

# Is Torture ever Morally Acceptable? If so, Under what Circumstances? If not, why not?

Written by Katie Smith

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Torture can be defined as, 'the officially sanctioned infliction of intense suffering, aimed at forcing someone to do or say something against his or her will.' (Rodley, 2000: 7) Under international law it is illegal to use torture in any situation whatsoever. Although torture undoubtedly continues throughout the world, the moral argument prohibiting it was won during the enlightenment and the debate was closed by twentieth century international legal prohibitions. However, the question of torture has resurfaced in the context of the "War on Terror" as people face up to the possibility of WMD terrorism. The dilemma is most commonly expressed in the problem of the 'ticking bomb terrorist.'

In this essay I will argue that torture is always morally wrong. I will do this through a careful examination of the 'ticking bomb' scenario which is often used as a justification for torture in extreme cases. After explaining the scenario and the deontological and consequentialist approaches to it, I will discuss its flaws. One section will address the immediate weaknesses of the scenario, and another will look at the wider implications of a decision to torture. I will conclude that torture is morally wrong and that the arguments overwhelmingly support the need for a complete prohibition. However, I also recognise the moral difficulty of the 'ticking bomb' decision and accept that this provides a mitigating factor for those who choose to torture in these circumstances.

### **Deontologists, Consequentialists and the 'Ticking Bomb'**

The 'ticking bomb' scenario is a commonly cited moral problem that causes us to question our moral priorities. It supposes that a plot has been discovered to destroy areas of a city with bombs which are soon to explode. It would be impossible to evacuate the city in time but possible to disarm the bombs if they could be found. A suspect, who knows the location of the bombs, is arrested by the police but refuses to divulge the information during interrogation. Can the suspect be tortured to extract the information? The scenario forces us to make a choice between two evils; we can choose to do no harm ourselves, but our passivity will have terrible consequences, or we can do something morally repulsive, and torture a suspect to save the lives of others. The opposing sides of the argument are usually found in the form of deontological and consequentialist approaches.

Deontology is an approach which seeks to create universal rules for the morality of human action; its ideas of common humanity and fundamental human rights were very influential in the banning of torture. (Turner, 2005: 7, 15) Kant's deontological approach creates two universal rules by which moral questions can be addressed: 'Act as though the maxim of your action were by your will to become a universal law of nature,' and 'Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.' (in Turner, 2005: 14) Under the first rule, the act of torture cannot be justified as we would not accept it being universalised and

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potentially used against ourselves. Under the second, torture is wrong because torturing a person for information is to use them as a means only. (Turner, 2005: 15) Thus Kant's logic leads to the conclusion that torture cannot be justified under any circumstances. The individual who chooses not to torture makes the correct moral decision regarding their actions despite the terrible consequences that might result.

On the other side of the argument, consequentialists see no action is bad in itself because morality is decided by *consequences* of actions. The 'good' of saving the innocent people must be weighed up against the 'bad' (torturing the suspect) in order to make a decision on the correct course of action. Bentham calls this method of moral evaluation the 'principal of utility.' (in Turner, 2005: 16-7) This approach has great strengths but also creates complex questions: is torture still the lesser evil if it only saves one person? Is it morally right to torture a person's children to extract a confession? Is it morally right to torture ninety-nine people in an attempt to save one-hundred others? In theory this type of thinking can justify extreme inhumanity as long as it is calculated as the lesser evil. (Dershowitz, 2002: 146)

The deontologist-consequentialist debate over torture provides a useful background and reflects common reasoning when faced with this dilemma. Our immediate focus is on the inhumanity of torture (emphasised by deontologists) and the numerically greater threat to innocent people (emphasised by consequentialists). However, the situation is presented deceptively simply; the next section will examine its flaws.

## **Hypothetical Situation or Real-Life Dilemma?**

The ticking bomb scenario is a carefully constructed puzzle. It presupposes a strong disinclination towards torture and therefore the situation is framed in the way where a defence of an absolute torture ban is at its most difficult; in extreme examples of a 'ticking bomb' situation the consequentialist arguments for torture can become overwhelming. (Pfiffner, 2005: 21) What if the suspect admitted their guilt but refused to give the necessary information? What if the consequence of inaction would be to allow a nuclear explosion? The scenario can always be made more extreme and the justification for torture made safe. (Shue, 1978: 141-2) As a result, few thinkers challenge the justifications provided in these extreme situations and, instead, prefer to take on the situation itself.

The 'ticking bomb' scenario can be challenged as it rests on many implicit assumptions. We must have some grounds to believe that the 'ticking bomb' exists, that the suspect has the information we require, that torture is the only method to elicit this information, that torture is likely to provide us with accurate information, and finally, that averting the attack will be possible but not avoidable without the information. These five assumptions are the basis on which the 'ticking bomb' dilemma rests; torture may be justified if all are present but if any one is absent torture is no longer 'necessary' and is therefore much harder to justify. (Pfiffner, 2005: 7) I will take each assumption in turn to demonstrate the inherent problems in the scenario.

The first condition, knowledge of the existence of the 'ticking bomb', seems self explanatory; the situation cannot exist without it. However, in reality there is little certain intelligence; would torture still be justified if there was only some, weak evidence? Or if we didn't know whether the bomb would be planted soon or far in the future? The justification for torture where we are uncertain about the existence of the bomb is weakened as its necessity is much harder to demonstrate.

Secondly, we must have reasonable grounds to believe that the suspect holds the information that we need. The

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argument for torture is severely weakened if it is likely that the suspect is innocent and unable to help our enquiries. In terms of efficiency, torturing the wrong person is a waste of time and, on a more human level, we must decide on the value of protecting the innocent from pain. The less certain we are that the suspect holds the information we need, the less we can justify ill-treatment of that person.

Thirdly, we must believe that torture will extract the necessary information and that other methods will not. If there is another way to induce the subject to talk our humanity must rule out any justification for torture; it can only be justifiable as a last resort. There are many other methods of interrogation that must have been tried and failed – developing rapport, plea bargaining, trickery, positive and negative psychological techniques, surveillance, disorientation and other non-damaging psychological methods. (Pffner, 2005: 15; Meyer, 2005; Saul, 2005: 3-4; Bowden, 2003) The argument may still be made that the price of failure to find the information makes an early recourse to torture worthwhile but the moral case is severely weakened as a result.

In addition to the above concerns about the usefulness of torture, the fourth assumption requires that torture will cause the subject to divulge *accurate* information. This is highly questionable as torture may force answers but there is no guarantee that they will be truthful (Rodley, 2000: 8) Under torture, a knowledgeable suspect may not tell the truth and an innocent suspect cannot; there can be no method of distinguishing between the two. Arar, a victim of the US's 'extraordinary rendition' program, claimed that, under torture, he eventually confessed to whatever was demanded, "You just give up. You become like an animal." (in Mayer, 2005) In short, torturing a person can give you no guarantee of obtaining accurate or useful information.

Finally, the scenario rests upon the presumption that it will be possible to save lives if the information is obtained. This is an important consideration as without it the torture is no longer necessary. If torture is carried out when the information cannot be of any use in saving lives (e.g. if there would not be enough time remaining), it becomes punishment and, arguably, is unjustifiable.

These five areas of criticism demonstrate the weakness of the 'ticking bomb' scenario as it is usually presented. Once uncertainty is added into the equation, the moral strength of the decision to torture is removed. In particular, the case rests on highly flawed beliefs in the usefulness of torture to produce truth. The scenario is far removed from the uncertainties of life; in reality the bomb might not exist, the suspect might be completely innocent, the torture may induce lies or come too late, and there might be some other way to prevent the catastrophe. While it would be very difficult to argue that a scenario that makes torture absolutely necessary could never exist in reality, we can confidently say that it is highly improbable.

Having demonstrated the weakness of the case for the moral justification of 'ticking bomb' torture, I will now turn to the case for prohibition.

## The Wider Context

The simplicity of the 'ticking bomb' scenario serves to hide the context of the puzzle and the wider moral dilemmas it entails. We are encouraged to consider only the immediate consequences of action and inaction which serves to strengthen the case for torture. However, the context can be widened to examine the implications of undermining the international torture taboo and allowing the likely extension of the practice, the adverse effects on those asked to torture, and the undermining of the judicial system. This context serves to present a strong case against morally

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condoning or legalising torture in any situation.

When considering only one 'ticking bomb' case, we can easily miss the potential effects of our moral choice on the social and international norms prohibiting torture. At the end of the twentieth century, the taboo against torture was arguably complete; during UN discussions in the 1970s, leading up to the 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment,' not one country spoke against the principal of the agreement. (Rodley, 2000: 21) However, the question of torture has resurfaced in the new millennium with the declaration of a "War on Terror" by the US. It is argued by US officials that the scale and unpredictability of the threat, as well as the lack of human intelligence sources, make harsher interrogation methods a necessity. (Pfiffner, 2005: 12; Mayer, 2005)

Alan Dershowitz has argued that there would be public outcry in any democracy that failed to use all necessary means to prevent terrorist attacks. (2002: 150) This is perhaps why we have seen an increase in 'coercive' interrogation techniques being used on suspected US enemies since 9/11. In particular, the practice of 'extraordinary rendition,' which 'disappears' suspects to allow information to be secretly extracted from them under torture, has greatly increased in scale since 9/11. (Meyer, 2005) For the US to allow, and even encourage, such a breach of human rights is severely weakening the norms prohibiting torture. If, under the stress of the "War on Terror," the world's most powerful state was to exempt itself from the international laws governing the treatment of prisoners, it is unlikely that the norm would hold. (Dershowitz, 2002: 142) As Colin Powell observed in a memo opposing the exemption of Guantanamo Bay detainees from the Geneva Convention, "It will reverse over a century of policy..." (Pfiffner, 2005: 12) If a decision was made to justify torture in some cases, it would have worldwide repercussions for the sanctity of human rights. (Saul, 2005: 3)

'Slippery slope' arguments also address the wider implications of justifying torture. They are concerned with the gap between theory and practice; arguing that the theoretical limits imposed upon the use of torture would never work in practice. It is well documented that torture spreads from one class of prisoner to others, from one type of treatment to harsher types, and from one emergency situation to routine use. (Shue, 1978: 141; Saul, 2005: 3; Pfiffner, 2005: 21) The Israeli experience demonstrates these dangers. In 1987, the Landau Commission advised that coercive interrogation of Palestinian terror suspects should be legalised in extreme cases. For 'moderate physical pressure' to be used the interrogators would have to demonstrate a 'necessity' such as a 'ticking bomb' situation. (B'Tselem, 2006) However, by 1999, the evidence that this ruling was being abused had become so overwhelming that the practice was outlawed by the Supreme Court. (Bowden, 2003) It was estimated that during this period 66% to 85% of all Palestinian suspects were ill-treated and that in many cases this amounted to torture. Supposed 'ticking bomb' cases were pursued on weekdays but were not severe enough to warrant weekend interrogation; torture had become 'routine, systematic, and institutionalized' (B'Tselem, 2006) Through returning to a complete ban, the legal repercussions for potential torturers are able to act as a deterrent.

Another consequence that is little considered is the impact that becoming a torturer would have on the individual responsible. Torture is not possible without the brutalisation of the torturer; you must 'lose your soul' if you are to save the victims. (Pfiffner, 2005: 20; Meyer, 2005) To torture requires us to overcome our socially conditioned abhorrence of violence and to accept the psychological repercussions. Shue argues that torture carries a much greater moral stigma (and therefore requires greater brutalisation) than killing in war, for example, as it constitutes an act of violence against an entirely defenceless being. (Shue, 1978: 130) The argument for legally sanctioned torture in some situations overlooks the secondary source of suffering it requires; the harmful psychological and social consequences endured by people who must train in and practice torture. To require this of someone is morally very

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problematic.

A further adverse consequence of allowing torture in some cases is the impact it would have upon the judicial system. The US has experienced this problem in relation to its practice of 'extraordinary rendition.' Secretly sending suspects for interrogation in countries known to use torture may occasionally provide useful information but torture evidence cannot be used in any reputable court. US government refusal to allow some of its prisoners to testify in criminal trials has led many to believe that the US is hiding the evidence of torture. As a result, the trial of Zacarias Moussaoui in relation to the 9/11 attacks was stalled for four years and, in 2004, Mounir Motassadeq, the first person to be convicted of planning the attacks, had his sentence overturned because the allowable evidence against him was too weak. (Meyer, 2005)

The arguments concerning the erosion of international norms, 'slippery slope' extension of torture, and the undermining of justice present the much larger context of the 'ticking bomb' dilemma. They demonstrate the implications of accepting any moral or legal justification for torture; implications which could potentially affect millions of people. The wider context of 'ticking bomb' torture can be used to sway consequentialist arguments away from the justification for torture as long term suffering would likely outweigh short term gains.

## **Moral Universalism and Human Choice**

Despite the wider case against torture, a person confronted with the immediate choices in the 'ticking bomb' case is unlikely to take these issues into account; 'interrogators will still use coercion because in some cases they will deem it worth the consequences' (Bowden, 2003) Few people would be unable to see a moral basis for torture if it was carried out in a reasonably clear 'ticking bomb' case and if the intention of the torturer was to 'do the right thing.' The difficulties of the immediate choice between carrying out torture and allowing deaths make it difficult to morally condemn the unfortunate person charged with deciding.

Following from the arguments above, it is dangerous to approve the practice of torture in any circumstances because of the consequences this could have on a wide range of people. Accompanying the moral arguments against torture, there must be legal procedures to ensure that the perpetrators of torture are brought to justice. The inhumanity of the act, along with its questionable usefulness and wider implications, makes torture always morally wrong. However, the humanity of the situation; (it will always be individual people who must make the decisions) must be taken into account as a mitigating factor.

## **Conclusion**

The 'ticking bomb' case provides perhaps the most convincing justification for torture that we have. In this essay, I have sought to argue that torture is always morally wrong through a critique of this scenario and through exposing the moral problems that it serves to obscure.

After explaining the problem as it is presented and outlining the main arguments for and against torture, I have shown the immediate flaws in the scenario. These include assumptions of the existence of the bomb, the guilt of the suspect, the effectiveness of torture and ineffectiveness of other methods, and the ability to prevent the disaster. Each is extremely unlikely to be certain in reality, however straightforwardly they may be presented in the moral puzzle, and each uncertainty weakens the case that torture is necessary and, therefore, justified. In particular, the assumption

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that torture will produce accurate information is deeply flawed as it can provide no measure for truth and cannot distinguish the guilty from the innocent.

Having shown the weaknesses of the case for torture, I then went on to make the case that torture is always morally wrong. The evidence for this is found largely in the wider context of the situation, where we can see implications of legitimising the practice that go beyond the immediate life and death of the situation itself. The erosion of the torture prohibition that could be caused by justifying and legalising the practice, and the 'slippery slope' from exceptional to routine use of torture, would have very wide implications and could lead to the torture of many individuals across the world. There would undoubtedly be innocent victims faced with long-term suffering as a result, and these victims would include those required to carry out torture. Further, the use of torture makes it impossible to use any evidence collected in a criminal trial and the US has already begun to see key suspects being acquitted as a result.

These arguments lead me to believe that torture is unjustifiable, even in extreme cases. However, because the immediate choice is so difficult and because the person making it possesses human emotions and instincts, I would not absolutely condemn the decision to torture provided it was made in an emergency situation and with the correct intention. To make prior judgement that torture is justified in some circumstances is dangerous and wrong – torture must be prosecuted as a crime wherever it occurs. However, to recognise the mitigating circumstances when it occurs is also important.

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