
on torture

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Liberal Torture

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So much of our mental lives is shaped by how we believe we are *supposed* to think about things of importance. The issue of torture is no different, a rather simple but demanding moral and political dualism set in front of us by the contemporary “torture debate”: generally speaking, on one hand, *realpolitik* utilitarians ostensibly defending a society and its citizens from its enemies by any means necessary; on the other hand, moral absolutists ostensibly defending a total prohibition on torture of anyone regardless of their citizenship, their ideological predispositions, or their violence. This either/or framework is misleading. Not because there’s a lot of gray area in between regarding the question of torture – there is no reasonable justification for torture – but because *we don’t have to* believe that this is the way we’re supposed to think about the question.

Let me try to carve out some pragmatic territory – rather than appealing to crude moral calculations or grounding a prohibition in fundamental universal rights – and discuss how the *logic* of torture ultimately sets us morally adrift from values we have reason to cherish.

Consider this: what would an openly torturing society look like, one in which torture is a feature of its legal, social, and political institutions? Nazism? Fascism? A new Inquisition? As people who have inherited at least some basic values of

liberal ideology, a torture society is certainly not a liberal-democratic one, although it could be the detritus of a *failing liberalism*.

Liberalism, historically, seeks to uphold principles of human dignity, individual autonomy, and liberty. It suggests that limitations on individual autonomy and freedom are only justifiable, in Locke’s and Mill’s formulations, when individuals cause harm to others or when they engage in acts of cruelty which limit others’ dignity, autonomy, and liberty.

Liberalism’s *de jure* principles have often hung in a precarious balance with *de facto* violations of those principles: the universalizing impulse of principles of individual dignity and freedom in conflict with the means for preserving a society, sometimes from real enemies and sometimes from enemies largely of a society’s own fearful creation. Liberalism has always struggled with this balancing act. Consider toleration, for example – how far does one go in tolerating the intolerant? At what point must one become intolerant of intolerance? Similarly, how far does one go in extending human rights to one’s enemies when those enemies seek to destroy you? At what point does the state’s defense of a society or constitution become an attack on civil liberties? Liberalism, despite its *de facto* cruelties, attempts to give reason to the management of this balance between substance (its core values – say, autonomy) and procedure

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(its means of defending those values – say, *habeas corpus* or universal suffrage). A strength of liberalism as an ideology is thought to come from both the ongoing reasoned defense of its principles and the claim that those principles derive from the laws of reason; for modern liberalism, it is the reasoned balancing act between substance and procedure or method.

A *failing liberalism* is one in which *de facto* cruelty becomes *de jure* cruelty. This is what the institutionalization of torture represents. Liberalism's preservationist procedures tip the balance towards an irrational defense of its substance. But a liberal state can't do so overtly because an openly torturing society is no longer a liberal society that respects human dignity and freedom. When it does, the liberal state thus tortures covertly in an attempt to conceal its cruelty. It may do so through secretive programs; it may do so through drawing a contrast between the civilized and the barbaric. Political ideologies do need to keep up appearances, after all.

Physical and psychological pain is not the end-goal of torture. The pain is intended to violate the dignity and autonomy of an individual. Liberal torture cannot be purely sadistic in its intentions, however, and this sets it apart from other uses of torture; it must be directed towards breaking the will of the person so that important information will flow. As David Luban has said, the sole conceivable rationale for torture under liberal ideology is information-gathering. Torture is a means supposedly justified in liberal ideology by an appeal to the greater harm that information from torture might prevent. For the archetypal liberal torturer, then, the act is a tragic but necessary defense of the substantive liberal principles of dignity and autonomy.

But torture is unique as a procedure for defending liberal society. Torturing for information entails an

institutionalization of torture. Raw information from an individual torture victim is famously unreliable. Information that rises to the level of morally significant information is highly unlikely ever to be gained from an individual victim alone. It's necessary to torture broadly in order to sort good information from bad information and generate aggregative patterns that may be "actionable" such that a serious, imminent threat may actually be prevented. This means a political program, a staff, refined procedures, torture sites, instruments, those who analyze the data, and those who make policy out of that data. It also means – because one is seeking information one does not yet have – often torturing innocents. The time bomb case of torturing one terrorist to save many innocents is the fantasy that obscures the reality of torturing many people in search of what might justify the act of torture. Torture searches for its justification.

When one seeks to justify torture by gaining morally important information one presupposes that such information exists. It is exceedingly difficult, however, if not impossible, to judge the information gained from torture to be morally significant until that greater evil is indeed uncovered and prevented. To use Rumsfeldian language, the crucial information must be previously *unknown* in order to justify interrogation. Yet, its great moral significance must also be previously *known* in order to justify the act. It is not *meaningful information* until one has tortured, gained information, and then verified it against expectations. Meaningful information fits with prior beliefs, assumptions, and modes of interpretation. But meaningful information is *not necessarily true information*. Furthermore, the victim's presumed guilt need never be resolved. In fact, meaningful information may play upon fear of the enemy, helping to construct and reinforce a more plausible picture of that threat no matter

how real it is. We can see this in Inquisitional torture as well as in modern torture.

How does one know when one has true information? To attempt to gain true information is ultimately to seek patterns rather than attempt to verify or falsify each individual bit of data, especially under time and resource constraints. Comprehensive sets of data-points yield more complex patterns. The more extensive the practice and institution, the more successful torture will be. If torture is used indiscriminately and broadly, more complex patterns and a better understanding of what is meaningful in the information may be obtained. Patterns of information may be meaningless by themselves, but they serve to corroborate and verify partial bits of information and infer other patterns. They also serve to eliminate or falsify outlying bits of information gained from innocents and the delirious. A descriptive narrative may be interpreted and assembled from the resulting patterns and regularities. Yet, this is always done against a backdrop of what the information is supposed to serve. As Aristotle noted in the *Rhetoric to Alexander* (book 16), whether information or evidence from a given case of torture is considered reliable or not depends precisely on the prior purposes that the users of that information wish it to serve.

If the goal behind torture is to gain information that saves liberal societies, then, given the logic of information-gathering through torture, the imperative will be to torture more and more. The more complete the information, the better the state can save us from our enemies. Constraints imposed by the substantive ideals that torture initially seeks to defend fall away one by one. First to go is the claim to universality of the principles of freedom, autonomy, and dignity. Like classical liberalism, universality then becomes synonymous with something like the community of “the

civilized.” This, then, enables the sense of revulsion and shame at cruelty to those outside of the community to fall away. But, especially in a pluralistic society, why should the legal formality of citizenship be a constraint on the use of torture? Why civil liberties? And on and on. Since the initial impulse is one of self-preservationist fear, liberal rationality ends up applied to the means rather than the ends, the only check on the logic of torture being the substantive, reasoned defense of the basic principles. But it is now unclear what those are.

Remember, we are led into this situation by a technique of information-gathering that professional interrogators say is woefully inadequate – not to speak of immoral – and which, I have suggested, grows concretely according to its own logic. In the meantime, that meaningful *and* true *and* morally significant information that the liberal institutionalization of torture ultimately sought rarely, if ever, exists.

I am suggesting that the logic of information-gathering torture leads from awful, concealed *de facto* cruelty of the liberal state into *de jure* cruelty. It thus subverts the ideal aims of the liberal state and throws our own adherence to basic values we gain historically from liberalism into disarray. This is the root of *failing liberalism* and it arrives precisely at the point where we’re cast adrift from an understanding of the importance – even if contingent – of those basic values. This is what an openly torturing society looks like.

Why does this all matter? My point here is not to defend liberalism, but to defend certain values that happen to be central to liberalism. Even if our immediate impulse is to ban torture, we do have to understand that legal and political institutionalization of such a ban only sticks if it is a powerfully reasoned ban. The humane side of who we are, however, is not solely a function of reason.

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Revulsion and shame are powerful forces themselves. But they are, in turn, not solely grounded in the better parts of human nature. They're also grounded in and nurtured by the institutions through which we live. And a society that institutionalizes torture is ultimately one that eats away at its individual and collective capacities to feel revulsion and shame in the face of cruelty towards and suffering of others. This result perhaps seems obvious, but it doesn't arrive in obvious ways. It can arrive out of what we may believe is a defense of the best we have.

The fact remains that, in a democratic society, we are responsible for the means used by our government in the name of protecting us, including how we allow ourselves to frame the issue. I think that we are here because we suspect that the two ways of looking at torture mentioned earlier – crude “realist” utilitarianism and moral absolutism – are inadequate. This public discussion hardly absolves us, but it is a small part of a maturing, democratic community.