

## Arguments about the Morality of Torture

*The philosophical analysis of torture is not simple. Torture is more than merely coercing someone or inflicting great suffering on them. It turns a person's body against himself, and constitutes a kind of personal violation that some people have compared to rape. A Kantian would probably object to torture because it undermines a person's ability to act rationally and treats him in a way it would not be rational for him to accept. From a utilitarian viewpoint, however it is possible to find a justification for torture in some circumstances. In this section we give a brief summary of an argument that concludes that torture is hardly ever justified. For more information on arguments about torture, see Sanford Levinson, ed., *Torture: A Collection*, Oxford University Press, 2004, or Abu Ghraib: *The Politics of Torture*, Berkeley: North Atlantic Books, 2004.*

This important moral argument about torture was developed by philosopher Henry Shue. Shue considers the argument that torture must be morally permissible in some cases, because killing the enemy in a just war is morally permissible, and torture is not as bad as killing. Shue argues that, on the contrary, torture may well be worse than killing. In saying this, Shue is not claiming that torture does more harm than killing. In fact, it might not. He is applying a standard of right and wrong that does not depend entirely on the harm done or benefits received. Thus Shue's position is not utilitarian. Torture is more wrong than killing an enemy soldier who is fighting back, not because it has *less justification*, whether or not it does more harm.

The soldier who dies in combat is (usually) not defenseless, but the torture victim will often be defenseless. Inflicting great harm on a defenseless person, Shue suggests, may be morally worse than killing a combatant. This would be shown perhaps by our just war principle number 8, which prohibits deliberate killing of civilians, but not combatants.

If there is something the torture victim could do to stop the torture, say by giving up information he has, then he may not be to-

tally defenseless. In the case of torture for intimidation of the tortured person or others, then the victim is truly defenseless. In the case of the torture of a person who actually knows nothing the torturers want to know, the victim is also defenseless. Further, there may often be no practical way for the torturer who seeks information to know in advance whether his victim knows anything or not. Thus if he is torturing for information, he is likely to treat every case as a dedicated enemy with important knowledge. Even if he only wants information, he won't know when to stop, since he doesn't know how much his victim knows.

Even in cases where the torturer knows that he is torturing a dedicated and knowledgeable enemy, is it morally permissible to torture this person until he betrays his ideals or his comrades? If betrayal is the only way out of torture, isn't the torture victim defenseless? Perhaps this depends on what cause it is that the torture victim would be betraying. In any case, the dedicated enemy may have no reason to be confident that he will survive or avoid further torture if he betrays, so he is still defenseless. He must make a bargain with the torturer that he cannot enforce. Giving up information may not stop the torture, and it might even make

the torture victim more likely to be killed if he has no further valuable information.

Shue proposes a case in which torture for information might be justified. The tortured person has planted a nuclear time bomb in a city, and many will die unless he discloses the location. The torturer is certain that the person tortured has planted the bomb and knows the location, and that no one else does. Since failing to prevent great suffering and death would be wrong (when you can prevent it), and inflicting cruel suffering on a defenseless person is also wrong, the right thing to do is simply the least wrong thing. That least wrong thing would be torturing to find out the location of the bomb. Or at least this is Shue's reason-

ing.

Cases like this must be extremely rare, however. If we allow torture as general policy simply because we can dream up a case where it would be justified, we are practically guaranteed to allow cases where it is actually immoral. Thus torture should be illegal, even if cases might possibly arise where it would be morally permissible. Let the torturer convince a jury that his act was really necessary, if it really was. The main problem is not the rare case of the punishment of a torturer who was justified, but the need to find ways to restrain totally unjustified torture, which certainly includes the vast majority of actual cases, and perhaps all actual cases.