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# Eliminating All Empathy

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## Personalism and the “War On Terror”

Yesterday, *the World Day against torture* was celebrated. May the common commitment of the institutions and citizens totally ban this intolerable violation of human rights which is radically opposed to human dignity.

POPE JOHN PAUL II<sup>1</sup>

As I understand it, technically, unlawful combatants do not have any rights under the Geneva Convention.

U.S. SECRETARY OF DEFENSE DONALD RUMSFELD<sup>2</sup>

WITHIN MONTHS OF THE SEPTEMBER 11 attacks on the United States, public officials, academics, journalists, and lawyers began debating the ethics of torture. Confronting an unconventional and intransigent enemy, the United States and its allies required quick intelligence in order to prevent further terrorist attacks. In such circumstances, some believed that torture would be morally justifiable. Often, they invoked political philosopher Michael Walzer’s well-known “ticking bomb” scenario. In it, a colonial official in a civil war captures a rebel who knows the location of bombs in a city.

To stop a bombing, should he torture the rebel? Walzer maintains that he should, but argues that he would incur moral guilt for committing torture. In the aftermath of the September 11 attacks, many have agreed with Walzer’s account of the ethics of torture.<sup>3</sup>

These ethical debates are no mere ivory-tower exercises. They have occurred when the United States waged war in Afghanistan and Iraq, and battled al Qaeda terrorists worldwide. In the first few years after the September 11 attacks, the United States imprisoned more than 70,000 people around the world, most notoriously in Saddam Hussein’s former prison, Abu Ghraib.<sup>4</sup> In 2004, the world was shocked to see photographs of Iraqi prisoners standing naked in human pyramids, fleeing attack dogs, and connected to electrical wires. These horrific images sparked worldwide outrage. The debate about Abu Ghraib, however, was only the most public one about American policy toward detainees in the “war on terror.” The United States held hundreds of prisoners at its naval base in Guantánamo Bay, Cuba. At this facility, allegations of abuse and torture began emerging, some leveled by FBI agents and military lawyers. For example, in August 2004, an FBI agent reported that

on a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food or water. Most times they urinated or defecated on themselves, and had been left there for 18–24 hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. . . . On another occasion, the [air conditioner] had been turned off, making the temperature in the unventilated room well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his hair out throughout the night. On another occasion, not only was the temperature unbearably hot, but extremely loud rap music was being played in the

room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor.<sup>5</sup>

In 2003, the public learned that officials in the U.S. departments of Justice and Defense had redefined torture, legitimizing new forms of abusing detainees. All these developments raised difficult ethical questions about how the United States employs torture.

Disturbingly, in the face of these developments, many Christians have remained silent. Those who often speak out against abortion, euthanasia, or embryonic stem cell research have said little about the prisoner abuse scandals and documents on torture. Many who admire the late John Paul II for defending human dignity have stood mute while the United States has been accused of brutalizing persons. Some have condemned abusive treatment of detainees but have uncritically applied ideas about the person's dignity to international politics. Complex military and civilian institutions devise and carry out interrogation policies. They do so in a political context, interpreted by media and political institutions. Too often, those who condemn torture and abuse naively ignore institutional forces and context. They operate at vague levels of abstraction, focusing on sensational or hypothetical cases.

In this article, rather than discussing the usual and sensational ticking-bomb scenario, I focus on empathy and torture. Providing a personalist analysis of recent U.S. policy in the war on terror, I argue that it has dangerously undermined our capacity to empathize with detainees. First, I briefly outline some basic presuppositions of personalism, distinguishing between the value of persons and things. Second, describing empathy, I maintain that it is one way we understand the person's value. I focus particularly on the face-to-face relationship, arguing that it is the paradigm for understanding many social relations. Third, drawing on phenomenological sources, I maintain that we should evaluate empathy by relating it to solidarity among all persons. Fourth, turning to detainee treatment, I describe how the Bush administration used the "unlawful combatant"

and “terrorist” labels to characterize terror suspects. I show how these labels contributed to policies that denigrate the person and undermine solidarity. I end by considering why we should empathize with people who commit evil acts, maintaining that empathy and solidarity are essential for a just international order.

### *Personalist Presuppositions*

Reflecting on daily experience, we note a fundamental difference between persons and things. For example, if I enter a classroom and hang my umbrella on an umbrella stand, students will think little about what I do. If, however, I hang the umbrella on a student’s neck, the other students will be outraged. They immediately experience the difference between a person and a thing, apprehending that using a person as an umbrella stand is ethically problematic. Our experience of the difference between persons and things illustrates the “great gulf which separates the world of persons from the world of things.”<sup>6</sup> Unlike things, persons are living, rational beings possessing an inner life revolving around truth and goodness. They possess self-awareness and the capacity to respond to others. They also exercise freedom and self-determination, actively cultivating relationships of giving and receiving.<sup>7</sup> These capacities suggest that persons share a common nature that differentiates them from inanimate objects.

These attributes also reveal the unique value of the individual person. Because of freedom and the capacity for self-determination, each person has an undeniable distinctiveness. All ontological individuals (whether persons or things) possess unique physical or other properties. Ethically, however, persons differ from things because they are irreplaceable. For example, in a genetic experiment, we have no compunction about eliminating one cell and replacing it with another but would hardly propose replacing one person with another. This is because we realize that “each person is, over and above the qualities and kinds that he has in common with others,

unrepeatably himself or herself, and each has dignity just by being the unrepeatable one that he is.”<sup>8</sup> We discover that the “incommunicable, the *inalienable*, in a person is intrinsic to that person’s inner self, to the power of self-determination, free will.”<sup>9</sup> A person has dignity not only because he possesses a common human nature, but also because he instantiates it in unique and unrepeatable ways.<sup>10</sup>

### *Empathy and the Inner Life of Persons*

Rather than defending this view of the person, I assume it and turn to empathy, one of the ways we know the inner lives of persons.<sup>11</sup> We can abstractly grant that persons have inner lives, but how can we concretely understand them? We are not hermetically sealed off from one another and share many cognitive and affective experiences.<sup>12</sup> Nevertheless, these experiences fail to provide us with clear access to the inner lives of others. I cannot immediately experience your inner life because this would require me to remember all your experiences as you have lived them. I would have to live through all your mental acts exactly as you do.<sup>12</sup> In other words, “the person would have to be me if he were to stand in that place where I stand in experiencing myself.”<sup>13</sup> In relating to other persons, we thus confront the inaccessibility and hiddenness of their inner lives.

Although we cannot experience persons exactly as they experience themselves, we can empathize with them, understanding “what it is like for them to experience what they experience and in this way achieve a certain solidarity with them” (“Emphatic Understanding,” 36). Like others who write about it, I distinguish empathy from sympathy and focus only on empathy in this article. Empathy is “primarily a mode of experiencing another (hence our frequent expression, the empathetic understanding of another), whereas sympathy contains a moment of love for the other” (*ibid.*, 38). To empathize, I must orient my experiences away from my center of activity. To use a spatial image, normally, I experience my activity as a “Here,” and another’s activity as a “There.”<sup>15</sup> In order to empathize,

I have to understand the other's There, and recognize that "I and my fellow-man would have typically the same experiences of the common world if we changed places; thus transforming my Here into his, and his—now to me a There—into mine."<sup>16</sup> Alfred Schutz calls this the "reciprocity of perspectives," without which I cannot empathize.

Additionally, unless I have had another's experiences, I must imaginatively understand them, finding "the potency or capacity" for them in myself ("Emphatic Understanding," 48). For example, I have never been detained on charges of terrorism. I have also never experienced the desire to kill innocent people for a religious cause. As a result, I have a limited capacity to empathize with those detained for terrorism. I, however, can imagine what their experiences might be like. Perhaps I can read about experiences of incarceration in order to try to understand something about the lives of prisoners at Guantánamo Bay. Or, I might think about how strongly I hold my own religious beliefs in order to understand why someone would kill for his. These imaginative exercises help me experience something of the inner lives of others. Through them, I can apprehend not only that another is a conscious subject, but also that he is a person with an inner life and a capacity to act consciously on others. He is a unique and irreplaceable being with dignity and value.

We most easily empathize in a face-to-face relationship, which allows for communication and response. In this relationship, I share a community of space and time with another. Spatially, I am directly aware of his body as "the field upon which play the symptoms of his inner consciousness" (*Phenomenology*, 163). Temporally, I experience with him a flowing of time in which "we are growing older together" (*ibid.*, 166). I am aware of him as a person with consciousness and life, and picture his "stream of consciousness as flowing side by side with my own" (*ibid.*). My partner may or may not reciprocate in my awareness of him. For example, Schutz describes relationships between train or bus passengers. I look at someone on a bus who is unaware that I notice him. Nevertheless,

we share a spatial and temporal relationship, and have “grown old together” during our bus trip. On another trip, my fellow passenger reciprocates my attention, conversing with me. In either case, I am in a face-to-face relationship in which I share something of another’s inner life.

Face-to-face relationships allow for correcting misunderstandings. Temporal and spatial proximity enable people to adjust to one another’s acts, assume motivations and character traits, and witness each other’s action. I may misunderstand you in conversation, picturing your stream of consciousness in a way that fails to capture what is going on. You may then correct me, allowing me to apprehend your inner life more accurately. We then have a response and correction, progressively leading to greater understanding of each other’s inner lives (*ibid.*, 171–72).

### *Can Empathy be Dangerous? Empathy and Solidarity*

In a face-to-face relationship, however, I might empathize with someone merely to harm him or her. For example, interrogators might use what they know about a detainee as a weapon with which to obtain information. In fact, recently, medical personnel have reported that psychologists and psychiatrists have participated in U.S. interrogations, supplying information about detainees’ psychological weaknesses to interrogators.<sup>17</sup> Clearly, we can abuse empathy, and by itself, it provides insufficient protection against policies damaging the person.

To protect the person’s value, we must commit ourselves to solidarity, and then seek to empathize with others. Solidarity is “a certain belonging together, a deep sense of community” in which people feel themselves to be “members of the same body” (“*Emphatic Understanding*,” 59).<sup>18</sup> Although it moves us affectively, solidarity also requires that we will it, cultivating “a firm and persevering determination” to commit ourselves “to the common good.”<sup>19</sup> We must ground it in an awareness of *both* our common humanity and

our understanding of the individual person’s value. With solidarity, we “recognize each other as persons,” have a sense of responsibility for others, and desire to rectify injustices.<sup>20</sup>

Imaginatively, I can link solidarity to empathy by thinking about the features of humanity and the inalienable character of persons occupying social roles. For example, Schutz describes how we might think of a postal worker (*Phenomenology*, 184–85). When I mail a letter, I assume a postal clerk will sort and forward it. I share a temporal but not a spatial frame with him, and think about him in relation to his social function. Only in unusual cases will I consider how he might feel when forwarding my mail. Most of the time, I simply assume his social role as background knowledge, which I use to navigate my way around the social world. Nevertheless, I can imaginatively consider how he does his job. I may never know anything about his inner life but can occasionally remind myself that he has one. I will always remain at a considerable distance from him but can self-consciously strive to link empathy and solidarity.

If I self-consciously link empathy and solidarity, I will find it difficult to engulf persons into nameless, faceless roles. For example, those who planned and executed the September 11 attacks assimilated the thousands of people inhabiting the World Trade Center into anonymous labels. They were “enemies,” “infidels,” or “Jews” rather than persons going to work and performing everyday tasks. For the attackers, they lacked any of the qualities of persons, serving instead as stock characters of Americans who hated Islam. The attackers apparently made no attempt to think about concrete persons and rejected the idea of the solidarity of all persons. Such deliberate indifference to the person helped produce the horror of September 11.<sup>21</sup>

To summarize my discussion of empathy and solidarity, solidarity prevents us from abusing empathy. We must always recall not only the extraordinary and inalienable character of the person but the communion between persons. We cannot uncritically accept labels that denigrate the person and legitimize abusive policies. Instead,

we need to test their adequacy by considering the subjective lives of others. Most importantly, we must counter distorted ideas of the person by committing ourselves to solidarity.

### *No Empathy for “Unlawful Combatants”*

With the relationship between empathy and solidarity clear, I now consider how the U.S. government used the language of unlawful combatant and terrorist to undermine empathy and solidarity. Very soon after the September 11 attacks, the Bush administration confronted the question of how to treat Taliban and al Qaeda detainees. In early 2002, administration officials debated whether the Geneva Conventions applied to these detainees. Attorney General John Ashcroft, lawyers in the Department of Justice, and Alberto Gonzales (then counsel to the president), all maintained that the Geneva Conventions did not protect them. After Secretary of State Colin Powell strongly insisted that the United States apply the Geneva Conventions to the Taliban, President Bush concluded that the Geneva Conventions protected them but not al Qaeda members. He noted that although the Geneva Conventions did not protect al Qaeda, “as a matter of policy, the United States Armed Forces shall continue to treat detainees humanely, and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.”<sup>22</sup> He clearly indicated that the United States would adhere to the spirit of the Geneva Conventions *only* when doing so did not conflict with military necessity. President Bush also described the Taliban as unlawful combatants. The label does not often appear in international law; the United States retrieved it from its domestic law.<sup>23</sup>

While employing the “unlawful combatant” term, the Bush administration also began using other labels to describe detainees. It often substituted “bad guy” or “terrorist” for unlawful combatant. For example, in an interview on NBC’s *Meet the Press* a few days after the September 11 attacks, Vice President Cheney stated that “if

you're only going to work with officially approved, certified good guys, you are not going to find out what the bad guys are doing." He went on to say that "you have to have on payroll some very unsavory characters. This is a mean, nasty, dangerous, dirty, business. We have to operate in that arena."<sup>24</sup> In November 2003, while discussing how the United States was developing an Iraqi security force, Defense Secretary Donald Rumsfeld stated that "once people see people in the police and so forth, they come around and say, 'Look, you've got the wrong fellow there. That person was one of the bad guys.' In which case, we look into that and take action."<sup>25</sup> Rumsfeld, Cheney, and less-senior civilian and military officials have repeatedly characterized al Qaeda and the Iraqi insurgents as "bad guys." They often used this term interchangeably with the term "terrorist," reinforcing the administration's decision to undertake a "war against terrorism."<sup>26</sup> In public debates, "terrorist" became the most common way to label both al Qaeda members and insurgents in Iraq.

As the war on terror continued, the Bush administration used these labels to justify abusive treatment of detainees. We can see this process most clearly in the so-called "torture memos." In mid-2002, Alberto Gonzales asked Justice Department lawyers for advice on how to interrogate detainees. Assistant Attorney General Jay S. Bybee wrote two advisory memos in which he redefined torture, departing from much of twentieth-century international and human rights law. Torture, he maintained, occurs not when we inflict severe pain or suffering on someone to obtain information but only when we *specifically intend* the victim to "experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result."<sup>27</sup> Bybee carefully crafted each component of this definition, citing U.S. law and other sources. He concluded that unless each component existed, no torture occurs.

When the document was leaked, those familiar with international and human rights law quickly recognized what it permits. First, if

an interrogator specifically intends only to obtain information and not to inflict long-term mental pain or suffering, he is not guilty of torture. Second, if he intends to produce only short-term harm, he is not guilty of torture. Third, even if he intends to cause long-term harm, if it does not result in loss of a significant body function, he does not commit torture. It requires little imagination to see what kind of acts Bybee's memo legitimizes. For example, an interrogator could submerge a detainee's head under water without causing long-term damage akin to organ failure. He could systematically remove his fingernails with pliers. Or, he could extract decaying teeth without anesthesia. Those familiar with torture can easily provide other examples of horrific acts Bybee's memo permits.

Confronted with this disturbing memo during his confirmation hearings for U.S. Attorney General, Alberto Gonzales insisted that Bybee's memo was merely legal advice with little impact on administration policy. He appeared, however, to be grossly misinformed because, in fact, the memo deeply influenced administration policy. In fall 2002, the Defense Department came under intense pressure to extract significant information from its detainees at Guantánamo Bay and elsewhere. Military commanders at Guantánamo requested permission from the Defense Department to use more coercive interrogation. They proposed a variety of interrogation techniques, including keeping detainees in prolonged stress positions, removing religious items (defined as "comfort items"), and taking advantage of individual phobias to induce stress. They recommended four new coercive techniques: the "use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and his family"; exposure "to cold weather or water (with appropriate medical monitoring)"; the "use of a wet towel and dripping water to induce the misperception of suffocation"; and the "use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing."<sup>28</sup> Lieutenant Diane Beaver from the Judge Advocate's office of Joint Task Force 170 at Guantánamo argued that no international or domestic law prohibit-

ed using these techniques. She echoed Bybee’s definition of torture by arguing that creating the perception of suffocation does not constitute torture if the interrogator intends only short-term harm.<sup>29</sup> In cold, calculating bureaucratic language, she recommended that “the proposed methods of interrogation be approved, and that the interrogators be properly trained in the use of approved methods of interrogation.”<sup>30</sup>

Responding to Lieutenant Colonel Beaver’s recommendations in December 2002, Defense Secretary Rumsfeld approved all the techniques she proposed, except for the first three (listed above) of the more coercive. He noted that these were not “warranted at this time,” but suggested that he might approve them in the future.<sup>31</sup> A few weeks later, however, reportedly responding to concerns from military lawyers, Rumsfeld rescinded his December 2002 memo. He permitted interrogators to propose more coercive techniques if they provided a “thorough justification” and a “detailed plan” for their employment.<sup>32</sup> He then commissioned a Defense Department working group to examine interrogation techniques.

Sadly, rather than objecting to the coercive techniques at Guantánamo, the Defense Department working group largely repeated Bybee’s conclusions. It analyzed international and domestic law and without reservation endorsed Bybee’s definition of torture. Describing detainees as unlawful combatants, the working group maintained that they lacked any protection under the Geneva Conventions.<sup>33</sup> Evaluating the Defense Department’s interrogation techniques, the working group proposed that “any decision whether to authorize a technique is essentially a risk benefit analysis that generally takes into account the expected utility of the technique, the likelihood that any technique will be in violation of domestic or international law, and various policy considerations” (“Working Group Report,” 343). It provided a detailed risk-benefit analysis of interrogation techniques, including prolonged standing, sleep deprivation, threats to send to other countries, and removing clothes. The working group also maintained that in exceptional circumstances the United States could use

illegal techniques. Public officials employing them could mount a “necessity defense,” claiming that necessity demanded torture. Or they could claim to be acting in self-defense of the nation. In all of its analysis, the working group never ruled out using more aggressive techniques, suggesting only that they undergo careful scrutiny (“Working Group Report,” 354).

With small amendments, Rumsfeld approved the working group’s recommendations. He was primarily concerned with how other countries would perceive U.S. action and repeatedly warned about potential negative response to it. He also insisted that detainees be treated “humanely,” but like President Bush, qualified this demand by saying that humane treatment be in keeping with “military necessity.”<sup>34</sup> Finally, he stated that he would consider using other interrogation techniques not on the working group’s list, saying that “if, in your view, you require additional interrogation techniques for a particular detainee, you should provide me, via the Chairman of the Joint Chiefs of Staff, a written request describing the proposed technique, recommended safeguards, and the rationale for applying it with an identified detainee.”<sup>35</sup> Rather than condemning more aggressive techniques, Rumsfeld allowed interrogators to propose them.

Apparently, the working group’s and Bybee’s redefinition of torture remained unchallenged at the highest levels of the Bush administration for more than a year. In fact, after the Abu Ghraib scandal broke, we learned that several officials on the National Security Council and in Vice President Cheney’s office vetted Bybee’s memo.<sup>36</sup> When the memo became public, the administration distanced itself from it. President Bush publicly rejected torture but never explained exactly what he meant by it.<sup>37</sup> In December 2004, the administration quietly rescinded the Bybee memo, rejecting its reasoning about torture and presidential power.<sup>38</sup> However, it did not disavow the working group’s conclusions, leaving unclear what it considered to be legitimate forms of interrogation.

To summarize, despite what Alberto Gonzales maintained at his

confirmation hearings, the Bybee memo significantly influenced administration policy on interrogation. Its redefinition of torture became part of Defense Department reasoning.<sup>39</sup> Far from being merely advisory, the Bybee memo shaped policy, which the Bush administration retreated from only when Congress and the public responded with outrage.

### *Interrogation and Moral Blindness*

Complex causal connections exist between the Bybee and working group memos and the abuses of detainees at Guantánamo, Abu Ghraib, and elsewhere. These documents may have legitimized aggressive CIA interrogation techniques, including feigned drowning and other abuses.<sup>40</sup> The Schlesinger report, commissioned by the Defense Department after the Abu Ghraib scandal, maintained that the extreme techniques Defense Secretary Rumsfeld approved for Guantánamo migrated to Iraq, contributing to events at Abu Ghraib. Soldiers were placed in intolerable situations where they were completely unprepared to handle large numbers of prisoners. In this environment, interrogators in Iraq employed coercive techniques designed only for Guantánamo.<sup>41</sup> In February 2004, the International Committee of the Red Cross reported numerous detainee abuses in Iraq. It described how American soldiers removed people from their homes, imprisoning them without notifying their families. The report detailed acts of humiliation, beatings, and long periods of hooding. The International Committee of the Red Cross concluded that these methods of “physical and psychological coercion were used by the military intelligence in a systematic way to gain confessions and extract information or other forms of cooperation from persons who had been arrested in connection with suspected security offences or deemed to have ‘intelligence value.’”<sup>42</sup> Finally, using the Freedom of Information Act, the American Civil Liberties Union has gained access to tens of thousands of pages of documents reporting numerous abuses of prisoners in Iraq and at

Guantánamo Bay. They included military and FBI documents that confirm that abuses occurred.<sup>43</sup> The Abu Ghraib abuses, horrific as they were, were no aberration of one group of soldiers but constituted only some of the abuses in Iraq and Guantánamo.

Ethically, the torture memos utterly disregarded the personhood of unlawful combatants. Once the administration concluded that suspected al Qaeda members lacked Geneva Convention protections, it became morally acceptable to dispassionately discuss how to cause them pain and suffering. Consider, for a moment, the mission of the Office of Legal Counsel in the Justice Department, the agency that produced the torture memos. It “assists the Attorney General in his function as legal advisor to the President and all the executive branch agencies,” and all “executive orders and proclamations proposed to be issued by the President are reviewed by the Office of Legal Counsel for form and legality, as are various other matters that require the President’s formal approval.”<sup>44</sup> Given this central mission, it is shocking that the Office of Legal Counsel ignored the person’s value. Bybee mentions the moral dimensions of abuse only when seeking to protect administration officials from prosecution for torture.<sup>45</sup> He never considers the personhood of those detained and what torture means for them. On the contrary, he keeps persons at a distance by using the unlawful combatant label, which severs ties of solidarity and empathy with detainees.

Perhaps, however, the Office of Legal Counsel should avoid making moral judgments altogether. Some have responded to the torture memos by arguing that Bybee and others acted perfectly appropriately because lawyers should provide clients with legal advice and avoid moral evaluation. This defense of the Bybee memo, however, endorses a profoundly disturbing separation of morality and legality. It implies that a central agency within the Justice Department, responsible for advising the president of the United States, should completely ignore moral reasoning. Defenders of this account of legal ethics also ignore the moral character of Bybee’s memo. Bybee is not at all morally neutral but departs from long-standing hu-

man rights concerns enshrined in international law. Throughout his memo, he assumes that unless the United States specifically agrees to international moral norms, they have no bearing on U.S. foreign policy. This argument ignores universal moral norms that acknowledge the person's dignity and affirm the solidarity of all persons. It disregards the possibility that universal human rights or natural law can serve as a norm for positive law. In summary, Bybee was not morally neutral but morally blind, and his defenders cannot take refuge in the idea that he merely offered morally neutral advice to the president.

The Defense Department working group also showed a profound moral blindness. From what we can discern, uniformed military, civilian Defense officials, and lawyers participated in this group. In its deliberations, it adopted a tone of clinical detachment and employed strictly utilitarian ethical criteria. For the working group, interrogation methods should be evaluated not by considering how they affect persons, but by using cost-benefit analysis. It never recognizes that detainees might have inner lives, histories, and aspirations. In its cost-benefit analysis, the working group never computes the cost of harming persons. Rehearsing the Bybee memo's concerns about necessity and self-defense, it treats morality merely as an instrument for promoting U.S. national interest.<sup>46</sup>

We might suggest that moral considerations should play no role in Defense Department deliberations. Such a view, however, arbitrarily exempts the military from the moral life. Why should military officers and civilian Defense officials banish moral considerations from their deliberations? Why should they forget the humanity of those in U.S. custody, considering them only as nameless unlawful combatants? Undoubtedly, the Defense Department working group was obligated to advise President Bush about the costs and benefits of interrogation techniques. Nevertheless, it was not required to ignore the person's value altogether, or capriciously exempt the United States from universal moral norms.

Sadly, this moral blindness also plagued some official respons-

es to the Abu Ghraib scandal. For example, soon after the scandal broke, former Defense Secretary James Schlesinger and others produced the Schlesinger Report, a well-crafted document heavily criticizing the Bush administration.<sup>47</sup> The report found the military grossly unprepared for detaining and interrogating large numbers of Iraqi prisoners. It criticized the Bush administration for inadequately planning for the aftermath of major combat operations in Iraq. It also condemned military commanders in Iraq for responding poorly to abuse allegations. Disturbingly, however, the Schlesinger Report failed to recognize the morally problematic character of the torture memos. It noted that many uniformed military personnel disagreed with the Office of Legal Counsel's stance on torture, and suggested that Defense Secretary Rumsfeld would have benefited from a more robust debate about interrogation techniques. It also included a fascinating section on the social and psychological causes of prisoner abuse, along with one specifically devoted to ethical issues. However, it did not occur to the Schlesinger commission to criticize Bybee's twisted reasoning. It said absolutely nothing about his ethically repugnant redefinition of torture. Its silence is a troubling sign of moral blindness.

In the Office of Legal Council and the Defense Department working group (and to a much lesser extent in the Schlesinger Report), we have the troubling phenomenon of intelligent, accomplished people who lose the capacity to empathize with others. When thinking about how to interrogate terror suspects, they show no awareness of the reciprocity of perspectives vital to empathy. Only one perspective exists, that of the U.S. government and its perceived interests. Detainees are no longer incommunicable beings with free will and moral worth. Instead, they are objects we manipulate to obtain national security information. Departing from the person's dignity and solidarity, we find ourselves in the frightening world of narrow risk-benefit analysis.

*Why Empathize with Terrorists? Empathy and Sanctioning Evil*

Why, however, should we attempt to understand the inner life of those who seek to destroy our society? Osama Bin Ladin has shown no empathy for Americans, at one point stating that "we believe that the worst thieves in the world today and the worst terrorists are the Americans. Nothing could stop you except perhaps retaliation in kind. We do not have to differentiate between military or civilian. As far as we are concerned, they are all targets."<sup>48</sup> Why should we empathize with such a monstrous person, who will never extend moral consideration to Americans? In the years since the September 11 attacks, calls to empathize with terrorists have often met with ridicule. Sometimes, public figures and personalities have simply denied the humanity of those fighting us. For example, in May 2004, insurgents in Iraq kidnapped and brutally murdered a young American businessman named Nicholas Berg. Berg was beheaded, and his execution recorded on videotape. Responding to this horrific crime, noted talk show host Rust Limbaugh condemned Berg's killers, stating that "you know who these people are. It is not a mystery. They are not good, there's nothing good about them. They are perverted, they are demented, they are pure trash, human debris."<sup>49</sup> Limbaugh was not alone in using such language about al Qaeda and insurgents in Iraq; numerous talk shows hosts and public figures also denied their humanity.

Such language illustrates the close link between empathy and solidarity. Sadly, we can stop ourselves from empathizing by denying we share a common humanity with others. We can refuse to acknowledge that others are incommunicable persons, unique in personality and moral capacities. By thinking of a terror detainee as a wholly foreign "other," I "am blocked by his otherness from passing from my subjectivity to his subjectivity" ("Emphatic Understanding," 49). Physical or other similarity alone cannot produce empathy but must be "situated in some solidarity" (*ibid.*, 60). Solidarity requires us to both feel and *will* a common humanity and

the individual's value. It demands that we give up "a certain proud isolation, a desire to breath a purer air than the rest of humanity" (ibid., 49). If we choose to see others as "human debris," we cannot possibly share a community with them.

Scattered reports from Guantánamo Bay suggest that interrogators agreed with Rush Limbaugh, adopting policies that deliberately undermined solidarity. For example, in 2005, *Time* magazine obtained copies of interrogation logs from Guantánamo Bay. They described how interrogators handled the "20th hijacker," Mohammed al-Qahtani, who came to the United States intent upon participating in the September 11 attacks. Immigration officials detained him, unknowingly preventing him from taking part in the attack. He was released and later captured in Afghanistan and sent to Guantánamo Bay. Al-Qahtani was a difficult prisoner, apparently well trained in counterresistance techniques. He resisted violently and nonviolently, denying that he was part of the September 11 plot. Gradually, however, interrogators used a variety of techniques to break him. Many are shrouded in secrecy, but we do know that in late 2002, interrogators expanded their repertoire of techniques after Secretary Rumsfeld approved new ones. The logs reveal how they made determined attempts to destroy al-Qahtani's sense of humanity. Here is a quote from the log:

Detainee was reminded that no one loved, cared or remembered him. He was reminded that he was less than human and that animals had more freedom and love than he does. He was taken outside to see a family of banana rats. The banana rats were moving freely, playing, eating, showing concern for one another. Detainee was compared to the family of banana rats and reinforced that they had more love, freedom, and concern than he had. Detainee began to cry during the comparison.<sup>50</sup>

In another log entry, the interrogator "told detainee that a dog is held in higher esteem because dogs know right from wrong and

know to protect innocent people from bad people. Began teaching detainee lessons such as stay, come, and bark to elevate his status up to that of a dog. Detainee became very agitated."<sup>51</sup> Interrogators undoubtedly subjected al-Qahtani to many other abuses that have yet to be publicized.

These logs vividly illustrate how empathy depends on solidarity between persons. Interrogators assaulted al-Qahtani's personhood, systematically attempting to reduce him to an animal. He was no longer a being with an inner life, capable of free choices. Instead, he was a subhuman form of life, who could regain his humanity only by cooperating with interrogators. When we permit this dehumanization, we cannot hope to cultivate empathy. We depart entirely from the dignity of persons, arbitrarily redefining them as animals. In this world, neither solidarity nor empathy can exist.

### *Does Empathy Produce Weakness or Moral Relativism?*

Many Americans do not go so far as to deny the humanity of terror suspects. Instead, they worry that empathy shows weakness or implies a moral relativism that undermines moral judgments. For example, in a controversial speech, presidential advisor Karl Rove suggested that "conservatives saw the savagery of 9/11 in the attacks and prepared for war; liberals saw the savagery of the 9/11 attacks and wanted to prepare indictments and offer therapy and understanding for our attackers."<sup>52</sup> Despite the polemical character of his remarks, Rove expressed a common sentiment about empathy. In public discussions of terrorism, those calling for it are seen as "soft" on national security. Some reasonably worry that cultivating empathy mitigates terrorism's evil. We may begin to excuse evil if we seek to understand the inner life of those who beheaded Nick Berg or empathize with the nineteen September 11 hijackers. To some, it seems obscene to empathize with people who can murder thousands of people without a trace of remorse. Fighting a vicious adversary, perhaps we should avoid empathy altogether. The unlaw-

ful combatant or terrorist labels are perfectly appropriate because they distance us from evil people who want to destroy us.

Identifying too closely with evil is spiritually and ethically dangerous and can weaken our moral compass. Rigidly adopting the unlawful combatant and terrorist labels, however, dangerously permits us to mistreat people who have nothing to do with terrorism. For example, in 2004, the International Committee of the Red Cross reported that “between 70% and 90% of people deprived of their liberty in Iraq had been arrested by mistake.”<sup>53</sup> The Fay-Jones Report, commissioned by Iraqi military commanders to investigate the Abu Ghraib scandal, also concluded that the Coalition Provisional Authority arrested many people who had no involvement in terrorism. In late 2003 when the Iraqi insurgency gained strength, American soldiers began rounding up and imprisoning thousands of people. Yet, Fay-Jones acknowledged that “85%–90% of the detainees were of no intelligence value based upon board interviews and debriefings.”<sup>54</sup> After subjecting these detainees to abusive treatment, the Coalition Provisional Authority in Iraq released many of them. Similarly, the United States freed hundreds of prisoners from Guantánamo Bay after concluding they were no terrorist threat. Many of them had been swept up in the war in Afghanistan or sold to the United States by the Northern Alliance, its ally in the Afghan war.

Personal horror stories have emerged of people who were simply in the wrong place at the wrong time. For example, during the war in Afghanistan, the United States arrested three British men, accusing them of having links with al Qaeda. They were sent to Guantánamo Bay, and subjected to two years of abusive interrogation, including long periods of hooding and isolation. They were released only after “the British Secret Service, MI6” came up with “documentary proof” that the “allegations against them were false.”<sup>55</sup> Their case was only one of many in which people were wrongly imprisoned for terrorism. Clearly, the United States applied the unlawful combatant label to many innocent people. Yet, refusing to

have any empathy, it paid no attention to the concrete individuals in detention, disregarding their humanity entirely.<sup>56</sup>

Critics of empathy also confuse it with toleration. Empathy, however, requires no “blind compliance with the viewpoint of the Other.”<sup>57</sup> Instead, it demands that we consider another’s inner life and value. Empathy reveals human dignity in a special way and can prevent us from treating persons merely as objects. If we consider a detainee to be less valuable than a dog or banana rat, we will be unable to empathize with him and will have few moral qualms about torturing or abusing him. Critics of empathy correctly understand that it alters our interactions with others. If linked to solidarity, empathy prevents us from torturing others in the name of national security. However, we need not agree with another or passively accept his view of the world. I can empathize with someone like al-Qaeda, apprehending that he intends to destroy innocent people but can also oppose his immoral use of innocent people. Moreover, I can take military and other steps to prevent him from destroying others. To identify empathy and tolerance, then, is fundamentally mistaken. Politicians may find this equation rhetorically useful for galvanizing a populace to oppose terrorism, but it has little philosophical merit.

### *Conclusion*

The September 11 attacks shocked Americans. Despite warnings that al Qaeda might target the United States, many politicians failed to anticipate the attacks. Most Americans had no idea that the United States was vulnerable to international terrorism. They saw the terrorists as a shadowy group of people seeking to destroy their way of life. They struggled to locate the attacks in some conceptual framework, comparing them to the 1941 Pearl Harbor attack, nineteenth-century Russian nihilism, or Communism.

Many commentators noted how the battle against al Qaeda is both an intellectual and military one. How can we defend the person’s

dignity when extremists try to destroy it? What intellectual framework provides the best defense for this dignity?<sup>58</sup> To respond to this challenge, we need not only to affirm the person's dignity but also to consider how to relate to persons whom we do not know. Empathy, experiencing another's inner life, provides an indispensable means of valuing persons. Its ideal locus is the face-to-face relationship, which affords opportunities for mutual understanding and correction. Unfortunately, we may abuse our relationships with others, using empathy to destroy them. Consequently, we need to link empathy with solidarity of all persons, thus preventing abuses of empathy.

The torture memos created a dangerous climate of moral indifference toward detainees in the "war on terror." Both Defense and Justice Department officials ignored their concrete humanity, employing a utilitarian mentality that disregarded the person's value. Embracing this narrow approach to morality, interrogators degraded detainees, treating them like subhuman creatures. When confronted with news of this treatment, public officials and personalities retreated to the idea that unlawful combatants have no rights. They ignored the many innocent people falsely labeled terrorists and subjected to abusive treatment in Guantánamo Bay, Abu Ghraib, and other facilities around the world. Such intellectual justification and practice of abuse and terror have profoundly damaged the U.S. image worldwide. Rather than responding to vicious terrorism by developing policies that respect the person, the United States abused detainees in its custody. When governments battle brutal terrorists, they will often use barbaric practices. However, if we hope to limit them, we must develop and strictly enforce ethical guidelines that retain a modicum of empathy and solidarity.

More than twenty-five hundred years ago, the great Greek historian Thucydides chronicled a descent into barbarism on the island of Corcyra. Factions battled factions, murdering large numbers of people and destroying Corcyra. Detailing this disaster, Thucydides drew particular attention to language, stating that in the Corcyran revolution,

words had to change their ordinary meaning and to take those which were given them. Reckless audacity came to be considered the courage of a loyal ally; prudent hesitation, specious cowardice; moderation was held to be a cloak for unmanliness; ability to see all sides of a question, inaptness to act on any. Frantic violence became the attribute of manliness; cautious plotting, a justifiable means of self-defense.<sup>59</sup>

By sophistically redefining torture, rejecting empathy, and using the unlawful combatant and terrorist labels, the Bush administration has profoundly distorted our ethical language. It has indeed identified moderation with “unmanliness,” and accused those counseling empathy of “inaptness to act.” People with little moral compunction about torture supposedly exhibit “manliness,” while those who condemn it show “specious cowardice.” Both Christians and non-Christians should find these responses profoundly disturbing. Fortunately, some Americans oppose them, and in an age of twenty-four-hour media and the Internet, more information is emerging about the United States’ treatment of detainees. Unlike in Corcyra, democratic institutions in the United States and Europe have begun to respond to numerous allegations of torture and abuse.<sup>60</sup> Hopefully, as we confront the prospect of more terrorist attacks, we will have the sense of solidarity and empathy to adhere to “those general laws to which all alike can look for salvation in adversity.”<sup>61</sup> Otherwise, like the Corcyrans, we may gradually descend into barbarism.<sup>62</sup>

## Notes

1. John Paul II, *Angelus*, June 27, 2004. [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/angelus/2004/documents/hf\\_jp-ii\\_ang\\_20040627\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/angelus/2004/documents/hf_jp-ii_ang_20040627_en.html).
2. Charles Aldinger, “Pentagon: Geneva Convention Doesn’t Cover Detainees,” *Reuters*, January 11, 2002.
3. “Michael Walzer, “The Problem of Dirty Hands.” Walzer’s piece has been reproduced in different anthologies. For an excellent recent anthology that contains it, see Sanford Levinson, *Torture: A Collection* (Oxford: Oxford University Press, 2004). In this volume, Jean Bethke Elshtain concurs with Walzer but locates his argument

in a Christian context, see Jean Bethke Elshtain, "Reflections on the problem of 'dirty hands.'" Mark Bowden also agrees with Walzer, "The Dark Art of Interrogation," *The Atlantic Monthly* 292, no. 3 (October 2003): 51–70. Defending torture in select circumstances, Charles Krauthammer rejects the idea that we ought to feel morally guilty for torturing terrorists to obtain information about bombings, see "The Truth about Torture," *The Weekly Standard* 011, no. 12 (December 5, 2005), available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/006/400rhqav.asp>. For some thoughtful responses to Krauthammer from evangelical Christians, see "The Truth About Torture: A Symposium," available online at <http://www.evangelicaloutpost.com/torture/>. I thank Father Richard J. Neuhaus for drawing my attention to this symposium.

4. For the 70,000 figure, see the Amnesty International report, "Guantánamo and beyond: The continuing pursuit of unchecked executive power," May 13, 2005, available at <http://web.amnesty.org/library/Index/ENGAMR510632005>.
5. For the complete text of this statement, see the August 2, 2004, memo available on the Web site of the American Civil Liberties Union, <http://www.aclu.org/torture-foia/released/FBI.121504.5053.pdf>. This Web site contains numerous documents that allege abuses of detainees in U.S. custody. Even if some of these allegations are false, it stretches credulity to claim that *all* of them are fabrications by sophisticated terrorists schooled in counterresistance techniques.
6. Karol Wojtyła, *Love and Responsibility* (New York: Farrar, Straus, Giroux, 1960), 21. My analysis of persons in this paragraph owes much to Wojtyła's work.
7. Naturally, I do not intend this to be an exhaustive account of the nature of persons. In presenting it, I have drawn heavily from the following works: W. Norris Clarke, *Person and Being* (Milwaukee: Marquette University Press, 1993); Wojtyła, *Love and Responsibility*; Joseph de Finance, *Être et agir dans la philosophie de Saint Thomas* (Rome: Università Gregoriana, 1960); and John F. Crosby, *Personalist Papers* (Washington, DC: The Catholic University of America Press, 2004).
8. John F. Crosby, "A Neglected Source of the Dignity of Persons," in *Personalist Papers*, 12. In this section, I use this essay extensively.
9. Wojtyła, *Love and Responsibility*, 24.
10. For a famous introduction to personalism, see Emmanuel Mounier, *Personalism*, trans. Philip Mairet (Notre Dame: University of Notre Dame Press, 1970). The first chapter is particularly insightful. For a general survey of different kinds of personalism and an accompanying bibliography, see Kevin Schmiesing, "A History of Personalism," available at the Acton Institute Web site at [http://www.acton.org/research/pubs/papers/history\\_personalism.html](http://www.acton.org/research/pubs/papers/history_personalism.html). I have been most influenced by John Paul II's personalism. For one excellent essay relating Thomism and phenomenology, see Karol Wojtyła, "Thomistic Personalism," in *Person and Community: Selected Essays*, trans. Theresa Sandork, OSM (New York: Peter Lang, 1993), chap. 10.
11. Historically, philosophers often link empathy with the issue of how we come to know other minds. Here, I assume that we already know that other persons exist

- but want to know more about their inner life. I follow Max Scheler and Alfred Schutz in believing that analogical arguments for other minds fail, see Max Scheler, *The Nature of Sympathy*, trans. Peter Heath (New Haven: Yale University Press, 1954), chap. 3, and Alfred Schutz, “The Problem of Transcendental Subjectivity in Husserl,” in Alfred Schutz, *Collected Papers III* (The Hague: Martinus Nijhoff, 1970), 51–91.
12. Scheler describes such experiences wonderfully, detailing grief, joy, emotional infection, and emotional identification, see Scheler, *The Nature of Sympathy*, chap. ii.
  13. Schutz states that the “postulate, therefore, that I can observe the subjective world of another person precisely as he does is absurd,” Alfred Schutz, *The Phenomenology of the Social World*, trans. George Walsh and Frederick Lehnert, with an introduction by George Walsh (Evanston: Northwestern University Press, 1967), 99 (hereafter cited in text as *Phenomenology*).
  14. John F. Crosby, “The Emphatic Understanding of Other Persons,” in *Personalist Papers*, 34 (hereafter cited in text as “Emphatic Understanding”).
  15. Alfred Schutz, “Symbol, Reality, Society,” in Alfred Schutz, *Collected Papers I: The Problem of Social Reality*, edited and introduced by Maurice Natanson, with a preface by H. L. Van Breda (The Hague: Martinus Nijhoff, 1971), 315.
  16. *Ibid.*, 316.
  17. M. Gregg Bloche and Jonathan H. Marks, “When Doctors Go to War,” *New England Journal of Medicine* 352, no. 1 (January 6, 2005):3–6.
  18. In this section, I draw heavily on Crosby’s work, which develops the close connection between empathy and solidarity.
  19. John Paul II, *Sollicitudo Rei Socialis*, no. 38, available on the Vatican Web site at [http://www.vatican.va/edocs/ENG023/\\_INDEX.HTM](http://www.vatican.va/edocs/ENG023/_INDEX.HTM).
  20. *Ibid.*, no. 39.
  21. See *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (New York: W.W. Norton and Company, 2004), chap. 1.
  22. “Humane Treatment of al-Qaeda and Taliban Detainees,” February 7, 2002, in Karen J. Greenberg and Joshua L. Dratel, eds., *The Torture Papers: The Road to Abu Ghraib* (Cambridge: Cambridge University Press, 2005), 134–35.
  23. For one account of the “unlawful combatant” category, see Michael H. Hoffman, “Terrorists are Unlawful Belligerents, Not Unlawful Combatants: A Distinction with Implications for the Future of International Humanitarian Law,” *Case Western Reserve Journal of International Law* 34, no. 2 (Spring 2002), 227–31.
  24. See NBC *Meet the Press with Tim Russert*, September 16, 2001, available at <http://www.whitehouse.gov/vicepresident/news-speeches/speeches/vp20010916.html>.
  25. Available at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2003&m=November&x=20031102202110aegio.4442713&t=usinfo/wf-latest.html>.

26. To avoid misunderstanding, I want to emphasize that I think we can arrive at a good definition of terrorism. I will not, however, explore this issue in this article.
27. "Standards of Conduct for Interrogation under 18 U.S.C., 2340–2340A," in *The Torture Papers*, 183.
28. Lieutenant Colonel Jerald Phifer, "Memorandum for Commander, Joint Task Force 170," October 11, 2002, in *The Torture Papers*, 227–28.
29. Lieutenant Colonel Diane E. Beaver, "Memorandum for Commander, Joint Task Force 170," October 11, 2002, in *The Torture Papers*, 235. I thank Karen J. Greenberg, executive director of the Center of Law and Security at the New York University School of Law for suggesting that I look at Lieutenant Colonel Beaver's memos.
30. Ibid.
31. "Memorandum for the Secretary of Defense," November 27, 2002, in *The Torture Papers*, 237.
32. "Memorandum for Commander USSOUTHCOM," January 15, 2003, in *The Torture Papers*, 239.
33. "Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations," March 6, 2003, in *The Torture Papers*, 288 (hereafter cited in text as "Working Group Report").
34. "Memorandum for the Commander, US Southern Command," April 16, 2003, in *The Torture Papers*, 360.
35. Ibid.
36. "CIA puts harsh tactics on hold," *The Washington Post*, June 24, 2004. For a systematic account of the relationships between the memos, policy, and abuses, see "Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees," *Human Rights Watch* 17, no. 1 (G) (April 2005), <http://www.hrw.org/reports/2005/us0405/>, and "The Road to Abu Ghraib," *Human Rights Watch*, June 2004, <http://www.hrw.org/reports/2004/usao604/>.
37. "Statement by the President, United Nations International Day in Support of Victims of Torture," June 26, 2003, available at <http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html>.
38. United States Department of Justice, Office of Legal Counsel, "Memorandum for James B. Comey," December 30, 2004, available at <http://www.usdoj.gov/olc/dagmemo.pdf>. I thank Karen J. Greenberg for drawing my attention to this document.
39. Michael Isikoff, Daniel Klaidman, and Michael Hirsh, "Torture's Path," *Newsweek*, December 27, 2004, available at <http://www.msnbc.msn.com/id/6733213/site/newsweek>; "Human Rights Watch Opposes Gonzales Nomination," *Human Rights News*, January 24, 2005, available at <http://hrw.org/english/docs/2005/01/24/usdom10064.htm>. For additional background on how the memo was crafted, see Mike Allen and Dana Priest, "Memo on Torture Draws Focus to Bush," *The Washington Post*, June 9, 2004, <http://www.washingtonpost.com/wp-dyn/articles/>

- A26401-2004Jun8.html. For a defense of the administration’s memos, see John Yoo, “Commentary: Behind the ‘torture memos,’” *UC Berkeley News*, January 4, 2005, available at [http://www.berkeley.edu/news/media/releases/2005/01/05\\_john-yoo.shtml](http://www.berkeley.edu/news/media/releases/2005/01/05_john-yoo.shtml). See also John Yoo, *The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11* (Chicago: University of Chicago Press, 2005).
40. “Human Rights News,” January 24, 2005, available at <http://hrw.org/english/docs/2005/01/24/usdom10064.htm>
  41. “The Schlesinger Report,” in *The Torture Papers*, 941.
  42. “Report of the International Committee of the Red Cross (ICRC) on the Treatment of Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation,” February, 2004, in *The Torture Papers*, 393.
  43. For example, see documents at the American Civil Liberties Web site for March 2005, <http://www.aclu.org/torturefoia/>.
  44. See the Office of Legal Counsel Web site, <http://www.usdoj.gov/olc/>.
  45. “Standards of Conduct for Interrogation under 18 U.S.C., 2340-2340A,” August 1, 2002, in *The Torture Papers*, 209.
  46. In a fascinating article, Jane Mayer describes how Alberto J. Mora, general counsel for the United States Navy, strongly opposed those who wrote the torture memos. He protested their conclusions, arguing that they were immoral and illegal. Unfortunately, he was unable to alter administration policy. For his story, see Jane Mayer, “The Memo: How an internal effort to ban the abuse and torture of detainees was thwarted,” *The New Yorker*, February 27, 2006, available at [http://www.newyorker.com/fact/content/articles/060227fa\\_fact](http://www.newyorker.com/fact/content/articles/060227fa_fact).
  47. “The Schlesinger Report,” in *The Torture Papers*, 909-76.
  48. Bin Ladin made these remarks in a 1998 interview with ABC, and they are quoted in the 9/11 report, *The 9/11 Commission Report*, 47.
  49. *The Rush Limbaugh Show*, May 12, 2004, transcript available at <http://www.freerepublic.com/focus/f-news/1134391/posts>.
  50. Adam Zagorin and Michael Duffy, “Inside the Interrogation of Detainee 063,” *Time*, June 20, 2005, 29. For evidence that labeling detainees contributed to this abuse, see Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror* (New York: New York Review of Books, 2004), 44-45.
  51. Zagorin and Duffy, “Inside the Interrogation of Detainee 063,” 30. There have been other reports of how interrogators treated detainees as animals, see Danner, *Torture and Truth*, 13.
  52. Patrick D. Healy, “Rove Criticizes Liberals on 9/11,” *The New York Times*, June 23, 2005.
  53. “Report of the International Committee of the Red Cross (ICRC) on the Treatment of Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation,” February 2004, in *The Torture Papers*, 388.

54. "The Fay-Jones Report: Investigation of Intelligence Activities at Abu Ghraib," in *The Torture Papers*, 1042. I owe this reference to Mark Danner's book, see Danner, *Torture and Truth*, 31.
55. David Rose, *Guantánamo : The War on Human Rights* (New York: The New Press, 2004), 15. For other stories of innocent people detained and abused, see Danner, *Torture and Truth*, chap. 1–3, and the American Civil Liberties Union and Human Rights First lawsuit against Defense Secretary Rumsfeld, *Ali et al., v. Rumsfeld*, available at [http://www.humanrightsfirst.org/us\\_law/etn/lawsuit/PDF/rums-complaint-022805.pdf](http://www.humanrightsfirst.org/us_law/etn/lawsuit/PDF/rums-complaint-022805.pdf).
56. Undoubtedly, many prisoners at Guantánamo Bay are dangerous and have or will commit terrorist acts. Nevertheless, it appears that many others have committed no serious crimes. For an analysis of data about Guantánamo Bay prisoners, see Mark Denbeaux, Joshua Denbeaux, and David Gratz, "Report on Guantánamo detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data," available at [http://law.shu.edu/news/guantanamo\\_report\\_final\\_2\\_08\\_06.pdf](http://law.shu.edu/news/guantanamo_report_final_2_08_06.pdf).
57. Michael D. Barber, *Equality and Diversity: Phenomenological Investigations of Prejudice and Discrimination* (Amherst, NY: Humanity Books, 2001), 121.
58. See Paul Berman, *Terror and Liberalism* (New York: W.W. Norton and Company, 2003) and Michael Ignatieff, *The Lesser Evil: Political Ethics in the Age of Terror* (Princeton: Princeton University Press, 2004).
59. Thucydides, *The Peloponnesian War*, The Crawley Translation, revised, with an introduction by T. E. Wick (New York: The Modern Library, 1982), Book 3, 82.
60. In December 2005, the United States Senate passed the McCain Amendment, which prohibited torture and abuse of detainees. Unfortunately, when signing this amendment into law, President Bush issued a signing statement indicating that he had the constitutional power to override legislation regarding torture. He and others in the executive branch maintain that they have the legal right to continue to abuse detainees. For the text of the McCain Amendment, see the Friends Committee on National Legislation Web site at [http://www.fcnl.org/issues/item.php?item\\_id=1567&issue\\_id=70](http://www.fcnl.org/issues/item.php?item_id=1567&issue_id=70). For information about President Bush's signing statement, see Charles Savage, "Bush could bypass new torture ban: Waiver right is reserved," *The Boston Globe*, January 4, 2006, available at [http://www.boston.com/news/nation/washington/articles/2006/01/04/bush\\_could\\_bypass\\_new\\_torture\\_ban/?rss\\_id=Boston.com+%2F+News](http://www.boston.com/news/nation/washington/articles/2006/01/04/bush_could_bypass_new_torture_ban/?rss_id=Boston.com+%2F+News).
61. Thucydides, *The Peloponnesian War*, Book 3, 84.
62. I am grateful to John F. Crosby, Fred Kersten, and Gilbert T. Null for very helpful advice and comments about Alfred Schutz and other phenomenological matters. I also thank the faculty and students at Franciscan University at Steubenville for helpful questions and responses when I presented this paper on their campus.