Introduction to Ethics

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Noah Levin, PhD

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I would like to thank everyone that helped make this volume a success by writing one or more chapters and providing valuable feedback (every amazing contributor is listed below and along with their work in the Table of Contents and in the appropriate chapters) without whom this work *literally* would not have been possible. They were willing to put in long hours with no compensation other than pride in a job well-done and final product that will save students thousands of dollars in the years to come, make quality textbooks more readily available to anyone with a computer, phone, or tablet, *and* enhance Philosophical education with their thoughtful writings. I would also like to thank my school, Golden West College, its Academic Senate and Institute for Professional Development, and the Coast Community College District for approving and supporting the initial version of this work to be produced under a sabbatical project in the Spring of 2019. They have all been very supportive of OERs and my work with them for many years. Finally, I would like to thank my wife, Jenny, for pushing me to pursue this project and supporting me in all of my writing endeavors.

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Introduction

I would like to take a brief moment to explain the origin, purpose, layout, and uses of this work. I first got involved in using Open Educational Resources (OER) all the way back in 2005 through the influence of numerous professors and other graduate students when I was in graduate school at Bowling Green State University (in Ohio, not Kentucky) and continued to use them six years later as a clinical assistant professor at Washington State University. This was before the materials we used were known as OER. Instead of a traditional textbook, in some of our courses we used a combination of works in the public domain and/or articles available to all students electronically through the school's library. It took some effort to gather them and point students to them, but there was no loss in educational quality and the students were able to save money by not having to buy what could be very expensive textbooks. In fact, a majority of the material we used (and I still use) is present in many textbooks. Fast forward to today, and there are many OER works coming from many different sources: single-author works, works written by multiple authors, textbooks that are old enough the publishers don't care about them anymore so the authors decided to release them into the public domain, edited collections of articles by authors willing to give their work away for free (as is the case with this volume), and works that are collections of classic texts that are old enough to be in the public domain (which make up the bulk of the OER textbooks I have created). I believe it is vital to approach all textbooks as learning tools, which means they should never be relied upon as the only method of conferring information and can even be inaccurate, assuming the inaccuracies are used as learning points. With this attitude, it follows that OER works, even if they are not as polished or perfect as traditional textbooks, are *just as* useful, of comparable quality, and are greatly more accessible due their free and electronic nature.

I have organized this textbook around the way I teach my introductory course in ethics. Since I got to design this textbook and it's for use in my own courses, it directly follows the order in which I teach the topics and each chapter makes up the reading assignment for about 1.5 hours of class time. In other words, I meet with students for thirty 1.5-hour sessions in a semester (hence there are 30 chapters in this work), and for the first meeting, we read and discuss chapter 1, for our second we cover chapter 2, then chapter 3, and so on. It leaves the guess work out of what we cover and when we cover it and keeps things very organized and streamlined. I tell you this now to give you some insight into the way I approach my classroom and time with my students. Since this is intended for an intro-level course, keeping things on track, moving, and organized in this way has proved to be very beneficial for my students.

I know that this work is the same quality as the classic and standard textbooks used in many introduction to ethics courses, which includes a number of chapters on important contemporary topics in ethics that students ought to be familiar with. Having read through everything in this volume multiple times, I know that students will benefit from the great quality of the pieces contained within it. These works come to us for free from the donated time of numerous philosophers to whom I am greatly indebted and are acknowledged on the previous page. Because of their hard work, I know this textbook will be useful for anyone that is taking an introduction to ethics class or is interested in learning more about ethics. The articles, while sometimes challenging, are readable and accessible even to newcomers to philosophy. If you find this work useful, I humbly ask that you spread the good news to others about this work and other OERs. The more people use and create these materials, the better and more accessible education will become.

Contents

UNIT TWO: TORTURE, DEATH, AND THE "GREATER GOOD"

We do ethics so that we can understand how to live a good life and do good things and how to avoid living a bad life and doing bad things. Many important questions about living, however, ask us to also consider death. This Unit brings together a few related issues that are the opposite of living well: torture, poverty, euthanasia, capital punishment, and abortion. These are not cheery topics to consider, but they are some of the more important, and polarizing, moral questions that confront society today. At the heart of most of these questions lies two important assumptions: pain and death are bad. But what does this say about living? And what type of life do we care about living? Through examining the issues in this Unit, we'll come to a better understanding of what is valuable about living (and dying).

Chapter 7, *The Ethics of Torture* by Martine Berenpas, discusses the motivations for, but also the serious problems with, torture. Chapter 8, *What Moral Obligations do we have (or not have) to Impoverished Peoples?* by B.M. Wooldridge, discusses the difficult problem of balancing our own autonomy and rights to the fruits of our labor with what we ought to do for those that need our help. Chapter 9, *Euthanasia: Pro and Con* by Nathan Nobis, discusses the situations where death might be preferable to life and the possible concerns of allowing people to pursue medical options to end their lives (and get help doing it). Chapter 10, *An Argument Against Capital Punishment*, discusses the reasons for executing criminals and the potential problems for policies implementing it. Chapters 11, *Common Arguments about Abortion* by Nathan Nobis and Kristina Grob, lays out many of the more popular arguments that are presented for and against and abortion and points out many of the problems that plague them. Chapter 12, *The Better (Philosophical) Arguments about Abortion* also by Nathan Nobis and Kristina Grob, goes through the more nuanced philosophically-inspired arguments about abortion and illustrates that the most rational conclusion to draw is that most abortions are morally permissible and ought to be legal.

7 The Ethics of Torture

Martine Berenpas[1]

What is torture?

In 2002 the media began to carry stories that U.S. military officers were engaging in torturing a large number of prisoners at the Guantánamo Bay Naval Base. At first, the American government denied that torture methods were being used, but soon they had to admit that some torture was used as "an enhanced interrogation technique" to obtain information in the war on terrorism (Fletcher et al., 2008:4). In 2004, The Justice Department advised the White House that torture "may be justified" for interrogations conducted in the war on terrorism.

Torture is defined in part as the deliberate infliction of extreme suffering. Torture is prohibited by the *United Convention against Torture (Torture Convention*) and is a universal human right that is grounded in the *habeas corpus* right; the "right to have the body". The *Torture Convention* is derived from the prohibition on torture as stated in the *Universal Declaration of Human Rights*. During war time, the *jus in bello* ("justice in war") or the *International Humanitarian Law* is in place to "regulate how wars are fought, without prejudice to the reasons of how and why they had begun" (Luban, 2014). The *1996 War Crimes Act* particularly prohibits willful killing, torture and inhumane treatment at all times.

The various national and international conventions and laws against torture make a distinction between torture and inhumane treatment. Some forms of mental suffering for example are not considered as torture because it does not cause severe physical suffering.

All of the practices of torture presuppose that the torturer has control over the victim's body. Torture as such is the *intentional* infliction of extreme physical suffering on a non-consenting and defenseless person (Stanford Encyclopedia of Philosophy). The definition should exclude acts that are considered as acts of self-defense; torture is, contrary to acts of self-defense, aimed at undermining the victim's autonomy.

Generally speaking, torture is the intentional infliction of extreme physical pain either for personal pleasure, interrogational, punitive or terroristic purposes (Stanford University of Philosophy). These motives are not mutually exclusive insofar as acts of torture might be motivated by several of these purposes. For example, torturing a criminal might have a punitive purpose as well as a terroristic purpose to deter future acts of crime.

Intentionally inflicting physical pain on a non-consenting and defenseless person is a moral evil that particularly undermines our liberal (in the sense of liberty) values. Yet even actions that are inherently morally wrong might be morally justified in extreme circumstances. What if we can save 1000 of lives when we torture a terrorist who can tell us how to dismantle a bomb?

Torture is an interesting philosophical topic, not only because it is grounded in some account of

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human rights, but more because the justification of torture frequently relies on some version of the "ticking time bomb" scenario. This philosophical experiment is used to justify torture as an exception to forestall a future catastrophe.

In this chapter I will present some perspectives on torture from philosophers such as Aristotle, Hegel and Bentham. These perspectives show us that philosophers are concerned with the questions of if and when we can justify the use of torture. There are those such as Beccaria, who argued that torture should not be used because it is against the principle that someone should not be punished until he or she is proven guilty in court of law. Aristotle raises the question whether torture leads to "true knowledge". The only philosopher who argues that torture is justified in extreme cases is Jeremy Bentham. We will relate Bentham's argument to the ticking time bomb scenario, because justifying torture often relies on some form of consequentialism.

The philosophy of torture

Throughout history, torture has often been used to obtain information from a person. An important question is whether torture is even an adequate method to acquire useful information. Already in Aristotle's *Rhetoric*, we find a philosophical evaluation on the different positions that persons take in regard to evidence acquired through torture:

"Torture is a kind of evidence, which appears trustworthy, because a sort of compulsion is attached to it. Nor is it difficult to see what may be said concerning it, and by what arguments if it in our favor, we can exaggerate its importance by asserting that it is the only true kind of evidence; but if it is against us and in favour of our opponent, we can destroy its value by telling the truth about all kinds of torture generally; for those under compulsion are as likely to give false evidence as true, some being ready to endure everything rather than tell the truth, which others are equally ready to make false charges against others, in the hope of being sooner released from torture." (Aristotle, 2014:163).

Although Aristotle affirms that torture involves extreme physical pain inflicted to a non-consenting and defenseless person, he does not argue that torture is morally wrong. He only argues that the truthfulness of evidence obtained through torture is open for debate.

One of the first philosophers who argued that torture was a judicial vice, is Cesare Beccaria (1738-1794). Beccaria argued that torture was a violation of the principle that no one should be punished until proven guilty in court of law. Furthermore, Beccaria thought that torture was an ineffective punitive method that prevented the criminal from learning from his or her mistakes. Torture is not based on the principle of justice, but motivated by vengeance. Judicial punishment should never be based on emotions or sentiments, but should solely be based on the prevention of crime:

> "The purpose of punishment, then, is nothing other than to dissuade the criminal from doing fresh harm. Punishments and the method of inflicting them should be chosen that, mindful of the proportion between crime and punishment, will make the most effective and lasting impression on men's minds and inflict the least torment on the body of the criminal" (Beccaria, 1964:53).

Torture is particularly morally revolting because it is aimed at a non-consenting, defenseless person. Torture practices presuppose that the torturer has control over the victim's body and degrades the victim to a mere object. The controlling relation and the power that the torturer has on the victim, is in the philosophy of Hegel explained as a struggle between rights and recognition.

Hegel used law extensively both as an illustration of the dialectical process of history as well as the necessary step in the unfolding of the ethical life (*Sittlichkeit*). From a Hegelian perspective, torture

is grounded in the struggle of recognition and must be seen as a wrong in which the other is no longer or not yet regarded as counting as an end in itself. Hegel argues in particular that if the state uses torture as a judicial method, it fails to recognize the criminal as an end in himself and hinders the criminal's ability to achieve full self-consciousness within his community (Hegel, 1983:118; Woodson Hogan, 2013).

Most philosophers argue that torture is a morally questionable action that destroys human freedom, prevents the criminal from becoming a better person and treats humans as means and not as ends. The idea that a human should never be treated as a mere end is formulated by Immanuel Kant in the *Groundwork of the Metaphysic of Morals*. Kant identified the supreme principle, the categorical imperative, in which rational agency provides its own means. In other words: the categorical imperative is a moral law that is derived from pure reason and is universally valid. Based on the categorical imperative that one should act only according to the maxim of which one can make a universal law of the rule. The categorical imperative thus argues that we should not lie, because we don't want "You should lie" to be a universal moral law. Kant identified a second formulation of the categorical imperative for humanity, "Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end" (Kant, 1949:433).

Kant would argue the inherent immorality of torture, regardless of the circumstances or motives. Torture is always wrong, because it contradicts the second formulation of humanity and violates the categorical imperative. We will all agree that the use of torture should not be a universal moral law.

In philosophical terms, we call this approach to morality *deontological ethics*; in which the action in itself is assessed as wrong or right, regardless of the consequences of it. There are also some philosophers who argue that an action should be assessed on whether the action produces the right kinds of overall consequences. Those who argue that torture is morally wrong but is justified when it is used to prevent even greater crime, all adhere to some account of consequentialism (Stanford Encyclopedia for Philosophy).

One of the most well-known accounts of consequentialism is Jeremy Bentham's Utilitarianism. Bentham's basic idea is that we should maximize utility, which is often defined in terms of universal well-being. Based on this line of reasoning, Bentham's raises the question whether torturing a criminal is justified when it prevents the killing hundreds of innocent people:

> "For the purpose of rescuing from torture these hundreds innocents, should any scruple be made of applying equal or superior torture, to extract the requisite information from the mouth of one criminal, who having it in his power to make known the place where at this time the enormity was practicing or about to be practiced, should refuse do so?" (Bentham, 1804:6).

Bentham's argument is very close to what nowadays is known as the "ticking time bomb" scenario. Most persons who argue that torture is justified in extreme circumstances rely on some version of the "ticking time bomb" scenario and argue that torture is sometimes justified when it is used for interrogational purposes.

The "ticking time bomb" thought experiment

Thought experiments are frequently used in philosophy as a method to justify our intuitive thinking. A common feature of these thought experiments is that they are imaginary and involve some degree of generalization (Williamson, 2018).

One of the most used thought experiment in the torture debate is the "ticking time bomb"

scenario. This experiment asks us to put ourselves in the position of an experienced law officer facing a situation in which a terrorist group states that it has hidden a nuclear bomb in the city center of New York. The authorities have arrested the leader of the group who says that he knows where the bomb is located. The terrorist however refuses to reveal the bomb's location. As he is detained in the interrogation room, the clock is ticking. The question that this thought experiment addresses is whether we should use torture to obtain the information from the terrorist that can prevent the catastrophe.

The ticking time bomb argues that torture is inherently wrong, but that it might be justified in extreme circumstances. Furthermore, the "ticking time bomb" seems to suggest that torture might be justified for interrogational purposes to prevent a future catastrophe. Furthermore, the ticking time bomb suggests that torture is the only way of preventing the catastrophe. The terrorist in this experiment is already guilty – already a criminal – so why should we take his human rights into account if he is willing to kill so many innocent people?

The "ticking time bomb" is so mesmerizing because it plays with our moral intuition that we should at all time prevent innocent people from being killed. The scenario is framed to see the terrorist as a bad guy and, as such, we are more prone to dismiss his human rights and to justify the use of torture to save innocent lives. The problem with the "ticking time bomb" scenario is that torture in real-life cases are justified based on some version of this experiment. Our reality is, however, more complex and ambiguous than a philosophical thought experiment.

First of all, it is a false dichotomy to claim that we either torture the terrorist and save lives or not torture the terrorist and lose lives. In a real "ticking time bomb" situation there are certainly more options like evacuating the city or trying to locate and dismantle the bomb. Furthermore, in most real-life scenarios we most of the time only have a strong suspicion that the suspected is involved in the terrorist attack. We might have the suspicion that he or she is the mastermind behind the attack, but in real-life cases we are not one-hundred percent sure. Even in attacks that already happened, such as the 1995 Oklahoma bombing, we are still faced with unexplained details and are left with the question whether we have arrested all the accomplices involved in organizing and executing a crime. And even if we know that the suspect is the mastermind behind the crime, it might not lead to the information that we need. The point here is that in real-life cases we run the risk that we are torturing a suspect who does not have the information that we need, or does not give the information we need or does not give us it early enough to prevent the crime. One of the cases similar to the "ticking time bomb" scenario was the 2002 kidnapping in Germany of Jakob von Metzler in which the suspect revealed the location of the kidnapped boy because the police threatened to torture him; unfortunately, however, the boy had already been killed.

Even when we are sure that the suspect has the information, we are still faced with ethical challenges. When we argue that torture is allowed in extreme circumstances, we also need to think about what kind of torture techniques are permissible to extract the information from the suspect. Should we only engage in "torture lite" such as standing against the wall for a prolonged period, sleep deprivation and continuous sensory stimulation or should we use physical torture such as waterboarding, slapping or branding? And who should administer torture? Should we train somebody who can inflict just the right amount of physical or mental pain that will break the suspect?

Consequentialism argues that we should assess the good that results from the moral act against the bad. However, the problem in the "ticking time bomb" scenario is that the attack did not yet happen. It is only a threat; we don't know how many people will die nor do we know for sure that the bomb will go off (it might be fake, or not working properly). How should we justify the use of torture against the consequences that are so difficult to determine?

David Luban aptly points to the fact that the "ticking time bomb" scenario is often used to justify torture in extreme cases, without having to engage in a thorough debate on torture, "Talking about them [ticking time bomb scenarios] is a distraction from discussing the actual practice of torture with no ticking bombs in the background" (Luban, 2014:75).

The "ticking time bomb" scenario in its generalized and idealized form is not helping us to address the issues we should address when we want to justify torture in extreme cases. Ticking time bomb versions in real-life are far more complicated and are not as clear-cut as the idealized version of it. Even the German case, in which the mere threat of torture did lead to the victim, no lives were saved. The mere fact is that torture always violates the human rights and dignity of the suspect. Yet, violating the suspect's rights does not always save lives nor does it always lead to the prevention of a catastrophe.

Using the "ticking time bomb" scenario to justify torture in extreme circumstances is an ethically questionable argument in which we are faced with a lot of uncertainties and challenges. Questions and challenges that, when taken seriously, are not in favor of justifying torture, but highlight why we should refrain from torture at all times.

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For Review and Discussion:

1. Do you think that the *Torture Convention* is a natural law that should be abided at all times? What are

the problems and challenges of universal declarations such as the *Torture Convention*?

2. Philosophical experiments are frequently used in philosophical debates. When are these experiments useful and when are they not?

3. In the scenario of the ticking time bomb, some scholars are reluctant to concede that the officer is morally entitled to torture the terrorist. How do these scholars justify their position?