

Knowledge question: Is torture ever justified?

1. Do Now:

- Suppose a man is suspected of planting a bomb in New York City, and it will explode in twenty-four hours unless the police are able to find it. Should it be legal for the police to use torture to extract information from the suspected bomber?

Look over the handout from two classes ago but the different approaches to ethics. Consider the different approaches in addition to your own thoughts. What are the different ways to approach this situation?

2. Discuss with your table and then as a class.

- How do we know what the right thing to do is? What circumstances should we consider?
- Does it matter that this person is a suspect? What if the person admitted to committing the act but refused to give up the information. What effect would this have?
- What if the person is tortured and won't give any useful information. Would it be right to torture the man's 10 year old child?

3. Watch Clip from Torture and Human Dignity

- What ethical claims do the different speakers make? Which do you agree with?

<https://www.youtube.com/watch?v=7FR-FuhN2HM>

4. Read and annotate passage from: “Can Torture Ever Be Moral”

<http://opinionator.blogs.nytimes.com/2015/01/26/can-torture-ever-be-moral/>

Adapted from: Can Torture Ever Be Moral?

By Gary Gutting and Jeff McMahan

Gary Gutting: What’s your overall view on the morality of torture?

Jeff McMahan: I think that torture is almost always morally wrong and that, for moral reasons, it ought to be prohibited absolutely in law. Torture has been used to extract confessions, to terrorize people associated with the victims, to punish presumed wrongdoers, and even to gratify and amuse sadists and bullies. These uses are always morally wrong. The only use of torture that has any chance of being morally justified is to gain important information. But even when torture is used to gain information, the torturers are usually wrongdoers seeking information that will help them to achieve their unjust aims. And even when those seeking information have just aims, their victims are often innocent, or lack the information sought, or are sufficiently strong-willed to mislead their torturers, so that the torture is ineffective or counterproductive. Still, both those pursuing unjust aims and those pursuing just aims will continue to be tempted to engage in torture if they can do so with impunity. Hence, torture has been widely practiced, though its use has almost invariably been wrong. This means that the overriding goal of the law ought to be to deter the wrongful use of torture, even at the cost of forbidding the use of torture in those rare cases in which it might be morally justified. The legal prohibition ought therefore to be absolute; for those who think that torture would be advantageous to them will always be tempted to try to exploit any legal permission to use it.

G.G.: But you do agree that torture can, in extreme cases, be moral. Why do you reject the absolute view that any instance of torture is immoral?

J.M.: Torture can be morally justifiable, and even obligatory, when it is wholly defensive – for example, when torturing a wrongdoer would prevent him from seriously harming innocent people. It could do that by forcing a person to reveal the location where he has planted a bomb, or hidden a hostage who will die if not found. It can be morally justifiable to kill a person to prevent him from detonating a bomb that will kill innocent people, or to prevent him from killing an innocent hostage. Since being killed is generally worse than being tortured, it should therefore be justifiable to torture a person to prevent him from killing innocent people. In cases in which torture is defensive in this way, the person tortured is not wronged. Indeed, he could avoid the torture simply by doing what he is morally required to do anyway – namely, disclose the location of the bomb or hostage.

G.G.: Do you worry that even saying that torture can be moral will provide an excuse for immoral torture?

J.M.: Yes, very much. The philosopher Henry Shue has a story of being thanked for his influential 1978 article [“Torture,” *Philosophy and Public Affairs* 7, no. 2 (1978): 124-43] by a pair of American agents who had tortured people. The article had argued vigorously against torture but conceded at the end that the moral prohibition of torture is not absolute. The agents were grateful for the concession, as that made them feel they could engage in torture without doing wrong. I think this is the explanation of why many people who aren’t absolutists about any other moral issue say they are absolutists about torture. They rightly want to avoid giving any aid or comfort to those who seek to justify torture in the circumstances in which it is actually practiced. But there is a dilemma here, for it can seem morally obtuse, and therefore discrediting, to deny that torture is permissible in those cases in which it

obviously is permissible – for example, when it would in fact force a kidnapper to reveal the location of hostages who will otherwise die.

G.G.: Should we treat cases of justified torture the way some say we should treat cases of justified civil disobedience: You may, in extraordinary cases, have a moral right to disobey the law, but then you have to face the legal consequences?

J.M.: I think so. To effectively deter wrongful torture, the law should make anyone contemplating torture feel that if he does so he will be sacrificing himself for the sake of morality. It may indeed be best for the law not even to allow a necessity defense for torture, though I don't think it should make harsh penalties mandatory. It should be possible for courts to exercise leniency in sentencing if there are cases in which people have engaged in torture with clear moral justification. But potential torturers should not be allowed to think that they can evade punishment through statutory loopholes.

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