

The Moral Permissibility of Torture in a  
Terrorized World and the Problem of Dirty  
Hands

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In the years leading up to September 11, 2001, the use of torture was considered to be so clearly morally impermissible that philosophers did not view the morality of torture as a topic worth discussing. To them, examining the moral permissibility of torture served no purpose; nearly everyone condemned its practice.<sup>1</sup> That being said, after the terrorist attacks on September 11, the United States government's position regarding the use of torture radically shifted. No longer did everyone abhor the use of torture. While the government did not publicly admit to the use of torture at the time, it soon became evident that, following the attacks on the Pentagon and the World Trade Center, U.S. government agencies captured, detained, and tortured suspected terrorists in an attempt to gain information concerning future attacks. As a result of the United States' policies, philosophers began to examine the moral permissibility of torture.

In this paper, I will argue that despite philosophers' and legal theorists' attempts to justify the use of torture in certain situations, torture has always been and will always be universally morally impermissible. My reasoning is as follows: 1) All human beings are deserving of respect and therefore should always be, as Immanuel Kant argues, treated as ends in themselves and never as mere means. 2) The dehumanizing nature of

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<sup>1</sup> One exception is Henry Shue, who examined the morality of torture in a 1978 issue of *Philosophy & Public Affairs*. While Shue ultimately believed torture was worth discussing at the time, he, in the following quote, expresses philosophers' general reluctance to examine the issue of torture. Shue writes, "Whatever one might have to say about torture, there appear to be moral reasons for not saying it. Obviously, I am not persuaded by these reasons, but they deserve some mention. Mostly, they add up to a sort of Pandora's Box objection: if practically everyone is opposed to all torture, why bring it up, start people thinking about it, and risk weakening the inhibitions against what is clearly a terrible business?" (Shue 124). Here, we see that, as I stated, torture was widely condemned, and most philosophers believed it to be unworthy of discussion, as they believed no good could come from its examination.

torture inherently involves captors viewing individuals merely as a means to an end (that is, as sources of information) and never as ends in themselves. And thus, 3) torture should never be morally permitted. Further, even if one refuses to accept my rejection of the use of torture for deontological reasons, the effects that torture has both on the individual being tortured and on society, as well as the proven ineffectiveness of torture, should be enough to convince any individual that torture should never be considered morally permissible.

This view about the universal moral impermissibility of torture, however, is in tension with another widely held moral intuition, that is that it would be morally wrong for an elected official, such as the president, not to do everything in his<sup>2</sup> power to protect the lives of his citizens when they are subject to a serious threat. Were the president to forbid the use of torture in extreme versions of the ticking bomb case, for instance, and individuals died, he would be seen as having acquiesced to civilian deaths simply in order to protect the rights of a suspected terrorist. Many would argue that, in this situation, the president would have acted inappropriately. He had, one could argue, by virtue of his office, a fundamental responsibility, or in other words a role obligation, to prioritize the safety of his citizens, even when doing so necessitated the violation of universal moral law. By not torturing the suspected terrorist, in favor of following the universal moral obligation, he did not heed his moral role obligation. Therefore, in my opinion, individuals' role obligations can cause particularly difficult dilemmas and lead us to

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<sup>2</sup> Here and throughout the duration of this paper, I use the pronouns "he" or "his" when discussing the president. I do this not because I am ignorant of the sexist ramifications of the habitual use of "he" as a pronoun, but out of simplicity and due to the fact that, up until now, we have yet to have a female president of the United States.

question how political leaders, for example, should deal with the tension between their universal moral obligations and non-universal moral role obligations. In the specific case that I ultimately present, I would argue that the president faces a genuine moral dilemma. He, on the one hand, has an absolute universal moral obligation not to torture while, on the other hand, a non-universal but still absolute moral role obligation to torture.

In arguing the above, I will do as follows: First, I will briefly detail the actions of the U.S.'s government following the terrorist attacks on September 11<sup>th</sup>. Then, I will transition to discussing the universal absolutist argument against torture. I will argue, as I highlighted above, that torture is universally morally impermissible on the grounds that it inevitably involves treating human beings and their rationality merely as a means and never as ends in themselves. In this section, I will also address several possible objections to my argument that there is something distinct about torture that makes it worse than killing in war. After addressing these objections, I will spell out the disconcerting consequences of permitting the use of torture. Even if you find yourself unconvinced by the deontological argument that I present, torture can and should also be viewed as morally impermissible in light of what it does to society and the individual. I will support this claim with arguments by Richard Matthews and David Luban. Next, I will briefly discuss the ineffectiveness of torture, which further suggests that torture should not be permitted.

Following this discussion, I will present the "ticking bomb scenario," which prompts some philosophers and legal theorists to argue that torture could be permitted in certain circumstances despite the moral problems associated with it. These people argue

that when you weigh the consequences of a terrorist attack, i.e. the deaths of thousands of citizens, with the temporary harm inflicted on the suspected terrorist then it becomes clear that torture should be employed. Legal theorist Alan Dershowitz puts one such argument forth, and I will describe it in detail and then address it with the help of David Luban. Despite the problems I see with the ticking bomb scenario as it is generally presented, I understand the insistence of certain philosophers regarding the use of torture in extreme situations. It does seem that the president would do something wrong by not permitting the use of torture in extreme situations despite the universal moral obligation not to torture. At this point in the paper, I will examine the president's role obligations, which lead me to argue that he would act inappropriately by not condoning the use of torture.

After this examination, I will explore in more detail the above intuition, leaning on the argument of Christopher Gowans for the existence of a moral remainder, or the feeling of inescapable moral wrongdoing that results from a conflict between two obligations with strong moral reasons supporting them. Then, having already spelled out in great detail the universal moral obligation not to torture and the reasons supporting it, I will take the time to argue for the existence of moral role obligations. I argue that while universal moral obligations are indisputably important, they fail to cover certain aspects of morality. Therefore, we need both universal moral obligations and moral role obligations. They have a different structure, which I will describe, but they are both necessary to cover the complexity of human life.

With the necessity of role obligations established, I will finally describe how role obligations can be justified, i.e. by the nature of the institution of which the role is a part and the values that it seeks to promote. Then, I will apply this framework to the president and the role of the presidency within our government. Finally, I will argue that the president faces a genuine moral dilemma with regard to torture, as there are equally strong obligations to torture and not to torture based on universal moral obligations and moral role obligations. In doing so, I will lay out a newly formed version of the ticking bomb scenario, which I believe escapes the worry about its applicability to reality that I present. Ultimately, I will argue that, in this case, the president must act according to his best judgment. In the end, when confronted with a genuine moral dilemma, the president must simply do his best to balance the conflicting obligations that he faces.

### **I. The United States' Actions Immediately Following the Attacks on September 11<sup>th</sup>**

Before discussing why I believe torture to be particularly heinous, and as such universally morally impermissible, I would like to detail the actions taken by the United States' government in the moments immediately following the fall of the Twin Towers and the destruction of the Pentagon. In my opinion, these actions are particularly illuminating, in that they show the government's rash actions, the horrible treatment that detainees faced, and the government's own initial reluctance to approve the techniques ultimately utilized. Further, I believe such a discussion provides a good context when examining the moral permissibility of torture.

Just days after the terrorist attacks on September 11, 2001, the U.S. government, specifically the Bush Administration, began hunting suspected terrorists. The

administration commenced its search on September 17, 2001 when President George Bush signed a memorandum, which gave the director of central intelligence (DCI) permission to “undertake operations designed to capture and detain” suspected terrorists (*Committee 37*).<sup>3</sup> At this time, the memo included no mention of interrogation or interrogation techniques. Then, on October 8, 2001 the DCI George Tenet charged the management and oversight of the capture and detainment of suspected terrorists to the CIA’s deputy director of operations (DDO) James Pavitt and the CIA’s chief of the Counterterrorism Center Cofer Black (39). Both were instructed that all requests and approvals concerning the program should be made in writing. However, by December 17, 2001, the DDO had declared this requirement null and void and issued a blanket approval for CIA officers to identify individually those persons who posed a risk.

Throughout the next year, the measures taken by the Bush Administration and the CIA became more drastic. On February 7, 2002, Bush issued another memo, which stated that neither Al Qaeda nor Taliban detainees were prisoners of war under the Geneva Convention and, as such, did not merit the protections of benevolent quarantine afforded to prisoners of war (46). Then, by March of 2002, CIA headquarters had also informed personnel that they were permitted to detain low-value targets so long as they could provide information about high-value targets (39).

Following this, the next major event occurred in July of 2002 when CIA attorneys proposed the use of 12 interrogation techniques, several of which were cramped

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<sup>3</sup> I acknowledge the fact that I have only cited the Senate Select Committee on Intelligence’s study of the CIA’s Detention and Interrogation Program, but given the secretive nature of the program, it constitutes one of the only sources available, if not the only one, which details the CIA’s actions.



confinement, the use of stress positions, sleep deprivation, waterboarding, the use of diapers, the use of insects, and mock burial (58). These techniques were used as part of the U.S. Air Force Survival, Evasion, Resistance, and Escape (SERE) School, which was designed to expose select U.S. military personnel to, among other things, coercive interrogation techniques. Representatives from the Office of Legal Counsel, including Deputy Assistant Attorney General John Yoo, told the CIA that the prohibition on torture would not apply to these proposed methods because of “the absence of any specific intent to inflict serious physical or mental pain or suffering”, but National Security Advisor Condoleezza Rice asked that their approval be delayed until the CIA provided details about the methods and reasons why they believed the techniques would not cause enduring and irreversible harm (60).

Later that month on July 24, 2002, the Attorney General verbally approved 10 of the 12 interrogation techniques, waterboarding not included (62). At this point, however, the interrogation team made it clear that interrogations would not begin until the use of waterboarding was approved. As a result, two days later the Attorney General verbally approved the use of waterboarding. While all of this occurred, the U.S. government remained silent with regard to its actions. President Bush did not publicly acknowledge the existence of the CIA’s Detention and Interrogation Program until 2006 (185).

## **II. The Universal Deontological Argument Against Torture**

Torture, I would argue, is inherently evil, and I have difficulty understanding how the Office of Legal Counsel could argue that the use of the methods I listed above do not entail “any specific intent to inflict serious physical or mental pain or suffering” (60).

Any rational agent could and should have anticipated the physical and emotional trauma that the techniques caused. Those techniques that were approved, and other methods that were used even without explicit approval, are both, in essence, physically devastating and dehumanizing. Allow me to elaborate on what exactly the detainees experienced: The methods described above were used in combination with others for days and weeks at a time despite the fact that each technique alone was unimaginably brutal (10), which is demonstrated by the fact that 1) Waterboarding habitually produced convulsions and vomiting (10), 2) Detainees were often kept awake for up to 180 hours at a time (10), 3) At least five prisoners were subject to rectal hydration while others were placed in ice baths (11), 4) One individual was kept in complete darkness and shackled in an isolated cell for at least 47 days (57), and 5) Another likely died from hypothermia as it is suspected that he was forced to sit on the concrete floor without pants for extended periods of time (80-81). Further, the Senate Select Committee report even notes that one interrogator told a detainee that he would only leave in a coffin-shaped box, while another told an individual that he would never go to court because “we can never let the world know what I have done to you” (11). In the end, all individuals who are tortured are treated as less than human, and thus anyone who is committed to the existence of fundamental human rights, cannot condone the practice of torture. Torture is universally morally impermissible, first and foremost, because when individuals torture other human beings, they cease to treat them like persons.

Immanuel Kant in the *Groundwork of the Metaphysics of Morals* asserts, “the moral worth of an action does not lie in the effect expected from it and so too does not lie

in any principle of action that needs to borrow its motive from this expected effect” (*Groundwork* 14). According to Kant, it is not the consequences of an action that determine whether it ought be done in a particular situation. Rather, Kant believes that morality must be grounded *a priori*, or prior to experience. Unlike utilitarians who argue that an action should be taken by virtue of its likelihood of producing happiness or minimizing suffering, Kant argues that we should act such that we may be worthy of happiness, regardless of whether this happiness is actually attained (*Critique* 677). In order to be worthy of happiness, he contends that we must act in adherence with what he calls the “Categorical Imperative,” or “that which represent[s] an action as objectively necessary of itself, without reference to another end” (*Groundwork* 25).

Now, Kant believes that there is only a single Categorical Imperative: *act only in accordance with that maxim through which you can at the same time will that it become a universal law* (31), but he identifies three different formulations of this Categorical Imperative, which he believes, in the end, require the same behavior. I myself find the second formulation to be the most illuminating, so for the sake of space, I now turn my attention to Kant’s second formulation of the Categorical Imperative, or the formula of humanity, which reads “*so act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means*” (38).

According to Kant, “humanity” is the rational nature of human beings, or our capacity to determine our own aspirations through reason, and it is something that should be valued above all else. Humans, as rational agents, Kant believes, are uniquely capable

of logically thinking, understanding, and forming judgments. We, as opposed to non-rational agents who are not endowed with reason, can soundly make sense of our world, evaluate our options, and choose projects for our lives. To Kant, this ability identifies humans as persons and makes us objects of respect. Kant writes, “Rational beings are called *persons* because their nature already marks them out as an end in itself, that is as something that may not be used merely as a means” (37). Were we not endowed with reason, Kant argues, we would possess only relative worth; we would be considered things rather than persons. Therefore, by virtue of our rational nature and our classification as persons, Kant argues that we must always treat others and their rationality as ends in themselves and never merely as means. While Kant does not explicitly define ends in themselves, I believe it can be assumed that treating someone as an end entails respecting his or her rationality, or allowing him or her to make his or her own informed decisions and not choosing for him or her or limiting his or her choices. On the other hand, I believe treating someone merely as a means involves using him or her as a vehicle for one’s own ends and consequently failing to respect his or her rationality.

In order to further illustrate exactly what he means by his Formula of Humanity, Kant employs several examples. First, he discusses an individual who is contemplating committing suicide (31-2). As a result of a series of troubles, Kant writes, a man finds that he no longer wishes to continue his day-to-day life. He has reached a point of indescribable despair and feels as if ending his life is the best course of action. In the man’s mind, should he continue to live, his life is more likely to promise further hardship

than agreeableness. Now, Kant argues that, in a situation such as this one, the man must ask himself before acting whether suicide can be consistent with the idea of treating humanity always as an end in itself and never merely as a means (38). If the man does so, Kant notes, he will soon realize that committing suicide does not treat humanity as an end. Rather, the man's choice to end his own life results in him using himself merely as a means to escape suffering and prevents him from using his intrinsic and uniquely human ability to reason in the future. Thus, according to Kant, committing suicide is contrary to the Categorical Imperative, which he argues one must always follow.

In an effort to further explain the implications of the second formulation of the Categorical Imperative, Kant examines the act of making false promises. This time, a man is considering borrowing money under the stipulation that he will repay his debt, all the while knowing that he will never be able to do so (32). The man desperately needs the money and believes since he has no other way of acquiring it, he should be allowed to borrow the money on false pretenses despite the fact that he does not actually intend to settle his debt. Now, once again, Kant asserts that the man, when faced with such a situation, must consider whether making a false promise makes use of the other human being merely as a means (38). When viewed in this way, Kant believes, the man will be forced to acknowledge the fact that the individual from whom he would be borrowing the money cannot possibly agree to his way of behaving because that individual does not *know* what the man is actually intending to do. It may be the case that were the lender to fully understand the man's plan he or she would agree to let him have the money permanently. The lender might even be happy to give the money to the man as a gift;

nevertheless, without giving the lender the option to decide for him or herself, the man in need treats the lender merely as a means to an end. Therefore, the man in making a false promise violates the formula of humanity. He does not respect the other individual's ability to reason through his or her own decisions.

Accordingly, I believe that if we ask the same question of ourselves when we contemplate torturing a suspected terrorist, we inevitably see that torture is contrary to the Categorical Imperative. When we torture individuals, we dehumanize them. We view them as things and fail to respect their rationality. In effect, we treat them as a means to an end rather than as ends in themselves. Suspected terrorists, when tortured, are viewed as merely receptacles of information we deem vital to our country and our citizens' security, and humans should never be seen in this way. Regardless of the crimes they allegedly committed, suspected terrorists deserve to be treated with at least a modicum of respect. They are persons endowed with reason and should be treated as such. Thus, by virtue of its intrinsically dehumanizing nature, torture should always be considered universally morally impermissible. It is not an act that we could ever commit or condone while still being worthy or deserving of happiness, which Kant believes is the basis for the Categorical Imperative. As I stated previously, Kant argues that the rightness of an action should not be based on whether it will bring about the most happiness but on whether it makes us deserving of said happiness.

One might ask why torturing entails treating someone merely as a means while killing them in battle does not. In response to this objection, I argue that when soldiers are engaged in war, even when they must kill other human beings, they are still

respecting the other soldiers' capacity to make their own decisions.<sup>4</sup> Soldiers in war enter into a conflict, which is governed by rules. This morally significant fact is evident by virtue of the existence of a war convention, which calls for the moral equality of soldiers. As a result of this assumed moral equality, individuals in war recognize the decisions that others make and respond to them by making their own decisions. They do not simply act solely in accordance with their own agendas and ignore completely the actions of others. More specifically, with regard to killing, a soldier can respect the other's decision to attempt to kill him or her while arguing that such a choice causes that individual to forfeit his or her right to life. Thus, it is possible for soldiers to kill other soldiers and still treat them as ends in themselves while it is impossible to torture an individual and avoid using him or her merely as a means to an end.

Thomas Nagel makes a similar argument himself in his article "War and Massacre." Nagel believes that when hostility is necessary, it is, in essence, a question of attempting to justify to the individual what is being done to him or her. He writes, "One could *even* say, as one bayonets an enemy soldier, 'It's either you or me.' But one cannot really say while torturing a prisoner, 'You understand, I have to pull out your fingernails because it is absolutely necessary that we have the names of your confederates'" (Nagel 137). The reason why this is the case rests on the nature of the relationship between the

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<sup>4</sup> There are, of course, certain instances when individuals are forced to or coerced into engaging in warfare and killing other human beings, such as when they are drafted or socially pressured. However, we generally view soldiers as making their own decision to join the military and consequently participate in battles. Further, even if an individual is drafted, I believe the argument could be made that the draftee is bound to go to war by virtue of a social contract. It could be considered the role obligation of the citizen to defend the country that ensures his rights and liberties. For a more detailed description of the nature of role obligations, please see the end of my thesis.

torturer and the victim: The soldier has taken certain actions, which lead him or her to understand and appreciate, in the end, the justifications that the other soldier gives for killing him or her; however, the torture victim cannot and should not be expected to understand the dehumanizing treatment to which he or she is being subjected and from which he or she cannot escape.

With the soldier, “the attack is aimed specifically against the [immediate] threat presented by a dangerous adversary” while the torture victim, after being captured, is helpless and no longer presents an immediate threat (138). The same “it’s either you or me” situation referenced earlier does not exist with torture, as the torture victim has no control over his or her current situation; he or she is completely at the mercy of the torturer. By virtue of the helplessness of the torture victim and, consequently, the lack of an immediate threat on the torturer’s life, the torturer’s claim that he or she has no choice but to subject the terrorist to cruel and dehumanizing treatment is literally false while a similar claim made by the soldier is not. The soldier faces immediate risk at the hands of the other soldier while the torturer does not face immediate danger at the hands of the terrorist. Therefore, in the end, the justifications the torturer gives, as I stated before, are not ones that the torture victim could or should be expected to understand and accept.

Now one might disagree and argue that, by virtue of being involved in terrorist activity, the suspected terrorist should understand the reason why he or she is being subjected to such terrible treatment and accept the torturer’s justifications. To this objection, I would argue that there is a difference between the terrorist being able to predict that retaliatory behavior might follow his or her actions and the terrorist accepting



torture as a justified reaction. Yes, the terrorist might anticipate being tortured as a result of his or her activity but that does not mean that he or she can or should appreciate the justifications given for the use of torture. Further, similarly to the way in which Kant argues that the victim of deception cannot possibly consent to the way he or she is being treated, one might argue that the torture victim also cannot possibly consent; the torturer, after all, gives him or her no genuine possibility to consent or dissent, making the torture victim's options, in essence, non-existent. As David Sussman says, "In combat, each party recognizes the other to be capable of reshaping the practical task before them in an indefinitely wide variety of ways. In contrast, the torture victim realizes that he has no room to maneuver against his antagonist, no way to fight back or protect himself, and he must realize that his antagonist is aware of this as well" (Sussman 6).

At this point, another objection that may arise is why it would not be justified for the torture victim to, at a later date, torture his or her torturer. After all, it seems in this case that the torture victim, like the soldier, would be recognizing the decisions made by the other individual and responding in kind. Nonetheless, upon more careful consideration, it becomes clear that such behavior should not be condoned, as there is another aspect of torture in addition to the asymmetric power relationship it involves, which truly distinguishes it from killing, and this aspect is the pain torture entails. As Sussman writes, "Unlike other kinds of unwanted impositions, pain characteristically compromises or undermines the very capacity constitutive of autonomous agency itself. It is impossible to reflect, deliberate, or even think straight when one is in agony" (14). Pain interrupts the very processes necessary for rationality, making it impossible for the

individual to consent to the use of torture on him or her or respond in any way. Thus, a Kantian could never condone torture; its use clearly violates the second formulation of the Categorical Imperative. In fact, it could be argued that torture is the most extreme case of using someone as a means to an end. It necessarily involves disrupting an individual's autonomy in order to attain information, which furthers the torturer's ends.

Still, one might argue that though torture disrupts the ability to think rationally and make decisions in the moment, killing in war ultimately eliminates the individual's ability to do so. After all, the individual's death, barring the existence of an afterlife, makes it such that that individual is no longer an autonomous agent. In response, I must concede that this fact is undeniably true; death is horrifying and extinguishes autonomy. However, while I believe killing is very problematic to Kant for this reason, his main concern is with treating someone merely as a means rather than as an end in themselves, and I have demonstrated that this is not the case with one soldier killing another in war while it is absolutely the case with regard to torture. Whereas each soldier respects the decisions made by the other and responds to them, thereby treating that soldier and his or her rationality as ends in themselves and not merely as means, the torturer inherently treats the torture victim as a means to an end.

Finally, one might also ask whether all the innocent civilians who happen to be killed in war have also made choices that cause them to forfeit their right to life? One might question why we find the relatively indiscriminate bombing characteristic of war, which we are certain will lead to the deaths of some civilians, acceptable, but we cannot condone the torture of a terrorist, which will not only not cause his death but may prevent

the deaths of others? To this objection, I would argue first that citizens do not really find indiscriminate bombing acceptable, and this fact is apparent in the Fourth Geneva convention's demand that soldiers take special care not to bomb indiscriminately and to avoid civilian casualties. Second, I would argue that there is a significant moral difference between the deliberate, intentional, and systematic use of pain and humiliation to acquire information from a suspected terrorist and the accidental deaths of civilians. As evidence of this intuition, I would like to refer to the distinctive wrongness of the relationship between the torturer and the victim, which I believe will become all the more apparent in the next section if it is not already.

### **III. The Disconcerting Implications of Permitting the Use of Torture**

Even if you find yourself unable to accept my argument for the universal moral impermissibility of torture on deontological grounds, which I believe to be the principal or fundamental reason why torture is immoral, I still assert that torture can and should be considered universally morally impermissible in light of the consequences of its use. One need only look at the disconcerting implications of permitting the use of torture in order to see that this is the case, and two philosophers in particular, Richard Matthews and David Luban, do just that. Both Matthews and Luban believe that torture should be universally prohibited, as I do. However, their arguments are based on concerns regarding 1) the psychological degradation of the victim and torture's effects on the fabric of society, 2) the troubling relationship between the victim and the torturer, which I have already briefly discussed, and 3) the institutionalization of torture and creation of a torture culture.

According to Matthews, “Torture is an assault on identity,” and I would argue that, upon reflection, this fact is unmistakably true (Matthews 8). As I have stated, torture is inherently dehumanizing. It involves depriving individuals of basic human rights and treating them as animals rather than people, partially so that the torturer can feel justified in treating them so horribly. Further, as a result of the treatment to which they are subjected, I would argue that the individuals might eventually start to conceive of themselves as less than human too. They could begin to view themselves as individuals who belong to some sub-human class that deserves to be violated and rendered helpless. Thus, torture, especially if this becomes the case, but even if it does not, involves attacking the minds of suspected terrorists as well as their bodies, and doing so leaves a psychological toll.

I find the words of Jean Améry, a survivor of the Holocaust who was tortured at Auschwitz, to be particularly enlightening when it comes to the effects of torture on the torture victim. Améry writes,

“I dare to assert that torture is the most horrible event a human being can retain within himself. [...] It is like a rape, a sexual act without the consent of one of the two partners. [...] Frail in the face of violence, yelling out in pain, awaiting no help, capable of no resistance, the tortured person is only a body, and nothing else besides that. [...] Whoever was tortured, stays tortured. Torture is ineradicably burned into him, even when no clinically objective traces can be detected. [...] Whoever has succumbed to torture can no longer feel at home in the world.” (Améry 22, 28, 33, 34, and 40).

What Améry describes sounds utterly unbearable, and I am sure that even he is incapable of communicating the depth of what the torture victim feels. Nevertheless, Améry still has a lot to say. In this quote, Améry describes what happened to him as akin to rape, a situation in which the victim is universally considered to be powerless and which leaves an irreversible mark on the victim's psyche. I would argue that the fact that Améry, a torture victim himself, describes torture in this manner solidifies the argument that torture is psychologically degrading. After all, as Améry writes, while being tortured, the torture victim is no longer a person but just a body, and he or she forever feels out of place in the world.

In addition to his belief that torture attacks the mind of the victim and causes him or her psychological trauma, Matthews believes that torture also destroys social attachments and belief systems (Matthews 9). What makes someone a good torturer, Matthews argues, is the ability to figure out what makes an individual tick and undermine it (11). In doing so, the torturer plays on the victims' networks of social relations. No individual remains completely isolated from society, and the torturer takes advantage of this fact. As a result, torturers' tactics, Matthews asserts, embody racism, sexism, Islamophobia, etc. and consequently destroy social ties and make it such that "whole communities [...] inevitably suffer along with the victim" (9). As evidence, Matthews cites William Cavanaugh as saying in his book *Torture and Eucharist* that "the effects of torture radiate beyond the solitary circle of the victim abandoned to the torturer's instruments" (9).

While Matthews does not explicitly state how he believes torture's effects radiate, every instance of racism, sexism, Islamophobia etc., I would argue, can reinforce the general stereotypes that society holds with regard to these groups. Even though torture usually occurs in secret without the public's knowledge, it is not difficult to imagine that the torturers' use of discrimination would bleed into other aspects of their lives and not remain contained to just the workplace. Torturers' actions and decisions in everyday contexts would most likely also be influenced by prejudice, which in turn could affect the individuals around them. Those people could begin to see racism, sexism, Islamophobia etc. as normal and themselves perpetuate inequality. Therefore, it seems as if torture, even done privately, can have wide-reaching consequences on society at large.

These consequences are even more pronounced when the use of torture is publicly acknowledged. I would argue that the U.S. government's acknowledgement of its use of torture on Muslims has indeed reinforced the country's prejudices against Muslims. Americans now feel justified in mistreating Muslims in light of the fact that the government itself mistreated them.<sup>5</sup> Thus, we see that torture tactics, when publicly

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<sup>5</sup> As evidence supporting this claim, I would ask that you consider some of the statements that Donald Trump has made throughout his 2016 campaign for presidency and the support that he has received from the American public. On several occasions, Trump has made statements to the effect that he would bring back waterboarding and 'a hell of a lot worse' to deal with Islamic terrorists (See: <http://www.theguardian.com/us-news/2016/feb/06/donald-trump-waterboarding-republican-debate-torture>). In these statements, Trump references the CIA's interrogation program and uses it to indirectly justify his arguments. Further, on December 7, 2015, the Trump campaign issued a press release, which reads, "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States [...] Mr. Trump stated, '[...] Our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life.'" ("Donald" 1). (*Footnote continued on the next page.*)

acknowledged, do affect the fabric of society, and it is not difficult to imagine that even the use of torture privately can have an impact. In summary, to Matthews, torture is wrong in view of its above-described effects. Not only does it destroy the victim's identity, it can also affect all of those members of society that belong to the same race, sex, religion, etc. as the victim.

David Luban believes torture to be particularly abhorrent for related reasons. When considering "what makes torture more illiberal than bombing and killing," Luban argues that "the answer lies in the relationship between the torturer and the victim" (Luban 1429-30). Torture rarely occurs at a distance, and according to Luban, "The torturer inflicts pain one-on-one, deliberately, up close and personal, in order to break the spirit of the victim – in other words, to tyrannize and dominate the victim. The relationship between them becomes a perverse parody of friendship and intimacy" (1430). Inherently, the torturer and the victim spend long periods of time together, just as friends and lovers do; however, the relationship between the two is nothing like one between friends. The torturer gets close to the victim in order to break or control him or her, not to form a long-lasting bond. As I suggested before, the torturer exploits the helplessness of the victim. Consider once more the quote by Jean Améry. In it, I would argue that it is clear that torture victims are utterly vulnerable as a result of the asymmetric power structure between the torturer and his prey. Therefore, there exists a deeply troubling relationship between the victim and the torturer.

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This press release assumes that all Muslims are in favor of the horrendous attacks of a few and argues that consequently all Muslims should be denied entry to the country.

Further, both Matthews and Luban worry about the inevitable institutionalization of torture should it be permitted. According to Matthews, torture is not a natural act for the torturer. It is a skill that must be learnt and practiced, and this fact has dangerous consequences (Matthews 10). For one, states do not search for sadistic and psychopathic individuals to serve as torturers, yet torture often turns the torturers into sadists and psychopaths. The zealous and obedient individuals that are recruited are corrupted via the continued practice of torture; Matthews writes, “repetitive torturing involves the destruction of the pre-social impulses that inhibit the perpetration of antisocial acts” (11). Thus, by permitting the use of torture, we not only irreparably harm those tortured; we also damage those individuals who we call upon to torture suspected terrorists for us.

The corruption of torturers, however, is not the only troubling consequence with regard to the habitual use of torture that Matthews notes. Whenever torture is employed, Matthews argues, there is a need for medical and psychological support, logistical support, and legal cover (12). Medical and psychological professionals are required to prevent the torturers from killing or driving the detainees insane, which would render them useless, facilities and infrastructure are necessary to accommodate the torturers and victims, and law and policies are vital to ‘justify’ the use of torture. Therefore, according to Matthews, torture is institutionalized, and its institutionalization through the development of these forms of support makes it such that torture becomes routine and not merely an exception to the rule (12).

Mathews’ specific worry about the involvement of medical and psychological professionals with regard to torture was indeed realized in the United States after 9/11 as



psychologists played an integral role in aiding and abetting the practice. Their involvement and complicity directly contradicted the American Psychological Association's official policy against torture. However, the APA's "unofficial" policy seems to have not been so absolutist: a report published in 2015 found over 600 instances of email communication between the APA and a CIA contractor and states that the APA colluded with the CIA, White House, and Department of Defense to readjust their ethics policy regarding interrogations so as not to explicitly prohibit psychologist's involvement (Soldz 10). This policy has since been amended.<sup>6</sup>

Luban echoes Matthews' sentiment about the institutionalization of torture. He argues that accepting the use of torture leads to a certain governmental torture culture, and he cites several examples in history as evidence, one of which is the United States' use of torture at Abu Ghraib, a detention facility in Iraq where unspeakable things were done to detainees.<sup>7</sup> According to Luban, "Abu Ghraib is the fully predictable image of what a torture culture looks like. Abu Ghraib is not a few bad apples – it is the apple tree" (Luban 1452). The despicable treatment of detainees that occurred at Abu Ghraib, he argues, was not merely the result of a misguided individual or two; it was the result of a bureaucracy that developed to facilitate the use of torture and extraction of information.

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<sup>6</sup> For more information, see the report itself:

<https://s3.amazonaws.com/s3.documentcloud.org/documents/2069718/report.pdf>

<sup>7</sup> If you are unfamiliar with the actions of the personnel at the detainment facility, I would suggest watching the movie *Standard Operating Procedure*, which depicts the horror to which the detainees were subjected: Some were sodomized, others were placed in degrading sexual positions while naked, and many were beaten or hung from their wrists etc. The list goes on and on, and the movie shows photographs that document all of these things. Further, another informative source regarding the occurrences at Abu Ghraib is the following New Yorker article by Seymour Hersh:

<http://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib>

More specifically, the fact that there was a very clearly delineated hierarchy, which required interrogators to merely follow the orders given to them, exacerbated the situation. Military intelligence officers at the facility, gave intentionally vague orders like ‘Loosen this guy up,’ ‘Make sure he has a bad night,’ and ‘Make sure he gets the treatment,’ which personnel in their zealous attempts at pleasing their bosses, often interpreted as meaning ‘Keep him up all night by physically abusing him’ (1450). Overall, the situation at Abu Ghraib quickly spun out of control due to the inevitable creation of a torture culture, and thus, in light of history, Luban believes that, as far as torture goes, “escalation is the rule, not the aberration” (1447). Some may argue that torture will only be used narrowly, but these people are mistaken. Thus, in light of all that has been said in this section, I believe that even if one refuses to accept my rejection of the use of torture based on the formula of humanity, the effects that torture has both on the torture victim and on society should convince any reasonable person that torture must never be considered morally permissible.

#### **IV. The Ineffectiveness of Torture**

Now, up until this point, my argument as well as Matthews’ and Luban’s arguments have assumed that torture, if employed, could still result in actionable intelligence. We have argued against torture even while assuming that the victim could provide useful information, which might give us an advantage in the war on terror. Yet in all of the United States’ dealings with suspected terrorists, this has not been the case.<sup>8</sup> The Senate Select Committee’s Report notes that the CIA’s use of enhanced interrogation

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<sup>8</sup> This is not to say that torture could never lead to actionable intelligence, but the fact that this has not yet been the case suggests that it is unlikely.

techniques was not an effective means of acquiring intelligence (*Committee* 9). It states, for example, that seven of the thirty-nine detainees known to have been subjected to the EITs produced no new intelligence, and that many other detainees fabricated claims.

Further, the Committee investigated twenty of the most frequently cited examples of the effectiveness of torture and found them to be fundamentally wrong (9). For instance, the claim that the torture of Abu Zubaydah, a captured Al Qaeda facilitator, led to information revealing Khalid Sheik Mohammed as the mastermind behind the September 11 attacks is untrue (51). In actuality, this information was discovered through a routine FBI interrogation, and what is more, CIA records indicate that Zubaydah never provided the information for which the CIA's enhanced interrogation techniques were justified and approved: information on the terrorist attack on September 11<sup>th</sup> and operatives in the United States (71).

In addition, the CIA has told Congress in the past that "inhumane interrogations or psychological techniques are counterproductive because they do not produce intelligence and will probably result in false answers" (16). This is corroborated by a 2008 statement from fifteen former interrogators and intelligence officials who gathered in Washington at a meeting convened by Human Rights First ("Top" 1). The statement itself consists of a set of principles designed to guide the creation of effective interrogation procedures in the future and is based on the collective experience of all the members at the meeting. It reads,

We believe:

1. Non-coercive, traditional, rapport-based interviewing approaches provide the best possibility for obtaining accurate and complete intelligence.
2. Torture and other inhumane and abusive interview techniques are unlawful, ineffective and counterproductive. We reject them unconditionally.
3. The use of torture and other inhumane and abusive treatment results in false and misleading information, loss of critical intelligence, and has caused serious damage to the reputation and standing of the United States. The use of such techniques also facilitates enemy recruitment, misdirects and wastes scarce resources, and deprives the United States of the standing to demand humane treatment of captured Americans [...] (2).

Within these principles, it is clearly stated that the use of torture and other inhumane tactics is an ineffective waste of time and resources. This fact should in no way be deemed inaccurate or overlooked. As I mentioned, it is based on the collected experience of seasoned interrogators, such as Jack Cloonan, who served as an FBI agent from 1977 to 2002 and worked in a unit dedicated to pursuing Osama bin Laden from 1996 to 2002, as well as Steven Kleinman, “who is an active duty intelligence officer who has twenty-five years of operational and leadership experience in human intelligence, special survival training and special operations” (4).<sup>9</sup>

Finally, the CIA has even arranged for the release of classified information to the media, including inaccurate information about the effectiveness of torture techniques, in

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<sup>9</sup> For more details regarding the backgrounds and experience of the individuals who created the above principles, please reference the following article:  
<http://www.humanrightsfirst.org/2008/06/24/top-interrogators-declare-torture-ineffective-in-intelligence-gathering>

order to make individuals believe that torture is both necessary and productive when neither of these two things has been proven to be the case (*Committee 15*). They simply want citizens to believe that torture is necessary, so that the majority will, by virtue of blind patriotism, listen and agree that torture is necessary and justified without questioning too deeply. Therefore, it seems that torture has not in fact led to actionable intelligence, though it is indeed true that this cannot, by itself, prove that it could never be effective.

### **V. The Ticking Bomb Scenario**

Yet despite all of the reasons to condemn the practice of torture, there are still those who want to argue for the moral permissibility of torture in some cases, and their justification rests on a hypothetical “ticking bomb” case. In its basic form, the thought experiment goes as follows: Imagine that an individual with knowledge of an imminent terrorist attack has come to be in the authorities’ custody. Further, imagine that all normal interrogation methods have been used, but the detainee still refuses to divulge any details about the impending attack, which will inevitably kill thousands of innocent civilians. Finally, imagine that it is clear that only by torturing the terrorist will he or she reveal the whereabouts of the ticking bomb in order for it to be found and defused before it explodes. With the ticking bomb scenario in mind, the prior consensus that torture is horrible disappears, and philosophers and legal theorists are willing to argue for the use of torture. As Thomas Nagel writes, “Once the door is opened to calculations of utility and national interest, the usual speculations about the future of freedom, peace [... etc.]

can be brought to bear to ease the consciences of those responsible for a certain number of charred babies” or in our case, tortured terrorists (Nagel 129).

One legal theorist who argues for the moral permissibility of torture in the ticking bomb case is Alan Dershowitz. Dershowitz, in his article “Should the Ticking Bomb Terrorist Be Tortured?,” asserts that, “virtually no one [is] willing to take the ‘purist’ position in the ticking bomb case” (Dershowitz 550). In his opinion, even those who normally object to torture would be willing to agree to its use under the circumstances described above; the consequences of a terrorist attack, he believes, are clearly much worse than that of torturing one individual. Thus, according to Dershowitz, torture can be justified via act utilitarianism. Its permissibility is evident, he argues, when one weighs the permanency of thousands of innocent civilians’ deaths against the temporary harm to one individual. Dershowitz quotes Jeremy Bentham who writes, “Could any pretense be made [...] by the man who to save one criminal, should determine to abandon 100 innocent persons?” (550). In Dershowitz’s eyes, pain constitutes a much lesser harm than death, and the lives of innocent people are more important “than the bodily integrity of one guilty person” (551). Thus, nonlethal torture should be employed.

Dershowitz realizes, however, that the ticking bomb case can serve “as a moral, intellectual, and legal justification for a pervasive system of coercive interrogation” (550). Consequently, he questions why, according to act utilitarianism, torture is only permissible in the ticking bomb case. Moreover, he worries that there is no real reason to stop at the torture of a guilty person (552). By merely applying act utilitarianism, it seems as if it would also be justified to torture the suspect’s family or friends in order to make

him talk, yet something about doing so, he argues, seems immoral. Thus, act utilitarianism is too permissive. Some limits need to be introduced. In Dershowitz's eyes, "the real issue, therefore, is not whether some torture would or would not be used in the ticking bomb case – it would. The question is whether it would be done openly, pursuant to a previously established legal procedure, or whether it would be done secretly, in violation of existing law" (554).

Ultimately, what Dershowitz seems to be arguing for is a kind of rule utilitarian argument. Dershowitz weighs the consequences of torturing the terrorist with deciding not to act and determines that the implications of not subjecting the individual to torture are far more dire than the consequences that will result if he or she is tortured. Nevertheless, Dershowitz notes that mere act utilitarianism with regard to torture is troublesome. Thus, he calls for what he terms a "principled break" and ultimately seems to argue that it would maximize happiness (or minimize suffering) to have a system in place, such as torture warrants, which allows for the use of torture but only under publicly stated and restrictive circumstances.

In the end, I find Dershowitz's argument for the morally permissibility of torture unconvincing.<sup>10</sup> I believe (as Luban argues) that the ticking bomb hypothetical bewitches us and leads us to unjustifiably support the use of torture (Luban 1442). The ticking bomb case causes us to see torture in a new light. When torture is used merely as a way to acquire information that detainees refuse to reveal, torture seems less horrible. Torturers no longer seem abhorrent but rather "heroic" (1436). They are portrayed simply as doing

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<sup>10</sup> At this time, I will not take a stance on the legal permissibility of torture and thus will not explore Dershowitz's notion of torture warrants.

what is necessary to protect innocent civilians. Thus, even those who would normally object to torture are willing to agree to it in order to avoid the loss of so many innocent lives (1440). As Luban writes, “It becomes possible to think of torture as a last resort of men and women who are profoundly reluctant to torture” (1436).

Unfortunately, these self-proclaimed “liberal” people who normally despise torture are tricked by the ticking bomb case. As part of his argument, Luban quotes Wittgenstein as saying something along the lines of “confusion arises when we become bewitched by a picture” and argues that what Wittgenstein “meant is that it’s easy to get seduced by simplistic examples that look compelling but actually misrepresent the world in which we live” (1441). This is exactly what Luban believes occurs with the ticking bomb scenario; we are seduced by a simplistic thought experiment that does not accurately represent real life. There is a lot of uncertainty in life, and according to Luban, “the ticking bomb scenario cheats its way around [this uncertainty] by stipulating that the bomb is there, ticking away, and that officials know it and know they have the man who planted it” (1442). Real life situations do not conform to the ticking bomb case. We can never know for sure that we have the right individual, that he or she has the information we need, and that we will be able to stop the bomb from detonating before it is too late.<sup>11</sup>

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<sup>11</sup> In his article, Luban examines one “real-life” ticking bomb situation and concludes that it is not truly representative of the ticking bomb scenario that leads many people to advocate for the use of torture though it is purported to be one. According to Luban, torture did, in fact, lead to the prevention of an al Qaeda plot to bomb several U.S. planes and assassinate the Pope (1441). However, the individual who divulged the necessary information was tortured for weeks, and at the time that the decision to torture him was made, no one knew about the impending al Qaeda attack (1442). Therefore, preventing the attack cannot be the reason given as justification for the use of torture. (*Footnote continued on the next page.*)



Therefore, we should not consider torture permissible based on the ticking bomb case; it fails to capture the complexity of real life situations.

### **VI. The Role of the President and Gowans' Phenomenological Argument**

While I believe torture to be universally morally impermissible, I understand the insistence of some philosophers and legal theorists as to the necessity of torture in particular instances. It is, as Dershowitz argues, difficult to acquiesce to the possible deaths of innocent civilians in order to protect the rights of a suspected terrorist, especially if you are the president of the United States. One could argue that the president, by virtue of his particular position, might have a reason, which ordinary citizens do not, to engage in an act that is universally morally impermissible, i.e. the use of torture on suspected terrorists. Further, it is one thing to say that torture has not yet been shown to be effective and another entirely to say that torture will never lead to actionable intelligence. What if, in just one case, the use of torture led to the avoidance of a terrorist attack that had the potential to kill thousands? Would the president not have a moral role obligation to allow the use of torture in this situation? He has, after all, as I will show in the coming paragraphs, a fundamental obligation to act in the best interest of all the citizens in his country. Therefore, one might argue that the president, by virtue of his position, would be acting immorally by not consenting to the use of torture.

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Further, after reading several news sources concerning the terror plot, it is now my understanding that the information about the plot was found on a suspect's computer well before he was subjected to weeks of torture. For more information, see the following article:

<http://web.archive.org/web/20030412091134/http://www.latimes.com/news/specials/911/la-na-plot-1sep01.story>

It is worth noting before I move on to discussing the president's role obligations that I am not arguing that the president would be potentially obligated to torture whenever an individual might possibly have information that could save the lives of some citizens. Instead, I am considering extreme cases in which the country and its citizens could be said to be facing a supreme emergency. In this, I have in mind Michael Walzer's argument in his book *Just and Unjust Wars*. According to Walzer, in times of supreme emergency, i.e. in instances when the perceived danger is imminent, not merely foreseeable, and of such a nature that the idea of defeat is objectively morally horrifying or unbearable,<sup>12</sup> acts that would not typically be allowed under the war convention, such as the targeting of non-combatants, may be justified (Walzer 252).

Further, Walzer argues that making exceptions in extreme cases neither rejects nor erodes the war convention or the rights of non-combatants but rather overrides them. He asks that we consider these extreme cases in which all other options have been exhausted to serve as a sort of tipping point, where the moral impermissibility of the act and the rights of the individuals involved can be overridden. Nevertheless, up until this point, the rules, he argues, must be enforced absolutely. Walzer cautions against using a sliding scale, which slowly undermines the absolute nature of the rules. In light of all of this, certain extreme versions of the ticking bomb scenario, I would argue, could be

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<sup>12</sup> As an example of a supreme emergency, Walzer discusses the bombing of German cities by Britain in 1940. In this case, Walzer argues that 1) Churchill believed, and was warranted in believing, that the Germans would succeed if the bombings of the R.A.F. installations did not cease immediately, and 2) that Nazism was the "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, immeasurably awful" (253).

conceived of as meeting the non-wartime equivalent of this threshold of imminent and unbearable disaster and thereby the president could potentially be seen as justified in overriding the universal moral obligation, though it is worth noting that his doing so would not undermine the obligation nor eliminate his duty to follow it. More specifically, it could be said that the potential loss of thousands of lives at the hands of a terrorist attack that we know is coming would qualify as a supreme emergency and lead us to believe that the president would act inappropriately by not permitting the use of torture despite the universal moral obligation to abstain from such behavior.

To fully understand why the president would act contrary to his moral duty by not condoning the use of torture, an examination of the president's role is in order. Now the only official job description for the president resides in Article II of the Constitution, and it states that the president:

- 1) Is the Commander-in-Chief of the armed forces of the United States [...],
- 2) Has power to obtain information and opinions from heads of executive departments,
- 3) May grant pardons and reprieves for crimes against the United States,
- 4) Makes treaties with other countries with the approval of the Senate,
- 5) Appoints ambassadors, federal judges and heads of executive departments [...],
- 6) Must report to Congress from time to time about the state of the union and recommend whatever measures he thinks are necessary,
- 7) May call members of Congress together on extraordinary occasions [...],
- 8) Receives foreign ambassadors and other public officials,

9) Is responsible for enforcing the nation's laws, and

10) Issues commissions to all officers of the United States ("President's" 1).

Overall, in this description, what seems to be most important and what the list of duties underlines is the fact that the president occupies both the role of Commander-in-Chief and the role of Chief of State. As such, he is charged with defending the United States and its people from threats both foreign and domestic and with running the government so that it serves the purpose originally intended by our country's founders. This purpose is clearly identified in the Declaration of Independence, which reads, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men" ("Declaration" 1). Therefore, while it is never explicitly stated that the fundamental obligation of the president is to protect the rights of the country's citizens and to act in their best interest, this duty can be inferred from the fact that the president serves as both Commander-in-Chief and Chief of State. Further, I would argue that my conception of the president's fundamental duty to his country's citizens is in line with what is commonly believed. I would assert that most U.S. citizens generally conceive of the president as being the individual who is ultimately in charge of preserving our inalienable rights to life, liberty and the pursuit of happiness by virtue of the fact that he holds the most powerful position in our government.

In view of this fact, it seems that the president would be morally required to do whatever was necessary to ensure the safety of his people, even if that meant allowing the

torture of a suspected terrorist. Nevertheless, it has already been established that torture is contrary to our ordinary universal moral obligations. Thus, it appears as if the president would do something wrong regardless of whether he decided to torture the terrorist or prohibit the use of torture. As a result, before moving on to an examination of the nature of role obligations in general, which will explain why the president's role obligations are indeed moral obligations, I think it is necessary to explore in greater detail this intuition that the president acts wrongly by not condoning the use of torture despite the strong moral obligations not to engage in its practice.

In doing so, I turn to Christopher Gowans who considers such intuitions in his book entitled *Innocence Lost: An Examination of Inescapable Moral Wrongdoing*. Gowans argues that there are sometimes moral conflicts in which moral wrongdoing is inevitable or, as the title of the book suggests, inescapable (Gowans 88). He calls this position the “Remainders Thesis,” which states that “deliberation may leave a ‘moral remainder’ that renders an action morally wrong, in some sense, even if performing the action fulfills what is required by the deliberative conclusion in that situation” (88).

According to Gowans, this Remainders Thesis is supported by what he terms “the phenomenological argument,” which deals specifically with the intuition of wrongdoing that I discussed earlier. Gowans states, “the phenomenological argument as I will defend it begins with the claim that we have intuitions to the effect that there are moral conflicts in which it would be appropriate to feel some form of moral distress no matter what is done” (19). He believes that there are certain instances where we would correctly feel moral anguish, guilt, or distress no matter which action we choose to take when faced

with conflicting obligations, and he argues that this feeling comes from the fact that, regardless of the path we choose, we transgress some moral value (90).

At this point, Gowans takes a moment to acknowledge his critics who argue that no weight should be placed on “the epistemological value of our moral experiences” and those who argue that we should focus rather only on “the credentials of the abstract principles” (93). Gowans believes that opponents to the phenomenological argument are correct in that our moral experiences should not solely guide our decision making; however, he argues, “it is a mistake to give methodological priority either to moral experiences or to abstract principles. The correct approach is to suppose that our intuitions concerning both moral experiences and abstract principles have some initial credibility, and to strive to develop a coherent account of these intuitions” (94). Thus, having not entirely dismissed the relevance of moral experiences, Gowans sets out to explore them more carefully.

In doing so, Gowans leans on the argument made by Bernard Williams, who makes sense of the nature of moral conflicts by comparing them to conflicts of beliefs and conflicts of desires. Citing Williams, Gowans writes,

When we discover that two factual beliefs conflict (meaning that in the circumstances they cannot both be true), Williams says, the discovery tends to weaken at least one of the beliefs. Moreover, the determination that one of these beliefs is true requires us to abandon the other belief. By contrast, when we discover that two desires conflict (meaning that in the circumstances they both cannot be satisfied), the discovery need not weaken either desire: The desire for

each thing may be as strong as ever. In addition, the decision to act on one of these desires does not require us to abandon the other: In particular, the unfulfilled desire ‘may appear in the form of *regret* for what was missed’ (94).

What we see in this quote is that when two facts conflict, the determination that one is true renders the other false, and it is dismissed; however, when two desires conflict, the decision to pursue or fulfill one and not the other might in no way lessen the desire for the other and instead lead to a sense of regret. With this in mind, both Williams and Gowans argue that when moral obligations or “oughts” conflict, they function in the same way as desires rather than facts (94). The determination that the fulfillment of one obligation over the other is morally best does not eliminate the duty to fulfill the other obligation, and as such, a sense of regret ensues, though one that is different from the regret that results from the inability to fulfill a desire.

To fully illustrate the fact that 1) moral obligations do not simply disappear when one is prioritized over the other, 2) the inability to fulfill the remaining obligation leads to a sense of regret or guilt, and therefore 3) there is a sense in which something wrong will be done regardless of the choice made, Gowans presents a thought experiment. In the scenario, Craig is hiking with a friend during which time they become separated (98). Craig wanders aimlessly trying to find his friend and in the process falls and breaks his arm. After some time, he stumbles upon a picnic area. There is a road, which he could follow, but civilization is miles away, and he does not have the strength to continue nor does he want to leave his friend behind. Without any good options, Craig simply sits on a picnic bench and rests.

Hours later, two teenage girls arrive in a car. Craig approaches them and tries to explain the situation, but the girls become frightened, refuse to help, and head back to their car. Based on their actions, it does not seem like they will be sending help, yet at this point, Craig feels that if the girls do not send help, it could be days before someone else comes along, and he cannot wait days. He is more seriously injured than he originally thought, the nights are beginning to get quite cold, and he has no idea where his friend is or what condition he is in. Taking all of this into account, it occurs to Craig that if he acts quickly, he could forcibly take the keys from the girls, steal the car, and go find help, thereby using the girls as mere means. He knows it would be wrong to treat the girls this way, but he also feels it is wrong to refrain from doing so and fail to secure help for his friend and himself.

In light of all these facts, Gowans argues that there is a sense in which Craig will do something wrong even if he acts in accordance with what he deems to be the correct or best resolution between his conflicting obligations. Further, as a result of this wrongdoing, Craig will experience a moral remainder, namely guilt, anguish or regret. Ultimately, I believe the tension between the obligations that Craig feels and the obligations that the president feels both to torture and not torture is essentially the same. The situation the president faces, like the one that Craig confronts, is the result of conflicting moral obligations that each have strong moral reasons supporting them.

## **VII. The Nature of Role Obligations**

Now one might ask why the president's role obligations are in fact moral obligations? Why is it that the president's duty to ensure the safety of his citizens and to



act in their best interest is a morally binding one? Could it not be an obligation that, though important, is not morally necessary? These questions are worth considering and should be answered. As a result, in this section, I endeavor to show 1) why we need role obligations and how their structure differs from universal moral obligations, and 2) why the president's role obligations carry moral force. I will do the latter by demonstrating the moral significance of the government, and more specifically its endeavors, as well as the president's part in furthering these ends.

One might think that role obligations are not, in fact, central to morality. One might argue that role obligations, at most, complement our universal moral obligations, but that they do not play a significant role in our moral lives. Following the work of Michael Hardimon, I will argue that this is a mistake. According to Michael Hardimon, role obligations play a central role in morality and should not be dismissed (Hardimon 333). Hardimon writes, "Our moral lives are characterized not only by how we relate to other people, but also by how we relate to our social roles and institutions" (342). Further, I would argue that universal moral obligations deal mostly, if not only, with our relations and interactions with others generally. They do not deal with our behavior in connection with our social or institutional roles.

I argue that there are some actions, which our roles require, that are not covered by universal moral obligations. In fact, I contend that there are obligations we have by virtue of our positions in society that are incompatible with universal moral obligations. Consider the following example: You are a lawyer defending a client against the accusation that he or she committed a crime. In order to win the case for your client, you

must badger a witness and push him or her to falter in his or her responses to your questions and create reasonable doubt in the minds of the jury. According to universal or general morality and the Categorical Imperative, this behavior seems impermissible. In this case, it could be argued that you are treating the witness merely as a means to get your client off and not as an end in him- or herself. Yet, lawyers are required to fight for their clients, as they should, and their fight can necessarily involve badgering witnesses. Therefore, because universal moral obligations do not require such behavior nor are they really even compatible with such behavior, it seems there necessarily exist role obligations, which outline proper behavior in relation to our roles as doctors, lawyers, parents, children, citizens etc. There are some special obligations that attach to roles that are simply not captured by universal moral obligations.

Now, I conceive of these role obligations and universal moral obligations as two different realms within the larger scheme of morality. I contend that we must have sets of rules or guiding principles that prescribe behavior for both our interactions with others generally and for our interactions with others in light of the roles we occupy. It is not enough to have simply one or the other as this would fail to cover the complexity of human interaction. We are not merely people generally, who are no different from any others, nor are we entirely the roles that we fulfill. We conceive of ourselves in both of these ways: as members of the human race, who deserve to be treated as such and who in turn are obligated to behave towards others in a certain way, but also as doctors, lawyers, parents, children, citizens etc. who have specific duties by virtue of these positions. Thus, if you were not already convinced, I believe the fact that we conceive of ourselves in this

way shows that we must have and follow both universal moral obligations and moral role obligations.

The fact that both universal moral obligations and moral role obligations do and must exist does not mean that they are structured in the same manner. The universal moral obligations that I discuss, such as the obligation to treat all individuals and their rationality as ends in themselves and never merely as means, are clear-cut deontological obligations; what makes a particular choice the correct one is whether it conforms to the moral norm that has been established, which is, in the case of Kant, the Categorical Imperative. On the other hand, moral role obligations, I would argue, are not explicitly deontological obligations though I believe that they, in the end, amount to something very similar. Unlike with universal moral obligations, actions that fulfill role obligations do not garner their justification simply from conformity with a moral norm as universal moral obligations do. Instead, they are justified by a more indirect route, i.e. via the institution of which they are a part. This indirect justification still results in deontological-like obligations that do not change with the circumstances but always remain fixed.

For the purpose of this thesis, I will define a role obligation, as Hardimon does, as “a moral obligation, which attaches to an institutional role, whose content is fixed by the function of the role, and whose normative force flows from the role” (334).<sup>13</sup> Further, I argue that the normative force of the role can be derived from the normative significance

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<sup>13</sup> I do not, however, argue that every action required by a role is a role obligation in the sense I am describing. Professionals are not, for instance, morally obligated to fill out paperwork or make phone calls.

of the institution. If the institution promotes the furtherance of things intrinsically valuable, then it can be said to be morally significant. In turn, if that morally significant institution necessitates the creation of certain roles, then those roles can be said to carry normative force. Consequently, if roles with normative force necessitate certain actions, which are fundamental to the pursuit of the role's project, then those actions can be said to be role obligations, which are morally compulsory. Therefore, the moral nature of role obligations comes from the fundamental moral nature of an institution.

To make this theoretical discussion a little bit more concrete, let us discuss a practical application by examining the normative significance of the field of medicine as well as the role of doctors and their role obligations. Presumably, the medical field performs a vital function in society. Without doctors and nurses who are trained to handle our health needs, society would not flourish. Therefore, by virtue of the fact that the medical profession perpetuates life, something intrinsically valuable, it is morally significant. Further, as I just suggested, the medical field would not function without those trained professionals we call doctors and nurses. The institution necessitates the creation of these roles, and they can be said to carry normative force in light of the moral significance of the institution. Finally, certain actions are required of doctors and nurses and are fundamental to their pursuit of a healthy society. For instance, doctors and nurses must pledge to, at all times, aid the sick, avoid causing additional harm, and protect the confidentiality of their patients' medical records. Consequently, seeing as these actions are paramount to doctors' and nurses' roles, which carry normative force due to the moral

significance of the medical field, they are, I would argue, obligations that are morally compulsory.

From all this discussion, I would argue that it becomes clear that the justification for the moral force of role obligations operates at several levels. On a macro level, the institution is justified by means of a kind of rule consequentialist mentality: If the existence of an institution produces worthwhile consequences, i.e. it aids in the furtherance of certain values, then it has merit or what I call normative significance. Further, a role within an institution is justified by the fact that it contributes to the production of these worthwhile consequences. Then, on a micro level, certain actions exist, which one is always obligated to do by virtue of the fact that they are fundamental to the proper execution of a role in society and in turn for the proper function of the institution. These actions are justified in light of their necessity to the furtherance of the worthwhile consequences produced by the role and the institution. Yet, they are not merely consequentialist obligations. Rather, they function similarly to deontological obligations in the sense that, for the individual occupying the role, they never change as a result of the circumstances of a particular situation but remain static. So, for instance, a doctor does not need to deliberate in each and every case about whether respecting patient confidentiality will in fact further the ends of the medical profession. He knows he is bound by this obligation in all circumstances.

I refrain from identifying them as deontological obligations themselves because, unlike with deontological universal moral obligations where the norm with which an action must conform is the same for all people performing all actions, the norm with

which an action must conform in the case of a person acting within a role changes with every role. For instance, the moral norm doctors must follow is different from the moral norm that lawyers are obligated to follow, which is in turn different from the moral norm that parents must subscribe to etc. Thus, such norms are not moral norms that every single individual must follow, which is the way in which I would argue we usually conceive of deontological obligations. Nevertheless, I argue that these obligations are similar to deontological obligations in the sense that they are absolute moral rules that carry the same moral weight as the deontological universal moral obligations.

It is worth noting, however, that these moral role obligations cannot be considered universal due to the fact that they do not apply to every individual, by virtue of their rationality, but apply only to all individuals occupying the specific role. Thus, I believe there exist non-universal absolute moral obligations and universal absolute moral obligations, where moral role obligations are non-universal and absolute while deontological moral obligations are universal and absolute. Despite differing in universality, I argue that both are absolute by virtue of the fact that they carry the same moral weight, something I noted earlier.

Now one might argue that role obligations could be conceived of as contingent. One might say that universal moral obligations appear to be primary since they are universal while moral role obligations appear to be secondary by virtue of their being non-universal. I would argue that this is a misconception. Yes, perhaps one could escape moral role obligations by leaving the role. However, in most cases, individuals willingly adopt the roles that they occupy and do so because the roles are necessary and

worthwhile. Therefore, there is a way in which it does not make sense to argue that an individual can or should leave a role, as someone must fill it and we have already determined that it serves a valuable purpose.

Finally, I feel I must emphasize once more that the individual occupying the role is not engaged in consequentialist decision-making. Instead, correct actions are those that conform to the obligations specific to a role, and these obligations are not up for consequentialist re-assessment on a case-by-case basis. Thus, though one might want to argue that the indirect route of justification for role obligations makes them less significant than universal moral obligations, I would argue that they are no weaker nor are they secondary considerations. They merely have different structures: one direct and the other indirect.

As before, I think the fact that the justification for the moral force of role obligations operates at multiple levels can be illuminated via an examination of the medical profession. In the end, I would argue that the justification for the existence of the medical profession is a consequentialist one: it serves vital needs and interests and promotes the well-being or health of the general public. Further, the need for doctors and nurses is similarly justified by the fact that they aid in the furtherance of these vital needs and interests, which can be viewed as worthwhile consequences. Finally, even the actions that they perform can also be justified via the sense of good that they are meant to bring about. Yet, when we examine the nature of these role obligations, we see that they function, for the doctor or nurse occupying the role, as a type of deontological-like

constraint. That is to say that they are not up for interpretation or re-visitation in every situation. They are still absolute despite not being universal to all human beings.

Consider this classic example: Imagine you are a doctor and you are looking at the charts of five different patients. Now, one of these patients is generally in great health aside from the fact that he or she has a fever. The other four patients, on the other hand, are in serious condition and in need of various organs. On a purely consequentialist reading, it seems as if you, as the doctor, should sacrifice the one healthy patient and harvest his or her organs in order to save the lives of the four other patients. Yet, a good doctor would never consider taking the organs of a healthy patient in order to save the lives of the other patients, even if he or she judged, correctly, that this would produce the best consequences. The doctor is bound, professionally, by the absolute moral norm to do no harm. Therefore, this norm functions in a deontological way, in the sense that it is absolute, though non-universal, and carries the same moral weight as deontological universal moral obligations, even though the existence of the particular norm is justified on consequentialist grounds.

With this established, I finally turn to the justification of the president's role obligations specifically via an examination of the fundamental nature of the government and the ideals it promotes, something that I underscored already when arguing that the president has a fundamental obligation to promote his citizens' best interests. I argue that our government is an institution that furthers the existence of many intrinsically valuable things. Democracy in general is committed to liberty and equality, and our government, in particular, is also committed to these things. The Declaration of Independence, for one,



demonstrates this fact with its identification of life, liberty, and the pursuit of happiness as an individual's inalienable rights. Further, the Bill of Rights clearly enumerates a list of intrinsically valuable things that the government is devoted to protecting: freedom of speech, freedom of religion, the right against unreasonable searches and seizures, which entails the right to bodily integrity etc. For these reasons, I do not feel remiss in saying that the government is an institution with normative significance. It clearly promotes the furtherance of intrinsically valuable things.

Further, I argue that we need the president's role within the overall institution of government to help carry out the particular end of the government: the protection of life and liberty. As I stated before, the president occupies the vital roles of Commander-in-Chief and Chief of State and, as such, is charged with defending the United States and its people from threats foreign and domestic as well as running the government so that it serves the purpose originally intended by our country's founders. Thus, from the government's institutional moral significance and the necessity of the president's role within that institution, it follows that the president's role has moral force.

Finally, from the normative force of the role, it can be inferred that any actions necessary for the president to carry out his duty to the people have normative significance. More specifically, those actions, which the president must perform, have moral weight because the president is the individual who, more than any other individual person, is ultimately responsible for ensuring that the government functions in the manner it was created to. Now, these actions conform to some kind of moral norm, which for the president could be formulated as something along the lines of act so as to promote

and protect the life and liberty of the country's citizens, within the constraints of the law, except in situations of supreme emergency when one might be justified in overriding ordinary legal constraints. This norm has a consequentialist justification; yet, the actions that the president is required to take are, in a sense, pre-determined. From within the role, the president himself does not engage in consequentialist calculations. He merely follows the moral norm associated with his office. Therefore, seeing as the use of torture can be considered necessary to protect the country's citizens and promote their best interests, it could be viewed as morally necessary for the president to permit the use of torture.

### **VIII. The Existence of a Genuine Moral Dilemma and the Problem of Dirty Hands**

In light of all that has been said, consider the following scenario: Imagine that a raid on an Al Qaeda or ISIS facility is carried out, and during the raid, an individual is captured who, at the time of the military's entry, was examining blueprints for a large populated area, bomb schematics, and a calendar with tomorrow's date circled. In this instance, though the details are still somewhat unclear, it seems it would not be unreasonable to consider this case a 'real life' variation of the ticking bomb hypothetical, which potentially escapes the issues I raised against the ticking bomb case. It is not unreasonable in this hypothetical to believe that the individual captured has information about the impending attack nor impossible to believe that he or she could be convinced to divulge such information via the use of torture. Here, it seems clear that the president should condone the torture of the detainee in order to save innocent lives. That is not to say that torture is no longer universally morally impermissible but that the president, in this supreme emergency case, has a conflicting moral role obligation to torture the

suspected terrorist. Therefore, in this extreme situation, it seems that the president would face a genuine moral dilemma.

Now, there are many who would argue that genuine moral dilemmas simply do not exist, but I would argue otherwise. In this, I realize that I depart from Kant; however, I believe there is good reason to. I would argue that given the complexity of human life and the situations with which we are presented, it is not unreasonable to expect that our moral obligations would come into conflict. Rather, I think it is illogical to believe that we are capable of devising a system that perfectly captures reality and ensures that in every case one particular course of action clearly outweighs the others. The occasions on which dilemmas will arise are not always predictable. Therefore, I do not see how it would be possible to establish a complete set of rules or principles, which would, without fail, determine the conflict course of action for every situation and eliminate the existence of a moral dilemma. As a result, I would argue that, however unpleasant it may be, we must accept that genuine moral dilemmas can and will arise. The question now becomes, when they do emerge, what is one to do?

According to Ruth Marcus, the individual must turn to some other kind of consideration, as in her article "Moral Dilemmas and Consistency," she writes, "It may be that not all moral dilemmas are resolvable by principles for which moral justification can be given" (Marcus 136). With regard to the president, that might mean asking himself whether he is willing to acquiesce to the potential loss of thousands of lives in favor of preventing a suspected terrorist from undergoing torture. Though it may not ease the president's conscience, should he decide to permit the use of torture, there is an argument

to be made that public decisions will inevitably be more consequentialist than private ones as public officials are held to higher standards with regard to the general welfare of the people than individuals who do not occupy such a substantial role as the president.

It may simply be the case that in order to be a good president of the United States and fully execute the duty to protect the country's citizens, a little unsavory behavior is required. Perhaps the president must be willing to break a universal moral obligation, and thus metaphorically get his hands dirty in order to fulfill a role obligation. Further, the fact that the president may be reluctant to do so is a good thing. As Bernard Williams writes, "Only those who are reluctant or disinclined to do the morally disagreeable when it is really necessary have much chance of not doing it when it is not necessary" (Williams 64). Nevertheless, if the president is entirely unwilling to break a universal moral obligation and not merely reluctant, then he must be willing to accept the fact that by not condoning the use of torture not everything was done to protect the country's citizens and that he has not fully satisfied the duties of the office of the president of the United States. In the end, I believe it is for the president a question of trying to balance the conflicting moral obligations with which he is faced. As I stated before, whether or not he decides to torture, his other obligation does not disappear. Thus, the president should keep both in mind and try to satisfy them to the best of his ability. Finally, in keeping with the universal moral obligation not to torture, the president should ensure that if he ultimately chooses to torture, he is only permitting the use of torture in supreme emergency cases where the danger is imminent and objectively morally unbearable.

#### **IV. Conclusion**

In this thesis, I have endeavored to show that 1) there exists a universal moral obligation not to torture and that this obligation stems from the Categorical Imperative, which requires us to always treat others and their rationality as ends in themselves and never merely as means, 2) torture has dangerous implications with regard to its effects on the individual being tortured and on society, and 3) torture, has up until this point, not been proven to be effective. Nevertheless, I have argued that it is, in fact, difficult to acquiesce to the deaths of thousands of innocent citizens in order to prevent harm from coming to a suspected terrorist. More specifically, the president of the United States, by virtue of his office, has a moral role obligation to permit the use of torture in extreme cases that other individuals do not. Further, we have the intuition that regardless of whether the president decides to permit the use of torture or forbid it, he will transgress some moral value, and the reason that this is the case is that both universal moral obligations and moral role obligations have strong reasons supporting them. Despite the fact that universal moral obligations are deontological and justified directly by conformity with a universal moral norm while moral role obligations are deontological-like and justified indirectly via an overall consequentialist framework, the obligations themselves carry the same moral force. They are both the result of absolute moral rules, which are not up for reinterpretation. They simply differ in terms of universality. Thus, the president faces a genuine moral dilemma and must ultimately decide whether he wishes to follow his universal moral obligation or his moral role obligation. It is, in the end, a question of trying to balance the conflicting obligations.

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