

It Torn about Torture

You may ask yourself: what would you have done to the perpetrators of the September 11, 2001 terrorist attack in order to prevent the tragedy, had you captured some of them before they committed their act? Would you choose to torture them to gain more information or not? The larger issue at stake here is whether and under what circumstances torture is permissible. No matter how “tempting” would be to do so my answers for the two questions: no and never.

Before we go into the details let’s make sure we are on the same page. There are various degrees and kinds of torture. The aim is always to cause pain in the victim. It can be achieved through psychological or physical means. As far as its effects are concerned there are three options: it can leave no marks on or in the person, can cause permanent damage, or death. I claim that none of the physical methods should be used as part of an interrogation procedure. I do not have a clear rule how to separate psychological pressure and torture. The former could be justifiable if there is good reason to believe that it can prevent future acts of crime. I leave it to the professionals to decide where the demarcation line is between pressure and torture, but they should follow clear and previously agreed upon guidelines. Another important distinction is that the issue to be discussed here is not whether torture should be used as punishment. We are simply focusing on “preventive” torture.

Consider the “ticking bomb” example in the opening line of this paper and in Michael Levin’s essay “The Case for Torture”. A potent bomb is ticking in a major metropolis and you have in your custody a person who supposedly knows where it is. Those who are focusing only on saving the lives of the people in the city would argue that the person should be tortured if there is no other way to make him (or her) talk. I agree with their goal that saving lives is of utmost

importance. However the method is questionable for several reasons. For one there is no guarantee that torture would yield the expected results. In fact I read somewhere that members of terrorist organizations, such as Al Qaeda are trained to resist torture. Also they may give out false information. Second, non torture methods, such as injecting “truth serum” into the person may make him “sing” faster and closer to the truth. I do not know whether this method was available or not when Levin wrote his article. If it was, I wonder whether he missed mentioning it on purpose in order to drive his case that torture is a valid method in this case. In his claim he assumed that torture is permissible if there is no other way to gain information. But this assumption can be scrutinized, because usually there are other intelligence, investigative and law enforcement methods that could be followed parallel with the interrogation. These may also gain results, thus no need for torture.

Having dealt with the technical aspects of this extreme scenario let's turn to its legal ones. I could not find in the US Constitution a clear passage stating whether it is against torture at interrogation or not. (The 8th Amendment outlaws only “cruel and unusual punishment.”) Nevertheless I am certain that there are federal laws derived from the Constitution that prohibit it. The question is then who can break the law. By definition laws are not supposed to be broken. Nobody, including the US President, is above the law. The government and those who represent it should set examples in their behavior in this regard. One may rightfully argue that there are unjust laws, such as the racially segregating Jim Crow laws were, that are unjust and should be changed. I concur and acknowledge that in the process these laws may be broken just like it happened during the height of the civil disobedience movement. However changing the Constitution or higher level laws should be preceded with a discussion about the topic in society and the legal experts as well. The US Constitution provided adequate backbone for building and maintaining a democratic

society for over 200 years and should not be taken light-heartedly. Breaking any law to gain an immediate perceived advantages is still illegal. This includes torturing a person. If one decides to break this law and we accept it, who is to decide which law can be broken next with or without our consent. The “we” in the previous sentence is the community of the governed, the common people.

One should consider the political aspects of our scenario and torture in general. In the previous paragraph we briefly dealt with the US legality of torture. However the US does not exist in a political vacuum. For example the US signed the Convention against Torture on October 21, 1994 that states “No exceptional circumstances whatsoever, [...] may be invoked as a justification of torture“(Convention). This means that when a US official is using torture technically he does not violate a signed treaty, because Congress never ratified the above Convention, but does violate international standards, supported by dozens of other countries. This may harm the country’s reputation and interests. Imagine if this is the effect of using torture in the eyes of friendly nations what it could be in hostile ones. For example if the captured terrorist is not a US citizen, then in his country of origin anti-US feeling may increase as a result of him being subjected to torture.

This points to another important point: torture may provide short term solutions for a particular case, but does not solve the underlying issues. The terrorist in our scenario surely had some strong motivation to form his plans. The US government should inquire into those and think about what it can do to reduce them. This line of action will provide more stability on the long run, than working on (literally “on”) individual cases, people.

One also has to look carefully at the torturer and the tortured. Assuming we allow torture under special circumstances, who decides who is entitled to do the physical process. Even with careful guidelines it can lead down on a slippery slope, when the demarcation line crumbles and at one point more and more government officials or even private citizens may feel entitled to torture

others. For example, Israel--that should be considered a western democracy despite its theocratic features--for a few years allowed its police officers to use milder forms of torture to prevent killings of its citizens. After a few years though they found that despite the intention of providing clear guidelines some police officers clearly abused their special privileges.

At the other end of the process we find the tortured. How can we ensure that only those who have the information the officers seek would be subjected to the process? We cannot. In the US we cannot even ensure that only guilty criminals would be subjected to capital punishments. Last summer in Santa Cruz in his speech Danny Glover, actor and human rights activist, said that every seventh person who is executed in this country is proven to be innocent later. It takes years, sometimes decades of careful deliberation and complicated procedures to execute one and there are still high numbers of "mistakes". How could we expect not to make mistakes when deciding who to torture?

I believe I proved that from a technical, legal and political point of view torture is not a permissible mean to gain information. I barely touch the subject of ethics, which could provide a whole other arsenal against it.

Having said all the above I have to add a personal note. If I would be in the decision maker's position whether to use torture or not and assuming that either my beloveds' life is at stakes or lots of other peoples I am not sure whether I would be able to follow the principles laid out above or not. It would require an extraordinary moral strength that I may or may not possess. I hope I will never be in the position to learn the answer for this one. This is why I titled this essay "Torn about Torture". I would be rather torn whether to follow my principles or my emotions. Wouldn't you?

Works cited:

“Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”. United Nations Treaty Collection 25 Jan. 1997.

< <http://untreaty.un.org/English/TreatyEvent2001/pdf/07e.pdf> >