

The Morality of State-Sponsored Torture

This work aims to show that state-sponsored coercive torture is not morally permissible. First I will describe the background of torture and supply working definitions to be employed throughout the argument. Then I will outline international law involving torture and study a particular case to determine whether the United States Central Intelligence Agency's program involving Enhanced Interrogation Techniques was ethical in itself and if carrying it out was ethical. The justification of torture will follow, and the work will finish with input from established philosophical schools of thought.

Torture definition

For the purpose of this exercise, torture is the intentional infliction of physical or psychological pain or fear on an individual for the purpose of extracting information. Particularly in this instance, it is the intention of the state, a state entity, or a state agent to extract information pertaining to national security through these methods. This paper does not aim to justify torture on a small scale for individuals seeking to torture for information to benefit exclusively them or their loved ones.

Additionally, this argument does not deal with torture as punishment, for instance torturing people who have been convicted of crimes for the purpose of heightening the severity of their punishment. Such torture does not aim to gain anything other than the agony of the tortured. Torture for the purpose of coercion will remain the main topic. In this instance the torturer aims to gain information that they believe will be of great benefit.

This paper contemplates whether it is ethical for a nation state to implement torture for the purpose of gaining information pertinent to national security. It also explores

circumstances in which torture might be carried out and assesses whether or not those circumstances have an effect on the moral permissibility of the torture.

For one to perform torture, one must intend to torture. Intention is inherent to torture. It is impossible to attempt to coerce information out of someone without the intent to coerce. Intent is sometimes seen as difficult to establish, though not in this case, as these practices are specifically carried out to gain information. To torture is an intentional act for a purpose. I will later discuss Kant's view of intention. For now, intent is the determined willing of an action for the purpose of performing the action and bringing about the action's expected consequences.

It is necessary to weigh a few factors to discern whether state sponsored torture is ethical. First, do the benefits outweigh the cost, particularly is enough happiness generated to negate the suffering torture brings about from a utilitarian perspective? Second, can torture be justified universally? Third, do the circumstances surrounding the implementation of torture matter, and if severe enough, can circumstances excuse torture?

The Role of Government in Coercion

In human civilizations, a government exists first and foremost to maintain stability through security of the civilization it oversees. Without being able to provide some level of security from the outside or other civilizations, governments do not serve their primary purpose. To maintain security, governments often need to secure intelligence, though much of this insight is not easily handed over. Government powers have long implemented torture as a means of gaining such information. It is perhaps the most straightforward form of coercion, using direct physical or psychological means to elicit information.

Political theorist Max Weber stated that government holds a monopoly on the “legitimate use of physical coercion” (1947). This holds true in the makeup of modern governments. Nation state governments employ their own military, police, and assorted agencies to coerce their civilians to submit to the law. These entities are given powers to detain citizens, prisoners, or people deemed to be threats to the public. Such powers are not given to civilians. Only the government has the power to coerce people into following its rules and laws, so it is true that government has this “monopoly”. However, even monopolies may not have unlimited power in their market. In that vein, government powers ought to have limitations on their monopoly of coercion. It must abide by some standard of ethics. Particularly regarding torture, how far ought the government’s ability to coerce extend?

The following serves as a case study for the actions of the U.S. Central Intelligence Agency (CIA) following the terrorist attacks on September 11, 2001, henceforth referred to as 9/11.

CIA Enhanced Intelligence Technique Program

Amid the extreme fear in the U.S. following the 9/11 attacks, the CIA implemented a new program involving Enhanced Interrogation Techniques (EITs). Such techniques included waterboarding, walling, cramped confinement, nudity, and sleep deprivation among other tactics (Feinstein, 2012). Upon capture of the first suspected high-profile prisoner in the War on Terror, CIA officials were tasked with collaborating on an interrogation program. Ali Soufan, a seasoned FBI Special Agent, was brought in to aid the CIA in these efforts. His interrogation tactics were conventional – working to build trust in hopes that the detainee will reveal the useful information they possess.

Agent Soufan's techniques did not yield the results the CIA hoped for. Cofer Black, the head of the CIA Counterterrorist Center at the time of 9/11 famously said, "There was a before 9/11, and there was an after 9/11. After 9/11, the gloves come off" (Scott, 2006). The agency felt pressure to act more aggressively, so it created a new program to elicit increased intelligence. This new program, however, toed the line of legality based on international law.

Breaking International Law and Rule Consequentialism

It is necessary to provide context of pertinent international law surrounding torture. Following World War II (WWII), many countries agreed upon the Geneva Convention in 1949. The United States and Afghanistan were both party to these agreements.

The Convention banned torture of prisoners of war and detainees and any acts deemed "cruel, inhuman, or degrading" carried out upon such detainees (Scott, 2006). Additionally, any acts producing long-term injury were prohibited. This particularly applied to physical injury.

It is necessary to consider whether the action was unethical or breaking international law was unethical, if in fact the program broke international law. Was it unethical to torture because torturing prisoners from a country that signed the Geneva Convention was prohibited? Was it unethical to torture in this instance because torture is inherently unethical? Was it both? Was it neither? Was this even a violation of the Convention?

If one confirms that torture is unethical because it is prohibited by international law, one ascribes to a sort of rule consequentialism. Rule consequentialism is relatively simple,

in that it assigns morality to whether or not an action aligns with the standing law, whatever it may be.

John Rizzo, the Acting General Counsel for the CIA from 2001-2002 and from 2004-2009, held that his primary focus throughout the creation, development, and implementation of the EIT program was the legality of the measures (Kirk, 2015). He has publically stated that he kept any personal moral dilemmas with the program to himself, as he believed determining the program's legality, rather than its morality, was his objective.

Beyond Rizzo, it is consistently debated whether the EIT program violated the Geneva Convention. Though Afghanistan signed the treaty, some argue the prisoners subjected to these interrogation methods were not prisoners of war as outlined by international law. At this time, the Taliban was the ruling party of Afghanistan, and some considered Afghanistan to be a failed state. Regardless, the fact that some considered Afghanistan to be a legitimate nation state should have inhibited the CIA's EIT program. The CIA appeared to be seeking loopholes to be able to implement the program, and the agency proceeded knowing it could be held responsible for breaking international law.

Rules and laws are created to either implement an ethical standard, to regulate subjects to maintain order, or to achieve a particular benefit through regulation. Whereas federal, state, local laws or the equivalent elsewhere are implemented both as ethical standards and regulations to maintain order or achieve benefit, modern international law is largely created to implement some agreed upon standard of ethics between nations. If all rules and laws were created solely to implement an ethical standard, one could make a stronger case for rule consequentialism.

In such an instance, if one lives according to rule consequentialism, and the rules in place were created for the purpose of instilling some form of morality, then one following rule consequentialism would actively be ascribing themselves to a moral code. Though this is not the case in practice when, along with following an entity's ethical standard rules, a person following rule consequentialism passively ascribes other laws, including those which regulate for order or benefit, to their moral code. This is a great flaw in this school of thought.

For the purpose of this argument, consider if a rule consequentialist could ascribe only to international law. As international law is created for the purpose of implementing an ethical standard rather than for implementing regulations apart from ethics, would ascribing rule consequentialism to international law alone make it be more practical and more universalizable? I believe so. That said, one could argue the mere breaking of the Geneva Convention was immoral, as international laws are created to enforce a minimum standard of ethics. However, this skirts around the point that if a law was created to outlaw something unethical, it is unethical to break the law not because it is the law, but because the act itself is unethical. This brings the faults of rule consequentialism back to the forefront.

All things considered, rule consequentialism is particularly difficult to implement as a moral code. In addition to differing purposes for specific laws, rules and laws vary so widely that there could not be a standard of ethics worldwide. Also, if these international laws did not exist, there would be no specific code by which to act. International law is only beginning to develop and faces difficulty in enforcement. Though it is certainly important to note that the legality of this program was in question, the only school of thought such an

argument adheres to in the philosophical arena is that of rule consequentialism, which does not hold valid universalizability.

Determining whether or not torture in itself is ethical can be undertaken many ways. It is necessary to study different types of interrogation tactics.

Conventional and “Enhanced” Interrogation Techniques

Though the CIA employed a particularly gnarly regimen of interrogation methods, local police forces and FBI workers utilize interrogation techniques as well. These techniques are relatively mild in nature and aim to guide the suspect to divulge information or confess depending what the situation calls for. Different from torture, these techniques sometimes involve interrogating the suspect in an aggressive manner to put the suspect on edge and make them flustered, causing them to reveal information. Other times these techniques include an agent building the trust of the detainee in order to calmly elicit the desired information after that trust has been established.

Though these conventional methods of interrogation involve some manipulation of the suspect’s environment – the agent puts them on edge or builds their trust as a means to an end – they are not meant to inflict psychological pain. Though the morality of implementing these conventional interrogation tactics is murky, as investigators use people as a means to an end by working to retrieve information from them, it is widely asserted that the benefits of the information received outweighs the suffering one might incur as a result of being interrogated.

According to the Associated Press (2014), the CIA implemented the following thirteen EITs in their post 9/11 program: Abdominal slap, attention grasp, cramped

confinement, dietary manipulation, facial hold, facial slap, nudity, stress positions, sleep deprivation, wall standing, walling, waterboarding, and water dousing.

The facial slap and abdomen slap were both executed with an open palm and were meant to humiliate the prisoner. In the attention grasp, an interrogator grabbed the prisoner by the collar with two hands to maintain the prisoner's attention. Cramped confinement involved a prisoner being put into a box and made to remain there for up to 18 hours depending on the size of the box. In some boxes a prisoner could remain standing, while in others they had to squat or otherwise crouch. For some detainees, a "non-harmful" insect was put in the box to inflict further psychological distress. Dietary manipulation involved a rotating menu of solid and liquid food. Some prisoners were given liquid diets of Ensure and water for a few days then switched back to solid food (Associated Press, 2014). In the facial hold, the interrogator held both sides of the prisoner's face. In regards to nudity, some prisoners were forced to stand nude for hours on end. Stress positions involved prisoners being forced to lean, balance, or hold their bodies in uncomfortable or physically tiring positions for long periods of time. Prisoners were often deprived of sleep for several days, some even up to 180 hours. At least five detainees experienced hallucinations, though the interrogators continued to deprive them of sleep even after the first appearance of hallucinations. Wall standing involved prisoners standing a few feet away from the wall and raising their arms parallel to the ground to have their fingertips just touching the wall and continuing to stand as such for hours on end while being interrogated. Walling involved interrogators slamming prisoners against hard walls repeatedly. Waterboarding, a particularly gruesome technique, involved the prisoner being strapped to some sort of board. The interrogator would then pour water over the

prisoner's face to give the prisoner the experience of drowning. Waterboarding led to vomiting, convulsions, and involuntary extremity spasms. The final tactic, water dousing, involved naked prisoners being repeatedly doused or hosed with cold water, sometimes while holding a stress position.

Beyond these thirteen techniques, other accounts included prisoners being subjected to constant loud sounds or music to further intensify sleep deprivation in addition to temperature manipulation of the rooms in which they were held (Kirk, 2015). For instance, detainees would be subject to remain naked in an absurdly cold room for days and may have been intermittently doused with water.

Alone, each of these tactics inflicts a degree of pain or fear, but the effects of these tactics are increased exponentially when the methods are combined. As these methods are all "cruel, inhuman and degrading", the EIT program implemented by the CIA constitutes state-sponsored torture (Scott, 2006). Even if the agency believed the program was within the scope of the law, it must have assumed such a program would yield beneficial results through the retrieval of information during interrogation. The expectation of obtaining useful intelligence was how the CIA justified the creation and implementation of the program.

Effectiveness of Torture

How can one justify torture? Often it is justified by the time-sensitive need for information. For the CIA, it was the need for information important to national security. Even if one justifies the use of torture, one must consider its effectiveness.

It is necessary to consider whether to put greater moral weight on intention and expected outcomes versus the actual outcome, which may have been unforeseen. Should

the effectiveness of torture be taken into account when deciding upon the morality of torture? In hindsight, based on the results of the CIA's program, the effectiveness of torture should be taken into account when considering future similar programs.

That said, I hold that intent should be weighted more heavily than actual outcome. Broadly, how can someone aim to live an ethical life if they decide to judge their own success through the outcomes their actions caused? It is impractical to judge morality on outcomes, as no action is undertaken with full knowledge of all possible consequences or knowledge of the exact and all-encompassing outcome. That is, one can know their own intent and expect certain outcomes to occur if an intended action is undertaken, though they cannot with full certainty know the full extent of the actual outcomes that will come about following the action. Therefore one cannot live according to a moral code of the unforeseen, but one can live based on the quality of their intent, malicious or beneficent.

In the case of torture, enough study has been undertaken on the implementation of torture to support the claim that torture is generally ineffective. Common sense helps one see why a tortured detainee would give false information. "It is easy to understand how beatings, torture, sleep deprivation, and threats of violence may lead an innocent suspect to confess falsely" (Leo, 2009, p. 196).

In the foreword to the Senate Intelligence Committee's report on the CIA program (2012), Senator Dianne Feinstein, the former Chair of the committee writes, "Prior to the attacks of September 2001, the CIA itself determined from its own experience with coercive interrogations, that such techniques 'do not produce intelligence,' 'will probably result in false answers,' and had historically proven to be ineffective. Yet these conclusions were ignored" (p. 3). This report gives evidence that points to the CIA's knowledge of torture's

ineffectiveness. Even if the agency's intent was to secure essential information pertaining to national security, it already knew the methods by which they were attempting to gain such information were faulty based on previous experience. The decision-makers for the program had enough knowledge to have expected the program to yield false answers or no intelligence by way of torturing prisoners. Because they had this knowledge prior to the program's creation and implementation, it is reasonable to assign some moral burden on the agency.

Does evidence supporting the ineffectiveness of torture for the purpose of extracting information unequivocally justify full prohibition of torture?

Justifying Torture

Though it has been established that the CIA had prior knowledge supporting the ineffectiveness of the sort of program implemented following 9/11, should the case be made that the CIA's actions were morally permissible, or at least excusable, as the program was created and implemented during a time of heightened fear and uncertainty? Such large-scale terrorism against the U.S. was unprecedented. The population was shook into a state of fear and solidarity it had not experienced before. In this state of fear, the government acted to protect its civilians with less care for international law than it may have within less alarming circumstances.

The U.S. was thrown into a dire state of panic following 9/11. The government felt pressured to act to prevent future attacks and ensure the safety of Americans. Because the situation was unprecedented, there was little policy to act according to, and the international law in place seemed reasonable to circumvent, at least to the CIA. In the moment, the CIA opted to act aggressively rather than proceed with caution (Kirk, 2015);

however, there would be consequences for a nation that prided itself on being the global police enforcement that always took the moral high ground now deciding to implement torturous programs. Several of the main CIA tactics clearly defy the Geneva Convention's "cruel, inhuman and degrading" clause (Scott, 2006). Other less aggressive tactics and some manipulative interrogation tactics utilized by lower law enforcement entities are considered more morally permissible, if degrees of permissibility can exist. At least in the case of lower-agency tactics, only verbal methods are used. Even if manipulative, such tactics refrain from direct physical contact and usually do not prescribe prolonged psychological endurance amid particularly torturous environments, as some CIA torture tactics utilized.

Some consider less aggressive forms of torture to be somehow more permissible than more aggressive methods. Usually this qualification comes with a form of measurement in order to compare different techniques. Some choose to compare based on whether the torture has long lasting effects on its subject. This is difficult to implement, as there can be invisible psychological effects of torture. To limit effects considered to physical effects is an outdated notion. Others decide the severity of the pain or fear inflicted upon the subject is the main factor in question, though how would one compare an instantaneous severe pain with prolonged bouts of lesser pain? Others argue in favor of allowing physical torture over psychological torture or vice versa, giving reasons as to why one is less severe than the other. Such arguments limit themselves greatly, as it is difficult to create a dividing line between what ought to be permissible and what ought not be permissible.

How could one go about establishing such a threshold? It seems impossible to define such a threshold. A reasonable attempt at this could be made by categorizing all known forms of physical and psychological torture. One could decide whether the methods are morally permissible by considering the factors listed above and develop some qualitative form of measurement. Again, this seems impractical. I tend to believe all forms of torture, that is all acts to intentionally inflict pain to coerce information out of a person, are morally impermissible. With torture's questionable effectiveness and inherent suffering, there is no reason to continue the practice or to attempt to justify its practice.

Established Schools of Thought

Though the vast majority thinkers considered to be included in the philosophical canon predate modern governments, high-tech terrorism, and sophisticated torture techniques, it is possible to apply their main precepts to these contemporary moral dilemmas.

The first philosopher to consider is Immanuel Kant. He would agree that torture is intentional; to Kant all actions are intentional and are guided by one's maxim, or personal moral directives. The clear intent remains that interrogators intend to coerce detainees to reveal information. To do so they intentionally inflicting physical and psychological harm. Kant would also likely assert that it is wrong to use prisoners as a means to an end. Even prisoners retain their humanity, and according to Kant's categorical imperative, it is immoral for humans to use other humans as mere means. This separates humans from animals, as animals are not held to a standard of morality.

Kant does hold a stricter view of justice. He believes people can rightfully compel others to observe just rules or laws. This view may coincide somewhat with the view that

the mere breaking of the Geneva Convention by the CIA was itself immoral; though Kant is no rule consequentialist. Kant also attested that justice could be implemented with what many consider an eye for an eye. This relatively harsh view of justice might lead Kant to side with the CIA somewhat, as they tortured detainees from groups notorious for torturing their prisoners. Torture could also be seen as just retribution for the 9/11 attacks. Though Kant's view of justice is relatively grave, his categorical imperative should win out in this case. Based on the categorical imperative, such torture is deemed immoral and impermissible in all cases.

Another philosopher to consider is Epictetus, a stoic. I have difficulty grasping all facets of this school of thought, and it remains relatively vague to me. From what I understand of stoicism, Epictetus would not have seen the EIT program as morally permissible and would not permit the use of torture, even as coercion, as a means of retribution. Following the 9/11 attacks, Epictetus would likely have recommended the U.S. not to seek revenge or involve itself overseas by beginning the War on Terror. As a stoic, he tends to assert that suffering be taken without complaint or seeking retribution. He would likely also implore the detainees to accept the torture silently, remaining steadfast in keeping any information they have to themselves and remaining loyal to their cause. Overall, Epictetus holds that suffering should most often be endured patiently, and one should not retaliate if they are made to suffer.

Additionally, Epictetus may have qualms with even the conventional interrogation techniques employed by law enforcement officials, as these methods sometimes misrepresent truth. Epictetus sees any stray from the truth as morally impermissible. Holding to the truth is one of Epictetus's main assertions.

John Stuart Mill, a utilitarian, writes that happiness is the only intrinsic good and manifests in pleasure with the absence of pain. It is largely undisputed that happiness is an intrinsic good, often manifest in pleasure and the absence of pain. Though it is often disputed whether or not happiness is the only intrinsic good, we shall proceed under the assumption that it is, for the sake of the argument, the highest intrinsic good regardless of if it is the only intrinsic good or not. Under that assumption, the opposite of happiness, manifest in pleasure and the absence of pain, is the presence of suffering. As torture actively increases human suffering, he would hold that torture is morally impermissible. Additionally, evidence widely supports the notion that torture does not yield its desired result and more often produces false information. Tortured detainees often give information to stop the continuation of their own suffering. Even if the person knows that their information will prove to be false, they opt for the temporary reprieve. Since torturing people does not yield the desired benefit of obtaining information to increase the safety of a community, and more often yields no useful information, Mill would contest that state-sponsored torture for the purpose of coercion is unethical.

Conclusion

In conclusion, I hold that state-sponsored coercive torture is morally impermissible, even if a country is thrust into a threatening environment. The U.S. was thrown into unknown circumstances following 9/11, but the attacks did not warrant the government to utilize inhuman tactics, which caused more suffering than they yielded beneficial information. Though a government maintains the ability to coerce, their reach ought not extend to physical and psychological torture for the purpose of extracting information. Torture is an immoral act of coercion that inflicts too much suffering to be justified by its

potential benefits. In particular, torture has not shown to yield its intended benefits, only further qualifying torture's immorality.

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