

INTRODUCTORY REMARKS

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I begin with sincere and enthusiastic thanks to Géraldine Muhlmann for arranging this event; and to her and the other panelists for their willingness to participate. I am grateful to you all.

My book is about the significance of torture and rape for the meaning of moral life generally, for the very idea of what morality is and why we care about it. Torture and rape are, I claim, paradigm moral injuries, paradigms of moral wrongness; at one level, they are even more morally prohibited than killing. Even as we allow a wide range of circumstances in which killing another human being, even a wholly innocent human being, might be justified, there are no circumstances of justifiable rape. And everyone regards the requirements for the use of torture, if ever justifiable, to be more stringent than those for killing: if an intruder violently breaks into my home, I might well be justified in killing him; no matter the level of threat, however, I would not be justified in dragging him into my basement and then torturing or raping him. For us moderns, if rape is never justifiable, and torture is either never justifiable or justifiable only when the threat is of such magnitude and imminence that for the purpose of collective self-defense there is no conceivable alternative, then it becomes natural to consider torture and rape as exemplars of moral wrongness, of what is morally wrong if anything is utterly morally wrong.

Yet, torture and rape have been only rarely considered by moral philosophers, perhaps because they are so indisputably morally atrocious acts, or because they seem so remote from ordinary moral consciousness (to which, it may be objected: For whom are they so remote?); or because they are so immediately repugnant, such virulent sources of moral disgust that they are too obscene for polite philosophical argument; or perhaps the philosophical silence over torture and rape arrives because their specific mode of moral

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wrongness cannot be accounted for by reigning moral theories, which I take to be flatly true: Aristotle's virtue ethics is idle in the face of extreme violence; Kant's moral law knows only the wrongs of willing, not the anatomy of human suffering that is at the center of rape and torture; utilitarian morality is used to defend torture; and so it goes.

Torture and Dignity is immodest: it aims to provide a reconstruction of the fundamentals of moral life. Morals, I argue, is not primarily concerned with moral rules or principles, with overriding obligations, with an "ought" that magically compels moral action, or the face of the other striking my conscience. Morals emerge from the experience of moral injury, from the sufferings of the victims of moral harm – which, from time to time, is each of us. Our most emphatic moral principles are not ideals of goodness, but terrible wrongs to be avoided: do not kill, do not assault, do not rape, do not steal. Morals emerge to regulate violence; only anxious hubris about "man as a *rational* animal" would lead one to think otherwise. My argumentative strategy is to take torture and rape as paradigms of moral injury, paradigms of the kinds of harm we have come to think that no one should ever have to suffer.

Here is my orienting thesis: the precise moral wrongness of rape and torture is that they cause *moral devastation*, that is, the fundamental effect of rape and torture, their effort, is to deprive the victim of her standing or status *as human*, as a being of equal status to the attacker; in rape and torture the victim is *undone*, she becomes for herself and her attacker no longer a fully human being, but a broken remnant. What is so striking in Jean Améry's account of his torture by the Nazis is his account of how in his failure to resist, in his failure of stoical resolve he was, finally, undone, devastated. He who is tortured remained tortured, forever.

Devastation is a radical version of the kind of devaluation or degradation at issue in everyday experiences of *humiliation*. Humiliation is the genus, devastation a species of it; devastation is the realization of the destruction implied by acts of humiliation. The reason we find humiliating experiences so terrible is that they adumbrate something much

worse: they reveal to us our fundamental vulnerability in the face of the other; every humiliation is a terrible reminder that one can be devastated, undone, by the other.

The acknowledgement of devastation is meant to demonstrate that humiliation – all the forms of devaluing, degrading, mortifying, embarrassing, shaming, debasing, dishonoring, etc. – is the negative core of moral experience, that experience has the moral texture and meaning it does because we are the kinds of being who are constitutively subject to moral injury, to humiliation and devastation. But devaluation can be the core of moral experience only if our being human is a *status or standing* we are granted by others: to be human is to be recognized as human; and only if we are recognized *as* fully human can we *be* fully human. We are radically and forever dependent on others for our standing as human. The essence of the human is that we are the kinds of being who can suffer devastation, and that we organize our moral lives around this fundamental possibility.

Devastation – this use of the word is mine – is intended as translation into the language of morals of the experience of *trauma*. Trauma, I am arguing, is primarily a moral experience of degradation, of loss of trust in the world brought on by the physical experience of violation; violation that is so absolute that the victim realizes that her body is not her own (because it never was fully her own), and hence her very person is not fully her own (because it never was fully her own), that she is dependent on the other for her very being and being ‘thus’. This form of radical debasement leaves the victim undone, devastated – that is the thought of trauma. Gregg Horowitz puts the thought this way: “In its compulsive repetition of the moment of utterly vulnerable victimization, trauma is the incessance of injury. It is not the incessant return of the past, but rather the persistence of the thing itself... in its persistence [it is] a broken-off piece of suffering”.

At bottom, all cultures have had an implicit awareness of this reality and arranged their moral codes and practices as way of preventing its occurrence. Nonetheless, this *explicit* way of thinking about moral life is historically new: up until the last third of the 18th century torture was regarded as an essential component of criminal justice systems, both in the law of evidence and in the penal process. Indeed, for 600 years torture played a

central role in all European legal systems—first, as an element in the law of evidence; and second, as the primary component of the system of punishment. In the Roman-canon legal system that began emerging in the twelfth century, crimes punishable by the death penalty, or by severe mutilation or maiming, required either the testimony of two eyewitnesses or a confession. This was a hard standard to satisfy – murderers tend not to commit their deeds in front of eyewitnesses, nor do they readily confess them. Torture became a vital supplement to interrogation procedures, helping to “prompt” confessions. Without torture, the law of evidence would have been unusable for serious crimes; without penal torture the power of the sovereign could not be demonstrated.

Yet, – and this is the story of my opening chapter – with breathtaking rapidity, torture was abolished throughout Europe in the second half of the eighteenth century. “So powerful was this revulsion against torture as a symbol of the enormities of the *ancien régime*,” writes the historian Edward Peters, “that not even the moral passion of the Revolution [with its murderous Terror] and the reaction that followed it inspired a return to torture... [The] real influence of writers like Voltaire and Beccaria: their work simply made torture unthinkable”.

I understand the abolition of state torture to be at the foundation of modern political morality. As Foucault rightly documents, the abolition of torture turns on the idea that the state is prohibited from “touching” the body of a citizen. With the abolition of torture, the bodily integrity of the individual becomes morally constitutive of her standing as citizen; it is her dignity. It is this very thought, I believe, that drives the defense of what we now call the rule of law in the writings of Beccaria – although now mostly forgotten, he was arguably the most influential philosopher of the 18th century. What has made Beccaria’s argument hard to decipher is that he does not argue from the possession of individual rights to the necessity of the abolition of torture or the moral inviolability of the body; rather, he argues from the actual devastations of torture to the necessity for the rule of law. The image of the body of the torture victim was the meeting place of state and citizen, the place where the newly morally saturated body of the citizen met the legal apparatus of the state: either the rule of law recognizes bodily integrity and bodily

autonomy as its own moral basis – broken laws standing for broken bodies – or the law becomes a vehicle of sovereign authority that knows no limit. Thus it is the morally charged conception of the rule of law itself that holds together the ban on torture with the recognition of human dignity: remove the prohibition on torture and neither the liberal state nor modern moral life is intelligible. The Rule of law, so understood, is itself the nerve of modern morality.

In the course of the 20th century, this great Enlightenment achievement became buried beneath colonialism, nationalism, terrorism, and the emergence of the security state – a new excuse for state sovereignty. Recovering the moral basis of the substantive conception of the rule of law is one fundamental ambition of my book.