

*Torture and the Forever War*

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LECTURE I.  
IMPOSING THE STATE OF EXCEPTION:  
CONSTITUTIONAL DICTATORSHIP,  
TORTURE, AND US

*We are in a fight for our principles, and our first  
responsibility is to live by them.*

—GEORGE W. BUSH, SEPTEMBER 20, 2001

I

We are living in the State of Exception. We do not know when it will end, as we do not know when the War on Terror will end. But we all know when it began. We remember the perfect blue of that late-summer sky stained by the acrid black smoke of the burning building. We remember the second jetliner appearing, tilting, and then disappearing into the skin of the second tower, to emerge on the other side as a great eruption of red and yellow flame. We remember the vast showers of debris, the falling bodies: then that great blossoming, exploding flower of white dust, roiling and churning upward, enveloping and consuming the mighty skyscraper until—impossible image!—it trembles and collapses into the white whirlwind.

These were unforgettable instants of transformation, of metamorphosis: For the towers, transmogrified before our disbelieving eyes from massive steel and concrete structures into great plumes of heaven-seeking dust. For thousands of families, slashed apart, as husbands, fathers, mothers, sisters, brothers were ripped from them in an unbearably public moment of incomprehensible violence. And finally, for our country—for all of us as Americans, whose identity as citizens was subtly and perhaps irrevocably altered.

Those terrible moments, which we watched together, formed a brightly lit portal in time through which we were all compelled to step, together, into a different world. Since that day nine years ago we have lived in a subtly different country, and though we have grown accustomed to these changes and think little of them now, certain words appear often enough in the news—*Guantánamo, indefinite detention, torture*—to remind us that ours remains a strange America. The contours of this strangeness are not unknown in our history—the country has lived through broadly similar periods, at least half a dozen or so, depending on how you count,

but we have no proper name for them. State of siege? Martial law? State of emergency? None of these expressions—familiar as they may be to the French, to the British, to many other peoples—falls naturally from American lips. They are not found in our Constitution, are seldom heard in our political talk.

What are we to call this subtly altered America: this . . . way we live now? Clinton Rossiter, the great American scholar of “crisis government,” writing in the shadow of World War II, called such times “constitutional dictatorship.”<sup>1</sup> Others, more recently, have spoken of a “9/11 Constitution” or “Emergency Constitution.” Vivid terms all, and yet, perhaps because I am not a lawyer or a constitutional scholar but simply a writer on war and politics, I find them too narrowly drawn, placing as they do the definitional weight entirely on law when this state of ours seems to me to have as much, or more, to do with politics—with *how* we live now, and who we *are* as a polity. This is in part why I prefer the phrase *the state of exception*, an umbrella term that gathers beneath it those emergency categories while emphasizing that this state has as its defining characteristic that it transcends the borders of the strictly legal—that it occupies, in the words of philosopher Giorgio Agamben, “a position at the limit between politics and law . . . an ambiguous, uncertain, borderline fringe, at the intersection of the legal and the political.”<sup>2</sup>

Call it, then, the state of exception: these years during which, in the name of security, some of our accustomed rights and freedoms are circumscribed or set aside, the years during which we live in a *different time*. This different time of ours has now extended nearly nine years—the longest by far in American history—with little sense of an ending. Indeed, the very endlessness of our state of exception—a quality emphasized even as it was imposed—and the broad acceptance of that endlessness, the state of exception’s increasing *normalization*, are among its distinguishing marks. Every state of exception, of course, has its particular distinctive attributes: President Woodrow Wilson imprisoned, or deported, thousands who spoke or wrote against the country’s entry into World War I; Franklin Roosevelt, after the attack on Pearl Harbor, interned 110,000 Japanese Americans, most of them citizens; Abraham Lincoln suspended, on presidential

1. See Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Princeton: Princeton University Press, 1948).

2. Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005), 1. The second phrase Agamben quotes is from François Saint-Bonnet, *L'état d'exception* (Paris: Press Universitaires de France, 2001).

authority alone, the Great Writ of habeas corpus. Of course, we remember these because they were, and remain, controversial actions, whose wisdom and propriety lawyers and historians still debate, yet they constitute only a small subset of the actions taken by these presidents—men generally agreed to be among our greatest—to impose a state of exception during a time of war.

When we consider the state of exception that began that bright September morning and continues today, we can point not only to openness and normalization, to its permanent embedding as part of our politics, but also to its . . . subtlety. For the overwhelming majority of Americans, the changes do seem subtle—certainly when set beside how daily life was altered during World War II or World War I, not to mention during the Civil War. Officially sanctioned torture, or enhanced interrogation, however dramatic a departure it may be from our history, happens not to Americans but to others, and the particular burdens of our exception seem mostly to be borne by someone else—by someone *other*. It is possible for most to live their lives without taking note of them at all except as phrases in the news—until, every once in a while, like a blind man who lives, all unknowingly, in a very large cage, one or another of us stumbles into the bars.

Whenever we take the time to peer closely at the space contained within those bars, we can see our country has been altered in fundamental ways: when President Barack Obama in his elegant address accepting the Nobel Peace Prize declares to the world that he has “prohibited torture,” we should pause in our pride and gratitude to notice that torture violates international and domestic law and that the notion that our new president has the power to prohibit it follows insidiously from the pretense that his predecessor had the power to order it,<sup>3</sup> that during the near decade-long state of exception, not only because of what President George W. Bush decided to do but also because of what President Obama is every day deciding *not* to do—not to “look back” but “look forward”—torture in America has metamorphosed. Before the War on Terror, official torture was an anathema; today it is a policy choice.

When it comes to the state of exception, our first task must be to notice the bars of the cage. Where do we find those bars? In order to bring them into the world of the visible, in order to grasp them and feel their

3. See Barry Eisler, “It’s Good to Be the King,” *Heart of the Matter*, December 17, 2009, <http://barryeisler.blogspot.com/2009/12/its-good-to-be-king.html>.

outlines, we must return to the months and years during which the state of exception was imposed. They can be represented, of course, as a series of laws and executive orders, beginning with the Authorization of the Use of Military Force passed by Congress one week after September 11th; to the President's Memorandum of Notification the day before authorizing the CIA to capture, detain, and interrogate prisoners; to Congress's passing, the following month, the USA PATRIOT Act; to the President's Military Order of November 13 withholding Geneva Conventions protection from detainees in the War on Terror; and so on through a great many executive and military orders, some public, most secret.

Interesting as such lists are to compile and discuss—I and others have set them out before<sup>4</sup>—I think it more profitable for our purposes to begin with a list of what seem to me the most important political and, as it were, stylistic elements of our state of exception. Though faced with the events of September 11, any president—including Al Gore—would have imposed a state of exception, no one but George W. Bush could have imposed precisely this one. What, as the Jesuits ask, is its *quiddity*—its “whatness”? What can we identify as the state of exception's particular traits, its distinguishing characteristics? Here are eight early decisions that, embedding themselves in our practice and our laws during the past nine years, have evolved and intertwined to form a kind penumbra of exception around the normal functioning of our politics:

First, and most obviously, *declaring the War on Terror*—that is, redefining the effort to protect the country from terrorists *as a war*, purporting to separate this war, deliberately and cleanly, from how the U.S. government had treated terrorism up until that moment, as a hybrid problem of national security and law enforcement;

Second, *defining this war as unbounded in space and time*<sup>5</sup>—that is, proclaiming under the Bush Doctrine that terrorists would be attacked wherever they might be found; that any states harboring them would be considered enemies and liable to attack along with the terrorists; that a state's support for terrorism would put it on the other side of an “us and them” ideological dividing line, strongly recalling, not coincidentally, that of the Cold War (with terrorists transformed, in effect, into the new

4. See my “The Politics of the Forever War: Terror, Rights, and George Bush's State of Exception,” 2006 Remarque Lecture, New York University, November 16, 2006, <http://www.markdanner.com/orations/show/213>.

5. See George Soros, *The Age of Fallibility: The Consequences of the War on Terror* (New York: PublicAffairs, 2006).

Communists); and that the war would not conclude until all “terrorist groups of global reach” were destroyed, which could only be, if ever, in the very distant and indefinite future, thus making the War on Terror, together with its accompanying state of exception, a Forever War;

Third, *redefining terrorists*—not only as combatants, thus withholding from them the protections of the criminal law, but as “unlawful combatants” or “illegal enemy combatants,” thus, the Bush administration insisted, depriving them of the protection of the laws of war, including the Geneva Conventions, and thereby transforming anyone designated a terrorist into a new kind of being understood *to enjoy the protection of no laws whatever*, transforming the person so designated from human being into, in Agamben’s words, “the object of a pure de facto rule”;<sup>6</sup>

Fourth, broadly *imposing the so-called preventive paradigm*, as publicly described by the attorney general shortly after the 9/11 attacks,<sup>7</sup> which shifted the focus of arrest, detention, and also military attack into the realm of aggressive, preemptive, and preventative action, and thus downgrading such traditional legal and evidentiary tests as probable cause, adversarial judicial and administrative procedures, and also, in the case of war, imminence of threat and a consequent emphasis on *eliminating risk* at the expense of both marshaling proof and gathering information;

Fifth, narrowly *grounding the legitimacy of large parts of the state of exception on the president’s “inherent powers” alone*, pushing to extend the realm of those powers, and tending to exclude the other branches, and the minority party;

Sixth, *making use, in multifarious and creative ways, of the powers of secrecy*, both when it comes to the mix of information offered to and withheld from the public—some aspects of this distinctive mix I will call “public secrecy”—and information disseminated within the government itself, where momentous and consequential decisions are often made by a handful of officials, circumventing the relevant bureaucracies, agencies, and experts, further narrowing the input of information and producing in turn a reliance on . . . ;

Seventh, *improvising solutions* to large and complicated problems, producing policies and methods that are often amateurish, because of lack of expertise and consultation, and difficult to sustain, both practically and politically, including within the government itself;

6. Agamben, *State of Exception*, 3.

7. See David Cole and Jules Lobel, *Less Safe, Less Free: Why America Is Losing the War on Terror* (New York: New Press, 2007), 23–69.

Eighth, *embedding the War on Terror in the political struggle* between the two parties and making increasingly blunt use of it as a political trump, especially, but not only, during the run-up to elections.

Now this last attribute in particular remains today a striking part of our politics—but I would argue that all eight, in their complex intertwining, haunt us still, in one form or another. In sketching out this list, idiosyncratic and incomplete as it is, I am hoping to trace a distinctive mode of acting, behaving, and reacting—the “*style of the exception*,” if you will—and go some way toward exploring the workings of our particular state of exception, not only as it was imposed during George W. Bush’s first term but as it matured during his second, and as it endures, however transformed, under the administration of Barack Obama. For these eight factors, as they combined and evolved, went far toward producing the trademark phrases of the exception that we still hear echoing like drumbeats in the news: War on Terror. Preemptive war. Worldwide conflict. Preventive detention. Material support for terrorism. Warrantless wiretapping. Extraordinary rendition. National security letters. Unlawful combatants. Indefinite detention. Military commissions. Targeted assassination. Alternative set of procedures. Enhanced interrogation techniques. Torture.

## II

Let us begin with an example of those last:

I woke up, naked, strapped to a bed, in a very white room. The room measured approximately 4 meters by 4 meters. The room had three solid walls, with the fourth wall consisting of metal bars separating it from a larger room. I am not sure how long I remained in the bed. After some time, I think it was several days, but can’t remember exactly, I was transferred to a chair where I was kept, shackled by [the] hands and feet for what I think was the next 2 to 3 weeks. During this time I developed blisters on the underside of my legs due to the constant sitting. . . .

I was given no solid food during the first two or three weeks, while sitting on the chair. I was only given Ensure and water to drink. At first the Ensure made me vomit, but this became less with time. The cell and room were air-conditioned and were very cold. Very loud, shouting type music was constantly playing. It kept repeating about every fifteen minutes twenty-four hours a day. Sometimes the music stopped and was replaced by a loud hissing or crackling noise. . . .



During this first two to three week period I was questioned for about one to two hours each day. American interrogators would come to the room and speak to me through the bars of the cell. During the questioning the music was switched off, but was then put back on again afterwards. I could not sleep at all for the first two to three weeks. If I started to fall asleep one of the guards would come and spray water in my face.<sup>8</sup>

A naked man chained to a chair in a very cold white room, where he is bombarded, hour after hour, day after day, night after night, with sound and with light. There is no day, no night—nothing but paralysis, cold, brightness, sound. Oceans of time flow over him, but he is denied sleep. Two weeks? he thinks. Three? In fact, we know it is after eleven successive days and nights without sleep that, we are told, he begins to “break apart.”<sup>9</sup>

By now, sometime in the summer of 2002, as he sits woozy and drooling, chained naked to the chair, and though he does not know it, Zayn Al Abidin Muhammad Husayn is a famous man, his knowledge and status debated in the world’s press and argued over in the White House. When he was captured on March 28, 2002, in a spectacular raid in Faisalabad, Pakistan, during which he leaped from a building’s rooftop and was shot three times, the man we now know as Abu Zubaydah, of Saudi birth and Palestinian nationality, had just turned thirty-one. His capture was an event of great moment, a trophy in the War on Terror, for as Secretary of Defense Donald Rumsfeld told the world from his Pentagon lectern two days later, Abu Zubaydah was a “close associate of [Osama Bin Laden], and if not the number two, very close to the number two person in the organization. I think that’s well established.”<sup>10</sup>

Bracket that phrase, *well established*: what does it take to make a fact a fact? What we actually *know* about Abu Zubaydah—and, even more, what we know *he* knows—will become a matter of intense debate. At this point we know he has bullet wounds in the stomach, thigh, groin; loses huge amounts of blood; falls into a coma. On the other side of the world,

8. “ICRC Report on the Treatment of Fourteen ‘High Value Detainees’ in CIA Custody,” February 2007. Also quoted in my “U.S. Torture: Voices from the Black Sites,” *New York Review*, April 9, 2009.

9. *Special Review: Counterterrorism Detention and Interrogation Activities* (Washington, D.C.: Central Intelligence Agency Office of the Inspector General, May 7, 2004).

10. “DoD News Briefing—with Secretary Rumsfeld and General Myers,” April 1, 2002, <http://www.globalsecurity.org/military/library/news/2002/04/mil-020401-dodo2.htm>.

in Baltimore, a trauma surgeon is awakened by an urgent call from the CIA director, rushed to a private jet, and flown to Pakistan, where he manages, just barely, to save the prisoner's life. Abu Zubaydah, bleeding, still unconscious, will be carried off to a famously "undisclosed location," and his whereabouts will remain a closely guarded secret, not least to him, even as he sits, several months later, chained immobile and woozy in his white room. Once again, we know a bit more than he does: the white room is likely on a military base in Thailand, but in any event on one of the so-called black sites that the CIA improvised hurriedly in the days after September 11, secret prisons in Pakistan, Afghanistan, Romania, Morocco, Poland, Lithuania, and perhaps elsewhere to hold and interrogate prisoners, pursuant to President Bush's order, issued six days after the attacks, which gave this task to the CIA, an agency that had had nothing whatever to do with detention or interrogation for two decades or more.

So the critically wounded Abu Zubaydah is "disappeared" into secrecy, but in fact all that is secret is his location. Abu Zubaydah's capture and his "disappearance" quickly became highly public victories in the War on Terror. That he was in American hands, being interrogated at an "undisclosed location"—this was known, discussed, debated, gloated over. This peculiar fiction of "public secrecy" allows the government to withhold not mainly knowledge from the public—though narrow and vital bits of information are withheld—but responsibility and liability from itself. Not officially acknowledging it has possession of the man—and, eventually, of scores more such prisoners—the United States will reject all claims that it has any obligation to account for them or to answer for their treatment, as many countries have done in the case of their own "disappeared." Without legal status or even government acknowledgment that they are alive and in custody, such prisoners become the objects, as Agamben said, of "pure de facto rule, of a detention that is indefinite not only in the temporal sense but in its very nature."<sup>11</sup> That is, we have reached, when it comes to detainees, the opposite end of the spectrum from the liberal idea of a government inherently limited in its powers.

A few days later Abu Zubaydah wakes from his coma to find at his bedside in this unfamiliar location in an unknown country a man he does not know, who asks him his name. Abu Zubaydah shakes his head: he has heard the American accent. "And I asked him again in Arabic," remembers John Kiriakou of the CIA. "And then he answered me in English.

11. Agamben, *State of Exception*, 3–4.

And he said he would not speak to me in God's language. And then I said, "That's okay. We know who you are."<sup>12</sup>

They did not quite know, as it happened. The facts Secretary Rumsfeld had crowed about at the Pentagon that were "well established" were not facts at all. Abu Zubaydah was not "a close associate" of Osama Bin Laden, nor was he "number two," nor even "very close to the number two person in the organization"—nor, as the Department of Justice recently admitted in court documents, did he have any role or advance knowledge of the 9/11 attacks, nor was he a member of the organization or "formally" identified with it at all.<sup>13</sup> To the U.S. government desperate for information on al-Qaeda six months after the attacks of New York and Washington, he seemed, however, a very rich prize indeed—as Abu Zubaydah seemed to recognize, according to Kiriakou's recounting of the initial bedside interview at that undisclosed location: "And then he asked me to smother him with a pillow. And I said, 'No, no. We have plans for you.'"<sup>14</sup>

The plans even then were being fought over. The interrogation would be led at this initial stage by two experienced interrogators from the FBI, using "traditional methods," helping nurse the wounded man back to health, changing his bandages, washing his wounds, building a relationship, respect, rapport, and so on. One of these men, the Lebanese-born Ali Soufan, would startle the prisoner by addressing him as Hani, the nickname his mother had used with him. Soufan has argued strenuously, first as an unnamed source for journalists and now in newspaper articles and congressional testimony in his own name, that all the valuable information that was gained from Abu Zubaydah—including the identity of so-called dirty bomber Jose Padilla and the code name of Khalid Sheik Mohammed—was gained in those initial discussions. Traditional interrogation, he and his colleagues contend, was working.

Others in the government, particularly in the CIA, did not believe it; they were convinced, as a Justice Department report has it, that "he was not telling all he knew." How did they come to this conclusion? It is a fascinating and, at this point, unanswered question. We are back to

12. Brian Ross, "CIA–Abu Zubaydah: Interview with John Kiriakou." An unedited, rough, and undated transcript of a video interview conducted by Brian Ross of *ABC News*, which aired on December 10, 2007, and is available as a .pdf at [http://abcnews.go.com/images/Blotter/brianross\\_kiriakou\\_transcript1\\_blotter071210.pdf](http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript1_blotter071210.pdf).

13. Jason Leopold, "U.S. Recants Claims on 'High-Value' Detainee Abu Zubaydah," *Truthout*, March 30, 2010.

14. Ross, "CIA–Abu Zubaydah: Interview with John Kiriakou," 8–9. Quotation edited slightly for clarity.

the calculation of knowledge and of risk. Unlike the famous parable of the Ticking Bomb, in which officials know everything—that the nuclear bomb has been planted, that it will be detonated soon, that the man in custody who denies knowing its location actually knows it, that only torture will make him speak—in the real world it is the vast unknowns we fear, the deserts of ignorance, unbounded by any certain facts. Donald Rumsfeld famously distinguished between the “known unknowns” (what we know we don’t know, which can be frightening) and the “unknown unknowns” (what we don’t even know we don’t know, which can be terrifying). That terror was embodied in a simple calculus, well described by the CIA inspector general in 2004: “Field interrogators, judge that [Headquarters’] . . . assessments to the effect that detainees are withholding information are not always supported by an objective evaluation of available information and the evaluation of the interrogators but are too heavily based, instead, on presumptions of what the individual might or should know.” And again: “Lack of knowledge led analysts to speculate about what a detainee ‘should know,’ [versus] information the analyst could objectively demonstrate the detainee did know. . . . When a detainee did not respond to a question posed to him, the assumption at Headquarters was that the detainee was holding back and knew more; consequently, Headquarters recommended resumption of [enhanced interrogation techniques].”<sup>15</sup>

In an atmosphere of fear and anxiety, it seems the prudent course to assume what the detainee “should know” and proceed accordingly. And make no mistake, the critical decisions laying the basis for the state of exception were taken in a state of anxiety and fear. How could they not have been? We remember Richard Clarke’s vivid account, among others, of the atmosphere in the basement bunker of the White House that day, when a jetliner was hurtling toward Washington to demolish at any moment the building above. And the days that followed: The mysterious and terrifying anthrax attacks. The series of security alerts and threat warnings: emanations of the “second wave” strikes coming at any moment. Every day the president and other senior officials received the “threat matrix,” a document that could be dozens of pages long listing “every threat directed at the United States” that had been sucked up during the past twenty-four hours by the vast electronic and human vacuum cleaner of information that was U.S. intelligence: warnings of catastrophic weapons, conventional attacks, planned attacks on allies, plots of every

15. *Special Review*, 104–5, 83.

description and level of seriousness. “You simply could not sit where I did,” George Tenet later wrote of the threat matrix, “and be other than scared to death about what it portended.” One official compared reading the matrix every day—in an example of the ironic “mirroring” one finds everywhere in this story—to “being stuck in a room listening to loud Led Zeppelin music,” which leads to “sensory overload” and “paranoia.” He compared the task of defending the country to playing goalie in a game in which the goalie must stop *every* shot and in which all the opposing players, and the boundary lines, and the field, are invisible.<sup>16</sup>

All this bespeaks, of course, an all-encompassing anxiety not only about information—about the lack of map rooms displaying the movements of armies; the maddening absence of visible, identifiable threats; the unremitting angst of making what could be life-and-death judgments based on the reading and interpreting of inscrutable signs—but also, I think, about guilt over what had already happened, what had been allowed to happen, together with the deep-seated need to banish that guilt, to start again, anew and immaculate. One must venture into this psychopolitical realm, treacherous as it is, to begin to understand the Bush administration’s particular crafting of the state of exception: the insistence on the clear dividing line between the “law enforcement paradigm” of the past and the War on Terror that had been declared in the wake of the attacks. For an administration that had begun life with a grave legitimacy problem—whose president had won a half-million fewer votes than his opponent and gained the White House only after a bitterly divided Supreme Court had stepped in to end a historic five-week political struggle—the bright line between past policy and the newly declared War on Terror was in part meant to banish the attacks themselves to the realm of the irresponsible past, and the responsibility of the other party.

That an attack was coming, of course, had been predicted: By Director of Central Intelligence George Tenet, who famously strode about the halls of government during the summer of 2001 with his “hair on fire.” By U.S. intelligence agencies, which offered the Presidential Daily Brief titled “Bin Laden Determined to Strike within the United States” to George W. Bush during his Texas vacation five weeks before September 11.<sup>17</sup> And by White House terrorism coordinator Richard Clarke,

16. Jack Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* (New York: W. W. Norton, 2007), 71–73.

17. The briefing, in Crawford, Texas, was held on August 6, 2001. See “Politics: Bin Laden Determined to Strike in U.S.,” *CNN Politics*, April 10, 2004, <http://edition.cnn.com/2004/ALLPOLITICS/04/10/august6.memo/index.html>.

who despite desperate efforts—“Something really spectacular is going to happen here,” he declared to domestic National Security Agency heads on July 5, “and it’s going to happen soon”—could not persuade National Security Adviser Condoleezza Rice even to schedule the administration’s first meeting on the al-Qaeda threat until the week before 9/11. One will never know whether, had Bush officials worked to focus the security agencies of the government on these threats during the summer of 2001—as the Clinton administration had focused the government on the Millennium Plot the year before—they could have prevented the attacks. Even without that pressure from the principals, they came excruciatingly close: the FBI’s arrest of Zacarias Moussaoui at a Minneapolis flight school; the CIA’s tracking of two of the 9/11 participants from a meeting in Malaysia to their entry into the United States and a failed “handoff” of them to the FBI; a Phoenix FBI agent warning urgently of “the possibility of a coordinated effort by Osama bin Laden to send students to the United States to attend civil aviation universities.” Within the security bureaucracy, far below the level of senior officials who believed terrorism had been a Clinton-era obsession, what *could* happen was on everyone’s mind: a month before the attacks an FBI supervisor in Minneapolis, meeting resistance in his quest to have Moussaoui’s laptop examined, responded angrily that he was “trying to keep someone from taking a plane and crashing into the World Trade Center.”<sup>18</sup> The furious activity of the Bush administration in the wake of the attacks should not blind us to a central point: none of these new laws and powers making up the post-9/11 state of exception *would have been necessary* to stop the attacks. The problem lay *in a lack of effectiveness* in carrying out existing procedures and enforcing existing laws, not in a lack of legal powers.<sup>19</sup>

Still, the declaration of the War on Terror banished the attacks to “before the War on Terror,” to the failed realm of the so-called law enforcement model, which the Bush administration, of course, had inherited from the previous, Democratic, administration. The failure, thus, could now be understood to belong mostly to *them*, to *their* methods—a dichotomy that has been enshrined in the politics of the exception, as we have seen vividly since the inauguration of Barack Obama: for example,

18. Lawrence Wright, *The Looming Tower: Al Qaeda and the Road to 9/11* (New York: Alfred A. Knopf, 2006), 389, 396.

19. See *ibid.*, esp. 373–89; and Oren Gross and Fionnuala Ni Aolain, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (New York: Cambridge University Press, 2006), 378.

in the political warfare surrounding the arrest of the so-called Underwear Bomber last Christmas Day. It is no accident that in the wake of that attempted attack both Dana Perino, the former Bush administration spokeswoman, and former New York mayor Rudolph Giuliani made statements suggesting that, in Giuliani's words, "we had no domestic attacks under Bush"—an astonishing assertion, given that more Americans died from terrorist attacks during George W. Bush's administration than during all others combined but entirely comprehensible if you believe that the administration, as Perino put it, "*inherited* the most tragic attack on our soil in our nation's history."<sup>20</sup> Since those attacks occurred *before the War on Terror*, so the reasoning goes, they occurred under a Democratic policy of law enforcement that in fact was not Bush's.

For that was before, when terrorism was not treated as the warfare it was. Now "the gloves came off." This resonant and oft-heard phrase, uttered most prominently by Cofer Black, then the chief of the CIA's Counterterrorism Center—"All you need to know: There was a 'before' 9/11 and an 'after' 9/11. After 9/11 the gloves come off"—encapsulates much of the psychopolitical latent content of the state of exception as it was imposed. That "the gloves came off" after the attacks meant that before the attacks the gloves were . . . *on*. What exactly were these "gloves"? Improper limitations on the president's power to conduct foreign policy: the Hughes-Ryan Act and its successor, the Intelligence Oversight Act of 1980, limiting the president's power to conduct covert action with "deniability"; the Foreign Intelligence Surveillance Act, or FISA, requiring application to a special court for a warrant to eavesdrop on Americans—those and other limitations that the two most important officials constructing the state of exception, Vice President Richard B. Cheney and Secretary of Defense Donald Rumsfeld, had watched, as young senior officials of the Nixon and Ford administrations, Congress impose on a wounded executive in the wake of the loss of the Vietnam War, the Watergate scandal, the resignation of Richard Nixon, and the CIA "dirty tricks" revelations of the Church Committee. If it is true, as Twain said, that "history doesn't repeat itself but it does rhyme," then we may consider that the time of the imposition of the state of exception in the post-9/11 early 2000s constitutes a kind of "reverse rhyme" with the post-Vietnam 1970s—when, as Vice President Cheney told reporters

20. "Giuliani: No Terror Attacks in U.S. under Bush: Former NYC Mayor Neglects to Mention 9/11 and Shoe Bomber Attacks," Associated Press, January 9, 2010.

after the revelation of the secret surveillance program in 2005, “Watergate and a lot of the things around Watergate and Vietnam both during the ’70s served . . . to erode the authority . . . the president needs to be effective, especially in the national security area.”<sup>21</sup>

The gloves coming off meant not only a vital freeing of the president’s hands to act but a corresponding blaming of the success of those attacks on the laws that had handcuffed him. This stripping off of the gloves was a sign of commitment, of a determination to sweep away those inherited limitations that had—so the implicit argument went—let the terrorists succeed in the first place. For President Bush and his administration, the stripping off of gloves—along with the declaration of the unending War on Terror and the redefinition of terrorists as unlawful combatants in it—was a shedding of guilt and, in its shedding, an affirmation that at the end of the day the true responsibility belonged to those who had put the gloves *on* the president in the first place and had insisted on using the legal system to “coddle terrorists.” That this phrase so clearly echoes time-honored Republican rhetoric denouncing Democrats’ supposed softness on criminals, and that it remains with us still, suggests how strongly embedded this aspect of the state of exception has become in our domestic politics. This is not to say these policies were *shaped* to win elections, only that they fitted very well into the post-civil rights era, post-Vietnam political reality that all knew and that Karl Rove had first enunciated publicly four months after the attacks, to the winter meeting of the Republican National Committee: “Americans trust the Republicans to do a better job of keeping our communities and our families safe. We can also go to the country on this issue because they trust the Republican Party to do a better job of protecting and strengthening America’s military might and thereby protecting America.”<sup>22</sup> The “national security trump” that the Republicans had lost with the end of the Cold War a decade before had been returned to their hands. That fall, using powerful rhetoric that emphasized the gravity of the ongoing threat and the fact that only his administration and his party could adequately protect America from it, the president under whose leadership the country had suffered the most devastating attacks in its history achieved what almost no first-term presidents have before: he led his party to a decisive victory in the midterm

21. U.S. Senate, Intelligence Committee, *Testimony of Cofer Black*, September 26, 2002; Richard W. Stevenson, “Cheney Says 9/11 Changed the Rules,” *New York Times*, December 21, 2005.

22. Richard L. Berke, “Bush Adviser Suggests War as Campaign Theme,” *New York Times*, January 19, 2002.



elections. In the dark shadow of the 9/11 attacks, the Republicans won back control of the Senate.

As for the leaders of the new War on Terror, they would not be “reading terrorists their Miranda rights.” They would launch their new War on Terror with an unblemished record—since during the War on Terror there had been no attacks, unlike under the Democrats’ “law enforcement model”—and a willingness, a commitment, *to do whatever it took*. That meant gaining the most vital fuel: information. When it came to the interrogation of Abu Zubaydah, the victor in the struggle between the FBI and its traditional “law enforcement methods” and the CIA and its improvised protocol was preordained. The judgment would seem to be built on evidence, on the thinness of what the detainee was providing, but in fact was based on conviction, as the CIA inspector general admitted: that is, on *lack* of knowledge. Abu Zubaydah was *known* to be a high official in al-Qaeda, so he would know—wouldn’t he?—of the “second-wave attacks” that were coming. If he gives up only relatively modest information, mustn’t that very fact mean he is concealing things that are important? The conviction of secret knowledge, set beside the paucity of what is revealed, proves the conclusion of deception. (It is a familiar, if distinctive, chain of reasoning: mustn’t, after all, the fact that the UN inspectors can find no weapons in Iraq be *confirmation* that Saddam is hiding them?)

The argument escalated, between the interrogators at the “dark site” and back in Washington. CIA officers, led by two “contractors” who had been U.S. Air Force instructors in the so-called SERE program in the military—a program designed to prepare downed pilots for hostile interrogation—prepared an interrogation plan for the detainee, and it was passed to CIA headquarters, discussed in the White House, and by May 17 the national security adviser advised that the plan could go forward, subject to Justice Department approval. At the Department of Justice Deputy Assistant Attorney General John Yoo and a young colleague were working furiously on a memorandum that weighed the legality of these twelve proposed techniques against the statutes of the U.S. Criminal Code, and the international undertakings, forbidding torture. Their memos went through several drafts. “Bad Things Opinion,” Yoo e-mailed his young colleague on July 8, 2008. “I like the opinion’s new title,” she replied brightly.<sup>23</sup>

23. *Report: Investigation into the Office of Legal Counsel’s Memoranda Concerning Issues Relating to the Central Intelligence Agency’s Use of “Enhanced Interrogation Techniques” on Suspected Terrorists* (Washington, D.C.: Department of Justice Office of Professional Responsibility, July 29, 2009), 45.

Meantime, on April 27, readers of *Newsweek* could ask themselves, in the words of the magazine's "Web exclusive," "How Good Is Abu Zubaydah's Information?" and learn that though one "senior US official" claimed that the prisoner was "providing detailed information from the fight against terrorism"—this official was presumably from the FBI—another, this one a "US intelligence source," doubtless CIA, suspected he was "trying to mislead investigators or frighten the American public."<sup>24</sup> Though this highest of high-value detainees was being held in the strictest secrecy at an undetermined location, this did not seem to prevent his interrogators, or their bureaucratic overlords, from leaking information from him directly to the press.

Eventually, those who could point to the desert of knowledge, who could point out and profit from the fear of that unknown, were victorious, and indeed nothing more dramatically embodies the style of the exception: Assume the worst. Act preemptively, aggressively. Do not hesitate. If there is a risk, the possible consequences are so grave that you must not let worries over evidence slow you down. This kind of thinking reached a kind of apotheosis in Vice President Cheney's so-called 1 percent doctrine, which was summarized by writer Ron Suskind as follows: "If there was even a one percent chance of terrorists getting a weapon of mass destruction . . . the United States must now act as if it was a certainty." This remarkable attitude toward risk—that only *lack* of action, and not mistaken action, posed dangers—had a peculiar and contradictory effect when embodied in the vast worldwide detention regime spawned by the state of exception: the five thousand arrested and detained by the Immigration and Naturalization Service in the United States; the tens of thousands detained in Abu Ghraib and Bagram and other prisons in Iraq and Afghanistan; the hundreds detained in Guantánamo Bay, Cuba; the scores detained in the "black sites," a system that at one time held nearly one hundred thousand prisoners. I shall call this effect "the broken funnel." Prisoners were swept into the system, often on very flimsy or no evidence, and once in it stayed there, clogging and debilitating it, for there was not only no adversary system to judge their guilt or estimate the threat they posed—a system that, had it existed, whether administrative or judicial, would at least have had the effect of forcing the gathering of information—but no incentive to release them. On the contrary: among those officers in Afghanistan charged with

24. Mark Hosenball, "How Good Is Abu Zubaydah's Information?" *Newsweek*, Web exclusive, April 27, 2002.

deciding which prisoners should be shipped to Guantánamo, according to one interrogator, “there was great fear among them . . . that they were going to somehow manage to release somebody who would later turn out to be the 20th hijacker. So there was real concern and a real erring on the conservative side.” That is, there was no incentive to release anyone, with the result that, as Lawrence Wilkerson, Secretary of State Colin Powell’s former chief of staff, discovered in the summer of 2002, “of the initial 742 detainees that had arrived at Guantánamo, the majority of them had never seen a U.S. soldier in the process of their initial detention and their captivity *had not been subjected to any meaningful review*. . . . [O]ften absolutely no evidence relating to the detainee was turned over, so there was no real method of knowing why the prisoner had been detained in the first place.” One sees parallels to this throughout the detention regime of the state of exception—for example, in Abu Ghraib, where, according to an officer on the Detainee Assessment Board, “85 to 90 percent of the detainees were of no intelligence value” and where this “failure . . . to sort out the valuable detainees from the innocents who should have been released soon after capture, [led,] ultimately, *to less actionable intelligence*.”<sup>25</sup>

The style of the exception was embodied in aggressive action: When in doubt, act. When suspicious, detain. Ask questions later. But the sweeping arrests and indefinite detention—the failure to make *discriminations of risk* (which would have meant a willingness to get it wrong) in favor of wholesale, sweeping judgments based on pervasive fear—had the contradictory effect of crippling the intelligence-gathering system itself. That system was flooded with detainees who literally knew nothing—and who could not be released, either because, as in Abu Ghraib, the officers who were responsible for detaining them objected or because, as Wilkerson says of the Guantánamo detainees, “it was politically impossible to release them,” in part because “the detention efforts at Guantánamo would be revealed as the incredibly confused operation that they were.” The injustice of the system, of course, was pervasive, and this was increasingly recognized around the world and had its own grave political effects in what was, after all, a political war. But it is important to recognize that it

25. Ron Suskind, *The One Percent Doctrine: Deep Inside America’s Pursuit of Its Enemies since 9/11* (New York: Simon and Schuster, 2006), 62; “Interview: Chris Mackey and Chris Miller Discuss Their Book, *The Interrogators*,” *Fresh Air*, July 20, 2004 (the name Chris Mackey is a pseudonym); court declaration of Col. Lawrence Wilkerson, cited in Jason Leopold, “Ex-Bush Official Willing to Testify Bush, Cheney Knew Gitmo Prisoners Innocent,” *Truthout*, April 9, 2010; Maj. Gen. George R. Fay, *AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade*, August 2004, 37.

failed on its own terms: a system meant to be gathering the most vital and precious resource to fight the existential dangers of the War on Terror—information—in fact was debilitating itself.

Sometime in the late spring of 2002, Abu Zubaydah was moved from the relatively civilized ministrations of Ali Soufan and his FBI colleagues, stripped naked, and taken to the very cold, very bright white room. When Soufan discovered the prisoner naked, he angrily protested, and soon after he and his colleagues were withdrawn by the Justice Department; thenceforth, the FBI's experts, the most experienced interrogators in the government and some of its most knowledgeable experts on al-Qaeda, would no longer take part in CIA-led interrogations. Abu Zubaydah had entered the realm of improvisation, of an interrogation program developed largely by two private contractors who had the distinction of never having carried out a single interrogation, and who were intent on "reducing" him, to quote the CIA's description of the program's intent in a memorandum to the Department of Justice two years later, "to a baseline, dependent state . . . to demonstrate that he has no control over basic human needs . . . [to] create[] . . . a mindset in which he learns to perceive and value his personal welfare, comfort, and immediate needs more than the information he is protecting."<sup>26</sup> By the time the "combined use of interrogation techniques" was codified in late 2004, HVDs—or "high-value detainees"—would have to immediately and "willingly provide information on actionable threats and location information on High-Value Targets at large—not lower level information—for interrogators to continue with the neutral approach." Failure to offer such immediate, complete cooperation would result in a "high-value detainee's" entrance into the first or "conditioning phase," which is described as follows:

- a. Nudity. The HVD's clothes are taken and he remains nude until the interrogators provide clothes to him.
- b. Sleep Deprivation. The HVD is placed in the vertical shackling position to begin sleep deprivation. Other shackling procedures may be used during interrogations. The detainee is diapered for sanitary purpose, although the diaper is not used at all times.
- c. Dietary manipulation. The HVD is fed Ensure Plus or other food at regular intervals. The HVD receives a target of 1500 calories a day per OMS [the CIA's Office of Medical Services] guidelines.

26. Central Intelligence Agency, *Background Paper on CIA's Combined Use of Interrogation Techniques* (Washington, D.C.: Central Intelligence Agency, December 30, 2004).

The bureaucratic language of the CIA documents is striking—"the procedures he is subjected to are precise, quiet, and almost clinical," we read, "and no one is mistreating him"—yet every once in a while, almost by chance, a bit of reality peeps through: one interrogator chastised for blowing cigar smoke in a detainee's face claims he smokes it "to cover up the stench." Our minds go back to those diapers, which are used for humiliation as well as for "sanitary purposes," and Khalid Sheik Mohammed's description of the "vertical shackling position," which, by the time he was captured eleven months later, was used in preference to "long term sitting" to "begin sleep deprivation": "I was kept for one month in the cell in a standing position with my hands cuffed and shackled above my head and my feet cuffed and shackled to a point in the floor. Of course during this month I fell asleep on some occasions while still being held in this position. This resulted in all my weight being applied to the handcuffs around my wrist resulting in open and bleeding wounds. Both my feet became very swollen after one month of almost continual standing."

The Red Cross interviewer notes that "scars consistent with this allegation were visible on both wrists as well as on both ankles," and these details are well confirmed by accounts gathered independently from other detainees, one of whom, Wallid bin-Attash, who had lost a leg fighting in Afghanistan, during the days and weeks he spent with his hands chained to the ceiling and his foot chained to the floor received periodic visits from a doctor whose task was to measure the swelling in his remaining leg using a tape measure.<sup>27</sup>

Like nearly all of these "enhanced interrogation techniques," long-term standing has a long tradition. The Soviets, who relied on it heavily, called it simply *stoika*. Pondering the effectiveness of this simple method, Hinkle and Wolff, in their classic paper "Communist Interrogation and Indoctrination of 'Enemies of the State,'" observe that "after 18 to 24 hours of continuous standing, there is an accumulation of fluid in the tissues of the legs. . . . The ankles and feet of the prisoner swell to twice their normal circumference. The edema may rise up the legs as high as the middle of the thighs. The skin becomes tense and intensely painful. Large blisters develop, which break and exude watery serum."<sup>28</sup>

We should remember that the contractors the CIA hired improvised this protocol from a program the U.S. Air Force had "designed to

27. "ICRC Report," 24.

28. Lawrence E. Hinkle Jr. and Harold G. Wolff, "Communist Interrogation and Indoctrination of 'Enemies of the State,'" *AMA Archives of Neurology and Psychiatry* 76, no. 2 (1956): 134.

simulate conditions to which [pilots] might be subject if taken prisoner by enemies”—that is, the Soviets and the Chinese—“that did not abide by the Geneva Conventions.” Which is to say, SERE training, as one former instructor told the Senate Armed Services Committee, from whose report I am quoting, was “based on *illegal* exploitation . . . of prisoners over the last 50 years.”<sup>29</sup>

We see here perhaps the prime example of the improvisation inherent in the state of exception. It is not simply that the critical security bureaucracies in the U.S. government—the CIA and the military—derived their “enhanced interrogation techniques” from a Cold War–era pilot training program that had been intentionally designed to reproduce *illegal techniques*, and then placed before government attorneys the through-the-looking-glass task of proving that those interrogation techniques are perfectly permissible under the tenets of international and domestic law that they were designed to violate, meaning that a central tree of reasoning running through the so-called torture memos is the peculiar notion that because the pilot trainees, who were volunteers and who could, of course, halt the procedures at any time, did not suffer, for example, long-term psychological harm, then detainees subjected to these techniques, as it were, *for real*, would not suffer any either.

It was that an interrogation program, deemed absolutely essential to protect the country during a national emergency, was “reverse engineered” from a training program for pilots by contract instructors who *had never carried out an actual interrogation*. However much this might seem to be a fantasy, in fact it is true. How can we begin to account for it? The country, after all, has had considerable experience in interrogating prisoners, not least during World War II, a time of no small national emergency, when the U.S. military managed to produce, in short order, an interrogation program that was legal, subtle, and, by all accounts, immensely effective.<sup>30</sup>

One begins to approach an answer by pointing to certain attitudes about government and bureaucracy held by the most senior and powerful figures in the Bush administration, notably the vice president and

29. “Inquiry into the Treatment of Detainees in U.S. Custody: Report of the Committee on Armed Service, United States Senate,” November 20, 2008, quoted in my *Stripping Bare the Body: Politics Violence War* (New York: Nation Books, 2009), 526.

30. See Steven M. Kleinman, “KUBARK Counterintelligence Interrogation Review: Observations of an Interrogator, Lessons Learned, and Avenues for Further Research,” in “Educating Information: Interrogation—Science and Art,” *Intelligence Science Board* (December 2006): 95–140.

the secretary of defense, and indeed the president himself. Ron Suskind remarks that “sober due diligence, with an eye for the way previous administrations have thought through a standard array of challenges facing the United States, creates, in fact, a kind of check on executive power and prerogative”—and that this was precisely what the president, in the wake of September 11, did *not* want, as he evolved from

the early, pre-9/11 president, who had little grasp of foreign affairs and made few major decisions in that realm; to the post-9/11 president, who met America’s foreign challenges with decisiveness born of a brand of preternatural, faith-based, self-generated certainty. . . . His view of right and wrong, and of righteous actions—such as attacking evil or spreading “God’s gift” of democracy—were undercut by the kind of traditional, shades-of-grey analysis that has been the staple of most president’s lives. . . . The hard, complex analysis . . . would often be a thin offering, passed through the filters of Cheney or Rice, or not presented at all.<sup>31</sup>

The so-called interagency, the policy process whereby the bureaucracies developed, studied, debated, and approved ideas and policies, went on, with the bureaucracy whirring along as it always had, but its recommendations were largely ignored, overtaken, or circumvented when it came to the state of exception, which meant that, with something as consequential as the decision to use “enhanced interrogation techniques,” we have very little real record of a policy discussion at all, beyond Condoleezza Rice’s approval of the Abu Zubaydah plan on May 14, 2002. As Philip Zelikow, executive director of the 9/11 Commission and later Rice’s counselor at the State Department, remarked, in this and other momentous policy choices in the state of exception, the tendency seems to have been to call in the lawyers to set out the limits, and perhaps push beyond the limits, of “what we can do.” There is little record of anyone ever discussing “what we should do.”<sup>32</sup> We do not know who precisely had the idea, and who discussed, and how thoroughly, if at all, this rather astonishing reality of the state of exception: that, in Zelikow’s words, “the CIA—an agency that had no significant institutional capability to question enemy captives—improvised an unprecedented, elaborate, systematic program

31. Suskind, *One Percent Doctrine*, 225–26.

32. Philip Zelikow, “Legal Policy for a Twilight War,” *History News Network*, May 30, 2007, <http://hnn.us/articles/39494.html>.

of medically monitored physical torment to break prisoners and make them talk.”<sup>33</sup>

So experimentation and improvisation are inherent in these “enhanced interrogation techniques,” as they are inherent in the very genes of our state of exception—as Abu Zubaydah seems to realize in recounting the second, or “correction,” phase of his interrogation, which followed his days and nights sitting chained to the chair in the cold white room:

Two black wooden boxes were brought into the room outside my cell. One was tall, slightly higher than me and narrow. Measuring perhaps in area [three-and-a-half by two-and-a-half feet by six-and-a-half feet high]. The other was shorter, perhaps only [three-and-a-half feet] in height. I was taken out of my cell and one of the interrogators wrapped a towel around my neck, they then used it to swing me around and smash me repeatedly against the hard walls of the room. I was also repeatedly slapped in the face. . . .

I was then put into the tall black box for what I think was about one and a half to two hours. The box was totally black on the inside as well as the outside. . . . They put a cloth or cover over the outside of the box to cut out the light and restrict my air supply. It was difficult to breathe. When I was let out of the box I saw that one of the walls of the room had been covered with plywood sheeting. From now on it was against this wall that I was then smashed with the towel around my neck.

In the memorandum to Daniel Levin in the Department of Justice, the unnamed CIA officer noted that “walling” “is one of the most effective interrogation techniques because it wears down the HVD physically, heightens uncertainty in the detainee about what the interrogator may do to him and creates a sense of dread when the HVD knows he is about to be walled again. . . . An HVD may be walled one time (one impact with the wall) to make a point or twenty to thirty times consecutively when the interrogator requires a more significant response to a question.”

But what about the mysterious appearance of the plywood? Abu Zubaydah suggests that “the plywood was put there to provide some absorption of the impact of my body. The interrogators realized that smashing me against the hard wall would probably quickly result in physical injury.”

33. U.S. Senate, Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, “Statement of Philip Zelikow,” May 13, 2009, available in full as a .pdf document at <http://judiciary.senate.gov/pdf/09-05-13ZelikowTestimony.pdf>.



No doubt he is right: the plywood is the answer to the perennial problem of the torturer—how to inflict sufficient pain without causing injury of the sort that will make further “exploitation” of the detainee difficult or even impossible. Frequently in the documents we see these concerns embody themselves in the evolution of techniques and equipment—for example, the towel around Abu Zubaydah’s neck had by the time of Khalid Sheik Mohammed eleven months later become “a thick flexible plastic collar [which] would . . . be placed around my neck so that it could then be held at the two ends by a guard who would use it to slam me repeatedly against the wall.” But where precisely, between the first time Abu Zubaydah was smashed into the wall and then placed inside the standing black coffinlike box for “close confinement,” and then emerged to be walled again, did that plywood come from?

I suspect it was someone back at CIA headquarters, in Langley, Virginia. As CIA officer John Kiriakou reminds us, “Each one of these steps . . . had to have the approval of the Deputy Director for Operations. So before you laid a hand on him, you had to send in the cable saying, ‘He’s uncooperative. Request permission to do X.’ And that permission would come. . . . The cable traffic back and forth was extremely specific.”

Beyond the hour-by-hour approval of specific techniques issuing out of CIA headquarters came an assiduous effort to brief “NSC [National Security Council] policy staff and senior Administration officials,” for “the Agency specifically wanted to ensure that these officials and the [Congressional Oversight] Committees continues to be aware of and approve CIA’s actions.”<sup>34</sup> One detects here a further echo of that “rhyming decade,” the 1970s, and a determination by CIA leaders and officers that this time, however much national attitudes on these matters might change—after the emergency had passed—they would never be in the position of being accused of “rogue” behavior again. It is unclear whether they will have succeeded in this, but it is clear, if anything in this history of the state of exception is, that their concerns had the effect of ensuring that responsibility was spread very high and very wide indeed.

I will say a bit more on this in a moment, after we follow Abu Zubaydah from the second-phase “corrective” techniques to the third-phase “coercive techniques,” which, again, come in combination. Again, Abu Zubaydah:

After the beating I was then placed in the small box. They placed a cloth or cover over the box to cut out all light and restrict my air

34. *Special Review*, 23.

supply. As it was not high enough even to sit upright, I had to crouch down. It was very difficult because of my wounds. The stress on my legs held in this position meant my wounds both in the leg and stomach became very painful. I think this occurred about 3 months after my last operation. It was always cold in the room, but when the cover was placed over the box it made it hot and sweaty inside. The wound on my leg began to open and started to bleed. . . .

I was then dragged from the small box, unable to walk properly and put on what looked like a hospital bed, and strapped down very tightly with belts. A black cloth was then placed over my face and the interrogators used a mineral water bottle to pour water on the cloth so that I could not breathe. After a few minutes the cloth was removed and the bed was rotated into an upright position. The pressure of the straps on my wounds was very painful. I vomited. The bed was then again lowered to horizontal position and the same torture carried out again with the black cloth over my face and water poured on from a bottle. On this occasion my head was in a more backward, downwards position and the water was poured on for a longer time. I struggled against the straps, trying to breathe, but it was hopeless. I thought I was going to die. I lost control of my urine. Since then I still lose control of my urine when under stress.

I was then placed again in the tall box. While I was inside the box loud music was played again and somebody kept banging repeatedly on the box from the outside. I tried to sit down on the floor, but because of the small space the bucket with urine tipped over and spilt over me. . . . I was then taken out and again a towel was wrapped around my neck and I was smashed into the wall with the plywood covering and repeatedly slapped in the face by the same two interrogators as before.

I was then made to sit on the floor with a black hood over my head until the next session of torture began. The room was always kept very cold.

This went on for approximately one week. During this time the whole procedure was repeated five times. On each occasion, apart from one, I was suffocated once or twice and was put in the vertical position on the bed in between. On one occasion the suffocation was repeated three times. I vomited each time I was put in the vertical position between the suffocation. During that week I was not given any solid food. I was only given Ensure to drink. My head and beard were shaved everyday.

I collapsed and lost consciousness on several occasions. Eventually the torture was stopped by the intervention of the doctor.

So this is the famous waterboarding, a time-honored technique deployed by the priestly interrogators of the Spanish Inquisition, by the French paratroopers during the Algerian War of the late 1950s and early 1960s, by the Argentines during their “dirty war” of the 1970s, by the Salvadorans during their civil war of the 1980s. Techniques varied—the French, for example, would strip the prisoner, beat him, and strap him to bench, at which point his head would be tilted back into a bucket of dirty or soapy water, or urine; the Argentines, in their version—they called it *el submarino*—added the innovation of a hinge-joining bench and water basin, but the principle remains the same: drowning the prisoner, provoking the panic this causes, and interrupting the drowning in time to save his life. That American interrogators were waterboarding prisoners first appeared in the press, to my knowledge, in May 2004, in a report in the *New York Times*. This of course is another side of what I have called “public secrecy”: the two narratives—that of what was done and that of what we know—crossed very early, in late 2002, in fact, when the *Washington Post* ran a lengthy report on its front page on so-called stress and duress techniques, and the *New York Times* followed with its own report several months later. In the spring of 2004, in the wake of Abu Ghraib, the trickle of leaks about torture became a flood, and we have had six years now to debate waterboarding and its effectiveness, from John Kiriakou’s assertion, in 2005, that Abu Zubaydah instantly “broke” almost immediately when waterboarded for the first time to the revelation, three years later, that in fact he had been waterboarded no fewer than eighty-three times—with the last of those instances ordered directly by senior officials in the face of objections from interrogators on the scene, who argued that the first eighty-two applications of the technique had left the detainee “compliant.”

Of the eleven “enhanced interrogation techniques” deemed legal by the Department of Justice, ten, according to John Yoo, “did not even come close to the [legal] standard [of torture],” but “waterboarding did.” In a rather striking admission to Department of Justice investigators that has received too little attention, Yoo confessed that “I had actually thought that we prohibited waterboarding. I didn’t recollect that we had actually said that you could do it.” He went on: “The waterboarding as it’s described in that memo, is very different than the waterboarding that was

described in the press. And so when I read the description in the press of what waterboarding is, I was like, oh, well, obviously that would be prohibited by the statute.”<sup>35</sup>

It should be said, of course, that the International Committee of the Red Cross, legally charged with investigating and judging the treatment of prisoners, had no problem whatever declaring that this treatment “amounted to torture and/or cruel, inhuman, or degrading treatment.” But Yoo’s observation underlines what we saw with the “vertical shackling technique” applied to Khalid Sheik Mohammed: the differences between what is prescribed in the legal and policy documents—in which waterboarding is described (by Yoo) as a “controlled acute incident”—and what actually happens at the black sites are very often significant. In waterboarding Abu Zubaydah, the interrogators used more water and performed the procedure much more frequently than prescribed in the documents, a general “drifting downward” into greater cruelty that we see throughout the various plotlines of this story, both in its military and in its intelligence application. Ali Soufan, the experienced FBI interrogator who carried out the initial interrogation of Abu Zubaydah using what he calls the Informed Interrogation Approach, explained this inevitable evolution in testimony to the Judiciary Committee last May. The harsh technique, he said,

tries to subjugate the detainee into submission through humiliation and cruelty. The approach applies a force continuum, each time using harsher and harsher techniques until the detainee submits. The idea behind the technique is to force the detainee to see the interrogator as the master who controls his pain. . . . [T]he detainee is stripped naked and told: “Tell us what you know.” If the detainee doesn’t immediately respond by giving information . . . [t]hen the next step on the force continuum is introduced, for example sleep deprivation, and the process will continue until the detainee’s will is broken and he automatically gives up all information he is presumed to know. There are many problems with this technique. A major problem is that it is ineffective. Al Qaeda terrorists are trained to resist torture. As shocking as these techniques are to us, the al Qaeda training prepares them for much worse—the torture they would expect to receive if caught by dictatorships for example. This is why . . . the contractors had to keep getting authorization to use harsher and harsher methods, until they reached

35. *Report: Investigation into the Office of Legal Counsel’s Memoranda*, 53–54.

waterboarding and then there was nothing they could do but use that technique again and again. Abu Zubaydah had to be waterboarded 83 times and Khalid Sheikh Mohammed 183 times. In a democracy there is a glass ceiling of harsh techniques the interrogator cannot breach, and a detainee can eventually call the interrogator's bluff.

The interrogators told Abu Zubaydah, by his account, that "I was one of the first to receive these interrogation techniques, so no rules applied. It felt like they were experimenting and trying out techniques to be used later on other people." Still, rules, however much they were stretched, did of course apply. It is good to be reminded, as we close on this rather grim note, of what can and cannot be done in a democracy, and to ponder the notion that we as a society can be both too cruel and not cruel enough.

Abu Zubaydah, of course, is still with us, in his eighth year of U.S. detention, now at Guantánamo, and it is difficult, gazing at him, to embrace fully the presiding philosophy of the Obama administration on these matters: to "look forward," not back. Impossible, gazing at him, and the questions he embodies, not to think as well of his partners in these scenes a half-dozen years ago. Many of course have moved on, to private law firms, to corporate security jobs, even to universities. But the story is not over. The documents are full of the drama of the interrogators and the officials of the CIA demanding that they be granted, if not a Department of Justice "declination letter"—or advance immunity for what they were about to do—then at least a "golden shield" that would eventually protect them from prosecution. They received one, indeed a series of them, in the so-called torture memos produced by the Justice Department and, later, in the Military Commission Act passed by Congress in 2006.

As we look back today at these ghostly figures, at the policy makers sitting in their offices who ordered these techniques and the lawyers who deemed them legal, and the interrogators who performed them on men chained naked in sunless rooms, we can have the sense, haunting as it is, that they are all looking forward at us, as we stand here today judging what they did. If we know anything, it is that they knew that this moment would come. In this sense, the state of exception, enduring as it is, inscribed within it a chronicle of a scandal foretold—and an unending open question for us as a society: what is to be done? This is not the least-potent sense in which we find ourselves still imprisoned within the state of exception. That imprisonment, and the normalization that accompanies it, I will take up during the next lecture.

LECTURE II.  
NATURALIZING THE STATE OF EXCEPTION:  
TERROR, FEAR, AND THE WAR WITHOUT END

I

Our Forever War began—as I did the previous lecture—with a transformative image of unending resonance and power: the violent metamorphosis of those great New York towers, taller than the builders of the Tower of Babel could ever have dared dream, into heaven-reaching plumes of white dust. As they were transformed, so were we, stepping through the portal into the state of exception—a state of exception that bears within it now, nine years later, all the signs of a prodigious contradiction: an exceptional state that, however much it has evolved, shows all signs of becoming *normalized*—thus seeming to contradict the most basic purpose that has since the Roman Republic motivated what Clinton Rossiter called “constitutional dictatorship.” That basic purpose is, in Rossiter’s emphatic words, “to end the crisis and restore normal times, . . . the complete restoration of the *status quo ante bellum*.”<sup>1</sup>

In the United States normal times have not been restored. What distinguishes this state of exception, it seems to me, is its endlessness, the fact that it was tied, in its imposition, to a “war” that was in part metaphoric and that by its definition would not end. This does not mean that the state of exception has not evolved and changed. Most notably torture, which occupied so much of our discussion in the previous lecture, has been “prohibited” by President Obama—an act that, in itself, suggests the “new normal” we now inhabit. Once forbidden as an act beyond the strictures of domestic statute and international law—which forbade it explicitly even in times of emergency—torture now lies within the president’s power to prohibit, or, indeed, to order. The change from practicing torture to prohibiting it is of course extremely significant, but it is emphatically *not* a return to the *status quo ante bellum*.

So the state of exception has not ended. At best, we have come to live with “a new normal.” How precisely did this happen? And why should it matter? After all, as I mentioned, the attributes of the state of exception have become increasingly subtle, and most affect us very little, if at all, in our daily lives. Why should we worry, if the state of exception keeps us safe?

1. Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Princeton: Princeton University Press, 1948), 7.

One very clipped answer, I think, is that we as a society have become trapped between the politics of fear and *la politique de pire*. We know the first phrase very well, of course, for we see its working almost daily, as the most obvious sign of how the state of exception is fought over now as a permanent feature in our daily politics: we saw the most recent upsurge of the politics of fear last December, after the failed Christmas Day bomber was arrested in Detroit and read his Miranda rights, to the loudly expressed outrage of members of the Republican Party, who accused the Obama administration of returning to “the failed law-enforcement model of the past”—the one, that is, that had, in this reasoning, permitted the country to be attacked on September 11. As many pointed out, domestic prosecution had never been abandoned by the Bush administration—witness the conviction and imprisonment of the so-called Shoe Bomber, Richard Reid, among others—but now its use could be used to demonstrate the supposed abandonment by President Obama of the War on Terror, which would, in the words of former vice president Cheney, “leave us vulnerable to attack.”

We see the workings of the politics of fear also in the struggle over President Obama’s announced vow to close Guantánamo within a year of taking office, a deadline he failed to meet in part because it was derailed in Congress, initially as a result of unfounded claims that the new administration would be “sending terrorists to our neighborhoods.” We see the politics of fear displayed in the controversy around the Obama administration’s plan to prosecute Khalid Sheik Mohammed, said to be the mastermind of the 9/11 attacks, and his alleged conspirators, in federal court in Manhattan, a plan that has now, apparently, been discarded. And we see it in the struggle over the drafting of a law that will allow the indefinite detention of fifty or so of its inmates, those whom the Obama administration has determined it can “neither try nor release.”

But what about what I have called the twin of the politics of fear, *la politique de pire*—a time-honored French phrase dating from the nineteenth century and meaning, roughly, “the politics of the worst”? We need for a moment, I think, to return to a too-seldom-asked question: what exactly is this Forever War about? What is its purpose? And how might it end? Before we offer up answers, like the war is about “keeping us safe” or “destroying all terrorist groups of global reach” or, in George W. Bush’s most vivid construction, “ridding the world of the evil-doers,”<sup>2</sup> I

2. Louise Richardson, *What Terrorists Want: Understanding the Enemy, Containing the Threat* (New York: Random House, 2006), 233.

think it useful to have a look at critical actors in this drama whom I discussed too little yesterday—I mean the forces of al-Qaeda and its allies—and to ask after the goals of our enemies, or, more precisely, what exactly it was they were trying to achieve on that bright, sunny September morning nearly nine years ago.

They intended, not least, of course, to kill people, and they killed nearly three thousand, twenty-six hundred of them Americans—by an order of magnitude the largest civilian death toll of any attack in American history, or any terrorist attack in world history, for that matter. But this no more describes al-Qaeda’s ultimate goal than “killing jihadis” would suffice as a statement of American war aims. On September 11, 2001, al-Qaeda’s weapon of choice was neither box cutters nor airliners but that great American invention: the television set. The goal, brilliantly achieved, was to create an ineradicable image that would spread fear—and also, critically, hope. Hope, that is, to young Muslim men that the United States, the great superpower standing behind the oppressive, idolatrous apostate puppet states of Egypt and Saudi Arabia, was indeed vulnerable, that it could be attacked and defeated. The purpose, that is, was in part the purpose of all terrorism, as defined by the late Israeli prime minister Menachem Begin, former leader of the Irgun and dynamiter of the King David Hotel: that is, “to dirty the face of power.” In dirtying the face of American power, the burning, collapsing towers—that lasting iconic image of triumph and destruction—were meant to serve, grotesque as this may seem, as a giant recruitment poster for the jihadi cause. It meant, and means whenever it appears again on television screens around the world: *We can win*; we can defeat them. *Join us*. It is an image of idealistic struggle.

Osama Bin Laden is engaged, first and foremost, in building a movement. His ultimate goals, that is, are political, even if he is trying to achieve them by military means: by the use of terror. That is why the second major goal of the jihadis that we can identify in attacking New York and Washington on September 11 was to *provoke* the United States to react, and to react by taking dramatic and brutal and—the hope was—*telegenic* action against Muslims. Much evidence suggests that Bin Laden assumed the reaction would come in an immediate American invasion of and occupation of Afghanistan, an occupation that would lead to an endless, grinding war, and that this quagmire would allow his Arab legionnaires, heeding the call from throughout the Islamic world to join their Taliban holy warriors, to defeat the sole remaining superpower in that



mountainous “graveyard of empires”—thus reenacting, at least in Bin Laden’s rather grandiose but vivid conception of it, the destruction of the Soviet Union before it.

In the event, of course, the Bush administration, after contenting itself largely with aerial bombardment of Afghanistan—the full-on occupation would come later—did him one better, by invading and occupying Iraq, a more important Muslim country and one much more central to the average Muslim’s concerns. The effect, though, and the consequences were the same: luring the Americans into embodying quite vividly the caricature that the jihadists had made of us—a blundering, godless, muscle-bound, violent superpower intent on humiliating, repressing, and killing Muslims. The day-to-day secondhand repression—exercised through the Mubarak regime in Cairo, to which the United States gives roughly two billion dollars in foreign aid a year, and the House of Saud in Riyadh, over which the United States stands as a guarantor of security and stability—carried out by what the jihadists called the “near enemies” would suddenly be embodied in a firsthand U.S. occupation of a major Arab country by the “far enemy” itself, as it were, in person, with Muslims heroically fighting and dying at the hands of American soldiers on television screens across the Islamic world.

Let us call this embodiment of *la politique de pire* “the strategy of provocation.” Its central dynamic, of course, is quite familiar from Marxist revolutionary politics of the nineteenth century. Following them, the jihadi theorists believe, as Michael Ignatieff put it, that “by provoking the United States and its Arab allies into indiscriminate acts of repression, they will turn them, as it were, into recruiting sergeants for its cause. They have understood that the impact of terrorism is dialectical. Success depends less on the initial attack than on instigating an escalatory spiral, controlled not by the forces of order but by the terrorists themselves.”<sup>3</sup>

That last point, about who controls the political dynamic, is vital, for it identifies one of the critical dangers of our current “politics of fear”—it makes *our* politics prey to *their* actions—and I will have more to say on this. I want to emphasize, though, that this general dynamic is well understood by our enemies, who—while the Bush administration contented itself with endless repetitions of the mindless formula that “they hate our freedoms” in describing jihadist goals—self-consciously enunciate

3. Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror* (Princeton: Princeton University Press, 2004), 61–62.

it as a strategy. (Bin Laden himself, of course, ridiculed the “they hate our freedoms” line, asking, “Then why didn’t we attack Sweden?”) The late Abu Musab al-Zarqawi, the Jordanian-born leader of al-Qaeda in Mesopotamia—he was killed, incidentally, in an air strike based on information that was gathered using, brilliantly, “traditional” methods of interrogation, as vividly described in Matthew Alexander’s book *How to Break a Terrorist*—described the strategy of provocation vividly in his famous 2004 analysis of his tactical and strategic goals. Here is how Zarqawi, a Jordanian Sunni Arab, who was then leading a vicious and unrelenting campaign of suicide bombing against the Shia in Iraq—some months averaging more than three suicide attacks on Shia targets a day, with many attacks blowing to pieces more than a hundred civilians—described his strategy in 2004: “[By] targeting and hitting [the Shia] in [their] religious, political, and military depth [we] will provoke them to show the Sunnis their rabies and bare the teeth of the hidden rancor working in their breasts. If we succeed in dragging [the Shia] into the arena of sectarian war, it will become possible to awaken the inattentive Sunnis as they feel imminent danger and annihilating death. . . . Despite their weakness and fragmentation, the Sunnis are the sharpest blades.”<sup>4</sup>

Zarqawi’s purpose in launching a series of suicide attacks on the Shia, in other words, was to *provoke* them to respond by attacking the Sunnis—something they finally did in February 2006, after Zarqawi’s militants blew up the Golden Mosque in Samarra. Zarqawi intended those Shia counterattacks on the Sunni that he had been struggling to provoke to force the Iraqi Sunni—Zarqawi’s potential allies—to rise up, defend themselves, and retake power. He was trying, that is, to provoke a triumphant *Sunni* response. His violence was meant to be a remedy for the political weakness of *his own cause* among Sunnis. He was using terrorism to make up for the lack of political popularity of his cause—but the remedy depended, crucially, *on the reaction, or indeed, the overreaction of his targets*. He had to force them to do the political work for him.

Bin Laden, similarly, in trying to provoke an American attack on Muslims, aims to revitalize his movement and *fuel a Muslim uprising*—to, in Zarqawi’s phrase, “awaken the inattentive” Muslims to the true depredations of the United States, depredations usually concealed, as it were, in the actions of American clients, especially those who rule in Cairo and

4. “Text of Zarqawi Letter,” GlobalSecurity.org, February 12, 2004, <http://www.globalsecurity.org/wmd/library/news/iraq/2004/02/040212-al-zarqawi.htm>.

Riyadh. In this conception, the United States is the distant puppet master, its responsibility for those malign activities of Hosni Mubarak and the House of Saud concealed by those hidden strings. An American invasion and occupation of Afghanistan, on the other hand, would tear the mask off the “far enemy” and show it for what it really was: a murderous repressor of Muslims. And by awakening the inattentive Muslims, it would launch the movement that would overthrow the current “apostate regimes” of the Muslim world—the allies of the United States—and lead to Bin Laden’s ultimate goal: the worldwide fundamentalist revolution and the reestablishment of the caliphate. In this sense, the attacks of 9/11 were a determined attempt to draw the United States, publicly, dramatically, unmistakably, into—as the title of one analysis has it—“someone else’s civil war.”

This is an age-old strategy of guerrillas and terrorists: If you are weak, if you have no army of your own, borrow your enemy’s army. Provoke your opponent to do your political work for you. And al-Qaeda knows that in this sense, they *are* weak. As no less a figure than Ayman al-Zawahiri, Bin Laden’s deputy and main strategist, put it, “However far our capabilities reach, they will never be equal to one thousandth of the capabilities of the kingdom of Satan that is waging war on us.”<sup>5</sup>

Recognizing that their “capabilities” were small, they sought to use ours—and, in launching the War on Terror, occupying a major Muslim country and producing the celebrated images of repression and torture from Guantánamo and Abu Ghraib, we proved ourselves very happy to oblige. It is against this background that former secretary of state Henry Kissinger’s answer, when asked why he supported the Iraq War, becomes almost unbearably poignant. We needed to invade Iraq, Kissinger said, “because Afghanistan wasn’t enough. Because we needed to humiliate them as they wanted to humiliate us.”<sup>6</sup> In Kissinger’s realist conception, the image of American tanks rumbling down the streets of an occupied Arab capital would restore the prestige that the superpower had lost in the 9/11 attacks. That image on the world’s television sets would supplant the collapsing World Trade Towers, cleansing “the dirtied face of power.”

Who knows—perhaps if things had worked out as the Bush strategists had fantasized, if the Americans had quickly installed a democratic Shia regime and removed almost all U.S. troops within three months, the

5. Richardson, *What Terrorists Want*, 232.

6. Bob Woodward, *State of Denial: Bush at War, Part III* (New York: Simon and Schuster, 2006).

“creative instability” that they hoped to provoke throughout the Middle East, with a “democratic tsunami” sweeping from Tehran to Ramallah to Beirut and bringing in its stead popular, American-supporting, Israel-recognizing regimes—perhaps if this fantasy had come to pass, the face of power would have been cleansed, and things might have been different. The Iraq War was indeed, in one of its many strands of justification, an answer to the political challenge presented by Osama Bin Laden. (“The transformation of the Middle East,” as Condoleezza Rice put it, “is the only guarantee that it will no longer produce ideologies of hatred that lead men to fly airplanes into buildings in New York and Washington.”)<sup>7</sup>

But that vision was a fantasy, with no consideration of how that democratic paradise might be achieved. The Iraq occupation produced instead an endless and spectacularly brutal insurgency, daily television footage of Muslims fighting and dying at the hands of American occupiers, and, finally, the most lasting, powerful images of the entire War on Terror: after the young Muslim men, their eyes blindfolded and goggled, their ears muffled, kneeling in their orange jumpsuits within the wire cages of Guantánamo, could now be placed the iconic images of hooded and naked and powerless Muslim men chained to the bars of cells, being forced to masturbate, being forced, naked, to climb on top of one another, under the eyes of beefy American soldiers in combat fatigues in the stark squalor of Abu Ghraib. If Bin Laden had come to Madison Avenue seeking a poster embodying his cause, it is hard to imagine he could have found one more effective than Hooded Man, balanced perilously on his box with wires extending from his fingers, or Leashed Man, a naked Muslim man lying on the dirty floor, his face convulsed in pain and humiliation, with a leash leading from his neck to the hand of a young American woman standing over him, smiling triumphantly in her military fatigues. It is difficult to imagine a more perfectly crafted image of American repression, humiliation, and emasculation of Muslims. These images, embodied not only in television footage but in murals and paintings and countless reproductions of all kinds, swept across the Islamic world and unquestionably had a potent political effect, serving as a spur to Muslim anger and to recruitment in the jihadi cause. By any measure, a potent victory in *la politique de pire*.

7. Dana Milbank, “Patience on Iraq Policies Urged,” *Washington Post*, August 26, 2003, 1, also quoted in my essay “Iraq: The New War,” in my *Torture and Truth: America, Abu Ghraib, and the War on Terror* (New York: New York Review Books, 2004), 57.

## II

So often when speaking of these matters we find ourselves struggling to compare incommensurables. But we can say that any judgment of the *practical* value of enhanced interrogation techniques must confront a very basic question: if one can identify vital information that was indeed derived from these techniques, information that could *not* have been derived by use of traditional and indisputably legal methods—and, as we saw in the previous lecture, whether there exists *any* such information remains a matter of violent dispute, not least among professional interrogators—how critical would such information have to be to begin to outweigh the vast political costs that have accompanied the way it was gathered? Such a question, of course, can never be answered qualitatively, as it were; it is inherently political, beginning with the counterfactual built into its premise: how do we identify information that could not have been gathered in any other way, particularly when experienced interrogators like Ali Soufan and Matthew Alexander and Steven Kleinman dispute the very premise of the question? But we need to begin to place it within the broader politics of the Forever War itself, which brings us back to my initial question: What is the war about? What are both sides trying to achieve, and what would constitute victory? If it was not clear in the aftermath of September 11, when President Bush uttered the phrase, it should be clear by now that the United States will not ever succeed in “ridding the world of evil-doers,” at least not by killing them, or capturing them, one by one.

Imagine for a moment a target—a large target with concentric circles of different colors, the kind you shoot at with a bow and arrow. Imagine at its red center, at the bull’s-eye, the Muslims who are the most committed jihadists, the leaders of the jihadist groups themselves, and the men and women willing to blow themselves up to support the cause. Imagine at the second circle, the yellow one surrounding the bull’s-eye, committed supporters who actively aid and abet the cause. Imagine in the next circle out those who contribute money to the cause, and in the next those who argue for its goals and aspirations, and in the next those who are politically sympathetic but who do nothing. And in the next circle are those Muslims who watch and follow the struggle with interest, whose political sympathies are undetermined but, perhaps, can be swayed. And finally, in the next, outermost circle, are Muslims who count themselves apolitical or actively oppose the jihadist cause.

If we keep this simple image in mind, perhaps we can concisely describe the strategic goals of the Forever War. For Osama Bin Laden and his colleagues, the task is to accelerate the movement of people from the outer circles to the inner ones: that is, to radicalize the population of young Muslims, to “awaken the sleeping Sunnis.” To lead apolitical Muslims to move into the circle of those sympathetic to the cause, to move those sympathetic into the circle of those who will contribute money and support, to move those who contribute money into the circle of those who will act and struggle and fight. To cause, then, a general migration toward the center, toward committed and violent activism.

For the United States the strategic goal in this war, first and foremost, is to slow the movement of people from the outer circles toward the inner ones: to stop those who give money from becoming active supporters, to discourage those who are sympathetic from giving money, and, most of all, to dissuade those who are undecided to become sympathetic to the jihadi cause. The task of the United States is to follow—insofar as it is possible in concert with other interests, an important caveat—policies that will discourage the radicalization of Muslims. Bin Laden’s, on the contrary, is not only to encourage radicalization but to provoke the United States to do things that will make his task easier.

Here is how Donald Rumsfeld phrased the question in a memorandum to his Defense Department colleagues in 2003: “Are we capturing, killing or deterring and dissuading more terrorists every day than the *madrassas* and the radical clerics are recruiting, training and deploying against us?”<sup>8</sup> The concision here is both typical—the defense secretary’s memos, known as “snowflakes,” were legendary—and also telling, for look closely at the verbs: *capturing, killing, deterring, dissuading*. That these tasks can be contradictory has been well proved in our nine-year state of exception. Killing and capturing, depending on the methods used, can clash rather violently with the deterring and dissuading. Capturing and detaining in Guantánamo—the treatment that was meted out, the images that were broadcast—clashed vividly with deterring and dissuading, not to speak of Abu Ghraib. We saw this clash vividly throughout the Bush years and also saw, it should be said, the emphasis very gradually shift and evolve. The Bush War on Terror in 2008 was not the same as the War on Terror of 2003. But more than anything, no matter how much “public diplomacy” was undertaken to regain the sympathy of Muslims throughout the Islamic world—this impossible task was the charge of a series of

8. “Rumsfeld’s War-on-Terror Memo,” *USA Today*, October 16, 2003.

talented and unfortunate women (Charlotte Beers, Margaret Tutweiler, Karen Hughes) throughout the Bush years—the ongoing bleeding sore of the Iraq War, and the lingering images from Guantánamo and Abu Ghraib that seemed its inseparable accompaniment, limited how far that change could be taken.

Senator Barack Obama, as he made evident, understood Bin Laden's *politique de pire*: “Bin Laden and his allies know they cannot defeat us on the field of battle or in a genuine battle of ideas,” the candidate declared in August 2007. “But they can provoke the reaction we’ve seen in Iraq: a misguided invasion of a Muslim country that sparks new insurgencies.” He went on:

Too often since 9/11, the extremists have defined us, not the other way around. . . .

I also will reject a legal framework that does not work. . . . As President, I will close Guantanamo, reject the Military Commissions Act, and adhere to the Geneva Conventions. Our Constitution and our Uniform Code of Military Justice provide a framework for dealing with the terrorists.

This Administration also puts forward a false choice between the liberties we cherish and the security we demand. I will provide our intelligence and law enforcement agencies with the tools they need to track and take out the terrorists without undermining our Constitution and our freedom.

That means no more illegal wire-tapping of American citizens. No more national security letters to spy on citizens who are not suspected of a crime. No more tracking citizens who do nothing more than protest a misguided war. No more ignoring the law when it is inconvenient. That is not who we are. And it is not what is necessary to defeat the terrorists. The FISA court works. The separation of powers works. Our Constitution works. We will again set an example for the world that the law is not subject to the whims of stubborn rulers, and that justice is not arbitrary.<sup>9</sup>

Thus candidate Barack Obama nearly three years ago. The words are eloquent, clear, and powerful. President Obama adopted a similar tone in his second full day in office, when he “prohibited torture”—limiting

9. Remarks of Senator Barack Obama, “The War We Need to Win,” Washington, D.C., August 1, 2007.

those techniques that could be used to those contained in the *Army Field Manual*, set up a special task force to study interrogation and how it should be performed, and vowed to close Guantánamo within a year.

The results, as I suggested earlier, have been quite mixed, not least because of the emergence, as no one could have predicted, of Vice President Dick Cheney as a visible, persistent, and relentless advocate of the use of “enhanced interrogation techniques”—and a prophet of the disaster that would befall the United States if their use was renounced. The former vice president, beginning a week after Obama’s inauguration, was there to remind him, telling a television interviewer:

When we get people who are more concerned about reading the rights to an Al Qaeda terrorist than they are with protecting the United States against people who are absolutely committed to do anything they can to kill Americans, then I worry. . . . These are evil people. And we’re not going to win this fight by turning the other cheek.

If it hadn’t been for what we did—with respect to the . . . enhanced interrogation techniques for high-value detainees . . .—then we would have been attacked again. Those policies we put in place, in my opinion, were absolutely crucial to getting us through the last seven-plus years without a major-casualty attack on the US. . . .

A few weeks later the former vice president went further, citing his worry about a

9/11-type event where the terrorists are armed with something much more dangerous than an airline ticket and a box cutter—a nuclear weapon or a biological agent of some kind. That’s the one that would involve the deaths of perhaps hundreds of thousands of people, and the one you have to spend a hell of a lot of time guarding against.

I think there’s a high probability of such an attempt. Whether or not they can pull it off depends [on] whether or not we keep in place policies that have allowed us to defeat all further attempts, since 9/11, to launch mass-casualty attacks against the United States. . . .

If you release the hard-core Al Qaeda terrorists that are held at Guantánamo, I think they go back into the business of trying to kill more Americans and mount further mass-casualty attacks. If you turn them loose and they go kill more Americans, who’s responsible for that?



Who indeed? These dark admonitions, which are both exculpatory, pointing back to what the administration did and justifying it, and minatory, warning about what will happen in the future and laying down a predicate for who will be blamed, have had their effect. How could they not? As all politicians—and all terrorists—know, fear is the most lucrative political emotion. In the wake of Cheney's comments—which, despite the former president's personal unpopularity, had wide resonance at a time when the Republican Party lacked recognized leaders—Congress declined to vote funds for the president's plan to close Guantánamo, the result of a campaign brilliantly spearheaded by the resonant warning cry that the new president intended to “put terrorists in our neighborhoods.” And we see its effect in the refusal to release additional photographs of torture, in the resistance to release memoranda on the subject, and in the increasing willingness to take positions similar to the Bush administration when it comes to lawsuits regarding torture and detainee rights.

The most characteristic decision, though, the one that expresses most purely the ambivalence of the Obama administration, caught between the desire for justice and the reluctance to confront the political costs of supplying it—costs that must be weighed against more tangible political goals, like passing health care or financial reform—is the decision not to bring criminal investigations against those who have tortured, or rather to do so only in the case of those who have gone beyond the Bush administration's immensely wide guidelines. Attorney General Eric Holder has passed the task of examining for possible prosecution the behavior of the CIA interrogators to special counsel John Durham, a U.S. attorney from Hartford, Connecticut, who was already investigating the destruction in 2005 of the ninety-two videotapes that had been made of the interrogations of Abu Zubaydah and other detainees. Durham must now decide whether anything done in the interrogations, one of which I recounted in some detail in the previous lecture, merits prosecution—but with one critical caveat. He can investigate only those activities that went beyond what was allowed in the Bush administration's own “torture memos” and identified as such by the report of the CIA inspector general in 2004, one of those documents whose release last year caused such controversy. So we might find ourselves in a position where a court case is brought against a former interrogator not for waterboarding but for using too much water, and doing it with too much frequency. An interrogator might be prosecuted not for shackling a prisoner by his wrists to the ceiling for two weeks on end but for racking his semiautomatic pistol next to the

detainee's hooded head and threatening to execute him, or threatening to murder his family—all things that were done at the black sites, according to the inspector general's report. I do not know if we will see such prosecutions in the future—I rather doubt it—but, if we do, it will be very hard to look at them and call them justice.

Barack Obama has spoken out strongly against torture; this is important. Indeed, we can be grateful that on this issue he has brought to bear his usual eloquence, as, for example, in his powerful Nobel Peace Prize Lecture in Oslo:

To begin with, I believe that all nations—strong and weak alike—must adhere to standards that govern the use of force. I—like any head of state—reserve the right to act unilaterally if necessary to defend my nation. Nevertheless, I am convinced that adhering to standards strengthens those who do, and isolates—and weakens—those who don't. . . .

Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. And even as we confront a vicious adversary that abides by no rules, I believe that the United States of America must remain a standard bearer in the conduct of war. That is what makes us different from those whom we fight. That is a source of our strength. That is why I prohibited torture. That is why I ordered the prison at Guantanamo Bay closed. And that is why I have reaffirmed America's commitment to abide by the Geneva Conventions. We lose ourselves when we compromise the very ideals that we fight to defend. And we honor those ideals by upholding them not just when it is easy, but when it is hard.

This is eloquent, and very welcome. It contrasts strongly with the stark philosophy of unilateralism and “power rules” of the Bush administration, whose essence, I think, is expressed perfectly in this quotation from its National Security Strategy of 2005: “Nations will continue to challenge us employing the weapons of the weak, including international fora, judicial processes and terrorism.”

Terror is here placed alongside international law, the courts, and other attributes of multilateralism as serving simply to limit American power. This dark vision sees international life as a zero-sum game, in which the strongest state simply has no interest in adhering to international law—in which the strongest is limited only by one thing, its own power. It is the

nightmare of an unbound America that the so-called Wise Men put aside after World War II by embedding American power in institutions like the UN, NATO, and the Marshall Plan. The new president, in his rhetoric and his behavior, is very far from that—and it is likely that distance, and the world's gratitude for it, that earned him the Nobel Peace Prize, when his accomplishments, as he himself said, up to then had been slight.

So we must be grateful for much of what President Obama has done, not least his decision to end the practices I have described and his vow, as yet unfulfilled, to close Guantánamo. But we can show our gratitude by listening closely to his words—for example, his statement that he “has prohibited torture”—a power, as mentioned, that he in fact lacks, and that, in its bald assertion, tells us how far we have come from beneath the shadow of international law. Or these words, from later in the same speech:

Furthermore, America cannot insist that others follow the rules of the road if we refuse to follow them ourselves. For when we don't, our action can appear arbitrary, and undercut the legitimacy of future intervention—no matter how justified. . . .

First, in dealing with those nations that break rules and laws, I believe that we must develop alternatives to violence that are tough enough to change behavior—for if we want a lasting peace, then the words of the international community must mean something. Those regimes that break the rules must be held accountable.

*Accountable*: it is an important word, and the truth is that we have heard too little of it lately. As I stand here precisely no one—beyond a handful of low-ranking soldiers from Abu Ghraib—has been held accountable for torture. It is an immensely difficult problem, and I envy colleagues and friends who find it simple: who argue, for example, that Bush and Cheney and their colleagues must be arrested and tried for violating the Convention Against Torture, the domestic torture statute, and other laws. There is a problem, of course: those techniques that were discussed so carefully at the upper levels of the CIA were also discussed, specifically and in detail, in the Department of Justice. Lawyers there approved them, in detail. We now have those documents—we have had a number of them for more than five years—and they make astonishing reading.

But it was not just the lawyers in the Department of Justice and the Department of Defense. It was the senior officials of our government

discussing these techniques, for George Tenet, then CIA director, would travel from Langley, Virginia, across the Potomac almost daily to the White House, to discuss interrogations with the Principals Committee—that is, with the senior officers of the government, including the vice president, secretary of state, secretary of defense, and attorney general. It is fair to say that the officers of the CIA—many of them perhaps with memories of the Church Committee inquiry of the midseventies—made certain that responsibility and awareness were spread very broadly, all across the top of the government, and they made sure to get a so-called Golden Shield, or get-out-of-jail card, so that these techniques would be shown to be “legal.”

So we now have to deal not only with the acts themselves but also with the corruption of language, and of the legal and bureaucratic processes of government, that accompanied them. President Bush, having redefined “torture” so it did not include waterboarding and other “enhanced interrogation techniques,” repeatedly insisted that “the United States doesn’t torture”; President Obama has no choice, in his statements that presumably mean something very different, to use precisely that same word.

How do we escape? President Obama has said repeatedly that when it comes to these matters, he wants to “look forward,” not “back.” It is a pernicious phrase and, if held to consistently, would preclude all punishment and prosecution. Rendering justice, by definition, implies looking backward. But the political costs of justice, at least that provided by prosecution, are very great, for we live still in the “politics of fear.”

How can we return to justice? I believe the road will run not through prosecutions but through education. That is why I have called for the establishment of a broad nonpartisan commission to investigate what was done in the realm of interrogation, who did it, what it accomplished, and, not least, how it hurt the country. Such a commission, made up of respected public figures provided with the highest security clearances, would investigate not only what information was gathered using these methods—for of course much information was gathered; the CIA had custody of these people in the black sites for years—but what was its value. Members of the commission would also judge whether indeed things were learned that could not have been using more traditional methods. And they would be charged with judging these gains against the damage such methods did to the country, not only in the cases of spectacularly mistaken pieces of information gained by torture—the most notorious of which came from Ibn al-Sheik al-Libi, brutally tortured by the Egyptians at the direction of

the Americans, who finally, after multiple applications of the waterboard, supplied the “intelligence” about the famous mobile biological weapons labs that Saddam was concealing in Iraq, which Secretary of State Colin Powell trumpeted before the United Nations on February 5, 2003, in an immensely influential television speech, indeed probably the critical public case the United States made for going to war in Iraq. This information, of course, and other details—like the charge that the Iraqis were training al-Qaeda in the use of chemical warfare—came directly from the torture room, produced by the waterboard. That the U.S. secretary of state used information gained by torture—false information—to make the country’s case for war is one of the shameful episodes of recent history, and it needs to be investigated.

Judgment of these matters cannot be scientific. Researching what information was gained; separating out which of it, if anything, could not have been gained in any other way; weighing that residue of information and its usefulness against what the country suffered as a result of these policies—in particular, the damage it did itself in what I have called *la politique de pire*—this is a matter for careful judgment by serious and trustworthy and well-respected people following the considered weighing of *all* the extant information. The priority must be not destroying the torturers but destroying the idea of torture. One of the most pernicious effects of the state of exception—beyond the damage it did to the reputation of the country, thereby hindering its ability to wage a worldwide counterinsurgency against jihadism—has been the spread of a conviction among an increasing number of Americans that it is impossible to protect the country, to keep the United States safe, while also following the law.

I want to end by talking for a moment about what the president *knows*: He knows that a crude nuclear weapon is planted somewhere in the Bay Area, probably in the city of San Francisco. He knows that it is set to go off within a few hours—certainly by day’s end. He knows that he has set all his considerable federal, state, and local resources—intelligence, police, fire department—to finding the weapon but that they have not found it. And finally he knows a man has been taken into custody who knows the location of the nuclear weapon. He knows this not only because various unimpeachable intelligence sources tell him the man knows but also because the man, after several hours of extensive interrogation, has freely admitted he knows, has offered confirmable facts that only someone intimately connected to the plot could know, and finally has insistently

repeated, when asked to give up his knowledge of the location of the bomb, only these words: “Soon you will know. Soon everyone—all who survive—will know.” What should the president do?

Yes, this is the dreaded Ticking Bomb Scenario, endlessly fertile fount of a thousand television dramas—most famously of *24*, which could well have been called *The Ticking Bomb*—and a million law school and political science seminars. We dread it not least because it is, after all, fantastical in its epistemological presumptions: How could any president ever have such nearly perfect knowledge? And if we are going to posit a nearly omniscient president, why not just supply him with the last bit of information and be done with it? And why, after all, insist on talking about *hypotheticals* when we have real cases to discuss—scores of real cases, alas, where the government actually made the decision to torture, or, if you will, to use “enhanced interrogation techniques”? And the circumstances of those actual cases, needless to say—not least, what was known and not known—are quite dramatically different from the case I have just described. As the CIA inspector general put it starkly in 2004:

The Agency’s intelligence on Al-Qaida was limited prior to the initiation of the . . . Interrogation Program. The Agency lacked adequate linguists or subject matter experts and had very little hard knowledge of what particular Al-Qaida leaders—who later became detainees—knew. This lack of knowledge led analysts to speculate about what a detainee “should know,” [versus] information the analyst could objectively demonstrate the detainee did know. . . . When a detainee did not respond to a question posed to him, the assumption at Headquarters was that the detainee was holding back and knew more; consequently, Headquarters recommended resumption of [enhanced interrogation techniques].<sup>10</sup>

When I first read this passage I thought of Jean Amery, a resistance fighter arrested in Belgium during World War II, who is given a choice between cooperating and being sent to the notorious Breendonk fortress, for interrogation by the Gestapo:

I would be most pleased to avoid Breendonk, with which I was quite familiar, and give the evidence desired of me. Except that I

10. *Special Review: Counterterrorism Detention and Interrogation Activities* (Washington, D.C.: Central Intelligence Agency Office of the Inspector General, May 7, 2004), 83.

unfortunately knew nothing. Accomplices? I could name only their aliases. Hiding places? But one was led to them only at night. . . . For these men, however, that was far too familiar twaddle, and . . . they laughed contemptuously. And suddenly I felt—*the first blow*. . . . The first blow brings home to the prisoner that he is *helpless*, and thus it already contains in the bud everything that is to come. . . . They are permitted to punch me in the face, the victim feels in numb surprise and concludes in just as numb certainty: they will do with me what they want.<sup>11</sup>

What is fascinating here is the reversal of knowledge—the standing on its head of the epistemological reality. The Ticking Bomb posits perfect knowledge on the part of the interrogators and the president who will order them to torture, apart from one small but vital piece. The reality, whether it is Jean Amery or Abu Zubaydah, of the tortured detainee is that he alone truly knows what he knows and is faced with the task, often insurmountable, of convincing the ignorant interrogator of what he does not—of convincing him that he is not “holding back,” that he has told what he knows. He is faced—and here again we have a strange echo of Saddam and our country’s actions around his weapons of mass destruction—with proving that what is not there *is* not there.

The Ticking Bomb, of course, is a kind of philosopher’s trick, a fiendishly clever attempt to slash a rhetorical hole in the lining of our ethical world. It aims to demolish the wall of absolutism surrounding torture and to make the decision one of degree. It aims to take the staunch deontologist and, by means of an alluring fantasy—and it is alluring—force him to become a consequentialist, to shake the dour Kantian until he surrenders and accepts that, *in this one case only*, he will consent to become a happily calculating Benthamite. And then of course the rhetorician pounces: so you *would* torture—under certain conditions. Now that we have established the principle—to repeat George Bernard Shaw’s quip about prostitution—it remains only to haggle about the price.

What matters about the Ticking Bomb Scenario is not the likelihood that it will happen in reality—which is very low indeed—but its potency as an image of commitment and a political test of the politics of fear. What matters, that is, is its inherent drama and the fact that it has captured, by means of *24* and its cultural ancestors—especially *Dirty*

11. Jean Amery, *At the Mind’s Limits: Contemplations by a Survivor of Auschwitz and Its Realities* (1966; reprint, Bloomington: Indiana University Press, 1980), 26–27.

*Harry*—the imagination of the public, and indeed the high ground of the argument. What matters is that most citizens, when they think of torture, seem to think of such an unlikely event—the Ticking Bomb—first.

We should—we must—disarm the Ticking Bomb. It is time to admit clearly that in the event of such a bizarre eventuality, any president—any leader—would do what the situation requires, that is, would be bound by his judgment of what the country’s immediate welfare demands. That in such a situation any leader in fact becomes a consequentialist, must become one, a fact Machiavelli recognized five centuries ago. Some writers I admire—Philip Heyman and Juliette Kayyem—have suggested that such an exception be written into the law. That is, that we should legislate the exception. That the president, under certain exigent conditions, be granted the legal right to use cruel, inhuman, and degrading treatment to acquire information that could prevent an imminent attack.

This of course is what might be called the paradox of the exception: Do we gain or lose by trying to legislate emergency procedures? Do we, by making them legal in certain situations, make it more likely they will be used? Or do we, by writing them into the law, bring them under the rule of societal consent and regulation—perhaps, for example, by requiring court approval of some kind, or by setting down very narrow conditions, and so on? It is a paradox contained in Bruce Ackerman’s proposal for an “emergency constitution” and, in homologous form, in Alan Dershowitz’s notorious idea for the establishment of torture warrants.

Though I do not support the proposal for special legislation to provide for the Ticking Bomb, I do acknowledge the source of its appeal, which is the need to reassure the public that those charged to protect them are willing to do what it takes—and are provided with the powers necessary—to keep them safe. Unfortunately, fear often results in policies that do just the opposite. What I in the earlier lecture called “the broken funnel,” the tendency to sweep up every possible jihadist in Afghanistan—even those about whom American forces knew nothing—is a remnant of that fear, an example of a policy designed to keep the country safe but had the effect of making it more vulnerable, first by debilitating the detention and interrogation system itself, and second, in the images from Guantánamo and Abu Ghraib, by providing immense aid to the enemy in the form of the political legitimation that it craved.

The Obama administration must cope now with the remnants of these policies, and with the resonating echoes of the politics of fear. Some of those remnants we can point to: the fifty-odd detainees at Guantánamo



whom the administration has determined can be “neither tried nor released.” Prisoners like Khalid Sheik Mohammed, who have been grievously tortured—and whom Republicans strenuously object to trying in federal court, as the Obama administration has proposed. Such a trial, I think, could be a victory, if a tarnished one, for justice—if, indeed, it could be held. As for those who can be “neither tried nor released”—well, though writers I respect like David Cole have proposed carefully crafted proposals for indefinite detention, it seems to me plain that endless detention without trial conflicts dramatically with the most basic American ideals. There must be either trials—or a point at which the war, and thus the detentions, can be declared at an end.

At the heart of the problem of the endlessness of the exception, it seems to me, is that of the endlessness of the War on Terror. And here we confront another paradox: a war must have an ending, an end that is declared. But the War on Terror, in proper terms, is not a war at all but a strange hybrid that is in part conventional war (in Iraq, for example), in part counterinsurgency (in Afghanistan), and in part a kind of persistent worldwide counterinsurgency that may not be concluded entirely in our lifetimes.

Several years ago the Pentagon recognized that the term *War on Terror* was unhelpful in dealing with local populations in various countries of the Islamic world, where people regarded it as a war against Islam. Officials in the Pentagon proposed replacing the time-honored global War on Terror—known in the Department of Defense as the “Global War on Terror,” or GWOT—with GSAVE, the Global Struggle Against Violent Extremism. The effort began with a change in documents and stationery—but it was halted ignominiously when President Bush, no matter what memos he received, went on using *War on Terror* as his rallying cry.

This was several years ago. We are confronted still with the problem of how to end our endless war. President Obama of course tends not to use the phrase—he has not adopted GSAVE, either, thank heaven—but his political adversaries have identified this as a sign of his lack of seriousness in “keeping the country safe.” It is important to remember, I think, that when we hear such criticisms, they are meant not only as a critique of present policy but as a predicate of blame for what tragedy might happen in the future.

Irving Howe said of 1984, “The book appalls us because its terror, far from being inherent in the human condition, is particular to our century.

What haunts us is the sickening awareness that in 1984, Orwell has seized upon those elements of our public life that, given courage and intelligence, were avoidable.”<sup>12</sup> A terror “particular to our century,” “elements of our public life that, given courage and intelligence, were avoidable.” This strikes me . . . When I read it this time, it cut to my heart because I thought, though certainly as I stand here we are not living in anything like the totalitarian state painted so vividly in 1984, it is true, it seems to me, that we are in a situation particular to our century, under the influence of the War on Terror, and a state of exception the end of which we cannot now see. When I read those scenes from the black sites—and I have spent at this point, eight years after the first revelation of official torture, far too much of my life reading them—I think, to use Howe’s words, these are “elements of our public life that, given courage and intelligence, were avoidable.” What it took to avoid them, at a certain perilous moment—to oppose fear, however overwhelming it was—was courage.

Much that is particular to our century—and I mean now the twenty-first century—is to be found in that book, 1984, not least the notion of virtual war. I am talking about that endless shape-shifting struggle fought between the superstates of Oceania, Eurasia, and East Asia that forms the background to Orwell’s novel. Of this struggle, this endless war, this virtual war, Orwell writes, “If we judge it by the standards of previous wars, it is merely an imposture like the battle between certain ruminant animals whose horns are set at such an angle that they are incapable of hurting one another. But though it is unreal, it is not meaningless. It helps to preserve the special mental atmosphere that a hierarchical society needs.”<sup>13</sup>

Now, the War on Terror certainly is not an imposture. We see tanks, we see artillery, we see soldiers dying, both in Iraq and in Afghanistan. But alongside it, I would suggest, stand the ghostly political benefits that Orwell has in mind. War produces fear. Fear and the cowed population that is its result produce power. Insofar as terrorism’s ultimate product is not death, is not mayhem, but is fear—which is, after all, the most lucrative of political emotions—the benefits of that fear are shared, between the terrorists who cause it and the political leaders who conduct the fight against them. That is, it benefits, very much, both sides. Those benefits, though they may lead to an increase in momentary power, do not often lead to wise policy; we should remember Ignatieff’s words about the true

12. See Irving Howe, *Politics and the Novel* (1957; reprint, New York: Ivan R. Dee, 2002), 237.

13. George Orwell, *Nineteen Eighty-Four* (1949; reprint, New York: Signet, 2002), 164.

purpose of *la politique de pire*, to instigate “an escalatory spiral, controlled not by the forces of order but by the terrorists themselves.”

We have seen this politics of fear used to great advantage during the past eight years, and its influence remains strongly with us still in the age of Obama. We will see its return with a vengeance after, or in the event of, a further devastating attack. Perhaps, with diligence and wise policy, we will be able to avoid this. But if we do not, we ought to be ready for the fear that will come like a whirlwind in its wake. When I hear the former vice president’s words about the necessity of torture, and his criticism of the foolishness of those who renounce its use because it is needed to keep us safe, I feel I hear the distant rustlings of that whirlwind. They are in the distance, as I say, but they can be heard clearly from time to time. In the end it is this fear, and its potent political power, that keeps us imprisoned still in the state of exception. We cannot legislate the courage and intelligence in our public life that Howe pleaded for. But only with them, in the pursuit of wise policies now, can we avoid being swept up in that cycle of fear when, and if, the next attack comes.