IN DEFENSE OF A PRINCIPLED ABSOLUTISM AGAINST TORTURE
A REPLY TO ALLHOFF’S TERRORISM, TICKING TIME-BOMBS, AND TORTURE

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Fritz Allhoff’s *Terrorism, Ticking Time-Bombs, and Torture* is one of many recent books on torture.1 Allhoff’s aim is to defend torture in those exceptional cases where torture will be the lesser of two evils—where it will prevent more harm than it causes. His approach is robustly consequentialist, unapologetically utilitarian. Allhoff of course acknowledges that torture is (usually) a moral wrong. His aim is to argue that, within the context of international terrorism, there will be a handful of cases in which interrogational torture is permissible, and, moreover, that the strongest versions of absolutism against torture can be “rejected out of hand” (122).

There is much of interest in Allhoff’s book. His explicit defense of the methodology and use of ticking-bomb thought experiments, his willingness to engage empirical issues, and his attention to the argumentative details are all laudable. I have profited a good deal from Allhoff’s work on the topic over the years, despite our continuing disagreement on some absolutely fundamental issues.

Allhoff has provided, to my mind, one of the most thorough defenses of ticking-bomb thought experiments to date. But for all that, I think his arguments fall short. In what follows, I want to highlight several areas where I think the arguments are the weakest—and why I think the absolutist case against torture has not yet been defeated.

**In Defense of Absolutism**

Allhoff sets out to show that any non-absolutist theory can accommodate torture, and that absolutist theories are deeply implausible. In what follows, I will concentrate on the arguments against absolutist theories, and in particular against what Allhoff calls “absolutism-in-principle” (a-principle), as opposed to “absolutism-in-practice” (a-practice). Absolutism-in-principle (a-principle) maintains that there are no conditions under which torture could be justified; absolutism-in-practice maintains that, while there might be some imaginable cases of permissible torture, these sorts of cases simply do not arise in the empirical world.

Allhoff offers two arguments against a-principle. These arguments can be put briefly as follows:

1. Suppose that we have two candidates for a-principles: one regarding killing and one regarding torture. Nearly everyone admits that killing is in some cases morally permissible. If killing is morally permissible in some cases, a-principle (killing) cannot be true. If torture were always worse than killing, the denial of a-principle (killing) would be compatible with a-principle (torture). It is implausible, however, to regard killing as in *every case* morally preferable to torture (in other words, there is at least one case of killing that is worse than at least one case of torture). Thus, it cannot be the case that there is no absolute prohibition against killing, on the one hand, and that there is an absolute prohibition against torture, on the other. Were we to maintain this view, we would be committed to an absurdity: namely, that it is acceptable to sometimes engage in a morally worse action and that it is never acceptable to engage in an action that will, in some cases, be morally better. More bluntly still: if we advocated a-principle (torture) but not a-principle (killing), we could find ourselves in a case where we were obligated to do the morally worse thing. Obviously, this cannot be right. One cannot be morally obligated to perform a morally worse action over a morally better one.

2. Any moral theory will involve the recognition of some value, V. An action, phi, will be deemed either permissible or impermissible based on its ability to instantiate the value (or set of values) in...
question. Determining whether or not an action is permissible will thus involve assessing the circumstances of that action to determine whether or not V is instantiated, promoted, etc. Any a-principle view, however, claims that there are no circumstances in principle such that some action type will promote V. However, given that we are talking about absolutism in principle, all that is required to falsify such a theory would be to construct a case where V was promoted in some C, where C can be as empirically preposterous as we like. This is easily done in torture.

In what follows, I will raise some concerns about both of these arguments. I will treat them in reverse order. I will conclude by offering some cautionary notes regarding Allhoff’s work.

The Second Argument against Absolutism in Principle (A-principle)

Allhoff claims that “a-principle needs to be predicated on some value that torture necessarily cannot promote, and it is virtually impossible to think of what such a value would be” (132). This runs roughshod over the distinction between actions and omissions. Without addressing this distinction, as well as similar moral doctrines (like double effect), I do not think that Allhoff’s claim is correct.

Consider: A moral theory might base itself on the values of particular intentional states of an agent, while remaining silent concerning the results of an action that might have been foreseen, but unintended. Indeed, this style of argument is frequently used to defend euthanasia: an agent’s action is to be assessed in terms of her intentions in that action (to ease the suffering of a patient) rather than in terms of the foreseeable outcome of the intended action (the patient’s death, the grief of the family, etc.). Thus, an advocate of the doctrine of double effect will not be particularly moved by the argument that Allhoff advances. Now, intentions are tricky business. Perhaps one might say that a moral agent should intend to promote whatever value is constitutive of one’s moral theory. Thus, if an agent allows people to die rather than to torture, we might accuse the agent of misunderstanding the value of protecting human dignity, and hence of misapplying that agent’s moral theory.

On the other hand, we might not. Kant’s own account of the murderer at the door seems to rely on something like the doctrine of double effect. One can only be responsible for one’s own intentions regarding immediate actions; the consequences of those actions are an empirical matter, and hence outside of one’s control. Now, there might be good reasons to reject Kant’s analysis, and more good reasons to reject the doctrine of double effect. There might even be good reasons to disregard the distinction between actions and omissions. My point here is not to advocate any of these per se; my point, rather, is to show that much more argument is required to reject a-principle.

Let me spell this out a little more. Allhoff’s attempted refutation of a-principle runs as follows:

Consider any candidate moral value by which to construct a moral theory. Suppose there is some act, phi, that (maximally) promotes its pre- eminent value V in some case C. Every moral theory other than a-principle treats this supposition in a straightforward way and endorses phi. A-principle, however, needs it to be the case that phi is ruled out a priori (i.e., without consideration of the details of C). (131)

Let’s suppose that we have a moral theory that regards purity of intention as the most important moral value. Let us further suppose that this theory promotes this view by advocating an act/ omission distinction as morally relevant, or the doctrine of double effect, or some such corollary principle. Given the kind of theory in question, any action phi (as promoting V) will concern what the acting agent is immediately doing rather than the foreseeable outcomes of that action. Let us stipulate that the central value regarding one’s intentions is the Kantian one: to never treat humanity, whether in our own person or that of another, merely as a means.

Now, so far as I can see, the details of the context, for this kind of moral theory, cannot include details about the empirical results of my action (given that the theory in view accepts something like the doctrine of double effect). What matters is simply my intention. Allhoff contends that “a-
principle needs to be predicated on some value that torture necessarily cannot promote, and it is virtually impossible to think of what such a value would be” (132). I think that the one offered above is a decent candidate: a moral theory that maintains that moral worth is a property of one’s intentions, and that considerations of empirical results of actions are morally irrelevant (because they are not in one’s immediate control, or something to that effect), will rule out all acts of torture provided that one cannot both torture a person and treat that person as an end-in-himself.

I do not have an argument that torture necessarily treats the tortured merely as a means—but I’m not sure one is needed. Most defenders of torture would concede this point and then go on to say that other people will also be treated merely as means (namely, those affected by a terrorist attack). But this is insufficient, as the a-principle view in question locates moral value in the intentions of an action, and the intention to torture is incompatible with respect for persons as ends. What of the consequences? What happens to the victim of the murderer at the door? Well, if our imagined theorist advocates the doctrine of double effect (or some such view), the response is clear: the death of innocent persons is foreseeable, and deeply tragic, but these are unintended consequences of doing the right thing (where this is understood as having the right intentions). I do not think that this theory is very far from the one standardly attributed to Kant. It is not a bizarre theory, even if it is wrong.2 Now, I do not deny that there are other ways to describe the case. One can argue, for example, that I’m using the future victims of some terrorist act as a means to my own moral purity. Likewise, one might object to these kinds of views as being hopelessly self-regarding (why is my own moral purity so important??). These objections are there to be made. My point here is that an elaboration of the original argument is required: so long as an a-principle view can help itself to double effect, to the moral priority of action over omission, and so on, Allhoff has left ample room for the a-principle theorist to reply. Without blocking these kinds of moves, Allhoff’s argument against a-principle is incomplete.3

A Second Problem

There is an additional problem with this argument that is worthy of remark. I have always been (perhaps inappropriately) skeptical of arguments that seem to prove too much, particularly when the arguments are brief. Allhoff’s second argument seems to be of this type. We can substitute any action for torture in Allhoff’s view and get the same result: child molestation is not in principle wrong; rape is not in principle wrong, sacrificing virgins to the gods and then eating their flesh is not in principle wrong. Why? Because we can construct cases—ticking bomb cases, even—where all of these would be acceptable.

Now, it may well be true that no actions are in principle morally wrong, but I do not think this argument has yet shown that. In this case, we run into a classic problem: one person’s modus ponens is another person’s modus tollens. Allhoff’s modus ponens might run as follows: If the argument against a-principle works, then any action could be permissible (absolutism is false). The argument does work (i.e. we can construct cases to make any action type morally permissible). Therefore, any action could be permissible (absolutism is false). Beginning with the same premise, however, one might argue as follows: There are at least some actions that could not be permissible. Therefore, Allhoff’s argument cannot work—there’s got to be something wrong with it.

Now, this is not a refutation of the argument (obviously). It is, rather, a simple objection: what compels me to adopt modus ponens over modus tollens here? I have difficulty conceding that it would ever be ok to, for example, rape a million children, even if it would save a billion lives. If one shares this intuition (and it is only an intuition), then it seems as though Allhoff’s argument fails prey to a reductio. After all, an implication of the argument seems to be that all versions of a-principle turn out to be false. Of course, some people with utilitarian sympathies probably won’t share the intuition that it would be wrong to rape a million babies when it might
save a billion people. This seems to leave us with
the old stand-off of moral theories—something
Allhoff rightly hopes to avoid.

Let me emphasize that I am not saying my in-
tuition that I ought to allow the billion to die is
justified. It might not be. My point, rather, is that
the argument Allhoff offers does not shake this
intuition, and it does not show that the intuition is
unjustifiable. Confronted with Allhoff’s argu-
ment against a-principle, my prior intuitions sug-
ject that the argument reduces to absurdity, and
hence ought to be rejected.

Now, I think it would be right to say that an ap-
peal to this intuition is question-begging. It is. I
assert that some actions are in principle prohib-
ited. But note that Allhoff’s argument also begs
the question. The claim that we can construct
cases where any action is permissible presup-
poses that absolutism in principle is false—but
that is precisely the issue that is here at stake.

Of course, one reply here might be that
Allhoff’s argument was only meant to apply to
torture (though he does say the objection is rele-
vant to all a-principles). In other words, it’s
enough to be able to describe a case where torture
is justified; we can leave it as open whether or not
similar cases can be constructed for other a-prin-
ciples (we don’t want to be absolutist in our rejec-
tion of absolutism, after all). I will confess that I
do not find this response particularly helpful. Af-
fer all, the argument has been constructed in a
way that allows it to be applied to any a-principle.
It seems ad hoc to simply assert that it should
only be seen as applying to the torture case (even
if only for now). Moreover, it seems obvious that
the case Allhoff constructs against a-principle
is because torture applies, mutatis mutandis, to any action.
All one needs to do is substitute some other ac-
tion type (e.g. raping children) for ‘torture,’ and
then adjust the stakes appropriately.

Where does this leave us? Arguably it leaves
us in the same place we were prior to even con-
sidering the argument in question—namely, with
competing intuitions about the possibility of in-
principle prohibitions regarding torture, or any
other actions, for that matter.

Killing and Torture: Why the A-principle is
Not Rare

Allhoff contends that “few—if any—people
defend a-principle with regards to anything other
than torture. For example, consider killing: who
would think that killing is absolutely, under all
circumstances morally wrong?” (129). Allhoff
goes on to argue that most of us will accept that
there are conditions under which killing is ac-
tetable. If killing is at least comparably wrong
to torture in a wide range of cases, Allhoff argues,
we should be skeptical of the idea that torture is
absolutely wrong.

There are two things I find quite troubling in
Allhoff’s argument here. First, I do not think it is
true that a-principle is not defended in any case
other than torture. Second, I do not think that
‘killing’ is appropriately comparable to torture.
People defend this claim regularly in regard to
a wide class of actions and practices: rape, slav-
ery, molestation, genocide, and murder are all
rather obvious examples of things that are
claimed to be absolutely immoral. Does the fact
that few people defend a-principle in regard to
killing count as an objection to this?

Strictly defined, of course, ‘killing’ covers ev-
erything from the use of antibiotics to premed-
itated murder. Thus understood, it is hardly sur-
prising to claim that no one (or, at any rate, very
few) defend a-principle killing. It covers too
much territory. Even when we limit ‘killing’ to
the killing of human beings, the territory is vast:
it covers self-defense, active euthanasia, man-
slaughter, and serial murder. The reason it is dif-
ficult to find someone who defends a-principle in
regard to killing is quite simply that the moral
worth of any of these actions cannot be divined
from the mere fact that life is extinguished. To
determine the moral worth of any particular act of
killing, we must include considerations regarding intentions, consent, purpose, and so
on.

It is here, I think, that “killing” and “torture” are not comparable. The absence of comparabil-
ity, I think, is written in the history and practice of
torture—as well as in our common under-
standing of the practice. “Killing” requires no specific
intent, no particular purpose, and can occur regardless of the consent of the person killed. Can the same be said of torture? Is the territory over which this term ranges as broad?

Minimally, I would argue, torture must be done without the consent of the person tortured. The reason for this, I think, has to do with the morally transformative character of consent. A person subjected to standard torture practices who consents to these practices—perhaps because he desires to be tortured—can be distinguished from the victim of torture proper. When consent is present, we’re much more likely to say that the “tortured” is simply someone with masochistic delights. Failure to say this would result in the implausible view that everyone involved in sado-masochistic sexual practices is involved in human rights violations.

My claim here is not merely that consent must be absent in torture. The point, rather, is that the absence of consent makes the category of torture morally unlike the category of “killing.” To infer, based on a similarity with killing, that a-principle defenses in regard to torture are implausible, proceeds too quickly. The appropriate analogue here, it seems to me, is murder (or homicide). Arguably, murder requires the absence of consent on the part of the person killed (it involves much more than this, too, but the other features of murder are not here at issue).

Likewise, the moral understanding of “killing” probably stands much closer analogically to the category of “causing pain.” I am happy to concede that causing pain cannot be regarded as absolutely morally wrong. The reason for this, however, is that the range of possible actions are huge: dentist visits, assault and battery, and being subjected to Britney Spears music might all count as causing pain.

Thus, a more appropriate question to ask is whether or not murder is routinely regarded as absolutely morally wrong. And, I hasten to answer, I think that it is. One provisional explanation of this is that we have more strictly defined the type of killing we are concerned with, thus eliminating a range of actions that we regard as acceptable under certain circumstances. Likewise, we might all accept that causing pain is sometimes morally permissible—perhaps even morally obligatory—without thereby conceding that torture has this same moral status.

This, I think, blocks Allhoff’s argumentative strategy. We might well reject a-principle (killing) but maintain a-principle (murder). Given that murder is a closer analogue to torture than is killing, the fact that we reject a-principle (killing) is no more significant than is the fact that we reject a-principle (causing pain). To argue in such a fashion requires that the action types in question occur at an appropriately similar level of analysis. Killing is simply a much broader type of action than is torture. It is thus not surprising that virtually no one defends a-principle (killing).

Of course, it might be objected that using “murder” as an analogue begs the question. “Murder,” one might contend, is by definition a killing that is wrong. Defined as such, of course one can defend a-principle (murder), but it begins to look like a tautology. Even if we do accept a-principle (murder), then, it certainly doesn’t follow that we should accept a-principle (torture)—unless of course we define torture as something that is intrinsically and absolutely wrong.

So far as it goes, this objection stands. My point here is not to show that a-principle (torture) is correct (though I’ll confess that I think it is). My aim, rather, is to show that we cannot infer it is false based on a comparison with killing. One would have to show that murder is in some cases acceptable, and this is by no means obvious. To test the absolutist case in torture, we need to test it against parallel principles. When we do so, I contend, the results are by no means straightforward. Much more argument is needed.

**Principle and Practice: A Cautionary Note**

I am skeptical that the division between a-principle and a-practice is as clean as Allhoff contends. My reservations on this note are tied to general considerations regarding the logical requirements of thought experiments. Can we cook the cases in any way we want?

Let us imagine, for example, that someone is raped, but that the person in question consents to the rape before it occurs, and even asks the perpetrator to carry out the rape. Let us further stipulate

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that the person who is raped never stops consenting to the rape. Understand by “consent” here all the usual meanings of the term: there is no duress, the agent is competent, and is informed about what is going on. All the conditions of consent apply before, during, and after the act of rape.

As I ask you to imagine such a case, I hope to have induced deep perplexity—aporia even. I don’t think we can coherently imagine such a case. There is simply no such thing as rape in consensual sex. A staged rape is just that—a staged rape. For the action in question to be rape, it must be a violation of the person in question. Consent (understood as admitting of all the conditions stipulated above) simply cannot be present.

The imagined case above does not show that a-principle (rape) is to be rejected, despite the fact that we’ve imagined a case where the objectionable feature of rape is not present. The issue, as I hope is obvious, is that by removing the objectionable feature of rape we have essentially stopped talking about rape. This kind of case shows, I think, that we are not free to postulate just anything about the circumstances in which some putatively immoral act takes place. In an earlier article, I characterized these constraints as “semantic requirements” for the legitimacy of thought-experiments. And some of these semantic requirements, I contend, are empirical.

Although a full articulation of this worry would require a great deal of argument, let me stipulate what I regard as some of the essential (ineliminable) features of torture: it is something that is experienced; it aims at “regressing” an agent—that is, reducing them to an “infant-like state” where the person no longer possesses autonomy; when successfully executed, torture has lasting physical and psychological consequences for the person tortured. On my view, any thought-experiment involving torture, to actually be about torture, must offer descriptions compatible with these basic features of torture—and we need empirical data to establish these basic features. To fail to do so is to fail to actually discuss torture in much the same way that describing consensual sex fails to describe rape.5

As I know Allhoff will agree, we philosophize in the armchair only at our peril. Allhoff takes the empirical reality of torture seriously; I do not mean to suggest that he does not. He nevertheless overplays the imaginary cases, in my view, as a means of trying to dismantle absolutism in principle. When we reject a sharp distinction between the empirical and the conceptual, however, the argument falls apart. Only some imaginary cases are actually about torture.6

Tragedy and Torture

When it comes to the question of numbers, one type of Kantian refuses to do the math—he hastens to give back his entrance ticket, to paraphrase Dostoevsky—refuses to see price where there is dignity. The Kantian might be wrong to do this, but it certainly does no good to simply insist that we look at the numbers. Such an insistence simply assumes the legitimacy of the numbers game—something the Kantian will not be willing to go along with.

There is, I think, an understated element of tragedy in the Kantian position (whether or not it’s in Kant is an open question). One possibility is that torturing is in fact absolutely wrong, but that there are certain imaginable circumstances where not torturing is equally wrong. It does not follow from the fact that not torturing is wrong that one is permitted to torture. The law of excluded middle does not find easy application in the arena of moral tragedy. There are imaginable cases where one will do moral wrong no matter what one chooses. Kant’s own view, in this case, seems to be to go with what you can control: you can control what you do, but you cannot control the outcomes beyond your immediate actions.

Here is a case of moral tragedy: you must murder one innocent person. They are of roughly equal age, character, etc. In a case like this, I think, it doesn’t make sense to ask which person it is morally permissible to kill. No matter what you do—and we stipulate that you must do something—you will have engaged in a morally impermissible act.

The ability to construct such cases (where someone must engage in immoral action) does not establish that the action in question is morally...
permissible in some cases. It shows, rather, that our condition is at least potentially a tragic one. We can have the purest of intentions and find ourselves forced to engage in immoral action.

So, how are we to be convinced that the torture case is one where torture is in fact morally permissible, rather than just a case of moral tragedy—where no matter what we do we have done wrong? At this point, people usually appeal to something like the “lesser evil,” or to the numbers involved, or something similar. This might in fact be the right way to go, but it is not equivalent to showing that torture is permissible, nor that a principle (torture) is false. Saying that a wrong-doing is excusable, after all, is not to say that it is permissible; to excuse a wrong-doing is not to say that no wrong-doing has occurred.

A Pessimistic Induction

I’ll conclude with one final remark: any argument for torture, given the stakes involved, the historical disasters of actual torture practices, the status of human rights legislation, and so on, has to meet the highest standard of scrutiny. It is at least arguably the case that all arguments for torture so far, even in exceptional cases—beginning at least as early as ancient Greek jurisprudence right down to the memos written by John Yoo in recent years—have failed to adequately make their case. Claims about “exceptional use” were espoused and codified in Greek law, Medieval canon law, and by Israel’s Landau Commission, to name but a few examples. In each case the benefits of torture have been over-estimated, and the ability to constrain the practice laughable. Given this history, any defense of torture—like any defense of, say, totalitarianism—must meet near air-tight standards of argumentation to make its case. My aim in these remarks has been to suggest some of the places where, I think, the air of doubt gets through Allhoff’s arguments. In my view, until all such holes are filled, we have reason to proceed with the utmost caution, and with the healthy skepticism that tends to accompany philosophical inquiry.

NOTES


2. Kant defends capital punishment as a means of respecting those who have committed capital crimes. One might attempt to draw a parallel with torture, arguing that the terrorist has somehow consented to torture by engaging in terrorist actions. I do not think this is a plausible view. For details, see J. Jeremy Wisnewski and R. D. Emerick, *The Ethics of Torture* (New York: Continuum, 2009).

3. I would further claim that I myself do not know what to do with either the doctrine of double effect or with the views that actions are morally assessable in a way that omissions are not. There are some cases where double effect seems to do real work; there are other cases where it seems ad hoc. Likewise, denying that there’s a distinction between actions and omissions seems to result in the unpleasant conclusion that we are all hopelessly immoral (I shouldn’t be reading this paper, or spending my time reading and writing philosophy. I should be helping to feed and provide healthcare for the dying multitudes).

4. I have pressed Professor Allhoff on this issue before. In a footnote, he claims that the prohibition against rape, genocide, and so on can all be accommodated under “a-practice.” But I do not think they can. Here, again, I think we have a stand-off of intuitions. Any moral theory that claims rape or genocide might be acceptable in specific (even if imaginary) circumstances strikes me as a deeply troubling and counter-intuitive moral theory.

5. I take up all of these issues in much more detail in my *Understanding Torture* (Edinburgh: Edinburgh University Press, 2010).