

Torture

How denying Moral Standing violates Human Dignity.

Andreas Maier

Abstract In this chapter I try to elucidate the concept of human dignity by taking a closer look at the features of a paradigmatic torture situation. After identifying the salient aspects of torture, I discuss various accounts for the moral wrongness of such acts and argue that what makes torture a violation of human dignity is the perverted moral relationship between torturer and victim. This idea is subsequently being substantiated and defended against important objections. In the final part of the chapter I give a (qualified) defense of the methodology employed in the previous sections.

Introduction

In a survey conducted by the BBC,¹ respondents in 25 countries were asked which of the following positions came closer to their own views about torture: Should clear rules against torture be maintained because “any use of torture is immoral and will weaken international human rights standards against torture” or do terrorists “pose such an extreme threat that governments should now be allowed to use some degree of torture if it may gain information that saves innocent lives?”

The results were somewhat disillusioning: Almost one-third of the respondents declared to support torture in cases where this may be an inevitable means to avert terrorist threats and, thereby, set themselves in opposition to the prevailing view in international law which prohibits torture under any circumstances whatsoever.² As disturbing as these results may seem, they are in perfect accordance with the better

¹ For the complete results see BBC/Globescan/PIPA (2006); in a more recent survey conducted by WorldPublicOpinion, 35% of the respondents opted for exceptions to the prohibition to torture in cases where innocent lives are at risk, and 9% held that the government should be able to use torture in general. (Kull et al. 2008).

² See, for example, the UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* Art.2(2): “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

part of philosophical theorizing about torture. There seems to be a wide consensus that although torture is a horrible thing there are realistic (or even real-world) scenarios which can be used to establish exceptions to the moral prohibition to torture.³ In the following discussion, I will try to show that despite the possibility and, admittedly, intuitive force of such scenarios, torture can never be morally justified – whatever the circumstances may be.

One very common way of substantiating such an absolutist position is the idea that torture constitutes a *violation of the victim's dignity*.⁴ But as sensible as such a contention might look at first sight, it is, at second glance, far from clear what calling torture a violation of human dignity exactly means. This is due to the fact that human dignity is, despite its intuitive appeal, a highly contested concept and, moreover, subject to serious philosophical criticism (Frankena 1986; Macklin 2003; Pinker 2008).

In what follows, I will sidestep this debate for the most part and completely ignore the profound critique of the concept of human dignity. This will result in a somewhat unorthodox approach (which might look like an attempt to discuss a highly controversial issue with an unclear concept): Instead of first arguing for a conception of dignity and then employing it to criticize the practice of torture, I will simply take for granted the assumption that torture is a violation of human dignity and subsequently take a closer look at the reasons why torture is a serious moral wrong. The underlying idea is that a grasp of the very reasons for the wrongness of torture will improve our understanding of the concept of human dignity.⁵

I will proceed as follows: I will start with a look at the practice of torture and identify the central elements of a paradigmatic torture situation (1). To maintain an absolutist position towards torture, it has to be shown that the reasons for the moral wrongness of this practice hold good under all conceivable conditions. My corresponding argument comes in three steps: *Firstly*, I will discuss other approaches and try to show that they fall short of identifying the specific moral wrong inflicted on the victims of torture. *Secondly*, I argue that the reasons for the moral wrongness of torture can be found in the asymmetric structure of the relationship between torturer and victim; this relational account will subsequently be substantiated and defended (3). *Finally*, I will show that the reasons identified by the relational account do not admit of exceptions and therefore support an absolutist position towards torture (4). In the last section, I will briefly discuss the limits of my methodological approach adopted in the previous parts and thereby qualify the scope of my results (5).

³ Amongst many others: Dershowitz (2002), Miller (2005), Žižek (2002: 103–4); for a thorough and critical discussion of such scenarios see Brecher (2007).

⁴ Cf., for example, the aforementioned *Convention against Torture* which bases the protection from torture in the “inherent dignity of the human person.”

⁵ This is in accordance with Ernst Bloch's insight that the meaning of human dignity becomes most visible when we look at *violations* of human dignity (Bloch 1961).

(1) What is Torture?

Finding a definition of torture is a notoriously difficult task. This is due to various reasons. On the one hand, there is a wide variety of practices coming under the heading of 'torture': Severe beatings, putting persons into stress positions, extended sleep or food deprivation, the use of special devices like the rack or thumbscrews, performing mock executions, or prolonged exposition to noise, and many more count as torture. It is not clear at first sight what might be the common element(s) in these acts. On the other hand, it is hard to draw a clear line between torture and related practices like degrading treatment, harsh punishment or coercion. The need for a clear distinction of these practices becomes evident, for instance, in the dispute about the Bush administration's attempt (manifested in the infamous *Bybee-Memo*) to explore the limits on how far it could go in aggressively interrogating suspected terrorists without having to call such treatment 'torture'.⁶

These problems, which have received due attention in recent discussions on torture,⁷ can safely be ignored in what follows. Since I am not concerned so much with the practice of torture *per se* but with torture *as a violation of dignity*, I will simply sidestep the problem of marginal, ambiguous or unclear cases and instead focus on the features of a *paradigmatic* torture situation. This should be sufficient to identify the main elements of a typical act of torture we would most likely describe as a violation of human dignity.

I take it that the following report of the torturing of Bangladeshi journalist Tasneem Khalil⁸ is paradigmatic in this regard and therefore a suitable starting point for my investigation:

At around 1 a.m. on the morning of May 11, 2007, 26-year old critical Bangladeshi journalist Tasneem Khalil is blindfolded, hand-cuffed and taken away from his apartment by a joint military and police task-force; on his enquiry, Khalil is given neither reasons nor a legal warrant for his arrest. After the arrival at what looks like a military camp, a doctor checks Khalil's state-of-health. Then he is taken to a room, still blindfolded and hand-cuffed.

A voice suddenly yelled, "[expletive deleted, A.M.]! Where is salam?" I then said, "Salam-alekum," which in Arabic means "peace be upon you." The man screamed, "Louder!" I cried out "salam" once again [...]. Then he told me to sit down and not to raise my hands off the table at any point. [...] Then another voice asked me to give examples of my recent reports. I could not remember anything at that moment. And then the second voice said, "[expletive deleted, A.M.], you have only reported on negative things. And you have [expletive deleted, A.M.] Bangladesh by your bloody anti-state reports [...]."

⁶ For a thorough discussion see the contributions in Greenberg (2006); another prominent example is the *European Court of Human Rights*'s decision in *Ireland vs Great Britain* that the treatment of a prisoner who was interrogated while standing blindfolded in a stress position and, additionally, deprived of food, water and sleep was a case of 'maltreatment', but not 'torture'.

⁷ Cf., amongst others, Sussman (2005:1–3) and Miller (2008).

⁸ As reported in Human Rights Watch (2008); italics represent my synopsis.

Someone started punching the side and back of my head. I started crying out in pain. Then someone cried out an order, "Bring in salt and nails!" [...] They asked me what things I had reported for The Daily Star. I said I had reported on human rights issues [...]. Suddenly people on both sides of me started brutally beating me with batons on the lower back, just below and next to my kidneys. The pain was excruciating. In that instant I assessed my situation. I could be a tough guy and get more of this, or I could cooperate. I quickly decided that it was time to cooperate with these people and do my best to dodge more beatings. I said I was sorry for whatever I had done. [...] I started begging for mercy. The beating continued for some time. Then another person said, "We will think about giving you a chance, but you have to do as we say." He said I had to write a confession [...], saying what they wanted me to say. Then I had to beg for his mercy. [...] They instructed some junior level staff to give me a pen and paper and take my statement after they had left. They also instructed them not to allow me to go to the toilet or eat anything.

Although he is willing to do everything his tormentors demand, Khalil is interrogated, shouted at, and severely beaten for a total of 22 hours, without knowing if he will get away with his life.

Perhaps the most salient feature in the report above is the severe physical suffering Khalil is subjected to: He is repeatedly beaten with batons and bare fists, on his kidneys, on his back, and on his head. This infliction of pain is obviously goal-oriented: On the one hand, it is used as a form of punishment for the critical articles Khalil has written in the past ("you have only reported on negative things"), and, on the other, it is a means to enforce a 'confession' ("We will think about giving you a chance, but you have to do as we say"). On a more speculative basis, we can assume that another purpose is to terrorize Khalil into renouncing his critical attitude towards the state.

Furthermore, there are various aspects in Khalil's torture that contribute to his suffering without being targeted at his body. The fear for his life and the anticipation of what his torturers might do next add another dimension of suffering over and above mere physical pain; this kind of suffering, which is due to the sequential character of acts of torture, is usually characterized as *mental suffering*.⁹

The sequential character of torture brings in an important structural element of torture, namely, the victim's inability to influence the course of events.¹⁰ This is significant in two respects: First of all, Khalil cannot react to what happens *presently* and guard himself against the beatings; his torturers can do whatever they want without having to fear any kind of resistance. And, secondly, there is no chance for the victim to have an impact on *future* events: The fact that Khalil is

⁹ The significance of mental suffering in torture situations is already noticed by Beccaria in his "Essay on Crimes and Punishment," (1995: ch. XVI). Expanding the concept of torture toward psychological effects is, also beyond Khalil's case, very plausible since many modern torture methods, like mock executions or extended solitary confinement, put emphasis on the infliction of mental, not physical, harm. For a denial of the necessity of mental suffering as a *sui generis* element of torture see Davis (2005).

¹⁰ Since at the present stage of the argument I am solely concerned with a description of torture, this is not meant in an evaluative sense.

compliant and willing to fulfill the demands of his tormentors has no bearing on the course of events in any way – the torture nevertheless continues for another twenty-two hours. To sum up, Khalil’s fate is completely in the grip of other persons: While he is not even able to exercise basic defensive reactions, his torturers can determine every detail of the situation unhindered. Expressive of this disparity of power are the forced demonstrations of respect (“Where is salam?”) and the torturers’ denial to disclose the legal basis of their actions, on the one hand, and the insults Khalil has to face, on the other.

The fact that his powerlessness is constitutive for the kind of situation Khalil finds himself in points to an important difference between torture and other situations where a person is subjected to violence: While in the latter cases violence against the victim is used as a means to *create* a setting where the aggressor is in full control of the situation, in cases of torture the victim *already finds* himself in a situation where another person has the absolute power to determine what happens without the slightest possibility to evade or resist the situation.

In the last paragraphs, various salient elements present in the depiction of Khalil’s torture have been identified. The first, and most obvious, aspect concerns *the act-level*: Torture situations consist of the sequential infliction of physical and mental suffering on the victims. Additionally, since pain is inflicted for a purpose which is determined by the torturers, there are conditions referring to the *attitude* of the torturer. In Khalil’s case we identified various goals which might have been pursued, namely, to get a confession or to punish him; this observation points to a more general point, since whatever specific goal the torturer might pursue, it is a goal he himself determined against the will of the victim. So, on a very general level we can say that the main intention of the torturer is to enforce his will on the victim. And, finally, there are *contextual* conditions specifying the setting in which torture acts take place. These conditions fix the unequal distribution of power and thereby ensure that the torturers can act unrestrictedly.

With act-level, attitudinal, and contextual elements put together, we get the following definition of torture:

Torture is the sequential infliction of physical and/or mental suffering on a person P1 by another person P2 (or other persons P2-Pn) [*act-level conditions*] with the intention to enforce P2’s (or P2-Pn’s) will(s) on P1 [*attitudinal conditions*] performed in a social setting in which P2 (or P2-Pn) can fully determine everything that happens while P1 is completely helpless and fully exposed to P2 (or P2-Pn) [*contextual conditions*]

In the next section, I will consider what is specifically morally wrong with acts fitting this description.

(2) What Makes Torture Wrong?

Cases of torture, like Tasneem Khalil's, are obviously morally wrong in almost every respect. In what follows, the focus will be on reasons why torture *as a practice* is morally wrong, not reasons for the wrongness of elements of particular acts of torture. These reasons do not necessarily have to coincide: While it might be correct to maintain that Khalil's torture was morally wrong because he was insulted and verbally humiliated, this might not be the reason for the wrongness of another torture case where symbolic humiliation does not play a central role. What are needed are reasons why cases of torture *qua* cases of torture are morally wrong, and the analysis of Khalil's case in the last section made evident what elements of a typical torture situation might provide such reasons.

In the following, I will discuss three accounts for the moral wrongness of torture: first, William Twining's idea that torture is morally wrong since the rights of the victim are violated; second, David Sussman's influential account according to which torture is morally wrong since the will of the victim is turned against the victim herself; and, finally, Henry Shue's idea that torture is wrong since the victim is completely exposed to the torturer. As I will argue, although each account identifies important reasons why torture is morally wrong, they all fail to grasp the *specific* moral wrong torture constitutes.

Twining's Account

William Twining's account for the moral wrongness of torture focuses on the quality of the *acts* carried out. The central idea is that the conditions for torture are independent of the mental attitudes of the participants and that the reasons for the moral wrongness of torture can only be found on the act-level, not on the attitudinal or contextual levels. Accordingly, Twining holds that what makes torture wrong is *solely* the fact that practices comprising torture restrain certain capabilities of the victim.

The starting point of Twining's argument is the thought that we do not have to refer to the mental attitudes of the participants in a torture situation to label such a situation a form of dehumanizing treatment.¹¹ Twining suggests that thinking otherwise would amount to a confusion of conceptual questions and questions of blameworthiness: Although knowledge about the intention of the torturer might be necessary to determine if he is morally or legally *responsible* for his act, the pursuit of a specific goal is not part of the concept and, a fortiori, of the reasons for the wrongness of torture.¹² Twining supports this position with an analogy:

¹¹ Although Twining at first grants that the intention to inflict pain is a necessary condition for torture, he (somewhat paradoxically) later argues for the insignificance of this feature (Twining 1978: 154).

¹² (Twining 1978:156): "It may well be the case that in legal and other contexts the term torture will be confined to situations where direct intention to inflict pain is attributable to the front-line

When we look at other forms of dehumanizing treatment, say putting a person in a “bad jail,” it would seem inadequate to make the question whether he has suffered inhuman treatment dependent on the intention of the judge who sentenced him, since “if the results were due to [...] lack of resources (for example, inadequate heating in a particularly harsh winter) has he not suffered inhuman treatment?” Accordingly, “words like inhuman and degrading, and, more important, the kinds of concern that lie behind them, *refer directly to the situation*, and the rights, of the victim [...]” (Twining 1978: 155).¹³

Twining’s main point seems to be that the moral wrongness of torture as a form of inhuman treatment is in no way dependent on the intention of another person: That the victim suffers morally wrong treatment does not presuppose that there is someone deliberately *wronging* the victim but is due to features of the situation. This makes clear that the concept of right employed in the quotation above is *non-relational*: If the violation of the victim’s rights is independent of the acts of other persons, these rights must be grounded in relation-independent properties, like, for example, basic human needs or capabilities.¹⁴

Accepting this account will have two important consequences: Firstly, the decoupling of the concept of torture from references to the intentions of the participants allows for acts of ‘accidental torture’ where someone is being tortured without anybody intending to do so; secondly, and relatedly, in Twining’s eyes it does not make a difference if the inhuman and degrading conditions a person finds herself in were intentionally brought about by other agents or are, for instance, simply the effect of some natural disaster. Thus, Twining denies the significance of the attitudinal conditions elaborated in the discussion of Khalil’s case above.

But this misses an important point about the nature of torture, namely that torture is something *persons* do to persons: There seems to be an essential difference between someone’s losing a fingernail because his hand was hit by a brick and someone’s fingernails being torn out to force him to disclose information.¹⁵

To transform this intuition into an argument, it has to be shown in a first step that an agent’s having an intention can, *contra* Twining, be a necessary conceptual condition and not significant with respect to blameworthiness only. This can easily be seen when we think about, for example, the practice of lying: Since lying is defined as an act of intentionally deceiving another person about what the liar believes to be true, there simply cannot be an act of lying without the agent

torturer; but an adequate theory of torture and related phenomena must confront the conceptual, moral, legal and other practical problems of attributing responsibility to persons higher up the hierarchy.”

¹³ My emphasis.

¹⁴ For a discussion of non-relational approaches to human rights cf. Powers and Faden (2008: 47–9).

¹⁵ Though I won’t argue this point, relation-dependence seems to be an essential feature of the moral wrongness of other forms of inhuman treatment as well.

pursuing the goal to deceive another person; for this reason, Twining's point cannot be a general truth. The case of lying is relevant in another respect as well: While it is true that the specific content of the liar's intention is not germane to the definition of the concept of lying, there is one intention all liars share, namely the intention to deceive. The same holds true for torture: While the torturer's *specific* intention is certainly not a necessary condition for his act's being a case of torture,¹⁶ every act of torture is characterized by the torturer's intention to break the victim's will. In other words, whatever the purpose of breaking the victim's will might be, the prime purpose of torture is the breaking of the victim's will.¹⁷ And this seems to be an element that accounts for the special moral quality of torture over and above the mere restriction of capabilities or non-fulfillment of basic human needs grounded in certain properties.

These shortcomings in Twining's analysis show that for an adequate account of the moral wrongness of torture reference to the violation of non-relational rights – which is without any doubt an important element – is not sufficient. While it is certainly true that in acts of torture victims cannot exercise their wills, the significance of the fact that there is a second person *using* the will of the victim for her own purposes cannot be underestimated; this insight is the starting point of David Sussman's approach.

Sussman's Account

According to Sussman, what makes torture essentially morally wrong is the fact that the victim's autonomy is used against itself and the tortured person, thereby, forced to play an *active role* in his own suffering. This entails that the victim is, despite his complete submission to the will of the torturer, made an accomplice in the torturer's efforts:

[...] Torture forces its victim into the position of colluding against himself through his own affects and emotions, so that he experiences himself as simultaneously powerless and yet actively complicit in his own violation. So construed, torture turns out to be not just an extreme form of cruelty, but the pre-eminent instance of a kind of forced self-betrayal [...].” (Sussman 2005: 4)

Sussman's argument has obvious merits: If the tortured person is made an instrument of her own violation and insofar forced to become an accomplice of the torturer, it is utterly clear what makes torture morally wrong: It is not only the fact that the torturer does not respect the victim's autonomy but the victim's autonomy

¹⁶ This is what Twining's bureaucracy-example shows (Twining 1978: 156).

¹⁷ Specific purposes, by means of which various types of torture can be distinguished, include the obtaining of intelligence (interrogation torture); the punishment or the intimidation of the victim (punishment/terroristic torture); or, simply, the sadistic gratification of the torturer (an element present, at least as a side-effect, in most torture cases).

is being turned against herself and it is, at least in part, her own doing what constitutes her suffering.¹⁸

With this criterion it is possible to explain what makes torture especially morally objectionable: Torture does not just amount to an infringement of the victim's autonomy but to an utilization of the victim's autonomy against herself.¹⁹ The victim of torture is forced to use her own rational agency for means pre-determined by the torturer and thus experiences the act as "something I do to myself, as a kind of self-betrayal worked through my body and feelings" (Sussman 2005: 21).

But as plausible as this may seem, this account has various disadvantages. To begin with, it seems to be tailored for one special kind of torture, namely *interrogation torture*. The aim of interrogation torture is to extract intelligence from the victim that she is not willing to give voluntarily and, therefore, to make the victim do something she would not do without being tortured. The success of this form of torture is dependent on finding a balance between impairing the victim's autonomy and leaving her enough autonomy to be able to do what her torturer wants (for example, giving information or a confession); if the torturer administers too much suffering, the victim cannot give what the torturer wants; if he administers too little torture, the victim may not be willing to give it. In this sense, Sussman's claim that the victim's autonomy is used against itself is correct in such cases.

But as a general analysis of the wrongness of torture Sussman's account is insufficient for the following reasons: On the one hand, it is *too wide*. This becomes clear if we look at non-torturing ways of extracting intelligence from a person without her cooperation; in these cases where interrogation experts gain information with non-coercive methods, the interviewee's autonomy is turned against itself in very much the same way, though without violent means. This shows that Sussman's account cannot capture the *distinct* moral wrong that torture constitutes.

On the other hand, and this is the more serious problem, Sussman's account is *too narrow*, since it does not capture other forms of torture where the torturer does not have to be considerate of allowing the victim a residue of autonomy. For example, Tasneem Khalil's case seems in some respects to be what is usually called 'terroristic torture', aiming at the intimidation of the victim and others; in such cases the torturer does not have to be considerate of the victim's autonomy, since in this kind of torture no direct response is aimed at. The same holds true for cases solely aimed at the sadistic gratification of the torturer. If this is correct, Sussman's account, though plausible for interrogation torture, does not apply to torture *per se*.

¹⁸ Sussman (2005: 30): "[Torture] is not just an assault on the victim's autonomy, but also a perversion of it [...]."

¹⁹ This is an element emphasized by Elaine Scarry whose account Sussman uses as an important empirical source (Scarry 1985).

This is due to the fact that Sussman treats the act-level and contextual conditions as two sides of the same coin²⁰ and thereby misses the special normative significance of the asymmetric relationship between torturer and victim: It is the very fact that torturer and victim are placed in a social context where the former is in a position of absolute power and the latter is without any power which allows the torturer to employ whatever means he thinks necessary to reach whatever end he pursues with the act of torture.

Put like this, the perversion of the victim's autonomy is not the specific wrong-making feature of torture but only one possible expression of the asymmetric relationship between torturer and victim. Accordingly, an adequate and encompassing account of the wrongness of torture has to take serious the structure of the relationship between the participants. Such an approach is advanced by Henry Shue.

Shue's Account

In trying to find specific reasons for the moral wrongness of torture, Henry Shue starts with the *structure* of a typical torture situation. Accordingly, the focus is not so much on what the torturer does to the victim but what kind of situation allows the torturer to do what he does. Shue holds that what makes torture morally wrong is the fact that the victim is put in a situation where he is completely exposed to the torturer; accordingly, “[torture] is a cruel assault upon the defenseless” (Shue 1978: 130).

By concentrating on the victim's helplessness, Shue performs a change of perspective which allows him to take the contextual conditions of torture into account. According to Shue, an understanding of the specific wrong torture constitutes can only be gained by understanding the helplessness of the victim. But what exactly does ‘helplessness’ mean in this context? This becomes clear when we focus on Shue's argument for cases meeting the definition of torture without being morally wrong. In such cases, Shue holds, “[t]he victim of torture must have available an act of compliance which, if performed, will end the torture” (Shue 1978: 131). Since the availability of an act of compliance shows, according to Shue, that the victim can freely choose a path that will lead to an end of the torture act, we cannot say any more that the victim is helplessly exposed to the torturer; hence, in such cases torture would not be morally wrong. The cases Shue has in mind are cases of interrogation torture where it is up to the victim to disclose the wanted information.²¹

²⁰ Sussman (2005: 30): “[Torture] is not just an assault on or violation of the victim's autonomy, but also a perversion of it, a kind of systematic mockery of the basic moral relations that an individual bears both to others and to herself.”

²¹ It is important to note that, if Shue's argument is correct, it would not be necessary that we already *know* that the victim is in possession of the information; it would (in analogy to cases of self-defense) be enough if the torturer would be *justified in believing* that this is the case.

This line of argument elucidates the meaning of ‘helplessness’ in the context of Shue’s argument: Only in cases where victims do not have means to interfere in the sequence of events are they ‘helpless’ in Shue’s sense and, hence, such acts of torture morally wrong. This can, without residue, be expressed in terms of a violation of the victim’s autonomy: What makes morally wrong cases of torture morally wrong is the fact that the victim is deprived of the ability to actively interfere in the course of events, for example, by disclosing the wanted information and thereby bringing the torture to an end. So, what at first glance looked like an account of the moral wrongness of torture based on the contextual conditions of this practice is just a variant of accounts based on act/attitudinal-level conditions.

But this comes as no surprise, since, in his search for wrong-making properties, Shue is solely focusing on the position of the victim in a torture situation and, therefore, misses what is peculiar about the whole relationship between torturer and victim. Once we give up this limited perspective, Shue’s argument for exceptions loses whatever initial plausibility it might have had, since, when we take into view the whole relationship between torturer and victim, it becomes clear that the victim’s ability to end the torture does not just ‘exist’. This ability must be *granted* by another person, namely the torturer. This means that the kind of autonomy Shue talks about is just sham autonomy, since, even if the victim is willing to do what the torturer wants, it is still the *torturer* who is in the position to determine what happens. This is exactly what happened in Khalil’s case where, despite his willingness to do what his torturers wanted, the decision to end the torture nonetheless remained in their power (and Khalil was tortured for almost another day). Once it is seen that the possibility of ending the torture is not ‘floating free’ but inextricably tied to the torturer, it loses its force as a reason for justifying cases of torture but turns out to be a reason why torture is morally wrong.

If these considerations are taken seriously they point in the direction of an approach which takes into account not only the position of the victim but the relationship between torturer and victim as a whole.

(3) The Moral Wrongness of Torture – a Relational Account

In the context of my discussion of other approaches in the previous section, I have suggested that the specific reason for the moral wrongness of torture lies in the asymmetric structure of the relationship between torturer and victim. This line of argument presupposes that we can make sense of the idea of a basic moral relationship which can be employed as a normative standard, against which we can judge practices like torture. To give this idea more substance we have to specify what it means exactly to stand in a moral relationship and what moral demands are grounded in our standing in moral relations. Thus, *firstly*, more has to

be said about what constitutes the basic moral relationship and how it is distinguished from other forms of relationships; and, *secondly*, it has to be shown which moral norms we can justify with reference to our standing in basic moral relationships with each other and how these are violated through practices like torture.

It is an undeniable fact that some moral norms are generated through the relationships we stand in:²² Friendship-relations, for example, are mainly constituted by mutual (normative) expectations of the participating persons, such as the expectation that our friends are willing to give help and support when we need them, and so on. These expectations, which are directed only at those persons we stand in the respective relation to, provide a normative standard relative to which an agent's act can be evaluated and, where appropriate, judged as constituting a violation of the friendship-norms. The important (and trivial) point is that such an evaluation presupposes an existing friendship-relation: Only when an agent A is friends with another person B can she aptly be criticized for violating the norms of friendship with respect to B. So, in the case of special relationships like friendships, it is an obvious fact that the participants have certain mutual obligations solely in virtue of standing in the respective relation to each other. But why should we think that there is, in analogy to the case of friendship, a *general* reciprocal relationship persons stand in *qua* being persons? What surplus value does a theory of morality have when it incorporates the idea of (some) norms grounded in a moral relationship between all persons?

As Joel Feinberg has pointed out,²³ our moral practice does not solely consist of impersonal norms that moral agents have to follow, but there is an irreducible intersubjective dimension with respect to the duties we have towards other persons: There is an important difference between, on the one hand, thinking that I am not allowed to hurt you because this would violate a demand of morality and, on the other, thinking that *you* as a fellow moral being can *demand* from me that I refrain from hurting you.²⁴ This means that if we want to do justice to the intuition that within the moral sphere we are confronted with other human beings and not only with abstract rules we have to follow, we have to provide conceptual room for the moral consideration we owe our fellow moral beings.

As the example above made clear, the moral consideration we owe other moral beings should not be confused with mere compliance with the moral norms in play but amounts to giving these others a special standing in our deliberations about what we should do: Treating you as a fellow moral being means to view me as

²² The following paragraphs have benefitted enormously from Scanlon's account of moral relationships (Scanlon 2008: ch. 4); the account I propose in this section is modeled very closely to recognition based theories of morality (Honneth 1992).

²³ Cf. the 'Nowheresville'-scenario in Feinberg (1970).

²⁴ This difference corresponds to Stephen Darwall's distinction between third- and second-personal reasons (Darwall 2006: ch. 3).

owing you a justification²⁵ for what I do concerning you; or, vice versa, to give you the moral consideration I owe you means to view you as being entitled to demand a justification from me for my acts affecting you.²⁶ This moral standing will in the following be called *human dignity*.²⁷

A closer look at the (*de facto*, not *de jure*) distribution of power in a torture situation allows us to see more clearly why the relationship between torturer and victim is the prime reason for the moral wrongness of torture: What the torturer denies the victim is not merely her exercise of autonomy or respect for her right not to be violated but her very *standing as a moral being* with the right to be given a justification for what is done to her; by putting himself into a position with the absolute power to determine the victim's fate without having to justify his acts to the victim, the torturer places his victim outside of the game of giving and asking for (moral) reasons.²⁸ An outward sign for this kind of relationship is the frequent use of derogative language and other ways of symbolically humiliating the victim, since such behavior is expressive of the inferior position the victim is assigned in a torture situation. This kind of asymmetric relationship, where one person denies another person her very standing as a moral being, is the specific reason why torture is a violation of the victim's dignity.

(4) Why is Torture *always* wrong?

In the last section I argued that the moral wrongness of torture consists in the deprivation of the victim's standing as a moral being and that this is the very feature which makes torture a practice which violates the dignity of the victim. The opposition between my intersubjective account and other accounts tying dignity to the properties of human beings was already implicit in my argument against Twining.²⁹ According to such property-based accounts, a violation of dignity consists in the violation of claims we have as beings with certain characteristics;³⁰ the question *who* or *what* violates these claims is completely irrelevant for the moral assessment of such acts. In my account, however, the

²⁵ 'Justification' is meant in a weak sense, i.e. as giving you an account of the reasons I acted for, *not* as being able to show that what I did was not blameworthy.

²⁶ This is similar to Feinberg's idea that dignity is the "capacity to claim rights" (Feinberg 1970). Recent renewals and elaborations of this idea can be found in Stephen Darwall's theory of a 'second-personal dignity' (Darwall 2006: ch. 6) and Rainer Forst's conception of dignity as the right to justification (Forst 2007).

²⁷ Despite the rich tradition of intersubjective accounts of the concept of human dignity (see fn. 26 above) this move might seem quite arbitrary. For a (qualified) defense see section 5.

²⁸ This puts torture into a category with other morally wrong practices like rape or slavery where exactly the same asymmetry is a dominant feature.

²⁹ See section 2 above.

³⁰ For example, the capacity for self-respect (Margalit 1996) or rational agency (Gewirth 1992).

distinctiveness of practices violating human dignity stems from the fact that there is something profoundly morally wrong about the way persons *relate* to each other when engaging in such practices; as terrible as it might be to be harmed in an accident or in consequence of a natural disaster, what makes practices like torture especially horrifying is the fact that it is something *persons* do to persons.

So far, it is still an open question if it is always and without exception morally wrong to put another person in a situation where her moral standing is completely denied. Can't we easily imagine scenarios where we have a perfect justification for torture and, hence, can give the victim valid moral reasons for what we do to him? In such cases, torturing a person and respecting her standing as a moral being would be perfectly compatible. A much discussed example in this fashion is the so-called 'Dirty Harry' scenario where a kidnapper has hidden his victim in a place where she will suffocate within hours if she cannot be rescued. A police officer arrests the criminal, but since he refuses to cooperate the only means to save the victim is to torture the kidnapper; so the officer inflicts pain on the criminal until he is willing to give up the wanted information.³¹

In this case it seems undeniable that there are good reasons to torture the kidnapper: In analogy to defense of others, the police officer could claim that torture was the only means to avoid the killing of an innocent person and thus give a perfect justification for what he does.³²

But this objection misses a fundamental point about the role of the justifying reasons: Even if *there is* a justification for torturing, the torturer cannot justify what he does *to* the torture victim himself since the social context in which torture takes place establishes an asymmetric relationship incompatible with viewing the victim as an addressee for moral reasons. When we take seriously the idea that reasons are relational and that in moral discourse the persons affected by our actions are the prime addressees when we have to justify our conduct, then it is incoherent to maintain that we can simultaneously deprive a person of her standing as a moral being *and* engage in a game of giving and asking for (moral) reasons with her.³³ This explains why violations of dignity are, on the one hand, a distinct type of moral wrong and, on the other, especially abominable: Practices like torture do not merely constitute a breach of rules *within* the moral practice but undermine the presuppositions of the moral practice itself and, hence, can never be morally justified.³⁴

³¹ Seumas Miller mentions a real case with these features (Miller 2008).

³² For a defense of torture along these lines cf. Steinhoff (2006).

³³ The foundation of this account is the idea that the basic elements of morality are concrete others, not ideal and abstract moral agents. Benhabib presents a strong argument against the validity of moral theories not taking the moral identity of concrete persons into view (Benhabib (1987: 88–90).

³⁴ Jeremy Waldron has a similar argument with respect to the legal wrongness of torture. He contends that with giving up the legal prohibition of torture we would not merely lose a single legal norm but change the shape of the whole legal system (Waldron 2005: 1728–34).

But, even if this picture is accepted, there is another pressing objection: If the moral relationship between persons is so central, what about the fact that the evil kidnapper in the example above has *himself* cut the ties between him and the moral community? Are there any moral obligations toward a person who refuses to enter into a moral relationship with others? Supposing so might look counter-intuitive on first glance, since to uphold the absolute prohibition to torture, it seems, we have to force the terrorist to benefit from something he explicitly denies, namely being part of a moral relationship.

But this objection overlooks two important points: Firstly, the moral community is not an association everybody can opt out of at will but a robust social fact which cannot just be denied; otherwise, everybody could just opt out when moral pressure becomes too high. Secondly, we cannot hold a person morally accountable for her actions without entering into a moral relationship with her in which she is accorded the standing of an equal moral being (Darwall 2006: 67–70). Viewing another person as morally responsible and blameworthy already presupposes that we view her as a part of the moral language game; hence, whatever reasons there might be to torture a person, these reasons cannot be *moral* reasons.

This result seems to amount to a cold-hearted and rigorous brand of absolutism which completely blanks out the perspective of the kidnapped person. Furthermore, when moral relationships matter in the way suggested above, it seems incoherent to worry only about our relationship with the kidnapper and neglect the fact that we also stand in a moral relationship with the victim.³⁵ Once we take into account that we owe *her* a justification for what we do, too, we seem to be stuck in a genuine dilemmatic situation: We cannot justify the decision to torture to the kidnapper and we cannot justify the decision to refrain from torture to the victim.

I take it that this result does not present an objection to my account but captures a common intuition: Even if we grant that the best decision in the ‘Dirty Harry’ scenario is to try to save the victim and to torture the kidnapper, it would seem strange to hold that the police officer has done nothing wrong and has no reason to regret what he did at all; torturing the kidnapper is – even in the face of the horrible alternative – still morally abominable. In situations of this kind, there is just no way out *without* dirtying one’s hands.³⁶

³⁵ Thanks to Susanne Boshammer for this objection.

³⁶ The same holds true for so-called ‘catastrophic’ scenarios where a morally wrong action (e.g. killing an innocent person) has to be committed to “save the world” (Fried 1994: 76).

(5) The Scope of my Argument

Even if the argument presented in the last sections is sound, there might be some worries about the method employed to arrive at a relational view of dignity. First of all, the results gained by looking at a practice to elucidate a concept C are subject to variation depending on the examples taken as raw data: When certain aspects of C are elaborated by looking at particular instances of C, there is no guarantee that the results represent C as a whole. This can be shown by a simple example: When we want to clarify the concept ‘bird’ we can look at entities typically regarded as birds, for instance, blackbirds, thrushes, finches, and starlings. The conditions for the concept ‘bird’ that we will end up with will most probably include ‘can fly,’ ‘lays eggs,’ and so on. But this would only represent a (considerable) subset of birds, since there are of course birds which *cannot* fly (for example, penguins or ostriches). From these considerations, it becomes clear that the results to be expected from looking at torture as *one* practice commonly considered a violation of dignity may be limited in their significance since a look at other such practices might yield very different results – possibly not fully congruent with those presented here.

Secondly, calling a practice like torture a violation of human dignity obviously begs the question for those skeptical about this concept. Skeptics might argue that whatever is morally wrong about practices like rape, slavery, or torture, it is not the fact that they are violations of dignity – since there is no such thing as human dignity. An ornithologist thinking he can do without the concept of oscines will not be impressed when you point at a nightingale and say, “But there is one!” In a way, this objection is justified, since the skeptic is right in pointing out that there is no guarantee that the features identified as those making torture morally wrong really are features of violations of dignity. But, on the other hand, such a proof can never be provided anyway. The only way of establishing a connection between these features and the concept of dignity is to look at the usage of the concept with respect to certain practices; if there is a pattern in the application of the concept of human dignity, and we can give an analysis of this pattern, this is all the proof that can be given.

Both objections point to the same problem: Giving an analysis of one isolated practice, as was conducted here with respect to torture, is not sufficient to bring into view every aspect related with the notion of dignity and the conditions for its application. Understanding why we call torture a violation of dignity can only be a first step towards a clarification of the concept of human dignity.³⁷

³⁷ I would like to thank Holger Baumann, Susanne Boshammer, Paulus Kaufmann, and Elaine Webster for helpful comments on an earlier draft of this paper, and the editors of this volume for many valuable suggestions.

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