

## **TORTURE WITH CONSENT**

**by Terence Rajivan Edward**

*Abstract.* There are attempts to define torture which say that a person is only being tortured if the pain inflicted upon them is pain that they have not consented to. I recommend that we define torture without this condition.

In an article on torture for the *Stanford Encyclopedia of Philosophy*, Seumas Miller considers three different definitions of torture (2017: §1). He challenges the first two definitions but not the third. All of these definitions include the condition that a person is only being tortured if the pain inflicted upon them is pain that they have not consented to. If a person consents, then it is not torture. This non-consent condition is never questioned. But the condition is very much open to doubt. One of the texts which Miller refers to itself disputes the condition (Twining 1978: 158-159), but in ways that Miller suggests he would disregard. I present an example below that is different to the examples offered there, but is related to a theory about how legal punishments can be justified (Nino 1983: 298).

Let us imagine that someone migrates to a country and is asked to consent to certain rules being implemented while they are there. One of the rules they consent to is that if they are in possession of information which is needed to protect the security of the country and are asked by the government to communicate this information, they will either voluntarily communicate it or else they will be subject to extremely painful procedures which aim to force communication. Let us further imagine that at some point in time, this person is asked to give such information. They have the information, but they refuse to give it. They are tortured in order to extract the information. But did they not consent to this torture, given what they agreed to when entering the country?

It may be proposed that they consented earlier, but they do not consent at the time when they are tortured. But can one withdraw one's earlier consent in this way?

Even if we grant that the earlier consent can later be withdrawn, what about the person who says, "I know what I agreed to, and I accept that I will be tortured now"? When we consider this person, it does not seem that torture must be without consent. They have not withdrawn their earlier consent. It makes sense to say that the person was still tortured, tortured with their consent. Furthermore, we do not want to discount this case when discussing the morality of torture or whether torture should ever be legal. (For example, if we think that torture should not be used to obtain information, because it is not reliable for this purpose, the conclusion applies to this case as well.) Therefore it is mistaken to include a non-consent condition in the definition of torture.

I do not think anyone will disagree with this argument, but even if someone does, the non-consent condition is simply too questionable to form part of a definition of torture in legal and moral contexts. The United Nations definition does not include this condition, fortunately. Objections have been made to that definition (Davis 2005: 163). Even if these objections are correct, unless the dubious nature of the non-consent condition is exposed, there is a danger that it will end up as part of the replacement.

I shall end this paper with a note. Saying that a person has consented does not mean that it is morally acceptable to torture them. I think you can consent to others doing things to you which are not morally acceptable things to do, even after consent.

## References

Davis, M. 2005. The Moral Justifiability of Torture and other Cruel, Inhuman, or Degrading Treatment. *International Journal of Applied Philosophy* 19: 161-178.

Miller, S. 2017. Torture. In E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2017 edition). Accessed on 9<sup>th</sup> February 2018 from:  
<https://plato.stanford.edu/archives/sum2017/entries/torture/>

Nino, C.S. 1983. A Consensual Theory of Punishment. *Philosophy & Public Affairs* 12: 289-306.

Twining, W. and Paskins, B. 1978. Torture and Philosophy. *Proceedings of the Aristotelian Society, Supplementary Volume* 52: 143-194.

Terence Rajivan Edward  
University of Manchester

© Terence Rajivan Edward 2019

Email: [T.R.Edward@manchester.ac.uk](mailto:T.R.Edward@manchester.ac.uk)