Critical Analysis of Moral Justification for Torture

The prohibition of torture is an absolute human right guaranteed by the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. The convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.” International statues prohibit torture there are many who argue a moral justification for torture in a variety of situations. The most persuasive justification is known as the ‘ticking-time-bomb’ dilemma which presents a classic utilitarian situational argument of the rights and suffering of the few against the many. The terrorist attacks on September the 11th, 2001 sparked an increased in the occurrence of international torture despite its absolute prohibition. The ‘ticking-time-bomb’ scenario has been used to justify acts of torture, however there is much debate around the existence of ‘justifiable torture’. The classic example is when there is a bomb hidden somewhere and in order to save as many lives as possible they torture the perpetrator behind the attack to gain information in order to prevent the attack.

Jeremy Bentham – a proponent of Utilitarianism – was a consequentialist, meaning that he believed the moral value of any decision depended on what decision will create the most amount of benefit for the most amount of individuals. There are three main situations where the ‘ticking-time-bomb’ justification may be used; when it is known that the person in custody has planted the ‘bomb’ they are aware of, that they are aware of where the bomb is or when torture is guaranteed to reveal where the bomb is. Provided the three qualifications are fulfilled then it could be argued that torture could be used for the greater good. It is of no surprise that for many the moral argument for torture proves to be convincing as the basic principle of one individual suffering so many can live is easy for many to accept in principle.

The ‘ticking bomb’ argument relies on the assumption that torture is the most effective method of gaining information. However, there is no absolute guarantee that torture suspects will reveal anything under pressure. In fact, there is also no guarantee any information they do reveal is accurate. The debate around torture and any potential moral justifications distracts from the reality that torture often does not produce the desired results. The moral justification for torture begins to fall through when we consider that the practice itself does not produce accurate results by which authorities can act upon. For example, in the US lead manhunt for Osama Bin Laden the government used ‘enhanced interrogation techniques’ were used on individuals believed to hold important information about Osama. This particular example is hard to justify given the ‘ticking time bomb’ scenario requires an imminent threat to life, which cannot necessarily be identified in this case. The ‘ticking bomb’ argument for torture therefore ultimately fails as torture does not absolutely guarantee th bomb will be ‘diffused’ and it is often applied incorrectly to situations where there is no ‘bomb’ per say.

Legal justifications are more challenging than moral justifications, however some argue for a distinction to be made specifically for government officials. The argument proposed by Derchowitz is for what he coined a ‘torture warrant’ which attempts to restrict the practice. Others argue for torture to be permitted provided that the officials responsible accept any and all consequences for their actions. The moral justification for torture is that often in times of emergency torture is the best option to ensure the best outcome for concerned parties, the legal

justification however, is not persuasive if arguments such as Derchowitz are allowed for. His argument allows for pandoras box to be opened, torture even when legislated for would be confined. Recognizing the distinction between the moral and legal arguments for and against torture is vital, as the moral arguments for torture are easily recognizable, understandable and in cases justifiable. However, the legal arguments tend not to be so.

It is important to make the distinction between the moral and legal prohibitions of torture for obvious reasons. Despite the moral arguments – such as the ‘ticking-time-bomb’ dilemma – they prove to be unrealistic in practice and they are often abused due to their nature. Legitimizing torture has implications that go beyond the immediate life and death of the situation at hand, the erosion of the prohibition of torture is a ‘slippery slope’ from the exceptional use of torture to the routine use of it. Torture is also not a guarantee of accurate and reliable information from individuals, often cases arise where the individual being tortured will confess to almost anything, other methods of interrogation have proven to be more accurate without opening Pandora’s box. A tolerance for torture within legislation should never be attempted as this will simply open a backdoor for more atrocities. To make the judgement that torture is justified in some circumstances is dangerous and wrong – torture must be prosecuted as a crime wherever it occurs. However, to recognize the mitigating circumstances when it occurs is also important.