

Can torture ever be justified



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Torture as defined by the United Nations Convention against Torture (UNCAT) is described as the purposeful infliction of extreme physical suffering on a non-consenting and defenceless human being.

1 The reference to torture at an international level is only when torture is committed by a state or an agent of the state. Torture is banned through the application of international legislation including the European Convention of Human Rights (ECHR) and the UNCAT. 2 Protection against torture is also offered for vulnerable groups in society such as children and women through the United Nations Human Rights Council (UNHRC) and the United Nations Committee against Torture respectively. 3 Thus, with the vast amount of legislation in place to prevent torture of human beings, this essay will offer a view on why torture can never be justified.

In addition, it will also look at the moral justification of torture under extenuating circumstances. To begin with, the right not to be tortured or treated in an inhuman or degrading way is absolute. Under Article 2 (2) of the UNCAT, the right not to be tortured, unlike other human rights such as the right to freedom of speech, has no exceptions to the rule of it. 4 The prohibition of torture is absolute as based on the important concept of respect for human dignity; this basic right should be available to anyone and is a representation of a well-developed society.

5 This means that torture must not be balanced against any other factors, including national security. All attempts to justify the practice of torture in the name of security in order to obtain information from a suspected terrorist for the purpose of, for example, saving the lives of people who are exposed

to an imminent terrorist attack discernibly violate the absolute prohibition of torture as laid down in Article 7 of the International Covenant on Civil and Political Rights (CCPR).⁶ Moreover, the danger of a creating a “slippery slope” exists. Once an exception is allowed on the grounds of pure need, this would open the floodgates to future cases being advanced on the basis of a precedent.⁷ Any justification for using torture or other forms of punishment on a human being would then be subjective and injudicious.

In times of emergency, who is then to make that moral judgement as to when these acts can be applied and to whom it may be effective against? Torture of human beings entails of the intentional restriction of one’s own liberties. Bearing in mind the importance of autonomy as protected by Article Five in the ECHR, the torturing of human beings is inherently evil; even without taking into account the physical harm.⁸ If the particular act of torture involves going against one’s wishes in the maximalist sense, then it is an even greater evil than otherwise would be the case. Moreover, the torture of a person has not been proven to be an effective way of obtaining reliable information. People will say just anything to get the torture to stop, and it is obviously inhumane to test the validity of a method through trying different methods of torture on people.

⁹ In December 2005 following *A v Secretary of State for the Home Department (No 2)*, the House of Lords unanimously overturned a ruling made by the Court of Appeal such that evidence obtained under torture in other jurisdictions could be admitted in British courts¹⁰. In addition, John Stuart Mill’s concept of the tyranny of the majority applies with regards to the torture of an individual by the state. Mill thinks that given a chance, a

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majority would surely step over the fundamental rights of minorities. 11 He argues that in the past the worry had been that governments held power at the expense of its citizens and the tussle for power was one of gaining liberty by confining such governmental powers. 12 However, that power has since been entrusted to its citizens through democratic forms of the government – with the hazard being the majority denies liberty to minority individuals through the use of torture for information.

13 The tyranny of the majority mainly operates through the acts of the public authorities and thus constitutes a violation of individual liberty by the state.

14 On the other hand – looking at the moral justification for torture, it is necessary to differentiate between one-off cases of torture and legalised torture. The argument is that there are one-time acts of torture in cases of emergencies that are morally justifiable. A common example is the ticking bomb scenario in the context of the consequentialist libertarianism approach. 15 The ticking bomb scenario; suppose a terrorist is apprehended, and intelligence reveals that he or she knows where the ticking bomb is hidden that will soon kill many ordinary citizens, or the location and time of a separate terrorist attack.

However, efforts have been exhausted and the terrorist will not reveal the information unless a threat of torture is given. Are we not ethically forced to torture given the benefits for majority of the country's people compared to the limited suffering of the tortured individual? Jeremy Bentham's principle of utilitarianism is to have the greatest amount of happiness for the greatest amount of people possible in society¹⁶. Bentham argues that the idea of a citizen pursuing his or her own happiness cannot be necessarily declared “

right”, because often these individual interests can lead to greater inconveniences and less happiness for the society as a whole¹⁷. As Brecher claims, “ all those who advocate interrogational torture, whether legalized or not, simply assume some variety of a utilitarian understanding of morality: if the benefit of the action outweighs its disbenefits, then that action is morally justified.” ¹⁸An example of this would be the treatment of prisoners from the USA at Guantanamo Bay.

Detainees were subjected to torture in order to obtain information used to protect the citizens of USA. ¹⁹ Conflict arose because the individuals were not treated as “ Prisoners of War” – Treatments which may have been specifically designed to offend the religious sensitivities of the detainees, were repeatedly used by those involved in the interrogation and treatment of detainees. ²⁰ It was also reported that these techniques were used before prayer times and that in some cases, detainees were not allowed to wash themselves before and therefore were not able to pray. ²¹ All these acts taken against the prisoners constitutes as a form of psychological torture. However, the USA have justified it in the name of protecting their own citizens. Additionally, the state can still be seen to support torture if they take people to places outside their jurisdiction to torture them.

Extraordinary rendition describes the abduction and extrajudicial transfer of a person from one nation to another. ²² In the USA, the authorities captured terrorists and transported them to prisons around the world. Being sent to prisons outside the jurisdiction of the USA has meant that the use of torture on them to obtain information for the safety of its citizens can be employed. ²³As Richard Posner puts it, “ If torture is the only means of obtaining the

information necessary to prevent the detonation of a nuclear bomb in Times Square, torture should be used – and will be used – to obtain the information.

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. no one who doubts that this is the case should be in a position of responsibility.” 24 Mill also argues that every citizen who enjoys the care of society owes society in return, and that living in a society is essential so everyone should be expected to behave a certain way towards the rest²⁵. As soon as any part of a person’s behavior negatively affects the interests of others, society has control over it and it is then up to society to decide on the best way to deal with the situation²⁶.

A political philosopher at the University of Chicago, Jean Bethke Elshtaine outlined the debate asking, “ Is violating one’s moral responsibility really the most important issue when multiple human lives are at stake?” 27 Consider the right course of action if a lunatic has poisoned some people with a chemically indeterminable substance. Would torture be appropriate in order to obtain an antidote that would save just a few lives? Because even just a few lives can be saved by subjecting one person to torture, it is justifiable in the view of the consequentialist libertarian. However, what if only one person is saved – not the majority of the population? Is the use of torture on a human being for information more or less justified? In Germany, a Mr. Gafgen kidnapped Jakob von Metzler, an eleven year old boy and murdered him.

Mr. Gafgen was arrested but after interrogation, he was still refusing to disclose where Jakob was being kept. Imagining that Jakob’s life might be in

imminent danger, the deputy police chief of Frankfurt, Wolfgang Daschner, ordered subordinates to extract the necessary information from Mr. Gafgen by threatening to torture him. 28 Mr Gafgen promptly released the required information leading police to the boy's corpse. In this case, the police officers threatened the suspect with torture because they thought it would save the life of the child; but he was already dead.

The ' perfect' scenario in which we know, not merely suspect, that the person has planted a bomb and know, not just hope, that obtaining information through the use of torture will result in the saving of many lives simply does not exist. More often than not, it will boil down to situations like these which show that too many factors of such a scenario are uncertain and that it can thus never take hold in reality. Imagine that the roles in society were reset and redistributed amongst the people, and that from behind a black curtain, one has no idea of their newly assigned role in society. Only then can one look at things from a morally objective point of view.

29 That black curtain is John Rawls's veil of ignorance. For example, using the previous example of the ticking bomb scenario where the utilitarian approach of sacrificing one person for the benefit of the majority was taken – the majority would most likely not have agreed on the usage of torture for admissibility had there been a re-fashioning of society so that it would have been impossible to find out if they were the ones being tortured. It is a method of establishing the morality of torturing based upon the following principle: one does not get to retain any characteristics of their current role, including their own personalities. As argued by Rawls, " no one knows his place in society, his class position or social status; nor does he know his

fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like".³⁰ Considering one might be placed in any position within society once the veil is removed, this theory promotes thinking about the different perspectives and fairness within a society. Hence, no human being under the veil of ignorance would ever allow the use of torture on people to be propagated.

It is then perhaps ironic to say that one has to be threatened with torture to protect other human beings from being harmed. After all as human beings ourselves, who are we to decide whose lives are more important? As Lord Hoffmann in *A v. Secretary of State for the Home Department* [2] said, 'The use of torture is dishonourable. It corrupts and degrades the state which uses it and the legal system which accepts it.'

³¹We must resist the incidental pressure to fuel a debate that should never happen. We are at risk of forgetting the lessons learnt in the past: that both legally and morally there can never be a justification for torture. In the long term, torture will never end mass violence or terrorism, and eventually it will only induce more pain and retaliation as it spreads into common use domestically and internationally. Often cited in the anti-torture argument, Immanuel Kant said, "Act as though the maxim of your action were by your will to become a universal law of nature." In other words, do not do something if you are not ready to see it used globally and against yourself.