Ethical Theory

Initially, we must recognize that the use of torture is not an absolute moral issue. Torture is a complex ethical problem that requires careful consideration of various factors. Torture is often used in situations of extreme necessity, such as in times of war or civil unrest. However, the use of torture is morally wrong and should be avoided whenever possible.

Interrogational Torture

Interrogational torture is aimed explicitly at the acquisition of information, as opposed to the punishment of the victim. Philosophers who defend torture argue that it is justified if it leads to the acquisition of vital information. However, it is important to note that torture is not always effective in obtaining information. In some cases, it can lead to false confessions or the production of misleading information.

Philosophers who oppose torture argue that it is morally wrong and should never be used. They believe that the use of torture violates the inherent dignity of the individual and is therefore unjustifiable.

In conclusion, the use of torture is a complex ethical issue that requires careful consideration. While there may be situations where the use of torture is necessary, it is important to weigh the potential benefits against the potential harms and to consider alternative methods of obtaining information.
Shue notes, "The victim's suffering... is being used entirely as a means to an end over which the victim has no control. Torture is a pure case—the purest possible case—of the violation of the Kantian principle that no person may be used only as a means..." (53).

The difficulties associated with any particular definition have led some to conclude that 'torture' cannot be defined with the kind of precision we often look for in philosophical and legal contexts. (Emerick and Wisnewski, 2009; Wisnewski, 2010).

By distinguishing kinds of torture, however it becomes much easier to make substantive claims about what torture is, as well as its moral status. Our focus is exclusively on interrogational torture, with the recognition that the boundary between kinds of torture is not a rigid one.

The Ticking Bomb Scenario
Torture is nearly uniformly regarded as at least prima facie immoral. When philosophers defend torture, they thus do not defend it tout court. Rather, philosoher ask whether or not there might be any conditions, no matter how extreme or unlikely, in which torturing a person would be justified. By attempting to construct such a case, the defender of torture aims to show that torture is not in principle wrong, even if it normally is. Once this point is made, defenders of torture attempt to specify the general conditions under which torture is acceptable.

Most arguments for torture begin with what is known in the literature as the ticking-bomb scenario. There are several versions of the scenario, going back at least as far as Jeremy Bentham. Here I quote a version of the scenario from my own work:

Ticking Bomb Scenario
Officials have recently captured a person with information regarding the whereabouts of an explosive device set to detonate in an urban area. It is also known that this device will detonate within the next 6 hours, making evacuation of the area impossible. It is known that torture will be effective on this person, and that it will be effective in time to defuse the bomb and save thousands of lives. No other means of interrogation can be assured of equal success. (Understanding Torture, 93)

Nearly everyone's initial response to this scenario is to note that the scenario is incredibly unrealistic. We must presuppose that we know 1) our suspect is in fact a terrorist, 2) that the suspect has information about a bomb, 3) that the information will allow us to dismantle the bomb, which we assume is correctly wired, and that will go off if we do not intervene, 4) that the bomb has not been moved, 5) that there will be sufficient time to dismantle the bomb, 6) that torture will in fact work, 7) that no other means of interrogation will accomplish the goal of finding and dismantling the bomb, and so on. It is of course true that the scenario is unrealistic. This, however, is not relevant. The scenario is a thought-experiment designed to test our intuitions. It has to be artificial if we are to isolate our intuitions about whether or not torture is acceptable in at least some cases. If we didn't postulate that we knew all of the above, any lack of willingness to engage in torture might be explained by other concerns—we might not want to torture innocent persons, or engage in torture if it will not work, and so on. By postulating that all such things are known, we can isolate and test the common claim that torture is always unjustified. That, at any rate, is the idea behind the thought-experiment as it is typically used.

At first blush, we expect the deontologist to reject torture, basing the rejection on the inviolability of the person tortured (or some such thing). This might take the form of an appeal to dignity (along Kantian lines), or an appeal to certain intrinsic, primary rights. (The Universal Declaration of Human Rights, for example, specifies that torture is never acceptable; the UN Convention against Torture says the same thing). Likewise, we expect the utilitarian to accept torture in the above scenario. At least initially, it looks as though the pain caused by avoiding torture would far outweigh the pain caused by engaging in it. For the utilitarian, who claims that the morality of an action is determined by the distribution of pains and pleasures produced by that action, torturing may well be an evil—but it's the lesser of two evils.

Deontology: For and Against
The most celebrated formulation of a deontological theory is certainly Kant's. Kant's theory specifies that persons are intrinsically valuable—that they have "dignity, not price." The core of many contemporary versions of deontology is captured in Kant's second formulation of the categorical imperative: treat humanity, whether in yourself or in
the person of another, always as an end and never merely as a means.

If persons have a dignity that precludes justifiably treating them as ‘mere means’ to an end, interrogational torture seems to be ruled out. If we subject a person to pain with the aim of acquiring information, we are clearly treating that person as a means. We are, in effect, using that person’s very agency to achieve what we want (namely, information).

Or so it would seem. The notion of intrinsic dignity and respect for agency, however, can be used in other ways as well. Kant himself, in a surprising passage, argues that respecting the dignity of a person will, in certain cases, require executing them. The passage in question runs as follows:

every murderer— anyone who commits murder, orders it, or is an accomplice in it—must suffer death; this is what justice, as the idea of judicial authority, wills in accordance with universal laws that are grounded a priori. (6:333)

The authority to impose death stems from the consent of the governed. As Kant claims in the Metaphysics of Morals, “the right to punish is the right a ruler has against a subject to inflict pain upon him because of his having committed a crime” (6:313). This right is grounded in the subject’s autonomous consent to be ruled by the sovereign. It might be possible to construct an analogous case in defense of torture. If it were known that persons consorting to commit terrorist acts would be subjected to torture, and persons nevertheless autonomously chose to pursue terrorism, respecting this autonomous decision would require subjecting this person to torture. Respect would require this action. Or so one deontological argument in favour of torture might go.

An additional deontological argument in favour of punitive torture has been put forward by Stephen Kersham. The argument, in essence, is based on the principle of lex talionis—the principle that the punishment should fit the crime. Given that certain crimes are worse than singular murder (killing ten is worse than killing one), if we regard lex talionis as a principle requiring that punishments not be too minimal (rather than merely requiring that they not be too severe), something worse than execution will be required when criminals kill more than one person. Kersham suggests that torture might fill this role.

I have argued against both of these attempts to justify torture deontologically. In my view, both of these arguments face insurmountable difficulties. In brief: the Kantian argument from respect only works if, in fact, we presuppose that torture is a just response to certain actions. Kersham’s argument is plausible only if we presuppose that lex talionis requires a certain level of punishment rather than limiting that level. On my view, lex talionis is only plausible as a limiting principle, and hence Kersham’s argument fails. Rather than rehearse these responses in more detail, I simply note them here. Elsewhere, I offer a much more complete argument for the view that neither of the above applications of deontological theory manage to justify torture. 4

Utilitarianism: For and Against
If a utilitarian theory only required examining immediate pleasures and pains, the ticking bomb scenario (and those sufficiently like it) would not be particularly difficult cases to handle. Indeed, it looks as though the morality of torture, in such cases, is relatively straightforward: the pain of one is weighed against the lives of many.

Of course, no respectable utilitarian claims that only immediate consequences should be considered. All versions of utilitarianism (act, rule, preference, etc.) specify that we must consider long-term consequences, as well as the intensity and duration of pains and pleasures inflicted on all interested parties in the present moment. To specify why the results are not nearly as obvious, it might be useful to consider one recent attempt to utilize oversimplified utilitarian reasoning to justify torture. This can be found in Peter Suedfeld’s recent article, “Torture, Interrogation, Security, and Psychology: Absolutist versus Complex Thinking” (Suedfeld, 2007).

The title of Suedfeld’s article states his position. Suedfeld compares his own ‘complex’ thinking to that employed by those who have an ‘absolutist’ position on torture—i.e., those who claim that torture should never be permitted, and who claim that psychologists must never become accomplices in torturous interrogation. As will be obvious to everyone, the natural contrast of ‘complex’ is ‘simple.’ So, in the very title of his article, Suedfeld has already begged the question against his opponents: to advocate an absolute ban on torture is ‘simpleistic’; his position, apparently by fiat, is better, as it is more complex.

Suedfeld argues that his view is the more complex one because it acknowledges “the inescapable tradeoff with which we need to deal” between “human rights of prisoners and the human rights to life and freedom of the much larger number of people whom blind protection rights might put at lethal risk” (4). He goes on to claim, with no argument whatsoever,
... how will using torture affect international relations? How will it affect the person ordered to torture? ... How will this affect the trust that citizens have regarding their nation and its relation to international law? ... How are we certain of the danger posed by the person in custody? ... How are we certain that the person to be tortured is not simply innocent?

that "a truly moral decision requires that these be assessed on a more mature level than whether they conform to some absolutist criterion." The only thing that Suedfeld has shown here, it seems to me, is a lack of familiarity with the ethics literature surrounding torture. No one claims that something is right or wrong simply in virtue of whether or not it fits some absolutist rule. Even absolutists (like myself) do not think that something is right simply because there is a rule in place that makes it so. Absolutists have a variety of positions on torture, and they reflect differing kinds of normative commitments. Some absolutists are so because of utilitarian concerns, arguing that the immediate rights to life and liberty of those endangered do not outweigh the significant costs incurred by engaging in torture (e.g., Arrigo 2004, Fiala 2007, Matthews 2008, Rejali 2007, Wolfendale 2006). Others argue that to even be capable of successful torture requires institutionalizing torture as a practice (Brecher 2007, Bulacchi and Arrigo 2006, Shue 2006). Only trained torturers will be capable of extracting information. Moreover, there is a significant moral price to pay for this training (Wolfendale 2007). There are also those who defend the view that something like human dignity is at stake in the torture debate (Gill 2005; Jeffrey, 2005; Perry 2005; Tindale 2005; Wisnewski and Emerick 2009). Still others argue that there simply are no actual cases of torture in which torture will actually produce any benefits that could not be produced in other ways, and hence that the standard kinds of ticking bomb arguments are over-simplifications (Rejali 2007; Wisnewski 2010; Intelligence Science Board 2006).

There is nothing 'simple' about the literature surrounding the ethics of torture. The idea that the debate will be settled by simply applying one's preferred moral theory (deontological, utilitarian, virtue theory, or whatever) is itself an extreme oversimplification of the landscape of moral dialogue. Even those who are moved by utilitarian considerations recognize that the issue will not be solved simply by an appeal to the numbers (Alito 2006; forthcoming; Bagaric and Clarke 2006). We must assess probabilities and intensities, long-term effects and their likelihoods. When moral theorists offer up rules for moral decisions, these rules are 'absolute' only in the sense that they have faced the gauntlet of critique and come out ahead. To have an absolutist position in philosophical ethics is the conclusion of a sincere grappling with the issues, not merely the slap-dash application of some principle which is itself questionable (Fiala 2008, Lercher 2008).

Suedfeld shows a similar oversimplification when he addresses the ticking bomb scenario:

Virtually no one in the philosophical literature would appeal so blindly to the scenario. It is widely recognized that intuitions can be trained and manipulated. Likewise, actual poll data suggests that it is not obvious what most people actually think about this situation. Results differ in different countries. Moreover, there are plenty of utilitarian arguments against torture (Arrigo 2005, Brecher 2007, Matthews 2009: Rejali 2007, Wolfendale 2006). There are also arguments that suggest that the ticking time bomb is not merely unrealistic, but logically impossible given the nature of successful interrogations (Matthews 2009; Wisnewski 2008). There are also arguments that claim that even if there are ticking bomb cases, we should not believe someone who claimed that she was in one (Lercher 2008).

So, when Suedfeld appeals to the numbers who would be endangered by failing to torture, this seems to me to be an oversimplification of the issues we face. Moreover, it is decidedly question-begging. Suedfeld claims that a 'truly moral' decision will pay attention to the numbers, and that this represents a 'mature' moral view. But notice that he has allowed his adverbs to do all of the argumentative work. 'This decision takes into account the numbers, therefore it is truly moral.' This is not an argument. It is mere assertion. Such assertions, even when we honour them by calling them 'complex,' do not advance the moral conversation. In fact, pretending that counting up heads is how to solve moral problems strikes me as a disastrous oversimplification of the many issues at stake: how will using torture affect international relations? How will it affect the person ordered to torture? (Huggins et al, 2002) How will this affect the trust that citizens have regarding their nation and its relation to international law (Card, 2008)? How are we certain of the danger posed by the person in custody? (Some detainees later admitted to inventing stories for their interrogators—see Intelligence Science Board 2006, Rejali 2007.) How are we certain that the person to be tortured is not simply innocent? (Some military personnel at GITMO and Abu Ghraib estimated that up to 90% of those detained there were innocent).

This is only the beginning of the questions that we should raise about torture. My aim here is to demonstrate how incredibly complex the issue is, even for a devoted utilitarian. It isn't enough to examine the ticking-bomb situation as though it stands outside of time. We must ask what effects will follow from utilizing torture in the long-term.
and what we must presuppose if we are to have trained torturers we can utilize if such situations emerge.

But in fact, all of these issues presuppose even more basic ones. The utilitarian can defend torture only if it will work—that is, only if we have reason to suspect that torture can, in fact, allow us to prevent greater wrong-doing than torture itself is. If there is evidence that torture does not work in a way that would justify it, the utilitarian can by no means argue in its favour.

The Relevance of the Empirical in the Torture Debate

This directly relates to an oversimplification shared by many who advocate considering torture as a means of information extraction. The claim made is that torture ‘works,’ where ‘works’ is understood to mean that people comply when sufficient physical and psychological force is used. The reason this is an oversimplification is that this is not a sense of ‘working’ that is sufficient to justify torture. Justifying torture requires more than people providing accurate information (something that cannot itself be taken for granted). It requires that the information provided is actionable, and that it cannot be gained in other ways with equal ease. So, despite the fact that torture has produced information in the past, there is very little evidence that this information has ever been such that it could not have been gained with equal ease using alternative interrogation techniques (Alexander 2008; Bell 2008; Intelligence Science Board, 2006; Janoff-Bulman 2007; Rejali 2007; Wisnewski 2010).

Thus, when Suchofeld, for example, claims that ‘there is considerable historical... and autobiographical evidence that torture can be effective,’ we should raise at least two questions. First, what is the sense of the word ‘effective’ here? Second, how selective is the historical evidence?

After all, torture was used for centuries in the law courts of Europe as a means of extracting confession (Langbein 2006, Peters 1985). We have no problem conceding that there were those who confessed who were innocent, and some who were guilty who never confessed. Where does this evidence stand in relation to the evidence Suchofeld mentions (but does not cite)? As noted above, there is also ample evidence (and more of it) that torture is not effective (in a sense that would justify it, as specified above).

Most trained interrogators reject the idea that force accomplishes anything that could not be accomplished in other ways. “Beyond the moral imperative, the competent interrogator avoids torture because it is counter-productive and unreliable... In my two decades of experience as an interrogator, I know of no competent interrogator that would report to torture. Not one” (Bennett 2006, 430, cited in Janoff-Bulman 2007). This opinion is shared by “a substantial majority of law enforcement officials,” (Goldstone 2006, 345). It is also shared by experienced interrogators in the US Military. Twenty interrogators made this clear to Congress in July of 2006, claiming that

"Trained and experienced interrogators refute the assertion that so-called "coercive interrogation techniques" and torture are necessary to win the "War on Terror." Trained and experienced interrogators can, in fact, accomplish the intelligence gathering mission using only those techniques, developed and proven effective over decades, found in the Army Field Manual 34-52 (1992). You will also see that experienced interrogators find prisoner/detainee abuse and torture to be counter-productive to the intelligence gathering mission. (Bauer 2006)

In November of 2006, Jean Marie Arrigo, along with seven other psychologists and
Without knowing the empirical realities of torture, then, it is quite difficult to engage in an appropriate utilitarian analysis.

References


