

What Is Torture?

I shall define torture as follows:

Torture is the knowing infliction of continuous or repeated extreme physical suffering for other than medical purposes.¹

Some claim that torture has to involve the intent to break the will of the victim.² This might be true for interrogative torture, where the torturer seeks to get some information out of the tortured person. I say “might” because it is not entirely clear what “breaking the will” actually means, nor is it clear that the interrogative torturer must intend more than that the victim give the desired information. If the victim decides with an intact will: “I do not want to be tortured anymore, therefore I will give the information,” this, it seems, should be fine with the torturer. Be that as it may, interrogative torture is not the only kind of torture; there is also punitive torture, which was widely practiced in the Middle Ages (and is, incidentally, still practiced today). Punitive torture, however, does not normally involve the intention to break the will of the victim. Whether his or her will is broken is completely incidental to the aims of this form of torture. The aim is simply to punish the victim by inflicting extreme physical suffering.

Some also claim that the victim has to be defenseless.³ I agree that in many cases he or she will be defenseless, but this in itself is no reason to make this a definitional requirement. Consider this case: a robber breaks into the house of a jeweler, who has a safe with a lot of money in his house. The robber points a gun at the jeweler and says: “Give me the combination, or I’ll kill you.” The jeweler says: “Well, if you kill me, you won’t get the combination.” “Right,” thinks the robber and draws something else, namely his pain-inflicting device, which when activated causes extreme pain (almost like drilling on the unprotected nerve of a tooth) to any person in a radius of ten meters, except for the person holding the device. He activates it. The jeweler writhes with pain on the ground, and the robber says, “Give me the combination,”

but the jeweler manages to reach for his own revolver. Because of the pain he cannot take real aim and can hardly hold the gun, yet he manages to shoot in the general direction of the robber, who dives behind a couch. "Let go of the gun!" the robber shouts, but the jeweler, still in extreme pain since the device is still activated, shoots in the direction of the couch, which offers no real protection, and the bullets go right through. The jeweler is obviously not defenseless. However, it seems that he was tortured nevertheless. Someone was intentionally inflicting pain on him nearly as intense as the pain inflicted by drilling the unprotected nerve of a tooth, and doing so in order to get some information or in order to have the person do something (let go of the gun)—how could this not be torture? The mere fact that the victim still has means of defense seems not to satisfactorily answer this question.⁴

At this point someone might object that this is a silly and contrived example that could not happen in the real world. Well, first, of course it could. Second, one might well see a taser as the equivalent of such a pain-infliction device. Thus there may already have been equivalent cases. Third, even if there never has been a real such case and never will be, that is not a counterargument against the definitional point. There is not, nor will there ever be, a *Tyrannosaurus rex* walking through the Black Forest in the years 2011 or 2017. However, that does not mean that by definition a *Tyrannosaurus rex* cannot do so. Whether one of them does is an empirical question, not a definitional one. A definition that simply stipulated that they cannot walk through the Black Forest in those years would be a *wrong* definition even if the *Tyrannosaurus rex* actually is extinct once and for all. Thus, if we would say about the case of the jeweler that it is (or would be) a case of torture, the alleged fact that such cases are not real is no counterargument to the claim that it indeed is (or would be) a case of torture.

The international conventions concerning torture seem to consider torture, for the purposes of those conventions, as something that can only be done by state agents. However, the legal usage of certain terms does not always coincide with the ordinary one. In any ordinary use of the term, torture can be practiced by private agents (for example the Mafia or a sadist).

Why is the knowing infliction of pain sufficient and specific intent not required? Consider the psychopaths that populate the movie *Hostel*. Let us assume that one of those people, who drill, for leisure, holes into their conscious victims or cut off their limbs, does not really have the specific *intent* to inflict pain or suffering. Rather, he just likes to drill holes into people and cut off their limbs. Are we, therefore, not dealing with a case of torture anymore? In other words, is the intent to inflict pain or suffering necessary for torture? Intuitively, of course not. If anything is torture, then those deprived

acts depicted in *Hostel* are. It is therefore sufficient that the people engaged in these acts foresee the suffering of their victims and are not engaged in these acts in the course of providing medical help. This distinguishes the indifferent torturer “operating” on a nonanaesthetized victim from a caring doctor doing the same in order to help a patient.

A note on the expression “continuous or repeated”: this is only meant to exclude isolated and single, extremely short “shocks” of intense pain. I find it hard to consider such “shocks” as torture (which is not the same as saying that they are quite all right). What counts as extremely short and what does not, however, might be debatable. Yet I do not think that this can be helped. Note, however, that what is relevant is the duration of the pain, not of the act that inflicts it.

What is “extreme”? That is contentious, but one kind of physical suffering that clearly is extreme is the above-mentioned pain produced by drilling on the unprotected nerve of a tooth. I will use this as a reference point throughout the book. This in no way implies that I think that lesser pains or certain other forms of pain and suffering are not also extreme.⁵

Finally, need torture be physical? Could torture not also occur via psychological suffering? Many people seem to think that torturing a person’s child in front of this person also amounts to torture of that person. Mental or psychological suffering would be sufficient. I have doubts. Of course the person is made to suffer (and it is, all else being equal, a particularly despicable and monstrous way of making someone suffer), but is she being tortured? Consider a Nazi camp guard and artist who has produced what he considers to be his greatest painting yet, his legacy to the world; he would protect it with his life. Now, however, the painting is damaged in front of his eyes by the recently freed concentration camp inmates to make him suffer (or divulge secret information), and the Nazi artist indeed suffers immensely. Is he being tortured? Intuitively, I would say no. And what about someone who immensely suffers when people point out the absurdity of her religion to her? Suppose that somebody does do exactly that in order to make her suffer. Is this a case of torture? It would seem that if we allow the intentional infliction of psychological suffering to be torture, many things we would intuitively not consider torture would now be labeled “torture.” I prefer to avoid this consequence. Thus, for the purposes of this book I use the term “torture” as defined above. This in no way prejudges the subsequent discussion. After all, if some forms of physical torture are permissible under certain circumstances, then obviously some forms of torture, period, are permissible under certain circumstances. Moreover, it is hard to see why some forms of psychological torture should not also be permissible under certain circumstances. Indeed, my moral arguments apply both to physical torture and to psychological “torture.”

Thus, a *wider* definition of torture than the one provided here will for obvious logical reasons not be able to block my arguments for the justifiability of forms of torture that are *included* in such a wide definition. However, a *narrower* definition of torture might try to *exclude* things I consider as justified torture so that according to the narrow definition these things would not count as examples of justified torture anymore. Such a narrow definition would, for instance, be one that makes absolute unjustifiability a constitutive definitional element of torture. However, there is obviously no reason to accept such a definition. It is a dogmatic stipulation, not a rational contribution to a moral debate.

It should be noted, however, that some people simply insist—although the history of both the word and the phenomenon it designates clearly show that torture need neither be interrogational or coercive nor state-sanctioned—that torture must be defined somewhat along the following lines: “Torture is the coercive and state-sanctioned infliction of suffering on a person by a state official in order to make that person give away some information.” According to this definition, the infliction of pain depicted in *Hostel* would not be torture. This implication of the definition is of course absurd. But be that as it may, even if we accepted this definition, this would still not block the moral argument provided in this book, since there are also many forms of torture in *this* sense that are not worse than killing. Thus, again, if self- (including other-) defensive killing is justified in some cases—and it is—then self-defensive torture (even in this narrower sense) is also justified in some cases.