

# A MORAL CALCULUS FOR TORTURE

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The argument advanced in this paper<sup>1</sup> is that the use of torture<sup>2</sup> to compel a person to divulge information is moral if, and only if, certain criteria are met. Those criteria are described in this essay.

## Criteria

### No Alternative

There must be no other alternate way of obtaining the information sought. One test of this criterion is whether the agent has exhausted all other means of getting the required information.

### Standing

The person or group employing force must have **Standing to Act**. This means that the person or group must have some responsibility for the good to be protected by the use of force. The principle must be applied as a matter of prudence and so more broadly in some cases than in others. For example, we might apply it narrowly with regard to the disciplining of children by limiting *Standing to Act* to parents and perhaps other close relatives. On the other hand, almost anyone witnessing, say, an assault on an elderly woman would have Standing to Act to protect her. In other cases, such as the use of some kinds of force (especially deadly force) by the police or the military, we would likely define Standing to Act narrowly again.

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<sup>1</sup> The arguments raised in this document are explicitly informed by [Just War Theory](#) as described and explained extensively in Jean J. Kirkpatrick's [Making War to Keep Peace](#).

<sup>2</sup> In this document, torture refers to acts that carry no permanent after effects. Torture that causes permanent physical pathology are always and everywhere immoral.

## Sound Reason

Third, the person or group employing force must have **Sound Reason to Act**, Sound Reason to Act exists only when real harm may be done or actually is being done to persons or their property and when at least four additional criteria are met.

1. *Discrimination*: the criterion of *Discrimination*, which is to say that force may only be directed against a person who is known to be acting badly or to be planning to act badly, especially when the bad action is directed against the person or property of others. In some special cases (e.g., persons who are severely depressed or mentally incompetent), force might be employed to prevent someone from harming himself.
2. *Necessity*: the criterion of Necessity, which is satisfied when there is a legitimate need for action to be taken and no non-coercive means are reasonably available.
3. *Proportionality*: the criterion of Proportionality, which requires that the potential or actual harm to others or their property is sufficiently serious that the use of force is warranted<sup>3</sup>, and also that any force employed be reasonably proportioned to the harm caused and to the status of the perpetrator.
4. *Prospect for Success*: the criterion of Prospect for Success limits the use of force to situations in which there is ample reason to believe that the force employed will bring about the hoped-for change in plans or behavior.

## Right Intention

Fourth, the person or group employing force must have **Right Intention in Acting**. In general, this means that the person or group must intend to prevent the harm about to be caused (or being caused) by the perpetrator. The principle is

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<sup>3</sup> Some kinds of harm to persons or property, while real, are relatively trivial and, consistent with Socrates' principle, should be tolerated rather than resisted with force. This is true on the personal as well as the social level. The virtue of patience is precisely the virtue that permits wise individuals and wise nations to tolerate for the sake of peace that which otherwise provokes the unwise to violence.

violated if the prevention of harm takes second place to a desire to exact vengeance, to exercise power, or to obtain some sort of advantage over others.

The use of force, whether it be a matter of restraint or threat, or the actual imposition of pain, always marks a breakdown in the peace and harmony that ought to characterize human relationships. The use of such force can cause damage that may not be immediately apparent, and sometimes that damage later fuels further erosions of peace and harmony. It can never be chosen lightly and it must always be employed to restore an authentic and just peace. While force is sometimes a necessary tool, it is also a dangerous one for families and communities to employ. We need to consider now whether and to what extent it may legitimately be used in the context of interrogation.

## Discussion: Defensive Coercive Interrogation

Torture is an ugly word, and the practice of torture in all its forms has a particularly ugly history. It is for good reason that civilized communities, from ancient times, have severely limited or abolished torture as an instrument of the state. The word “torture,” however, is used to name a number of different practices that involve the use of force to change plans or behavior. Some of these practices are rightly condemned as gross violations of human dignity, but must this be true of all?

*Defensive coercive interrogation* describes a situation in which a person is subjected to one form of force or another (but which does not result in permanent injury, physical or psychological) in an effort to compel that person to cooperate in frustrating or curtailing an offensive, manifestly deadly act. The relevant act may be one in which the person himself is engaged or it may be one of which he has knowledge. In either case, there is a serious harm that can be prevented but the subject refuses to offer the cooperation necessary to prevent the harm.

The question that remains is: Can defensive interrogatory torture ever be morally legitimate? For example, could a terrorist who has knowledge of an imminent bombing be justly subjected to torture in an effort to compel him to reveal what he knows about the attack? Could a kidnapper be tortured in an attempt to learn the whereabouts of his victim? Could a confessed murderer be forced to reveal the location of the victim’s body?

To answer these questions, we need to appeal to the principles governing a just use of force as discussed above. Defensive interrogatory torture may be legitimate only if its use can satisfy all of the criteria enumerated above.

Two of the principles can be easily satisfied, or at least it can be easily determined whether a particular situation can satisfy them. They are the principles of *Standing to Act* and *Right Intention to Act*. Torture, as it is ordinarily defined, is a public act. That is to say, it is the act of a state authority, working through those persons properly delegated to act on behalf of the state. Police, for example, are authorized to do things to protect the common good that private citizens are not permitted to do. Similarly, persons generally authorized to use force for the sake of the common good (i.e., the police and the military) may be assumed in principle to have Standing to Act. It may however come to be the case, as some have suggested, that the employment of torture would be reserved to certain persons explicitly empowered to use it. Others, except perhaps in very serious emergencies, would not have Standing to Act.

Right Intention to Act merely requires that persons employing force do so for the sake of preventing harm to innocent persons or their property. As mentioned above, this principle is violated if force is used for revenge, for personal gain, and so forth.

The real difficulty with defensive interrogatory torture has to do with whether instances of it can ever satisfy all of the criteria associated with Sound Reason to Act.

The first of the criteria, Discrimination, could be satisfied if the subject of the interrogation were known beyond reasonable doubt to possess the information necessary to frustrate the bad act and if he were unwilling to reveal that information. The criterion would not be satisfied if the subject were merely suspected of possessing information.

The second criterion, Necessity, could be satisfied if time was short and no means of compelling cooperation short of force were available, which brings to mind something like a “Ticking Bomb” scenario.

The third criterion, Proportionality, requires something quite serious to be at stake. In the present world situation, with the wide concern about further terrorist attacks, one can readily imagine that some severe risk to innocent persons could be at stake. If so, the criterion of Proportionality would probably be fulfilled. However, we must be careful not to be so unimaginative that we cannot conceive of less serious uses of force than torture to accomplish our ends, or so complacent that we are too readily prepared to fall back on torture if other means are not rapidly successful. The use of torture has implications beyond the immediate suffering of and harm to the subject, and these implications ought to be considered in the context of Proportionality.

The final criterion, Prospect of Success, plays a larger role in the question of interrogatory torture than it normally does in other instances of the use of force. This criterion can be satisfied only when there is very good reason to believe that the force applied will result in the cooperation needed. It is not satisfied—and the use of force cannot be justified—when it is reasonably believed that a proportionate use of force will not compel cooperation or when the level of force deemed likely to succeed is disproportionately severe.

Another consideration comes into play here as well. Judicial interrogatory torture has generally fallen into disuse in one culture or another because it is an unreliable way of arriving at the truth. Subjects have a strong incentive to say what the interrogator wishes to hear, whether that be an accusation or a confession - anything to bring the torture to an end. The cases where torture was commonly used were often those in which no adequate corroborating evidence was available. As a result, where genuine success would be a determination of the truth, a phony success—an accusation or a confession that could not be independently verified—was accepted as a substitute.

Therefore, the criterion of Prospect of Success, with regard to defensive interrogatory torture, should also entail, the condition that the information obtained from the subject be readily verifiable. In this way, the subject, knowing that the information he reveals can be promptly checked for accuracy, will be much more likely to tell the truth.

In sum, defensive interrogatory torture may be morally legitimate if imposed by persons properly authorized to do so, who act with the intention of protecting the innocent, and if there is a sufficiently grave risk to the well-being of these innocent people. Furthermore, the subject must be known beyond a reasonable doubt to possess the capacity or the information needed to frustrate the bad act and be unwilling otherwise to exercise that capacity or reveal that information; time constraints or other conditions must make alternate methods of obtaining cooperation unreasonable; the harm at issue must be grave and the means used to obtain cooperation must proportionate to that harm; and there must be good reason to believe that such interrogatory methods would be successful and that information received could be promptly verified.

While these conditions may actually be fulfilled in some cases, this probably would happen rarely. It is quite likely that most instances in which interrogatory torture is employed would not conform to these principles and so would not be justified.