Enhanced Interrogation, Consequential Evaluation, and Human Rights to Health

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Abstract Balfe argues against enhanced interrogation. He particularly focuses on the involvement of U.S. healthcare professionals in enhanced interrogation. He identifies several empirical and normative factors and argues that they are not good reasons to morally justify enhanced interrogation. I argue that his argument can be improved by making two points. First, Balfe considers the reasoning of those healthcare professionals to be utilitarian. However, careful consideration of their ideas reveals that their reasoning is consequential rather than utilitarian. Second, torture is a serious human rights abuse. When healthcare professionals become involved in enhanced interrogation, they violate not only human rights against torture but also human rights to health. Considering the consequential reasoning against human rights abuses, healthcare professionals' involvement in enhanced interrogation is not morally justified. Supplementing Balfe's position with these two points makes his argument more complete and convincing, and hence it can contribute to the position that enhanced interrogation is not justified by consequential evaluation.

Keywords Enhanced interrogation; Torture; Healthcare professionals; Consequential evaluation; Utilitarianism; Human rights to health

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Introduction

Torture is wrong, yet it is arguable whether it is morally justified in some exceptional cases. Some people believe that "enhanced interrogation," or torture during the war on terror, is one of these exceptional cases. How can enhanced interrogation be morally justified? One possible explanation is that it is the lesser of two evils, the better of two wrongs. From the infamous but hypothetical "ticking time bomb" case to some real cases in history, it is said that enhanced interrogation is necessary for saving more people and protecting the greater good. This justification is usually based on utilitarian or even consequential evaluation (Allhoff 2012). On the other hand, there are several ways to show that enhanced interrogation is not morally justified. One way is to develop the arguments based on some absolute values and deontological moral theories, such as basic rights (Shue 1996), natural rights (Finnis 2011), or some kinds of contract theories such as contractualism (Scanlon 1998). Another way is to argue that enhanced interrogation is not even justified by consequential evaluation. This approach shares the same reasoning (i.e., consequential evaluation) with the position that enhanced interrogation is morally justified, but it has different contents and an opposite conclusion (i.e., torture is wrong). To defend such an approach, one needs to discuss empirical and normative factors in detail.

The aim of this paper is to show that with proper modifications the argument in Balfe (2016) can be considered as a contribution to this consequential case against enhanced interrogation.

Historical records show that doctors and nurses are involved in many kinds of torture in different times and places, but Balfe specifically focuses on the involvement of U.S. health professionals in enhanced interrogation. He identifies several factors and argues that they are not good reasons to morally justify enhanced interrogation. I generally agree with his position, but I think his argument can be improved by making two points.

First, Balfe considers the reasoning of those healthcare professionals as utilitarian. However, careful consideration of their ideas reveals that their reasoning is consequential rather than utilitarian. This does not directly tell us whether utilitarianism is either for or against enhanced interrogation but does imply that Balfe has mistakenly thought that his discussion is based on utilitarianism, while actually it is based on consequentialism. I argue in this paper that Balfe's focus on consequential evaluation as reasoning against enhanced interrogation, rather than focusing on utilitarianism, is an important contribution to the debate on enhanced interrogation. This is the first point I would like to defend in detail in this paper.

Second, torture is a serious human rights abuse. I argue in this paper that when healthcare professionals become involved in enhanced interrogation, they violate not only human rights against torture but also human rights to health. Although this human rights debate can also be based on different absolute or deontological moral theories, the focus here is consequentialism. Considering the consequential reasoning against human rights abuses, I use Balfe's argument to show that healthcare professionals' involvement in enhanced interrogation is not morally justified.

In short, the following sections will show that Balfe's idea should be considered as a consequential evaluation rather than utilitarian reasoning, and it is more cogent in terms of human rights abuses, especially human rights to health. Supplementing Balfe's position with these two points makes his argument more convincing, and hence it can contribute to the position that the involvement of the U.S. health professionals in enhanced interrogation is not morally justified by consequential evaluation.

Consequential Evaluation

Let us begin by discussing consequentialism and utilitarianism in detail. "The healthcare professionals who became involved in enhanced interrogation appeared ultimately to justify their

actions by taking a utilitarian position" (Balfe 2016, 458). However, I think the reasoning mentioned in Balfe's paper is consequential rather than utilitarian. So, the first question here is: what is the difference between consequentialism and utilitarianism?

Utilitarianism is probably the best-known version of consequentialism. Sometimes the two terms may even be used interchangeably (Sinnott-Armstrong 2015). Nevertheless, utilitarianism should be considered as a specific version of consequentialism, as it focuses only on the consequences of actions for others' well-being. Sen (1979, 2000) points out that utilitarianism has three major components. In addition to (1) consequential evaluation, there are also (2) welfarism and (3) sum-ranking (Sen 1979, 464–468).[1] To make his distinction simpler and fit into our discussion, let me use the simplest version of the principle of utility to illustrate. This principle of utility states that an action is right when it maximizes happiness overall. Based on Sen's distinction, this principle tells us not only that a good consequence is important, but also that happiness (pleasure) is the only intrinsic value and one can aggregate happiness together.[2]

This is an important distinction because many traditional objections against utilitarianism are against welfarism and sum-ranking only. For example, the experience-machine problem targets well-being (gaining happiness or reducing suffering) as the only intrinsic moral value. This traditional problem is a thought experiment which asks us to imagine the following situation. If gaining pleasure is really all that matters, then we should hook up to a machine that stimulates our brains and gives us every kind of pleasure that we desire. Nevertheless, Nozick argues that since the pleasure is not real but only produced by the machine, we should not want that kind of

[1] As Sen (2000) mentions, his view is about consequential evaluation, which is "seen as the discipline of responsible choice based on the chooser's evaluation of states of affairs, including consideration of all the relevant consequences viewed in the light of the exact circumstances of that choice" (477). And he also thinks whether "consequential evaluation should be called by the name 'consequentialism' or not is a subsidiary and rather uninteresting issue" (477–478). For simplicity, I use these two terms "consequential evaluation" and "consequentialism" interchangeably in this paper.

[2] For simplicity, the version I discuss here is the classical utilitarianism (i.e., hedonist utilitarianism). A particular important point is that the classical utilitarianism assumes that happiness means pleasure, which means it identifies the good with pleasure. For other versions of utilitarianism (especially a comparison between hedonist utilitarianism and preference utilitarianism), see Lazari-Radek and Singer (2014, 200–284; 2017, 42–52).

fake experience. In other words, in addition to gaining happiness, reality is also important. Therefore, gaining happiness is not the only intrinsic value (Nozick 1974, 42–45). For another example, the agent-neutrality problem is against the sum-ranking component. Utilitarian assumes that everyone should be neutral in moral consideration and be counted the same in the calculation of goods (i.e., to aggregate all goods together). But many philosophers point out that in some situations people have special duties to others, such as parents having special duties to their own children. In these situations, the goods cannot be counted equally for everyone. Therefore, the sum-ranking component is problematic (Parfit 1984; Scheffler 1994; Williams 1973). These traditional problems are open to debate, and it is out of the scope of this paper to discuss them in detail. The important point here is that even if they are successful challenges, they are only problems against utilitarianism but not consequentialism. In other words, even without the components of well-being and sum-ranking, consequentialism can still survive successfully. As Sen (2000) concludes:

> Some of the alleged limitations of consequential reasoning can be seen to be generated not by the discipline of consequential evaluation itself, but by additional assumptions—entirely separate and by no means necessary—with which a consequential approach is frequently combined (502).

In other words, if we only use consequential evaluation but not utilitarianism in our reasoning, we can avoid many objections.

Based on Sen's distinction between consequentialism and utilitarianism, we can easily determine why consequential evaluation is better than utilitarian reasoning for Balfe's argument. Balfe (2016) discusses psychological factors to showcase how healthcare professionals justify their involvement (451–457), but he also discusses several problems with these psychological factors involved in torture and concludes that they are unjustifiable (457–459). The psychological factors he mentions can be divided into two groups.

The first group is psychological factors that are not directly related to any moral reasoning. Among the factors Balfe discusses, "dispositional reasons," "authorization by a legitimate authority," "legal approval and euphemistic labelling," "diffusion of responsibility," "bystanders," and "financial incentives" belong to this group (Balfe 2016, 451, 453–457). These factors are not related to any moral consequence for another's well-being, and the considerations

behind these factors are not always related to sum-ranking; some may even violate the concepts of utilitarianism. For example, in a section of his study on financial incentives, Balfe (2016) states that "[h]ealth professionals may also become involved in torture for self-interest and self-promotional reasons" (457). This is a self-interest psychological factor; it may be relevant to egoism, but it is definitely not based on utilitarianism because it is not about maximizing happiness overall. Other factors such as legal approval are also only related to personal excuses or self-interests rather than happiness or suffering in utilitarian reasoning. Indeed, these psychological factors do not relate to moral reasoning whatsoever. Balfe correctly argues that these factors cannot morally justify the involvement of healthcare professionals in enhanced interrogation.

Psychological factors in the second group are more related to moral consequences, but Balfe still thinks that they are not good reasons to justify enhanced interrogation. These factors include "defence of group," "morality and dehumanization," and "prevention of harm and risk management" (Balfe 2016, 451–453, 455–456); they involve considerations of doing "the most good for the most people" (452). However, the moral consequences of these factors are not intrinsic values in utilitarianism. For example, Balfe (2016) explains that some healthcare professionals "develop a black and white moral ideology" and that is why "they see themselves as engaging in a transcendent mission to purify and heal the world" (452). These healthcare professionals may believe that enhanced interrogation can result in some good moral consequences such as the successful protection of national security. Nevertheless, these good consequences are not necessarily related to happiness. Indeed, sometimes they may even violate these concepts of welfarism. For example, when Balfe (2016) discusses the prevention of harm, he writes that "U.S. health professionals did not intervene when detainees were suffering or in pain" (455). It is easier to interpret these psychological factors by consequentialism rather than utilitarianism because some of them are only good consequences in general and not necessarily good consequences for the well-being (happiness) of others. The discussions of all of these factors are based on consequential evaluation. Some people believe that the involvement of healthcare professionals in enhanced interrogation may have good consequences, such as prevention of too much harm to detainees from interrogators. As Balfe points out with empirical

evidence from many records and documents, it is usually not the case (453–454). In a word, Balfe rightly points out that enhanced interrogation has many bad consequences.

This point can be explained further by comparing the problem of the ticking time bomb with real cases of enhanced interrogation. On one hand, some believe that torture is a necessary evil to solve the hypothetical problem of a ticking time bomb; some think that such a hypothetical case shows that every rule has exceptions, and some argue that it can provide a utilitarian framework to morally justify enhanced interrogation (Allhoff 2012, 87–117; Lazari-Radek and Singer 2017, 91–94). On the other hand, others argue that the hypothetical case of the ticking time bomb is not very meaningful in ethics and cannot justify enhanced interrogation. They believe that "artificial cases make bad ethics" and "one cannot easily draw conclusions for ordinary cases from extraordinary one, and as the situations described become more likely, the conclusion that the torture is permissible becomes more debatable" (Shue 1978, 141–142; see also Shue 2006; Luban 2009). In other words, we should not just imagine possible situations; we should deal with the exact scope and real facts of the involvement of healthcare professionals in enhanced interrogation in detail. Balfe's paper contributes to this point by pointing out some empirical problems of enhanced interrogation.

In the real world, there are records showing that health professionals were involved in different kinds of torture in Nazi Germany, Imperial Japan, the Soviet Union, Iraq, Israel, and even the United States, just to name a few. Nevertheless, people argue that all of them are not morally justified (Annas and Grodin 1995; Gordon and Marton 1995; Harris 2002; Lifton 1988, 2004; Murphy and Johnson 2004; Reis et al. 2004). Balfe joins forces with them and argues against enhanced interrogation in a consequential way (Balfe 2016, 449). He particularly focuses on the U.S. involvement of healthcare professionals in torture during the war on terror and argues that interrogation usually lasts for an extended period and cannot solve the immediate crisis. He also thinks that torture does not produce quality information about terrorist actions. In addition, healthcare professionals usually cannot prevent detainees from being abused (Balfe 2016, 458). Again, the points he mentions do not tell us whether utilitarianism is either for or against enhanced interrogation. Indeed, these points are only relevant to consequential but not utilitarian reasoning, as he discusses bad consequences of torture that are not necessarily related to welfarism or sum-ranking, which are the two major components of utilitarianism. Although

Balfe has mistakenly mixed up consequentialism and utilitarianism, he has rightly pointed out that torture has many bad consequences, and this point contributes to the consequential evaluation against enhanced interrogation.

Human Rights Abuses

Balfe's paper contributes to the consequential argument against enhanced interrogation. Based on this idea, for the rest of the paper, I would like to discuss one of the bad consequences Balfe mentions. This bad consequence is about how the involvement of healthcare professionals in enhanced interrogation violates human rights. Balfe (2016) argues that healthcare professionals should maintain the no-harm principle as their priority (458) and that "'just following orders' has, since Nuremberg, never been a sufficient justification for the commission of human rights abuses" (459). In other words, there are already many arguments and guidelines (such as *Hippocratic Oath* in ancient Greece or *The Uniform Code of Military Justice* in the U.S.) telling us why the no-harm principle is so important and following orders is not a good reason for torture, and Balfe has discussed them in his consequential argument (457–459). So here we only need to focus on his idea on human rights. Although Balfe's idea that we should not violate human rights is cogent, we should discuss the concepts of human rights in more depth to fill in the gap in his argument.

The term "human rights" has a lot of meanings, and here I only focus on human rights in international documents (i.e., international human rights). Similar to the general debates on torture, there are also two major moral justifications to human rights. One is to consider that international human rights are justified as absolute or deontological moral rights, such as basic rights, natural rights, rights to protect normative agency, or rights in contract theories (Finnis 2011; Griffin 2008; Scanlon 1998; Shue 1996). Another is to justify international human rights by consequential evaluation (Sen 1982, 2000, 494–498; Talbott 2010). It is out of the scope of this paper to argue which is a better justification for human rights. Given that Balfe's paper mainly focuses on consequential evaluation against enhanced interrogation, below I only discuss human rights abuses in enhanced interrogation from the perspective of consequential evaluation, and set the discussion on deontology aside.

From this consequential perspective, human rights are minimal values (or in Walzer's term, "minimal and universal codes" (1987, 22)) in the sense that they are "a minimal threshold of human life which no one should sink below" (Chan 2014, 579; see also Chan 2015; 2019a; 2019b; Li 2006, 312; Nickel 2007, 10; Shue 1996, 18–19; Walzer 1987, 21–24; 1994, 6). This moral perspective is called "the minimal account of human rights," and it is useful because many common international standards, such as the protection of human dignity, can easily fit into the idea of a minimal threshold of human life. Moreover, based on this account, human rights can be related to consequential evaluation. One may consider that protecting and promoting human rights and minimal values are good consequences, and these actions bring us many other good consequences as well.

The involvement of healthcare professionals in enhanced interrogation violates at least two kinds of international human rights: human rights against torture and human rights to health. Below is an empirical case on human rights against torture. Although the George W. Bush administration once insisted that its enhanced interrogation tactics were not torture under a strict legal interpretation, such a defense is not accepted globally (Luban 2009, 181–183; Murphy and Johnson 2004). Despite what the U.S. government says, it is obvious that healthcare professionals violate human rights against torture (a kind of physical security rights) when they get involved in enhanced interrogation. In particular, they violate human rights against torture spelled out in international documents and treaties such as Article 5 of the *Universal Declaration of Human Rights* (United Nations 1948), Article 7 of the *International Covenant on Civil and Political Rights* (United Nations 1966a), the *Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment* (1984), the *World Medical Association Declaration of Tokyo* (World Medical Association 1975/2016), just to name a few.[3] Even if we do not think about the violation of human rights against torture in terms of absolute rights, this is still a violation of international contracts on a global level. From the perspective of consequential evaluation, such a violation is already a bad consequence in practice. In short, it is wrong to violate human rights against torture in terms of consequential evaluation.

[3] Both Article 5 of the *Universal Declaration of Human Rights* and Article 7 of the *International Covenant on Civil and Political Rights* state: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Given that it is easy to see why enhanced interrogation is a violation of human rights against torture, let us turn our attention to other human rights. In addition to human rights against torture, human rights to health are also violated. This violation is not as obvious as the violation of human rights against torture, and so this point should be explained further. What are human rights to health? It is hard to define the concept of health. For example, some agree with the evaluative views of health, and others agree with the naturalistic views (Hausman 2015a, 339–344). The first sentence of the World Health Organization's (WHO) constitution famously defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity," but this is an extremely wide definition (World Health Organization 1946/2006). In general, most people arrive at the minimal consensus that health is at least the absence of physical or mental disease or impairment, but beyond this minimal consensus, controversies remain. Nevertheless, human rights to *health* are not the same as human rights to *be healthy*. No matter how we define health, usually human rights to health simply refer to some policies or duties of governments and other agents (including healthcare professionals) to promote health and prevent fatal diseases (Macklin 2007, 713; Wolff 2011, 110).

In many international legal documents, human rights to health belong to economic, social, and cultural rights, which are also known as the "second generation of human rights." Human rights to health are affirmed in international documents such as Article 25 of the *Universal Declaration of Human Rights* (United Nations 1948), Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (United Nations 1966b), and the preamble to the WHO constitution. One practical issue in which human rights to health are different from human rights against torture is that human rights to health are not yet legally ratified in the U.S. Although the *International Covenant on Economic, Social and Cultural Rights* was signed in 1979 under the Carter administration, it has not yet been ratified by the Senate. This implies that human rights to health are not fully implemented and promoted in the United States.

Regardless of a lack of legal recognition in the United States or elsewhere, human rights to health are morally important because they are considered minimal values and should not be violated. Some philosophers use different arguments to support the same conclusion: promoting health is a minimal moral standard. Daniels (1985, 2007) uses the concept of opportunities to argue for the importance of health, while Sen (1992), Ruger (2010), and Venkatapuram (2011)

uses the concept of capability (see also Hausman 2015b; Wolff 2012). One may argue that health is a minimal threshold of human life because it is usually a capability or an opportunity for people to achieve other goods (Chan 2019a; 2019b). In other words, all philosophers cited above support human rights to health because health is a minimal value. They also agree that healthcare professionals should make promoting health the first priority of their duties. In this sense, when healthcare professionals become involved in torture, they cross the line and violate human rights to health. As Balfe (2016) correctly argues: "Involvement in torture can blur the line between healing and destruction. It can cause professionals to have dual loyalties, both to patients in their care and to the state and the security services" (459).

Although international documents on human rights do not aim to provide any moral foundation for human rights, we should consider them as applications for the minimal account of human rights. In other words, once we agree that not only human rights against torture but also human rights to health are minimal values with good consequences, we have a stronger reason to support these international contracts. Violation of these international human rights breaks the contracts on a global level with bad consequences. This idea supports Balfe's position that the involvement of healthcare professionals in torture during the war on terror is not morally justified. Further research and additional examples may be needed for developing a complete moral argument against enhanced interrogation. It is also out of the scope of this paper to compare this consequential argument with other approaches such as absolutism or deontological ethics. But Balfe's argument, with the improvements made in this paper, has already contributed a part for developing a successful consequential argument against enhanced interrogation in general.

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