

Religious Reason-Giving in the Torture Debate: A Response to Jeremy Waldron

by David P. Gushee*

I am grateful to the Mercer Law Review for including a Christian ethics professor in this colloquy and, wearing my other hat as a co-sponsor of this symposium, grateful to our distinguished guests for being here! I am also grateful to my friend Jeremy Waldron for his very kind words about me and about our Evangelical Declaration Against Torture,¹ and for his excellent paper presented at this symposium, to which it is my honor to offer a brief response.

It seems to me that a paper focusing as it does on my own work on the Evangelical Declaration rightly evokes a somewhat autobiographical response. I want to deal with the important theoretical issues raised by Professor Waldron in light of my own involvement in the torture debate from 2005 until today. This will take you behind the scenes to some extent and, I hope, will reveal the cogency of Dr. Waldron's claims about the constructive value of religious contributions to public deliberation.

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1. Evangelicals for Human Rights, *An Evangelical Declaration Against Torture: Protecting Human Rights in an Age of Terror* (Mar. 2007), *reprinted in* DAVID P. GUSHEE, *THE FUTURE OF FAITH IN AMERICAN POLITICS: THE PUBLIC WITNESS OF THE EVANGELICAL CENTER* 253-70 (2008).

I. STAGE 1: “FIVE REASONS WHY TORTURE IS ALWAYS WRONG”—AN
ESSAY FOR *CHRISTIANITY TODAY* (FEB. 1, 2006)²

I was contacted by evangelicalism’s flagship magazine, *Christianity Today*, in the fall of 2005 with a special request: Would I write a Christian moral analysis of the ethics of torture? *Christianity Today* (CT), for whom I have published periodically over almost two decades, is an extraordinarily cautious keeper of the flame of evangelical orthodoxy. In Waldron’s terms, though it has no “practical authority” like the Vatican, in the odd reality that is American evangelicalism, CT has at least considerable sway. Its politics and its readers tend to the right, though not the extreme right. This is the quasi-official organ of mainstream white evangelicalism.

CT was taking a political risk with its constituency in even asking me to write such an analysis, which would inevitably have political implications and ramifications. However, correspondence with my editor suggested that the issue was urgent at a pastoral level. CT editors were hearing from some of the disproportionate number of devout evangelicals in the United States Armed Forces and intelligence services—good-hearted souls who were troubled by what they were seeing, hearing, and being asked to do by way of prisoner treatment. They wanted the kind of moral guidance that believers seek from leaders within a faith community when that community’s theological and moral resources are brought to bear on a problem that affects their lives.

Thus, my first foray into moral analysis of torture was pastoral. I attempted to tell Christians serving in the War on Terror that torture was always wrong, that they were not morally permitted as followers of Christ to torture anyone because of the following:

- (1) Torture violates the intrinsic dignity of the human being, made in the image of God;
- (2) Torture mistreats the vulnerable and thus violates the demands of public justice;
- (3) Authorizing any form of torture trusts government too much;
- (4) Torture invites the dehumanization of the torturer; and
- (5) Torture erodes the character of the nation that tortures.

In my original draft, I added a sixth reason that was cut by the editors:

- (6) Torture risks negative consequences at many levels.

My editors thought that even entering into the cost-benefit analysis, the “Does torture do more harm than good” discussion, was not where CT

2. David P. Gushee, *Five Reasons Torture is Always Wrong*, *CHRISTIANITY TODAY*, Feb. 2006, at 33-37.

wanted to go theologically. In light of later public debate over the ethics of torture, comprised of (as Professor Waldron indicates) constant if not reductionistic appeals to consequences, this was a very interesting move on the part of CT's editors. And, even though I later published a book chapter in which I kept the sixth point,³ I have always felt that resort to such claims undermined the most important Christian theological argument to make in this culture on this issue.

When looking at the five reasons that made the CT cut, notice the kind of moral arguments offered. It is easy to see that these are first addressed to the Christian and from within the framework of the Christian tradition, especially points one to four. Caring about the character of the nation (point five) matters to those Christians who accept a legitimate national concern as an aspect of Christian discipleship—this is critical patriotism rather than uncritical nationalism, but it is still clearly a Christian concern.

Although these were arguments grounded in scripture and Christian tradition, most, if not all, have the potential to be intelligible in public discourse as well. The deepest reasons why a Christian cares about mistreatment of the vulnerable, over-trust of government, the dehumanization of the torturer, or the character of the soldier or nation, might be different from the reasons offered by a person of another faith or of no faith. However, the moral claims themselves have the potential to translate. One might say that this essay contained the seeds of both a Christian “comprehensive doctrine” and a publicly accessible moral argument.

II. STAGE 2: THE EVANGELICAL DECLARATION AGAINST TORTURE (EDAT) (MAR. 2007)⁴

My highly visible and contested essay for CT brought many changes to my life, including an unhappy dean and the kinds of pungent Internet criticisms Professor Waldron cited in his paper. More happily, it brought contact from a newly forming interfaith coalition known as the National Religious Campaign Against Torture (NRCAT).⁵ They contacted me and a few other evangelicals and asked if we would become involved in their campaign and do so precisely as evangelicals. They knew that it was not particularly newsworthy that Muslims, Reform Jews, secularists, and mainline Protestants were opposed to Bush Administration interrogation

3. See David P. Gushee, *Six Reasons Why Torture is Always Wrong*, in *TORTURE IS A MORAL ISSUE: CHRISTIANS, JEWS, MUSLIMS, AND PEOPLE OF CONSCIENCE SPEAK OUT* 73-91 (George Hunsinger ed., 2008).

4. See An Evangelical Declaration Against Torture, *supra* note 1.

5. Still fighting the good fight at NRCAT, www.nrcat.org (last visited Feb. 14, 2012).

policies. To bring white evangelicals into the mix, however, was a very different matter. Our involvement was therefore critically important to them—not just as a matter of political strategy, but also because the kinds of thick religious arguments I was making had a different flavor to them than the thin generalities that could be generated within an interfaith coalition.

With funding from NRCAT, I had the resources to hire staff (current Mercer University School of Law student Mary Head) and assemble a coalition to draft a major statement. Our clandestine strategy was to draft the statement privately and then see if we could get it approved by the Board of the National Association of Evangelicals through its then Vice President, Richard Cizik, without mobilizing hardline opposition. We succeeded, much to the shock of the conservative American religious and political establishment, on a 38-1 vote.

The Evangelical Declaration was intended as a major theological statement against torture, but also as a document representing a stronger Christian public voice for human rights. As Dr. Waldron argues, the ultimate theological grounding for our total opposition to torture was an exalted, grave, and particularly Christian formulation of a sacredness-of-human-life ethic. Such formulation created the basis for a strongly articulated support for human rights and a defense of Christian engagement on behalf of human rights (and opposition to anyone who would claim that human rights are fictive or anti-Christian). We moved from human rights broadly to the human right not to be tortured under any circumstance, a right recognized by international law, U.S. domestic law, and most ethical systems. This led to specific recommendations to reform U.S. interrogation policies so that they did not transgress the moral and legal ban on torture.

It was always our intention to address both an ecclesial and a public audience with this statement, though in rereading the statement I am reminded that it is mainly addressed to the general public. This was indeed a form of bearing witness, a statement of our comprehensive doctrine, and a way of explaining Christian opposition to prisoner abuse and torture. Still, I would say that its first goal was to shape Christian conscience rather than to bear directly on public deliberation. We invited any person of good will to listen for the intelligibility of our arguments, but we assumed that if we could win the hearts and minds of our own people—because evangelicals represent at least a quarter of the American population—that we could change public policy. This rhetorical strategy still makes sense in the particularly American context of a vast residual Christian population. It is still conceivable to pursue a strategy of speaking to Christians and aiming to move their consciences on a mass scale in order to change national policies and values.

I acknowledge that this was a hybrid document. Its theological claims and many of its moral claims were particularly Christian, yet the document made specific policy recommendations for the United States. One might have thought that this mix would have ruled the text out of bounds for public deliberation, but to the contrary, I learned that it was being noticed in public policy circles. I was even asked to submit testimony to the Senate Judiciary Committee. When I asked my staff what kind of language would be appropriate for such public testimony, they said that the Evangelical Declaration's language was a welcome contribution. This is worth considering, and Professor Waldron makes the following implication near the end of his essay: in a time when thoughtful Americans of various types were concerned that we were losing our way morally in this matter of public policy, could it be that precisely because our committee's moral and policy claims were grounded in some kind of transcendent religious-ethical reference point that they were most needed, and precisely in that form, without secular translation?

III. STAGE 3: A PURELY PUBLIC ARGUMENT (EVANGELICAL THEOLOGICAL SOCIETY, NOV. 2010)⁶

Dr. Waldron has accurately recorded the distressing news that despite much theologically grounded argument intended specifically to address U.S. evangelical Christians, polls show this particular religious community still supports at least occasional resort to torture at a higher level than the general public. Further, the polling that Mercer University conducted along with Faith in Public Life for the 2008 Mercer University National Torture Summit showed that Southern evangelical Christians did not primarily turn to resources of faith (28%) when thinking about the issue of torture, but instead turned to "life experience and common sense (44%)."⁷ Thus, white evangelical Christians support torture more than the general public and do not want to be bothered with religious arguments to the contrary.

Therefore, in disgust and out of a growing sense that religious arguments related to torture were ineffectual, when I was asked to participate in a 2-on-1 debate on torture this past fall at the quite conservative Evangelical Theological Society, I decided to surprise my interlocutors by paring my arguments down to public reason-giving.

6. See David P. Gushee, *Loyalty and Passion in the American Christian Torture Debate*, HUFFINGTON POST (Nov. 17, 2010, 1:44 PM), http://www.huffingtonpost.com/dr-david-p-gushee/loyalties-methodologies-a_b_784812.html.

7. Results of the poll are reported in RELIGIOUS FAITH, TORTURE, AND OUR NATIONAL SOUL 289-92 (David P. Gushee et al. eds., 2010).

Using Bush-Cheney Administration staffer Marc Thiessen's *Courting Disaster*⁸ as my foil, I purposely engaged only public arguments until near the very end of the paper. Therefore my claims were:

1. Thiessen is wrong in claiming that enhanced interrogation techniques were necessary and effective;
2. Thiessen is wrong in claiming that enhanced interrogation techniques were legal;
3. Thiessen is wrong in claiming that enhanced interrogation techniques were "tough but humane";
4. Thiessen is right that enhanced interrogation techniques were and are supported by the American people, but this proves nothing other than recent moral corruption on the part of the American people, led by their government;
5. Thiessen is wrong in claiming that enhanced interrogation techniques were consistent with our nation's highest moral values and ideals; and
6. Thiessen is clever, but dangerous, in initiating a rhetorical race to the bottom by claiming that enhanced interrogation techniques bear no real resemblance to torture as practiced by totalitarian regimes or the Spanish Inquisition.

I must say that in this hostile setting, and one in which a purely religious argument would have been far more appropriate, I have never been more rhetorically effective on the torture issue—and, it seems, never have I changed more minds. What shall we make of that?

IV. STAGE 4: THE DETAINEE TREATMENT PANEL OF THE CONSTITUTION PROJECT⁹

I will close by saying that today I serve on the Taskforce on Detainee Treatment, a bipartisan, blue-ribbon commission sponsored by the well-respected Constitution Project and filled with experienced senior figures like former FBI Director William Sessions, Ambassador Tom Pickering, and Judge Patricia Wald. I am the only Christian ethicist on this panel, whose work will probably be completed after the November 2012 election. Can I be honest and say that after this journey I am rather confused about what kind of discourse this particular panel wants and needs from me? Can it be that what I have discovered over these five years is that the best discourse strategy may be to bring secular

8. MARC A. THIESSEN, *COURTING DISASTER: HOW THE CIA KEPT AMERICA SAFE AND HOW BARACK OBAMA IS INVITING THE NEXT ATTACK* (2010).

9. See Press Release, Task Force on Detainee Treatment Launched (Dec. 17, 2010), available at http://www.davidpgushee.com/Web%20Docs/TF_Launch.pdf.

2012]

RESPONSE TO JEREMY WALDRON

875

arguments to bear in Christian settings, and to bring Christian arguments to bear in secular settings? Can it be that unsettling fixed patterns of discourse actually helps both audiences think in a fresh way about the issues that all of us must face? With this question, I will conclude my remarks. Thank you.