



Before taking office, former President Barack Obama had promised to close the prison at Guantanamo Bay, but ultimately failed to do so.

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The moral hazards of intuition pumps. Professor Miller's Beating Case:

This is the second version of a paper I have been writing on and off for more than a decade. That paper began in response to what I considered an outrageous and fallacious use of a philosophical thought experiment, the discipline's failure to adequately respond, and to my own involvement in the perpetration of that use. To my shock, almost an entire class of first year undergraduates under my tutelage reproduced the 'case study' discussed here in an essay on the ticking bomb scenario. I have always felt I did not respond adequately.

Since my first attempt¹, the world has moved on. The scholarship rejecting arguments justifying torture on the basis of the ticking bomb thought experiment has increased significantly in both sophistication and size. In addition, the issue of the problematic nature of 'intuition pumps' has now become a field of study in its own right and some of it has even been applied to the field of torture arguments. However, I note that the example I intend to discuss is still published on the site of the Stanford Encyclopedia of Philosophy² and so presumably, is still thought to have some currency. While, Wolfendale's³ critique of

1 McDonald, Catherine "Deconstructing Ticking-Bomb Arguments" Global Dialogue. Vol 12 Number 12 Winter/Spring 2010 - Working the Dark Side. Available at www.worlddialogue.org

2 Miller, Seumas, "Torture", *The Stanford Encyclopedia of Philosophy*. Accessed on 25 August 2019 <https://plato.stanford.edu/entries/torture/>

3 Wolfendale, Jessica. "The Torture Fantasy", *Torture: Asian and Global Perspectives*. August-Oct 2014.

the use of ticking bomb scenarios is definitive, it is useful to consider defects in this particular example. My intention here is to argue that not only does this particular case fail to conceal the underlying prejudices that drive the “intuition” but that the failure of the original author and the publisher to notice this is a demonstration of a more general moral hazard; the moral hazard of using intuition pumps incorrectly and in situations of limited life experience.

Philosophers have been using thought experiments to support their arguments for centuries. The purpose of thought experiments has traditionally been to manipulate individual elements of an argument to allow us to consider individual premises, to add and remove individual elements in order to see what is really doing the work in an argument and to test our responses in relation to the conclusions we draw. In other words to test our intuitions in relation to conclusions. It is this element that that gives us the term 'intuition pump'; a term I believe originally coined by Dan Dennett.⁴ Of course, intuitions can vary wildly and thought experiments or intuition pumps can be used for good or evil.

Traditional thought experiments are stripped of all extraneous detail, the simpler the better. In the ubiquitous trolley thought experiment⁵, we never consider how the the potential victims come to be on the trolley tracks or why they don't get off. We merely stipulate the potential victims exist. We do this because intuition pumps are not designed to generate conclusions about the 'real world' but to generate counterfactuals to more general principles. Thus, the original purpose of the ticking bomb scenario was to try and demonstrate that moral absolutism is flawed⁶. It was not intended to generate any conclusion about the justifiability of torture in the real world. Indeed, in my undergraduate years, the apparent outcome of the ticking bomb was explicitly used to demonstrate a counterfactual to utilitarian absolutism; the application of the utility calculus in the face of real world side constraints. Unfortunately, some intuition pumps have become associated with predictive justifications for otherwise implausible moral positions. In the first instance, stripped of all real world detail, the experiment bears no relationship to the position it is used to justify, while actual detail merely demonstrates how variant intuitions can be and how revealing of our underlying prejudices.

Professor Miller's example demonstrates both limitations. Eschewing the the stripped down version of the ticking bomb scenario in order to avoid the first objection, he offers instead a detailed case study, “the emergency beating”, which he asserts is “...realistic; indeed, it was provided by a former police officer from his own experience.”⁷ It is not clear why Miller thinks this example is “realistic” although perhaps his statement might imply that he has simply assumes that the origins of the example somehow establishes its credibility. The least one might say in response, is that his intuitions about the example's credibility are naive.

This is the example in question, a “case study” presented by Professor Miller as part of an argument justifying the use of torture by utilizing the 'emergency case' defense. It is given in full here.

Case Study — The Beating

Height of the antipodean summer, Mercury at the century-mark; the noonday sun softened the bitumen beneath the tyres of her little Hyundai sedan to the consistency of putty. Her three year old son, quiet at last, snuffled in his sleep on the back seat. He had a summer

Vol.3.No.4 & 5. pp.5-12.

4 Dennett, Daniel: An Introduction to Intuition Pumps. Big Think. <https://www.youtube.com/watch?v=5tvT90uPz-U> Accessed

5 Originally from Philippa Foot, "[The Problem of Abortion and the Doctrine of the Double Effect](#)" in *Virtues and Vices* (Oxford: Basil Blackwell, 1978) Now can be found in many places.

https://en.wikipedia.org/wiki/Trolley_problem#cite_note-Philippa_Foot_1978-1 Accessed 24 October 2019.

6 Wolfendale, Jessica *op. cit.* p.8.

7 Ibid.

cold and wailed like a banshee in the supermarket, forcing her to cut short her shopping. Her car needed petrol. Her tot was asleep on the back seat. She poured twenty litres into the tank; thumbing notes from her purse, harried and distracted, her keys dangled from the ignition.

Whilst she was in the service station a man drove off in her car. Police wound back the service station's closed-circuit TV camera, saw what appeared to be a heavy set Pacific Islander with a blonde-streaked Afro entering her car. "Don't panic", a police constable advised the mother, "as soon as he sees your little boy in the back he will abandon the car." He did; police arrived at the railway station before the car thief did and arrested him after a struggle when he vaulted over the station barrier.

In the police truck on the way to the police station: "Where did you leave the Hyundai?" Denial instead of dissimulation: "It wasn't me." It was — property stolen from the car was found in his pockets. In the detectives' office: "Its been twenty minutes since you took the car — little tin box like that car — It will heat up like an oven under this sun. Another twenty minutes and the child's dead or brain damaged. Where did you dump the car?" Again: "It wasn't me."

Appeals to decency, to reason, to self-interest: "Its not too late; tell us where you left the car and you will only be charged with Take-and-Use. That's just a six month extension of your recognizance." Threats: "If the child dies I will charge you with Manslaughter!" Sneering, defiant and belligerent; he made no secret of his contempt for the police. Part-way through his umpteenth, "It wasn't me", a questioner clipped him across the ear as if he were a child, an insult calculated to bring the Islander to his feet to fight, there a body-punch elicited a roar of pain, but he fought back until he lapsed into semi-consciousness under a rain of blows. He quite enjoyed handing out a bit of biff, but now, kneeling on hands and knees in his own urine, in pain he had never known, he finally realised the beating would go on until he told the police where he had abandoned the child and the car.

The police officers' statements in the prosecution brief made no mention of the beating; the location of the stolen vehicle and the infant inside it was portrayed as having been volunteered by the defendant. The defendant's counsel availed himself of this falsehood in his plea in mitigation. When found, the stolen child was dehydrated, too weak to cry; there were ice packs and dehydration in the casualty ward but no long-time prognosis on brain damage.

(Case Study provided by John Blackler, a former New South Wales police officer.)

In this case study torture of the car thief seems morally justifiable. Consider the following points: (1) The police reasonably believe that torturing the car thief will probably save an innocent life; (2) the police know that there is no other way to save the life; (3) the threat to life is imminent; (4) the baby is innocent; (5) the car thief is known not to be an innocent — his action is known to have caused the threat to the baby, and he is refusing to allow the baby's life to be saved.⁸

The first thing that struck me about this case study; other than the salacious description of the violence; something my undergraduate students seemed to be particularly attracted to; is the reference to the victim's race, he is a Pacific Islander. Perhaps identifying the culprit as a Pacific Islander is thought to add to the certainty of his identification, although this would assume that the surrounding circumstances were such that being a Pacific Islander was in itself highly unusual.

⁸ Miller, S. *op.cit.* Accessed 17/8/2019

Although Australia continues to be predominately white there is in fact a reasonably large community of Pacific Islanders in New South Wales⁹. It is not clear that race in this instance is necessarily a plausible identifier. In any case, the culprit is also identified as having a “blonde-streaked Afro” and one would have thought that this would have been sufficiently unusual to identify the car thief. Perhaps the combination of the two characteristics is thought to put the matter of identification beyond reasonable doubt.

However, this cannot explain the subsequent reference to the culprit's race in the torture scene. Here the case study presumes that, by virtue of being a Pacific Islander, the culprit can be easily provoked into violence. A mere insult is “calculated to bring the Islander to his feet to fight”. In addition, we are provided with the added information that he actually *enjoys* violence. The victim, “... quite enjoyed handing out a bit of biff”. Both are negative racial stereotypes often linked with Islanders in Australia. This reference to race is particularly offensive given the racial make-up of the discipline of philosophy itself. There may be academic philosophers of Islander descent but among the overwhelmingly white faces of the discipline, Islanders would seem to make an easy target. There were certainly no Islanders in my classes who might have objected to this outrageous slur against their culture. Targeting an ethnic minority who are not in a position to defend themselves or object to the use of such stereotypes seems particularly low. It is interesting to speculate on what the Stanford's attitude to publication might have been if the culprit was identified as Jewish or Black. Historically, Jewish and Black Americans have also been subject to racial stereotype types that held them particularly given to violence and or criminality. In more enlightened times, we tend to recognize these racial stereotypes for what they are, racism that seeks to excuse injustice.

In any case, the characterization of the culprit as belonging to a race who are presumed to be inherently violent saves the police and Miller the necessity of proving that the beating is justified. It serves to provide a form of rationalization for the torture. The implication that trades on the racial stereotype is that the police do less *real* harm to the culprit because the culprit actually enjoys the violence and comes from a violent culture where violence might be considered commonplace. This strategy is a well-known psychological maneuver among actual perpetrators of violence¹⁰. If the victim actually enjoys violence then the perpetrator of the violence is somehow absolved (at least partially) of moral responsibility for their actions. Miller's example invites the reader to engage in just such a rationalization. Not only does the culprit deserve to be tortured because he is a *bad* person, “sneering” and “belligerent” but torture in this case is not *really* immoral because the victim actually enjoys violence and accepts it as normal.

Compare this description to the language designed to generate empathy for the child and mother. We don't get the child's race but we do get his age; three. Toddlers are about as cute as children get and at an age most likely to tug at our heart strings. The child is described as a “tot”, not merely a colloquial expression for a small child but one that conjures up affection and a sense of protectiveness. One would never describe Damian, son of the Devil, as a “tot”.¹¹ Similarly, the child is described as sick, having a summer cold and snuffling (like a small animal) while the mother is described as harried, and distracted (and therefore deserving of our sympathy). The effect is to encourage identification and empathy with the 'victims'. The intuition pump in this case, is as legitimate as any piece of propaganda. Its purpose has less to do with testing our gut moral instincts than to

9 In 2011, 0.8% of the entire NSW population were of Pacific Islander decent. In many areas, they account for a much higher percentage, nearly four percent in places like Campbelltown for instance. So, they are not by any means rare. Multicultural NSW <http://multiculturalnsw.id.com.au/multiculturalnsw/ancestry-introduction?COIID=120> – accessed 9 September 2019

10 There is a great deal of scholarship in this field but a recent research article worth reading is “Ingroup Glorification, Moral Disengagement, and Justice in the Context of Collective Violence.” [Bernhard Leidner](#), [Emanuele Castano](#), [Erica Zaiser](#), [Roger Giner-Sorolla](#) *Personality and Social Psychology Bulletin*. 2010. Volume: 36 issue: 8, pp.: 1115-1129

11 https://en.wikipedia.org/wiki/Damien_Thorn

manipulating our unconscious prejudices. In this case, the prejudice is tainted with racism.

The second major difficulty is in the description of the details of the case study that are presumed to justify the reader's impulse to support the "emergency beating". While it is true that people will simply have different intuitions about the same scenario, in this case, the intuition that Miller seeks to generate appears to rely upon a distinct lack of critical faculty. In other words, despite Miller's belief that this case is "realistic", it is not our intuition that fails here but our reasoning.

Consider what, according to Miller, the police do in fact know in this case. They have information to enable them to identify the car, they have evidence, via the CTV for ascertaining the direction in which the car drove away from the petrol station, they know *from* which direction the culprit was traveling when detained, they know the geographical relationship and the distance between the petrol and railway station where the culprit was apprehended and they know the time that has elapsed between the theft and the culprit being detained. They also have good reason to believe that this theft was an opportunistic unplanned crime. On the basis of this information alone, a reasonably intelligent person, with only a moment or two of thought, should be able to infer the likely location of the car and to do so with a high degree of certainty.

If the culprit dumped the car and then traveled by foot to where he was apprehended, the car *must* be within walking (running) distance of where he was apprehended; the station. The longer he drove around, the closer to the station the car must be. There simply are no other options¹² unless we presume that the culprit can fly. This is not a moral intuition but a reasonable inference based solely on the information that is provided by Miller.

The speed at which the average person walks is highly variable, but the standard rule of thumb is that on flat ground the average walking speed is approximately 1 km per 15 minutes.¹³ Since the culprit is described as thick set and since we have no information regarding whether or not he looked like he had been running, for example, sweating and breathing heavily (something an observant police officer might have been expected to notice) the speed in this instance might be considerably lower. But even if we assume the average speed, the car is somewhere within approximately five – six hundred meters of the station. Quite possibly it is much closer. Alternatively, if he dumped the car immediately after stealing it and then proceeded on foot, the car will be within a few hundred meters of the petrol station. Either way, the car cannot be more than approximately ten¹⁴ minutes walk from where he was apprehended and must be between the petrol and the train station. Since he was traveling on foot when apprehended there are simply no other possibilities.

Miller wants us to believe that the police are unable to effectively search such an area in twenty minutes, given that they have at their disposal at least one car and that they are looking for a car that must be parked on a street, not a child who might be hidden in a rubbish bin or behind a tree. Miller might object that searching would take too long but the details of the case as he presents them hardly support this view. We are not told where in fact the car is found but we are told that it is twenty minutes between the theft of the car and the thief's arrival at the police station with all actions in between. This suggests that the distance between the police, petrol and rail station cannot be very great and so

12 Of course, there are literally other options, (the car may have been abducted by aliens) but none that are plausible in the circumstances.

13 See Naismith's Rule. https://en.wikipedia.org/wiki/Naismith%27s_rule Accessed 20 October 2019

14 The case is implausibly short on details and thus it is not clear that the time-line as presented actually makes sense. Having responded to the theft, interviewed the victim, viewed CTV tapes at the petrol station, driven to the rail station, apprehended the culprit in a struggle and then taken him to the police station, the police officer claims that it is a mere twenty minutes since the car was stolen. How close is the police station to the point of apprehension? The action seems to have occurred over an area of approximately half a square kilometer. In any case, ten minutes between theft and apprehension seems like a reasonable compromise. If the time were actually shorter, Miller's case is even less plausible. If the time is actually slightly longer it will make little difference to the suggestion that it would be reasonable to search.

the search area cannot be very great. We do know that police forces that routinely use torture are prone to intellectual inadequacy, i.e., poor detective skills.¹⁵ It appears that this might also be so for those who use such “case studies” to justify torture.

In addition, we are not told how long it takes the police officers to beat the information out of the thief. Did it take five minutes, ten, more, less? Given the description of the violence, we can reasonably assume that the thief did not immediately give in, so the beating had some duration. Under these conditions we have no reason to believe that it would take longer to search for the car than it does to extract the information under torture. Nor do the police officers have any good reason to believe that it would. They cannot know how long it might take to extract the information under torture or even if this is possible. At best, they might infer that they can extract information this way if they have had previous experience beating other prisoners or perhaps this prisoner but then the case would hardly be a one-off instance justified as an “emergency”. In any case, how people react under torture also varies enormously. What reason could the police officers have for thinking that they would be able to quickly beat the information out of the culprit on this particular occasion? Proponents of torture often reject the concept of reasonable judgment (ordinary knowledge) and opt instead for odds. If there is a chance (any chance at all) that torture could work they believe we would be rational to try it. However, the police have no reason to believe that there is a greater chance of beating the information out of the culprit than there is in locating the car through searching. It is their lack of intellectual effort that leads them to believe that torture is an appropriate response.

This might lead us to conclude that Miller's premises (1) “police reasonably believe that torturing the car thief *will probably save an innocent life*” and (2) “police know that there is *no other way to save the life*”, are simply implausible. We might also reject his premise (5) since it appears that the police share culpability for the danger to the child. The culprit is not preventing the police rescuing the child. They should search for the car, but apparently this has not occurred to them. The thief is certainly not preventing them from doing so. However, the point of this analysis is to query Miller's use of this case as an “intuition pump” as such. As with so many Hollywood versions of torture, Miller seems to lack any factual understanding of the nature of actual violence. It is the outrage of tabloid headlines that his intuition pump generates not the gut reaction and common sense of real life experience.

Oddly, Miller also seems blissfully unaware of the one real life consequence that his case study raises, the corruption of the legal system. Perhaps this is also an indication of the fraught nature of intuition pumps for these sorts of moral problems. Having been badly beaten, the thief's lawyer and one also presumes the judge, ignore this. Instead, Miller would have us believe that “[t]he defendant's counsel availed himself of this falsehood [volunteering the location of the car] in his plea in mitigation”.¹⁶ Once again Miller case study relies upon the vigilante impulses of his largely white, middle-class audience. The bad guy apparently deserves his treatment. In reality, ethnic minorities are all too often subject to police violence and failures of the legal system. I cannot imagine that the “Black Lives Matter”¹⁷ campaign would be happy to know that a defense counsel simply ignored the defendant's legal rights and overlooked the fact that their client had been badly beaten. Nor should we be sanguine about such cases in Australia. Indigenous Australians die in police custody at an alarming rate, making up 19 percent all custodial deaths although they represent only 3.3 percent of the entire population¹⁸. The

15 Arora, Nirman. “Custodial Torture in Police Stations in India: A radical assessment.” *Journal of the Indian Law Institute*, vol. 41, no. 3/4, 1999, pp. 513–529.

16 It is not clear why volunteering the location of the car would be thought particularly significant in mitigation for an already convicted criminal who is on recognizance. Despite carrying a possible penalty of up to ten years imprisonment car theft or illegal use of a car in Australia is a relatively minor offense. The average penalty for repeat offenders is between 10 and 28 months. Grech, Katrina. Sentencing snapshot: Motor vehicle theft. <https://www.bocsar.nsw.gov.au/Documents/BB/bb69.pdf> Accessed 1 November 2019

17 <https://blacklivesmatter.com/> Accessed 1 November 2019

18 Lyneham M & Chan A. *Deaths in custody in Australia to 30 June 2011: twenty years of monitoring by the National Deaths in Custody Program since the Royal Commission into Aboriginal Deaths in Custody*. 2013. Monitoring reports no. 20. Canberra: Australian Institute of Criminology.

intent may have been to generate an intuition that no real harm was done to the culprit, given the 'good' outcome. However, the factual conditions of this case actually demonstrates that the legal system is corrupted beyond the immediate act of torture. Lawyers and police lie, defense lawyers fail to truly represent their clients' interests, judges are apparently willfully blind, and police incompetence is accepted as given.

Perhaps all this demonstrates is that Miller's case study is a poor example and that alterations to the details would make a more persuasive argument. However, this seems to miss the true significance of the failure. His case study does only demonstrates that people's intuitions do as a matter of fact vary widely but that intuition pumps can be subject to a number of defects that would in normal circumstances invalidate any conclusion arising from them. They can be highly manipulative of their audience's background prejudices and psychological biases. In effect they may operate as forms of propaganda, constructed so as to manipulate a predictable emotional response; an emotional response that one would normally seek to avoid in the calm consideration of argument. Hence, the "emergency beating" here appeals to the audience's racist stereotypes, and their innate impulse to avenge themselves on the 'evil ones'. Characterizing the thief as subhuman and the victims as defenseless innocence, attempts to force the audience's sympathies entirely in one direction. However, this only works if we assume the putative audience is white, or at least, certainly not an ethnic minority frequently subject to police violence. The thought experiment in this case is misused.

The second problem with Miller's use of this intuition pump is that it encourages a lack of consideration for both factual evidence and logical reasoning. His belief that the "case study" was realistic seems to arise from an excessive faith the source, to wit, members of the police force.¹⁹ No doubt many members of the NSW police are honorable and honest. However, anyone with a passing familiarity with the history of the NSW force could not be unaware of the wholesale corruption and violence that once existed²⁰. It might not exist now, but the fact that it once did exist should alert us to the possibility of falsehoods arising from State operators. Rather than being drawn into blind acceptance, we should be encouraged to adopt a healthy skepticism or at least a willingness to test evidence that is brought before us. Not only does Miller's intuition pump discourage this kind of healthy skepticism but he seems to have been caught by his own gullibility. Further, there is failure to apply even a modicum of logical reasoning to the scenario. So entranced by the appeal to intuition, Miller ignores the evidence as presented. Searching for the car is simply not considered because the point of the case is to justify torturing the thief. Yet, searching is precisely what would normally occur. Small children frequently wander away from their homes and searches must be conducted to locate them. A child is significantly more difficult to locate than a car. In addition, the urban area restricts the potential location of cars. They are parked on streets or in car parks, not hiding behind trees or in undergrowth or under houses. Given that the culprit is found on foot and acted alone, he must have dumped the car within walking distance. It really is that simple.

Had Miller (and my undergraduates) not imagined that this case was in some sense realistic, he might have thought to "turn all the knobs"²¹ to see what was actually doing the work in the intuition pump, and may have discovered for himself that this is in fact a "boom-crunch"²². Let's start with the issue of race, since that attracted my attention first. Let's imagine that the culprit is not a large male Islander but a petite, wild white daughter of a middle-class philosophy professor. Do we still feel that this person should be beaten? Let us suppose that in response to her willful refusal to reveal where she dumped the car, her face is pounded to a pulp. Her beating is so bad that she eventually loses a kidney or an eye. (In Hollywood, victims of violence almost invariably subsequently leap to their feet,

<https://aic.gov.au/publications/mr/mr20> Accessed 20 October 2019.

19 (a not uncommon defect with pro-torture proponents).

20 https://en.wikipedia.org/wiki/Royal_Commission_into_the_New_South_Wales_Police_Service Accessed 20 October 2019

21 Dennett, Daniel. Intuition pumps and other tools for thinking. Penguin 2013. p.16.

22 Ibid.

this is rarely the case in real life.) Or perhaps, since sexual assault is a common form of torture for both males and females, suppose she is sexually assaulted, or threatened with sexual assault²³. Let's suppose that the 'victim' in this case is actually a middle-aged man with a gambling addiction who has inadvertently left the child in the car while playing the pokies. Do we still feel strongly that the thief's torture is justified? Suppose further that, having taken her to the police station and beaten her to a pulp, the car is actually located in the station car park, 60 seconds from where she was apprehended and easily located with minimum effort. Do we still feel that the police acted appropriately, rationally?

Finally, Miller's example seems to demonstrate something about the hazards of using intuition pumps in the academic setting. Used with their original intent, intuition pumps are harmless and even useful. However, where they are used to predict some intuition about a real world circumstance, we need to be certain that we have some factual knowledge of that circumstance. Intuiting about circumstances of which one has no actual experience or knowledge is to invite manipulation. This is the hazard of the impulse generated by headline outrage. Equally, if we are dealing with theoretical cases that are not intended to be "realistic" we are obliged to "turn the knobs" nor merely accept the case as given. We should know what element of the case is really the doing the work, and how our intuitions will change with the precise detail of the circumstances. Philosophy often delves into the world of the weird in order to examine the foundations of our beliefs. However, thoughts are dangerous things and philosophers have an obligation to wield our thinking tools with great care and with a clear understanding of the impact such tools may have in the public domain.

23 Wolfendale points out that the logical conclusion of the "ticking bomb" argument is that we should be prepared to do 'whatever it takes' to get the result but that this position is, for good reason, rarely defended in public. Wolfendale, J. op.cit.