

# The Alternative

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Dear Reader,

The theme of this month's Newsletter is assaults on human dignity. There is no shortage for candidates. The idea of human dignity is one that has a long history but it is only in the twentieth century that it was brought forward as the very center of ethics. No nation or political leader would now admit to attacks on human dignity, and yet the violations are widespread. Although everyone seems to agree that "human dignity" is a good thing it is both surprising that it should be the centerpiece of ethics and somewhat difficult to understand what it is.

Nearly the entire civilized world considers the execution of prisoners to be a violation of human dignity. The United States continues this practice to the horror and disgust of most other nations. Opponents of the practice have had no success in getting it banned altogether. They have resorted to the strategy of bringing suit under the provision of the Constitution that forbids cruel and unusual punishment.

On April 15, 2008, the Supreme Court ruled that lethal injections are not a violation of the Constitution's protection against cruel and unusual punishment. The question was whether a prisoner is exposed to pain and cruelty while being executed. Chief Justice Roberts cited an 1890 ruling that defines cruelty as limited to punishments that "involve torture or a lingering death." Justice Thomas cited an 1879 case in which, he said, "the court had no difficulty concluding that death by firing squad did not amount to cruel and unusual punishment." Actually, in that case the firing squad hit only the prisoner's arms and torso. It took him 27 minutes to bleed to death.

If you step back from the question, it certainly has its bizarre side. It is assumed that it is okay to kill a person but it is questionable if there is pain involved. Might it be that killing a person is cruel and unusual punishment? The whole history of state executions in this country has revolved around finding "humane" ways to kill. Each new way is hailed as advancement in the method. The electric chair was a big disappointment. Poison now turns out to have its problems. Maybe there is no way to kill people while giving them "death with dignity."

The first essay is by the Israeli ethicist, Avishai Margalit, who argues that a "decent" society is one that does not humiliate its prisoners. The two essays that follow are concerned with torture, which until a few years ago was not thought to be an ambiguous term. The final essay is on the origin of the idea of human dignity in Christian and European history.

## THE DECENT SOCIETY

By Avishai Margalit

Humiliation is the rejection of a human being from the human family, that is, treating humans as nonhuman, or relating to humans as if they were not human. Treating persons as if they were not human is treating them as if they were objects or animals. The important role of ceremonies or gestures of humiliation derives from the fact that humiliation involves acting toward persons “as if” – as if they were inanimate objects, as if they were tools, as if they were beasts. But these humiliating attitudes are not authentic. Attitudes of rejecting people from the community of human kind, as objects or animals, do not express an authentic attitude toward these people. The attitude is *as if* they were objects, *as if* they were beasts.

Humiliation typically presupposes the humanity of the humiliated. Humiliating behavior rejects the other as nonhuman, but the act of rejection presupposes that it is a person that is being rejected. This claim is close to Hegel’s account of the master-slave dialectic. The master wants absolute power over the slave but he also wants the slave to recognize his absolute power. The two desires are in conflict.

Even settings horrifying in their cruelty betray the fact that the people in charge know very well that they are dealing with human beings. The Japanese forced-labor camps for prisoners of war were known for their fearful ferocity, but it is reported that in one of those hideous camps the commander took his enslaved prisoners up the mountain to see the cherry blossoms. He felt that this wondrous sight could not be withheld from anyone, accursed as he might be. Nazi propaganda frequently compared Jews to rats: rats poison wells, while the Jews were perceived as “poisoners of culture.” Yet a poisoner of culture cannot be a rat, in spite of Nazi propaganda to equate the two.

Even Heinrich Himmler, the arch-racist, was forced to admit, in his famous speech before the SS commandants in Posnan, that killing people in camps is not the same as killing rats. Thus the killers’ efforts to suppress their natural feelings toward the wretched were far more “heroic” than if they had merely been killing rats. The special cruelty toward the victims in the forced-labor and death camps – especially the humiliations that took place there – happened in the way it did because human beings were involved. Animals would not have been abused in the same way. For one thing, animals do not have accusing eyes.

Thus my basic claim is this: the key concept for humiliation is rejection from the human commonwealth. But such rejection is not based on a belief or attitude that the rejected person is merely an object or an animal. The rejection consists of behaving *as if* the person were an object or an animal. Such rejection typically consists in treating humans as subhumans.

Punishment is the litmus test of the decent society. The way a society conducts its punishment policies and procedures put it to the test of whether or not it is a decent society. The respect that must be accorded criminals is basic human respect; they clearly must not be granted any social honor. Thus looking at punishment is a good way of examining whether a society is decent and treats human beings as human. The paradigm case of punishment is imprisonment so this is the focus of discussion.

A decent society is one that punishes its criminals – even the worst of them – without humiliating them. After all, a criminal is a human being. Every human being, even a criminal, is entitled to the respect granted to humans because they are human. An injury to human dignity is humiliation, and so even a criminal is entitled not to be humiliated. A decent society must not provide a reason for criminals to consider their dignity violated, even if their punishment gives them good reason to consider their social honor impaired

The demand for humane punishment has historically been motivated by something more than a newly acquired sensitivity to human suffering. The punishment reforms based on the demand to treat criminals humanely have stemmed from changes in the economics of punishment. On the one hand, the old regime behaved especially violently and savagely toward condemned prisoners, yet, on the other, it had a high tolerance for illegality. This tolerance was associated not only with special privileges of the nobility but also with lenient treatment of illegal behavior on the part of the lower classes, derived from a nonmoralistic attitude to their criminality. The rise of the bourgeoisie and their business requirements created the need to take punitive steps to protect the property and businesses efficiently. It therefore became necessary for lawbreakers to be punished broadly and uniformly.

Thus there was, on the one hand, a demand to restrict barbaric types of punishment, and, on the other, a demand to extend the areas in which lawbreaking was punished. It was not only changing moral sensitivities that changed peoples' attitude toward punishment, but also, and perhaps even primarily, responsiveness to the needs of the economy and society. Even if the motives for "humane" punishment were not particularly noble ones, this should not affect our demand that the decent society justify itself by appealing to human dignity as a central value, rather than by safeguarding the interests of a respectable society that is not necessarily a decent one. Policies of a decent society should be carefully constrained by regard for human dignity.

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## THE TERROR PRESIDENT

By Anthony Lewis

In these last weeks of turbulent events, the single most significant has not been the financial crisis, not the fall of a governor, not the passing of the fifth year of the war without end in Iraq. It has been an American president's formal blessing of the use of torture. That was what President Bush did in early March when he vetoed legislation prohibiting the use of brutal methods of interrogation by American intelligence agents. His action was quickly overtaken by other news. But in its redefinition of American values – of the American character – it had profound implications.

I grew up believing that Americans did not torture prisoners, as Hitler's and Stalin's agents did. There were rogue episodes of American brutality but to make torture a national policy? Unthinkable. No one should be in any doubt that torture was what President Bush had in mind. No one should be fooled by Orwellian talk of "enhanced interrogation techniques."

What Congress sought to outlaw was such things as hanging prisoners from the ceiling by their wrists, beating them, depriving them of food and water, preventing them from sleeping for days, keeping them in freezing temperatures, using electric shocks on them, and subjecting them to water-boarding – an almost drowning technique that was used by the Inquisition and by Japanese soldiers who were successfully prosecuted for it by the United States after World War II. All such methods are prohibited by the Army Field Manual. They are barred by international conventions that the United States has ratified. After the scandal of abuse at Abu Ghraib, Congress reiterated the ban in legislation covering the U.S. military. What President Bush vetoed was a bill to extend the explicit, reiterated ban to CIA agents.

In announcing the veto, Mr. Bush said that “the program” – his euphemistic term for interrogation methods used in secret CIA prisons at “black sites” on foreign soil – had produced information that exposed planned terrorist attacks. He made specific claims that “the program helped to stop a plot to strike a U.S. Marine camp in Djibouti,” for example, and “a plot to hijack a passenger plane and fly it into Library Tower in Los Angeles. He offered no evidence to support these claims. Nor is there proof that they are false. But skepticism is surely in order for self-serving assertions by a president who has misled the country about so much in his war, including the use of torture.

Senator John D. Rockefeller IV, the chairman of the Senate Intelligence Committee, who has sometimes been criticized for being too easy on the President, said of Mr. Bush’s claims: “I have heard nothing to suggest that information obtained from enhanced interrogation techniques has prevented an imminent terrorist attack. And I have heard nothing that makes me think the information obtained from these techniques could not have been obtained through traditional interrogation methods used by military and law enforcement interrogators. On the other hand, I do know that coercive interrogations can lead detainees to provide false information.”

The corrupting effects of the adoption of torture as an American practice have been widespread. First of all on the law. The Justice Department’s Office of Legal Counsel, which makes binding interpretations of the law for the federal government, issued secret opinions defining torture away to the vanishing point, saying it must be equivalent in pain to “organ failure, impairment of bodily function, or even death” – and adding that Congress could not stop the president from ordering the use of torture. (The whole idea of secret official opinions defining the law should be anathema in a free republic, one that has boasted from the beginning of having a government of laws, not men. Secret laws are the hallmark of tyrannies.)

The Justice Department opinions were not abstractions. They were immediately taken up by political appointees at the Pentagon and led directly to the torture of prisoners and the killing of some at Bagram Air Base in Afghanistan.

Torture has had corrupting effects on our politics, too. Most Republicans in Congress have defended the president’s claim of the right to use such methods, evidently as a matter of political solidarity. The corruption has even touched the man who more than anyone has been a symbol of resistance to torture, John McCain. Senator McCain led Congress in 2005 to pass the legislation reiterating the ban on the military’s use of torture. But when it came to extending the ban to intelligence agents in this year’s Intelligence Authorization Act, he sided with the

president. It was as if he were saying that the North Vietnamese who so cruelly tortured him as a prisoner were war criminals if they were soldiers – but not if they were intelligence agents.

George W. Bush can seek his God’s mercy for trying to legitimize torture by Americans. But here on earth he cannot escape judgment. For me he will always be the torture president. The rest of us do not have to resign ourselves to being a Torture Nation. *The Washington Monthly* devoted its current issue to the subject of torture as American practice, publishing brief essays by figures across the political spectrum. Colonel Lawrence B. Wilkerson, U.S. Army (Ret.), who was chief of staff to Secretary of State Colin Powell, writes: “We must start now to recognize our crimes and our complicity. We are all guilty, and we must all take action in whatever way we can. Torture and abuse are not American. They are foreign to us and always should be. We need to exorcise them from our souls and make amends.”

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## MEMORY AND TERROR

By Tony Judt

The abstracting of foes and threats from their context –the ease with which we have talked ourselves into believing we are at war with “Islamofascists,” “extremists” from a strange culture, who dwell in some distant “Islamistan,” who hate us for who we are and seek to destroy “our way of life” – is a sure sign that we have forgotten the lesson of the twentieth century: the ease with which war and fear and dogma can bring us to demonize others, deny them a common humanity or the protection of our laws, and do unspeakable things to them.

How else are we to explain our present indulgence for the practice of torture? For indulge it we assuredly do. The twentieth century began with the Hague Conventions on the laws of war. As of 2008 the twenty-first century has to its credit the Guantanamo Bay detention camp. Here and in other (secret) prisons the United States routinely tortures terrorists or suspected terrorists. There is ample twentieth-century precedent for this, of course, and not only in dictatorships. The British tortured terrorists in their East African colonies as late as the 1950s. The French tortured captured Algerian terrorists in the “dirty war” to keep Algeria French.

At the height of the Algerian war, Raymond Aron published two powerful essays urging France to quit Algeria and concede its independence: this, he insisted, was a pointless war that France could not win. Some years later Aron was asked why, when opposing French rule in Algeria, he did not also add his voice to those who were speaking out against the use of torture in Algeria. “But what would I have achieved by proclaiming my opposition to torture?” he replied. “I have never met anyone who is in favor of torture.”

Well, times have changed. In the U.S. today there are many respectable, thinking people who favor torture – under the appropriate circumstances and when applied to those who merit it. Professor Alan Dershowitz of Harvard Law School writes “that the simple cost-benefit analysis for employing such non-lethal torture [to extract time-sensitive information from a prisoner] seems overwhelming.” Professor Jean Bethke Elshtain of the University of Chicago’s School of Divinity acknowledges that torture remain a horror and is “in general”[sic]...forbidden.” But

when interrogating “prisoners in the context of a deadly and dangerous war against enemies who know no limits...there are moments when rule may be overridden.”

These chilling assertions are echoed by New York Senator Charles Schumer (a Democrat), who at a Senate hearing in 2004 claimed that “there are probably very few people in this room or in America who would say that torture should never be used.” Certainly not Supreme Court Justice Antonin Scalia, who informed the BBC’s Radio Four in February 2008 that it would be absurd to say that you couldn’t torture. In Scalia’s words: “Once you acknowledge that, we’re in a different game. How close does the threat have to be? How severe can the infliction of pain be? I don’t think these are easy questions at all...But I certainly know you can’t come in smugly and with great self-satisfaction say, “Oh, it’s torture, and therefore it’s no good.”

But it was precisely that claim, that “it’s torture and therefore it’s no good,” which until very recently distinguished democracies from dictatorships. We pride ourselves on having defeated the “evil empire” of the Soviets. But perhaps we should read again the memoirs of those who suffered at the hands of that empire – the memoirs of Eugen Loebel, Artur London, Lena Constante, and countless others – and then compare the degrading abuses they suffered with the treatments approved and authorized by President Bush and the U.S. Congress. Are they so very different?

Torture certainly “works.” As the history of the twentieth-century police states suggests, under extreme torture most people will say anything (including sometimes the truth). But to what end? Thanks to information extracted from terrorists under torture, the French army won the 1957 Battle of Algiers. Just over four years later the war was over. Algeria was independent, and the “terrorists” had won. But France still carries the stain and the memory of the crimes committed in its name. Torture really is no good, especially for republics. And as Aron noted many decades ago, “torture – and lies are the accompaniment of war. What needed to be done was end the war.”

We are slipping down a slope. The sophistic distinctions we draw today in our war on terror – between the rule of law and “exceptional” circumstances, between citizens (who have rights and legal protections) and non-citizens to whom anything can be done, between normal people and “terrorists,” between “us” and “them” – are not new. The twentieth century saw them all invoked. They are the selfsame distinctions that licensed the worst horrors of the recent past: internment camps, deportation, torture, and murder – those very crimes that prompt us to murmur “never again.” So what exactly is it that we think we have learned from the past? Of what possible use is our self-righteous cult of memory and memorials if the United States can build its very own internment camps and torture people there?

Far from escaping the twentieth century, we need, I think to go back and look a bit more carefully. We need to learn again – or perhaps for the first time – how war brutalizes and degrades winners and losers alike and what happens to us when, having heedlessly waged war for no good reason, we are encouraged to inflate and demonize our enemies in order to justify that war’s indefinite continuance. And perhaps, in this protracted electoral season, we could put a question to our aspirant leaders: Daddy (or as it might be, Mommy), what did you do to prevent the war?

## A CHRISTIAN ETHICS OF HUMAN DIGNITY?

By Gabriel Moran

Where did the idea of human dignity come from? There is no word in philosophical Greek for the idea. *Dignitas* was a Latin word coined for the respect that was to be shown to an upper class gentleman. It was an unlikely word to describe the fundamental respect deserved by every human being, but today it is one of the few terms that links medieval and modern ethics.

Christianity is seldom given the credit it should have for democratizing and universalizing the idea of human dignity. Of course, Christianity often failed to live up to its best ideals. And without the help of philosophy, especially Stoicism, Christian thinking could not have provided Europe and the rest of the world with the basis of human rights.

During the fifteenth to the seventeenth century, the ideal of Christendom was replaced by the idea of “civilization” as Europe’s gift to the world. Europe, like medieval Christianity, mixed its bountiful ideas with aggressive military conquest. Paradoxically, universal human rights were bought with the violation of nations and races judged to be inferior. Most writing on human rights tends to dismiss the question of the historical and philosophical basis of rights.

The Christian contribution came from two different strands: mysticism and canon law. Christian mystics, while holding on to the principle of incarnation, still pushed at the limits of finitude and saw all creatures as equal in being created. “Every man a king,” according to Meister Eckhart; all are deserving of being treated with dignity simply by being a member of humankind.

The influence of the canonists, starting in the twelfth century, is easier to trace though more surprising. The Christian mission to the whole world joined with a recovered idea of Roman natural law. The word *jus*, translated into English as “law” had three different meanings: 1) what is just 2) a law that applies everywhere to human beings 3) the justice due to an individual.

In most European languages to this day the same word can mean both law and right. Because there is a law embracing all humans, each human has duties and accompanying rights. The idea of dignity and rights came to fruition with the Dutch humanist, Grotius in the seventeenth century, with the help of the Spanish Jesuits. He wrote his major work while Catholics and Protestants were destroying each other in the thirty-years war.

The English had taken a different route, less philosophical and more practical. The idea of rights and the dignity of each individual were slowly built up through parliament’s struggle with the kings. The “glorious revolution” of 1689 was a culmination of centuries of struggle and a bitter civil war. When the United States of America was founded, it looked more to English tradition than the European continent. If the “West” now wishes to spread the idea, it needs all the historical, political and philosophical support in its past. The Christian Church should be given credit, although disgraceful episodes, such as the Spanish Inquisition, undercut any grandiose claim it might make about creating the sense of human dignity. .

The challenge now is for church leaders to speak forthrightly on war, torture, execution, economic disparity, and other obvious affronts to dignity. The church has to draw from its

deepest and best tradition while also speaking concretely to today's problems. The Catholic Church's pedophile scandal meant that it was the main thing the Pope had to address in his U.S. visit. The Pope did the right thing but it is a sad fact that the news media were only interested in that.

Joseph Ratzinger, before becoming pope, wrote: "There may be a legitimate diversity of opinion about waging war and applying the death penalty, but not however with regard to abortion and euthanasia." The statement is muddled on all counts. It tries to close discussion where discussion is urgently needed while it leaves open discussion where the Christian Churches should be unified in their total opposition to society's most barbaric practices.

There may be some "diversity of opinion" about war insofar as the term now carries more ambiguity than it formerly did. The ambiguity is not so great that the church cannot say that almost anything that goes by the name of war is immoral. The Christian Church has much to atone for in its blessing of the battlefields in past centuries. Today there is no doubt about what any organization that claims to stand for peace should say about war, namely, that it is the stupidest, most immoral activity that human beings do.

The so-called "death penalty," is a euphemism for the state execution of prisoners. I cannot understand any hesitation at all in a church condemnation. Nearly all of the civilized world has outlawed the practice. I fail to see how the state execution of prisoners can be judged other than blatantly immoral, sacrilegious, and opposed to Christian orthodoxy.

On the other side of Ratzinger's contrast, he says there is no legitimate diversity of opinion about abortion. If he means that abortion is bad, of course everyone agrees. It is a terrible form of birth control that should be eliminated as far as possible and as soon as possible. People do legitimately disagree about how serious is the moral failing of abortion. Roman Catholic spokesmen often equate abortion and murder which neglects centuries of Catholic tradition on the need to make precise moral distinctions. In any case, most Roman Catholics in the United States agree on the need for political leaders to let abortion be dealt with by physicians and their patients without the government dictating more than some basic rules.

As for euthanasia, the Catholic Church has been a leading light in dealing with care of the dying. But to say there is no diversity of opinion on "euthanasia" is simply incorrect. Fifty years ago, the meaning of the term euthanasia was clear ("mercy killing") and the practice was condemned by nearly all medical authorities and ethicists. The phrase "dying with dignity" had not been invented as a euphemism for physician assisted suicide.

In recent decades, the meaning of the term euthanasia has changed. I think the change is unfortunate but it has happened. The term now usually if not always includes what the Catholic Church has consistently approved, namely, that no extraordinary means are required to prolong the process of dying. The Catholic Church has many well informed thinkers who need to be in this discussion. For bishops or the Vatican simply to issue condemnations of euthanasia is not facing up either to the way language changes or to the extraordinary complexity of what goes on in hospitals and nursing homes today.