

Lorena del Carmen Klausmeier – Criminology – Discussion on Torture: Taxi to the Dark Side & Standard Operating Procedure

1. Classical criminology – Beccaria in particular – critiqued Torture, yet Beccaria seemed to allow torture in certain circumstances, why? Analyse Beccaria's position on Torture.

Beccaria is one of the main writers that positioned himself against the use of torture, as in his view it directly contradicted human dignity. First of all, according to Beccaria torture cannot terrify those contemplating to act in a criminal way, as torture is a private practice, and not a punishment as a result of a public offence. Indeed, the public will be unaware of torture practices, and thus will not consider it as a punishment, or a reason why to avoid acting in a criminal manner. Even if Beccaria believed that punishment given in society should be proportionate to the harm inflicted by a certain individual, torture was still not an option. He was concerned by the fact that judges in general were giving much less harsh or unequal punishments to the elite or noble classes' offenders compared to the offences from the working-class.

For Beccaria, torture is a practice to obtain information from an individual. This follows, one of his main arguments was that torture does not guarantee the obtention of correct information. Instead, he even proposes using other ways in order to obtain information, such as through trust or confidence. Therefore, justifying torture under the idea that it helps maintain protection towards citizens is not valid. As a matter of fact, an innocent man may be punished for being innocent, or a guilty man will be punished and provide incorrect information. Therefore, under no circumstance is torture an effective mechanism.

Nonetheless, Beccaria only accepts the use of torture in the course of trial in the occasion when the person that is being questioned, consistently refuses to answer to the question posed. Only in such circumstances may torture be accepted. Indeed, Beccaria was an utilitarianist with a focus on creating a better society, and if it was necessary to use torture to obtain information, for the greater good, then Beccaria may have accepted such practices. Yet, even Beccaria does not fully endorse this view nor advocate torture. He simply recognises that torture may be useful in certain circumstances.

2. Are there any circumstances in which you personally think torture is justified?

I do not believe that torture should be allowed or justified at any point. One may state that a person deserves it, but in my opinion even the vilest should not be inflicted such pain.

First of all, perpetrators may have a conscience, and by inflicting pain upon them, one further determines their path: more anger and hatred towards society. For example, if a terrorist ferociously believes that that "X" country is to be attacked, it is not by showing that X's authorities have a greater power upon the terrorist, by torturing him, that the terrorist will halt future attacks. It actually even starts a vicious circle, by which the terrorist is further fuelled with hatred and violence. It actually gives more of a reason to attack the country X, since they follow such atrocious practices, clearly in violation with human rights. It is not because a person becomes a perpetrator that the law stops applying to that particular individual. For example, in Europe, everyone has right to Article 3 of the European Convention of Human Rights, whereby "no-one shall be subjected to torture or to inhuman and degrading treatment or punishment". Being a perpetrator of the law, does not give the law the right to make an exception and not apply the law to that specific case. The law is uniform and whether criminal or not, it applies to all "humans". It is important for the law to apply consistently and clearly in all circumstances, and thus, it is not acceptable nor just for torture to be justified on certain individuals, and some not.

Additionally, torture may be origin to much long-term psychological problems, reported by survivors. These include trauma, anxiety, depression, and problems of psychotic nature. How may survivors easily re-integrate society, after having borne with such trauma? These effects are found not only on the tortured, but also on the torturers. This was the case of Lynndie England, who took antidepressant medication as a result of anxiety and post-traumatic stress disorder. Why should torture be allowed, when it affects both torturers and tortured? It does not make sense to me to justify torture in certain circumstances where its practices obviously harm and hinder any human being.

Moreover, it would be very hypocritical of society to punish an evil related to violence, such as battery or assault, but themselves be allowed to practice the same abuses on individuals who committed it originally. If society is supposed to set an example, it is not through violence, that it will teach its citizens to act in a non-violent manner. In the end, they would also be committing a crime, they should also be punished and held accountable for. The argument by which Y should be tortured by Z because they harmed someone else, leaves Z to be tortured too, as they have tortured Y, and W to be tortured as they have harmed Z... at this point we might as well all be tortured for a never-ending crime. Thus, the government, or any other citizen or individual, should follow the values they are attempting to establish in society. A retributive justice will simply not lead to satisfactory conclusion.

Also, it must be added that torture is not effective. Beccaria argued himself that information obtained through torture has no guarantee to be correct. Indeed, most individuals that are subject to torture have stated to give information in order for the torture to stop, and give the answers the torturers are looking for, rather than giving the truth. If the individuals undergoing torture are actually innocent, they will not be safe until they provide answers. Thus, with this in kind, torture is extremely ineffective. I believe a different approach with confidence and trust should be taken, such as through a psychological or psychiatric appointment. Through this, the information given is more likely to be of use, and more importantly, to constitute the truth.

Here is a summary of why torture should not be justified under any circumstances:

- It further convinces the perpetrator to continue undertaking crimes;
- The law cannot allow torture to be practiced on some people and some not;
- There may be some psychiatric effects on the torturer;
- In the end torturers are also committing the crime they are holding the tortured into account for;
- Not very effective, since there is no guarantee the information given is correct; and
- Although asymmetric if do not use torture, there are other things ways of going on about.

3. Analyse either *Taxi to the Dark Side*, or *Standard Operating Procedure*:

- Is this an 'honest' film? I believe both were an honest film as it clearly reflected the reality behind the "scenes" in the military, and on the US practices in Abu Ghraib during the Bush administration. From my perspective, those having the floor during both the documentaries seemed to come from a place of honesty and genuinity. Even the soldiers never denied not having followed nor applied torture-practices. It may be possible that they gave more blame to some soldiers rather than others, but in the end the documentary seemed very neutral. Even the victims of torture were also said to have committed crimes such as rape on very young boys, while some such as the taxi driver Dilawar, or the British man Moazzam Begg, were fully innocent. Thus, whether soldiers, victims, or other, it was shown that neither were truly innocent, nor fully to blame. As a result, it is a good thing both *Taxi to the Dark Side* and *Standard Operating Procedure* were shown as documentaries to avoid turning a person into a "hero" and another into the "villain", as is done in most movies. Furthermore, showing the point of view from many individuals prevents the watcher from being biased: we are listening to all the versions of the story, even from those who were not directly involved, such as journalists commenting on the aftermath of the events.
- What explanations for torture occurring are presented? One of the main explanations given is the lack of education and formation. This was an argument set forth by the soldiers, who were not at all aware, or had never even heard of the Geneva Convention, or more precisely, that these actions would be classified as torture. Thus, there was a lack of knowledge as to international law, and which laws should be followed and respected in non-US territory. Soldiers cannot not-torture, if they are not given the specific rules that torture is forbidden at an international scale, normally also applied on US-soil, the US being one of the parties to the Geneva Convention. Another issue in relation to education, was the lack of formation. Many soldiers were sent into situations they were not mentally nor physically prepared for. Lynndie England for example, was not trained to work in a prison, nor hold prisoners. Yet, she was asked to work with detainees, and as a result of her inexperience, this led her to take part in the appalling practices in Abu Ghraib. Why would soldiers be sent to such conditions if they had not received the required training and courses? This is as if

one asks a student to pass a mathematical exam, without having told or taught the student the content that will be examined: one cannot expect the result to be of a high-standard.

Then, of course there is wide amount of discretion as to what exactly amounted to torture, and what did not. Even with the US having ratified the Geneva Convention, the definition given on torture remained unclear, allowing a wide interpretation as to what precisely constitutes torture. This enabled everyone to justify their actions under the idea that what they were committing, was not defined as torture. Many also justified their actions by arguing they were not aware that this was happening. For example, this is the case with the officer in charge of the Abu Ghraib prison, who apparently “did not even know” what her soldiers were doing. What a coincidental luck that you cannot be accountable for torture, in a prison the officer is supposed to be responsible for and have control over, if you are *fully unaware* of them. In my opinion, this seems more of a convenient excuse than anything else to explain why torture occurred.

The fact that torture has become a wide practice, was also presented as an argument in the documentaries, explaining the use of torture. For example, when new soldiers came in, they came to a prison that already had such practices established: they simply followed the group. At this point, it had even become more of a tradition in Abu Ghraib, and it would have been extremely difficult for anyone new to halt widely-established torture practices. Finally, torture was justified under the idea they were all “saving” their home country. As long they got information out of their prisoners, they were providing a great job, saving the world “from terrorists” and thus should continue torturing.

The following is a summary of the ideas explaining the use of torture:

- The lack of education and formation;
 - A vague definition of torture allowing a wide discretion;
 - The “did not know it was happening” argument;
 - The fact that everyone does it; and
 - That it “saves” the country on the long-term.
-
- Who, if anyone, should be punished? I find this question very difficult to answer. It is easy to answer that those who committed the crime, so Lynndie England and the rest of her group, should be punished. But I strongly believe the argument of “following orders” should be strongly taken into account. Indeed, it is human nature to do so. We have all been taught since a very young age to respect the authority above us and follow whatever they tell us to do without questioning it. This is shown at school, when teachers have authority and decide when you speak, what you say, what you write, or at home when parents are the representative authority taking the decisions for their children, or as well as society as a whole, where the law and your superiors are those responsible for you. I see the situation as the following: if a parent tells a child that it is okay to go hit his friend, and the child does it, it is very difficult to hold the child responsible. The child was taught and grew up that way, thinking hitting others is justifiable. Thus, the parents should be held accountable, for themselves having ordered the child to do so. The same goes for authorities and soldiers: the soldiers in both these documentaries were obviously not educated on how to handle prisoners, but were even told “it was good work, and they should continue to do this”. None of them had ever even heard of what the Geneva Convention was, and that it applied in the US as much as in other countries. Just like a child with their parents, I feel a bit of pity having to punish the soldiers.

This was also shown through Milgram’s Experiment, by which Milgram, a scientist, had two volunteers come in to test his experience. One of the volunteers was asked to sit on an electric shock sender, and to give electric shocks to the other volunteer, when incorrect memory answers were given. The other person, in reality an actor without the knowledge of the first volunteer, would sit on the chair and receive “electric shocks”. The first volunteer operated under the orders of Milgram. In 100% of the experiments undertaken, it was shown that all individuals sent electric shocks to the actor of over 300V. 60% of them went over 500V of electricity. At no point were the individuals menaced, and they all had the chance to decide to drop out

from the experiment, or decide not to send the electric shocks. But this image, of doing “what the authority says”, gave them confidence to continue what they were doing. The experiment clearly shows having an authority as responsible is ingrained in our system, and obeying orders is part of human nature.

Of course, this does not justify the soldiers’ behaviour. What they have done is immoral, and they should still receive a consequence from their actions. Indeed, even when one is following orders, it is important to not be blinded by them, and one only needs a minimum of moral and human-decency to understand the gravity of torture. However, in my opinion, they are not as responsible, or guilty, as the authorities, or in this situation the military agencies or President Bush himself. They are the ones that have this “authoritarian position” or “parental” position. It is very convenient for them to have someone do the *dirty work* of torture, and then hold those same people into account for actions they approved in the first place. In this situation, I would like to see the soldiers in a re-education camp, to understand what they have done wrong, and learn what standards should be followed by the military, while the authorities themselves going to prison.

One may say the soldiers ended up enjoying torturing, and in this sense, they are just avoiding the blame under the argument “they were told to do so”. In that case, they would be just as responsible as the authorities are. Nonetheless, if the authorities’ policies, laws and regulations were good ones, the soldiers would not even be given the chance to justify their actions under the “order argument” in the first place. It is almost as if those having enabled torture, wanted the soldiers to follow practices of torture and not make any regulations for any events where it happens.

4. What needs to be done to prevent torture? Or should some torture be ‘regulated’?

As I stand with the ground that no form of torture should be allowed, I do not think “regulating” torture is an option. This is also likely not to function, as “regulations” always contain a certain amount of discretion, which will of course allow for there to be situations in which it is abused. One can state that the Geneva Convention already regulated torture in some sense, as it clearly gave the definition of torture (*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*) and prohibited it. Yet, this was still performed by the military soldiers and military intelligence both physically and mentally. So, as history has shown, torture “regulations” at an international scale will not function.

A way to prevent torture is to clearly hold into account those who practice it. As international law has proven not to be effective, nor enforceable, it is necessary every country to clearly define torture, or implement the Geneva Convention into its national laws or constitution, in order to provide it with a highest degree of legitimacy. Rendering torture-laws legitimate will enable justice to certainly punish those who disrespect the law and practice torture. Seeing other people be sentenced for torture practices, may as well stop others from practising torture in future events. Clear consequences from actions will avoid torture-acts increasing and becoming widely-established, however it is important the law on torture becomes clear and available to all in the first place.

Furthermore, it is necessary to educate people in this matter. Education is key to improvement and avoiding past conflicts. For example, it is needed that the military or any form of soldier is taught on the Geneva Convention, and the law itself: what they are allowed, and not allowed to do. This clarity will enable them to uphold given standards and not flow into a long-practice of hidden abuse and discretion. It is necessary to explain individuals and distinguish the right from the wrong before being sent into situations, where the right and wrong may be blurred.