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Bye Bye Bybee



By Marty Kaplan

It will be the playwrights and screenwriters, not the journalists and historians, who will some day get the torture story right. It will be the poets and novelists, not the philosophers and clergy, who will take us to the heart of that darkness. It will be the artists and satirists, not the law and the lawyers, who will eventually haul this decade to the bar of justice.

It is tempting to read the legalistic redefinition of torture in the top secret memos by Steven G. Bradbury, Jay S. Bybee and John Yoo as a case study of the banality of evil. In this account, Dick Cheney and Donald Rumsfeld tasked the Bush Justice Department to reverse-engineer a rationale for doing whatever the White House asked the CIA to do to terrorist suspects, and his supine clerks obligingly generated a preemptive update of the “only following orders” defense.

Alternatively, it is possible to read those memos as shocking evidence of the criminality of their authors and the moral monstrosity of those who commissioned them. The White House, the CIA and the Justice Department knew full well that the law defined waterboarding as torture; that the Geneva Convention outlawed torture; that the US Army Field Manual on Interrogation warned that torture produces only phony confessions and wild goose chases. Seeing the “depths of human misery and degradation” being unnecessarily inflicted on prisoners had — in the words of a senior American intelligence official quoted in *The New York Times* — “a traumatic effect” on their American captors. And yet the Bush administration persisted with these “enhanced interrogation techniques,” arguably because the intrinsic satisfactions of vengeance were warrant enough for sadism.

Both versions are at least partly true, yet neither throws much light on the human condition, or on the currents that washed our country to such an awful shore. It isn't neoconservative ideology that explains the Iraq War; it's *Oedipus Rex* and *Richard III*, *Mother Courage* and *1984*. It wasn't Hannah Arendt who limned the Holocaust; it was Anne Frank and Elie Wiesel, Andre Schwarz-Bart and William Styron. Much as I hope that Jay S. Bybee, now enjoying a lifetime appointment as a federal judge, is impeached by Congress, much as I want the Office of Professional Responsibility to seek the disbarment of Berkeley law professor John Yoo, and much as I'd like to see them — along with Alberto Gonzalez, David S. Addington, Douglas J. Feith, and William J. Haynes II — be forced to abandon international travel

because of pending war crimes prosecutions, the lessons of those consequences will be pitifully less powerful than the silent scream of *Guernica* or the savage wit of Swift.

In true tragedy, said Hegel, both sides are right. If you think that Creon is entirely wrong and Antigone is entirely right, there is little you can learn from Sophocles. If you think that Hamlet should have just run Claudius through with a sword and be done with it, Shakespeare has nothing to teach you about human nature.

It is not yet clear, and maybe will never be, whether the Bush administration's redefinition of torture was motivated by patriotism or by arrogance, by logic or by faith, by realpolitik or by psychosis. But if it becomes too easy for us to believe that Bybee, Yoo & Company belong to a different species than we do, it will be a wasted opportunity for insight. No matter how horrified we may be by their actions, it is too convenient to distance ourselves from what they did by explaining it away as Rovian evil; it is too simple to dismiss Douglas Feith, as General Tommy Franks did, as "the f—ing stupidest guy on the face of the earth." Only by seeing in these malefactors a fleeting, scary reflection of ourselves can we begin to fathom the depths to which ideology can lead anyone.

I'm not excusing these people. I'm saying that pegging Rove as Satan or Cheney as Darth Vader takes us nowhere in an attempt to grasp how 21st century America could sanction torture. I'm saying that calling the September 11th terrorists "evildoers" does nothing to explain jihadism. The books about this painful period, written and still to come, contain powerful evidence of deception and delusion. But it will take artistic genius, not investigative relentlessness, to convey the tragedy we have lived through, to show how difficult it is even for educated and God-fearing people to know the right thing to do.

Of course that's why we have laws: to codify rules that apply — that especially must apply — even in the teeth of fear or the heat of passion, even in the thrall of groupthink, even when the serpent convincingly whispers, Extraordinary times require extraordinary measures. It doesn't matter to the torture victims whether Jay Bybee really believed that they weren't being tortured, or really believed that ticking time-bomb scenarios justified torture, or really believed that he was merely parsing a clear-cut law. The grounds for impeaching him have nothing to do with what he believed. But even his impeachment will leave unplumbed the mystery of his moral blindness, and maybe, awfully, ours. For that, only art will do.

This is my column from The Jewish Journal of Greater Los Angeles. You can read more of my columns here, and e-mail me there if you'd like.

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