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A Moral Investigation of Torture in the Post 9.11 World

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Joe is a junior studying criminal justice and philosophy. He feels that this research was a great opportunity to blend both fields of study. Currently he is enrolled in a directed study with Dr. Olson of the Department of Criminal Justice learning how to map crime and analyze crime data. Joe is applying for a summer grant to study the relationship between robberies and drug offenses using a spatial analysis. He is looking forward to applying to graduate schools in the fall.

The field of philosophy is unique, as it allows one to logically examine issues in all disciplines, from science to politics to art. One further important discipline that philosophy examines is criminal justice. In this respect, one approach philosophy can take when examining criminal justice is to assess each issue by questioning its morality—that is, whether an action within the issue is right or wrong based upon a system of ethics. This approach concerns the subfield of philosophy known as ethics, a subfield that includes questions concerning what is morally good and morally bad. When one is faced with an ethical situation, one must decide whether or not the action is morally good. It is important for one to understand that these issues in question, especially those in the field of criminal justice, provide great topics for debate and discussion. It is within these debates and discussions that individuals support their beliefs of the morality of an action with ethical systems.

It is crucial, for the sake of argument, that the individuals involved agree on the definitions and understanding of terminology used to avoid miscommunication. As this research concerns the issue of torture in a post-9/11 society, I will clearly define torture, suspected terrorist and interrogation in the context I wish to use each term. Torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession (Hamm, 2007). In regards to who is being tortured, I shall focus on suspected terrorists which, in this case, are those that are believed to have any information regarding terrorist activities, those that harbor terrorists and those that commit acts of terror according to U.S. intelligence. Finally, these acts of torture of suspected terrorists usually occur during sessions of interrogation. I define interrogation as any point in which a suspect is being questioned or asked to provide information on any event surrounding acts of terror, terrorist activities or one's involvement with those that commit acts of terror.

Part I: Literature Review

The issue of torture has been the focal point of discussion of researchers both in the field of ethics and in the field of criminal justice. In order to fully understand the issue of torture, one must become acquainted with several aspects that are involved. These aspects include the laws that prohibit/inhibit torture, torture typology, techniques that are used for retrieving information

from the suspects, the personnel that apply these techniques, the victims of torture and the locations of the acts of torture. There is a great collection of literature, research and discussion on the issue of torture, as well as the surrounding aspects previously mentioned, of which this portion of my work is dedicated.

The laws regarding torture in the United States have been the focus of debate in the last decade, more specifically, since September 11, 2001. Though the focus is fairly recent, the laws that are scrutinized regarding torture date back to those constructed by the framers of the U.S. Constitution in 1776. After the Declaration of Independence, many colonies wrote state constitutions using Virginia's state constitution as the model (Skoll, 2008). Virginia dedicated section eight of their state constitution specifically to self incrimination. As stated in section Eight, "...nor can he [the citizen of the state] be compelled to give evidence against himself" (as cited in Schwartz, 1971). Although this law was created in the eighteenth century by the framers of the U.S. Constitution, there has been a great deal of controversial issues surrounding it. Take, for example, the case of *Brown v. Mississippi* (1936). This case was ruled in favor of the defendant, Ed Brown, who was charged with the murder of Raymond Stewart. The defendant was one of three black males that were beaten, hung and tortured by the sheriff and other people gathered at the crime scene (*Brown v. Mississippi, 1936*). Brown was tortured and beaten until he admitted to the murder of Raymond Stewart. After a series of appeals, the Supreme Court ruled that Brown's Fourteenth Amendment right to due process and Fifth Amendment right to self-incrimination had been violated, and so the decision was reversed. This was the first case in which the Supreme Court reversed a decision based on torture (Skoll, 2008). The next case in which the court more clearly defined torture, and a stronger foundation for which future rulings could rely upon, is the case of *Chambers v. Florida* (1940). In this case, the court ruled that any act of persistent questioning, which is different than prior cases because this one concerns non-physical events, is considered an illegal act that is comparable or even equivalent to torture (Khasin, 2009). One must understand that in regards to the laws prohibiting torture that the court, in this case, did not make a ruling based on a specific torture law; rather, they made their ruling based on the results of the torturous acts which violated the Fifth and Fourteenth Amendments.

Torture, as is the case with many other practices that concern the criminal justice system, has long been studied and analyzed. In order to obtain a better understanding of torture and its intentions, one must become acquainted with torture typology. There are three types of torture, as illustrated in the work by Christopher Tindale, *The Logic of Torture: A Critical Examination* (1996). The three types of torture are *interrogational torture*,

deterrent torture and *dehumanizing torture* (Tindale, 1996). Each type of torture has a purpose, or intent, which is used to determine which kind of torture is being used in each event. This typology also states that each incident of torture can be categorized under one type; however, it may also fall under more than one type.

The first type of torture is referred to as interrogational torture. As with each type of torture, interrogational torture has a specific goal. This type of torture is used to extract information from an individual (Tindale, 1996). Under this notion, torture limits its victims to those that are believed to be the possessors of crucial information. The second type of torture is deterrent torture. Here, torture is used to either encourage or discourage the actions of a suspect or population (Tindale, 1996). Deterrent torture does not have a limit to the scope of its victims; more clearly, victims can be randomly selected. This random selection is said to be the factor that would satisfy its goal of deterring criminal behavior. The victims of this type of torture are thus not limited to suspects or, for the sake of this research, suspected terrorists. Deterrent torture uses the pain and suffering of the victims, who are generally innocent people with no pertinent information regarding the crime that is, has or is about to be committed (Tindale, 1996). The third type of torture is referred to as dehumanizing torture. The goal of dehumanizing torture is to change the self-conception of the individual. Here, dehumanizing torture can be a brutal form, more so than others, because the culture, religion or beliefs of the victim are targeted in which the torture will violate these aspects to humiliate, or, dehumanize the suspects (Tindale, 1996). In regards to the torture of suspected terrorists, this type of torture plays a crucial role in the argument to be presented on the issue of morality later in this paper.

In many instances, the individuals that carry out the act of torture are the center of attention. This is particularly evident in cases of torture that occur on U.S. soil. Domestic cases of torture, generally speaking, occur during interrogation situations between law enforcement officials and suspects. The law enforcement officials carrying out interrogations consist of agents in the federal sector (i.e. FBI, DEA, ATF) and police officers from the local, county and state departments. Since the terrorist attack of September 11, 2001, there has been a noticeable change in interrogation tactics and standards (Stewart & Morris, 2009). There have been many claims that suggest policing has entered a new era, an era now referred to as the 'homeland security era' (Stewart & Morris, 2009). This era focuses on the issues of terrorism and prioritizes threats of terrorism over any other crime.

Although torture is not a dominant domestic concern, there is a relationship between torture and interrogation. The traditional use of torture has been for the extraction of information, which falls under the category of interrogational torture (Tindale, 1996). This is an important factor in this research because the idea that the information one is withholding can be extracted via torture is the main justification behind torture. This is most evident, as far as domestic cases or torture are concerned, in interrogations. In these interrogations, there are specific types of torture that are used on the suspect. However, these types are not nearly as severe as the types of torture reported outside of the United States. For example, one type of torture used by law enforcement officials in domestic cases is sleep deprivation. In the case of *Ashcroft v. Tennessee*, the suspect was questioned by police for a period of thirty-six hours without sleep or even rest (322 U.S. 143, 153-54, 1944). Sleep deprivation is a fine example of torture that is not as physical as whippings or beatings, but it is more psychological. Furthermore, the uniqueness of this type of torture is that the suspect is actually harming his or her own body by staying awake (Hamm, 2007). Due to the fact that the interrogators are not actually physically harming the suspects, one may find it difficult to prove that this is torture, depending on how one defines torture. Although torture on U.S. soil is not a prevalent issue, this is not the case with torture in countries outside of the U.S.

The most provocative and exploitive case of torture abroad in this post-9/11 society is the case of Abu Ghraib. Located in Baghdad, Iraq, Abu Ghraib was the prison in which the U.S. held suspected terrorists since the start of the war on terror. At this facility it was the job of the American soldiers, or more specifically, the Military Police (MPs), to run the facility as if they were corrections officers at any other prison. Abu Ghraib, however, was not like any American prison. The inmates consisted of several thousand men, women and children of all ages that were suspected of involvement or to have knowledge of terrorist activities (Kennedy, 2006). American soldiers were assigned to carry out missions in which their duty was to detain random Iraqi citizens and transport the detainees to prisons such as Abu Ghraib (Hamm, 2007). Once the detainees were processed and housed in the prison, the MPs and CIA agents were to carry out the “interrogation” process. This process required American soldiers, MPs and CIA agents to question the inmates in order to obtain any information they may have in regards to terrorism and terrorist organizations.

The first step in this interrogation process required the MPs and American soldiers to “soften up” the inmates for questioning by more highly trained interrogators, such as CIA agents (Hamm, 2007). The order of preparing inmates for questioning, or softening them up, was not only an order

from the CIA but also from the highest point in the chain of command, President George W. Bush. Supporting evidence, as well as photographic evidence, reveals that orders and pressure from the chain of command from top to bottom encouraged soldiers, such as Private Lynndie England and Corporal Charles Grainer Jr., to do what it takes to obtain information from the inmates (Hamm, 2007). Some of the techniques used to soften up the inmates consisted of stress positions, forced removal of clothing, light deprivation and prolonged exposure to loud noises (Schlesinger, 2004). The aforementioned techniques were used while the inmates were in the prison, but do not include the treatment of the inmates while they were being detained during the random sweeps by U.S. soldiers. The treatment during the process of detaining the Iraqi citizens included being strapped to the hood of military trucks during transportation, receiving beatings in front of family members, being struck by rifles, being removed from their house in only underwear, and being denied to gather any clothes or items to maintain the proper hygiene (Hamm, 2007). This type of treatment was aimed to humiliate Iraqis, especially men, in order to weaken them and instill a strong sense of fear to allow the interrogators to successfully obtain information regarding terrorism and terrorist activities (Hamm, 2007).

While housed in the prison, the inmates faced cruel treatment from soldiers, CIA agents and MPs, such as Private England and Corporal Grainer Jr. The impact of the actions of these two soldiers plays a crucial role in the consequences of torture in this post-9/11 society, more specifically, during the war on terror. Photographs taken by Private England and Corporal Grainer Jr. and other accomplices reveal that the acts of torture and inhumane treatment that took place at Abu Ghraib were highly impactful (Hamm, 2007). The torturous acts of these two soldiers consisted of forcing Iraqi men to watch the abuse of loved ones, mutilation via dog bites, asphyxiation, burning, stretching and forcing the inmates to eat pork and drink alcohol to violate the customs and standards of their religion (as cited in Marks, 2005). The torture took place in all corners of the prison such as showers, hallways, cells and vehicles—hence, the reason why soldiers referred to it as its own hell (Hamm, 2007). One Abu Ghraib detainee would later recall: “We suffered. We Wept. We kept silent” (Kennedy, 2006). These acts of torture were so impactful on how Americans were viewed by the Iraqi community, as well as the Islamic community, due to the fact that this torture scandal was documented by photographs. These photographs were released upon the media discovery of the torture of inmates in April of 2004 on the CBS television program *60 Minutes II*. The pictures soon emerged on national news broadcast stations such as CNN and, even internationally, on Al-Jazeera (Hamm, 2007). The Islamic community, as well as the rest of the world, was outraged by the torture of

inmates by U.S. soldiers. Just four days after the entire world was introduced to Abu Ghraib, terrorist leader Abu Musab al-Zarqawi released footage on an Islamic militant website of the beheading of American journalist Nicholas Berg. The video began with Abu Musab al-Zarqawi making remarks about the released photos of the Abu Ghraib torture incident and the footage revealed that the victim was wearing a jumpsuit similar to the ones that Iraqi inmates wore at Abu Ghraib (Hamm, 2007). The reports of the Abu Ghraib torture scandal by both the U.S. Army and the International Committee of the Red Cross would later reveal that upwards of 85% of the inmates at Abu Ghraib were innocent and contained no information on terrorist activity (Hamm, 2007).

Another issue that involves the torture of suspected terrorists includes the notion of rendition. Rendition is the system of sending captives to other countries with less progressive human rights standards in order to interrogate them more aggressively (Moher, 2004). Under rendition, the United States sends captives to locations throughout the world where interrogators could torture the captives without any limitations set forth by civil rights (Altheide, 2009). The notion of rendition is interesting because it allows the United States to torture suspects, or in this case, suspected terrorists, and officials will not have any direct knowledge of it since it takes place outside the U.S. (Moher, 2004). Thus, without having knowledge of the possible acts of torture that may occur, the U.S. avoids breaking any laws that prohibit the use of torture. Although the U.S. can evade breaking laws by practicing rendition, it does however open the door for extremely harsh torture techniques, due to the fact that there are little to no laws that protect the suspects from this amount of cruelty. The case of Abdul Hakim Murad in 1995 presents itself as a fine example of the extreme torture that can occur under the act of rendition. Murad was sent to the Philippines for interrogation where he was tortured for over two months (Moher, 2004). The techniques involved in this act of torture included beatings with large pieces of wood (which broke his ribs), forced water into his mouth and crushing lit cigarettes in his genital region (Moher, 2004). Although the act of rendition is not common, it is yet another process in which the United States can torture suspects while ensuring they do not break any laws prohibiting torture.

At this point, all of the relevant facts and necessary knowledge regarding the issue of the torture of suspected terrorists has been presented and explained. With the current facts of the issue of torture presented, the question of this research comes to the forefront. Namely, is it ethical for the United States to torture suspected terrorists in a post-9/11 society? If so, what is the ethical justification one can use to ground such torture? If not, what are the moral reasons one must follow to hold that torture

is unjustified? In order to analyze and evaluate the moral issue of torture, one must become acquainted with an ethical theory that can be applied in order to properly determine whether or not torture is moral or immoral.

Part II: Ethical Theory

The field of ethics consists of many types of ethical theories that lay out a detailed system which one can use to evaluate the morality of an action, that is, whether or not an action is right or wrong. As with every set of choices in which one is faced, the individual can evaluate the available options and weigh their own values in choosing to act in such a way that is morally good according to one's beliefs. Ethics and ethical theories are unique because they can be applied to any situation under any circumstance. Although there are many ethical theories in which one can apply to a situation to determine morality, the focus of this research rests upon one ethical theory: deontological theory.

The deontological theory of ethics is based primarily upon the work by Immanuel Kant, *Grounding for the Metaphysics of Morals*. The foundation of determining morality under Kant's system includes the moral principle, which Kant refers to as the *categorical imperative*. Kant's categorical imperative provides the formula one should use to determine whether or not one's maxim, or personal inclination, can be made into a universal law. This is designed to determine morality due to the fact that it objectively reveals any logical contradictions, or factors that would make the maxim immoral, within the maxim itself. If the maxim does not hold a logical contradiction, then it can be made a universal law. As Kant explains, the categorical imperative can be formulated in the following way: "I should never act except in such a way that I can also will that my maxim should become a universal law" (Kant, 1993). This is also known as the universal formulation (Kant, 1993). By this, Kant means that, in order to determine whether or not an action is moral, one should determine whether or not it could be willed as universal in such a way that "the ordinary reason of mankind... agrees completely with this" (Kant, 1993). This simply means one cannot make the maxim a personal exception, but rather one must use reason to objectively determine the morality of the maxim. When determining the morality of a maxim, the categorical imperative allows one to see whether something is moral or immoral, while leaving no doubt in one's mind regarding the answer.

To determine the moral value of any action, Kant maintains that the categorical imperative is formula one ought to use. For example, if a man were contemplating whether it would be moral or immoral to take his own life due to depression and dissatisfaction in life, he should evaluate his actions under

the categorical imperative. The act of taking one's own life due to dissatisfaction and unhappiness is immoral because there is a contradiction if it were to be made into a universal law. The contradiction is as follows. As beings of nature, in order to continue as existing beings in nature's system, we must continue life. If one decided not to continue life due to a feeling of unhappiness or dissatisfaction, nature's system of continuing life would be destroyed. In the end, the act of committing suicide for the sake of negative feelings will destroy our existence in nature's system which contradicts our original goal. Also, the act of taking one's own life is immoral on the grounds that one must never use a human being as a means. The act of suicide requires one to end one's own life to escape their unhappiness and dissatisfaction which is using oneself as a means, therefore, deeming this act immoral on more than one ground. However, in the same regard, if the same man decided that he will not take his own life, it would be a morally good act because he is following his duty as a being of nature to continue his existence. Therefore, according to the categorical imperative and Kant's system of ethics, this action is immoral.

It is important to note, however, that a maxim is not necessarily morally permissible just because it does not entail a logical contradiction. Kant specifically explains that the final step of evaluating the moral value of an action under the categorical imperative requires one to ask the following question: Would one rationally will this action into a universal moral law? Even though the action may not hold a logical contradiction, it is important that the action can rationally be made into a universal moral law. The following example will provide a better understanding of this notion. Imagine a scenario where a moral law exists that states one shall not help others in need. There is no logical contradiction here. However, there is still a problem. Would one rationally will this action into a universal moral law? If so, whenever a situation arises in which a person needs assistance from another, that person would not receive the assistance. One must not think about the consequences, but, rather think about the act. It simply does not make sense to make a universal moral law that restricts any form of one person helping another. Furthermore, even the individual that ponders the thought of willing this act into a universal moral law would, in turn, never receive help from others when in need. No rational individual would want to will this action into a universal moral law. Thus, just because a maxim meets the criterion prohibiting a logical contradiction, that maxim may still be deemed immoral should it not be rational to will this maxim into a universal moral law.

Now that Kant's deontological ethical theory has been presented, I will illustrate how this system of ethics provides the necessary logical foundation to prove that torture is

immoral on any grounds. This theory will be further examined with examples that specifically regard the torture of suspected terrorists in a post-0/11 society. In doing so, I will present an argument supporting the current practice of torture. Next, using Kant's deontological ethics, I will illustrate how the argument in support of torture, from the Kantian perspective, is wrong. From the deontological viewpoint, one will be able to gain a better understanding for the moral examination of torture from an ethical perspective.

Part III: Discussion

The case of torture is a prime example which one can analyze and evaluate under Kant's deontology. In order to evaluate the morality of torture under this system, one must focus on two formulations of Kant's categorical imperative. The first formulation is the universal formulation, which we have discussed in the previous section. The second formulation is what we refer to as the *practical imperative*. This formulation states that one cannot use another human being as a means, that is, as a gateway to accomplish another objective: "Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means" (Kant, 1993). In this section, I will first present an argument in favor of the practice of torture under Kantian ethics, on the grounds that torture can be construed as a morally good act. Then, I will proceed to evaluate this argument using the deontological criteria of evaluation. Finally, I will present my argument against the act of torture and show how torture is immoral according to Kant's ethical theory.

Many people maintain that torture is a necessary tool utilized by law enforcement officials worldwide for one overarching purpose: to obtain information regarding criminal acts. For example, in the case of Abu Ghraib, the prisoners housed in this facility were tortured by soldiers and federal agents in order to extract information regarding terrorism. Under Kant's deontology, one could argue that it is the moral (and civic) duty of the law enforcement official to do anything in their power to ensure that the homeland and its citizens are safe and secure from acts of terror. This is reinforced by the tragedy of September 11, 2001, where several thousand innocent Americans were killed due to an act of terror. The United States has since taken powerful action to prevent another tragedy from occurring. The duty of the soldiers, MPs and federal agents stationed at Abu Ghraib was to extract information from any individuals that may have information on links to terrorist organizations or terrorist plots. Since the enemy combatants or civilians in the Middle East region and, in particular, Iraq, are often hostile and violent toward Americans and soldiers in their country, it is safe to assume that the majority will not simply hand over this

type of information to interrogators. Due to this, the United States must make tough decisions to allow the torture of these enemy combatants to take place in order to fulfill their duty to extract information in the hopes of preventing any future acts of terror on Americans. In respect to Kant's system of ethics, one may argue that torture is a moral act because the individual is simply fulfilling his or her duty as a law enforcement official or soldier, to ensure that the homeland is safe and secure of any threat of terrorism.

One may also argue that torture is a moral act through Kant's categorical imperative. For example, if an individual was withholding information regarding terrorism and the United States needed that information to secure the safety of the homeland then some may argue that interrogators ought to extract that information in any way possible, even via torture. Under the universal formulation of the categorical imperative, this act could be deemed moral because it can be made into a universal moral law. For instance, if the United States were to make a law that stated any individual withholding information on terrorism is subject to torture, one can imagine that it could be made into a universal law as there is no logical contradiction. That is, one can imagine that all suspected terrorists are tortured in order to gain information without running into a logical contradiction that prohibits us from achieving the end of extracting information. It is logically possible to torture all suspects to achieve such sensitive information. Therefore, torture satisfies Kant's categorical imperative because it can be made universal in cases where the governing body of a country is simply trying to carry out their mission in protecting the safety and security of their citizens.

On the contrary, I argue that, under both formulations of the categorical imperative (the practical imperative and the universal formulation), torture should be considered to be an immoral act. As such, the previous argument fails to fully apply Kant's ethics to the issue of torture. To see why, let us examine torture under Kant's practical imperative first, then re-examine torture under the universal formulation. Kant maintains that one cannot use another human being simply as a means (Kant, 1993). In any situation of torture, there is the interrogator(s), or torturer(s), and there is the suspect on the receiving end of the torture. Two out of three of the forms of torture, under Tindale's typology, are intended to produce a result in which the interrogators can torture the suspect in order to extract information (in this case, the information is regarding terrorism). In order for the interrogators to accomplish their goal of extracting information from the suspect, they must treat the suspect as a means. That is to say, the suspected terrorist is treated as a means to achieving the end of obtaining the information. Although one can argue that, in order for law enforcement officials to carry out their

duty, they must torture, the act of torture remains immoral because it violates the practical imperative since it treats the suspect as a means to an end. It is simply not possible for torture to be conducted without using the suspect as a means. Under Kant's practical imperative, using any individual as a means to an end is immoral. Therefore, torture is immoral under Kant's practical imperative on the grounds that it treats the suspect as a means in order to satisfy the goal of the interrogators.

Now that we have examined the morality of torture under the practical imperative, let us return to examine the morality of torture under the universal formulation. As previously mentioned, the universal formulation has a method that must be followed when one is determining the morality of an action. Furthermore, recall that, even if the action does not hold any logical contradictions, it can, however, still be deemed immoral according to the universal formulation. In order for an action to be deemed moral, one must be able to rationally will that act into a moral law. When it comes to the case of torture, I accept that there is no logical contradiction in the action itself. However, I argue that the act of torture is immoral under the universal formulation because one would not rationally will the act into a moral law. Take the following situation as an example. In the case of torture in Iraq and Abu Ghraib, any individual suspected to have information on terrorist activities or terrorism is subject to torture. If this were made into a moral law under the universal formulation, it would have to become a *universal* moral law. In this case, any individual suspected to be withholding information regarding terrorism is subject to torture. The problem with this moral law is the fact that the individuals that could potentially be tortured are only *suspected* of having information on terrorism. As we have seen in the case of Abu Ghraib, any individual can be suspected of having information on terrorism and, thus, be subject to torture. Furthermore, the individual that wills the act of torture into a moral law under these conditions through the universal formulation is also subject to torture. One issue that arises is the accuracy of these claims. In the Abu Ghraib case, most of the individuals that were tortured did not have any knowledge pertaining to terrorism or related activities (Hamm, 2007). Thus, one could not rationally will this law into existence, as the lawmaker himself or herself, would run the risk of being subject to torture on account of suspicion alone. But one would not want to rationally subject oneself to being treated simply as a means (i.e., an object of torture) to extract information that one doesn't even have. Due to this, I maintain that because the individuals were simply *suspected* of having information regarding terrorism, it does not allow for the torture of these individuals, according to Kant's deontology.

In conclusion, the act of torture and the surrounding issues have been a predominant debate worldwide since September 11, 2001. This issue raises personal feelings as well as questions of morality. It is difficult for one to objectively examine torture, more specifically, when regarding suspected terrorists. This examination is simply one perspective, or, one way of examining the act of torture under a system of ethics. The deontological theory of ethics put forth by Immanuel Kant proves to be an effective system when evaluating the morality of torture. As I have presented in this work, the act of torture is believed by some to be moral; however, under the Kant's deontology, it is not.

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