

MORAL INTEGRITY AND INTERROGATIONAL TORTURE IN THE WAR ON TERROR

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### **Lay Abstract**

In response to the terrorist attacks of September 11, 2001, the United States government engaged in acts of torture to acquire information from terrorists. In this thesis, I will argue against the use of torture by focusing on the concept of moral integrity. I will argue that common arguments used to justify the use of torture are flawed for a variety of different reasons. I will then argue against the use of torture by arguing that torture violates the moral integrity of state institutions and government officials. Government institutions and the state officials who represent those institutions ought to embody the moral principles that help form the moral foundation of the state, and I will argue that committing acts of torture go against these moral principles and, hence, degrade the moral integrity of state institutions and government officials.

### **Abstract**

In this thesis I will argue that interrogational torture, understood as the infliction of severe pain and suffering in order to acquire information from someone, is morally impermissible. I will begin by considering two arguments in support of interrogational torture: the consequentialist argument and the rights-based argument. I will argue that both of these arguments are flawed and fail to establish the conclusion that interrogational torture is morally permissible. I will then provide a philosophical analysis of the concept of moral integrity, and show how this idea of moral integrity applies to state institutions and government officials who represent those state institutions. I will argue that any government official who engages in an act of torture degrades their own moral integrity as a representative of state institutions, along with the moral integrity of state institutions.

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## **Table of Contents**

<b>Introduction.....</b>	<b>1</b>
<b>Chapter One: Moral Justifications for Interrogational Torture in the TBS .....</b>	<b>12</b>
<b>1.1 The Rights-Based Argument for Torture.....</b>	<b>13</b>
<b>1.2 A Critique of the Rights-Based Argument .....</b>	<b>21</b>
<b>1.3 The Consequentialist Argument.....</b>	<b>25</b>
<b>1.4 A Critique of the Consequentialist Argument .....</b>	<b>28</b>
<b>Chapter Two: Moral Arguments Against Interrogational Torture in the TBS .....</b>	<b>42</b>
<b>2.1 The Utilitarian Argument against Interrogational Torture in the TBS.....</b>	<b>43</b>
<b>2.2 The Deontological Argument against Interrogational Torture in the TBS.....</b>	<b>57</b>
<b>Chapter Three: A Philosophical Examination of Integrity .....</b>	<b>66</b>
<b>3.1 Understanding Integrity .....</b>	<b>68</b>
<b>3.2 Integrity and the Ticking Time Bomb Scenario.....</b>	<b>82</b>
<b>Chapter Four: Interrogational Torture and the Degradation of Institutional and Professional Integrity .....</b>	<b>90</b>
<b>4.1 Institutional &amp; Professional Integrity .....</b>	<b>91</b>
<b>4.2 Objections and Responses .....</b>	<b>110</b>
<b>Conclusion .....</b>	<b>120</b>
<b>Bibliography .....</b>	<b>125</b>

## **Introduction**

Prior to September 11<sup>th</sup>, 2001, the question of whether a liberal-democratic government should ever use interrogational torture to acquire information from a detainee seemed to be beyond discussion. Not only were there numerous international legal documents that explicitly outlawed the use of torture, but also, with few exceptions, philosophers often regarded torture as an abhorrent practice that could have no moral justification.<sup>1</sup> Prior to 2001 it was generally thought that because of the intense physical and/or mental pain and suffering that accompanies any act of torture, this practice could have no possible moral justification, especially in liberal-democratic governments which are committed to moral principles such as respect for persons and respect for universal human rights.

And then, September 11<sup>th</sup> happened. The terrorist attacks of 9/11 gave new life to the question of whether liberal-democratic governments should ever use torture on a detainee to acquire information about a future attack. Shortly after these terrorist attacks, the Abu Ghraib scandal was revealed to the world, where some U.S. soldiers engaged in practices that many considered to be torture. During this time, the philosophical literature on the moral and legal status of torture also began to increase. A topic that had previously so little philosophical attention paid to it suddenly became a practical topic worthy of moral consideration: Should we ever torture a terrorist to prevent a future attack and potentially save thousands of innocent civilians?

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<sup>1</sup> In a 1978 paper, Henry Shue argued that in rare and extreme cases, torture might be morally justified. He later reverses this stance and argues categorically against the moral justification of torture, in a paper written in 2005. See Henry Shue, "Torture," *Philosophy and Public Affairs* 7 (1978): 124-143; "Torture in Dreamland: Disposing of the Ticking Bomb." *Case Western Reserve Journal of International Law*, 37, 2 (2005): 231-239.

Throughout my dissertation I will be relying on the following definition of torture, outlined in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>2</sup>:

the term "torture" means 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, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

This definition will be useful for my purposes, as I am restricting my discussion of the moral status of torture to instances where torture is inflicted by public officials for the acquisition of information. While I do acknowledge that this definition does have some potential problems (for example, what counts as ‘severe’ pain or suffering?) such definitional issues are beyond the scope of my dissertation. My main goal is to outline and discuss why it is morally problematic for interrogational torture to be authorized and carried out by liberal-democratic states.<sup>3</sup>

In answer to the question of whether liberal democracies should ever torture a terrorist to acquire potentially life saving information, philosophers have posed a thought experiment known as ‘the ticking time bomb scenario’ (TBS). While there are many variants of this thought experiment, consider this outline by Seumas Miller:

A terrorist group has planted a small nuclear device with a timing mechanism in London and it is about to go off. If it does it will kill thousands and make a large part of the city uninhabitable for decades. One of the terrorists has been captured by the

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<sup>2</sup> United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

<sup>3</sup> Another potential issue one might raise is regarding the distinction between acts of torture and acts of cruel, inhuman, and/or degrading treatment or punishment. Ultimately, delineating these differences is tangential, for whether an interrogator inflicts torture or cruel, inhuman, or degrading treatment or punishment, both ultimately violate liberal democratic principles, and both, I shall argue, result in a violation of moral integrity.

police, and if he can be made to disclose the location of the device then the police can probably disarm it and thereby save the lives of thousands. The police know the terrorist in question. They know he has orchestrated terrorist attacks, albeit non-nuclear ones, in the past. Moreover, on the basis of intercepted mobile phone calls and e-mails the police know that this attack is under way in some location in London and that he is the leader of the group. Unfortunately, the terrorist is refusing to talk and time is slipping away. However, police know that there is a reasonable chance that he will talk, if tortured. Moreover, all their other sources of information have dried up. Further, there is no other way to avoid catastrophe; evacuation of the city, for example, cannot be undertaken in the limited time available. Torture is not normally used by the police, and indeed it is unlawful to use it.<sup>4</sup>

Despite it being somewhat unrealistic, discussions of the moral status of interrogational torture usually begin with this thought experiment. For when we are discussing whether it is morally permissible for a state to torture, it is within the context of an extreme emergency like the TBS that this discussion occurs. The TBS does serve a useful purpose in asking us to consider how liberal-democratic governments should respond to emergency situations. Torture is thought to go against many core liberal-democratic values, such as respect for persons and a respect for universal human rights. Yet, emergency situations might call for either an outright violation of these values, or they might force us to accept certain limits on how and when liberal democratic governments should look to uphold these values. While I acknowledge that the thought experiment as it is usually constructed is unrealistic, I will be using it throughout my dissertation as a starting point to motivate my discussion of the moral wrong of torture being carried out by liberal-democratic governments and institutions. This is primarily because the thought experiment is so prevalent in the literature. However, it also allows us to test our intuitions about the moral wrongness of torture and to determine what is morally important in extreme emergencies like the TBS.

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<sup>4</sup> Seumas Miller, "Is Torture Ever Morally Justifiable?" *International Journal of Applied Philosophy*, 19, 2 (2005): 183.

My aim in this dissertation is not to argue, categorically, that torture is always morally wrong. While I will argue against the moral permissibility of interrogational torture, establishing that interrogational torture is absolutely morally impermissible is an impossible burden to prove. Indeed, the TBS as it is constructed might represent a tragic dilemma, where whatever we end up doing is morally wrong in some way. Rather, my aim is to identify and discuss the moral significance of two moral features that are often lost in the debate surrounding the moral permissibility of interrogational torture. But first, let me provide a brief overview of the literature on this topic.

Surveying the philosophical literature on this topic, one finds that most philosophers are against the use of torture in an extreme emergency like the TBS. There are a variety of arguments offered against torture, but three stand out as being the most prominent. First, some philosophers, such as David Luban and Henry Shue, will argue that the TBS is an unreliable thought experiment on which to base arguments for or against the use of torture. The TBS is unreliable because of its many problematic assumptions. For example, it is not clear, nor is it reasonable to assume, that in the TBS we will have in custody the terrorist who planted the bomb. Nor is it reasonable to assume that after torturing this terrorist he will reveal the correct information and do so in a timely manner, and that the terrorist will not die because of the torture. The idea here is that if moral justifications for interrogational torture are to be based on the TBS, and if the TBS is so unrealistic and implausible that it is unlikely to occur in real life, then it would seem inappropriate to base a moral justification of torture on such a thought experiment, as many philosophers do.

Second, some philosophers will rely on consequentialist reasoning to support their claim that torture is morally impermissible. The consequentialist argument can take many different

forms. One thought might be that using torture in this one, extreme emergency will lead to the use of torture in less extreme situations. If we torture the terrorist in the TBS, we might, for example, think it justifiable to torture someone for committing a lesser crime. Moreover, some consequentialists will argue that interrogational torture requires an institutional apparatus to work effectively. And to torture in the TBS, we would need an institutional apparatus in place so as to torture effectively, and this institutional apparatus brings with it many undesirable consequences, such as the tarnishing of the medical and security institutions of the state. This is a version of a slippery slope argument: torture in this one case would lead us down a slippery slope of undesirable consequences, and so it would be better not to torture in this one case, even if it is an extreme emergency.

Finally, there is the deontological argument against torture, arguably the most popular argument against the use of torture. This argument proceeds roughly as follows. Torturing someone, regardless of who that person is, is a moral wrong because it disrespects the person's humanity. Immanuel Kant, for example, argues that we ought to treat ourselves and others as an end, and never as a mere means to some end.<sup>5</sup> If we were to torture a terrorist for the sole purpose of retrieving information from him so that we can prevent a bomb from going off and saving the lives of many people, we would be disrespecting the terrorist's humanity. Torturing one terrorist so as to potentially save many innocent civilians would be an instance where we use this terrorist as a mere means to the end of potentially saving innocent civilians, and this is morally problematic. For in this situation we would not be treating the individual as a person, but rather simply a thing to be used in our pursuit of information to save lives. Regardless of what individual is being tortured, and regardless of what that individual has done, all individuals,

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<sup>5</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Trans. & Ed. by Mary Gregor & Jens Timmerman (Cambridge: Cambridge University Press, 2012), 41.

considering their status as humans, possess inherent dignity and moral worth. Torturing an individual would be arguably the clearest and most severe case of violating an individual's dignity and moral worth.

On the other hand, there are those philosophers who argue that torture would be morally permissible in the TBS. Two common arguments offered in defence of this claim are the rights-based argument and the consequentialist argument. The rights-based argument states that by participating in an act of terror, a terrorist forfeits his right not to be tortured. Since a terrorist no longer has this right in virtue of his morally evil actions, we would not be violating his rights if we were to torture him. Moreover, government officials within a liberal democracy have a duty to defend their citizens against this morally evil action. As such, torture would not be impermissible.<sup>6</sup> The consequentialist argument states that torturing one guilty terrorist will likely lead to information that could save thousands of innocent lives. And since a state of affairs where one terrorist is tortured and thousands of people live is better, all things being equal, than a state of affairs where thousands of people die and one guilty terrorist lives, then torture is morally permissible in an extreme emergency like the TBS.<sup>7</sup>

What is missing from this debate is a consideration of two similar, yet distinct, moral features. First, the moral harm that torture does to the person who performs the act of torture is not properly represented in the debate. And second, since the torturer will be either a government official or someone hired on behalf of a government official, a consideration of the moral harm

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<sup>6</sup> See, for example: Stephen Kershner, "For Interrogational Torture," *International Journal of Applied Philosophy* 19, 2 (2005): 223-241; *For Torture: A Rights-Based Defense*, Lanham: Lexington Books, 2012; and Jeff McMahan, "Torture in Principle and in Practice," *Public Affairs Quarterly*, 22, 2 (2008): 111-128.

<sup>7</sup> See, for example: Fritz Allhoff, "Terrorism and Torture," *International Journal of Applied Philosophy* 17, 1 (2003): 121-134; "A Defense of Torture: Separation of Cases, Ticking Time Bombs, and Moral Justification." *International Journal of Applied Philosophy* 19, 2 (2005): 243-264; and *Terrorism, Ticking Time-bombs, and Torture: A Philosophical Analysis*. Chicago: The University of Chicago Press, 2012.

that torture does to the social, political, and legal institutions that the torturer represents is also missing from this debate. Since they are largely absent from the debate about the moral permissibility of using torture in an extreme emergency like the TBS, my thesis will address these two ethical features, and focus on the moral harm that torture does to both i) the government official who orders or performs the act of torture, and ii) the background social, political, and legal institutions that this government official represents. My argument will be centred on the idea of moral integrity. I will argue that the act of interrogational torture is a violation of moral integrity in the public realm, at both the individual and the institutional level. At the individual level, performing and/or ordering an act of torture is a violation of a government official's professional moral integrity because it goes against moral principles that government officials in a liberal democracy ought to represent. I am concerned here not with the government official's own personal moral principles, but rather the principles that the government official takes on in his role as an agent of the state. Hence the 'professional' moral integrity of the government official. As agents of the state, government officials ought to embody those moral principles that a liberal-democratic state is committed to, and engaging in the act of torture, or ordering someone to engage in the act of torture on their behalf, corrupts the moral character of government officials and violates their professional moral integrity. Institutionally, performing an act of torture, or ordering that an act of torture be done, violates core liberal-democratic principles that not only government officials are supposed to represent, but also that state institutions are supposed to embody.

The idea here is that liberal-democratic states, and the individuals who act on behalf on these states, are committed to core principles such as respect for persons and respect for human rights and engaging in a brutal practice like torture is a direct violation of these principles.

Engaging in torture would violate not only the professional moral integrity of government officials, but also, and perhaps most importantly, the moral integrity of the institutions of the state.<sup>8</sup> Thus, torture is not simply inconsistent with liberal-democratic principles. While torture does violate core liberal-democratic principles, government officials, in their roles as agents of the state, act in ways that express this inconsistency. By torturing a detainee for information, or ordering that torture be performed, government officials act against principles that they are supposed to be committed to, thereby alienating themselves from their professional role as an agent of the state. In addition, by engaging in a practice that goes against the moral values that the state abides by, the state can no longer be described as a state that does not torture, and hence can no longer be said to represent important moral principles. In both cases, we have a loss of constitutive identity. The principles and values that liberal-democratic states embody, and the principles and values that government officials of liberal-democratic states embody, are degraded when a liberal-democratic state engages in a brutal practice like torture. By engaging in a brutal practice like torture that is a direct violation of the principles they are meant to endorse, government officials can no longer be said to represent those liberal-democratic principles that they are supposed to embody, and liberal-democratic institutions can no longer be said to represent liberal-democratic principles. With this alienation comes a violation of a government official's professional moral integrity, along with a partial loss of their identity as an agent of the state, and a violation of the state's institutional integrity, and a partial loss of its identity as a state. For once a liberal democratic state engages in interrogational torture, it is no longer representing a commitment to values that it is founded upon.<sup>9</sup>

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<sup>8</sup> A more thorough discussion of the idea of moral integrity will occur in Chapter 3.

<sup>9</sup> A similar idea, discussed in the context of the demandingness of consequentialism, is provided by Bernard Williams in "A Critique of Utilitarianism," in J.J.C. Smart & Bernard Williams, *Utilitarianism: For and Against*, (Cambridge: Cambridge University Press, 1973), 108-118.

In developing my position, I will engage with other philosophers who have also considered the moral harm that torture brings upon the torturer. Jessica Wolfendale, for example, has written on the moral harm that torture does to the person who performs the act of torture. She argues that in a situation like the TBS, we would need a trained torturer, and trained torturers often embody many vicious traits of character. And, since most instances of torture are carried out by military personnel, the act of torture goes against the principles and ideals of the military profession.<sup>10</sup> In a more recent work, Matthew Kramer argues that interrogational torture corrupts the moral integrity of the person who performs the act of torture.<sup>11</sup> The argument that will be offered in my dissertation is similar, yet distinct from, the positions of both Wolfendale and Kramer. I agree with Wolfendale's position that a trained torturer with morally undesirable traits of character is problematic. Having trained torturers with morally undesirable traits of character could lead to what Wolfendale refers to as crimes of obedience, whereby torturers engage in torture without moral reflection, thereby increasing the risk of torturing innocents, or people who should not otherwise be tortured.<sup>12</sup> In addition to this, having trained torturers would seemingly require some kind of institutional apparatus, whereby the state commits resources to training these torturers, and would associate the institutions of a liberal-democratic state with a vicious practice, one that is a direct violation of the principles that a liberal-democratic state is supposed to endorse. Moreover, I agree with Kramer that interrogational torture would corrupt the moral integrity of the torturer, although, as will be shown, the structure of my argument is substantively different because of my focus on institutions.

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<sup>10</sup> Jessica Wolfendale, "Training Torturers: A Critique of the Ticking Bomb Argument," *Social Theory and Practice: An International and Interdisciplinary Journal of Social Philosophy* 32, 2 (2006): 269-287; *Torture and the Military Profession*, New York: Palgrave MacMillan, 2007.

<sup>11</sup> Matthew Kramer, *Torture and Moral Integrity*, (Oxford: Oxford University Press, 2014), 190-192.

<sup>12</sup> See Wolfendale, "Torture and the Military Profession."

My contribution to the philosophical literature on the moral permissibility of interrogational torture is twofold. First, I will be focusing on two moral features that are rarely or never discussed in the literature: the harm that torture does to the person who tortures and to the states that the torturer represents. While Kramer discusses the harm that occurs to the torturer through his discussion of moral integrity, I hope to add to this discussion by offering a more nuanced account of moral integrity. And, so far as I am aware, no author has discussed the moral harm that occurs to the institutions of the state. I will discuss this by applying the idea of moral integrity to state institutions. Moral integrity is often thought to be attributable to persons, such that individuals can possess and act with moral integrity. Moral integrity, as I will argue in Chapter 4, requires, in the individual realm, forming and standing by moral principles in the face of adversity or temptation. Yet not much has been written about whether moral integrity can be applied to institutions, and what an account of ‘institutional moral integrity’, as I shall refer to it, might look like. My thesis will provide the beginnings of such an account and apply it to the practical issue of using interrogational torture in the war on terror. In the same way that individuals can possess and act with moral integrity, in formulating and standing by moral principles in the face of temptation, so too, I shall argue, can institutions form and stand by moral principles in the face of adversity. Given that terrorist attacks are often both unpredictable and devastating to the civilian population and given that liberal-democratic governments are committed to moral principles that might conflict with combatting terrorism, the war on terror represents a clear case of adversity. Responding to these terrorist attacks with interrogational torture would represent a violation of institutional moral integrity, as the government officials charged with acting on behalf of the state would be acting directly against the principles that they (as government officials) and the institutions of the state are supposed to embody.

I will proceed as follows. In Chapter One, I will outline and critique the two most common arguments offered in defence of interrogational torture: the rights-based argument and the consequentialist argument. I will show that each argument is problematic and does not justify the use of torture in an extreme emergency like the TBS. In Chapter Two, I will outline and critique the two most common arguments offered against the use of interrogational torture: the consequentialist argument and the deontological argument. I will argue that while the conclusion of these arguments is the correct conclusion to draw, the arguments offered to reach this conclusion are problematic. In Chapter Three, I will discuss the concept of integrity, and distinguish between personal and moral integrity. I will also discuss an argument from Matthew Kramer that reaches the same conclusion that I hope to draw. Namely, that interrogational torture is morally impermissible because it violates the integrity of the torturer. I will show that, while Kramer and I reach the same conclusion, the substance of our arguments is different, and given that my argument focuses on the integrity of both government officials and of institutions, mine is a more robust account of the wrongness of using interrogational torture in the TBS. Finally, in Chapter Four, I will relate this idea of moral integrity to the public institutions and argue that engaging in interrogational torture degrades the moral integrity of state institutions and government officials who represent those institutions.

## **Chapter One: Moral Justifications for Interrogational Torture in the TBS**

In this chapter I will outline and critique two arguments in support of interrogational torture: the rights-based and consequentialist arguments. The rights-based argument in support of interrogational torture is centred on two central premises. First, the terrorist forfeits his right not to be harmed because of his participation in a morally unjust act. And second, government officials acting on behalf of innocent civilians have a moral right to defend these citizens from a terrorist attack. The rights-based argument thus combines a rights-forfeiture account with an argument from self-defence.<sup>13</sup> Combined, these two arguments establish the conclusion that if a government official were to torture the terrorist, he would a) not be violating the terrorist's right not to be harmed, and b) he would be justifiably defending innocent civilians from a morally unjust attack.

On the other hand, the consequentialist argument<sup>14</sup> in support of interrogational torture proceeds roughly as follows. In the TBS, we have one guilty terrorist who has planted a bomb with the intention of killing thousands of innocent civilians. Authorities believe that using torture to retrieve the location of the bomb has a good chance of being successful, and they would therefore be able to save thousands of innocent civilians. And since, under a consequentialist framework, the suffering of thousands of innocent civilians is a morally worse state of affairs than the suffering of one guilty terrorist, torture would therefore be morally justified, for it would save many innocent civilians and only harm one person.

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<sup>13</sup> As I will outline more fully later, the conditions for a justifiable claim of defending others are the same as a justifiable claim of self-defence.

<sup>14</sup> I will be using 'consequentialism' and 'utilitarianism' interchangeably throughout this chapter.

I will begin in Section 1.1 by outlining the rights-based argument for interrogational torture. Then, in Section 1.2, I will offer a critique of this argument. The rights-based argument establishes both that a terrorist forfeits his right not to be harmed, and that government officials have a duty to defend others from an unjustified attack, where it is understood that these others (i.e. innocent civilians) have a right not to be harmed. This rights-based argument does not provide a moral justification for torture because it a) fails to establish a connection between the forfeiture of a right and the moral permissibility of imposing harm on another individual, and b) does not meet the required conditions for a justified defence of others. I shall argue that showing a terrorist forfeits his right not to be tortured is not enough to establish that torture would therefore be morally permissible. Moreover, as I will show, the conditions for a successful claim of defending others are not established in the TBS. In Section 1.3, I will present the consequentialist argument, and in Section 1.4 I will offer a critique of this argument. Here I will argue that in addition to some pertinent practical limitations, the standard consequentialist argument defending interrogational torture is ultimately inconsistent with the consequentialist argument used to support it. I will conclude that the rights-based argument and the consequentialist argument are both unsuccessful in providing a moral justification for torture.

### **1.1 The Rights-Based Argument for Torture**

In “The Rights Forfeiture Theory of Punishment”, Christopher Wellman provides the following thought experiment to help motivate the claim that rights can be forfeited. Suppose there are three individuals: Victim, Bystander, and Criminal. Suppose that Victim and Bystander are having lunch together, and Criminal, for no good reason, punches Victim and steals Victim’s briefcase.<sup>15</sup> As Wellman argues, in this example Criminal has changed his moral status in such a

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<sup>15</sup> Christopher Wellman, “The Rights Forfeiture Theory of Punishment”, *Ethics*, 122, 2 (2012): 377.

way that Victim, or someone acting on Victim's behalf, can now treat Criminal in a way that otherwise would have been impermissible had Criminal not punched Victim and stolen his briefcase. This is not to say that Criminal is no longer a moral agent. An individual's fundamental moral status as a person and/or a rational and autonomous agent is what makes that individual the type of thing that qualifies for moral rights on a general level. However, which specific moral rights an individual retains is dependent on the actions that one performs.<sup>16</sup> By engaging in harmful and otherwise immoral activities, an individual can indirectly forfeit certain moral protections. 'Indirectly forfeiting certain moral protections' means that an individual can forfeit moral protections without his or her consenting or otherwise agreeing to such forfeiture. So, while Criminal does not lose his humanity and/or status as a moral agent, his status has nonetheless been altered in such a way that moral protections previously afforded to him no longer apply.

With respect to the TBS, a terrorist plants a bomb with the intention of killing thousands of innocent civilians. In committing this action, the terrorist has altered his moral status from an agent that possessed certain moral protections, such as the right to life and the right not to be harmed, to one who no longer possesses these moral protections because of his planting the bomb.<sup>17</sup> Another way of making this point is to say that the terrorist is now 'liable' to be tortured. Jeff McMahan, for example, argues that in the TBS, a terrorist has brought about a situation in which either he is to be harmed, or else many innocent lives will be lost. McMahan argues that the terrorist is 'liable' to be tortured, so long as this "is a necessary and proportionate means of preventing his having planted the bomb from killing those people. To say that he is liable to be tortured is to say that torturing him would not wrong him or violate his rights, in the

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<sup>16</sup> Wellman, "The Rights Forfeiture Theory of Punishment," 377-8.

<sup>17</sup> I will explain later why I think these are the moral protections that the terrorist forfeits.

circumstances.”<sup>18</sup> For McMahan, provided that torture is necessary to avert a much greater harm from occurring (i.e. the bomb exploding), and provided that the inflicted torture would not result in more harm than what the terrorist seeks to inflict, torture would not wrong the terrorist or violate his rights, because such rights have been forfeited in virtue of his actions.

As McMahan notes, this idea of ‘liability’ is found in the criminal law. In criminal cases the infliction of punishment on a guilty party is justified on the grounds that the criminal has made himself liable to be punished because of his moral and/or legal responsibility for a criminal act. Similarly, the terrorist has made himself liable to be tortured, for he has willingly brought about a situation in which either he is to be tortured, or else innocent lives will be lost. For McMahan, as a matter of preventative justice, torture is morally justified. In forfeiting his right not to be harmed, the terrorist therefore bears the burden of his previously and presently wrongful acts, and so it would be morally permissible to torture the terrorist.<sup>19</sup>

The rights forfeiture argument as presented above constitutes the first part of the rights-based argument. The second part concerns the right of self-defence. However, before proceeding to the self-defence argument, two clarifications regarding the rights forfeiture account are in order. First, we should be clear on exactly which rights the terrorist forfeits, and for how long he forfeits them. This is a disputed question within the literature of rights-forfeiture.<sup>20</sup> For example, does the terrorist forfeit all his rights, or only some? Moreover, are these rights forfeited permanently, or only temporarily? Wellman and McMahan do not provide answers to these

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<sup>18</sup> Jeff McMahan, “Torture in Principle and in Practice”, *Public Affairs Quarterly*, 22, 2 (April 2008): 117.

<sup>19</sup> McMahan, “Torture in Principle and in Practice,” 118.

<sup>20</sup> For further discussion of rights-forfeiture theory, see: Stephan Kershnar, “The Structure of Rights Forfeiture in the Context of Culpable Wrongdoing”, *Philosophia: Philosophical Quarterly of Israel*, 29, 1-4 (2002): 57-88; Richard Lippke, “Criminal Offenders and Right Forfeiture”, *Journal of Social Philosophy*, 32, 1 (2001): 78-89; David Alm, “Self Defense, Punishment, and Forfeiture”, *Criminal Justice Ethics*, 32, 2 (2013): 91-107; and Brian Rosebury, “The Theory of the Offender’s Forfeited Right”, *Criminal Justice Ethics*, 34, 3 (2015): 259-283.

questions, and while these are important questions for rights forfeiture theory in general, I do not want to dwell too deeply on them, for ultimately it is inconsequential to my argument to focus on which rights are violated and for how long they are violated. However, I will briefly address these issues here for the sake of being thorough.

As it relates to the TBS, I think it is sufficient to claim that the terrorist forfeits those rights which are relevant to the case at hand. In the TBS, the terrorist violates, or attempts to violate, the right not to be harmed and perhaps also the right to life. These are the ‘moral protections’ that I spoke of earlier. In planting a bomb, the terrorist is attempting to harm and kill others, and since these are the rights that he attempts to violate, he therefore forfeits these rights. It would be irrelevant to consider other rights of the terrorist, simply because these rights are not relevant to the situation (i.e. the TBS). The rights not to be harmed and the right to life seem most relevant to the situation, in that these are the rights that the terrorist attempts to violate, and a forfeiture account should stick to these relevant rights. Going beyond those rights that are relevant to the situation does not seem to be a plausible approach. Moreover, the terrorists’ rights are forfeited only temporarily, for the time that the threat is active. If the bomb is discovered within, say, five days of his capture and interrogation, then his right not to be harmed and his right to life are forfeited for those five days, after which these rights are restored. For, once the threat is over, he is no longer participating in an action that is or has the potential to harm others. Of course, this assumes, quite plausibly I think, that he remains in the custody of the authorities.

Moreover, another clarification worth making with respect to the forfeiture argument is the distinction between being liable to be harmed and deserving to be harmed. Claiming that a terrorist is liable to be tortured is not the same thing as saying that the terrorist deserves to be tortured. These are two separate claims. As McMahan argues, “The claim that a person deserves

to be harmed in a certain way entails that it is intrinsically good that he should suffer that particular harm. ... I do not accept that a person can deserve to be tortured.”<sup>21</sup> Liability and desert are thus distinct from one another. In claiming that a terrorist forfeits his right not to be tortured and is therefore liable to be tortured, one is not necessarily committed to the claim that a terrorist deserves to be tortured.<sup>22</sup> With these clarifications in mind, let us now proceed to the second part of the rights-based argument for torture: the argument from self-defence.

While the rights-forfeiture account established that a terrorist forfeits his right not to be harmed by planting a bomb that could kill thousands of innocent civilians, the self-defence argument builds on this and establishes that we, as the potential victims of this morally evil act, have a right to defend ourselves. For one to make a justifiable claim of self-defence, there are certain conditions which need to be satisfied. Stephen Kershner, in “For Interrogational Torture,” outlines the following conditions, all of which need to be met for a successful claim of self-defence:<sup>23</sup>

A Party, X, is permitted to inflict serious harm on another, Y, in order to defend some third party, Z, if

- a) Y brings about (or attempts to bring about) an unjust risk of significant harm to Z,
- b) Y lacks independent justification for causing (or helping to cause) the risk,
- c) under the circumstances, X’s harming Y is necessary to prevent (or significantly reduce the likelihood) of the risked harm,
- d) the harm X imposes on Y is proportionate to the risked harm to Z,
- e) X’s harming Y will not seriously unjustly harm anyone else, except for others who satisfy a) - d), and
- f) Z gives X, or some party for whom X is an agent, permission to defend him.

Before proceeding to set out how these conditions are satisfied in the TBS, two clarifications need to be made. First, in the TBS, the variables X, Y, and Z are as follows: X is the government

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<sup>21</sup> McMahan, “Torture in Principle and in Practice”, 118.

<sup>22</sup> While McMahan is clear on this point, it is less clear if Wellman thinks the same.

<sup>23</sup> Stephen Kershner, “For Interrogational Torture,” *International Journal of Applied Philosophy* 19, 2 (2005): 229.

official (or someone acting on behalf of the government official) who would perform the act of torture, Y is the terrorist who plants the bomb, or who is presumed to know about the location of the bomb, and Z would be the innocent civilians. Second, since the government official, or someone acting on behalf of the government official, would be the one inflicting the torture, and since the government official or an agent acting on behalf of the government official is acting on behalf of the innocent civilians threatened by the bomb, in the TBS torture would be more accurately classified as a defence of others, rather than being labelled as self-defence. For the government official, or an agent acting on behalf of that official, is not, strictly speaking, defending himself from attack, but rather defending those civilians whom he represents from attack. In any event, with respect specifically to the TBS, the conditions for a justifiable claim of defending others are similar to a justifiable claim for self-defence.<sup>24</sup>

With these clarifications in hand, let us now consider the self-defence argument in support of torture. Given that the innocent civilians give up some of their freedoms and rights to participate in a liberal-democracy, and given that civilians indirectly give government officials permission to defend them from an attack, the government has authority to defend these innocent civilians from attack. As such, condition f) is most easily satisfied. But what about the others?

Let us begin with conditions a) and b). The terrorist, Y, through his actions of planting the bomb and refusing to inform the authorities of the location of the bomb, brings about (or attempts to bring about) an unjust risk of significant harm to the innocent civilians, Z. And the terrorist lacks a good reason for bringing about this harm. It is worth stressing here that in refusing to reveal the location of the bomb, the terrorist does still constitute a threat, even if he is not actively harming anyone. Some philosophers argue that since the terrorist is restrained and in

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<sup>24</sup> Condition f) is not applicable to the case of individual self-defence.

custody of the authorities, he does not present a threat, and hence torturing him would not be an act of self-defence. Rather, it is more akin to an assault on the defenceless. Henry Shue puts the point this way: “The torturer inflicts pain and damage upon another person who, by virtue of now being within his or her power, is no longer a threat and is entirely at the torturer's mercy.”<sup>25</sup> However, the terrorist is not entirely defenceless. He has information that could, at least theoretically, put an end to his torture, and the terrorist still constitutes a threat, for as Seumas Miller argues, “...the terrorist is more akin to someone in the process of murdering an innocent person, and refusing to refrain from doing so.”<sup>26</sup> The terrorist is still in the process of his action of attempting to murder thousands of innocent civilians. His capture by the authorities does not put an end to this process, nor does it eliminate his status as an active threat. While I will ultimately critique the rights-based argument, this is a point on which I agree with rights-based defenders of torture.

Moving on to conditions c) – e) (i.e. the harm inflicted is necessary and proportionate, and will not harm anyone else), the torture of the terrorist is necessary to stop the bomb from detonating. For if we torture the terrorist, proponents argue that there is a strong likelihood that the terrorist will capitulate under the intense pain and suffering and reveal the location of the bomb. It is also necessary in the sense that all other options have been exhausted. Torture in the TBS is only used as a last resort, and hence necessary to prevent the bomb from detonating. Moreover, this harm of torture is proportionate to the harm that the innocent civilians will experience. In saying that torture is proportionate to the harm that the innocent civilians will experience, the idea here is that the pain and suffering that accompanies torture is equal to or less

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<sup>25</sup> Henry Shue, “Torture,” *Philosophy and Public Affairs* 7 (1978): 130.

<sup>26</sup> Seumas Miller, “Is Torture Ever Morally Justifiable?” *International Journal of Applied Philosophy*, 19, 2 (2005): 184.

than the pain and suffering that would befall the innocent civilians. Consider, for example, Uwe Steinhoff, who outlines the following three scenarios that one could be faced with:<sup>27</sup>

- A) The intentional and continuous or repeated infliction of extreme physical suffering on a nonconsenting victim...
- B) The intentional blowing out of someone's brain with a .44 Colt or
- C) The intentional chopping off of someone's head...

If faced with a situation wherein I had to choose one of the above options, it seems that option A would be the most attractive, given the other two choices. For even if I am tortured, I will still have my life afterwards, whereas with options B and C, I will have no life at all. Steinhoff concludes that if presented with these three options, “most people would, no doubt, prefer being a victim [of option A] to being a victim of [either B or C] ... most people prefer extreme physical suffering to death. Death is *worse* than (most forms of) extreme physical suffering.”<sup>28</sup> Since death is worse than torture, torture is therefore a lesser evil than death, and hence is proportionate to the threat of death. Finally, since it will only be the terrorist who is tortured for information, torturing the terrorist would not unjustly harm anyone else. As such, conditions c) – e) are also satisfied.

Thus, all the conditions for a justifiable claim of self-defence are satisfied. So not only does the terrorist forfeit his right not be harmed by participating in morally evil actions, but the government officials who represent these innocent civilians have a right to defend these civilians from this attack. This concludes the rights-based argument in support of torture. In the next section, I shall offer a critique of this argument.

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<sup>27</sup> Uwe Steinhoff, *On the Ethics of Torture*, (Albany: SUNY Press, 2013): 19.

<sup>28</sup> Steinhoff, *On the Ethics of Torture*, 19.

## **1.2 A Critique of the Rights-Based Argument**

Given that the rights-based argument is based on two central premises, I will break down my critique into two parts. First, I will discuss the problems with the rights-forfeiture account, and then I will discuss the problems with the self-defence argument.

Let us begin with the rights-forfeiture portion of the argument. Here it is argued that since the terrorist participates in morally evil actions, he forfeits some of his rights. For what it is worth, I am sympathetic to this argument. I share the intuition with rights-forfeiture theorists that when an individual engages in behaviour that is harmful to other people, that individual loses certain moral protections that he or she otherwise would have enjoyed. As Wellman suggests, perhaps this is just a matter of intuition and common-sense, and can't be defended through rational argumentation.<sup>29</sup> However, in saying that I am sympathetic to the rights-forfeiture account, this does not commit me to the claim that torture is therefore morally permissible. There are at least two ways we can understand the rights-forfeiture account. One reading of the rights-forfeiture account is as follows: 'by engaging in morally evil actions, a terrorist forfeits his right not to be harmed, and it would therefore be morally permissible to torture the terrorist.' I am not committed to this reading of the argument, and indeed it should be rejected. All this argument establishes is that *if* we were to torture the terrorist, we would not be violating his right not to be tortured, for he forfeited this because of his evil actions. But surely there is more to the moral permissibility of torture than simply the forfeiture of a right. We should also consider other factors, such as whether it can help us save lives. McMahan, for example, includes in his justification of torture the harm that would be prevented by torturing the terrorist, and I will address this claim in the next section and show how it is problematic. But considered separately

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<sup>29</sup> Wellman, "The Rights Forfeiture Theory of Punishment," 377-8.

from these other considerations, the rights forfeiture account is too simplistic. While it might be an important first step in providing moral guidance and providing the basis for another argument (like it does above with the self-defence argument), when considered separately from other reasons and/or arguments, the rights forfeiture account does not provide us with sufficient normative direction. So, in saying that I am sympathetic to the rights-forfeiture account, I am thus committed to the following reading of the argument: ‘*if* we were to torture the terrorist, we would not be violating his right not to be harmed, for he forfeited this when he planted a bomb with the intention of killing innocent civilians.’ This is different from saying that torture is therefore morally permissible. Thus, the rights-forfeiture account does not, by itself, establish that it would be morally permissible to torture the terrorist.

Let us now consider the self-defence argument. In Section 1.1, I presented an argument that demonstrated that all the conditions for a successful claim of defence of others are met. However, we should question whether these conditions are sufficiently met in the TBS. Indeed, in the TBS I maintain that only conditions a), d), f), and, to a limited extent, b) and e), are satisfied.

With respect to conditions a) and f), it is relatively uncontroversial that the terrorist brings about a situation which imposes an unjust risk of harm on innocent people, and the innocent people have granted the government official permission to protect them in the event that their lives are at risk. Moreover, with respect to condition d), the harm that the government official would inflict on the terrorist is proportionate to the risk harm to the innocent civilians. While in a one-to-one case we might argue that torture is worse than death, in the TBS we are comparing the harm of one person to the harm of thousands to millions of others. I will also assume, for the sake of argument, that conditions b) and e) are met, although we should have

some reservations about these conditions. Regarding condition b), in many cases of terrorism, terrorists arguably do have an independent justification for acting, usually in retaliation for previous wrongs committed by the nation that they attack. However, I will assume here that the act of terrorism in the TBS would be a random act of attempted violence against innocent civilians, and not a retaliation for previous wrongs committed by the government of the innocent civilians. Regarding condition e), the use of torture would clearly harm the person receiving the torture. However, it might also harm innocent civilians, albeit in an indirect way. Richard Matthews, for example, argues that since human beings are necessarily social animals, the act of torture also harms the people who are associated with the victim of torture, and these people might be innocent civilians.<sup>30</sup> Moreover, the act of torture might also provide an impetus for future terrorist attacks, which would again harm the innocent civilians that the torturer is trying to protect. Nevertheless, for the sake of argument, let us grant that condition e) is satisfied. The remaining condition, c), is not satisfied.

Condition c) stipulates that the harm (i.e. torture) is necessary to prevent, or significantly reduce the likelihood, of the bomb detonating and killing innocent civilians. In the TBS, the act of torture is not necessary to prevent the attack, nor will the use of torture significantly reduce the likelihood of the attack. In claiming that torture is necessary in the TBS, it would seem that one must be committed to the claim that if we do not torture the terrorist, then innocent lives will be lost. However, we cannot determine with any reasonable degree of certainty whether it will be the case that if we do not torture, innocent civilians will die, nor can we reasonably determine that if we do torture, we will be provided with information that will save the innocent civilians. For even if we do torture, we are not guaranteed to get the correct information, let alone any

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<sup>30</sup> Richard Matthews, "An Empirical Critique of Interrogational Torture," *Journal of Social Philosophy* 43, (2012): 465-66.

information. There are many different outcomes from the use of torture, only one of which is the saving of lives. If we were to torture the terrorist, at least three things could happen: i) the terrorist could reveal the location of the bomb, and innocent lives could be saved; ii) the terrorist could reveal false information, and thus divert our attention away from the true location of the bomb; or iii) the terrorist could reveal no information at all.

Of the three possible outcomes mentioned above, the terrorist revealing the correct information is only one option, and we should question whether this option is more likely than the others. Indeed, we may have good reason to doubt that torture will be effective, and that results ii) or iii) are more likely than result i). It is implausible to think that a terrorist, who is determined to carry out an act of mass murder, would reveal the information and thus help us prevent an attack that he originally set in motion. Terrorists are usually individuals who are highly committed to carry out their mission of mass murder, and applying severe pain and suffering seems unlikely to deter him from this mission. The use of torture might even further inspire the terrorist's hatred of us, which could harden his resolve and lead him to reveal false information to divert our attention away from the bomb. Or the terrorist could remain completely silent and provide us with no information at all.

In addition to this, as mentioned above the use of torture on a terrorist might provide the foundation for future terrorist attacks. If terrorists are being tortured by their enemies, then this provides a powerful propaganda tool for terrorist organizations, which could further fuel both the terrorists' hatred of their enemies, and further intensify the severity of their attacks. As such, the use of torture in the TBS will not necessarily bring about the result we are seeking, which is saving innocent civilians. In suggesting that we either torture the terrorist or be killed by the

bomb, proponents of torture present a false dichotomy. There are several different outcomes from the use of torture, and saving lives is only one outcome, and an unlikely one at that.<sup>31</sup>

As such, we can question whether condition c) of the rights-based argument is met. This would cast doubt on the claim that the use of torture in the TBS would be a justified act of defending others. The use of torture in the TBS will not necessarily save lives. Thinking that it is necessary is intellectually dishonest. This concludes my critique of the rights-based argument in defence of torture. Let us now turn to the consequentialist argument.

### **1.3 The Consequentialist Argument**

Fritz Allhoff, Mirko Bagaric, and Julie Clarke are the most ardent consequentialist supporters of the use of torture in the TBS. They provide specific conditions that must be met for torture to be morally permissible. Before proceeding to these conditions, however, one important clarification should be made. Consequentialism tells us that an act is morally right if it either a) increases the greatest amount of utility (usually understood as happiness or well-being) for the greatest number of people (or for the greatest overall good), or b) reduces the greatest amount of disutility for the greatest number of people. The consequentialist argument in support of interrogational torture can take either form. That is, the consequentialist argument can be read as an argument that states that we would be maximizing utility for the greatest number of people, for stopping a bomb from detonating will surely make people happy. Just as well, the consequentialist argument might be read as an argument that states that we would be minimizing the amount of disutility for the greatest number of people. While inflicting a great amount of

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<sup>31</sup> There have been numerous studies done on the effectiveness of torture, with most concluding that torture is ineffective in eliciting information from a detainee. This includes both scientific studies and the experience of military personnel who claim, based on experience and training, that torture is an ineffective method of gaining information from detainees. For a neuroscientific argument against the efficacy of torture, see Shane O'Mara, *Why Torture Doesn't Work: The Neuroscience of Interrogation*, (Cambridge, MA: Harvard University Press, 2015).

harm on one person is regrettable, even more disutility and harm could occur if we refuse to torture the terrorist. While torturing a terrorist might not make many people ‘happy’ in a direct way, it will nonetheless make them ‘happy’ in an indirect way. For as the consequentialist argues, not torturing the terrorist will result in an extreme loss of life and keeping one’s life is a better state of affairs than losing it. While consequentialist defenders of torture are not immediately clear on these points, the argument can be read in either way. With this clarification in mind, let us now proceed to the conditions that must be met for torture to be morally permissible under a consequentialist framework.

First, torture “should only be used to retrieve information that could be used to prevent future threats from occurring.”<sup>32</sup> In the TBS, torture may be the only available means to retrieve the necessary information in order to defuse the bomb. Pursuing other methods of retrieving information, like following up on intelligence leads, is, according to Allhoff, “unwarranted and imprudent”, given the time constraints of the TBS.<sup>33</sup>

Second, there must be a “reasonable expectation that the captive has knowledge of the relevant information.”<sup>34</sup> The point here is that authorities should not ‘fish’ for information; they must be reasonably certain that the captive has the relevant information. Consequentialists, however, are split on exactly who can be tortured. Consider the following. Suppose we capture someone, and it is later revealed that the captive is a janitor who worked in a building where terrorists were known to plot their terrorist acts. Allhoff argues that since it is unlikely that this janitor has information that can be used to stop a terrorist attack, and since the janitor is not part of the terrorist network, it would be morally impermissible to torture him.<sup>35</sup> Only those who are

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<sup>32</sup> Fritz Allhoff, “Terrorism and Torture,” *International Journal of Applied Philosophy* 17, 1 (2003): 111.

<sup>33</sup> Ibid.

<sup>34</sup> Bagaric & Clarke, *Torture*, 35-6.

<sup>35</sup> Allhoff, “Terrorism and Torture,” 111.

closely connected to the terrorist plot, and who we reasonably believe have the desired information, can be tortured.<sup>36</sup> This would seemingly include the terrorist who planted the bomb and anyone who is part of the terrorist network who may have information on the location of the bomb. It would not include torturing an innocent person. Bagaric and Clarke, on the other hand, argue that “[p]eople who are simply aware of the threatened harm, that is, ‘innocent people,’ may in some circumstances also be subjected to torture.”<sup>37</sup> While Bagaric and Clarke do not discuss the janitor example, it might be the case that for Bagaric and Clarke the janitor may be tortured, for he is aware of the threatened harm, while Allhoff provides a more restricted scope of who may be permissibly tortured for information. I will return to this issue later in this chapter.

Third, there must be a “reasonable expectation that the information that the captive has knowledge of corresponds to an imminent and significant threat.”<sup>38</sup> If the threat is not imminent, then there would be no need to torture, since other information gathering techniques could be tried before torture is undertaken. Moreover, the threat must be significant, in the sense that many innocent lives must be at stake. Another way of putting this point is to say that the harm to be prevented is likely to be greater than the harm that will be inflicted.<sup>39</sup> The more lives that are at stake, the more reason we have to inflict pain on the terrorist so that he will reveal the information that we desire. And finally, there must be a “reasonable expectation that acquisition of the information can lead to prevention of the terrorist act.”<sup>40</sup> If the authorities think that the terrorist act cannot be stopped, even if we do acquire information by torturing, then there is no

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<sup>36</sup> Ibid 111-112.

<sup>37</sup> Bagaric & Clarke, *Torture*, 36.

<sup>38</sup> Allhoff, “Terrorism and Torture,” 112.

<sup>39</sup> Bagaric & Clarke, *Torture*, 35.

<sup>40</sup> Allhoff, “Terrorism and Torture,” 112. See also Bagaric & Clarke, *Torture*, 35.

need to torture. If these four conditions are met, then it is morally permissible to torture the terrorist.

One additional qualification to the consequentialist argument is that “the inflicted torture should never inflict more than the minimum trauma necessary to obtain the desired compliance.”<sup>41</sup> This is an important qualification to the consequentialist argument, for consequentialists who defend torture are not committed to the claim that we should inflict as much pain as possible. Rather, they are committed to the weaker claim that we should only inflict the minimum amount of pain and suffering that is necessary to get the required information. Allhoff suggests that psychological profiling can help us determine the minimum amount of pain required.<sup>42</sup>

Since torturing the terrorist will likely lead to the desired information and save many innocent civilians, this would likely produce greater overall consequences than not torturing the terrorist. A state of affairs where one terrorist is tortured and many innocent civilians are saved is a better state of affairs than one where a terrorist is not tortured and many innocent civilians lose their lives, and so interrogational torture would be the morally permissible in this situation.

#### **1.4 A Critique of the Consequentialist Argument**

In this section, I will argue that the consequentialist argument in defence of torture is specious. The consequentialist argument offered in Section 1.3 implicitly relies on act consequentialism, and my critique of this argument will be focused on act consequentialism. However, later in this section I will include a discussion of rule consequentialism, and how a rule consequentialist might respond to the problems of the act consequentialist argument in support of

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<sup>41</sup> Allhoff, “Terrorism and Torture,” 113.

<sup>42</sup> Ibid.

torture. Overall, my critique of the act consequentialist argument supporting torture is that it is filled with several practical problems and inconsistencies. Let us first consider the practical problems of the argument.

As a way of gathering information from detainees, torture is ineffective. This is not a new revelation. Indeed, torture has long been regarded as a poor way of gathering intelligence. The CIA KUBARK Manual, for example, specifically warns against using torture techniques as a way of gathering intelligence. This manual, designed in 1963 during the Cold War, states that

[i]ntense pain is quite likely to produce false confessions, concocted as a means of escaping from distress. A time consuming delay results, while investigation is conducted and the admissions are proven untrue. During this respite the interrogatee can pull himself together. He may even use the time to think up new, more complex ‘admissions’ that take still longer to disprove.<sup>43</sup>

As an initial response, one might suggest that the advice given in the CIA KUBARK Manual is simply outdated. The Manual was created in 1963 during a much different type of war. The Cold War was more of an ideological war between the United States and the Soviet Union, whereas in the War against Terrorism, there are often multiple, unpredictable attacks that claim innocent lives. Terrorism is thus very different from the Cold War, and so our tactics must change with the times. While torture was thought to be ineffective during the Cold War era, things might be different in the current era.

Indeed, there might be some truth to this claim. Consider, for example, two cases where torture has proven to be effective. In 1995, Abdul Hakim Murad was arrested during a security sweep done before Pope John Paul II’s visit to the Philippines. During Murad’s captivity, which lasted sixty-seven days, he was severely beaten (resulting in broken ribs), had water forced into

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<sup>43</sup> CIA KUBARK Counterintelligence Interrogation Torture Manual, p 94. Available in two parts, at: <http://nsarchive.gwu.edu/NSAEBB/NSAEBB122/CIA%20Kubark%201-60.pdf> (Part One) & <http://nsarchive.gwu.edu/NSAEBB/NSAEBB122/CIA%20Kubark%2061-112.pdf> (Part Two)

his mouth, was forced to sit on ice for long periods of time, and had his genitalia burned with cigarettes. The torturing of Murad purportedly led to information that helped to foil a plot to assassinate the Pope, and to foil a plot that involved shooting down multiple civilian passenger planes. The connection with the TBS is clear: just like the TBS, the Philippines bomber case was a situation in which one person knew information that could save the lives of many innocent civilians, and the use of torture was thought to be, and actually turned out to be, an effective way of gathering information to save innocent civilians. Moreover, in Germany in 2003, Magnus Gafgen kidnapped an 11-year-old boy, wrapped him in a plastic bag, covered his mouth and nose with duct tape, and left the boy to die. Before the child died, however, the police captured Gafgen after he had picked up his ransom money and interrogated him about the whereabouts of the child. Refusing to reveal the location of the child, the police then threatened to torture Gafgen. Within minutes of the threat of torture, Gafgen revealed the location of the child, although, by this point, the child was already dead.<sup>44</sup> Thus, there are modern cases where either the threat of torture, or the act of torture itself, have been successful in acquiring life saving information.

To be clear, in suggesting that torture is ineffective, I am not claiming that torture will *never* work. Torture, or the mere threat of torture, does sometimes work, as the above cases make clear. However, to support the claim that torture does or does not work, we need to do more than simply cite cases where it has or has not been effective, because for every case that a defender of torture cites where the use of torture was effective, an opponent of torture can come back with a case where the use of torture was not effective. We have already considered two cases where torture was effective, but there have been multiple cases, specifically in the United States' War

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<sup>44</sup> Full story available at: <http://www.nytimes.com/2003/04/10/world/kidnapping-has-germans-debating-police-torture.html>.

on Terror, where torture was ineffective. One of the main findings of the recently released Senate Intelligence Committee Report on Torture is that the CIA's use of torture during the War on Terror was largely ineffective in acquiring life saving information. The Committee concluded that the CIA's use of torture was not an effective means of obtaining accurate information. In fact, the Committee concluded that multiple detainees "fabricated information, resulting in faulty intelligence. Detainees provided fabricated information on critical intelligence issues, including the terrorist threats which the CIA identified as its highest priorities."<sup>45</sup> Not only did detainees provide faulty intelligence, but the Committee also concluded that actionable intelligence was gained as a result of *not* using torture. The report states that some detainees provided "significant accurate information prior to, or without having been subjected to [torture]."<sup>46</sup> Thus, for every case that a defender of torture cites as proof that torture was effective, an opponent of torture can come back with a case where torture was not effective. Simply citing cases where torture was or was not effective will therefore result in an impasse and will not be enough in establishing the claim that torture is either effective or ineffective.<sup>47</sup> Instead, we need reasons to support the claim that torture is either effective or not effective.

Let us start with a reason that a defender of torture could give in support of the claim that torture is effective. The defender of torture might claim that the infliction of pain can go a long way in getting people to do something that we want. Inflicting pain on someone gives us control over that person, and thus leads to the victim of pain revealing the necessary information to put a stop to the pain. Consider, for example, two siblings. The younger sibling knows a secret that the

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<sup>45</sup> Senate Select Committee on Intelligence, *The Senate Intelligence Committee Report on Torture: Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, (Brooklyn: Melville House Publishing, 2014): 3.

<sup>46</sup> *Ibid.*

<sup>47</sup> Not to mention the fact that circumstances play a large role in dictating the success or failure of torture as an information gathering technique, which also speaks against a general rule supporting interrogational torture.

older sibling wants to know. The younger sibling refuses to tell the secret, and the older sibling twists the younger sibling's arm to get the younger sibling to reveal the secret to him. In most cases, something like this will be effective in getting the younger sibling to reveal the information that the older sibling wants. This example of the two siblings can be extended to the TBS. A terrorist knows something that we want, so we assume control over this terrorist and inflict serious pain on him so that he will reveal the information that we need to save lives.

While there is some intuitive basis for the claim that inflicting pain on someone will lead to the desired information, there are several reasons to question this, especially in the TBS. First, as has already been discussed, the victim of pain will quite likely reveal any information to make the pain stop. In the sibling example, if the younger sibling is clever enough, he can tell the older sibling anything, and the older sibling will have to believe the younger sibling, simply because the older sibling does not know what the secret is. In the TBS, this is even more pertinent. A terrorist who is determined to kill us will most likely reveal any information to make the pain stop. And, what is more, the interrogator will, at the very least, have to stop torturing the terrorist after any information is revealed in order to find out if the information is correct, which will result in a time-consuming delay. This is because the interrogator is at an epistemic disadvantage compared to the terrorist. In the TBS, the interrogator does not know where the bomb is located, and the terrorist does. This means that any information the detainee provides while tortured must be verified, simply because the interrogator does not know where the bomb is. If the interrogator knew where the bomb was located the very idea of interrogating the terrorist would be pointless. During this pause in the interrogation, the terrorist can, as the KUBARK Manual suggests, gather his thoughts, and come up with more elaborate falsehoods to fool the interrogators. Thus, while

the interrogator is in control of the interrogation, the terrorist has quite a bit of control himself, for he has what the interrogators are looking for.

Second, from a neuroscientific perspective, the infliction of intense pain on a subject makes it difficult for that subject to reveal information. As neuroscientist Shane O'Mara has argued, the infliction of pain severely disrupts the proper function of the brain, such that the brain cannot process information and retrieve memories. O'Mara argues that the imposition of severe pain significantly impairs the capacity of the brain to appropriately regulate the expression of one's thoughts, and that repeated and continual infliction of pain impairs the directed recall of information from one's memory.<sup>48</sup> Put another way, if one is subjected to severe pain, the brain is damaged in a way that increases the likelihood that memories, such as where a bomb has been planted, cannot be accessed properly, and thus cannot be communicated in an effective way.

Finally, in the TBS, there simply is not enough time to effectively torture. As J. Jeremy Wisnewski has argued, any effective interrogation takes considerable time. The goal of an interrogation is to break the individual down and manipulate him into cooperating with the interrogator.<sup>49</sup> This cannot be done in a situation in which we have limited time, like the TBS. Moreover, the point at which an individual will break as a result of the infliction of severe pain cannot be determined in advance of the interrogation.<sup>50</sup> One of the common claims of defenders of interrogational torture is that we should only inflict the minimum amount of pain necessary to get the information. This, however, is simply indeterminate. There is no telling how one will

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<sup>48</sup> Shane O'Mara, *Why Torture Doesn't Work: The Neuroscience of Interrogation*, (Cambridge, MA: Harvard University Press, 2015): 4.

<sup>49</sup> J. Jeremy Wisnewski, "It's About Time: Defusing the Ticking Bomb Argument," *International Journal of Applied Philosophy* 22, 1 (2008): 114.

<sup>50</sup> *Ibid* 112.

react to pain – they might reveal information in a timely manner, but they might also hold out under the pain, or, worse yet, die from the torture.

Thus, the use of torture in the TBS is likely to be ineffective. A terrorist is likely to reveal any information to make the pain stop, especially given that he is determined to kill us, as is evident in his planting a bomb. The infliction of severe pain also impacts the brain in such a way that information likely cannot be properly recalled and communicated in an effective way. And finally, we simply do not have enough time in the TBS to effectively break the terrorist down to a point where he is willing to divulge information. While I do allow for the possibility of torture being effective in some situations, the TBS is not one of those situations.

So much for the practical problems of the argument. Let us now consider the inconsistencies of the argument. As it is presented above there are at least two inconsistencies with the consequentialist argument: the torturing of innocents and the stipulation that only the minimum amount of pain and suffering should be inflicted on the terrorist. Let us deal with these separately.

As discussed above, some consequentialists do not think that torturing innocent people is a serious problem. While Allhoff rejects the torturing of innocent people on the grounds that they are not morally complicit in the act of terrorism, Bagaric and Clarke argue that if an innocent person has relevant knowledge of the attack itself, or important details related to the attack, that person may, under some circumstances, be tortured. However, Bagaric and Clarke's argument is implausible, for even if an innocent person has knowledge of an attack, they themselves did not participate in the attack. While this point might not matter to a consequentialist, it should matter from a broader moral standpoint. Consider again the case of the janitor who may have information about where the bomb is located. While this janitor may have information, the

janitor himself did not participate in the terrorist activity. He did not, for example, meet with the terrorists to determine where the bomb should be planted, nor did he help the terrorists plan their attack. The janitor in this case is merely a victim of circumstance – he happened to work in the same building where the terrorists discussed their plans. To say that he can be subjected to torture on the chance that he might be able to give us some information related to the attack is morally problematic, for it does not seem to impose a justifiable limit on who may be permissibly tortured. Indeed, under Bagaric and Clarke’s logic, there does not seem to be a justifiable limit on who can or cannot be tortured. What if, for example, the terrorist’s young child was around the terrorists when they were planning their attack? It would seem that, under Bagaric and Clarke’s logic, the child may be tortured, for if we think it will lead to the saving of many lives, then the suffering of one will lead to better consequences than the suffering (or death) of thousands. This is morally problematic for the same reason that torturing the janitor would be morally problematic – neither had anything to do with the attack. To be fair, Bagaric and Clarke do say that innocent people may ‘in some circumstances’ be tortured. So perhaps the young child, or even the janitor, may not be tortured because the circumstances dictate that they should not be tortured. Such circumstances might include that there is not enough evidence that the janitor and/or young child does possess reliable info. But since Bagaric and Clarke leave these ‘circumstances’ unspecified, these problems remain.

So, the more intuitively acceptable claim is Allhoff’s stipulation that innocent people may not be tortured. This would seemingly include those individuals who do not have knowledge of the attack, but, if tortured, might entice the terrorist to reveal the location of the bomb. Consider again the young child. Even if the young child does not have information or was not near the terrorists when they were planning their attack, it might be argued that torturing this

child would force the terrorist to reveal the information that we desire. This would be morally impermissible, for under Allhoff's conditions, only those who play an active role in the attack, or who we reasonably believe possess the desired information, may be tortured.

While I agree with these claims, these claims are inconsistent with the consequentialist argument that Allhoff employs. Allhoff's justification for torture is that it will likely save the lives of many innocent civilians. It is the consequences of the act that are morally important, and so long as torturing one person (or multiple people) will lead to better overall consequences than not torturing, we must, under consequentialist reasoning, torture that person (or people), regardless of whether they are complicit in any wrongdoing. As Yuval Ginbar argues, the consequentialist argument *dictates* that we torture the innocent, only if doing so will lead to finding the bomb. For under consequentialist reasoning, if a better moral state of affairs will be produced through the use of torture, then a person's innocence cannot shield them from torture.<sup>51</sup> Ginbar also correctly notes that a consequentialist argument allowing for the torture of the 'guilty' terrorist but not the 'innocent' person is not truly a consequentialist argument.<sup>52</sup> If we are only focused on the consequences of the act, and if torturing an innocent person will lead to better consequences than not torturing an innocent person, or will lead to better consequences than torturing the guilty terrorist, then morally, this is what we should do. Notice too that torturing an innocent person is consistent with Allhoff's four conditions as outlined above. Torturing an innocent person would be used to retrieve information from the terrorist so that we can prevent the bomb from going off. It is also reasonably expected that the captive has knowledge of the information, that the knowledge corresponds to an imminent and significant

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<sup>51</sup> Yuval Ginbar, *Why Not Torture Terrorists? Moral, Practical, and Legal Aspects of the 'Ticking Bomb' Justification for Torture*, (Oxford: Oxford University Press, 2010), 68-70.

<sup>52</sup> Yuval Ginbar, *Why Not Torture Terrorists*, 70.

threat, and that acquiring this information can lead to the prevention of the terrorist act. Nowhere within these conditions does Allhoff specify that it must be the terrorist who is tortured.

Torturing an innocent person to get the terrorist to retrieve the information satisfies all the above conditions, and hence can be justified under Allhoff's own argument. We thus see that there is a tension between Allhoff's account and the general act consequentialist framework that he uses to support his account. While Allhoff wants to justify torture on consequentialist grounds, his own argument in defence of torture might ultimately be inconsistent with the tenets of act consequentialism. The idea here is that act consequentialists will generally not accept non-consequentialist constraints against things like torturing innocent people. And in adopting these non-consequentialist constraints, Allhoff is being inconsistent in his reasoning.

However, let us consider for a moment whether a consequentialist could adopt such non-consequentialist constraints. That is, could a consequentialist like Allhoff adopt the constraint that torturing innocents is morally impermissible and yet still present an argument that is consistent with general consequentialist tenets? One approach would be to switch the focus from an act consequentialist argument to a rule consequentialist argument. A consequentialist might adopt a rule that prohibits torturing innocents, and specifies only that terrorists, or those responsible for planning and/or actually committing harm to others, be tortured, because this will lead to better overall consequences than not adopting such a rule. This rule might look like this: 'in extreme emergencies, only those who are responsible for planning to commit, or actually committing, an act that harms others can be tortured.' This has two advantages for a consequentialist. First, it allows them to include a non-consequentialist constraint in their reasoning: protecting innocents from being harmed. And second, it allows them to keep the conclusion of their argument intact: that torturing a terrorist is morally permissible because it is

required by a rule, the general observance of which will lead to better overall consequences. Unfortunately, the problem with this argument is the same problem that plagues rule consequentialism in general: what if, by breaking the rule, we would promote better overall consequences than if we were to follow the rule? If consequentialists are truly committed to maximizing the consequences, then this would seem to necessitate breaking the rules in some instances where the breaking of a rule would actually lead to better overall consequences, and it seems that the TBS is such an instance. At the very least, some instances where utility could be maximized by the breaking of a rule will force the consequentialist to seriously question the necessity and/or importance of rules, which thereby weakens the force of those moral prohibitions.<sup>53</sup> As such, the switch from an act consequentialist ethic to a rule consequentialist ethic will not work for the consequentialist defender of torture.

The second inconsistency with the consequentialist argument has to do with the claim that only the minimum amount of pain and suffering should be inflicted on the terrorist. While they think that torture is morally permissible in the TBS, consequentialists nonetheless acknowledge that torture is morally problematic. Allhoff, for example, states, “Certainly I do not think that torture is *not bad*: it obviously is. Granted, my intuitions tend to be fairly utilitarian, but even the utilitarian is going to say that there is something wrong with torture, ...”<sup>54</sup> This is one of the main reasons why consequentialists include the stipulation that only the minimum amount of pain and suffering should be inflicted on the terrorist. The reasoning here is that while

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<sup>53</sup> One response to this line of argument is that rule consequentialists focus not on the expected good of complying with the rules, but rather on the expected good of accepting the rules. But this response seems to miss the point of rule consequentialism. How, for example, can we promote better consequences simply by accepting rules, and not necessarily complying with them? And, moreover, what specifically is the difference between accepting a rule and complying with one? For more on this response, see Brad Hooker, “Rule Consequentialism”, *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2016/entries/consequentialism-rule/>>.

<sup>54</sup> Fritz Allhoff, “In Defence of Torture: Separation of Cases, Ticking Time-Bombs, and Moral Justification,” *International Journal of Applied Philosophy*, 19, 2 (2005): 257.

torture would be morally permissible in this case because of the better moral consequences it would produce, it nonetheless ought to be restricted to the minimum amount necessary in order to achieve those consequences because of its problematic moral status.

One initial problem with this argument is that it is extremely difficult, if not impossible, to determine the minimum amount of pain and suffering necessary to get the terrorist to reveal the information. Allhoff suggests that psychological profiling can help determine, with reasonable certainty, what the minimum amount of pain and suffering is for a given terrorist.<sup>55</sup> Psychological profiling, however, takes time, which we do not have in the TBS, so this suggestion is puzzling. The much larger issue, however, is that imposing a threshold for how much pain and suffering we can inflict on the terrorist is again inconsistent with consequentialist reasoning. Suppose we follow the consequentialist argument with the stipulation that we should only inflict the minimum amount of pain necessary to get the location of the bomb. We torture the terrorist, inflicting only the minimum amount of pain and suffering, which we were somehow able to determine within the time constraints of the TBS. But the terrorist does not reveal the information. Now what? We have already reached the minimum threshold and still have not acquired the information we desire. It seems that a true consequentialist would tell us to keep torturing until we do get the desired information. For if the focus is on achieving the greatest happiness for the greatest number of people, or for minimizing the amount of pain and suffering, then we must keep torturing. If we keep torturing, we will impose a considerable amount of pain and suffering on the terrorist, but this would be outweighed by the saving of thousands of innocent civilians. Regardless of how we read the consequentialist argument, as either increasing happiness or minimizing suffering, both versions of the argument would tell us to keep torturing

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<sup>55</sup> Allhoff, "Terrorism and Torture," 113.

until we achieve this situation. One cannot impose limitations on the use of torture if one is concerned about achieving greater overall consequences. Thus, the claim that only the minimum amount of pain and suffering should be inflicted on the terrorist is inconsistent with consequentialist reasoning.

In response to this argument, a consequentialist might respond by claiming that the initial minimum threshold that we established was mistaken. And so, we need to change what we thought to be the minimal pain necessary to get the terrorist to reveal the location of the bomb. For example, suppose that injecting a sterilized needle under the fingertips of the terrorist is the minimum amount of pain that can be inflicted.<sup>56</sup> And suppose that what is commonly known as ‘rat torture’ is the maximum amount of pain that can be inflicted.<sup>57</sup> Now suppose we inject the sterilized needle under the fingertips of the terrorist and he does not reveal the information. This means that what we thought to be the minimum pain necessary was not really the minimum amount necessary, and so needs to be adjusted to something else that falls below the maximum. Such a scale can be illustrated as follows:

Minimum Amount of Pain ←-----→ Maximum Amount of Pain  
(Inserting sterilized needle under fingertips) (Rat Torture)

There are at least two problems with this response. First, it associates the minimum threshold of pain with how successful the infliction of pain is in getting an individual to reveal information.

But the revealing of information is irrelevant to how severe pain and suffering is. Pain and

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<sup>56</sup> Example derived from Alan Dershowitz, “Tortured Reasoning,” In *Torture: A Collection*, Ed. Sanford Levinson (Oxford: Oxford University Press, 2004).

<sup>57</sup> In instances of rat torture, a pipe is placed on an individual’s stomach, genitals, or anus. A rat is inserted into the pipe, and one end of the pipe is closed off. The pipe is then heated, and the rat is forced to chew through the individual’s stomach, genitals, or anus.

suffering can be extremely severe and yet not succeed in getting an individual to reveal information. In other words, revealing information is independent of how severe pain and suffering is. Second, if consequentialists are truly committed to the claim that we should only inflict the minimum amount of pain and suffering, then they must be working with some kind of scale of pain and suffering, like I outlined above. On one end is the minimum amount of pain and suffering, and on the other the maximum amount of pain and suffering. But if we keep adjusting what the minimum amount of pain and suffering is, then we really are not operating on a scale anymore. There is no more ‘minimum and maximum’, but rather a variety of techniques that inflict more or less pain. Perhaps consequentialists can alter their approach and claim instead that we should only utilize torture techniques that inflict less pain than the alternatives. However, differentiating between more or lesser amounts of pain and suffering is just something that we should not have an interest in clearly specifying. Jeremy Waldron makes a point about specificity in law that applies equally well to this discussion, “*There are some scales one really should not be on, and with respect to which one really does not have a legitimate interest in knowing precisely how far along the scale one is permitted to go (original emphasis).*”<sup>58</sup>

To conclude, I find the arguments for the moral justification of torture in the TBS to be problematic. There are serious problems with both the rights-based argument and the consequentialist argument for torture in the TBS which should lead us to have considerable doubts about their merits.

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<sup>58</sup> Jeremy Waldron, “Torture and Positive Law,” in *Torture, Terror, and Trade-Offs: Philosophy for the White House*, ed. Jeremy Waldron (New York: Oxford University Press, 2010), 205.

## **Chapter Two: Moral Arguments Against Interrogational Torture in the TBS**

In this chapter I will outline and critique two of the most common arguments offered against the use of torture in the TBS: a) the consequentialist argument against torture, which establishes that in a situation like the TBS, the use of torture will lead to bad consequences, beyond the severe harm it inflicts on the terrorist who is tortured, and that these bad consequences outweigh the good consequences that might result from the use of torture; and b) the deontological argument against torture, which establishes that torture violates the humanity of the victim of torture, and is therefore morally wrong. While I ultimately agree with the conclusions of these arguments, I find that each of them is lacking in some regard.

With respect to the consequentialist argument, I will argue that the consequentialist argument against the use of torture in the TBS as it is presented by its proponents contains flawed reasoning. That is, the consequentialist argument against torture in the TBS outlines that the institutions of the state need to be devoted to perfecting the practice of torture before we perform the act of torture, which means that the bad consequences that result from torture are not *a consequence* of the decision to torture in the TBS. This is important, for while the consequentialist argument against torture in the TBS raises morally relevant considerations, it ultimately fails as a consequentialist argument against the use of torture in the TBS, because if the institutions of the state need to be devoted to perfecting the art of torture before the TBS occurs, then we cannot say that the use of torture *in the TBS* will lead to morally worse consequences in the TBS if those bad consequences are already occurring before the onset of the TBS. With respect to the deontological argument against torture, while this argument against torture is strong, it fails to account for two important moral features. Namely, the harm that torture does to the torturer and the harm done to the social and political institutions that the

torturer represents. So, while I do not disagree with the deontological argument, it only provides one part of an argument against torture by capturing the harm done to the tortured. And while the deontological argument does a good job of capturing this wrong, it is not the only wrong of interrogational torture that needs to be considered. The deontological argument will serve as a segue into my own argument against interrogational torture.

I will proceed as follows. In Section 2.1 I will outline and critique the consequentialist argument against torture. And in Section 2.2, I will outline the deontological argument against torture and discuss how the deontological argument, while important, only provides one part of a moral argument against interrogational torture.

## **2.1 The Utilitarian Argument against Interrogational Torture in the TBS**

In Chapter One, I outlined and critiqued a consequentialist argument supporting the use of torture in the TBS.<sup>59</sup> This argument proceeded roughly as follows. In the TBS, we have one guilty terrorist who has planted a bomb with the intention of killing thousands of innocent civilians. Authorities believe that using torture to retrieve the location of the bomb has a good chance of being successful, and they would therefore be able to save thousands of innocent civilians. And since the suffering of thousands of innocent civilians is a morally worse state of affairs than the suffering of one guilty terrorist, torture would therefore be morally justified, for it would save many innocent civilians and only harm one person, thereby producing better overall consequences. The consequentialist argument against the use of interrogational torture in the TBS is a response to the consequentialist argument supporting the use of interrogational torture in the TBS, as some consequentialists think the consequentialist argument in support of interrogational torture in the TBS is overly simplistic, and fails to account for all the morally

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<sup>59</sup> Like my first chapter, I will be using ‘consequentialism’ and ‘utilitarianism’ interchangeably.

relevant considerations of torturing a terrorist in the TBS. Indeed, as Richard Matthews argues, if we examine the true consequences of torture, all consequentialists must absolutely oppose the use of torture in the TBS.<sup>60</sup>

The central component of the consequentialist argument against interrogational torture in the TBS is what I shall refer to as the ‘institutional harms’ argument. Consequentialists like Matthews, Vittorio Buffachi and Jean Marie Arrigo argue that in order to torture effectively in the TBS, we need an institutional apparatus in place first before a terrorist suspect is captured.<sup>61</sup> This is because in order to have a good chance of successfully retrieving information from the terrorist, torturers must be trained by institutions of the state. For if torturers are not trained, then the chances of successfully retrieving information decrease. And once we see what is involved with a torture training program, we see that this affects numerous institutions of the state and leads to negative consequences that consequentialist supporters of torture do not factor into their utilitarian calculus.

To train torturers, we would need a research program that investigates how to torture effectively. This would necessarily involve the medical establishment, including doctors and psychologists. As Buffachi and Arrigo argue, medical professionals can “help to determine the types of torture the subject can endure, monitor the subject for endurance under torture, resuscitate the unconscious subject, and treat the subject in preparation for further torture.”<sup>62</sup> Doctors and psychologists could provide information on what would best make an individual reveal desired information under the infliction of severe pain and suffering. Doctors,

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<sup>60</sup> Richard Matthews, *The Absolute Violation: Why Torture must be Prohibited*, (Montreal: McGill-Queens University Press), 138.

<sup>61</sup> Matthews, *The Absolute Violation*, 122-3; Vittorio Buffachi & Jean M. Arrigo “Torture, Terrorism and the State: A Refutation of the Ticking-Bomb Argument,” *Journal of Applied Philosophy* 23, 3 (2006): 362-367.

<sup>62</sup> Buffachi & Arrigo “Torture, Terrorism and the State,” 363.

for example, could provide information on the human body and identify the parts of a given individual that are most vulnerable for interrogators to exploit. Similarly, psychologists could provide information on how the brain reacts to pain, and whether psychological harm or physical harm would best elicit the desired information. A troubling implication of this research program would be that individuals would need to be tortured for the conclusions of doctors and psychologists to have any strength. For without torturing individuals, the opinions of doctors and psychologists would be purely theoretical. And while theory might be helpful for practical problems, it would be more useful and beneficial to have some practical grounding about which torture methods work and which do not. It is also likely that these individuals would be unwilling participants, for it seems unlikely that one would volunteer to be tortured, even for the possible benefits that it might produce.<sup>63</sup> We thus see two negative consequences here. First, the institution of medicine would be tarnished by its association with a brutal and inhumane practice like torture. And second, unwilling individuals would have to be tortured for the theories of doctors and psychologists to have any practical importance.

Furthermore, in addition to the institution of medicine, the police and armed forces would also need to be involved in this research program. Both police and military forces would be required to perform the difficult task of “discriminating between terrorist and non-terrorist criminal suspects, because of many overlapping criminal activities (e.g. forgery, money laundering, illegal immigration).”<sup>64</sup> And for both the police and the military, “the most grievous consequences of a torture interrogation program are demoralization of personnel, destabilization of the institutional structure, and loss of honour.”<sup>65</sup> Both police agencies and military personnel

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<sup>63</sup> Matthews, *The Absolute Violation*, 125; Buffachi & Arrigo, “Torture, Terrorism, and the State,” 363.

<sup>64</sup> Ibid 364.

<sup>65</sup> Ibid.

would need to be trained in the art of torture, and learn how to best make a suspect reveal information through the infliction of severe pain and suffering. For while it is the case that anyone can torture, not everyone can torture effectively. Individuals need to be trained on how best to inflict severe pain and suffering so that suspects will reveal information that is useful in foiling terrorist plots. This would require police agencies and military professionals to devote a portion of their training regimen to teach torture and associating the police and military institutions with the practice of torture is yet another bad consequence of torture.

Considered holistically, a research program into the effectiveness of torture would result in a degradation of key institutions of the state, including, but not limited to, the medical, police, and military institutions. As Matthews notes, “[t]hey will have to operate at lower moral standards than we typically expect of them and have to deliberately violate autonomy, inflict harm, act unjustly, and otherwise act immorally.”<sup>66</sup> This concludes the ‘institutional harms’ portion of the consequentialist argument against torture. There are also further features that should be part of the utilitarian calculus that are omitted from the consequentialist argument supporting torture, and once these further features are added to the utilitarian calculus, we see that the consequentialist argument supporting torture is seriously weakened.

First, consider the harms done to the victim and the interrogator. Matthews argues that there is an extreme variance in the way that individuals experience pain and suffering, and because of this variance it makes it difficult to assess just how severely painful torture is. What one individual takes to be severe pain and suffering, another individual might take to be simply mild pain and suffering.<sup>67</sup> Factors such as the psychology, physiology, culture, and gender of the torture victim will all play a role in determining just how severe the pain and suffering is.

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<sup>66</sup> Matthews, *The Absolute Violation*, 127.

<sup>67</sup> Ibid 110.

Because different people react and respond to pain differently, we cannot determine a priori how much suffering the infliction of torture involves.<sup>68</sup> And, “since the torturer cannot possibly have any precise idea of the quanta of suffering that will be inflicted on an individual, ... [the utilitarian calculation] is based on no clear idea how much suffering the torture actually inflicts.”<sup>69</sup> Matthews’ point here is that while torture will surely harm the terrorist who is tortured, the pain and suffering of the victim cannot be predicted, let alone assessed. And a utilitarian calculation that balances unpredictable suffering of one individual against the public good is incomplete, for we have no clear idea just how severe the pain and suffering is.

In addition, torture harms more than just the victim of torture. Torture also harms, albeit in an indirect manner, the individuals who are close to the terrorist, such as family members, friends, colleagues, etc. This is because, as Matthews has argued,

Human beings are social beings. They understand themselves and their identities in light of their communities, their social and historical backgrounds, their normative commitments, their education, and the institutional networks within which they are born and reared. Furthermore, humans are familial beings. That is, they exist in more or less close relations to parents, siblings, children, friends, neighbors, and to the strangers who nonetheless belong to their own communities. In torturing one person, torturers also harm these networks, albeit in less direct or obvious ways. Torture never merely attacks a single “terrorist”; its run-on effect is well documented and involves wide-ranging pain and suffering across the communities and contexts from which the torture victim comes.<sup>70</sup>

The idea here is not that the interrogator directly harms the social network of the terrorist, but rather these social networks will be harmed in an indirect way because of the symptoms that the terrorist will experience after being tortured. Such symptoms include, but are not limited to, anxiety, irritability, alienation, sexual dysfunction, and abusiveness to partners, friends, and

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<sup>68</sup> Matthews, *The Absolute Violation*, 112.

<sup>69</sup> Ibid.

<sup>70</sup> Richard Matthews, “An Empirical Critique of Interrogational Torture,” *Journal of Social Philosophy* 43 (2012): 465-6.

family members.<sup>71</sup> The social network of the terrorist is harmed because these symptoms associated with torture cause the victim of torture to lash out at those in their social network and this causes pain and suffering in the lives of others.<sup>72</sup> Even if such pain and suffering is considerably less than the pain and suffering experienced by the terrorist, it must be included in the utilitarian calculus as a consequence of the decision to torture.

Added to the unpredictability of the pain and suffering of the victim and the indirect harm done to those close to the terrorist, is a consideration of the harm done to the torturer. By inflicting severe amounts of pain and suffering on another individual, a torturer destroys their own character.<sup>73</sup> This is due not simply to the infliction of severe pain and suffering on another human being, but also to the intense physical and mental training that is required before an interrogator engages in the act of torture. To torture effectively, an interrogator needs to be trained to resist their most basic moral norms, including a readiness to ignore feelings of sympathy or pity associated with the suffering of another individual. According to Henry Shue, for example, torture cannot be a ‘one-off’ act. Rather, it is an act which requires practice and training, and a larger background institutional framework through which potential torturers can be trained.<sup>74</sup> This is necessary because successful torturers must have the appropriate dispositions to torture. They must not only avoid feelings of sympathy and empathy, but they must also avoid feelings of anger or cruelty. Feeling sympathetic for the person being tortured might not allow the individual to effectively torture, whereas feeling angry or excessively cruel may force the torturer to go too far, and either severely harm the terrorist to the point where he is

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<sup>71</sup> Matthews, “An Empirical Critique of Interrogational Torture,” 466.

<sup>72</sup> Ibid.

<sup>73</sup> Matthews, *The Absolute Violation*, 116.

<sup>74</sup> Henry Shue, “Torture in Dreamland: Disposing of the Ticking Bomb.” *Case Western Reserve Journal of International Law*, 37, 2 (2005): 236.

incapable of providing any information, or, worse yet, inflicting so much pain and suffering that the terrorist dies as a result of the torture.<sup>75</sup> Matthews adds to this by arguing that torturers cannot feel sorry for their victims, but rather have to find ways to “suppress the...natural respect for the prohibition against deliberate infliction of suffering.”<sup>76</sup> While it is not a necessary component of being a moral agent, most of us feel repulsed when we witness another individual undergoing excruciating pain and suffering. Yet when one tortures another human being, one is forced to ignore this and continue to inflict pain and suffering. Such training requires developing dispositions which violate some of our more basic moral inclinations.<sup>77</sup>

In addition, the harm done to the torturer extends beyond the training and infliction of pain and suffering. Harm also extends to the friends, family, and other community members of the torturer, just like it does with the victim of torture; this is backed up by empirical data. Consider, for example, Frantz Fanon’s account of his observations of two former torturers, both of which were his patients:

One of them found it impossible to sleep and couldn’t maintain satisfactory relations with his wife or relatives. He used to stuff his ears with his pillows to try to shut out the screams of his victims. Another started beating his children and then tied up and beat his wife...Other torturers suffer from having done such wrongs and from the irresolvable conflict that arises from the incompatibility between the wrongness of torture and the fact that they have done it.<sup>78</sup>

What we see here is not just a conflict within the torturer about performing a morally degrading act, but also real, identifiable, and negative consequences that resulted from their performing the act of torture. Thus, torture effects more than just the victim – it has negative consequences for the individual who performs the act, along with the social network of the torturer, as well.

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<sup>75</sup> Shue, “Torture in Dreamland,” 236.

<sup>76</sup> Matthews, *The Absolute Violation*, 117.

<sup>77</sup> Ibid.

<sup>78</sup> Cited in Matthews, *The Absolute Violation*, 118.

In addition to the unpredictability of the harm done to the victim of torture, and the harm done to the torturer, we should also consider the distinction between necessary and possible harms, for a consideration of this distinction will go some way in showing that the utilitarian calculus in favour of torture is deeply flawed. As we have seen, in the TBS there will inevitably be harm associated with the act of torture. While we cannot quantify the harm done to the victim of torture, we know that the victim will experience some form of pain and suffering, and the social networks of the terrorist are highly likely to be harmed as well, albeit it in an indirect way. We also know that the torturer will likely experience harm because of his torturing the terrorist, as well as the social network of the torturer. To be fair, Matthews does specify that the harm done to the torturer is not guaranteed to occur, but there is a strong likelihood that it will, based on the violation of basic moral norms that it entails. These are instances of harm that will likely occur. However, the benefits derived from any act of torture are not as clear. Indeed, as Matthews argues, there might not be any benefits associated with the act of torture.<sup>79</sup> For in any reasonable outline of the TBS, interrogators have imperfect knowledge. They have good reason to believe that a terrorist attack will likely occur, but they cannot be certain. In this sense, they are merely acting on their beliefs, and not on knowledge. Indeed, the bomb detonating might not even occur, regardless of whether they get information from the terrorist. But as Matthews argues, “because they believe that a future catastrophe will take place, they torture to prevent an attack. In a case like this, there are no harmful consequences to balance against the harms that torturers will inflict.”<sup>80</sup> While it is possible that the bomb will go off, it is not necessarily so. But it is necessarily the case that torture will inflict great harm to the victim and possibly to the

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<sup>79</sup> Matthews, *The Absolute Violation*, 114-115.

<sup>80</sup> Matthews, *The Absolute Violation*, 114.

torturer as well. As such, the consequentialist argument in support of torture includes future harms that may, in the end, not occur, which makes the calculation flawed and incomplete.

Thus, the consequentialist argument against torture complicates the consequentialist calculus that defenders of torture provide. It is not simply about balancing the oftentimes unpredictable and indeterminate suffering of one terrorist against the saving of many innocent lives. Rather, we must also factor in the harm done to the social networks of the terrorist and torturer, the likely harm done to the torturer, the distinction between necessary and possible harms, and finally, and perhaps most importantly, the involvement of state institutions in a torture program. Once we consider all these factors, the utilitarian calculus is weighted much differently than initially thought. It therefore seems that the utilitarian calculus supporting torture is considerably less forceful than it might initially have seemed.

While I ultimately agree that the utilitarian calculus supporting torture is flawed, this consequentialist argument against interrogational torture in the TBS is ultimately unsuccessful. To see this, let us consider the first component of this argument: the harm done to the institutions of the state.

Consequentialists who argue against interrogational torture in the TBS claim that an institution of torture should first be in place before an interrogator can effectively torture a terrorist, for the interrogator needs to be trained in order to effectively torture so as to retrieve the desired information in a timely manner. But this argument relies on flawed reasoning to support the use of torture specifically in the TBS. This argument concludes that to increase the chances of successfully acquiring information from a detainee, an institution of torture should first be in place before an interrogator tortures a detainee. But if an institution of torture should be in place before an interrogator can effectively torture, this presumably means that there has not yet been

an extreme emergency like the TBS. This is so because, as I outlined earlier, consequentialists maintain that an institution of torture should be in place before we torture in the TBS, to increase our chances of success. But if this is so, consequentialists who argue that interrogational torture in the TBS harms the institutions of the state are not relying on the TBS to make their case. They are claiming that these institutions should be in place before the TBS occurs. Yet most discussions of the moral permissibility of interrogational torture occur within the context of an extreme emergency like the TBS. In claiming that an institution of torture should be in place *before* the TBS, consequentialists who argue against torture in the TBS are not relying on the TBS. Thus, consequentialists who focus on the harm done to the institutions of the state are making their argument without relying on the TBS. But if this is the case, then these consequentialists cannot argue that the use of torture *in the TBS* harms the institutions of the state, for these institutions have already been in place, and have already been harmed through the development of torture practices.

I argue that the institutional harms argument is, to borrow terminology from Arrigo and Buffachi, a ‘backward-looking argument’.<sup>81</sup> That is, it tells us what should be in place before we can torture effectively in a situation like the TBS. But consequentialism is a ‘forward-looking’ theory, meaning that it tells us that we should evaluate our actions based on the consequences that our actions will produce. Rather than looking backwards, we are to look forward and examine what will happen because of our actions. We are not required to look back and determine what should be in place before we can act. We are simply charged with the responsibility of performing that act that will produce the greatest good for the greatest number of people. And thus, we see that the institutional harms argument is not a forward-looking

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<sup>81</sup> Buffachi & Arrigo, “Torture, Terrorism, and the State,” 360.

argument, mainly because the institutional harms of torture are not a result of using torture in the TBS. These harms *will not be a consequence of the act of torture in the TBS*, but rather will already be occurring before we torture in the TBS. As such, this argument is flawed as a consequentialist argument against the use of torture in the TBS.

To better understand this point, consider by way of analogy the Trolley problem. In the Trolley problem we have a train bearing down on five unsuspecting workers. In one version of the problem, flipping a switch will re-route the train so that it goes down a different track and only kills one person. If we are to examine this problem from a consequentialist perspective, it is not necessary to consider what needs to be done first before we can successfully flip the switch. We do not need to consider, for example, whether the wiring in the switch is properly put together so that when we switch it the train will successfully re-route. Nor do we need to consider whether the tracks are properly put together. All of these are backward looking considerations that are not immediately relevant to the decision we are faced with. Rather, from a consequentialist perspective, we are concerned with what consequences will result from our flipping the switch. And if we reasonably believe that flipping the switch will lead to us saving five lives and killing one person, then from a consequentialist, forward-looking perspective, this is the action we must perform.

Perhaps here a consequentialist can argue that while it might not be necessary to focus on backwards looking considerations, it might be relevant to the decision we make. To take the Trolley problem, for example, it might be relevant to consider whether the wiring in the switch is properly put together, for if we know this then we can be more certain that our flipping the switch will actually produce the greatest good for the greatest number. A similar point can be made about the institutional harms argument. In order to torture effectively, it is relevant to

consider what needs to be in place first before we can effectively torture, and an institution of torture is akin to the wiring of the switch: if the institution is in place, torture will be more effective and perhaps lead to the desired information, just like if the wiring is properly put together, we are more likely to save the five people on the track by flipping the switch.

The problem with this response is that while it might apply to the trolley problem, the same reasoning does not apply to interrogational torture in the TBS. Proponents of this argument will tell us that in order to torture effectively we should have institutions of the state devoted to carrying out research into torture. While this might be the case, it is far from being necessarily the case, as proponents make it out to be. Buffachi and Arrigo, for example, claim “empirical evidence clearly suggests that institutionalizing torture interrogation of terrorists has detrimental consequences on civil, military, and legal institutions, making the costs higher than the benefits.”<sup>82</sup> Later in their article they also claim that “the accuracy and speed of virtuoso torture interrogation *dictate long advance preparation and coordination*, and ultimately corruption, of many key social institutions (my emphasis).”<sup>83</sup> Yet, they do not provide us with any reason for thinking that the *only* effective way to torture is if key social, political, and legal institutions are involved. Put another way, in saying that state institutions need to be involved in the infliction of torture, proponents seem to be arguing that we cannot torture effectively without an institution of torture. But this is clearly false. There have certainly been cases where an individual has tortured another individual successfully without an institutional apparatus devoted to perfecting the art of torture. While it might be the case that establishing an institution of torture will lead to more effective results, it is not necessarily the case that we need to have an institutional apparatus in place.

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<sup>82</sup> Buffachi & Arrigo, “Torture, Terrorism, and the State,” 362.

<sup>83</sup> Ibid 367.

None of this is to say, however, that these backward-looking considerations are not important. Indeed, the institutional harms of torture are relevant to assessing its moral status, and many of the points that Buffachi and Arrigo and Matthews make are relevant to a moral argument against torture. For example, their points are relevant and important when considering more broadly whether a state should adopt a torture program for combating terrorism. However, these institutional harms are not relevant to a consequentialist argument against torture in an extreme emergency like the TBS, because institutional harms are not a consequence of the decision to torture the terrorist in the extreme emergency of the TBS.

With the institutional harms argument dismissed, we are left with the harm done to the victim, the social network of the victim, the perpetrator of torture, the social network of the torturer, and the distinction between necessary and possible harms. Let me first start with the harms done to the victim and the interrogator and their respective social networks. Matthews argues that there is great variance in the way that individuals experience pain and suffering. What one individual considers to be extreme pain and suffering another individual might take to be mild pain and suffering. And if we cannot accurately determine the pain and suffering experienced by the victim of torture, then the utilitarian calculus supporting torture is flawed. While I do not disagree with Matthews that there is great variance in the way individuals experience pain, this point is not enough to alter the utilitarian calculus. Even if we attribute the most severe and painful suffering to the victim, this is still only experienced by one person. And this is easily outweighed by the happiness of thousands to millions of individuals who could be saved by the torturing of this one person. And even if we add in the harms done to the torturer, this is still only the pain and suffering of two people. Again, I do not disagree with Matthews that the torturer experiences great pain and suffering because of his inflicting torture on another

human being. But when we consider this only as a consequence of torture, it is still easily outweighed by the thousands of individuals who could be saved as a result of torturing the terrorist. So even if we attribute the greatest amount of pain and suffering to the victim and the interrogator, this will still only be a small part of the utilitarian calculus, and is not strong enough to seriously tip the consequentialist scales against torture.

What of the social networks of both the tortured and the torturer? Does the indirect harm done to these networks alter the scales in any meaningful way? In response to this point I should begin by noting that it is curious that Matthews does not include the social networks of the innocent civilians who might be killed by the bomb. For if we need to factor in the relationships of the victim of torture, and the relationships of the torturer, then it seems appropriate to also include the relationships of the innocent civilians who might be killed by the bomb, for they are an important part of the equation. Indeed, they are the only reason why anyone suggests we should torture the terrorist in the first place. When we factor in the relationships of the innocent civilians, and the happiness that they would derive from having their loved ones saved from a terrorist attack, we see that the utilitarian calculus is again not altered in the way that Matthews thinks it is. Regardless of how many people would be saved by the bomb, whether it be hundreds, thousands, or millions, the social networks of the innocent civilians will far outweigh the combined social networks of the terrorist and the torturer.<sup>84</sup>

What about the distinction between necessary and possible harms that Matthews draws? Matthews is correct to point out that interrogators act on imperfect knowledge, and that while there will certainly be harm done to the victim and potentially the interrogator, there might not

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<sup>84</sup> This point about the social networks of individuals involved in the TBS might also lead to a question about utilitarianism in general: just how far into the future should we look to assess the consequences of our actions? In other words, should these social networks even be considered, or should we only be focused on the immediate consequences of the act of torture?

be a catastrophe to prevent. But this is true of any consequentialist calculus. We can never be certain that there is some event in the future that we need to prevent from happening. For example, we cannot be certain in the trolley problem that if we flip the switch the train will actually re-route and kill the one person. What if it re-routes to another track and ends up killing 10 people? Yet, we can be reasonably certain that our actions will lead to some desired outcome. And it is reasonable certainty that we should strive for, not perfect knowledge. We never really know with certainty what the consequences of our action will be. Yet to be fair to consequentialists who support torture, we can act with a reasonable degree of certainty that our actions will lead to certain consequences. So, while it is technically true that by torturing the terrorist, we might not avert a catastrophe, we can be reasonably certain that there is a catastrophe to avert.

This concludes my critique of the consequentialist argument against interrogational torture in the TBS. While I am sympathetic to the conclusion of the argument (i.e. that interrogational torture is morally impermissible in the TBS), this argument ultimately fails to establish this conclusion on consequentialist grounds. I will have more to say regarding the consequentialist argument against torture in Chapter 4. While I disagree with the way in which the consequentialist reaches their conclusion that torture is morally impermissible, I do acknowledge that this consequentialist argument can serve as a nice supplement to my own argument. Next, I will discuss the final, and perhaps the strongest, argument against torture: the deontological argument.

## **2.2 The Deontological Argument against Interrogational Torture in the TBS**

The deontological argument against the use of interrogational torture in the TBS that I will be focusing on has its basis in Immanuel Kant's second formulation of the Categorical

Imperative. The second formulation of the Categorical Imperative states that as rational, moral creatures, we are to act such that we treat humanity, whether in our own person or the person of any other, always as an end and never merely as a means to some end.<sup>85</sup> Using a moral agent as a mere means is using them in a way that they would never consent to.<sup>86</sup> In the TBS, an interrogator who inflicts severe pain and suffering on another human being uses that person as a mere means, and treats them in a way that they would never consent to, for no one, regardless of who that person is, would ever willingly consent to being tortured. Not only this, but an interrogator also perverts and destroys the humanity of the person who is tortured. For Kant, respecting the humanity of an individual involves, at a bare minimum, recognizing that individuals exercise their rationality to form and pursue ends, which are rationally defensible to other moral agents. And they do so in an autonomous way – they are free to pursue these ends without the interference of other agents. Exercising one’s rationality and acting autonomously are the key components of humanity for Kant. However, when it comes to the practice of torture, we see that rationality and autonomy become insignificant, and severely degraded. Torture involves using another individual like an object. When one is tortured one is used and manipulated for someone else’s ends, in a way that no human could consent to. To better understand this point, let us consider David Sussman’s account of how torture perverts the humanity of its victim.<sup>87</sup>

While Sussman does acknowledge that his argument regarding torture is not meant to be an argument against the use of torture, and that it is meant to be an argument about what makes

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<sup>85</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Trans. & Ed. by Mary Gregor & Jens Timmerman (Cambridge: Cambridge University Press, 2012), 41.

<sup>86</sup> Christine Korsgaard, *Creating the Kingdom of Ends*, (Cambridge: Cambridge University Press, 1996), 295.

<sup>87</sup> David Sussman, “What’s Wrong with Torture?” *Philosophy and Public Affairs* 33 (2005): 1-33.

torture a serious and unique moral harm<sup>88</sup>, his argument does provide the basis for a Kantian based argument against torture. Sussman begins by noting the common intuition that there is something peculiarly harmful about torture. That is, there is something about torture that makes it morally wrong in a way that does not make anything else morally wrong. For Sussman, the peculiar moral harm of torture is that it turns one's "agency against itself, forcing the victim to experience herself as helpless yet complicit in her own violation. This is not just an assault on or violation of the victim's autonomy, but also a perversion of it..."<sup>89</sup> In inflicting severe pain and suffering on the victim, Sussman argues that the interrogator uses the victim's pain as a way of expressing the interrogator's will. The victim's suffering is not just something that an interrogator brings about, but is also something that the victim does to his or her own self.<sup>90</sup> As Sussman describes, the victim of torture "experiences within himself a dialectic where some part of him [the victim] serves as the eager agent of his tormentor [the interrogator]."<sup>91</sup> In this way, the interrogator symbolically places a surrogate of himself into the victim, a surrogate which comes to dominate the victim's world. The tortured person is no longer looking to resist the pain being inflicted, but rather the victim is being forced to give in to that pain, to give in to the will of the interrogator, who dominates the world of the victim. The victim of torture then becomes focused on pleasing the interrogator, who represents all source of value in the victim's life, by revealing the information that the interrogator desires.<sup>92</sup>

What we see here is not just the victim of torture being used as a mere means to the interrogator's end of gaining information. Rather, the victim of torture, through her own bodily

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<sup>88</sup> Sussman, 'What's Wrong with Torture,' 4.

<sup>89</sup> Ibid 30.

<sup>90</sup> Ibid 21.

<sup>91</sup> Ibid 24.

<sup>92</sup> Ibid 25-6.

responses, is taking an active role in using herself as a mere means. In cases of torture, it is the actions of another individual *and* the victim's own unintentional bodily responses that constitutes being used as a mere means to some end. The interrogator inflicts pain and suffering on an individual, but this infliction of pain and suffering in and of itself is not the only way that the victim is being used as a mere means to an end. It is the additional harm that the victim of torture unwillingly does to him- or her-self that constitutes part of being used as a mere means to an end. The victim of torture is forced to be an active yet helpless participant in his or her own suffering. As Sussman puts the point, "the sufferer is made to experience himself not just as a passive victim, but as an active accomplice in his own debasement."<sup>93</sup> The humanity of the victim of torture is thus turned against itself. The surrogate of the interrogator forces the victim to become an active participant in her own suffering. Yet, the victim of torture simultaneously remains helpless, for only the interrogator can choose to stop the infliction of severe pain and suffering, even if the desired information is revealed. For it is the interrogator who is in complete control of the process.

In turning the victim's agency against itself, the interrogator not only perverts the victim's humanity, but also destroys his autonomous agency.<sup>94</sup> Ben Juratowitch has argued that the infliction of severe pain and suffering deprives the victim of his autonomy, for the infliction of torture involves a complete deprivation of any choice. And with this deprivation of choice comes a deprivation of any autonomy for the victim.<sup>95</sup> Even if the terrorist we have captured does have the information, and even if there is a short time during which the terrorist can choose to reveal the information, "the objective of the torturer is to inflict such a degree of suffering that

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<sup>93</sup> Sussman, 'What's Wrong with Torture,' 23.

<sup>94</sup> Sussman outlines this position, yet never explicitly endorses it. See Sussman, "What's Wrong with Torture?," 13-15.

<sup>95</sup> Ben Juratowitch, "Torture is Always Wrong," *Public Affairs Quarterly*, 22, 2 (2008): 87.

ultimately the person suffering it cannot bear it and so there is no alternative left but to provide the information. That is not a choice on any understanding of the term.”<sup>96</sup> It is this complete deprivation of the victim’s autonomy that renders the use of interrogational torture morally impermissible in a situation like the TBS. The victim’s humanity and autonomy are completely disrespected, and ultimately destroyed, by the interrogator. The victim, as Juratowitch argues, becomes a:

suffering instrument of the torturer...her dignity and autonomy...completely disrespected. It is for this reason...that torture is something that the state should not inflict on any human...it does not qualify as something that may be put on the scales to balance against other things that we would like to avoid.<sup>97</sup>

Sussman’s and Juratowitch’s accounts, when combined, form the Kantian Deontological argument against torture.

In response to this Kantian deontological argument, a critic might dispute the point that no one willingly consents to torture. This argument might take one of two forms. First, it might be argued that in refusing to divulge the location of the bomb to authorities, a terrorist is offering implied consent to being tortured. In refusing to cooperate with the authorities, the terrorist implicitly consents to being treated in any way that will lead to the location of the bomb.<sup>98</sup> This argument, however, is problematic in two ways. First, as Peter Brian Barry has argued, “the victim of torture is coerced to an exceptional degree, so exceptional that it probably undermines consent.”<sup>99</sup> Second, it is problematic to suggest that because the terrorist does not provide the information, that he is in some way consenting to being harmed in such an egregious manner. On any very minimal understanding of consent, consent is an active process whereby an individual

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<sup>96</sup> Ibid.

<sup>97</sup> Juratowitch, “Torture is Always Wrong,” 87.

<sup>98</sup> Peter B. Barry, “The Kantian Case against Torture,” *Philosophy* 90, 4 (2015): 603.

<sup>99</sup> Ibid.

expresses his or her willingness to engage in activities with others. But the terrorist has not expressed his willingness to be a participant in torture. He has not agreed to be tortured because of his refusal to divulge information. And if we take this argument seriously, then it would seem to imply that a victim of robbery ‘consents’ to being robbed by her refusal to say ‘stop’ to her robber. In the same way that it is wrong to think an individual offers implied consent by not saying ‘stop’ to her robber, so too is it wrong to think that a terrorist offers implied consent to being tortured by refusing to divulge information.

The second approach is more fruitful. Here a critic can argue that soldiers, for example, consent to being tortured during their military training. Soldiers are put through gruelling physical and psychological exercises to test their strength and fitness to serve. Such exercises often rise to the level of severe pain and suffering that accompanies any act of torture, and so might plausibly be regarded as an instance of torture. Yet it seems odd to classify military training as ‘torture’, primarily because of the different ends of military training and paradigmatic cases of torture. In cases of military training, soldiers are put through these exercises to gain strength and resilience, and to test whether they are cut out for a career in the military. In paradigmatic cases of torture, however, an individual is undergoing severe pain and suffering not for ends that they themselves hope to achieve, but rather for the ends of their enemies, which in our case is the end of retrieving information. In cases of military training, soldiers consent to training because of what they will achieve after the training, whereas terrorists will achieve nothing after the torture. Because of these different ends, I hesitate in calling military training torture. Certainly, it resembles torture in the infliction of severe pain and suffering, I do not wish to deny this. But as an instance of torture per se, it is problematic.

For what it is worth, I agree with the conclusions of the Kantian Deontological argument against torture, and I do not have much to say by way of a critique of this argument. It undoubtedly captures an important part of what is morally wrong with torture, both in general and specifically in the TBS. Namely, the failure to respect the humanity of a person. However, the deontological argument is only one part of what is wrong with torture and what makes it morally impermissible in the TBS. The deontological argument against torture accounts for the wrongness and impermissibility of torture by analyzing the situation from the perspective of the victim of torture. It is because of the moral harm that torture inflicts on the victim of torture that renders it wrong and impermissible, again both in general and in the TBS. However, what this argument fails to account for is that torture involves two actors, the tortured and the torturer. Focusing on one actor (the tortured) and not the other (the torturer) makes for an incomplete moral argument. However, providing a moral account of the wrongness and impermissibility of torture that captures the moral harm done to the tortured and the torturer makes for a more robust account, and it is this that I propose doing.

In what follows, I will propose that torture is wrong not just because it fails to respect the humanity of the tortured, but also because it harms the torturer. And, since the torturer in the TBS is an agent of the state, I will also discuss how the use of torture in the TBS harms the institutions of the state that the torturer represents. As such, I do not propose that we forget about the deontological argument against torture, but rather add to it. The deontological argument provides the first prong in a two-pronged argument against the moral permissibility of torture. In what follows, I will outline the second prong of this argument, by focusing on a concept that is often discussed in moral philosophy but is usually not fully outlined or appreciated. To support the claim that torture harms the torturer and the institutions that the torturer represents, I will be

relying on the concept of moral integrity. Understood very briefly, moral integrity involves having a strong commitment to moral principles that shape who we are as individuals. Importantly, moral integrity involves standing by those commitments in times of temptation. By engaging in torture, I will argue that state officials violate their professional moral integrity and, more importantly, the moral integrity of the institutions that they represent. In what follows, I will provide a more robust explanation of what moral integrity is and how it provides the foundation for my claim that torture degrades the professional moral integrity of the torturer and the integrity of the institutions of the state. However, before proceeding any further, let me first address a potential worry that some might have with my approach.

In an article exploring the Kantian argument against torture, Peter Brian Barry considers the claim that the wrongness of torture lies in something outside the harm done to the victim of torture. By way of analogy, he discusses Kant's views on cruelty to animals, and how for Kant the wrongness in being cruel to animals is based primarily in the harm that it does to the person who is cruel, rather than the victim of cruelty. It is worth quoting Barry in full here:

On Kant's view, the wrongness of animal cruelty consists primarily in its contingent relationship to the corruption of our character: the mistreatment of non-human animals can lead us to become like butchers who become accustomed to the sight of death and hardened as a result ... Surprisingly, the wrongness of beating a dog or torturing kittens for fun is not a function of the harm done to the animal being abused, but in the damage done to the abuser. Similarly, torture's essential wrong-making feature on this strategy is not a function of the harm done to persons tortured, but to torturer. And that seems wrong: any plausible account of the wrongness of torture had best identify its wrong-making feature primarily in terms of what torture does to its victims.<sup>100</sup>

The argument that I will advance in the following chapters is strikingly similar to Kant's views on animal cruelty, in that the wrongness of torture corrupts the moral integrity of the torturer. I will add to this by arguing that torture also corrupts the integrity of the institutions that the

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<sup>100</sup> Barry, "The Kantian Case Against Torture," 613.

interrogator represents. Nonetheless, it seems appropriate to address this potential criticism from Barry, for I think many would share his intuition that the central wrong of torture is in the harm it does to the victim of torture.

Let me first be clear in claiming that I am not going to be arguing that the harm done to the torturer and the institutions that the torturer represents is the *essential* wrong-making feature. My claim is the more modest claim that the harm done to the torturer and the institutions that the torturer represents are an important part of the moral wrongness and impermissibility of torture in the TBS, a feature that I think is neglected in current discussions of torture. As I hope I have made clear, I do not wish to mitigate the importance of the harm done to the victim of torture. This is essential to any account of the wrongness and moral impermissibility of torture, whether in general or in the specific case of the TBS. Yet, contra Barry, I think we have good reason to explore the harm done to the torturer and the institutions that the torturer represents. For however much pain and suffering is inflicted on the victim of torture, we ultimately need *someone* to inflict that pain. Simply put, without an individual torturing, we have no one who is tortured. And inflicting such pain and suffering is no easy task. As Matthews argued, it involves going against basic moral norms that we all do, or at the very least should, share.<sup>101</sup> Furthermore, it is not just any individual inflicting this severe pain and suffering, but an agent of the state, which, as I will argue, associates the institutions of the state with a morally brutal and degrading practice. With these points in mind, let us now consider the concept of integrity and how it fits into the debate on the moral permissibility of interrogational torture in the TBS.

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<sup>101</sup> Matthews, *The Absolute Violation*, 117.

### **Chapter Three: A Philosophical Examination of Integrity**

Let us take stock of the arguments offered thus far. In the first chapter, I outlined two of the more popular arguments offered in the philosophical literature supporting the use of torture in the TBS: the rights-based argument and the consequentialist argument. Both, I argued, were flawed. The rights-based argument failed for two reasons: first, it did not establish a connection between the forfeiture of a right and the moral permissibility of inflicting harm on another individual, and second, it did not satisfy all of the necessary conditions for a successful claim of self-defence, or, in our case, defence of others.<sup>102</sup> The consequentialist argument failed as a moral justification for the use of torture in the TBS because of some important practical limitations and because the reasoning employed by consequentialist defenders of interrogational torture in the TBS is ultimately inconsistent with consequentialism.

In Chapter Two, I outlined and critiqued two of the more popular arguments against the use of torture in the TBS: the consequentialist argument against torture, and the deontological argument against torture. I argued that the consequentialist argument against torture failed as an argument against torture in the TBS because it is mainly focused on the bad consequences of implementing institutions of torture, institutions which consequentialists argue need to be in place before a situation like the TBS occurs. If such institutions need to be in place before the TBS, and if bad consequences result from these institutions, then consequentialists who oppose the use of torture in the TBS cannot say that the use of torture in the TBS will lead to bad consequences, for these negative consequences are already occurring because the institutions have already been set up. While I think that the harm that befalls institutions because of torture is

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<sup>102</sup> As I discussed in Chapter One, the conditions for a successful claim of self-defence are the same conditions for a successful claim of a defence of others. It is the defence of others that is more appropriate for the TBS.

serious and worthy of moral consideration, the way it factors into the consequentialist argument against torture is problematic. In addition, I argued that the institutions of torture consequentialists speak of are not necessary before torturing in the TBS, and I also argued that regardless of these institutions, the consequentialist calculus used to argue against the use of interrogational torture in the TBS is problematic, such that when we perform a more careful analysis, we see that the bad consequences of using interrogational torture in the TBS are not enough to establish the conclusion that torture is morally impermissible. I will have more to say about the consequentialist argument against interrogational torture in Chapter Four.

Furthermore, I argued that the deontological argument against torture, while strong, nonetheless fails to account for important moral features of the use of torture in the TBS: namely, the harm that torture does to the government official who tortures, and the background institutions that the government official represents. The deontological argument against torture thus accounts for one important harm involved in interrogational torture: the harms that the tortured individual experiences. But another important harm that is not accounted for in the literature is the harm that torture brings upon the torturer and the institutions that the torturer represents. It is this topic that will occupy the remainder of this dissertation.

In claiming that the infliction of torture harms the government official who tortures, and the background institutions that the government official represents, I will be relying on an account of integrity. My aim in this chapter is to explain this moral concept of integrity, and discuss how this idea of integrity relates to the debate on the moral permissibility of torture in the TBS. This account of integrity will serve as the foundation for my next chapter, where I will argue that torture degrades the torturer and the institutions that the torturer represents. I will proceed as follows. In Section 3.1, I will offer an account of individual integrity. Then, in section

3.2, I will discuss how integrity relates to the TBS. I will do this by outlining and critiquing Matthew Kramer's argument against torture. I will then conclude by offering some thoughts on why the idea of integrity is important in the debate on the moral permissibility of interrogational torture.

### **3.1 Understanding Integrity**

Integrity, like most other philosophical concepts, has proven to be very difficult to define. One reason for this is that we ascribe integrity to many different things, such as buildings, persons, institutions, and organizations. For the purposes of this chapter, I will be restricting my analysis of integrity to the individual context, and then using this individual account of integrity to provide the basis for my account of institutional integrity. That is, I will be focusing my discussion on what it means for an individual to have integrity. Then, in the next chapter, I will apply this understanding of integrity to government officials and the institutions of the state. So, with this mind, let us begin our discussion of what it means for individuals to have integrity.

In its most general form, integrity signifies a commitment to remain true to one's principles. According to Mark Halfon, to be committed "involves a pledge to pursue some objective..."<sup>103</sup> Making a pledge to pursue some objective can be either explicit or implicit. It is explicit when one makes a promise, oath, vow, or declaration.<sup>104</sup> When the President of the United States takes an oath to uphold the Constitution of the United States, for example, the President makes an explicit commitment. A commitment is implicit, or implied, when no words are used to express the commitment, but when the agent nonetheless acts in accordance with some principle or objective.<sup>105</sup> One who is committed to helping others, for example, will often

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<sup>103</sup> Mark Halfon, *Integrity: A Philosophical Inquiry*, (Philadelphia: Temple University Press, 1989), 16.

<sup>104</sup> *Ibid* 21.

<sup>105</sup> *Ibid*.

not come up to a stranger and say ‘I am going to help you.’ Rather, one who is committed to helping others will help others without declaring or promising that they will do so. Persons of integrity can, although I suspect rarely do, publicly declare that they are committed to certain principles. Rather, generally speaking, persons of integrity implicitly adopt principles that they act in accordance with.

The principles that a person of integrity is committed to must be both consistent and coherent. With respect to consistency, in forming principles that she will remain committed to, the person of integrity must ensure that the principles she forms do not logically contradict each other. As for coherence, the actions that a person of integrity performs must not go against the principles that she endorses, and the person of integrity must also ensure that her actions are representative of the principles she chooses to adopt. She must not only make a pledge to act in accordance with her principles, but she must also intend to act in accordance with those principles on a regular basis. Here we see that consistency signifies a relationship between one’s principles, and coherence signifies a relationship between one’s principles and actions. One’s principles must not contradict one another, and one’s actions must be coherent with the principles that one chooses to adopt. The person of integrity is consistent in the sense that she adopts principles that do not contradict one another, and coherent in the sense that she has a disposition to act on those principles that she has chosen to adhere to. I say ‘has a disposition to act’ because in some cases, one is either unable to act according to their principles or might have more urgent matters to attend to. Think, for example, of an individual who suffers a serious injury and is forced to remain in hospital for a while. In this case, an individual who does not act on their principles should not be faulted, simply because they are incapable of acting. Nonetheless, so long as an individual makes it a habit to act on those principles that she

endorses, she is being coherent. Another way of putting this point is to say that a person of integrity not only makes a commitment but is also committed. This means that the actions that an individual with integrity performs must not go against her principles and must also be determined by the principles that she endorses. This helps ensure that the person of integrity is a unified individual, in that she is committed to principles that are consistent and coherent with one another, and that her actions represent those principles that she is committed to.

While there is a difference in the kinds of commitments that one makes, and while such commitments must be consistent with each other and an individual's actions must cohere with their principles, there is also a difference in the strength of those commitments. Lynne McFall, for example, distinguishes between 'identity conferring commitments' and 'defeasible commitments.'<sup>106</sup> Identity conferring commitments "reflect what we take to be most important and so determine, to a large extent, our ... identities."<sup>107</sup> This is in contrast to defeasible commitments, which "can be sacrificed without remorse."<sup>108</sup> A person of integrity can generally sacrifice some of their defeasible commitments and still maintain their integrity. McFall uses the example of professional success. I might be committed to being a successful philosopher, one who is well liked by my peers and widely published, but a failure to achieve this, or an outright change in my career path, will not mean I lose my sense of self-worth.<sup>109</sup> Nor does it mean that I will lose my integrity. Defeasible commitments can thus be lost without one's integrity becoming compromised. Identity conferring commitments, on the other hand, cannot be sacrificed without some loss of integrity, for identity conferring commitments determine to a large extent who we are as a person.

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<sup>106</sup> Lynne McFall, "Integrity," *Ethics* 98 (1987): 12-13.

<sup>107</sup> Ibid 13.

<sup>108</sup> Ibid 12

<sup>109</sup> Ibid.

This discussion of identity conferring commitments is important for understanding integrity, for it is these identity conferring commitments that are a central focus of the person of integrity. This understanding of identity conferring commitments, and the relationship such commitments have to one's integrity, is perhaps best articulated by Bernard Williams. Williams' understanding of integrity is rooted in his critique of utilitarianism. Williams argues that utilitarianism is an alienating theory because of its tendency to distance an agent from his or her projects and/or commitments.<sup>110</sup> A project for Williams are those things that an individual is involved in, and which flow from an agent's character.<sup>111</sup> While this is not meant to be an exhaustive list, a project can include things such as having a desire for the wellbeing of oneself and one's family and/or friends, intellectual, cultural, and creative pursuits or interests, the abolition of certain types of warfare, or some general disposition regarding human conduct, "such as a hatred of injustice, or of cruelty, or of killing."<sup>112</sup> Projects rise to the level of commitments when "one is more deeply and extensively involved and identified" with these projects; "one can be committed to such things as a person, a cause, an institution, a career, one's own genius, or the pursuit of danger."<sup>113</sup>

Utilitarianism, according to Williams, demands that an agent perform that action that maximizes the utility in a given situation, where the utility is generally understood as happiness. However, in so doing, an agent's interests count just as much as the interests of a stranger. For according to Williams,

the agent as [a] utilitarian...is committed only to...the outcome...[h]is own substantial projects and commitments come into it [the outcome], but only as one lot among others – they potentially provide one set of satisfactions among those which

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<sup>110</sup> Bernard Williams, "A Critique of Utilitarianism," in *Utilitarianism: For and Against*, ed. J.J.C. Smart & Bernard Williams (Cambridge: Cambridge University Press, 1973), 108-118.

<sup>111</sup> *Ibid* 110-111.

<sup>112</sup> *Ibid*.

<sup>113</sup> *Ibid* 116 and 112.

he may be able to assist from where he happens to be. He is the agent of the satisfaction system who happens to be at a particular point at a particular time...[h]is own decisions as a utilitarian agent are a function of all the satisfactions which he can affect from where he is: and this means that the projects of others, to an indeterminately great extent, determine his decision.<sup>114</sup>

The idea here is that an agent who adheres to the utilitarian tenet of maximizing the consequences in a given situation acts as a ‘utilitarian calculator’. He is to assess the situation, factoring in all who might be affected by such a situation and determine the course of action that would lead to the greatest good overall. However, in doing so, the agent must value his own interests, or, to use Williams’ terminology, ‘projects and commitments’, as equal in worth to the projects and commitments of others. In some cases, this will not be an issue, as some of one’s projects and commitments can be sacrificed without difficulty; these are the defeasible commitments that McFall refers to above. However, with respect to identity conferring commitments, this is deeply problematic. Identity conferring commitments are what Williams refers to as ‘ground projects.’ These ground projects “are closely related to his existence and which to a significant degree give a meaning to his life.”<sup>115</sup> Sacrificing these ground projects, or demeaning their importance in light of utilitarian calculations that prevent us from acting in accordance with these ground projects, represents a grave harm to the agent. For as Williams concludes:

The point is that he is identified with his actions as flowing from projects and attitudes which in some cases he takes seriously at the deepest level, as what his life is about...It is absurd to demand of such a man, when the sums come in from the utility network which the projects of others have in part determined, that he should just step aside from his own project and decision and acknowledge the decision which utilitarian calculation requires. It is to alienate him in a real sense from his actions and the course of his action in his own convictions. It is to make him into a channel between the input of everyone’s projects, including his own, and an output of optimistic decision; but this is to neglect the extent to which *his* actions and *his*

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<sup>114</sup> Williams, “A Critique of Utilitarianism,” 114-115.

<sup>115</sup> Bernard Williams, “Persons, Character, and Morality,” in *Moral Luck*, ed. Bernard Williams (Cambridge: Cambridge University Press), 12.

decisions have to be seen as the actions and decisions which flow from the projects and attitudes which he is most closely identified. It is thus, in the most literal sense, an attack on his integrity.<sup>116</sup>

For Williams, integrity and identity are thus closely connected. We each have projects and commitments, those things that we are involved with daily and which, in some cases, give our life meaning. And when we are required, whether through the dictates of some moral theory or for other reasons, to abandon or act against these commitments, this serves as an attack on our identity as a moral agent.

Williams here seems to be suggesting that it is wrong to abandon or act against one's commitments when the dictates of impartial moral theories tell us to do so, for doing so will be an attack of one's integrity. This would seemingly include situations in which we are tempted to act against our projects and commitments. Temptation can occur from considering the demands of impartial moral theories but can also include other cases. One might, for example, be tempted to act against one's principles or commitments not because of the demands of some impartial moral theory, but rather because acting against one's principles or commitments might be the easier thing to do in a given situation. It is equally important that the person of integrity stand by her commitments in these times of temptation. Indeed, one of the defining features of integrity is that it requires agents to stand by their principles and commitments in times of temptation. As McFall notes, "[a] person of integrity is willing to bear the consequences of her convictions, even when this is difficult, that is, when the consequences are unpleasant...[w]here there is no possibility of its loss, integrity cannot exist."<sup>117</sup> In those instances where an individual is faced with a situation wherein it is tempting for her to act against her identity-conferring principles, she

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<sup>116</sup> Williams, "A Critique of Utilitarianism," 116-117.

<sup>117</sup> McFall, "Integrity," 9.

acts with integrity when she refuses to give in to the temptation and remains true to her identity-conferring principles by adopting that course of action that is consistent with such principles.

So far we see that, at a minimum, integrity involves a) forming and remaining committed to principles that are consistent with one another and that help shape an individual's identity; b) developing a course of action that will cohere with the principles that one endorses, and c) standing by those commitments in times of temptation. These components are minimally necessary for any account of integrity, although different emphasis is placed on each component by different authors.<sup>118</sup> One question we might raise in response to the above analysis is whether there are any restrictions on the content of the principles that a person of integrity is committed to. That is, can a person of integrity be committed to *any* principles, or must a person of integrity be committed to principles that are in some sense moral?

Consider, for example, the case of the Nazi. A Nazi seemingly meets all the requirements of integrity outlined above. A Nazi is committed to principles that are consistent with one another, such as preservation of the Aryan race and a belief in the inferiority of certain ethnic groups. These principles do not contradict one another, and the actions of a Nazi also cohere with the principles that they endorse. Nazis do act on their principle of racism, among other principles, and discriminate against races that they deem inferior, especially the Jewish population. And finally, Nazis remain committed to their principles in the face of temptation. The backlash that was experienced immediately after World War Two rendered the Nazi ideology as one that goes against the basic tenets of humanity, and any Nazis who survived

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<sup>118</sup> John Cottingham, for example, stresses the importance of the inner unity of a person of integrity. A person of integrity, on Cottingham's view, should not be fragmented, but rather stable and integrated. See Cottingham, "Integrity and Fragmentation." Gabriele Taylor emphasizes the importance of coherence between action and principle. According to Taylor, we should not be led to act on whatever desire is strongest, but rather we should act on those desires that are truly ours. See Gabriele Taylor, "Integrity," In *Pride, Shame, and Guilt: Emotions of Self-Assessment*, 108-141. New York: Oxford University Press, 1985.

World War Two were faced with temptation to alter their views and go against their principles. And while some certainly did (mainly those who were forced against their will to become Nazis), to this day there remain committed Nazis, despite the backlash that they receive and the temptation to change their views.

The case of the Nazi seemingly presents a problem for the account of integrity sketched thus far, for the Nazi meets all the conditions of integrity set out. Yet, when we speak of persons of integrity, we often think that these are persons that we should admire and look up to, and possible even emulate, and it is relatively uncontroversial that a Nazi is someone we should not look up to. Contrast the case of a Nazi with the case of Martin Luther King Jr. King formed and remained committed to principles centred on equality and justice, and his actions were coherent with those principles. Importantly, he remained committed to these principles in the face of great adversity. Certainly, we should admire someone like King, and perhaps even emulate someone like him. He also seems to qualify as a person of integrity. Yet King's integrity seems to be of a different kind than the integrity of a Nazi. What, then, is the difference?

The principles that King formed and remained committed to were moral principles. I understand a moral principle as a principle that expresses the disposition to respect the humanity of others. Respecting the humanity of others has roots in Kant's second formulation of the Categorical Imperative, which requires us to act such that we treat humanity, whether in our own person or that of another, always as an end and never as a mere means to some end.<sup>119</sup> Before acting, we must recognize that other individuals have their own ends, and respecting the humanity of an individual involves, at a bare minimum, recognizing that individuals exercise their rationality to form and pursue ends that are rationally defensible to other moral agents. One

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<sup>119</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Trans. & Ed. by Mary Gregor & Jens Timmerman (Cambridge: Cambridge University Press, 2012), 41.

implication of Kant's view is that we are social creatures, and as social creatures, we must recognize and respect the fact that we are surrounded by other individuals who, like us, are acting to pursue their own ends.

Since we are social creatures in a moral community, I argue that respecting the humanity of others involves accepting and appreciating the views of others, specifically as it relates to our behaviour. That is, persons of integrity must be reasonable, and submit their principles and actions to the rational judgments of others. An agent is reasonable when they "[exercise] their general capacities of reason in good faith and to the best of their abilities."<sup>120</sup> A reasonable agent exercises their capacities of reason in good faith when they are willing to listen to and critically engage with the viewpoints of others. This means that the person of integrity must be willing to submit those principles to the critical scrutiny of others. A person of integrity must be willing to critically reflect on their principles, submit those principles to the judgments of others and, if necessary, revise them in light of rationally justifiable reasons offered by one's peers.

Importantly, this does not mean that others must think that the principles of a person of integrity are in some sense 'correct.' There is bound to be considerable disagreement about the justification and acceptance of moral principles. Rather, I have in mind a weaker criterion, something along the lines of John Rawls' reasonableness standard as developed in his account of Public Reason.<sup>121</sup> On this understanding, the commitments of a person of integrity would have to be those that reasonable people who disagree with those principles can at least understand how you might reasonably believe what you do. For example, a deontologist will never think that a consequentialist has the correct moral principles. Yet, the deontologist can, at the very least,

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<sup>120</sup> Charles Larmore, "Political Liberalism: Its Motivations and Goals," In *Oxford Studies in Political Philosophy, Volume One*, Ed. David Sobel et al., (New York: Oxford University Press, 2015), 66.

<sup>121</sup> John Rawls, *Political Liberalism*, New York: Columbia University Press, 2005.

understand how a consequentialist can reasonably believe what they believe. The deontologist and the consequentialist approach the question of morality from different angles, yet at the end of the day they are still concerned with what is morally appropriate. That they have different answers to this question of what is morally appropriate does not necessarily entail that they each think the other is unreasonable. Calhoun, for example, argues that persons of integrity are concerned not only about the principles and commitments that they have, but also, and more importantly, whether those principles and commitments can be made justifiable before their peers.<sup>122</sup> Persons of integrity do not simply stand by their commitments, but they stand *for* their commitments. As Calhoun puts the point, “standing for something is not just something [one] does for [one]self. [One] takes a stand for, and before, all deliberators who share the goal of determining what is worth doing.”<sup>123</sup> This reflects Margaret Walker’s view that integrity is a form of reliable accountability, whereby agents are required to maintain their reliability in matters relating to important goods and commitments.<sup>124</sup> Building on Calhoun’s account, Walker conceives of integrity as a kind of reliability:

...reliability in the accounts we are prepared to give, act by, and stand by, in moral terms, and dependable responsiveness to the ongoing fit among our accounts, the ways we have acted, and the consequences and costs our actions have in fact incurred. This includes keeping reasonably straight what we are doing and whether the accounts we can give of it make sense...<sup>125</sup>

Thus, it is not just a personal matter of forming and remaining committed to principles, but rather a social matter of remaining committed to rationally defensible principles and being reliable in standing by those principles.

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<sup>122</sup> Calhoun, “Standing for Something,” 254.

<sup>123</sup> Ibid 257.

<sup>124</sup> Margaret Walker, “Picking Up Pieces: Lives, Stories, and Integrity,” In *Moral Understandings: A Feminist Study in Ethics*, ed. Margaret Walker, (Oxford: Oxford University Press, 2008), 113.

<sup>125</sup> Ibid 122.

It is now appropriate to draw a distinction that will respond to the worry of a Nazi having integrity. We must distinguish between what I shall refer to as ‘personal integrity’ and ‘moral integrity.’ Having personal integrity is a matter of forming and remaining committed to principles that are consistent with one another, that cohere with one’s actions, and that one remains committed to in times of temptation. Importantly, there are no restrictions on the content of one’s principles with respect to personal integrity. A person of personal integrity can be committed to any kind of principles, so long as they meet the above conditions.

Moral integrity derives from personal integrity. For one to be a person of moral integrity, one must meet the conditions of one who has personal integrity. Like the person of personal integrity, the person of moral integrity will form and remain committed to principles that are consistent with one another, and her actions will cohere with those principles. She will also remain true to her principles in times of temptation or adversity. There are, however, two key differences between the person of personal integrity and the person of moral integrity. First, the person of moral integrity endorses moral principles, those principles that express the disposition to respect the humanity of others. Other moral agents need not necessarily agree with the principles, or endorse those principles themselves, but they must be able to accept that the principles that a person of moral integrity endorses or remains committed to could be made defensible to other reasonable moral agents.

The second key difference between persons of personal integrity and persons of moral integrity is that the latter are open to revising or reassessing their moral principles. That is, if one subscribes to moral principles that are, upon reflection, problematic or otherwise cannot be made defensible to others, then the person of moral integrity can revise her principles. This might seem like a problematic claim. One of the key tenets of having integrity, in either the personal or the

moral sense, is remaining true or abiding by one's commitment to her principles in times of adversity or temptation. I am not saying that a person of moral integrity can therefore succumb to temptation or revise her principles because things get too tough. Rather, what I am saying is that, if presented with good reason(s) that the principles that one endorses cannot be made defensible to others, or otherwise conflict with each other, then the person of moral integrity will reassess and perhaps revise her principles to alleviate this problem. We should not, for example, think that the principles that a person of moral integrity adheres to remain fixed and unchanging. At times, one will have good reason to revise or otherwise change their principles and doing so is not a weakening or a violation of one's moral integrity, but rather a strengthening of it. We sometimes find that the principles we endorse cannot hold up to the rational scrutiny of others, and in these situations we ought to revise or reassess those principles so that they respond to the reasonable criticisms of others. This highlights the important point that as moral agents in general, and persons of moral integrity more specifically, we are not isolated beings. Our actions and the lives we lead are intimately connected to the lives of other human beings in the moral community, and the principles that we act on must, at the very least, be considered acceptable by others in the moral community. Greg Scherkoske, for example, suggests that integrity "is characteristically expressed in...an unswerving fidelity to the aim of having only defensible convictions that are worthy of acting on and affirming to others."<sup>126</sup> This means that we must be trustworthy in our relationships with others, and we should seek the opinions and rational criticisms of others in forming our moral principles.

Furthermore, one might question whether this point about revising/reassessing one's commitments can apply to one's identity-conferring commitments. Earlier I said that a violation

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<sup>126</sup> Greg Scherkoske, *Integrity and the Virtues of Reason: Leading a Convincing Life*, (Cambridge: Cambridge University Press, 2013), 26.

of identity-conferring commitments results in a loss of integrity, and one might think that revising an identity-conferring commitment is in some sense a violation of that commitment. However, there is an important difference between revising and violating a principle. In revising a principle, we are strengthening that principle by making it more responsive to the reasonable criticisms of others, whereas in violating a principle one is acting against what that principle requires. There is a big difference in, for example, revising a principle of charity such that a person will not help others if doing so will seriously harm the person who chooses to help, and simply choosing to act against that principle and not help others, even when doing so will not cause any serious harm to the person who helps. In revising a principle, one is not acting against that principle, and hence violating it, but rather strengthening it through critical reflection. Moreover, this also reflects the important point that as moral agents our identities can develop, and it is through this critical reflection and engaging with the views of others that we develop and further refine our identities as moral agents.

An example might help clarify this point. Suppose we have a case wherein a moral agent is committed to a principle of charity, such that she sets out to help others. Suppose further that this same person is also committed to a principle that forbids her from killing people. Both principles could be classified as moral principles, in that other reasonable agents could accept that helping others and refusing to kill others are justifiable. In a case where a loved one of our imaginary moral agent is faced with a life of continued pain and suffering, our imaginary moral agent will be faced with a conflict: acting in accordance with the principle of charity might mean that our moral agent will be forced to euthanize her loved one, assuming that this is the course of action that the loved one wants. Yet, our moral agent is also committed to a principle that forbids

killing people. In such a situation, a conflict arises, where acting in accordance with one principle would thereby violate another principle.

In the case above, our moral agent might revise one of her principles, perhaps the principle that forbids killing people. She might revise her principle so as to allow for some cases where killing someone would be acceptable, namely those cases where the individual sincerely wants his life to be ended and where ending his life will alleviate pain and suffering. Our moral agent might not even need a conflict to arise for her to reassess or revise her principles. Perhaps, in discussing her principles with others or reflecting upon them herself, she concludes that while endorsing the principle of charity is certainly justifiable to others, it might need further specification. Revising one's principles because of a conflict or further critical reflection is not a violation of moral integrity, but rather a strengthening of it. To be a person of moral integrity, one must be willing to critically assess the principles that one subscribes to.

This concludes my account of individual integrity. In the next chapter, I will use this account of integrity as a basis for the claim that torture in the TBS corrupts the moral integrity of both institutions and government officials. As we will see, the basic account of integrity offered in this chapter will undergo some modifications. However, before proceeding any further, I will do two things. First, I will outline Matthew Kramer's argument against the use of torture in the TBS. I include Kramer's account in this chapter because of his reliance on the concept of integrity to argue against the use of torture in the TBS. As I will show, my argument is similar in structure to Kramer's account. That is, both Kramer and I agree that the moral wrongness and impermissibility of torture relies on both the suffering of the victim and the moral harm done to the torturer, in that the infliction of torture results in a degrading of one's integrity. However, I will argue that despite the similarities in structure, and even though we reach the same

conclusion, Kramer’s argument does not offer a robust account of integrity. And second, I will conclude by discussing how this conception of integrity fits into the debate on the moral permissibility of interrogational torture, and why it is important to consider the integrity of government officials and the institutions that they represent when discussing the moral permissibility of interrogational torture in the TBS.

### **3.2 Integrity and the Ticking Time Bomb Scenario**

As mentioned above, my argument is similar in structure to Kramer’s argument in “Torture and Moral Integrity.”<sup>127</sup> As I argued in Chapter Two, an account of the moral impermissibility of interrogational torture should account for both the suffering that is inflicted on the victim of torture, and also the moral harm that the torturer experiences as a result of torturing. Kramer makes a similar argument. He argues that the suffering experienced by the victim of torture is, by itself, insufficient to account for the moral wrongness of interrogational torture. As Kramer argues, people who suffer from severe injuries and/or illnesses might experience just as much pain and suffering as someone who is tortured, if not more so. And since there is nothing morally problematic about such ailments, considered separately from how those ailments came about, an argument against torture that focuses exclusively on the pain and suffering of the victim is incomplete.<sup>128</sup> Thus, Kramer and I agree that an argument against the moral permissibility of interrogational torture should account for both the suffering experienced by the victim of torture, and also for the moral harm that befalls the perpetrator of torture.

Kramer provides what he refers to as ‘a perpetrator focused argument’ against the use of interrogational torture. This argument is his central argument against the use of interrogational

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<sup>127</sup> Matthew Kramer, *Torture and Moral Integrity* (Oxford: Oxford University Press, 2014).

<sup>128</sup> *Ibid* 175.

torture, and this perpetrator focused argument is centred on the idea of moral integrity. To fully understand Kramer's argument, it will be helpful to consider two thought experiments that he relies on: the cases of Brenda and Sylvia.

Let us start with the case of Brenda. Brenda is a soldier who, as part of her resistance training, has consented to undergo the open-ended infliction of severe pain and suffering. Suppose further that Daniel is one of the soldiers tasked with administering that severe pain and suffering. Daniel knows that Brenda has consented to undergo the severe pain and suffering, and he also knows that this severe pain and suffering is meant to enhance her overall physical and mental well-being. Given this, according to Kramer, "notwithstanding that his inducement of severe pain in her is deliberate rather than an unintended though foreseeable side-effect, it is salutary rather than destructive in its orientation toward her bodily and psychological welfare."<sup>129</sup> Now compare this case to the case of Sylvia. Sylvia is a mass murdering terrorist, and Walter is one of the interrogators whose goal is to extract information from her to avert a catastrophe. Sylvia represents the quintessential 'ticking time bomb' terrorist. In this case, Walter's infliction of torturous techniques on Sylvia would be morally impermissible, but not because of Sylvia's interests in being free from interrogational torture. Given her responsibility for past moral atrocities, and her responsibility for impending atrocity, Sylvia's interests in being free from severe pain and suffering "do not contribute to any justification for a ban on the use of interrogational torture against her."<sup>130</sup> Indeed, Kramer goes so far as to argue that "the interests of a mass-murdering terrorist in being free from excruciating pain are of no positive ethical weight."<sup>131</sup> Rather, Walter's infliction of interrogational torture is morally impermissible because

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<sup>129</sup> Kramer, *Torture and Moral Integrity*, 190.

<sup>130</sup> *Ibid* 189.

<sup>131</sup> *Ibid* 187.

in torturing Sylvia, Walter “sull[ies]...his moral integrity through his adoption of a self-aggrandizing course of conduct.”<sup>132</sup>

It is important to take note of the differences between the cases of Brenda and Sylvia. While Daniel imposes severe pain and suffering on Brenda, he does so in a way that does not involve animosity on his part. In the case of Brenda, Daniel’s infliction of severe pain and suffering on Brenda does not “exploit her susceptibility to such pain as a mere vehicle for the realization of his own objectives.”<sup>133</sup> In other words, Daniel is not treating Brenda as a mere means to his end, for Brenda has consented to such treatment to further enhance her development as a soldier. In the case of Sylvia, on the other hand, Walter’s infliction of severe pain and suffering does exploit her susceptibility to such pain, and Sylvia is being used for the realization of Walter’s objectives, noble as they may be.<sup>134</sup> It is worth quoting Kramer in full here:

[B]ecause Walter has had to pursue his morally worthy objectives by treating another human being as a locus of vulnerability to severe pain that is to be employed as an instrument and an expression of his ascendancy over her, and because he has had to exert that ascendancy to impel her toward the performance of the type of action that suits his purposes – highly commendable purposes – he has taken (or has sought to take) control over her in a way that is inconsistent with his own elementary humility as a moral agent.<sup>135</sup>

Walter’s infliction of torturous techniques on Sylvia is morally impermissible not because of her interests in being free from torture, but rather because in so doing Walter corrupts his moral integrity. Walter should demonstrate basic concern to Sylvia because of his own moral integrity.

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<sup>132</sup> Kramer, *Torture and Moral Integrity*, 191.

<sup>133</sup> Ibid.

<sup>134</sup> Kramer draws a distinction between moral optimality and moral permissibility. In this case, Walter’s objectives (saving innocent civilians from an attack) might be, and are, according to Kramer, morally optimal, but still nonetheless not morally permissible. For more on this distinction, see Kramer, *Torture and Moral Integrity*, p 212 – 219.

<sup>135</sup> Kramer, *Torture and Moral Integrity*, 191 – 192.

It is Walter's moral integrity that dictates that he should interact with her in a morally legitimate way, despite her morally evil life and the atrocities she has committed in the past. This involves:

not afflicting her with excruciating pain as a means of taking control of her to direct her performance of some action. His taking control of her in that way is morally wrong not because it redounds to the detriment of her interests – interests that carry no positive ethical weight – but because it elevates him to a position of overweening dominance. His elevation of himself to such a godlike position morally degrades him, for it is incompatible with the fundamental modesty that is incumbent upon him.<sup>136</sup>

Later in his work, Kramer further argues that by assuming a position of 'quasi-divine ascendance' (or the 'overweening dominance' spoken of in the quote above), moral agents no longer possess the basic modesty that is required of them as individuals interacting with other individuals. Importantly, Kramer argues that an agent's integrity "depends on their not using the misery of someone else to elevate themselves to a level that transcends their own humanity."<sup>137</sup> Thus, for Kramer, the infliction of torture on a mass murdering terrorist like Sylvia in the TBS is morally impermissible because it degrades the moral integrity of the torturer.

In response to Kramer's argument, I maintain that Kramer's account of the moral impermissibility of torture is based on an incomplete account of integrity. So far as I can tell, under Kramer's account an individual's moral integrity is dependant on that agent maintaining a sense of humility in their interactions with others, which includes, as outlined above, not using the misery of someone else in such a way as to elevate oneself to a level that transcends their own humanity.<sup>138</sup> If this is all that is relevant when it comes to ascriptions of integrity, then Kramer's account of integrity is far too narrow to be applied to other contexts. Kramer's account is too narrow in the sense that all that matters for ascriptions of integrity is remaining humble and not taking a position of overweening dominance over an individual. But why are these at all

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<sup>136</sup> Kramer, *Torture and Moral Integrity*, 192.

<sup>137</sup> Ibid 196.

<sup>138</sup> Ibid.

relevant to ascriptions of integrity? That is, why is it important that, if an individual is to maintain their integrity, they ought to remain humble and not use the misery of someone else to elevate themselves to a God-like position? Certainly, remaining humble and not assuming a position of dominance over individuals are important moral qualities, I do not deny this. Moreover, these qualities might even plausibly be included in an account of integrity. However, remaining humble and not assuming a position of dominance over others, while morally commendable qualities, are not morally commendable for how they contribute to ascriptions of integrity.

Consider, for example, an agent who has moral integrity. This agent is an individual who forms and remains committed to principles that are consistent with one another, and that help shape her identity. She develops a course of action that coheres with those principles, and she stands by those principles in times of temptation. Yet, at the same time, she is open to the reasonable criticism of others, and is willing to revise her principles in light of good reasons for doing so. These are the characteristics of moral integrity that I outlined above. Now let us add in Kramer's two components.<sup>139</sup> Our agent of integrity is also to remain humble in her dealings with others, and not use the misery of someone else to elevate themselves to a position of overweening dominance. Now suppose that our agent engages in an act of torture, where the recipient of torture does not consent to being tortured. Are we to conclude from this example that she has therefore sullied her moral integrity because she has failed to remain humble in her dealings with others, and has ascended to a God-like position over another human being? Certainly, being humble and not assuming a position of dominance over others are morally worthy qualities, but if we are to say that failing to remain humble and on equal footing with

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<sup>139</sup> This component of being humble might be implicit in the characteristic of being open and willing to revise one's principles.

others therefore results in a degradation of one's moral integrity, Kramer is missing something here. Moral integrity is about a lot more than just remaining humble and not assuming a position of dominance over other individuals. Importantly, moral integrity is about remaining committed to moral principles that one deeply identifies with, and that help form the identity of the agent who endorses them. Indeed, based on Kramer's account, it seems that integrity is more dependent on the interests of others, and not enough on the agent who performs some action. For being humble and not ascending to a position of dominance over others is based more on a consideration of how we treat others than about what we deem to be important, or what we stand for.

Now, to be clear, I am not assuming that the account of moral integrity I have sketched above is the only plausible account of moral integrity. There might be other accounts of moral integrity that include different qualities than the ones I outlined above. Yet these different accounts build on the very basic idea that having moral integrity means being committed to something – most commonly, moral principles that help shape the identity of an agent. My critique of Kramer's account is that he fails to account for this fundamental component, which renders his account insufficient. Indeed, Kramer's moral integrity-based argument against torture focuses on a morally significant reason for why torture is wrong, but it fails to pick out the way in which it's wrong in virtue of its effect on the torturer's moral integrity. In other words, Kramer's argument for why torture is morally impermissible does not focus enough on how it degrades the torturer's moral integrity.

In what follows, I will argue that torturing a terrorist in the TBS degrades a government official's moral integrity. However, torture also degrades the moral integrity of the institutions

that the torturer represents.<sup>140</sup> Interrogational torture does not degrade a government official's moral integrity and an institution's moral integrity through a failure of humility or an ascension to a position of dominance over another agent. Rather, interrogational torture degrades an agent's moral integrity and an institution's moral integrity by going against the fundamental principles that government officials, as representatives of a state's institutions, are supposed to embody. This degradation of a government official's moral integrity and an institution's moral integrity results in an important moral harm that should be included in an account of the moral impermissibility of government sanctioned torture in a situation like the TBS. Before proceeding to outline this account, let me conclude this chapter by briefly discussing why it matters. That is, why does integrity matter to the debate on interrogational torture? Why isn't the pain and suffering experienced by the victim of torture enough of a reason to not engage in this morally barbaric practice?

First, let me briefly reiterate a point I made in an earlier chapter. Regardless of how much pain and suffering is inflicted on the victim of torture, we ultimately need *someone* to inflict that pain. Simply put, without an individual torturing, we have no one who is tortured. This means that the infliction of torture is necessarily prior to the experience of pain and suffering by the victim of torture. Without an individual torturing, we have no individual who is tortured. Understood in this way, torture necessarily involves two actors: the torturer and the tortured. Disproportionately focusing on one of these actors and not the other results in an incomplete account of the moral wrongness and impermissibility of interrogational torture, both in the TBS and in general.

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<sup>140</sup> Kramer's failure to account for this might be considered a further critique of his position.

Secondly, as I outlined in my account of moral integrity, an important part of moral integrity has to do with identity. The principles that an agent is committed to, and that an agent acts in accordance with, constitute, either wholly or in part, that agent's identity. Committing an act that goes against those principles harms that moral agent by degrading her moral integrity and, in turn, her moral identity. Understood in this way, engaging in a practice that is inconsistent with one's principles, which in the next chapter I will argue is true in both the case of a government official and the case of liberal-democratic institutions, fundamentally alters the identity of a government official and the institutions that the government official represents. This is important because any liberal-democratic government that engages in torture turns itself from a state that respects the humanity of others to one that disrespects the humanity of others. A change in identity from a state that does not torture and to a state that does torture results in a serious moral harm that should not be discounted or taken lightly.

## **Chapter Four: Interrogational Torture and the Degradation of Institutional and Professional Integrity**

In the previous chapter, I concluded that persons of moral integrity are individuals who a) form and remain committed to moral principles that are consistent with one another, and that help shape that individual's identity; b) develop a course of action that will cohere with the principles that they endorse and who c) stand by those commitments in times of temptation, but also d) have the willingness to revise or reassess those moral principles that cannot stand up to the rational scrutiny of others. In this chapter, my aim is to argue that this idea of moral integrity is an important moral feature that is often lost in the debate surrounding the moral permissibility of interrogational torture, and relying on this notion of moral integrity as it relates to government officials and state institutions can help solidify the conclusion that interrogational torture is morally wrong and impermissible. I will argue that engaging in interrogational torture degrades the moral integrity of both the state's institutions and the government official who performs the act of torture.

As I will demonstrate, there is great interplay between the integrity of institutions and the integrity of the professionals charged with acting in accordance with the principles of state institutions. Given this, my aim in this chapter is to consider the different components of moral integrity (conditions a – d listed above) separately, showing how they relate to institutional moral integrity and to the integrity of government officials, which I shall refer to as 'professional' moral integrity. I will then sum up this analysis by offering my argument for why considering the moral integrity of government officials and state institutions leads to a more robust argument against the moral permissibility of interrogational torture. Once this is complete, I will consider and respond to various objections that might be levelled against my argument.

#### **4.1 Institutional & Professional Integrity**

Let us begin by considering the first component of integrity: forming and remaining committed to principles that are consistent with one another, and which help shape the identity of an individual. Beginning at the institutional level, I start from the relatively uncontroversial claim that liberal democratic institutions are founded, in part, on a commitment to moral principles. These moral principles help establish the institutional framework of the liberal-democratic state in question, and, more importantly, come to shape the identity of the state itself. A list of moral principles that help form the foundation upon which liberal-democratic governments and institutions are built can include, but are not limited to, the following: freedom, equality, respect for persons, and respect for basic human rights. Oftentimes, these principles are built into a state's Constitution and/or Bill of Rights. For one example, consider the Canadian context.

The Canadian Charter of Rights and Freedoms includes a set of provisions specifying several rights and freedoms to which Canadians are entitled. Importantly, built into these provisions is the implicit acknowledgement of moral principles, including the ones I identified above. Section 2 of the Charter, for example, outlines the freedoms which Canadians are entitled to, including the freedom of conscience and religion, freedom of thought, belief, opinion, and expression, freedom of peaceful assembly, and freedom of association.<sup>141</sup> This section of the Charter makes explicit the commitment to freedoms, and sets out specific freedoms that Canadians are entitled to. The general recognition that liberty is important for everyone provides the foundation for these clauses of the Charter. Section 15 of the Charter sets out the Equality

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<sup>141</sup> *Charter of Rights and Freedoms*, s 2, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

rights of Canadians, while Section 7 of the Charter outlines that all Canadian citizens have the right to life, liberty, and security of the person, which emphasizes and makes more explicit the commitment to equality and respect for persons, while the Charter as a whole makes explicit the commitment to a respect for basic human rights.<sup>142</sup> These clauses from the Charter help make clear the claim that Canada specifically, and liberal-democratic states more generally, are committed to principles that respect the humanity of others.

So far it seems clear that liberal-democratic states, through their Constitutions and/or Bill of Rights, set forth a variety of rules and principles that they remain committed to and that respect the humanity of others. But are these principles consistent with one another? Here it is helpful to consider the arguments of Jeremy Waldron, as outlined in *Torture, Terror, and Trade-Offs: Philosophy for the White House*.<sup>143</sup> In this important work, Waldron introduces his idea of a ‘legal archetype’. While Waldron restricts his analysis of archetypes to the legal domain, I will argue that his general understanding of an archetype can extend beyond the legal realm and be applied to liberal-democratic institutions more broadly. Nonetheless, let us become clear on Waldron’s argument.

The idea of a legal archetype has its roots in Ronald Dworkin’s account of law. For Dworkin, a legal system is more than just a system of rules, but also includes such things as policies, principles, norms, and reasons.<sup>144</sup> As Waldron explains, these elements of a legal system operate as “background features; they do their work behind the legal rules, pervading doctrine, filling in gaps, helping us with hard cases, providing touchstones for legal argument,

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<sup>142</sup> *Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

<sup>143</sup> Jeremy Waldron, *Torture, Terror, and Trade-Offs: Philosophy for the White House* (New York: Oxford University Press, 2010).

<sup>144</sup> See, for example, Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), and *Law’s Empire* (Cambridge: Harvard University Press, 1986).

and in a sense capturing the underlying spirit of whole areas of doctrine.”<sup>145</sup> This ‘spirit’ of the law is something that legal practitioners often implicitly create, emerging from the way in which they treat the laws that they have created. Over time, lawyers and judges observe that legal provisions and precedents come to embody a certain principle (or principles) that permeate our legal system. Going beyond Dworkin, Waldron argues that, sometimes, there is one provision in the cluster of background principles that, through its force and clarity, “expresses the spirit that animates the whole area of law. It becomes a sort of emblem, token, or icon of the whole: I shall say it becomes an archetype of the spirit of the area of law in question.”<sup>146</sup>

For Waldron, an archetype is a “particular provision in a system of norms which has a significance going beyond its immediate normative content, a significance stemming from the fact that it sums up or makes vivid to us the point, purpose, principle, or policy of a whole area of law.”<sup>147</sup> These archetypes are also more than just Dworkinian background principles. While they do serve as a backdrop upon which other areas of law arise, archetypes also operate in the foreground as explicit rules set out by a legal system. As Waldron argues, archetypes “do work in the foreground as rules or precedents; but *in doing that work* they sum up the spirit of a whole body of law that goes beyond what they might be thought to require on their own terms.”<sup>148</sup>

Waldron gives a host of examples of different archetypes. Consider, for example, habeas corpus statutes. These habeas corpus statutes, important as they are in and of themselves, are archetypal of our emphasis on liberty, and ensuring that individuals are not unfairly and arbitrarily confined. These statutes are not just laws of our legal system, but they also serve as archetypes, representing the commitment that liberal democracies have to respecting the liberty of its

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<sup>145</sup> Waldron, *Torture, Terror, and Trade-Offs*, 226.

<sup>146</sup> *Ibid* 227.

<sup>147</sup> *Ibid* 228.

<sup>148</sup> *Ibid*.

citizens.<sup>149</sup> In the Canadian context, the Canadian Charter of Rights and Freedoms' 'notwithstanding clause' can also be identified as an archetype. The notwithstanding clause allows national and provincial governments to invoke legislation 'notwithstanding' operative sections of the Charter. While this notwithstanding clause is rarely invoked, it is nevertheless important. It is important not just by its own accord, but also because it represents the Canadian commitment to democratic dialogue between legislatures and the courts.<sup>150</sup> Legal archetypes thus perform a double duty: they not only act as explicit provisions of a legal system, but they also represent a broader principle that operates in the background of a legal system.<sup>151</sup>

Waldron uses this account of legal archetypes to provide a legal argument against the imposition of interrogational torture, either in the TBS or more broadly as a government policy. Given that there are numerous legal provisions outlawing the use of torture, we can claim that there is a general rule against the use of torture. This rule against torture, according to Waldron, is archetypal of a certain policy concerning the relationship between law and force. The rule against torture is expressive of the principle that "law is not brutal in its operation; law is not savage; law does not rule through abject fear and terror, or by breaking the will of those whom it confronts. If law is forceful or coercive, it gets its way by methods which respect rather than mutilate the dignity and agency of those who are its subjects."<sup>152</sup> While it is undeniable that law is sometimes forceful and/or coercive, it is forceful and/or coercive in a way that respects the humanity of those whom it is forceful or coercive against. While the law might force us to do things we otherwise might not want to do (like, for example, testify in front of a jury), and while the law might force us to go places that we would otherwise not want to go (like jail, for

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<sup>149</sup> Waldron, *Torture, Terror, and Trade-Offs*, 228-9.

<sup>150</sup> *Ibid* 231.

<sup>151</sup> *Ibid* 229.

<sup>152</sup> *Ibid* 232-3.

example, if we violate a legal provision), the law does so in a way that respects our humanity. It is this respect for humanity that the legal provision against torture is archetypal of. For according to Waldron, “the rule against torture...is vividly emblematic of our determination to sever the link between law and brutality, between law and terror, and between law and the enterprise of trying to break a person’s will.”<sup>153</sup>

So, in what areas of law does the prohibition on torture epitomize a more pervasive policy or principle of non-brutality? One example is in the American constitutional prohibition on cruel and unusual punishment. Waldron argues that the foundation upon which this constitutional provision rests is in the Founding Father’s repugnance towards torture, and this is epitomized in American court decisions to this day. Even for those sentenced to death, the courts continue to hold that punishments of torture and unnecessary cruelty are forbidden.<sup>154</sup> Another example Waldron provides is the American procedural due process laws. Reference to torture is common in this area of law, as principles of procedural due process are expressed in statements like the following, “[t]he rack and torture chamber may not be substituted for the witness stand.”<sup>155</sup> Importantly, the procedural due process laws are not primarily concerned with torture. As Waldron makes clear, the point is not to remind us that torture is prohibited, but rather to use this prohibition on torture to “illuminate and motivate other prohibitions that are perhaps less extreme but more pervasive and important in the ordinary life of the law.”<sup>156</sup>

One important clarification of Waldron’s idea of a legal archetype, specifically as it relates to the rule against torture, is in order. When we speak of the prohibition against torture being archetypal of a general policy that severs law from brutality, it is important to be clear that

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<sup>153</sup> Waldron, *Torture, Terror, and Trade-Offs*, 233.

<sup>154</sup> *Ibid* 236-8.

<sup>155</sup> *Ibid* 238.

<sup>156</sup> *Ibid*.

the body of law need not specifically or even generally deal with torture. Rather, the claim that Waldron is defending has two aspects, “first, that the body of law in question is pervaded by a certain principle or policy, and second that the prohibition against torture is archetypal of that policy or principle.”<sup>157</sup> For both aspects, Waldron concedes that they will not always be easy to identify. That is, it is not readily apparent that a certain policy and/or principle pervades an area of law, nor is it easy to identify a particular provision being archetypal of a principle and/or policy. While not easily identifiable, we can make reasonable deductions by looking at the things holistically. Consider Dworkin’s argument in *Taking Rights Seriously*<sup>158</sup>:

The origin of these as legal principles lies not in a particular decision of some legislature or court, but in a sense of appropriateness developed in the profession and public over time. Their continued power depends on this sense of appropriateness being sustained... True, if we were challenged to back up our claim that some principle is a principle of law, we would mention any prior cases in which the principle was cited, or figured in the argument. We would also mention any statute that seemed to exemplify that principle... Unless we could find some such institutional support, we would probably fail to make out our case... Yet we could not devise any formula for testing how much and what kind of institutional support is necessary to make a principle a legal principle... We argue for a particular principle by grappling with a whole lot of shifting, developing and interacting standards (themselves principles rather than rules) about institutional responsibility, statutory interpretation, the persuasive force of various sorts of precedents, the relation of all these to contemporary moral practices, and hosts of other such standards.

While it is not always explicitly clear that a particular principle pervades an area of law, we can look to a host of different standards, such as institutional responsibility and the relationship between institutional practices and contemporary moral practices, for guidance. This applies equally well to Waldron’s idea of a legal archetype. It is not always going to be readily apparent that a particular legal provision is archetypal of a particular body of law. In some cases, like in Waldron’s example of habeas corpus, it will be generally indisputable that certain statutes are

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<sup>157</sup> Waldron, *Torture, Terror, and Trade-Offs*, 235-6.

<sup>158</sup> Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), 40. Cited in Waldron, *Torture, Terror, and Trade-Offs*, 236.

archetypes. In other cases, it will not be as clear. Indeed, Waldron concedes that sometimes it is in part a subjective decision.<sup>159</sup> Nonetheless, we can make reasonable deductions based on a holistic assessment of the body of law in question.

With this outline of archetypes provided, we can now consider what would happen if an archetype like the prohibition on torture were to be violated. Waldron argues that undermining an archetype has devastating consequences for the political and legal system as a whole. Here he relies on a version of slippery slope reasoning. Most slippery slope arguments make the claim that if we perform some act, x, it will lead to us performing some worse act, y, in the future. One example would be that if we legalize marijuana, it will lead to more younger children consuming the drug, which will lead to higher drop out rates among school aged children, which will then lead to more health problems among youth. However, Waldron's version of the slippery slope is slightly different. With respect to the prohibition on torture, Waldron argues that

if we mess with the prohibition on torture, we may find it harder to defend some arguably *less important* requirements that ... are perched above torture on the slippery slope. The idea is that our confidence that what lies at the bottom of the slope (torture) is wrong informs and supports our confidence that the lesser evils that lie above torture are wrong too (my emphasis).<sup>160</sup>

Most slippery slope arguments related to torture begin with an act that is thought to be less morally problematic than torture, like, for example, roughing up a prisoner to get him to admit to a crime. If we rough up a prisoner by, for example, coercing him and slapping him around, the thought might be that we will inevitably progress to worse abuses, and will eventually end up torturing prisoners. Waldron's claim, however, is that we use the prohibition on torture, which is generally thought to be at the bottom of the slippery slope, to inform us about what is wrong

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<sup>159</sup> Waldron, *Torture, Terror, and Trade-Offs*, 236.

<sup>160</sup> *Ibid* 243.

about lesser acts (like slapping a prisoner), and, importantly, to inform us about why these acts should be prohibited. As Waldron puts the point,

Our beliefs that flogging in prisons is wrong, ...that police brutality is wrong...these beliefs may each of them be uncertain and a little shaky, but the confidence we have in them depends partly on analogies we have constructed between them and torture or on a sense that what is wrong with torture gives us some insight into what is wrong with these other evils. If we undermine the sense that torture is absolutely out of the question, then we lose a crucial point of reference for sustaining these other less confident beliefs.<sup>161</sup>

Waldron's point here is that if we undermine the prohibition on torture, we undermine the strength of other legally impermissible acts, like, for example, beating prisoners. Undermining the prohibition on torture specifically, or a legal archetype more generally, has a domino effect. It leads to the weakening of the prohibition on harms that are less morally severe than torture.

Importantly, Waldron is not arguing that it is necessarily the case that lesser prohibitions will be weakened. In saying that other lesser prohibitions will be weakened, he is not saying that by violating the prohibition on torture, police officers will necessarily violate other lesser prohibitions and begin to beat prisoners. Rather, what he is arguing is that the strength of those prohibitions will become weakened. To support this claim, Waldron draws an analogy to officials accepting bribes in office. Suppose a government official decides to accept bribes while in office, but that in other areas of his personal and professional life he will not accept bribes, but rather remain honest with himself and to others. According to Waldron, this is an artificial distinction. Waldron argues,

[h]e no longer refrains from stealing for the reasons that are common to the condemnation of stealing and bribery; he refrains from stealing because even though it is like the acts he is willing to commit, he has simply determined that his dishonesty will go thus far and no further. That is a moral loss attendant on his corruption: an inability now to follow the force of a certain sort of reason...<sup>162</sup>

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<sup>161</sup> Waldron, *Torture, Terror, and Trade-Offs*, 243.

<sup>162</sup> *Ibid* 246.

Comparing this to the prohibition on torture, Waldron argues that if we permit the use of torture on terrorists, perhaps only a couple of detainees would be affected. However, the character of our legal system would become corrupted. We would, Waldron warns, “be moving from a situation in which our law had a certain character – a general virtue of non-brutality – to a situation in which that character would be compromised or corrupted by the permitting of this most brutal of practices.”<sup>163</sup> Thus, undermining an archetype like the prohibition on torture affects not just our rules against brutal practices like torture, but also corrupts the principles that provide the backdrop for those rules. And since it is these principles that help shape the identity of our institutions, undermining an archetype also corrupts the moral integrity of our political and legal system.

While Waldron was focused exclusively on the legal context, I am using his idea of archetypes to make the point that the Constitution and/or Bill of Rights of a state contains a host of archetypes. Recall that an archetype does a double duty – not only does it serve in the foreground as an explicit rule outlining or forbidding some course of conduct, but it also serves in the background, representing a broader principle upon which the legal system is based. For our purposes, however, these archetypes make vivid and clear a principle that not only pervades a body of law, but also pervades the institutions of the state. And while the Constitutions and Bills of Rights are technically legal documents, their influence and importance spreads beyond merely the legal realm. I argue that in addition to illuminating the underlying principles of law, these archetypes contained in the state’s constitution and/or Bill of Rights also recognize the principle(s) upon which our liberal-democratic governments and institutions are based. These principles, taken together, help express the commitments of the liberal-democratic state, and help

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<sup>163</sup> Waldron, *Torture, Terror, and Trade-Offs*, 246.

form the identity of the liberal-democratic state. These principles, however, are more fully expressed in the actions of governments and states. While a Constitution and/or Bill of Rights can outline and make clearer a host of liberal-democratic principles, it is only through the actions of government officials that these principles become fully realized. Since institutions cannot ‘act’ but for the actions of those who represent those institutions, we must consider the role of government officials. More specifically, how do government officials decide which actions to perform and not to perform in their role as government official, and how do these actions relate, if at all, to the institutions that they represent?

In *Virtue Ethics and Professional Roles*, Justin Oakley and Dean Cocking introduce the idea of a ‘regulative ideal.’<sup>164</sup> In their work, Oakley and Cocking focus on this regulative ideal as a way of expressing the idea that virtue ethics is the ethical theory best equipped to outline the moral responsibilities of professionals such as lawyers and doctors. I will have little to say regarding this, but instead want to draw on their notion of a regulative ideal to account for the actions of government officials specifically. I will argue that government officials must act in accordance with this regulative ideal to uphold the liberal-democratic principles embedded within the institutions of the state.

According to Oakley and Cocking, to say that an agent has a regulative ideal “is to say that they have internalised a certain conception of correctness or excellence, in such a way that they are able to adjust their motivation and conduct so that it conforms – or at least does not conflict – with that standard.”<sup>165</sup> Consider the example of fatherhood. A man who internalizes a certain conception of what it means to be a good father can be guided by this conception in his

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<sup>164</sup> Justin Oakley & Dean Cocking, *Virtue Ethics and Professional Roles*, (New York: Cambridge University Press, 2001).

<sup>165</sup> *Ibid* 25.

practices as a father, “through regulating his motivations and actions towards his children so that they are consistent with his conception of good fathering.”<sup>166</sup> The regulative ideal can be either general in scope, or more specific to certain domains. A consequentialist, for example, will generally be guided by a regulative ideal focused on maximizing agent neutral value. However, the activities of an agent might also be guided by specific regulative ideals in particular areas. A doctor, for example, might, and indeed should, internalize a conception of what it means to be a good doctor, focusing specifically on the ends of medicine. The doctor would, in turn, be disposed to act in ways which are consistent with this specific regulative ideal.<sup>167</sup> Moreover, the regulative ideal can direct us to act appropriately or rightly even when not specifically drawn upon. That is, a doctor need not always remind himself of the regulative ideal of what it means to be a good doctor before he acts. Eventually, this regulative ideal will become internalized through his habitual practices of good doctoring.<sup>168</sup>

The internal conception of correctness or excellence is bound to be influenced by a host of different things. These can include competing internal motivations and external factors. For example, in the case of fatherhood, an agent might have competing internal motivations about what it really means to be a good father, and might also consider the views of others, such as his wife or friends, when deciding on what makes a good father. Given this, Oakley and Cocking’s understanding of a regulative ideal is similar in structure to John Rawls’ notion of ‘reflective equilibrium.’<sup>169</sup> Rawls discusses reflective equilibrium in the context of competing theories of justice. When presented with a new conception of justice, a morally responsible agent is to consider this new conception and see how it fits with his already settled convictions on a theory

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<sup>166</sup> Oakley & Cocking, *Virtue Ethics and Professional Roles*, 25.

<sup>167</sup> *Ibid* 26.

<sup>168</sup> *Ibid*.

<sup>169</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 48-51.

of justice. According to Rawls, reflective equilibrium is a state wherein an agent has weighed various proposed conceptions of some normative concept, and he has either revised his judgments to accord with one of the conceptions, or has stood firm and kept to his initial convictions.<sup>170</sup> The regulative ideal operates in a similar way. One internalizes a conception of what it means to be a good X, where X can be the role that an agent has, such as a father or doctor. This regulative ideal guides the agent's actions, eventually reaching a point where the agent does not need to draw on the regulative ideal at all, for it eventually becomes a settled part of his or her character. Thus, a regulative ideal is an internalized normative disposition to direct one's actions and alter one's motivation in certain ways.

With Oakley and Cocking's understanding of a regulative ideal fully outlined, we are now able to consider how this relates to government officials specifically. I argue that government officials ought to act in accordance with a regulative ideal. This regulative ideal is the conception of what it means to be an excellent government official, one who consistently strives to uphold the principles that help form the foundation of governmental institutions.<sup>171</sup> Since government officials are agents of the state, they are official representatives of the state. It follows that part of the regulative ideal of government officials will include an adoption of the principles of the institutions of the state, since a representative of the state must, at least partially, embody and abide by what the state deems to be morally important. The principles embedded in state institutions, drawn from sources such as the state's Constitution, Bill of Rights, and various ethical codes of conduct, will serve as a benchmark for their actions as government officials.

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<sup>170</sup> Rawls, *A Theory of Justice*, 48-51.

<sup>171</sup> One need not necessarily buy into the virtue ethics framework to adopt this regulative ideal and be an excellent government official. While the regulative ideal is explained through virtue ethics, one who does not subscribe to this framework could still see the value of carrying out one's duties and functions well.

Their actions, in their roles as government officials, must respect these principles, for acting against these principles would render them a bad, or sub-optimal, government official.

Since the principles of liberal-democratic institutions either explicitly or implicitly prohibit the use of brutal practices, any engagement in brutal practices will result in a government official not fulfilling their role as an agent of a liberal-democratic state committed to respecting the humanity of others. This is further exemplified through Waldron's principle of non-brutality. Since torture is one of the quintessential expressions of brutality, a government official who engages in the act of torture violates its most basic principles and so degrades his state's institutional moral integrity, and his own professional moral integrity as an agent of the state. It is important to be clear here that when I speak of a 'professional's moral integrity,' I am not referring to the personal moral principles and dispositions of the agent in question. I am referring to the moral principles and dispositions of the agent in her role as an agent of the state. So, for example, some agent A who works for liberal-democratic institutions might not be committed to a personal principle that forbids the use of torture. However, in his role as an agent of the state, he must adopt the moral principles of the state in his professional practice. So, while he might think that it would be morally permissible to torture a terrorist in an extreme emergency like the TBS, as a professional of a state that forbids the use of torture, he must refrain from torturing the terrorist.

Furthermore, recall that one of the essential features of moral integrity is standing by one's commitments in times of temptation, yet also having the willingness to revise or reassess one's principles that cannot stand up to the rational scrutiny of others. Might the TBS be thought of as a rational criticism of a state's commitment to non-brutality? One might argue, for example, that the TBS represents a supreme emergency, one which calls for a reassessment of

prior moral beliefs and principles. Far from being irrational, supreme emergencies such as the TBS might give us a good reason to reassess or revise our principles, such that we could allow for the use of brutal acts in times of emergencies. Let us now turn to consider this argument.

The literature on supreme emergency has its origin in Michael Walzer's seminal work "Just and Unjust Wars."<sup>172</sup> In this work, Walzer sets out the conditions for what constitutes a just war, and one of his chapters focuses specifically on the idea of a supreme emergency. Walzer describes a supreme emergency as involving a "fear beyond the ordinary fearfulness...of war, and a danger to which that fear corresponds, and that this fear and danger may well require exactly those measures that the war convention bars."<sup>173</sup> The idea here is that there are some events that happen in the course of a war that are beyond ordinary, and that demand us to either violate traditional moral norms, or at the very least, reconsider the strength of those norms. Supreme emergencies for Walzer also involve two necessary and sufficient conditions: the imminence of the danger, and the nature of the danger. The imminence of the danger refers to the immediacy of the threat. For our purposes, this can be expressed in the common notion of having one's 'back to the wall.' A nation faces a supreme emergency when they are backed into a corner by another nation or some serious threat and must do what is necessary to defend themselves, even if this involves committing actions that would otherwise not be permissible. Walzer expresses this idea as follows, "when conventional means of resistance are hopeless or worn out, anything goes...anything that is *necessary* to win...(my emphasis)."<sup>174</sup> The second condition, the nature of the danger, has to do with the kind of danger that the nation experiences. It must, as

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<sup>172</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Fourth Edition (New York: Basic Books, 1977).

<sup>173</sup> Ibid 251.

<sup>174</sup> Ibid 252.

Walzer makes clear, be of an “unusual and horrifying kind.”<sup>175</sup> While war itself can be classified as a danger, it is not unusual, for there has always been and likely will always be conflict of some kind in the world. And while war is horrifying, not only for the soldiers who fight but also for the innocent civilians who suffer as a result of war, a supreme emergency must be even more horrifying, an atrocity (or potential atrocity) that transcends the usual horrifying nature of war. Finally, it is worth stressing that both of the above conditions, that of imminence and that of the nature of the threat, must both be present in a supreme emergency. Having one without the other does not classify an event as a supreme emergency. As Walzer puts the point, “[n]either one by itself is sufficient as an account of extremity or as a defense of the extraordinary measures extremity is thought to require. Close but not serious, serious but not close – neither one makes for an extreme emergency.”<sup>176</sup>

As an example of a supreme emergency, Walzer discusses the case of the British military decision to bomb German cities in World War Two. In late 1940, the British, the only remaining Allied force left in the war at the time, decided to terror bomb German cities. In doing so, they set in motion a policy that resulted in the deaths of many innocent German civilians. In ordinary times, such a policy would be considered morally impermissible. However, Britain was the only remaining allied power fighting against Germany at the time. France had already been defeated, and the United States, while providing economic support, had not yet officially entered the war. Moreover, and perhaps most importantly, the consequences of defeat were extreme. As Walzer argues,<sup>177</sup>

Nazism was an ultimate threat to everything decent in our lives, an ideology and a practice of domination so murderous, so degrading even to those who might survive, that the consequences of its final victory were literally beyond calculation,

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<sup>175</sup> Walzer, *Just and Unjust Wars*, 253.

<sup>176</sup> *Ibid* 252.

<sup>177</sup> *Ibid* 253.

immeasurably awful. We see it...as evil objectified in the world, and in a form so potent and apparent that there could never have been anything to do but fight against it.

The peculiarly evil nature of the Nazi threat, coupled with the immediacy of the situation, forced Britain to consider measures that are typically considered morally impermissible. Britain figuratively had their backs against the wall and had to do what was necessary to win. Britain used measures that would otherwise be morally impermissible to defend themselves from the supreme emergency of the Nazi threat.

Applying this idea of a supreme emergency to the case of the TBS, one might argue that a situation wherein a terrorist plants a bomb with the intention of killing many innocent civilians is a modern-day example of Walzer's idea of a supreme emergency, and that our prohibition on the use of interrogational torture should be lifted, much the same way that the war time prohibition on killing innocent civilians was lifted in the case of Britain's terror bombing. The threat of the bomb detonating is imminent. Regardless of how one constructs the hypothetical, the bomb is set to go off relatively soon, usually within hours. Indeed, one can argue that the threat in the TBS is even more imminent than the threat Britain faced in World War Two, for in the TBS the bomb is set to go off in hours, whereas in World War Two, Britain was not in danger of losing the war to Germany within hours, but rather in days or months, or possibly even years. Moreover, the type of danger is also horrific. Terrorism and terrorist related attacks are a peculiar evil that intentionally target innocent civilians, usually to cause chaos and unrest within a community, which leads to the destabilization of a state. Understood in this way, terrorism is a different kind of danger than what Nazism was. While Nazism was focused on world domination, terrorism looks to unsettle and destabilize the global world order. Terrorist attacks are often random and cause great fear among both civilian and non-civilian populations. So, despite this difference in

the intentions, the evils of terrorism are horrific enough that an instance like the TBS can be classified as a supreme emergency. Just like how Britain had their ‘backs against the wall’ against Nazi Germany, we too, it can be argued, have our ‘backs against the wall’ against terrorists, and just like Britain was forced to perform actions that are, in normal circumstances, morally impermissible, so too are we forced to perform actions that are normally morally impermissible, for such actions are necessary for survival. The threat of terrorism, it might be argued, forces us to violate the moral prohibition against torture. Moreover, since this threat meets the conditions of a supreme emergency, it can be argued that this serves as a rational criticism of our commitment to non-brutality, and to the prohibition on the use of torture in all circumstances. The prohibition on torture cannot stand up to the dangerous immediacy of the TBS, and as such we should reassess our commitment against torture by revising our moral principles. Such a revision might involve an exceptions clause. While torture is normally morally impermissible, in a supreme emergency like the TBS such a prohibition cannot stand up to critical scrutiny, and as such should be allowed in limited circumstances.

I reject this argument on the following grounds. First, the TBS does not meet the conditions of a supreme emergency set out by Walzer. And second, the claim that the prohibition on torture does not stand up to critical scrutiny is deeply problematic. Let us consider each of these objections in turn. Let me state from the outset that the TBS, or a situation like the TBS, is a grave danger, and in arguing that it does not constitute a supreme emergency, I do not wish to deny the severity of the threat. The threat is severe indeed. However, it is not severe enough to satisfy the conditions of a supreme emergency. Recall that these conditions are the immediacy of the threat and the nature of the danger. While the danger in the TBS is certainly imminent, the action used to combat that danger (i.e. interrogational torture) is certainly not necessary to resist

this danger. Recall my argument from Chapter One, where I argued that the use of torture is not necessary to prevent the bomb from going off. Torture is not necessary because we cannot determine with any reasonable degree of certainty whether it will be the case that if we do not torture, we will die, nor can we reasonably determine that if we do torture, we will be provided with information that will save us. For even if we do torture, we are not guaranteed to get the correct information, let alone any information. There are many different outcomes from the use of torture, only one of which is the saving of lives. So, while the threat in the TBS is certainly imminent, the means used to combat that threat are not necessary to prevent the attack. So much for the first condition.

As for the second condition (i.e. the nature of the threat), while I agree that terrorism is a horrific threat, it does not meet the strict requirements needed for a supreme emergency. Consider again the case of Nazi Germany. This threat was horrific because the danger it posed was arguably unlike any other danger in history. I do not think it is an overstatement to claim that no other nation in history up to that point posed the threat that Nazi Germany did. Of course, there were horrific regimes before Nazi Germany, but none so focused on world domination, racial cleansing, and general animosity towards common human decency as what Nazi Germany was. Importantly, what is key to Nazi Germany being considered a serious and horrific threat was that the threat they posed was unusually evil and horrific, and it is precisely this unusually evil and horrific threat that is missing in the case of terrorism. Terrorism certainly is evil and horrific and poses a grave danger to people all over the world. However, it is not unusually evil and horrific, and its threat to human life, while certainly severe, is not severe enough to meet the requirement of a supreme emergency. Terrorist atrocities have been occurring for a very long time, and continue to occur, and it is this recurrence of terrorist attacks that make them quite

usual. While this is unfortunate, it is a harsh reality. Again, none of this is to deny the evil and horrific nature of terrorism. Terrorism does pose a real and severe threat to human lives and moral values all throughout the world. And while it regrettably claims the lives of innocent civilians, it does not pose the same kind of horrific and unusual emergency as what Nazi Germany did. As such, it does not meet the level of severity that is needed to constitute a supreme emergency.

If I am right that the TBS does not constitute a supreme emergency, then the liberal-democratic commitment to non-brutality in general, and to the prohibition on torture specifically, stands up to critical scrutiny, for it is only in these desperate times that the thought of violating such a prohibition is considered.

Before considering objections to my account, let me conclude this section by offering an overview of my argument. I argue that the act of torture corrupts the moral integrity of both government officials and state institutions. Performing and/or ordering an act of torture is a violation of a government official's professional integrity because it goes against moral principles that government officials in a liberal democracy ought to represent. Here I mean not the government official's own personal moral principles, but rather the principles that the government official takes on in his role as an agent of the state. Hence the 'professional' moral integrity of the government official. As agents of the state, government officials ought to embody those moral principles that a liberal-democratic state is committed to and engaging in the act of torture corrupts the professional moral integrity of government officials. At the institutional level, performing an act of torture corrupts core liberal-democratic principles that not only government officials are supposed to represent, but also that state institutions are supposed to embody. The idea here is that liberal-democratic states are committed to core principles such as

respect for persons and respect for human rights, and engaging in a brutal practice like torture directly corrupts these principles. Government officials who engage in torture thus corrupt not only their own professional moral integrity, but also the moral integrity of the institutions of the state.

## **4.2 Objections and Responses**

To conclude this chapter, I would like to consider several potential objections to my position. Considering these objections will not only allow me to address potential weaknesses of my account, but will also hopefully provide a fuller account of why the corruption of a government official's professional moral integrity and of the state's institutional moral integrity are important moral features in the debate about the moral permissibility of interrogational torture, and how these moral features can be applied to discussions about the moral wrongness and impermissibility of interrogational torture.

First, let us deal with a critique that focuses on the relationship between one's personal integrity and one's professional integrity. The idea here is that integrity is most often evoked in a personal sense, in that individuals have integrity when they act according to principles that govern their individual lives. Evoking this idea of integrity in the professional realm is potentially problematic. Consider, for example, the arguments of Peter Olthstorn. Olthstorn argues that integrity, commonly understood, is about loyalty to personal principles, or being loyal to oneself. Integrity, on his view, "requires us to be loyal to our *own* principles, and, in that way, to ourselves."<sup>178</sup> This, Olthstorn argues, presupposes that different persons have different values and principles, and that these values and principles are unique to each individual.<sup>179</sup> But

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<sup>178</sup> Peter Olthstorn, "A Critique of Integrity: Has a Commander a Moral Obligation to Uphold his own Principles?" *Journal of Military Ethics* 8, No. 2 (2009): 92.

<sup>179</sup> *Ibid* 95.

this understanding of integrity is flawed when applied to professional contexts. Olthstorn uses the example of the military profession. In the military profession, integrity is most often about upholding organizational values. Members of the military are to uphold values and principles that are central to the military profession, which may or may not be like the personal values and principles that members have as moral agents. Olthstorn also makes the point that militaries, and other professional organizations (including, for example, governments) are more collective than individuals, emphasizing the importance of cohesion and group loyalty over the individual.<sup>180</sup> As an example, Olthstorn cites the case of Sergeant Joe Darby, the military officer who revealed the photographs depicting the abuses at Abu Ghraib. In this case, Olthstorn argues, Darby was acting on his own personal principles in revealing these abuses. While Olthstorn does not specify what these principles are, we can speculate that Darby's principles were centred on, at the very least, a basic respect for the value and dignity of human life. But in acting on his own personal principles, Darby placed individualistic values above group values. As Olthstorn puts the point, "[h]is case illustrates that soldiers who...want to do their work based on their own values, do not always fare well."<sup>181</sup>

There are at least two ways we can respond to this argument, and both, I argue, are equally fruitful. The first approach would be to critique Olthstorn's understanding of integrity. While I agree with him that integrity is fundamentally about loyalty to oneself and the principles that one chooses to live their life by, it is simply not the case that these principles are innate and separate from the principles and values that others adhere to. Olthstorn bases his understanding of integrity on the following two assumptions: "that an individual has innate moral principles

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<sup>180</sup> Olthstorn, "A Critique of Integrity," 98.

<sup>181</sup> Ibid 100.

and...that those are unique to him or her.”<sup>182</sup> I argue that it is not the case that the principles that a person of integrity adheres to must be ‘innate.’ That is, these principles do not arise from the individual, but rather from the social interactions that the person of integrity has with others. Recall from Chapter Three that a fundamental component of moral integrity is being reflective about the principles that one adheres to and ensuring that these principles can stand up to the rational scrutiny of others. This means that the principles that a person of integrity adheres to are also not ‘unique.’ Olthstorn claims that “integrity presupposes that different persons have values and principles that are not only different from each other, but also unique in a way that makes it central to whom they are.”<sup>183</sup> This is simply not the case. Integrity does not necessarily presuppose that different persons will have values and principles that are different from one another. There is nothing inconceivable about claiming that two different individuals, A and B, can adhere to the same values and principles, and that both are persons of moral integrity. All that is required for moral integrity is that individuals remain committed to these principles, and that they critically reflect on those principles so that they can stand up to the rational scrutiny of others. And while these principles are indeed central to who A and B are as persons, unique is perhaps the wrong word to use here. For if both A and B adhere to the same principles, such principles are not unique. Rather, I think it is likely, and a good thing, that such principles are not unique to individuals, but rather are part of the public moral community that A and B find themselves in. Thus, while integrity is about being loyal to oneself, the assumptions that Olthstorn bases his account on are problematic.

Secondly, let us consider Olthstorn’s claim that professions are focused more on collective values than individual values, and that these collective values are different from the

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<sup>182</sup> Olthstorn, “A Critique of Integrity,” 93.

<sup>183</sup> Ibid 95.

individual values of each member of the profession. In his example, Olthstoorn claims that Sergeant Darby was acting more on his own personal principles, rather than adhering to the collective values of the military. However, I argue that this is a poor example to support Olthstoorn's point. Rather than highlight Olthstoorn's point that Darby was acting on personal principles, this example highlights the important point that professionals are committed to principles that guide their profession. With respect to this case, Olthstoorn claims that "It seems that [soldiers who do their work based on their own values] sooner end up as martyrs for a good cause than as moral exemplars for the organization."<sup>184</sup> Yet it is unclear from the example whether Darby revealed the Abu Ghraib scandal because of his personal commitments or because of his professional commitment to upholding principles that guide military conduct. In either case though, I argue that Olthstoorn is wrong to claim that someone like Darby does not represent a moral exemplar. Indeed, Darby's conduct is precisely what one should expect to happen when a profession like the United States Military veers far away from its commitment to uphold the state's moral values in the conduct of warfare.

Moreover, Jessica Wolfendale makes a crucial distinction between conscientious objection and refusal of service on the grounds of professional integrity. Conscientious objectors, according to Wolfendale, refuse to provide a professional service on the grounds that such a service violates a deeply held personal commitment on the part of the service provider.<sup>185</sup> Conscientious objection has four features. First, a conscientious objector must clearly demonstrate that his or her objection to perform military service is based on some deeply held personal conviction. Second, a conscientious objector usually appeals to a moral and/or a

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<sup>184</sup> Olthstoorn, "A Critique of Integrity," 101.

<sup>185</sup> Jessica Wolfendale, "Professional Integrity and Disobedience in the Military," *Journal of Military Ethics* 8, No. 2 (2009): 132.

religious duty that takes precedence over serving the profession; as Wolfendale puts the point, “this overriding duty...rests on moral and/or religious principles that are taken to be external to and in conflict with the duties that arise from the objector’s role as a citizen or as a member of the military.”<sup>186</sup> Third, the objector believes that the duty to refuse applies to him or her-self, and not necessarily to other members of the profession; the conscientious objector is thus not necessarily making a claim about the rightness or wrongness of other people participating in the service that the objector is objecting to. Finally, the conscientious objector is cognizant of the fact that if he or she were to participate in the service, the objector would be morally responsible for this, and would be unable to reconcile this moral responsibility with their deeply held moral and/or religious convictions.<sup>187</sup>

On the other hand, refusal of service based on professional integrity is based on the belief that the act in question violates certain professional values, rather than personal values. The professional who refuses service on the grounds of professional integrity is not appealing to a value that is external to and in conflict with his or her duties as a professional. Rather, they are appealing to values that they believe arise from their role as a professional.<sup>188</sup> For example, consider cases of euthanasia. Doctors might refuse to provide this service, as a doctor, because they feel it conflicts with their professional duty to better one’s life, and a life cannot be bettered by being destroyed. Some doctors have this belief even if they have the fully rational consent of their patient. Based on these distinctions, it seems that Olthstorn believes that a soldier like Darby is a conscientious objector, appealing to his own personal moral convictions as justification for revealing the abuses of Abu Ghraib. Yet it could be equally the case that he was

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<sup>186</sup> Wolfendale, “Professional Integrity,” 132.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid 132-3.

doing so on the grounds of professional integrity. Such abuses go against the core commitments of liberal-democratic governments, and so it is far from certain that Darby was acting on his own personal convictions.

However, the important point to take away from this is that it is not necessarily the case that one's personal convictions need to be separate from one's professional commitments.

Indeed, in many cases there will be considerable overlap. Wolfendale, for example, argues that those who refuse to perform a service on the grounds of professional integrity might also be violating their personal integrity in the process. As Wolfendale argues,<sup>189</sup>

[A] professional who refuses his/her services on professional grounds is similar to the conscientious objector in one important respect. Like the conscientious objector, the professional who refuses services on professional grounds does so partly because he/she believes that using professional services as requested, will make one morally responsible for these actions and this responsibility would violate one's professional and personal moral integrity. He/she would not be able to separate what he/she does as a professional from [their] sense of being as an integrated moral agent. So the professional who refuses services on the grounds of professional integrity accepts that one cannot escape responsibility for one's professional actions by appealing to an artificial distinction between one's professional and private self.

The distinction that Olthstoorn wants to draw between integrity in the professional realm and integrity in the personal realm is thus problematic. These two realms are not always separate and distinct from one another, and what one does in one realm can have, and indeed often does have, considerable impact on how one behaves in the other realm. One's role as a professional is often bound up with their identity as a moral agent, and while there may be some difference between what one does as a professional and what one does as an individual, these roles are not always separate from one another. Olthstoorn's claim that integrity in the professional realm is problematic is thus not as problematic as what he thought.

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<sup>189</sup> Wolfendale, "Professional Integrity," 133.

Let us conclude with what I take to be the main critique someone might raise against my account. This objection has to do with my reliance on institutions. Recall that in Chapter Two I argued that the consequentialist argument against torture failed as an argument against torture in the TBS because it mainly focused on the bad consequences of implementing institutions of torture, institutions which consequentialists argue need to be in place before a situation like the TBS occurs. These institutions of torture need to be in place before a situation like the TBS, because in order to torture effectively, according to those consequentialists who oppose torture, we must have some kind of research program dedicated to investigating torture techniques and training individuals to implement that torture. This results in these institutions operating at “lower moral standards than we typically expect of them and have to deliberately violate autonomy, inflict harm, act unjustly, and otherwise act immorally.”<sup>190</sup> I argued that if such institutions need to be in place before the TBS, and if bad consequences result from these institutions, then consequentialists who oppose the use of torture in the TBS cannot say that the use of torture *in the TBS* will lead to bad consequences, for these negative consequences are already occurring because the institutions have already been set up. In response to this, a critic might argue that my argument that interrogational torture degrades the integrity of liberal-democratic institutions is not substantively different from that of the consequentialist argument against torture. Both my argument and the consequentialist argument against torture conclude that torture degrades the institutions of the state, and if so, then my argument is subject to the same criticism that I levelled against the consequentialist argument against torture.

In response to this critique, I maintain that my argument, while similar to the consequentialist argument against torture, is also substantively different. First, the nature of the

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<sup>190</sup> Richard Matthews, *The Absolute Violation: Why Torture must be Prohibited* (Montreal: McGill-Queens University Press, 2008), 127.

harm. Consequentialists maintain that the institutions of torture are harmed because of the bad consequences that will result if we implement a torture training program. My argument, however, focuses on the idea that the institutions of the state are harmed not because of a torture training program, but rather because of the act of torture itself.<sup>191</sup> While I think the consequentialists are correct to point out the harms that a research program into torture can cause to state institutions, the focus of my argument is not on these kinds of harms. Rather, I argue that once a government official either prepares to or actually does torture a terrorist, he violates a core liberal-democratic commitment that is embedded within the institutions of the state: namely, the principle of non-brutality. This act results in a violation of a core, identity-conferring commitment, and with it a degradation of a state's institutional moral integrity. Importantly, this is not in any way dependent upon the creation of a research program into torture. A consequentialist might argue that harming the institutions of the state by degrading an institution's moral integrity is another harm that can be added to the consequentialist argument against torture. There is nothing in my arguments that restricts a consequentialist from doing this. However, I would caution the consequentialist to not include this harm as 'just another harm to be thrown into the consequentialist calculus.' If a state's institutional moral integrity is degraded because torture has been used, this is more than just a 'bad consequence' of interrogational torture. This harm runs deeper, in that it harms the identity of the state and the very foundations upon which that state is based. Thus, the harm involved is not only a bad consequence, but rather an (self-inflicted) attack on the identity of liberal-democratic institutions.

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<sup>191</sup> Although, one might argue that a torture training program does harm the institutions of the state.

Second, as previously mentioned, part of the consequentialist argument against torture relies on the creation of a research program dedicated to perfecting the practice of torture.<sup>192</sup> As I outlined above, this is necessary for consequentialists, for it is the creation of this research program that results in the bad consequences. My argument, however, relies on no such program. I do not argue that we need a research program in place before we engage in an act of torture. Rather, any government official, or any person acting on behalf of a government official, who engages in an act of torture harms the institutions of the state by degrading a core moral principle(s) upon which such institutions are, in part, based. As such, if there is no research program created to perfect the practice of torture, and if a government official still engages in an act of torture, then I argue that the institutions of the state are still harmed.

While I do think our arguments are different, I also think that the consequentialist argument against torture and my arguments centred on the degradation of a government official's professional moral integrity and a state's institutional moral integrity are compatible, and can supplement each other nicely. Indeed, if we combine my argument, the deontological argument against torture, and the consequentialist argument against torture, we have a very robust account of the moral wrongness and moral impermissibility of interrogational torture. As such, my aim was not to completely dismiss the consequentialist argument against torture. While in the case of the consequentialist argument, I think there are some important errors in reasoning, but I agree with the conclusion that the consequentialists reach, and think that, with some minor tweaks, it can serve as a powerful argument against the use of interrogational torture when combined with

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<sup>192</sup> I say 'part of' the consequentialist argument because, if we take out the claims regarding institutions, consequentialists can still make an argument against torture based on consequences. Refer to Chapter Two for more on this.

the deontological argument and my own argument focused on the moral integrity of government officials and state institutions.

## **Conclusion**

To conclude, let me offer a recap of the central arguments of this dissertation. In Chapter One, I outlined and critiqued two arguments in support of interrogational torture in the TBS. The rights-based argument proceeds as follows. First, the terrorist forfeits his right not to be harmed because of his participation in a morally unjust act. And second, government officials acting on behalf of innocent civilians have a moral right to defend these citizens from a terrorist attack. The rights-based argument thus combines a rights-forfeiture account with an argument focused on defence of others. Combined, these two arguments establish the conclusion that if a government official were to torture the terrorist, he would a) not be violating the terrorist's right not to be harmed, and b) he would be justifiably defending innocent civilians from a morally unjust attack. On the other hand, the consequentialist argument in support of interrogational torture stipulates that in the TBS, we have one guilty terrorist who has planted a bomb with the intention of killing thousands of innocent civilians. Authorities believe that using torture to retrieve the location of the bomb has a good chance of being successful, and they would therefore be able to save thousands of innocent civilians. And since, under a consequentialist framework, the suffering of thousands of innocent civilians is a morally worse state of affairs than the suffering of one guilty terrorist, torture would therefore be morally justified, for it would save many innocent civilians and only harm one person.

I argued that the rights-based argument does not provide a moral justification for torture because it a) fails to establish a connection between the forfeiture of a right and the moral permissibility of imposing harm on another individual, and b) does not meet the necessary and sufficient conditions for a justified defence of others. I also argued that showing a terrorist forfeits his right not to be tortured is not enough to establish that torture would therefore be

morally permissible. With respect to the consequentialist argument, I argued that in addition to some pertinent practical limitations, the standard consequentialist argument defending interrogational torture is ultimately inconsistent with the consequentialist reasoning that its proponents rely on.

In Chapter Two, I outlined and critiqued two of the most common arguments offered against the use of torture in the TBS: a) the consequentialist argument against torture, which establishes that in a situation like the TBS, the use of torture will lead to bad consequences, beyond the severe harm it inflicts on the terrorist who is tortured, and that these bad consequences are more than sufficient to outweigh the good consequences that might result from the use of torture; and b) the deontological argument against torture, which establishes that torture violates the humanity of the victim of torture, and is therefore morally wrong. While I ultimately agreed with the conclusion of these arguments, I found that the consequentialist argument was flawed, and the deontological argument was missing a consideration of two important moral features.

The consequentialist argument against torture showed that the institutions of the state need to be devoted to perfecting the practice of torture before the act of torture is justified on consequentialist grounds, which means that the bad consequences that result from torture are not *a consequence of* the decision to torture in the TBS. This is important, for while the consequentialist argument against torture raises morally relevant considerations, it ultimately fails as a consequentialist argument against the use of torture in the TBS, because if the institutions of the state need to be devoted to perfecting the art of torture before the TBS occurs, then we cannot say that the use of torture in the TBS will lead to morally worse consequences in the TBS if those bad consequences are already occurring before the onset of the TBS.

Ultimately, I argue that these consequentialists are wrong to claim that institutions devoted to perfecting the practice of torture are necessary for effective torture in the TBS. While it would certainly increase our chances of gaining actionable intelligence, a training regime for torture is not necessary. And, moreover, whatever bad consequences do result from torturing the terrorist in the TBS are not enough to change the utilitarian calculus in favour of torture. With respect to the deontological argument against torture, while this argument against torture is strong, it failed to account for an important moral feature; namely, the harm that torture does to the torturer and the harm done to the social and political institutions that the torturer represents.

In Chapter Three, I outlined the concept of integrity, and drew a distinction between personal and moral integrity. As we saw, personal integrity involves a) forming and remaining committed to principles that are consistent with one another and that help shape an individual's identity; b) developing a course of action that will cohere with the principles that one endorses, and c) standing by those commitments in times of temptation. For one to be a person of 'moral integrity', one must meet the conditions of one who has personal integrity. Like the person of personal integrity, the person of moral integrity will form and remain committed to principles that are consistent with one another, and her actions will cohere with those principles. She will also remain true to her principles in times of temptation or adversity. However, the person of moral integrity endorses moral principles, those principles that express the disposition to respect the humanity of others. And the person of moral integrity is also open to revising or reassessing their moral principles. That is, if one subscribes to moral principles that are, upon reflection, problematic or otherwise cannot be made defensible to others, then the person of moral integrity can revise her principles.

In Chapter Four, I argued that the act of torture corrupts the moral integrity of both government officials and state institutions. Performing an act of torture is a violation of a government official's professional moral integrity because it goes against moral principles that government officials in a liberal democracy ought to represent. Here I mean not the government official's own personal moral principles, but rather the principles that the government official takes on in his role as an agent of the state. Hence the 'professional' moral integrity of the government official. As agents of the state, government officials ought to embody those moral principles that a liberal-democratic state is committed to and engaging in the act of torture corrupts the professional moral integrity of government officials. At the institutional level, performing an act of torture corrupts core liberal-democratic principles that not only government officials are supposed to represent, but also that state institutions are supposed to embody. The idea here is that liberal-democratic states are committed to core moral principles such as respect for persons and respect for human rights and engaging in a brutal practice like torture directly corrupts these principles. Government officials who engage in torture thus corrupt not only their own professional moral integrity, but also the moral integrity of the institutions of the state.

I would like to conclude this dissertation by briefly discussing a speech made by the late US Senator John McCain to the US Congress in 2005. McCain, a Vietnam war veteran, and POW who was subjected to torture, outlines a letter he had received from a Captain in the US Airborne division who also fought in Afghanistan and Iraq. As McCain outlines, the Captain writes about how he

struggled to get answers to a basic question from his chain of command: What standards apply to the treatment of enemy detainees? But he found no answers. In his remarkable letter, he pleads with Congress, asking us to take action, to establish standards, to clear up the confusion - not for the good of the terrorists, but for the good of our soldiers and our country. The captain closes his letter by saying, 'I

strongly urge you to do justice to your men and women in uniform. Give them clear standards of conduct that reflect the ideals they risk their lives for.<sup>193</sup>

In his plea to Congress, McCain implores Congress to clear up the confusion, and definitively state where the US stands on the issue of torture specifically, and cruel and inhumane treatment of detainees more generally. Given that McCain was subjected to torture as a POW, one would not be surprised to find personal anecdotes from McCain about the horrific pain and suffering that one experiences as a result of being tortured. Instead, McCain focuses on the damage that torture does to the soldiers that perform the act of torture, and the damage that torture does to a nation that permits its use. McCain ends his speech with this powerful message,

We are Americans, and we hold ourselves to humane standards of treatment of people, no matter how evil or terrible they may be. To do otherwise undermines our security. It also undermines our greatness as a nation. We are not any other country. We stand for something more in the world - a moral mission, one of freedom and democracy and human rights at home and abroad. We are better than these terrorists, and we will win. The enemy we fight has no respect for human life or human rights. They do not deserve our sympathy. But this is not about who they are. This is about who we are. These are the values that distinguish us from our enemies.<sup>194</sup>

In the fight against terrorism, it is important that liberal democratic governments not forget the values that their nations are built upon. For in this war, it is not about what the terrorists are doing. It is not about whether they lose rights because of their actions, or whether they are in some way deserving of the brutal and horrific treatment that often befalls them. Rather, as McCain emphasizes, it is about us. It is about our response to these atrocities. As liberal democratic governments, it is important that we ensure we do not become the enemy by using the tactics that we are fighting against. We must remain diligent and uphold our values in the fight against terrorism.

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<sup>193</sup> John McCain, "It's about Us," *Human Rights*, Vol 3 (2006): 20.

<sup>194</sup> McCain, "It's about Us," 22.

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