Book Reviews

F.M. Kamm


The literature on torture continues to grow. In an ideal world, an increase in quantity would promise an increase in quality – more people discussing torture intelligently would yield greater insights into the practice and its significance. Sadly, this does not seem to me to be the case in the current torture literature.

F.M. Kamm's recent book, _Ethics for Enemies: Terror, Torture, and War_, embodies much of what I think is problematic with the current philosophical discussion of torture. It also embodies, I fear, why so few outside of philosophy are paying attention to what professional ethicists are saying about this practice. I do not make this accusation lightly. Frances Kamm is a deservedly famous philosopher: she is as smart as they come, and I have profited a great deal from much of her work in the past. Unfortunately, I cannot say the same about her treatment of torture in this, her most recent book.

One of Kamm's primary concerns is to call into question some of the features of two influential accounts of torture. On the one hand, Kamm rejects Henry Shue's claim that standard just war theory cannot be used to support torture, as just war theory typically involves provisions for protecting those agents who do not pose an immediate threat. In interrogational torture, the person to be tortured has already been captured, and hence no longer poses a direct threat. To torture such a person, then, would be to engage in asymmetric violence against an unarmed enemy. Kamm asks: “Why should the use of the term ‘torture’ be limited to cases where the tortured person does not now present a threat to anyone?” (7). By considering a series of hypothetical cases, she argues that asymmetry is not a part of the concept of torture, and hence that Shue's analysis ‘artificially narrows’ the definition of torture. She argues that the “conceptual point is that permissible torture of those who are threats is still torture” (8).

Kamm uses a similar strategy when considering the work of David Sussman. Sussman, drawing on the work of Elaine Scarry and others, sees torture as a particular kind of wrong – one which involves turning an agent's body against
him. By undermining a person's bodily agency, torture essentially leads a person to no longer be able to control his or her own actions (the CIA's KUBARK manual, as well as other torture manuals, refers to this as 'regression' – reducing the tortured person to an 'infantile state'). Kamm retorts that one can imagine cases where torture leads a person to decide to act rather than undermining that person's agency. Thus, she argues, Sussman's account cannot be correct.

Building on her criticisms of Shue and Sussman, Kamm goes on to argue that torture may well be permissible in a variety of cases, regardless of whether or not the person tortured is a threat, and regardless of whether or not torture undermines agency. She suggests that the issue behind many objections to torture is a concern about 'ex post harm' rather than about torture itself, and that concentration on realistic cases of torture (in interrogational settings, where the aim is to undermine the agency of the tortured) can prevent us from seeing those cases in which torture is (or might be) permissible.

One of the most striking features of Kamm's treatment of torture is how little it engages with the (massive) extant literature, philosophical or otherwise. In fact, Kamm cites only four articles, and spends time discussing only two (by Shue and Sussman), both admittedly excellent and seminal in their own right, but hardly an adequate representation of where the debate currently stands. No mention is made of the many absolutist positions regarding torture's impermissibility. In fact, Kamm does not consider a single such position. She proceeds by considering standard-form hypothetical cases and her intuitions about them. Kamm does not consider a single legal definition of torture, or a single account of how torture actually works.

There is nothing objectionable in principle, I want to emphasize, about utilizing thought-experiments. But there is something objectionable about defending a view based exclusively on the consideration of such thought-experiments while ignoring entirely the many very good discussions of torture in the literature – discussions which have raised significant problems for every one of the conclusions Kamm draws.

Kamm never offers a defense of a definition of torture – something that is crucial to the claim that it is sometimes permissible. In the case of torture this is particularly problematic given that what torture is stands at the very center of much current debate. Her criticisms of Shue and Sussman, moreover, imply that these philosophers were actually trying to provide necessary and sufficient conditions (rather than to characterize the phenomenon in a way that was true to its empirical reality). While there are no good accounts of necessary and sufficient conditions for torture (at least in my view) in the available literature, simply assuming that we all already know what torture involves is highly