

Torturous Defence

One of the most secure exemptions made for violence in our ordinary moral thought is defence: it is permissible to defend ourselves, and others, from others' aggression. The inner theoretical details of theories of defence are complicated, but few doubt that that violent defence will turn out to be permissible in at least some circumstances. One of the least secure exemptions for violence, by contrast, is interrogational torture. For many of us, this option is completely off the table, even if the aim of torture is to save innocent lives or prevent some other evil.

It is therefore surprising, and potentially disturbing, that a moral justification for interrogational torture can be clearly traced to our defensive rights. There is a well-trodden justificatory path which links ordinary cases of self-defence to torture: we can travel all the way from self-defence to characteristic cases of torture using only four cases.

How so? We start with this case:

Poison 1: Jay is embarked on an attack on Daisy. His aim is to inject Daisy with deadly poison. Daisy kills Jay in order to stop him from injecting Daisy with deadly poison.

Imagine that Daisy can stop Jay in no other way: she cannot flee from Jay, or deflect Jay's attack with some lesser degree of defensive harm. It is a 'kill or be killed' situation. *Poison 1* is an ordinary defence case. Daisy may kill Jay.

Now imagine the following variant of *Poison 1*:

Poison 2: Daisy tortures Jay in order to get Jay to give Daisy the antidote to the deadly poison which Jay has just injected into Daisy.

Poison 2 is a case of self-defensive torture. But many will think that Daisy's act in *Poison 2* must be permissible if her act in *Poison 1* was permissible. First, the basic aim of Daisy's violence is the same, and that aim is a defensive one. Daisy is attempting to defend her life against Jay's aggressive threat to her. The character of the defensive violence is different merely because the timings are different: Jay has already injected Daisy with poison in *Poison 2*, unlike *Poison 1*. But the point of killing Jay in *Poison 1* was to prevent him from *killing* her with the deadly poison, not just to prevent him from *injecting* her with the poison. That defensive aim is fully intact in *Poison 2*: the poison is already in her system, true, but she can still do something to prevent it from killing her. These differences should not rob Daisy, in *Poison 2*, of the defensive justification she enjoyed for harming Jay in *Poison 1*. A further point is that killing Jay in *Poison 1* is *worse for* Jay than defensively torturing him in *Poison 2*. If Jay had to choose between being killed and being tortured, he would presumably choose the latter. So, if killing Jay is permissible in *Poison 1*, then defensively torturing him in *Poison 2* should also be permissible.

The final two cases simply cast *Poison 1* and *Poison 2* in other-defensive form, in which there is third-party involvement. *Poison 3* is the other-defensive analogue of *Poison 1*, while *Poison 4* is the other-defensive analogue of *Poison 2*.

Poison 3: Tom kills Jay in order to stop Jay from injecting Daisy with deadly poison.

Poison 4: Tom tortures Jay in order to get Jay to give Tom the antidote to the deadly poison which Jay has just injected into Daisy.

Poison 4 is a case of other-defensive torture. But ‘other-defensive torture’ is just another way of referring to interrogational torture.

Now if we disfavour this conclusion, we will have to break the justificatory circuit at some earlier point. Rather than quarrelling with one or both of *Poison 3* and *Poison 4*, I will focus on *Poison 2*, since this is the earliest case in which the essential ingredients of torture are gathered. By disaggregating and recombining these ingredients in other possible variants of *Poison 2*, we can see that the defensive justification in *Poison 1* cannot be straightforwardly extended to *Poison 2*.

As an example:

Poison 2A: Daisy tortures Jay’s mother in order to get Jay to give Daisy the antidote to the deadly poison which Jay has just injected into Daisy.

Is *Poison 2A* a case of defensive torture? Jay’s mother is innocent and does not pose a threat to Daisy. Well, there is a big gulf between Jay and Jay’s mother, one might reply: Jay is far from innocent! The point of *Poison 2A*, however, is to bring into question why Jay is liable to being *tortured* in defence. The fact that someone else *could* play the role of the torture victim, as in *Poison 2A*, simply confirms that the defensive justification does not extend all the way to this particular way of protecting Daisy’s life. This point holds even if, as it does in *Poison 2*, it is Jay who plays *both* roles: the poisoner and the antidote-withholder. We know that Jay is liable to ordinary eliminative defensive violence in *Poison 1*. The question is whether he is liable to being *tortured* in defence in *Poison 2*. That justification will not ensue from pointing out that *Daisy* is in the same situation in *Poison 2* as she was in *Poison 1*.

Even so: don’t we feel some sympathy for Daisy’s plight in *Poison 2*? Is she really debarred from torturing Jay in order to obtain the antidote which he is withholding from her? The ‘mere difference in timing’ defence of the transition from *Poison 1* to *Poison 2* did, after all, carry some initial credibility. And we might also hold that Jay is required to bear a lethal harm to prevent his initial attack on Daisy from attaining its lethal completion. If we are going to break the justificatory connections as soon as *Poison 2*, we need to address these concerns. I will argue that certain concessions can be made on this score without generating an imprimatur for torture.