

## The Moral Distinctiveness of Torture

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### **ABSTRACT**

Suppose there's a chemical weapon hidden somewhere in your hometown, and you have custody of the person responsible for planting it. This person is also capable of disarming the bomb; is it acceptable to torture this person in order to get the information needed? I argue that it can't be. While many could die, it seems extraordinarily unlikely that torturing this person would actually yield the intended results: one must have the right person, and they must promptly and accurately reveal the information needed. If the wrong person has been apprehended, the end result wouldn't change – the bomb in your hometown will still go off – except now an innocent person has been tortured in the last moments of their life. Furthermore, even if you do have the right person, to extract correct information from them in the required time frame necessitates someone well-practised in torture. But a well-practised torturer could never be well-practised without people to regularly practise on – which cannot be endorsed. In this essay, I use these points to illustrate that the moral distinctiveness of torture lies in its total unjustifiability.

### **KEYWORDS**

Torture, Ethics, Morality, Public Policy, Moral Absolutism, Meta-ethics

## INTRODUCTION

Torture is an abhorrent, evil act. Yet still, it appears to be a frighteningly useful tool, and good people might find themselves inclined to use it – or at least justify its usage. In this essay, I mean to discuss the moral worth of torturing, and assess whether or not it can be classed as morally distinct from all other acts. I will first elaborate on what it means for an act to be ‘morally distinctive’, concluding that a morally distinctive act must be something that is completely impermissible, regardless of the situation and consequences. I will then use Winfried Brugger’s hypothetical scenario (Brugger 2000) to illustrate the difficulty in classifying torture as wrong a priori, before commenting on Henry Shue’s writing on the problems of these kinds of hypotheticals (Shue 2006), and addressing the context that must exist for torture to be viable. The aim of this essay is to illustrate that torture is morally distinctive – it can never be a permissible act.

### I. TO BE MORALLY DISTINCTIVE

Firstly, to address what it means for something to be morally distinct, I argue that the act would need to be impermissible in any situation. To prove this, torture – the distinctiveness of which is yet to be proved – must be temporarily removed from the discussion. Instead, I will look at other immoral acts and assert that they can all be deemed as morally permissible in a certain context.

First, killing appears to be the most wrong<sup>1</sup> one can do to an individual. If one loses their life, all their other rights vanish as well: if I kill someone, I necessarily stop them from accessing all of their other rights. Meanwhile, infringing upon any other right – to private property, to education, to free speech – doesn’t directly infringe upon one’s right to life: I can steal from someone, but they won’t necessarily lose their life as a consequence. Therefore, killing can properly be deemed as the most wrong crime, because it necessarily infringes upon *all* of one’s rights. Even this, however, is generally considered to be morally permissible when defending an innocent person from a guilty attacker. As Jeff McMahan writes, if a guilty party

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1. I use ‘most wrong’ here instead of ‘worst’ because my claim is about *wrongfulness*, not about how distasteful the act is. I’d be slower to call killing the ‘worst’ act, since death is something everyone must experience, while no one *must* have something stolen from them for example. However, I think *wrongfulness* is most appropriately weighed by assessing damage done to one’s rights.

threatened to murder a child and the only way to save the child was to kill the guilty party, "By his own voluntary action he has made it the case that either he or the child will be killed" (McMahan 2008, 94). In this case, justice demands that, if one should live, it should be the innocent party. Thus, it can rightly be said that *defending the innocent* is a powerful enough moral imperative to permit killing.

Since I've established that murder is the most wrong crime, *defending the innocent* must also be a powerful enough imperative to permit every other immoral act. If examples are considered, the truth of this seems to be clear: stealing a weapon from a madman; betraying a friend who has become murderous; and lying to a murderer about the location of his intended victim, are all examples of immoral acts which would generally be agreed to be morally permissible. Therefore, to be morally distinctive, an act would need to be impermissible even when it's needed to defend the innocent.<sup>2</sup>

## II. THE TICKING TIME BOMB

It is largely agreed that torture ought not to be used regularly. Thus, the question which often finds the spotlight in discussions about torture is that of the *ticking time bomb*:

Suppose the bomb is planted somewhere in the crowded heart of an American city, and you have custody of the man who planted it. He won't talk. Surely, the hypothetical suggests, we should not be too squeamish to torture the information out of him and save hundreds of lives. (Luban 2007, 252)

To posit this hypothetical in order to claim that torture should be used is to say that torture cannot be wrong a priori. This would promptly end the discussion about torture's moral distinctiveness: it has none, since it cannot always be morally impermissible. With good reason, Gross argues that torturing the terrorist responsible for the *ticking time bomb* could be justified – provided all the desired results were achieved. He proposes an *ex post*, *extra-legal* method of torture, where interrogators act outside the established law against torturing; they may

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2. There is a temptation to use rape as an example of an act that is always impermissible, but it seems that torture, which can be defined as the infliction of suffering upon a victim in order to gain something, can accommodate rape in its meaning.

be legally punished if it wasn't necessary, or ratified if it saved the nation from disaster (Gross 2004, 24). This seems to support the idea that torture cannot be morally distinct: if torture can be ratified post-hoc, then it isn't totally morally impermissible.

Perhaps then, we may allow that the *ticking time bomb* case is extreme enough to allow torture, but this doesn't mean that the case can't be rejected altogether as laughably improbable – improbable enough to make the decision to torture ill-advised and wrong. I won't go as far as to say that this scenario isn't possible: Luban comments on the real 1995 example, "an al-Qaeda plot to bomb eleven US air-liners was thwarted by information tortured out of a Pakistani suspect by the Philippine police" (Luban 2007, 253). The issue is that this success isn't regular enough to allow that torture is the right thing to do – there are far too many variables that simply aren't addressed in the *ticking time bomb*. These issues are aptly presented by Henry Shue: "*The right man... Prompt and accurate disclosure... Rare, isolated case.*" (Shue 2005, 233). What's laughably improbable is not the claim that the *ticking time bomb* can't happen – it can – but the claim that torture is likely to yield the desired results. It's optimistic at best to even suppose you have the right person, let alone that they will break in time; give accurate information; won't disassociate, leading to them being informatively useless; and won't die while being tortured. Gross's proposition of an *ex post* ratification is flawed largely for this reason: no one would feel confident putting their neck on the line when the likelihood of success is so vanishingly small, and the consequences of torturing an innocent are so huge. Recognising the lack of pragmatism here, a government would need to work torture into its policy in the case of emergencies, or regard torture as totally impermissible (making it morally distinctive, at least in the eyes of the law). To work torture into a nation's policy is to likely cause global catastrophe, as Shue makes clear:

"[The] catastrophe lies on the side of undermining the taboo against torture. Then other nations will reason that if the superpower with its thousands of nuclear weapons and high-tech conventional forces cannot maintain its own security without the liberal use of secret torture, they can hardly be expected to defend their security without far more torture." (Shue 2005, 234–235)

Torture is, therefore, morally distinctive for this reason: the use of it provides a tiny chance to avoid catastrophe, thus *defending the innocent*, but it is far more likely to cause the catastrophe of normalising torture – a practice which regularly *harms* the innocent by torturing the ‘wrong’ person, while rarely successfully defending the innocent.

I’ve shown that the classic *ticking time bomb* has too many variables to allow torture to ever be morally permissible. The question becomes more interesting if we can remove some of these variables: specifically, the *right man* problem; if it’s known that the person being tortured is certainly guilty, then there is no risk of breaking the *defending the innocent* imperative. Consequently, I’ll comment on Winfried Brugger’s more interesting hypothetical, which implies that torture can even be just when alternatives exist:

This hypothetical takes place in your home city that is threatened by a terrorist armed with a bomb containing deadly chemical agents. He has hidden the bomb. After he has been tracked down and detained by the police, he states, credibly, that he has activated the timer of the bomb. The bomb will detonate in five hours and kill all of the inhabitants of your city and its suburbs. All will suffer a horrible death. Despite police pressure the terrorist refuses to disclose the bomb’s location. Instead, the terrorist demands ten million dollars, the freeing of all death row inmates, and an airplane for his getaway. In addition, he wants ten hostages, so as to ensure a successful escape. The hostages must be ten prominent citizens of your home city. The police find that they are neither able to meet the terrorist’s demands nor can they evacuate the city and the surrounding area in time. Only one solution seems to remain. They want to use physical force – torture – to compel the terrorist to divulge the location of the bomb. Are they allowed to use such methods? (Brugger 2000, 662)

Brugger admits here that giving in to the demands isn’t an option. For one, “innocent people in your town would be subject to risking life and limb” (Brugger 2000, 667), which immediately counteracts the *defend the innocent* imperative. Furthermore, whether or not the terrorist will actually disarm the bomb once he’s

free seems doubtful at best: “we do not know whether the terrorist would really deactivate the bomb, and what would keep him from reactivating it, once he’s on the airplane?” (Brugger 2000, 667). He admits that torture doesn’t guarantee the divulgence of information either, but the terrorist would certainly have more motivation to do so than if he was on an airplane to freedom (Brugger 2000, 668). Forbidding the use of torture here seems to be far too extreme. If we can agree that it is permissible to end a guilty person’s life to protect an innocent person, so too should justice permit us to torture someone we *know* to be guilty to protect many innocent persons. It seems in this situation, Gross’s *ex post* ratification system seems plausible here – the torturer can guarantee that there will be no repercussions for their actions, since they know for a fact that they have the *right man*.

### III. A CONTEXT OF TORTURE

Brugger’s hypothetical presents torture as not being morally distinctive: it is permissible at least in his hypothetical. However, it focuses far too heavily on the situation itself and not the wider context that the act of torture would need in order to exist. For torture to be successful, the torture needs to be done *well*, as Shue highlights: “successful torturers need to be ‘pros’, and no one becomes a ‘pro’ overnight. At a minimum, one must practise” (Shue 2005, 236). To imagine that the torture is a success – the torture that involves going against every basic human inclination towards empathy, without going overboard and rendering the captive informatively useless – is to imagine a good torturer. To imagine a good torturer is to imagine someone practised in torture, which imagines people that the torturer regularly practises on. As a result, any attempt to justify the use of torture in extremely isolated incidents relies on a context involving the frequent use of torture for it to be a success; otherwise, guilty individuals would be harmed without truly *defending the innocent*, since the operation is likely to fail.

One could claim that well-practised torturers are no longer necessary in a world with modern technology – surely we could create Artificial Intelligence which could torture people far more effectively than humans, and without regular practise. Setting aside the frightening and unnerving thought of AI torturers, even these would certainly need to be trialled on humans to ensure their effectiveness. Consequently, while they may need *less* practise, it would be wrong to say that

they need *no* practise, and so would still need to torture in more cases than the occasional isolated incident.

In conclusion, torture is morally distinctive because it is completely morally impermissible in the real world. Because the *right man* is so unlikely to be known in the *ticking time bomb* scenario, Brugger's hypothetical (Brugger 2000, 661–678) is the only context in which torture is acceptable *as long as the intended good results are obtained*. However, for these results to be obtained *at all* – let alone in so short a time frame – the torturer would need to exist in a context in which they can regularly practise, and therefore be effective. While imaginable, it cannot be said that Brugger's hypothetical – the only justifiable occasion to use torture – occurs regularly enough for the torturer to be well-practised. Consequently, the torturer will be inexperienced and will almost certainly be unsuccessful. Unsuccessful torture does not *defend the innocent*, so it cannot be permissible. Of course, there is a small chance the torture *could* be a success, but an action cannot be called permissible if the intended good outcome is doubtful – this is what is morally distinctive about torture.

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