

*Torture: A Collection*, Sanford Levinson, ed. (New York: Oxford University Press, 2004), 319 pp., \$29.95 cloth.

Sanford Levinson has done us all a tremendous service in compiling this rich set of essays on a highly compelling and timely topic. The anthology comprises specifically commissioned essays on topics ranging from examinations of the history of torture to contemporary legal and philosophical perspectives, as well as reprints of two articles that have become minor classics in the quarter century since they were first published: Henry Shue's "Torture" and Michael Walzer's "Political Action: The Problem of Dirty Hands." Levinson provides a lucid introduction, which contains his thoughtful commentary on many of the diverse perspectives to be found in the volume.

One reason why torture is still practiced in many countries is that it is assumed to "work." But does it? Many authors in this anthology, such as legal historian John Langbein, argue that it's not a reliable method of obtaining accurate information. However, the empirical claim that torture is unreliable may be vulnerable to actual (even if rare) counterexamples where it *has* worked when less coercive methods have failed, and thus in some instances may have been instrumental in preventing terrorist plots from succeeding. That point was made by Alan Dershowitz in his book *Why Terrorism Works* (2002), whose response to his critics is included as an essay in this anthology, and by Levinson in his introduction (p. 34).

The point is obviously most relevant to "ticking bomb" scenarios, in which time is truly of the essence. Regretfully, such examples are no longer confined to hypothetical cases in practical ethics textbooks: U.S. military and intelligence personnel face them almost daily in Iraq when questioning detainees who may be involved in plots to

kill them. They now understand the situations that Israeli intelligence faced for decades in preventing terrorist attacks: see the judgment of the Supreme Court of Israel on the legality of interrogation methods (pp. 165–82), and commentary by Miriam Gur-Arye. Dershowitz also indicates that his own approach was driven by his reflections on Israeli dilemmas (pp. 258–64).

Many of the essays in this book help us to comprehend the personal experience of torture, beginning with an extraordinarily moving foreword by Ariel Dorfman. Long known for his public opposition to the practice of torture and his forced exile from Pinochet's Chile, Dorfman reminds us that we must never treat torture as if it were merely an abstract moral puzzle to be analyzed but as a deeply disturbing encounter between human beings, a practice that induces intense terror, unimaginable suffering, and shattering despair in its victims. The essays by Jean Bethke Elshtain and Jerome Skolnick are similarly vivid in portraying myriad techniques that human beings have invented to torment one another. Mark Osiel also provides an original analysis of the complex mental state of torturers, using testimonies from Argentina's "dirty war."

Essays by John Parry and Fionnuala Ni Aolain indicate that recent international treaties and court rulings have achieved a commendable level of sophistication in discriminating among practices as cruel, inhuman, degrading, torturous, and so on, while condemning and punishing all such practices to various degrees. Some writers, such as Elshtain, Oren Gross, and Richard Posner, seek also to uphold a clear *moral* distinction between torture and other coercive techniques, such as sleep deprivation.

Consider, however, the following moral definition of torture (my own, and unlike any provided in the anthology): Torture is (1) the intentional infliction of suffering on another person, (2) without that person's informed consent, and (3) not intended to promote that person's welfare. (I'll ignore nonhuman sentient beings here.) Condition 2 is essential to distinguish torture from, say, painful medical experiments that people might freely volunteer to undergo solely to help others. Condition 3 is needed to exclude painful medical treatments given to children or the mentally retarded for their own good but without their informed consent, since they lack that capacity.

I would contend that these three conditions are necessary and collectively sufficient to define torture. But note that this definition goes beyond the scope of what the *law* typically regards as torture, encompassing many other coercive interrogation techniques. (It does not encompass all methods, though, since the use of deception could be coercive even if it didn't produce suffering; in other words, deception might exhibit conditions 2 and 3 but not 1.) If my proposed definition of torture survives scrutiny, the firm distinction advocated by Elshtain, Gross, and Posner may be possible only in stipulative legal terms: there's no clear moral line separating electric shocks from sleep deprivation, for example, only degrees of suffering; they're both forms of torture.

However, identifying any particular action as torture may not be sufficient by itself to render it immoral, all things considered. None of the essays in this anthology addresses the following deontological questions: Is a moral right not to be tortured *absolute*? Or is it the sort of right that could be *forfeited*, say, by anyone conspiring to commit mass murder? Some of the essays,

such as those by Walzer and Gur-Arye, at least imply that a right not to be tortured might be *overridden* by the rights of innocent persons not to be murdered.

Yet, even if we believed that a right not to be tortured could credibly be forfeited or overridden *morally* in certain extreme cases, we might not necessarily agree on whether torture ought to be permitted *legally*. None of the authors in this volume explicitly adopts an act-utilitarian position, but many of them might be classified as rule-utilitarians, to the extent that they oppose the legalization of torture on consequentialist grounds even while acknowledging that the benefits of torture in particular cases (like ticking bombs) might outweigh its harms.

Perhaps the most important debate exhibited in this anthology is between, on the one side, Shue, Elshtain, Gross, Parry, and Posner, who argue that torture should remain illegal, but that state officials prosecuted for torture should nonetheless have the potential for acquittal or suspended sentences on grounds of "necessity" or national emergency; and on the other side, Dershowitz, who considers their arguments to be hypocritical and self-contradictory, and who has advocated the legalization of judicial "torture warrants" to regulate what he regards as a sadly inevitable state practice.

It is hard to imagine a collection of essays having greater import for our collective moral identity as citizens of countries that affirm universal human rights and forbid torture, but that also face covert enemies who are firmly committed to killing us in large numbers. In Levinson's concluding words, "We are staring into an abyss, and no one can escape the necessity of a response" (p. 39).

—DAVID L. PERRY  
U.S. Army War College