The International Conference on Interdisciplinary Humanities and Communication Studies
DOI: 10.54254/2753-7048/5/20220679

The Judgment of Torture

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Abstract: Whether torture is justifiable or feasible is a long-lasting debate between consequentialists and deontologists which involves human morality and ethics. This essay evaluates the legitimacy and feasibility of torture, examining the reasoning behind both utilitarian and deontological approaches. The essay is based on a thought experiment: the ticking bomb scenario, in which a terrorist places a bomb that can kill the city's entire population, and the terrorist is captured by the police. The dilemma here is to determine whether we should torture the criminal to save the people in the city. Our discussion expands on Michael Moore's idea of threshold deontology, verifying the rationality of his reasoning. We conclude that torture is never morally justified, so it should be prohibited. However, defendants should have the justification of necessity.

Keywords: Torture, Deontology, Consequentialism, Moral Justice, legitimacy

1. Introduction

Imagine a terrorist who is captured telling the government that he planted a bomb in the city, and it will soon go off and kill many people. Due to time constraints, the only possible way to discover the bomb's location is through torturing this terrorist. Is torture justifiable in this scenario? Torture is a technique of interrogation that is gradually being abandoned in the current administration of justice. However, its use can be traced back thousands of years ago. With the progress of civilization, more and more scholars have criticized the immorality and irrationality of torture. This paper reviews the academic discussions on torture in the last two decades. First, we discover that the vagueness and diversity of the definitions of torture have laid the groundwork for further discussions of other torture-related issues. We will define torture that our discussion is based on. Second, we will examine the never-ending debate on the justifiability and feasibility of torture. The current mainstream view in academic and judicial circles is that the use of torture should be prohibited during interrogation. Third, by evaluating the ticking bomb dilemma, we sort out the philosophical and theoretical grounds for whether or not torture is justified based on the classic debate between consequentialists and deontologists. Finally, we conclude that torture might be morally acceptable in extreme circumstances, but it should never be justified.

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2. Background

2.1. The Definition of Torture

The study of torture contains two main issues: the definition of torture and whether or not torture can be used in interrogation. For the first issue, there is still much controversy. For the meaning of the concept of torture, many current definitions are not accurate. On the one hand, some definitions are too vague; consequently, "The administration claims to be against torture, and yet it refuses to renounce, without equivocation, the cruel, inhuman and degrading treatment of detainees [1]." On the other hand, vague definitions of torture prevent interrogators from placing explicit restrictions on their behavior. As a result, they will often treat the detainees in inhumane manners, which they think are not instances of torture but are.

On the other hand, there are too narrow definitions, such as the Bybee Memorandum, which holds that torture occurs only when the tortured person suffers severe physical or mental pain [2]. In addition, many definitions of torture ignore that the agent of torture can be a private person or a public authority. As the Department of Public Information of the United States officially declares, "such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity [3]." Through summary analyses of the concept of torture, this article argues that torture is the intentional action done by the government (or private person acting as a governmental agency) which causes mental or physical pain to people, including convicts, suspects, and innocents, in order to gain information.

2.2. The Legitimacy of Torturing

The prevailing view on whether or not torture can be used during interrogation is that it is prohibited in all circumstances. However, a few people believe that torture can be used in some circumstances. I will explain each of the various views below.

2.2.1. The Views Supporting Torture

Two main views support the use of torture during interrogation.

The first view is that the use of torture is reasonable because it is necessary. The necessity of interrogational torture is mainly justified from the perspective of self-defense. It can be argued that interrogational torture is a tool that sometimes must be used to protect innocent people. "Most criminal laws provide specific defenses to the justification for self-defense, protection of others, protection of property, and use of force in law enforcement [4]." Therefore, torture is permissible because when a person is seriously threatening the security and property of innocent people, the people's right to self-defense outweighs and even cancels this person's right not to be tortured. Therefore, interrogational torture can be legitimately used against this person in order to protect innocent people from his/her threat and harm.

The second view, based on utilitarianism, argues that whether or not torture is justified depends on the difference in the result when it is used and when it is not. Utilitarianism holds that "Actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness [5]." Therefore, interrogational torture is justified as long as the benefits it brings outweigh the disadvantages of its application. Utilitarianism is a form of consequentialism, according to which it does not matter whether torture is moral or not because what matters is whether the overall consequence of its use is good or bad. For example, in ticking bombs, torture's downside is the suffering of one terrorist, whereas the upside is the saving of hundreds of innocent lives. Obviously, the benefits far outweigh the drawbacks, so the use of torture is justified in this case, according to utilitarianism. An even stronger utilitarian position is held by Allhoff, who believes that according to

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utilitarianism, the torture of innocent family members of terrorists can also be carried out when necessary. In his view, from a utilitarian perspective, it matters not what moral status the tortured person has but whether the total value of the threatened lives outweighs the cost of the torture [6].

2.2.2. The Views Opposing Torture

Opposition to using any form of torture under any circumstance is the dominant view today. The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Geneva Convention relative to the Treatment of Prisoners of War, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights all state prohibition of torture in all circumstances.

The first and foremost philosophical ground against torture is deontology, especially Kant's deontology. Kant thought it was strictly forbidden to use torture under any circumstances, which is an absolute moral code. Deontology holds that "Act so that you treat humanity, whether in your personal or that of another, always as an end and never as a means only [7]". When torture is used, we treat the tortured person as means to our end. Even if our end is good, e.g., to protect the safety of innocent people, deontologists insist that this end cannot justify the act of interrogational torture because "the deontologist is solely committed to the moral priority of rights and duties [8]." From the deontological perspective, the criterion for justification is not the consequence of action, but the right and dignity of the person.

The second argument against torture is that even in extreme cases, torture should not be allowed because it will cause many worse problems. Bufacchi argues that the routinization of interrogational torture undermines the rule of law and that the legalization of interrogational torture weakens the values of liberal democracy [9]. Bob Brecher argues that once torture is rationalized, it is inevitable that the targets of interrogational torture and the scenarios in which it is used will be expanded. Family members, friends, and even other innocent people may become victims, and the use of interrogational torture may be extended to drug offenders, smugglers, serial murderers, rapists, and so on [10]. Legalizing torture is like opening Pandora's Box, which can lead to unpredictable and dire consequences.

2.2.3. The View Partly for and Partly Against Interrogational Torture

A famous view in this category is threshold deontology, a mixture of deontology and utilitarianism, proposed by Michael Moore [11]. Moore establishes five rules for torture. The first rule is deontological, arguing that "One of morality's firmest norms is that torture is impermissible." However, this ban becomes less firm when torture is applied "to those culpably cause the need for torture (Rule 3)". Even for the innocents, "the most horrendous of consequences could justify the torture of the innocent (Rule 5)". Therefore, according to Moore, although there is a moral rule against torture, whether or not people should follow this rule rests on the consequence of using or not torture. When the scale and intensity of the consequence of using or not using torture reach and step over a certain threshold, the use of interrogational torture should be seriously considered as a justifiable option.

3. Main Argument

To determine whether an action is intrinsically evil or not, we heavily rely on our moral instinct. For example, we would lend our hands to a stranger who needs help mostly because we feel it is the right thing to do. In contrast, we will feel guilty after we hurt others because we understand that we are not supposed to inflict pain on others. So, what is moral instinct exactly? People evaluate their actions by

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putting themselves in others' shoes. For instance, helping others is intrinsically good because we feel happy if someone helps us when we need help. It is the same thing when we examine torture. Since we can all acknowledge that no one wants to be tortured, and we certainly do not want to be tortured by others, it is safe to say that torture is intrinsically evil.

Human rights also have to be taken into account when evaluating the feasibility of torturing. We process certain rights that could and should not be violated, such as the right to life. Therefore, violating these rights is innately wrong, and if someone plans to do any action that potentially can violate another's rights, it is morally intuitive to top the person. For example, a terrorist who places a bomb in the city should be stopped and arrested. Nevertheless, we can all acknowledge that the suspect has his or her rights. We should stop the action from happening, but we cannot stop it by violating human rights, which makes us no different from the terrorists. As a result, no matter how bad the situation is, torture is wrong. However, does this mean we should never torture anyone in any situation? The answer is no. Although we argue that torture is intrinsically evil and wrong, people sometimes have to do wrong things because we must do so in some cases. Therefore, we should prohibit people from torturing others by prohibiting them but making exceptions for extreme cases. We will elaborate on other points and respond to some objections in the following sections.

4. Objections to the Position

4.1. Torture Inflicts Temporary Suffering on People, Saving a More Significant Number of People

Some people insist that it is morally acceptable to torture a suspect based on consequentialism principles because torture only inflicts temporary suffering on one person, while it potentially can save a more significant number of people. Considering the result of an action, Consequentialists argue that the overall benefits of torturing someone outweigh the evil that the action produces, resulting in a positive net gain for society. As a result, In the ticking bomb scenario, the utilitarian approach seems more appealing, considering the number of people killed. The evil produced by torturing can be offset by avoiding a greater evil, blowing up more people with the bomb.

4.2. Torture is a Good Deterrence

Some people believe that torture is a good deterrence for two main reasons. The first reason is that allowing torture in the interrogation reduces the likelihood of people committing crimes in the future. Since people do not want to suffer physical or mental pain when arrested, they are more likely to reconsider their actions when doing something against the law. The second reason is that even if criminals decide to commit a crime anyway, they would be more likely to provide the information that polices need in the first place if they know they will be tortured. In this case, suspects would provide necessary information before even being tortured, which means we sometimes do not need to torture the suspect, thanks to the legalization of torture.

4.3. The Criminals Deserve to be Tortured

Retributivists might argue that these criminals deserve to be tortured since no one would enforce torture on them if they do not do anything illegal. In other words, If they do not want to be tortured, they should not commit crimes in the first place. In the Retributivism view, criminals should be punished because of their actions, and the amount of punishment they need to endure depends on how much they deserve. In the case of the ticking bomb scenario, since the criminal threatened the lives of people in the city, he deserves to be tortured to pay for the evil he produces.

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4.4. A Variation of the Ticking Bomb Scenario

In the original ticking bomb scenario, the terrorist placed a bomb only to destroy a city, but what if the bomb is powerful enough to destroy the entire world? Some people might argue that, in this case, torture should be allowed even if the one being tortured is innocent because the consequence of not torturing is overwhelmingly more severe than the consequence of torturing one person. Although we cannot quantify the evil we produce, we can undoubtedly evaluate its severity using our moral intuition, which tells us that the evil we can prevent is larger than the evil that torturing someone produces.

5. Answers to Objections

5.1. The Value of Human Lives cannot be Quantified

We cannot quantify the value of human lives. In other words, we cannot tell whether one's life is more important than others. Even though we assume that one's life is worth more than the other, we cannot evaluate how much more in terms of value one's life has than the other. If it is acceptable to torture one individual to save an entire city, is it feasible to torture ninety-nine individuals to save one hundred? Is there any justification for torturing ten suspects to save only one person? If we assume that human lives are the same, torture still involves many uncertainties that make calculating good and evil impossible. For example, we cannot evaluate how much pain torture inflicts on the suspect. Besides the physical pain, the tortured suspect might also experience mental suffering, leading to long-lasting mental disorders. Therefore, saving many by torturing one seems fair on a superficial level, but this assumption is unreliable if we dive deeper into its reasoning. In addition, we should take potential long-term effects facilitated by permitting torture into account. In the long run, if torture is allowed, abuse of torture will become ubiquitous, leading to social unrest. For instance, the imprudent use of torture by polices may lead to violence against innocent people, plunging people into panic and distrust of the state's justice system.

5.2. Torture might Backfire as a Deterrence

Indeed, torture might be a decent general deterrence for criminal behaviors in specific situations since it makes the consequences of illegal actions more severe by inflicting potential physical or mental pain. Nevertheless, torture is undoubtedly not an excellent specific deterrence since criminals being tortured can seek revenge or continue to commit crimes in the future after they are set free. Some people might still think that general deterrence is all it needs for torture to become a good deterrence. However, even if we only consider the general deterrence of it, torture is still not feasible. Since it inflicts extreme suffering on people and is considered intrinsically evil, we are essentially utilizing an evil action to prevent other evil actions from happening when torturing suspects.

5.3. Torture is a Means, not a Punishment

When a suspect is arrested, there are many uncertainties involved in the situation. For example, in the ticking bomb dilemma, it is uncertain whether the suspect is the person who placed the bomb or whether the person indeed has the information we need. In both cases, torturing the suspect is essentially enforcing punishment to the wrong target. If we take a step back, assuming that the suspect being tortured is absolutely the suspect who placed the bomb and he or she knows everything about the bomb, the suspect still does not deserve to be tortured because torture is merely a means rather than a punishment. In other words, the criminal might deserve to be punished since he threatened the security of a group of people, but he does not deserve to be tortured.

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5.4. Why We may or may not Torture an Innocent Person in the Ticking Bomb Scenario

In the variation of the ticking bomb scenario, the terrorist placed a bomb that can destroy the entire world, and we can torture an innocent person to get the information we need to defuse the bomb. Most people think we should torture one person to save the entire world. However, theoretically, we still should not torture one person despite the extreme situation. As discussed above, The most common Consequentialist's response to this situation is that the innocent person should be tortured because by torturing the one, the entire world would be saved, which is a better consequence than what would happen if the one is not tortured. However, if we only consider the evil we produce and the evil we prevent, this might not always be the case. For example, if the bomb explodes long after it is placed, say one thousand years. The person can live until the moment that it explodes, assuming that we cannot deal with the bomb without the information that the person has, so we have to keep torturing him. On the other hand, the person is, for some reason, so committed that he would never share the information with us, will this still be the case that the evil we prevent is greater than the evil we produce? In this case, as we continuously torture the person, the evil we produce is aggregated. At some point, the evil we produce will exceed the evil that a bomb's explosion produces, so should we stop torturing him and let the world be destroyed if we take a Utilitarian approach? This is indeed a tricky and complicated question, but this case should be considered differently in practice. Torturing one person in terms of necessity is permissible, but we should acknowledge that the action itself is wrong. In other words, it is understandable for people to torture others in extreme situations like the one described previously. However, the action should not be morally justified since it is essentially a wrong thing to do.

Moreover, people, more often than not, torture others not because it is necessary to do so. Instead, they torture for their benefit. For example, In Guantanamo Bay Prison in Cuba, prisoners were tortured ruthlessly for information about the 9/11 attacks. Investigators torture them not for necessity, and they merely want someone to account for the attacks [12]. If torture is not illegalized, it would be tactically permitted, leading to brutality.

6. Conclusion

We believe that torture is morally wrong and unjustifiable under any circumstances, but it is feasible and understandable in extreme cases. According to the Landau Commission Report, torture should be illegalized, but the defendant should have the justification of necessity [13]. This conclusion is relatively practical and balanced because the illegalization of torture inherently reflects the action's wrongness. In other words, it discourages people from making the wrong decision to torture someone else yet gives enough tolerance to exceptions. In conclusion, we insist that torture might be morally acceptable in some extreme circumstances, but torture should not be justified in all cases.

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