what in the nuclear age we sometimes seem to have forgotten: that we have both the responsibility *and the ability* to protect one another, both within the boundaries of our own nations and across national boundaries. Once we hold in front of our eyes the landscape of actual emergencies—as the central chapter of this book asks us to do—we can recognize the deep principles of mutual protection that consistently appear, whether in the act of a midwife in Zambia trying to save a newborn with CPR, a commune in Saskatchewan building a raft to rescue stranded villagers, or an entire national population in Switzerland working in concert to uphold their commitment to “equality of survival.” We can and ordinarily do retain our ability both to think and to act in emergencies, and should not be misled by governments into believing that the speed of modern life requires that populations step aside and stop thinking while larger and larger arsenals are accumulated whose only purpose is to injure.

We need to turn to this work of mutual protection. If we are late in beginning, we are not yet too late.

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THINKING
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Chapter One

THE SEDUCTION TO STOP THINKING

In his mid-twentieth-century book on *Constitutional Dictatorship*, Clinton Rossiter predicted that the atomic age would soon be governed by emergency rule and a solitary executive figure.¹ He was right. A recent report by the Geneva Center for the Democratic Control of Armed Forces reviews the governance structures of the earth's eight nuclear states: the United States, the United Kingdom, France, the Russian Federation, China, Israel, India, and Pakistan. All eight have ceded control of nuclear weapons to their presidents or prime ministers; all eight have permitted their legislative assemblies and their citizenry to disappear.²

There are, of course, distinctions among the eight nuclear weapons states. Of 22,600 weapons held worldwide, the United States and Russia hold 21,600 of them.³ The countries vary in their readiness to fire: both China and India keep their warheads "unmated" to the delivery vehicles;⁴ the United States and Russia together keep 2,000 ready for launch day and night. Strategic policies vary: India is committed to a "second-use only" policy,⁵ whereas the United States and Britain have a first-use policy (the

United States adopted a first-use policy shortly after acquiring a nuclear weapon, formalized the policy as Presidential Directive 59 in 1980, and defended the legality of firing nuclear weapons first at the International Court of Justice where, in 1995, seventy-eight countries petitioned to have nuclear weapons declared illegal). The number of people who will initiate any launch also varies from country to country: in the United States, the president issues the order to launch alone;⁶ in Pakistan, three people—the prime minister, the president, and a third unidentified person—must act in concert to launch a weapon, as is also true in Russia where the president, the defense minister, and the chief of the general staff share control over the release codes.⁷

While these and other differences are important, what unites the eight countries should be kept steadily in view. Each has the capacity to kill millions of people; each has placed that capacity in a small number of hands; each has bypassed the distributional structures that characterize democratic governance; and each has a population that could bring its own national laws (as well as international laws) to bear on ridding itself of both the nuclear weapons and the legal deformations those weapons cause.

Legal scholars have shown that by the end of the twentieth century many countries have come to live in the state of “chronic emergency” that Clinton Rossiter predicted, with more and more powers ceded to the country’s president or prime minister. Hans Born, the author of the Geneva study, judges that among the eight nuclear states, the United States has a strong chance of reestablishing democracy both because of various constitutional provisions and because of a robust civil society. Given this democratic potential, it is revelatory to see how saturated with emergency rule this particular nation has become. Supreme Court

attorney and constitutional scholar Jules Lobel calls attention to a Senate report acknowledging that by the 1970s “470 statutes existed delegat[ing] power to the executive over virtually every aspect of American life,” presidential power that since then has increased, appearing in presidential control of drug wars, civilian transportation, and civilian nuclear plants.⁸ Astonishingly, even the constitutionally specified arrangement for presidential succession has itself been replaced by two separate lines of presidential succession, determined not by constitutionally legal procedures but by private councils within the executive.⁹ Counterparts of many of these legal deformations can be found in the other nuclear states. For example, both Russia and France have set up lines of succession that diverge from the constitutionally mandated sequence;¹⁰ in Britain, two deputies are appointed, one of whom can launch the weapons if the prime minister is not available to do so.¹¹

In the United States, the dissolution of law in the second half of the twentieth century accelerated in the twenty-first. In the first eight years of the new century, the claim of emergency and the momentum toward unconstrained executive power became increasingly legible, with a presidential office that sanctioned the practice of torture, detention without charge, widespread surveillance of its citizens, and a private mercenary army answerable only to the president.¹² The first in this list—the practice of torture—carried the United States into the deepest region of war crime. The international and national prohibition on torture is not just one law among many but a foundational prohibition underlying the larger framework of laws.

As these many acts indicate, the overall shift in government across the last sixty years has entailed setting aside distributional