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Losing Trust in the World

Holocaust Scholars Confront Torture

Edited and Introduced by

LEONARD GROB and JOHN K. ROTH

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Reality is reasonable only so long as it is moral.

—Jean Améry, *Radical Humanism*

22 Ibid, 42.

23 Ibid., 38.

24 See, for example, Rabbi Aryeh Klapper, "Torah Does Not Support Torture," *Edah*, <http://www.edah.org/klapperb.cfm>. See also Rabbi David Rosenn, Rabbi Jeremy Kalmanofsky, and Rabbi Melissa Weintraub, "Torah against Torture: A Sample OpEd," *Jewish Week*, October 6, 2006.

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Torture in Light of the Holocaust

An Impossible Possibility

DIDIER POLLEFEYT

This chapter explores whether a proportionalist approach to torture can pass the test of a post-Holocaust Catholic understanding of good and evil. To begin, one can distinguish two basic positions in dealing with moral issues about torture: a deontological approach and a proportionalist one. The former is taken by "absolutists," who contend that torture is intrinsically evil and can never be legitimized or accepted. Deontologists defend this position by emphasizing the integrity—physical and mental—of the human being who is tortured. Torture denigrates the victim's autonomy and human dignity; it often regards the individual as little more than a source from which information is to be extracted. Deontologists stress that torture undermines the moral universe itself and therefore must always be prohibited. Such an interpretation can be found in the fifth article of the Universal Declaration of Human Rights (1948).¹ It has been made even more explicit in the 1949 Convention Relative to the Treatment of Prisoners of War, Geneva: "The following acts are and shall remain prohibited at any time and in any place whatsoever . . . violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture."² The Catholic Church also holds a clear deontological view about torture. The 1992 *Catechism of the Catholic Church* states that "torture which uses physical or moral violence to extract confessions, punish the guilty, frighten

opponents, or satisfy hatred is contrary to respect for the person and for human dignity.”³ In addition, Pope John Paul II’s encyclical *Veritatis Splendor* calls torture “intrinsically evil” (*intrinsece malum*).⁴ Emphasizing that the prohibition against torture must never be contravened, Pope Benedict XVI supported that judgment in his 2007 address to the Twelfth World Congress of the Commission of Catholic Prison Pastoral Care.⁵

Accentuating consequences, not absolute prohibitions, the proportionalist outlook is different. Where torture is concerned, it weighs moral value by considering that good outcomes may sometimes entail choices between the lesser of evils, if not decisions in favor of necessary evils. Proportionists often use the “ticking time bomb” scenario to show that urgent circumstances can legitimize the use of torture in rare cases. They invoke a thought experiment in which a terrorist in custody possesses critical knowledge, such as the location of a “ticking time bomb” that will soon explode and cause great loss of life. Proportionists claim that in a case like that—where timely information about the bomb’s location may be obtained—sound reasons exist to inflict torture. The consequence of doing so, they contend, is a lesser evil than murder. Indeed, to avert that calamity, torture may be a necessary evil. Hence, while proportionists do not deny that torture is evil, they are prepared to argue for the conditional possibility of torture based on a contextual assessment of costs and benefits. Torture is then acceptable only when the benefits of torture exceed its costs. The “ticking time bomb” scenario seems both to illustrate and to invoke that principle.

Avoiding the Slippery Slope

A major objection to the proportionalist approach is the slippery slope argument: once we decide to torture a single person, we cross a moral line and will be willing to torture anytime it seems necessary. Eventually we may create a “culture of torture.” As a Catholic theologian trained in the proportionalist intellectual tradition, I think there is a crucial difference between an ethics that legitimizes a culture of torture and an ethics that—while condemning torture in almost every instance—will not argue, *a priori*, that torture is never morally necessary. To be clear, I am not defending any broad justification of torture. Rather, I support the argument that would legitimize “restricted” or, better, “restricting” torture. This position demands

taking the greatest possible caution in ever defending the morality of torture. The argument does not deny reality by taking a theoretical, deontological position but is sensitive to the possibility of conflicts between values and antivalues. It tries to discern honestly and critically when the radical respect for the dignity of the human person is limited by the right to life and the integrity of other people and communities. In this way, a proportionalist understanding of torture can also be motivated by a radical respect for human dignity.

Proportionists contend that torture is legitimate only in extremely rare cases to gain vital information in what is considered a supreme emergency—for example, when one is faced with the choice between the torture of one or a few people and the potential death of innocent people. Therefore, proportionists employ strict criteria to legitimize use of torture: (1) the danger should be imminent and very severe; (2) fundamental values should be at stake; (3) no other options can be available to gain access to the necessary life-saving information; (4) there should be reasonable evidence that the captured individual knows the information, that the information will be useful, and that the pain inflicted will lead directly and immediately to the vital information; (5) the torture must not cause death or irremediable harm in the long term to the person who is tortured.

The foregoing does not imply that in the proportionalist view torture becomes a good in itself. On the contrary, torture is *always* an evil, but sometimes a lesser evil. Thus the possibility of a justified act of torture can never be excluded *a priori*. Michael Walzer has argued that sometimes a moral politician with high ethical standards will acquire “dirty hands” because he may be obliged under certain circumstances to opt for torture to avoid a much greater evil. This individual recognizes all the while that torture remains a moral evil: “He commits a determinate crime, and he must pay a determinate penalty. When he has done so, his hands will be clean again, or as clean as human hands can ever be.”⁶ The proportionalist position also holds that this legitimation of torture in isolated and extreme cases is not the same as accepting institutionalized torture as a legal and ongoing practice of the state. It also implies that governments can never take torture “off the radar,” that any act of torture should be undertaken by someone who has the juridical authority to do so, and finally, that each decision should be made public and thus be open to democratic judgment, including harsh critique and insistent protest.

Taking the Holocaust into Account

Whether this proportionalist approach to torture passes the test of a *post-Holocaust* Catholic understanding of good and evil depends, at least in part, on taking the Holocaust itself explicitly into account. Consider, then, the perspectives of Holocaust victims, perpetrators, and bystanders. Tortured by Nazis before deportation to Auschwitz, the Jewish philosopher Jean Améry described torture as an essential aspect of Nazism. His reflection offers unique insight into the experience of torture under the swastika, but not only there. For Améry, torture is an experience of being physically overwhelmed that is equivalent to an existential consummation of destruction. The person being tortured is completely isolated in his or her own body. When writing that one's mind and soul "are destroyed when there is that cracking and splintering in the shoulder joints," Améry makes clear that there is no proportionality in torture: the nature of torture is such that it inflicts pain without proportion.⁷

Against this line of thinking, one can argue that the intention of a torturer in one situation can be very different from the intention in another. Améry's testimony suggests that his bodily and psychological integrity was violated for no other reason than the satisfaction gained by his sadistic torturers. But it is also possible, as I have argued, to cause pain with the intention of obtaining information that might save human lives. Although one can argue that pain is not always the deprivation of a basic human good—pain is often present, at least to some extent, in even the best human experiences—what we learn from Améry is that in the experience of *all* torture, whatever the intention, the pain itself transcends every kind of proportionality. This awareness does not mean that torture cannot be judged according to a proportionalist ethic; rather, it implies that alternative goods or evils that are at stake should also be disproportionate in nature.

A decisive question follows immediately: who will decide when torture is acceptable? This issue leads me to seek responses from the perspective of perpetrators of the Holocaust. In his groundbreaking book *Morality after Auschwitz*, Peter Haas questions not why the Nazis committed such evil as the torture of Améry, but why they did not recognize this evil as evil.⁸ The answer to this question, in Haas's view, is that *good* and *evil* had been given a new interpretation in Nazi Germany. Millions of Germans were no longer capable of seeing evil as evil. The Germans did not lose their ethical faculties; rather, they adopted new modes of moral evaluation. Many Ger-

mans were well aware of what was happening to the "enemies of the people," but they found the actions undertaken by the Nazis to be morally acceptable and acted consciously and enthusiastically in accordance with this new moral interpretation. This "moral" Nazi logic goes far toward explaining how the Holocaust was maintained for years without much meaningful opposition from German political, judicial, medical, or religious leaders. How could torture—as brutal as it is—be judged to be moral? Haas would say that the difficult emotions which may have arisen in the minds of the torturers were the "necessary price" that had to be paid if one wanted to contribute to a higher Nazi goal. Arguably, every morality asks people at certain moments to give up feelings generally understood as "human." Nazi ethics praised mercilessness as a moral virtue.

What we learn from Haas's analysis is how vulnerable "ethics" is to manipulation by those in power who are imbued with a fixed ideology. How merciless can ethics become when traditional moral values are excluded from such ideologies. The Nazis thought there were good reasons to torture their victims, such as the alleged need for medical experiments or the ruthless implementation of war goals. Of course, not every ethical legitimization of violence is automatically a misuse of ethics. Should we show mercy, an important human virtue, to those who show no mercy? Should we tolerate the intolerable? From this perspective, there is a radical difference between torture in Améry's case and torture in the "ticking time bomb" scenario. Nevertheless, we learn that not every ethical argumentation leads to a morally correct decision. We learn that we always risk falling into the trap of a situational ethics that claims the end justifies the means. In Améry's case, torture could never pass the test of this moral rigor since it violates almost all criteria of proportionality reasoning, starting with the fifth one I noted above: no permanent, irredeemable harm may be inflicted on a human being.

A third perspective garnered from a study of the Holocaust is related to the position of bystanders and the "dynamics of indifference" that often characterized their position.⁹ We learn from Holocaust studies how bystanders were not always adequately informed—or how they neglected to inform themselves—about what was happening around them. They remained passive, avoided involvement, and felt powerless. Responsibility for the evil that was occurring was spread so wide that most people did not feel accountable. Of course, in a totalitarian system, even when evidence of evil's being committed was obvious, bystanders had relatively

few possibilities for protest that did not put them and their families in dire straits. In a democratic context, bystanders can play a more critical role if they have access to the necessary information and if moral weight is given to good deeds in the larger society. But even in a democratic context, bystanders can easily be paralyzed and rendered powerless.

The argument that those who would otherwise be called bystanders can abandon that role to protest the immorality of torture presupposes that such situations are clear and relatively easy to judge. In most cases when moral dilemmas come into play, we are confronted with many uncertainties; options for acting are often unclear. This dilemma exists even in the "ticking time bomb" scenario. Will there ever be a situation where everything is certain and where bystanders will have no moral questions when confronted with the complexities at hand? With regard to the "ticking time bomb" scenario, it would be difficult to judge if there was a bomb and if the tortured person had the requisite information that would lead to its dismantling. Therefore, some call the "ticking time bomb" situation merely hypothetical, a "fraud scenario."¹⁰

What, then, do we learn from study of the Holocaust with regard to moral issues surrounding torture? We learn that comparing deontological and proportionalist approaches to the morality of torture can be a merely intellectual exercise. But there is much more to be learned. Study of the Holocaust requires us to give more attention to the radical experience of torture itself. As Améry indicates, the perspective of the victims of torture shows that there is no continuous passage from "normal" human suffering to torture, but rather a radical discontinuity, a complete disproportionality.

Another Jewish philosopher, Emmanuel Levinas, echoes and extends Améry's insights in reflecting on the meaning of torture in the context of *incarnation*.¹¹ Even if our human freedom is characterized in principle by an infinite invulnerability, says Levinas, the nexus of spirit with body—our incarnation—makes us extremely vulnerable beings. Because of our "carnal condition" (*condition de chair*), we are defenseless against instruments of torture that penetrate both body and spirit. For this reason, our human will is not heroic, but rather precarious and fallible; in the end, our will can only be characterized as a "derisory freedom" (*une liberté dérisoire*). On the one hand, according to Levinas, the will is created free, divine, and inviolable; on the other hand, especially because of its corporality, the will is vulnerable. This condition implies that torture not only

aims to force the victim to confess secret information; it also destroys the human person as at once soul and flesh. In torture, the human will is brought to and kept at the border of its own decay—this is the immorality of torture. Torture reveals the vulnerability of the will in the sense that even the greatest mind, the greatest hero, can be forced to become a betrayer. This humiliation is the deepest one that the tortured person has to undergo and bear. Torture makes one into an object but at the same time maintains the person's subjectivity. One cannot "steal the secret" of the other if one kills or renders the other unconscious.

Study of the Holocaust also reveals the dangers of torture from the perspective of the perpetrators, whose core of being is also destroyed by this act. One becomes contaminated by the evil that one does to the other. This evil does not remain external to the perpetrator, but precisely because the perpetrator is also incarnated, evil enters into his or her body and soul. The torturer who destroys the freedom of the victim also destroys his or her own freedom from within. In this sense, torture is contagious: it destroys the dignity of freedom in both victim and perpetrator. The study of Nazi torture shows how the practice of torture has a deeply dehumanizing impact on the torturer; it also teaches us not to expect too much of bystanders, who might otherwise be thought of as those who could prevent such an abuse of power. As I have argued, both in totalitarian and democratic societies, bystanders are often not well informed and not directly engaged in the acts of the torturer. Bystanders may be morally confused, divided, powerless, or indifferent when confronted at a distance by torture.

Revisiting the Proportionalist Argument

Taking the Holocaust into account, my proportionalist argument remains a critically important approach to an ethics of torture. Given the many conditions that must exist for a "ticking time bomb" scenario to come into play, this approach rejects facile acceptance of torture as a moral act. Indeed, through exploration of Holocaust-related torture, including especially the disproportionality of the pain caused by torture, my outlook is constrained almost to a deontological position. I believe this is what the Catholic teaching wishes to express by its deontological condemnation of torture. Nevertheless, I would not go so far as to conclude that torture is "structurally" disproportional. Even if I am almost moved to the deontological position,

I continue to opt for a proportionalist approach. As I have argued, a “just cause” can be at stake here: there could be a more grave injustice in play. A post-Holocaust exploration of torture, however, demands that we tremble in the face of such dilemmas. It warns against ever feeling satisfied with regard to these matters.

These latter insights lead to my central conclusion: torture cannot be excluded a priori as a moral possibility, but as a moral possibility, torture must be questioned time and again in terms of the consequences at stake. On the one hand, torture can never be prohibited in advance in every context; since it is not an absolute evil, torture should always be weighed proportionally in light of potential murder. A greater evil may come about, in very rare contexts, if torture is not administered. On the other hand, it is impossible to imagine at this moment, except theoretically, any circumstances that would be so clear and urgent that a proportionalist judgment justifying torture could be offered. For this reason, I term torture an *impossible possibility*. However, evildoers must know that a proportionalist judgment may need to be made in circumstances in which it is warranted. One can never be certain a priori that torture cannot, in certain circumstances, be justified. The concept of *impossible possibility* serves as a cautionary measure, requiring us to hesitate, question, criticize, and postpone torture as long as possible in the search for alternatives. Still, we must be open to the possibility that in certain circumstances, there may be no moral choice other than to engage in acts of torture.

This position can be understood and criticized as a paradox. It is, however, also the position taken by the Catholic Church with regard to capital punishment. The *Catechism* does not condemn capital punishment on deontological grounds as a universal evil, but says rather that “cases of absolute necessity for suppression of the offender today . . . are very rare, if not practically non-existent.”¹² Thus the traditional approach of the church does not exclude by definition all recourse to the death penalty, at least not when it appears to be the only possible way of effectively protecting human lives against an unjust aggressor. If nonlethal means are sufficient to protect the lives of other human beings, one has to limit oneself to those means that speak directly to the common good and the dignity of the human person. And as a consequence of the ability of the modern state to protect potential murder victims through an adequate system of imprisonment, the death penalty, according to church doctrine, is in fact almost never necessary—and thus almost never morally acceptable. This line of argu-

ment is similar to my proportionalist approach to torture, recalling the distinction articulated above between the a priori (in principle) impossibility of torture and the empirical near impossibility of torture that a sound consequentialist approach requires. Cases in which torture would be considered inevitable are “very rare, if not practically non-existent.”

CONTRIBUTORS' QUESTIONS FOR DIDIER POLLEFEYT

1. You want to curb and eliminate torture. Nevertheless you oppose a blanket condemnation of it. While criticizing deontological and consequentialist positions, you argue that the “ticking time bomb” scenario could justify torture under “very rare, if not practically non-existent” conditions. Thus, you contend, a total condemnation of torture would be a *static* absolute. Are you arguing instead for what might be called a “living absolute,” one *enacted*—rather than *posited*—by our facing, with fear and trembling, the choice between the torture of one or more people and the murder of others?

The parameters giving rise to such a choice can never be known in advance of the moment of *enactment* of that choice, but at the same time you articulate five “strict criteria” that must be met prior to the infliction of torture if torture is ever morally justified: (1) the impending danger to innocents must be “imminent and very severe”; (2) “fundamental values should be at stake”; (3) “no other options” are available; (4) useful information can be obtained; (5) “the torture must not cause death or irremediable harm in the long term to the person who is tortured.” But how *imminent and severe* must the danger be? How should *fundamental values* be defined? Are not other options *always* available? How *useful* must the information be? When does torture *not* cause irremediable harm? Who gets to decide when your “strict criteria” are met, and what happens if the interpretations/decisions are contestable or contested? Furthermore, how would you respond to the following dilemma: Once criteria for judging the morality of torture are cited in advance of the critical moment of decision, has not a “living absolute” become fixed in the expectation that the unanswerable can be answered?

2. Your position requires you to keep your balance on a precarious high wire with no safety net. For example, it is well known that the “ticking time bomb” scenario is a carefully constructed thought experiment that arguably no actual circumstances ever match. Even if you do not

fall off the high wire when confronting the dilemmas posed by your “strict criteria”—especially the “who decides?” problem—you have not met the objection that the real world does not contain the finely tuned “ticking time bomb” scenarios that would be legitimate occasions for torture to extract life-saving information. You feel the pressure of that problem because you acknowledge that your position is almost stretched into one that rejects torture outright. Yet you allow “ticking time bomb” possibilities—scarcely realistic though you admit they are—to trump outright rejection of torture. How, then, do you respond to the proposition that perpetrators of torture will take comfort from the fact that you keep the torture chamber door unlocked, especially when they see that, your objections to the contrary notwithstanding, your “strict criteria” provide convenient interpretive ways to justify torture?

Given the “impossible possibility” of maintaining balance on the high wire of your own construction, why not reject torture outright? That question looms ever larger as you develop your analysis of the racking pain and relentless suffering caused by torture, a part of your essay that brings to mind lines from the Polish poet Wisława Szymborska. “Nothing has changed,” her poem “Tortures” repeats five times. “The body is a reservoir of pain . . . its bones can be broken; its joints can be stretched. In tortures,” she understates, “all of this is considered.”¹³ You are at your best when you share Szymborska’s firm ground. On the high wire, your moral balance is too shaky.

RESPONSE BY DIDIER POLLEFEYT

Post-Holocaust ethical reflections on torture can indeed be described as calling for keeping one’s balance on a precarious high wire. Holocaust scholars know very well that there is no safety net underneath when they fall off the wire in the confrontation with evil. In my view, this predicament requires a carefully nuanced consideration of torture. A central moral concern in that inquiry, especially in the post-Holocaust world, poses a key question: who is the victim? During the Holocaust, the answer to that question often would have been “a Jewish prisoner in a Nazi camp, tortured for whatever reason or for no reason at all.” In such cases, the moral issue is simple and clear: torture is a moral evil and should be condemned without any hesitation or restriction. But my analysis suggests, in the form of another query, a different answer to the question posed above. Would it

be morally legitimate to torture a Nazi perpetrator for the sole purpose of eliminating the possibility that yet more victims would suffer as a result of a *failure* to torture the perpetrator? In this case, I believe that an absolute moral position rejecting torture in all instances—whatever the circumstances—involves serious problems. A proportionalist moral position offers more opportunities to exercise justice toward large numbers of potential victims implicated in a “ticking time bomb” scenario.

A proportionalist position underscores that one is often confronted with the clash between two moral evils. In such cases, I contend, one has to choose the lesser evil. For example, the act of amputating a leg to save a human life is an act with a double effect: the leg is lost, but the person’s life is saved. The amputation is not a good in and of itself; it is and remains an evil. The amputation saves the life of the person, but the loss of the limb is not redeemable, at least not completely. Instead, that loss remains irreversible, tragic, and even shocking. Morally speaking, the act of amputation can therefore never be chosen for its own sake. That is why we say that in such an instance, the negative (evil) effect may never be intended, but only tolerated in light of a higher good to be attained. The amputation itself can never be called redemptive, even if the consequence is that a person’s life is redeemed. The saving of the person can never make the amputation itself a good.

As applied to the issue of torture, therefore, proportionalist reasoning leads to moral complexity. On the one hand, this approach attempts to delay the use of this form of extreme violence as long as possible; on the other hand, this mode of argument does not deny the possibility that exceptional circumstances may exist in which not to torture may result in murder. It is only with “fear and trembling” that this line of argument attempts to realize its ethical call within the complexity occasioned by a realization that a potentially exceptional case may indeed become a reality.

I hold that any justification of torture should be made in the course of employing the strictest intellectual rigor, taking into account all those goods and evils that are at stake in a given context at a given moment. In fact, I agree with my respondents that I am arguing for a kind of “living absolute” rather than a “static absolute.” In any discussion with those who would want to torture for a higher moral good, I would introduce criteria against which the legitimacy of torture must be measured so rigorously that, in practice, acts of torture will almost never be morally acceptable. These criteria are based on a long and solid tradition in Catholic moral

theology, including, for instance, the just war theory developed by Augustine and Thomas Aquinas. This theory holds that the use of violence ought to meet rigorous philosophical, religious, and political criteria, which are indeed very strict and severe. These criteria are at work in key questions that test whether torture approaches moral legitimacy: How near and severe is the danger? How fundamental are the values at stake? Are no alternatives available? How useful will the eventual information be? How sure is it that torture will not cause death or irremediable harm? If the United States government had persistently raised these questions, and carefully applied the criteria embedded in them, not one person would have been tortured at Guantánamo.

Given my very restricted defense of torture as an *impossible* possibility, my respondents wonder why I do not reject torture outright. In short, they want me to be an absolutist, and I think they do so because they fear that my position plays into the hands of relativism and too easy “justifications” of torture. I reject that implication, and in doing so, I want to point out that absolutism is not necessarily the antidote for easy “justifications” of torture. For instance, one can claim to be absolutely opposed to torture on moral grounds but end up justifying torture by calling it something else—“enhanced interrogation techniques,” for example, or other euphemisms such as “waterboarding.” Absolutist discourse is no guarantee against torture. To the contrary, such discourse can be rendered powerless or, even worse, help to mask torture by calling it something other than what it is, all the while proclaiming “absolutely” that torture is never justifiable. The Holocaust drove home this lesson, for Nazism succeeded in combining ethical absolutism with moral relativism in a monstrous way.

Absolutists—including Nazi absolutists—strive to avoid uncertainties, but a proportionalist approach to torture learns to deal with moral uncertainty, complexity, and ambiguity. Advocates of proportionalism have no expectation that the unanswerable can be answered with perfection. Avoiding euphemistic language and speaking openly about torture, my proportionalist position emphasizes that even in the “ticking time bomb” scenario, we will never know *with certainty* that a bomb exists or that the person to be tortured is the right person, the one who possesses the necessary and exact information sought. We will never know *for sure* that torture will generate useful information and whether that information can be obtained in a timely manner. My approach to torture is put forward for *uncertain* situations and, in particular, for those in which every decision is

likely to have an undesirable outcome, at least to some extent. It also recognizes that situations exist in which not acting becomes itself an act with severe moral implications. Thus, this approach is made for a world in which there are no finely tuned scenarios that can categorically legitimize or reject torture.

This brings me to yet other questions posed by my critics: Who gets to decide what’s what in the circumstances I have noted? What if there are different interpretations as to the nature of a moral decision to be made? First, I emphasize that any moral decision to inflict torture can be made only in extreme circumstances that are always unique and contextual. Further, I argue that no government should be given the right to make a decision that would apply to each and every case in which the legality of torture is at issue: there is always a risk that governmental power may be misused. One can hope and pray that one will never be confronted with a situation in which torture seems justifiable. Yet virtually every human being, every group, every community can imagine circumstances in which that terrible dilemma could be real. If such situations do occur, one should know that all those involved will be held accountable for the choices they have made or not made; they will be held accountable also for the evils that may prove to be the outcome of these choices. Individual and public accountability is a central element in the proportionalist approach to torture. In addition, even if one finally decides not to torture in a circumstance of this sort, it must be understood that this is not necessarily a neutral act. A decision *not* to torture can also give rise to evil consequences.

It is true that my position is so strongly driven by the desire to avoid torture that it almost rejects torture outright. And indeed, I allow not so much for the possible occurrence of a “ticking time bomb” scenario *per se*, but rather for the eventuality that somewhere, sometime, an extreme and tragic situation may arise, a situation in which the suffering of others is so imminent that torturing the likely perpetrator or accomplice can be deemed the lesser evil. But this restricted view of torture is completely different from leaving the door of the torture chamber unlocked and wide open for perpetrators of torture, providing them with “convenient interpretive ways” to justify atrocity. Employing a proportionalist approach, there is simply never a “convenient” way to defend torture, nor any easy way to unlock—or permanently lock—torture’s doors. My position demands that perpetrators of torture never feel comfortable, that they will always be held accountable for the evil they cause.

Paradoxically, one of the most telling reasons not to reject torture outright lies with the victims of the Holocaust, those whose bones have turned into dust and ashes. Levinas, I believe, would put the point as follows. Facing the question "Why not reject torture outright?" his response would emphasize four words: *because of the Other*.¹⁴ Levinas stressed the importance of face-to-face relationships, but he did not interpret them as if there were only two persons in the world. He spoke about "Third Parties" too. The experience of the face of the Other is not the only relationship in which one must hear the commandment "Thou Shalt Not Murder." Levinas emphasized that we must address issues of social justice. Many others exist beside the Other. Properly understood, Levinas's philosophy is attentive to the presence of this third party. Sometimes, when we do something for the Other, it has a known or unknown effect on others. Levinas is sensitive to the difference between the interhuman relationship, where we only have moral concern for one another, and relationships with the larger society in which we have to be concerned with *all* others.¹⁵ That consideration is the reason I do not embrace moral absolutism about torture: we should leave open—at least in theory—the possibility of torture in extreme cases precisely because of care for the suffering of others.

Following Levinas, I have made a clear choice to stay with an ethics grounded not in the heaven of theoretical moral principles but in a conflicted and violent world where people suffer unjustly. No one, I contend, should put his own moral comfort so far above the well-being of others that he would be opposed a priori to torture. Should a Nazi perpetrator captured by Allied Forces in the middle of World War II be a priori safe from torture if, theoretically, such a person could provide vital information that would lead to a highly effective attack on an extermination camp? Of course, this scenario also assumes that the decision would be made at a moment when the perpetrator is unwilling to give the necessary information even though he would be at no risk in doing so. In response, one can say that no such Nazi was ever captured in specific circumstances of that kind. My point is that a reflection on such a hypothetical situation should at least change, in theory, the nature of our argumentation about torture when the welfare of others is at stake. It should be clearly understood, in conclusion, that my advocacy of a proportionalist argument is completely different from any blind and random legitimization of torture.

NOTES

- 1 United Nations General Assembly, Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/index.shtml>.
- 2 International Committee of the Red Cross, Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, accessible at <http://www.icrc.org/ihl.nsf/COM/375-590006?OpenDocument>.
- 3 Vatican, *Catechism of the Catholic Church*, para. 2297, http://www.vatican.va/archive/ENG0015/_INDEX.HTM.
- 4 Vatican, *Veritatis Splendor*, no. 80, http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor_en.html.
- 5 This speech is available at http://w2.vatican.va/content/benedict-xvi/en/speeches/2007/september/documents/hf_ben-xvi_spe_20070906_pastorale-carceraria.html.
- 6 Michal Walzer, "Political Action: The Problem of Dirty Hands," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 72.
- 7 Jean Améry, *At the Mind's Limits: Contemplations by a Survivor on Auschwitz and Its Realities*, trans. Sidney Rosenfeld and Stella P. Rosenfeld (Bloomington: Indiana University Press, 1980), 40.
- 8 See Peter Haas, *Morality after Auschwitz: The Radical Challenge of the Nazi Ethic* (Philadelphia: Fortress Press, 1988).
- 9 See Victoria Barnett, *Bystanders: Conscience and Complicity during the Holocaust* (Westport, CT: Greenwood Press, 1999).
- 10 David Luban, "Torture and the Ticking Bomb," in *The Torture Debate in America*, ed. Karen J. Greenberg (Cambridge, UK: Cambridge University Press, 2006), 84–97.
- 11 Emmanuel Levinas, *Totalité et infini: Essai sur l'extériorité* (Paris: Kluwer Academic, 2001 [1961]), 100–104; Emmanuel Levinas, *Liberté et commandement* (Paris: Livre de Poche, 1999), 36–38.
- 12 *Catechism of the Catholic Church*, para. 2297.
- 13 Wisława Szymborska, "Tortures," in *Poems New and Collected 1957–1997*, trans. Stanisław Baránczak and Clare Cavanaugh (New York: Harcourt, 1998), 202.
- 14 The word *other* in Levinas's corpus is sometimes capitalized. The capitalization refers to persons insofar as they are understood in the essence of their being as other.
- 15 Emmanuel Levinas, *Otherwise Than Being or Beyond Essence*, trans. Alphonso Lingis (Dordrecht: Kluwer Academic, 1991), 159.