

The Coxford Lecture

Inhuman and Degrading Treatment: The Words Themselves

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1. Introduction

What is meant by “inhuman and degrading treatment”? The phrase is resonant in modern human rights law. The International Covenant on Civil and Political Rights (ICCPR) provides that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”¹ A great many national and regional Bills of Rights say something similar. The formulation of the European Convention on Human Rights (ECHR) is very well known: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”² There are similar provisions in the South African Constitution,³ the Constitution of Brazil,⁴ and the New Zealand Bill of Rights Act.⁵ In addition to these general provisions, similar language is used in some more specific international instruments. The UN Convention against Torture (CAT) uses the language of cruel, inhuman and degrading treatment in one of its supplementary provisions (i.e., supplementary to its main prohibition on torture).⁶

I used to think the most important thing about these provisions was that they erected a sort of *cordon sanitaire* around the much more important prohibition on torture—a “fence around the wall,” designed not just to keep police, spies, and interrogators from crossing the torture threshold but to keep them from even approaching it. The present paper, however, is predicated on the assumption that the phrase “inhuman and degrading treatment” has work of its own to do.

2. Indeterminacy and Elaboration

How should we go about interpreting this phrase? Almost everyone agrees that the legal provisions forbidding “inhuman and degrading treatment” are contestable. They use highly charged evaluative predicates—terms that the authors of one treatise say,

1. International Covenant on Civil and Political Rights, art. 7.

2. European Convention on Human Rights, art. 3.

3. South African Constitution, art. 12 (1): “Everyone has the right to freedom and security of the person, which includes the right ... not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way.”

4. Constitution of the Federal Republic of Brazil, art. 5 (III): “[N]inguém será submetido a tortura nem a tratamento desumano ou degradante.”

5. New Zealand Bill of Rights Act 1990, sect. 9: “Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.”

6. UN Convention Against Torture, art. 16 (1): “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined. ...”

“tend to be over-used in ordinary speech”⁷—rather than descriptive predicates, and so they present themselves as *standards* rather than rules. Later I shall argue that it is important to keep faith with this presentation. But it has to be admitted that, even with the best will in the world, it is not easy to figure out what these provisions forbid. So what approach should we take to determining the application of these standards to the various regimes of treatment, interrogation and captivity that might be thought to fall under them? Here are five different strategies that have been tried, and one modest suggestion that I would like to offer.

(i) *Refuse to deal with these predicates.*

One response is to throw up one’s hands and refuse to deal with these provisions on the ground that they are too indeterminate to be justiciable. This is what some federal courts have done when prohibitions on inhuman and degrading treatment been invoked in the United States in Alien Tort Statute litigation. The ATS entitles an alien to sue a foreign tortfeasor for (among other things) violations of the law of nations. It is something of an historic anomaly, but it is about as close as we get in U.S. law to the sort of *ius cogens* jurisdiction that some foreign courts have assumed over human rights abuses.⁸ In a case against Argentinean officials involved in torture and disappearances, a District Court in California complained about the relativity of the “degrading” standard:

From our necessarily global perspective, conduct ... which is humiliating or even grossly humiliating in one cultural context is of no moment in another. An international tort which appears and disappears as one travels around the world is clearly lacking in that level of common understanding necessary to create universal consensus.⁹

The court concluded that in the absence of clear and categorical definitions, it had no way of knowing what conduct was actionable under a “cruel, inhuman, and degrading treatment” standard.¹⁰ And so it refused to recognize violation of this standard as a tort under the Alien Tort Statute.

More recently, however, federal judges have shown themselves willing to work with these standards even if they the definitions are a little ragged around the edges.¹¹ One district court said that “[i]t is not necessary that every aspect of ... ‘cruel, inhuman or degrading treatment’ be fully defined and universally agreed upon before a given action meriting the label is clearly proscribed under international law.”¹² In 2002, in a case dealing with human rights abuses in Zimbabwe, Judge Victor Marrero in the Southern District of New York made the point that federal courts have a responsibility to help remedy the definitional indeterminacy

7. D.J. Harris, M. O’Boyle & C. Warbrick, *Law of the European Convention on Human Rights* (Oxford: Oxford University Press, 1995) at 88.

8. Compare the assertion of universal jurisdiction in *Regina v. Bow Street Metropolitan Stipendiary Magistrate and Others, ex parte Pinochet* [2000] 1 A.C. 147.

9. *Forti v. Suarez-Mason* 694 F.Supp. 707, at 712 (N.D. Cal., 1988).

10. *Ibid.*

11. See, e.g. *Jama v. United States Immigration and Nat. Serv.*, 22 F.Supp.2d 353, 363 D.N.J. 1998); *Mehinovic*, 198 F.Supp.2d at 1347-8.

12. *Xuncax v. Gramajo*, 886 F.Supp. 162, 186 (D. Mass. 1995).

of “inhuman or degrading treatment.” Judge Marrero said that in an area of law “where uncertainty persists by dearth of precedent, declining to render decision that otherwise may help clarify or enlarge international practice ... creates a self-fulfilling prophecy and retards the growth of customary international law.”¹³

(ii) Substitute more familiar language.

A second approach is to link the problematic provision to language that we find more familiar or more congenial. So, for example, the United States entered this reservation when it ratified the CAT.

[T]he United States considers itself bound ... only insofar as the term “cruel, inhuman or degrading treatment or punishment” means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.¹⁴

The shift is not to language that is any less evaluative. But the idea seemed to be that Americans would be more comfortable with these provisions if they substituted terminology familiar to them from their own constitutional law.

In his confirmation hearings in 2005, former Attorney-General Alberto Gonzalez told the Senate that the effect of these reservations was to incorporate American geographic limitations on the application of constitutional rights into U.S. obligations under the treaty.¹⁵ Aliens “interrogated by the U.S. outside the United States enjoy no substantive rights under the Fifth, Eighth and 14th Amendment,” he said. And he added that there was therefore “no legal prohibition applying to us under the ‘Convention Against Torture’ on cruel, inhuman or degrading treatment with respect to aliens overseas.”¹⁶ This was a mistake. On its terms, the reservation concerns only definitions, not jurisdiction. I doubt very much whether a jurisdictional or geographic reservation would be valid. Certainly it would not have been valid had it amounted to a determination not to apply the relevant provision at all in the treatment of certain categories of aliens in certain places.

(iii) Treat these predicates as quantitative distinctions

A third approach is to see these terms as referring quantitatively to different levels of suffering that might be inflicted on prisoners or detainees, suffering that falls short of torture but is also prohibited—usually in the very provisions that impose an absolute ban on torture. This seems to have been the approach taken by the European Court of Human Rights (ECtHR) in the early stages of the interpretation of Article 3 of the ECHR. So one might say that degrading treatment is painful—painful enough to get over the minimum threshold of Article 3—but not as painful as inhuman treatment. Inhuman treatment is very painful, but not as painful as

13. *Tachiona v. Mugabe* 234 F.Supp.2d 401 S.D.N.Y., 2002 at 437.

14. See <http://www2.ohchr.org/english/bodies/ratification/9.htm>. Something exactly similar was said to accompany American ratification of ICCPR.

15. This account of Gonzalez’s testimony is adapted from Craig Forcese, “A New Geography of Abuse” (2006) 24 Berkeley J. Int’l L. 908 at 908-9.

16. *Ibid.* at 909.

torture. Torture is the most painful of all and so needs a special stigma attached to it.¹⁷ On this account, there was no concern to establish qualitative differences between these modes of prohibited treatment.¹⁸ Elements of this quantitative approach still persist.¹⁹

(iv) *Use precedents to replace these standards with rules.*

In recent years, however, the ECtHR has pursued a different approach, one that involves decisions about the assignment of the predicates “inhuman” and “degrading” to particular kinds of practice in particular circumstances. Scholars then use these decisions to establish what they call “the meaning” of inhuman and degrading treatment. So, for example, the Court might establish that shackling a prisoner (when he poses no physical danger to himself or others) is degrading; and so, in effect, a rule is established that shackling prisoners in these circumstances violates Article 3. Or the court might establish that confinement in an over-crowded cell is inhuman treatment; and so in effect a rule is established that over-crowding is prohibited by Article 3. Gradually these rules begin to constitute a distinctive body of Article 3 jurisprudence.

As the precedents build up, vague evaluative terms are (in effect) replaced by lists of practices that are prohibited, practices that can then be identified descriptively rather than through evaluative reasoning. In time, the list supplants the standard; the list becomes the effective norm in our application of the provision; the list is what is referred to when an agency is trying to ensure that it is in compliance. The list is then administered using a set of principles and benchmarks: principles such as the principle that a presumption against shackling may be rebutted by a danger the prisoner poses to himself or others; and benchmarks such as a specification of the minimum space that must be allotted for each prisoner in a crowded cell.²⁰

The method is similar to the method of “reasoned elaboration” suggested by Henry Hart and Albert Sacks in *The Legal Process*:²¹ courts and agencies take a relatively indeterminate standard and elaborate it by developing a set of much more determinate rules (sometimes called ‘subsidiary guides’), which can then be used in people’s self-application of the standard.

17. The ECtHR famously said in the 1970s in *Ireland v. United Kingdom* Series A, No. 25, ECtHR, 18 January 1978: “[I]t appears ... that it was the intention that the Convention, with its distinction between ‘torture’ and ‘inhuman or degrading treatment,’ should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.”

18. Bernhard Schlink, “The Problem with ‘Torture Lite’” (2007) 29 *Cardozo L. Rev.* 85 at 86: “Whatever the wording, the distinction between torture and cruel, inhuman and degrading treatment is one of intensity.”

19. Scholars still routinely refer to the prohibition on “degrading” treatment as “the lowest form of an absolute right on the graded scale of ill-treatment under Article 3”—see Yutaka Arai-Takahashi, “Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment or Punishment under Article 3 ECHR” (2003) 21 *Netherlands Quart. Human Rts* 385 at 420.

20. *Kalashnikov v. Russia* (2003) 36 E.H.R.R. 34 at §97: “[T]he Court recalls that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment has set 7m² per prisoner as an approximate, desirable guideline for a detention cell, that is 56m² for eight inmates.”

21. See Henry M. Hart & Albert Sacks, *The Legal Process: Basic Problems in the Making and Application of Law*, William N. Eskridge & Philip P. Frickey, eds. (Minneapolis, NY: Foundation Press, 1994).

In the hands of the ECtHR, this approach has produced a good and usable jurisprudence. But there is one thing one misses in this case law and in the textbooks that summarize it. Neither judges nor scholars spend much time reflecting on the meaning of the predicates that are incorporated in the Article 3 standard—“inhuman” and “degrading”—and explaining how the Court is guided by their meanings in generating its principles, presumptions and benchmarks. The Court simply announces its finding that certain practices are inhuman or degrading while others are not.

Consider, for example, the cases—still distressingly common in Eastern Europe, Turkey and the former Soviet Union—in which someone is made to “disappear” by the authorities and frenzied inquiries by their parents or loved ones are dismissed with callous indifference. That the Court has been receptive to these claims is to its great credit. But the manner in which it articulates a relation between the text of Article 3 and the principles it lays down for dealing with such cases leaves a lot to be desired. In the earliest cases there is just a finding of anguish and distress caused by the authorities’ indifference, and an announcement that this rises to the level of severity required for a violation of Article 3. Nothing more.²² There is no sense that it might be worth discussing *why* the word “inhuman” or the word “degrading” apply to these recurrent dismissals of parental inquiries. Is it *degrading* inasmuch as the parent is treated as though her anxiety amounted to nothing, as though she had no right to make such an inquiry, or as though officials could treat an inquiry from someone like her as beneath contempt? Is the conduct *inhuman*, inasmuch as any decent human being would understand a mother’s need to find out what had happened to her son, and would have to be particularly hard-hearted to ignore her distress? Is it inhuman because it predictably leads to a level of suffering that no human can reasonably be expected to endure?

The scholars don’t attempt any analysis either. The principles and precedents are simply listed in the treatises and commentaries; the chapters on Article 3 in these textbooks consist of nothing but a succession of such citations—sentence plus footnote, sentence plus footnote.²³ The impression they convey is that a lawyer working in this area does not need to understand the elaborative relation between the principles and precedents and the actual meaning of the text of the Article.

I believe there is a danger that, for all its merits in adding some determinacy to Article 3, this approach detracts from the sort of thoughtfulness that the standard initially seemed to invite. The standard seems to invite us to reflect upon whether a given practice is degrading or inhuman. But instead we now simply consult a list of rules and principles. The result is a decline in the level of argument that

22. See, for example, *Kurt v. Turkey* (15/1997/799/1002), ECtHR, 5 BHRC 1, 25 May 1998 at §§133–4.

23. See e.g. Donna Gomien, David Harris & Leo Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter* (Strasbourg: Council of Europe, 1996) 108–18; Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford: Oxford University Press, 2007) 172–227; and Claire Ovey & Robin C.A. White, *Jacobs and White: European Convention on Human Rights* 58–66 (Oxford: Oxford University Press, 2002).

the original standard seemed to require; I mean a decline both in the level of abstraction, and perhaps also in the quality of moral argument.

Also, it is not clear how this approach helps when a court is confronted with an unprecedented practice alleged to be inhuman or degrading. How should a court approach the task of establishing a new precedent in this area? How should counsel in such a case frame their arguments? Should they proceed by a process of analogy with the list of practices already condemned as violations of the standard? Or should they go back to the original standard and reflect on the fundamentals of *its* application to this new set of circumstances? I believe the latter is by far the better approach to take. And it is probably inevitable anyway, given that anything other than a mechanical analogy with practices already prohibited will require us to reflect upon whether the new practice is *relevantly* similar—where “relevantly” necessarily takes us back to some understanding of the original standard itself.

In effect, what I am saying is that the “list of precedents” (or list of subsidiary rules) approach can function as a useful guide only for those whose orientation to the law is primarily to predict the behavior of the Court and figure out what is necessary to keep on the right side of their decisions. But it cannot be the basis on which the courts themselves approach the matter. This is more or less the point that used to be made against Legal Realists and others who tried to define “law” in terms of predictions about what the courts would do; such a definition is of little help to a court when it is actually in the throes of deciding what to do. That task requires active argument, not the paradox of self-prediction.²⁴

(v) *Interpret the predicates in light of their purpose.*

Another familiar lawyerly approach to these matters is to try interpreting problematic or indeterminate provisions in terms of the purpose or policy behind their enactment. Of course it remains to be seen whether the underlying principles or policies are any more determinate than the text itself. As H.L.A. Hart observed, indeterminacy of purpose is at least as much of a contributing factor to indeterminacy as the open texture of the language.²⁵ But the idea that this is the only place we can look has a very strong grip on the legal mind.

Unfortunately, we have very little detailed information about the purposes that lay behind the choice of language in the ICCPR or the ECHR or in the national Bills of Rights that use these terms. It is safe to say that Article 7 of the ICCPR and Article 3 of the ECHR both aimed at broadly dignitarian values: the purpose of these provisions was to uphold human dignity against various forms of egregious attack. But a broad commitment to dignity does not offer much in the way of guidance to help us make the application of these provisions more determinate. I do not mean that a dignitarian gloss is unhelpful. It can be tremendously useful in conveying the importance of these provisions and the nature of the values at stake when they are applied. (By the same token, Justice Brennan’s famous suggestion that the

24. For the predictive approach, see Holmes, “The Path of the Law” reprinted in (1998) 78 Boston Univ. L. Rev. 699 at 699-700 and, for this criticism of it, see H.L.A. Hart, *The Concept of Law*, ed. by Joseph Raz & Penelope Bulloch (Oxford: Clarendon Press, 1994) 10-11.

25. Hart, *ibid.* at 128.

U.S. Eighth Amendment embodies the principle “that even the vilest criminal remains a human being possessed of common human dignity”²⁶ is of great importance to our understanding of that provision even though it does not make the task of its determinate application any easier.)

Nor is there much in the drafting history of provisions embodying bans on “inhuman and degrading treatment” to help us develop anything like an originalist approach. Most such provisions simply copy earlier uses of the formula in other national, regional, and international instruments. And of their earliest uses, we know little more than that this form of words evidently had some appeal to the framers of (say) the ECHR. But we know next to nothing about why exactly these words were used; and there is nothing in the respective *travaux préparatoires* to indicate, for example, why the word “cruel” was conjoined with “inhuman” and “degrading” in the ICCPR but not in the ECHR.²⁷

3. Ordinary meaning

I think that in the end there is no alternative but to focus our attention in the ordinary meaning of the words themselves. What is the natural language meaning of these words? What do they convey in themselves? What would someone think they meant if they had just been introduced into a conversation?

My approach is going to involve what for many scholars will seem a distressing and perhaps annoying deference to the dictionary. It focuses on the complications and components of word-meaning that it is exactly the function of a good dictionary to record. I am well aware that words do many things in law besides conveying their dictionary definitions. Attention to word-meaning is not the be-all or end-all. The situation is redolent of what J.L. Austin said in his defense of ordinary language analysis: ‘[O]rdinary language is not the last word: in principle it can everywhere be supplemented and improved upon and superseded. Only remember, it is the *first* word.’²⁸ I worry sometimes that in our rush to the bottom line we miss some of the nuance and illumination that ordinary language can provide in helping us appreciate the standards that are being invoked here.

Some readers may think this is a mistake. They may follow Arthur Chaskalson, former President of the Constitutional Court of South Africa, who said this in an early decision of that Court on the death penalty—

In the ordinary meaning of the words, the death sentence is ... an inhuman punishment for it ‘... involves, by its very nature, a denial of the executed person’s humanity,’ and it is degrading because it strips the convicted person of all dignity and treats him or her as an object to be eliminated by the State.²⁹

26. *Furman v. Georgia*, 408 U.S. 238 (1972) at 271-3.

27. See Malcolm Evans & Rodney Morgan, *Preventing Torture: A Study of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (Oxford: Oxford University Press, 1998) 72.

28. J.L. Austin, “A Plea for Excuses” [1956-57] *Proceedings of the Aristotelian Society* 1 at 8.

29. Chaskalson P., in *S. v. Makwanyane and another* 1994 (3) SA 868 at para. 26.

But President Chaskalson then went on to say that

[t]he question is not, however, whether the death sentence is a cruel, inhuman or degrading punishment in the ordinary meaning of these words but whether it is a cruel, inhuman or degrading punishment *within the meaning of section 11(2) of our Constitution*.³⁰

However, as it stands, this is unhelpful. The case in question was one of the earliest cases facing the new South African Constitutional Court. The Court had to *decide* what meaning to attribute to these words for constitutional purposes. There was no well-established technical meaning there already to appeal to. If technical meanings are relevant at all, our inquiry in the first instance must be into how a technical meaning for ‘cruel,’ ‘inhuman,’ and ‘degrading’ is to be arrived at, and it seems to me obvious that, in this regard, we cannot avoid taking the ordinary meaning of these terms as our starting point at least.

In following this ordinary-language approach, I shall proceed on the basis of five assumptions.

(a) *Evaluative language*. The terms we are considering are patently evaluative. We should not lose sight of this, and we should not approach the interpretation of the relevant provisions thinking that this is some sort of mistake or failure of nerve on the part of the drafters. We should not use the opportunity that interpretation presents to correct or supplant the evaluative character of these terms and try to convert what is presented to us as a standard into a rule or set of rules.

Constitutional, humanitarian, or human rights provisions governing adverse treatment might have been framed using descriptive rather than evaluative predicates; but the ones we have were not. It seems to me that the elaboration of a standard is not the same as the elaboration of a rule; nor should we assume that the elaboration of standard involves replacing it with a rule.

(b) *Particular, not all-purpose, evaluations*. The provisions prohibiting inhuman and degrading treatment invite us to make particular, rather than all-purpose, evaluations. “Inhuman” and “degrading” don’t just mean “bad.”³¹ Their use invites us to look for a particular sort of badness and it is the purpose of the word-meanings of “inhuman” and “degrading” to indicate to us what that particular sort of badness is supposed to be.

(c) *Unpacking evaluations*. The elaboration of provisions like these should involve some movement from general evaluative ideas to more specific *but still evaluative* ideas. We should take a term like “inhuman” and try to open up the specific evaluations—often the quite complex evaluations—that it involves, rather than scuttling away from the realm of evaluation altogether.

Often it is assumed that there is nothing to be said about the meaning of value terms: they just express attitudes. This is a mistake. Just because a word or phrase

30. *Ibid.* [emphasis added].

31. I follow ECtHR judge Gerald Fitzmaurice in *Tyrer v. United Kingdom*, judgment of 25 April 1978 Series A No 26., sep. opinion, para. 14, in saying that “[t]he fact that a certain practice is felt to be distasteful, undesirable or morally wrong ... is not sufficient ground in itself for holding it to [be inhuman or degrading].”

is evaluative and hence contestable does not mean that we might not gain from reflecting upon its meaning. A single evaluative word often packs into its conventional linguistic meaning resources that can be useful for the elaboration of the provisions in which it appears. Not all evaluations are simple. Some are complex combinations of description and evaluation tangled together and not readily separable; we sometimes call these ‘thick’ moral predicates (as opposed to thin ones like ‘good’ and ‘right’ and ‘reasonable’). Some evaluations nest inside one another, directing our evaluative attention at each level to some particular aspect of a situation.

(d) *The path not chosen.* We should be attentive to the fact that a particular set of words has been chosen and that others have not been chosen. On their terms, the norms we are considering do not prohibit “unjust” treatment, for example, or “inefficient” punishment. Our evaluative language is very rich: and these provisions draw on some of these riches and not others.

(e) *Different terms mean different things.* I shall assume that the use of more than one term is supposed to indicate more than one meaning. The United Nations Human Rights Committee is on record as saying that it is not necessary “to establish sharp distinctions between the different kinds of punishment or treatment.”³² But I shall not follow them in that. We may find a certain measure of overlap; but that is something for us to uncover in our analysis, not to assume *ex ante*.

(f) *No distractions.* The provisions we are considering prohibit treatment or punishment which is cruel, inhuman, or degrading, *whatever else it is*. So, for example, if someone thinks that water-boarding is *necessary* in certain circumstances to prevent terrorist attacks, that does not affect the question of whether it is inhuman, nor does it affect the consequences of its being judged inhuman. If it is inhuman, then it is prohibited by the provisions we are considering whether it is necessary for defense against terrorism or not. (This point is sustained partly by the categorical language of the Articles and partly by the explicit statement in the ICCPR and the ECHR that no derogation is to be made from these provisions in time of emergency.)³³

I do not mean that attendant circumstances can never be relevant to a determination of whether treatment is inhuman or degrading. For example, ECHR doctrine holds that shackling a prisoner is degrading unless the shackling is necessary to stop the prisoner from harming others. Someone might ask: what is the difference between *this* invocation of an attendant possibility of harm to others to justify what would otherwise be degrading, and (say) the invocation of the danger of terrorist attack to justify what would otherwise be degrading treatment during interrogation? The question is a fair one, but I think it can be answered. In the shackling case, what is degrading is the use of chains without any valid justification. Once the justification is clear, the element of degradation evaporates. But in the interrogation case, we choose treatment that is inherently degrading because we think that it is

32. HRC, General Comment No. 20/44 (2 April 1992), cited by Evans & Morgan, *Preventing Torture*, *supra* note 27 at 76.

33. See ICCPR, Article 4(2) and ECHR, Article 15(2).

precisely the *degradation* that will get the detainee to talk. In other words, the purpose of avoiding future attacks is not a way of undermining the claim that the interrogation technique is degrading; it is a way of justifying the selection of a degrading technique. And as such it is prohibited by the provisions we are considering.

Some scholars have argued that a prohibition on (say) cruel punishment is going to work differently in a society which believes that God mandates amputation for theft and stoning for adultery.³⁴ But that need not be true. It is quite consistent to say of a punishment that it is cruel *and* that God ordains it: God may be cruel.³⁵ The question of whether something is cruel or inhuman is one aspect of its overall evaluation; the question of whether God ordains it is another. The position of the ICCPR is that cruel punishment is prohibited absolutely *whether God is thought to have ordained it or not*. Of course someone who thinks that God *has* ordained cruel punishment may be reluctant to sign up for the ICCPR prohibition. That just shows that human rights are demanding; indeed, it is a measure of how demanding they are.

4. The Words Themselves

So let us turn now to the meaning of the particular predicates that are used in these provisions: “inhuman,” and “degrading.”

(i) “inhuman”

The first thing to note about “inhuman” is that it does not mean the same as “inhumane.” The confusion is very common. According to the *Oxford English Dictionary*, “inhumane” in its modern use is “a word of milder meaning than *inhuman*.”³⁶ Accordingly a prohibition on “inhumane conduct” is much more demanding than a prohibition on “inhuman conduct.”³⁷ (So, if one wants to discredit an accusation

34. See, e.g., the discussion Abdullahi An-Na'im, “Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment” in Abdullahi An-Na'im, ed., *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992) 19 at 33.

35. Cf. Isaiah 13: 9: “Behold, the day of the Lord comes, cruel, with both wrath and fierce anger, to lay the land desolate; and He will destroy its sinners from it” and also Jeremiah 30: 14: “I have wounded you with the wound of an enemy, with the chastisement of a cruel one, for the multitude of your iniquities” (KJV).

36. *The Oxford English Dictionary* (2nd ed., 1989), On-line, entry for “inhuman” (etymological note) says there was a time when the two expressions meant the same thing and were used interchangeably, but it notes that by the nineteenth century, “inhumane” had become an obsolete variant of inhuman. It also says that “*inhumane* in current use has been formed afresh on *humane*, in order to provide an exact negative to the latter, and [is] thus a word of milder meaning than *inhuman*.” The dictionary defines “inhumane” as “destitute of compassion for misery or suffering in men or animals.”

37. There is an excellent discussion of “inhuman” and “inhumane” in the opinion of Elias CJ in *Taumo v. Attorney-General* [2008] 1 NZLR 429, at §79. Considering that section 23 (5) of the New Zealand Bill of Rights Act requires that “Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person” in addition to the broader section 9 prohibition on “cruel, degrading, or disproportionately severe treatment or punishment,” the Chief Justice said this:

A requirement to treat people with humanity and respect for the inherent dignity of the person imposes a requirement of humane treatment. That seems to me to be the natural

of “inhuman” treatment” as invoking a standard which is excessively demanding, one rewrites it as an accusation of “inhumane treatment.” I believe this has happened often in the American debate).

The term “inhuman” seems to refer to the absence of something to do with our common humanity or the presence of something at odds with it. There is something about being human that makes particularly problematic either (a) the act of inflicting of the treatment referred to as inhuman or (b) the suffering of the treatment referred to as inhuman. The dictionary seems to favor (a). According to the *Oxford English Dictionary*, “inhuman,” as applied to persons, means “[n]ot having the qualities proper or natural to a human being; esp. destitute of natural kindness or pity; brutal, unfeeling, cruel.” It is the person meting out the treatment who is inhuman, who does not have “the qualities proper or natural to a human being.”

Judge Fitzmaurice in his separate opinion in *Ireland v. United Kingdom* (1974) said that we should confine the concept of inhuman treatment to “kinds of treatment that ... no member of the human species ought to inflict on another, or could so inflict without doing grave violence to the human, as opposed to animal, element in his or her make-up.”³⁸ That is an agent-centered emphasis. But it is also relational in the sense of referring to treatment that no member of the human species ought to inflict *on another member of the human species*. There are certain things that humans cannot or should not be able to do to other humans (whatever they can do to dogs). This relationality might be explained by sympathy, along lines suggested by David Hume.³⁹ The idea is that the suffering of another human resonates with us—we know what it is like to be a human in pain—and it might be thought that there is an extent of human suffering whose resonance in the person inflicting it would normally excite such sympathetic anguish as would lead him to desist.

Now this certainly will not work as a psychological hypothesis. There are sadists who enjoy the infliction of suffering that those who talk of “inhumanity” say no human could tolerate inflicting, and these sadists are and remain members of the human species. Humans can be cruel and pitiless in the suffering they are prepared to inflict. We may want to label them inhuman, yet they remain human beings. The inhuman, as Levinas put it, comes to us through the human.⁴⁰

and contextual effect of the words “with humanity.” A principal meaning of “humanity” relates to “humane.” In the context of the New Zealand Bill of Rights Act, the words “with humanity” are I think properly to be contrasted with the concept of “inhuman treatment,” which underlies s 9 and its equivalent statements in other comparable instruments. On this view, s 23(5) is concerned to ensure that prisoners are treated “humanely” while s 9 is concerned with the prevention of treatment properly characterised as “inhuman.” The concepts are not the same, although they overlap because inhuman treatment will always be inhumane. Inhuman treatment is however different in quality. It amounts to denial of humanity. That is I think consistent with modern usage which contrasts “inhuman” with “inhumane.”

38. Separate opinion in *Ireland v. United Kingdom* (Application no. 5310/71), 18 January 1978.

39. David Hume, *A Treatise of Human Nature*, ed. by L.A. Selby-Bigge & P. H. Nidditch, 2nd ed. (Oxford: Clarendon Press, 1978), Bk. II, Part 2, ch. vii, p. 368 ff., observed that “[a]ll human creatures are related to us by resemblance. Their persons, therefore, their interests, their passions, their pains and pleasures must strike upon us in a lively manner, and produce an emotion similar to the original one.”

40. Levinas, *Sur L'esprit de Genève*, as quoted in C. Fred Alford, “Levinas and Political Theory” (2004) 32 *Pol. Theory* 146 at 157.

The term “inhuman” is evidently a normative, not a descriptive one; but it is not simply a term of condemnation. The substance of the claim is that persons who behave in this way are being in some sense *untrue* to their undoubted humanity. Maybe we can resolve this with talk of pathology: we have a sense of normal moral development that places limits on what one can bear in the way of this fellow feeling, and then we define a pathology by contrast with that pattern of normal development. So someone’s ability to inflict this suffering leads us to classify him as sick or damaged. But we have to conjoin this with an acknowledgement that many people of whom we say such things remain cheerfully steadfast in their brutality.

I said that “inhuman” can be understood both in an agent-oriented way and in a victim-oriented way. Milton used the phrase “inhuman suffering” in the last book of *Paradise Lost*,⁴¹ and we might give that a quite distinct meaning, along the following lines. Suffering might be described as inhuman if it were thought that no human could or should have to put up with it. This is a different invocation of normal human qualities than we saw in the agent-centred approach. It looks to the weight we can bear, the pain we can stand, the loneliness we can endure, and so on.

It is not easy to parse this meaning of “inhuman.” What does it mean for a person not to be able, as a human, to put up with something? Does this predict what will happen to him—death, physical collapse, unconsciousness, nervous collapse, madness—if he tries? We may say, for example, that the human capacity for bearing pain is limited: but what are we saying will happen if the threshold is exceeded? We saw in the case of the agent-centered meaning of inhuman that the implicit claim may be normative rather than descriptive. The same may be true of the victim-oriented sense. Perhaps we should talk not about suffering that no human *can endure*, but about suffering that no human *should reasonably be expected to endure*. But if we adopt such a formulation, we should treat it carefully: it doesn’t mean the same as “suffering that it is not reasonable to impose on a human being.” We are not jumping directly to a judgment about what treatment is permissible and what is not. Inhuman treatment is supposed to be a ground of impermissibility, not equivalent to impermissibility. I think that “inhuman treatment” in the victim-oriented sense refers to treatment which cannot be endured in a way that enables the person suffering it to continue the basic elements of human functioning such as self-control, rational thought, care of self, ability to speak, and so on. Any such list will reflect what we value about elementary human functioning, and so of course it will be contestable. But we have now focused the evaluative contestability in a particular way, rather than leaving it at the more general level of contestation about what it is permissible to do to people.

Is inhuman treatment just about the infliction of suffering? Perhaps not. Treatment may be described as inhuman if it fails in sensitivity to the most basic needs and rhythms of a human life: the need to sleep, to defecate or urinate, the need for daylight and exercise, and perhaps even the need for human company.

41. John Milton, *Paradise Lost*, x, 507-11: “Can thus / Th’ Image of God in man created once / So goodly and erect, though faultie since, / To such unsightly sufferings be debas’t / Under inhuman pains?”

In this regard, we should remember the context. These standards prohibiting inhuman and degrading treatment are supposed to operate in situations like detention, incarceration, and captivity: situations of more or less comprehensive vulnerability of a person; and total control by others of a person's living situation. Such provisions require those in total control of another's living situation to think about whether the conditions that are being imposed are minimally fit for a human, with characteristic human needs, vulnerabilities, life-rhythms, and so on.

(ii) “*degrading*”

“Degrading” might be thought to have the same duality as we noticed with “inhuman.” In the context of torture, we sometimes talk of treatment that degrades the torturer as well as treatment that degrades the victim of torture. But in the human rights context “degrading” is mostly a victim-impact term.

The *Oxford English Dictionary* defines “degrade” rather formalistically as meaning “[t]o reduce from a higher to a lower rank, to depose from ... a position of honour or estimation.” Someone is degraded if he is treated in a way that corresponds to a lower rank than he actually has: treating a queen like an ordinary lady is degrading or treating a professor like a graduate student. This use of degrading can certainly be relevant to the treatment of detainees in time of war. Fans of the David Lean movie, *The Bridge on the River Kwai*⁴² will remember the long sequence in which Colonel Nicholson, played by Alec Guinness, insists to the Japanese commander of a prisoner-of-war camp that he and his officers are exempt by the laws of war from manual labor, even though the private soldiers under his command may legitimately be forced to work. Nicholson clearly believes that forcing the officers to work would be degrading, and he suffers a great deal as a result of the Japanese reaction to his refusal to accept this degrading treatment. However, it is pretty clear that the reference to degrading treatment in the modern Geneva Conventions is not about insensitivity to military rank. It depends on an idea of dignity that is more egalitarian than that.

The word “dignity” traditionally had a hierarchical reference: one talked, for example, about the dignity of a king or the dignity of a general. I have argued elsewhere that the modern notion of *human* dignity does not cut loose from the idea of rank; instead it involves an upwards equalization of rank, so that we now try to accord to every human being something of the dignity, rank, and expectation of respect that was formerly accorded to nobility.⁴³ It involves what James Whitman has called “an extension of formerly high-status treatment to all sectors of the population.”⁴⁴

This might be understood as a constructive idea: we have decided to treat everyone like royalty. But there are also more ontological theories about the *inherent*

42. *The Bridge on the River Kwai* (Columbia Pictures, 1957), directed by David Lean.

43. Jeremy Waldron, “Dignity and Rank” (2007) 48 *Archives Européennes de Sociologie* 201.

44. James Whitman, “Human Dignity” in Europe and the United States: The Social Foundations’ in George Nolte, ed., *European and US Constitutionalism* (Cambridge: Cambridge University Press, 2005) 108 at 110-11: “The core idea of ‘human dignity’ in Continental Europe is that old forms of low-status treatment are no longer acceptable. ... ‘Human dignity’ ... has been formed by a pattern of leveling up, by an extension of formerly high-status treatment to all sectors of the population.”

dignity and high rank of every human person. One idea is that the human species has a rank that is much higher than any other natural species—higher than the animals, a little lower than the angels—by virtue of our reason and our moral powers. A connected idea is that each human has a high rank by virtue of being created in the image of God. Associated with both of these is an insistence that this ontological dignity is the birthright of every human, and that, for example, racial discrimination is to be condemned as degrading treatment precisely because it involves the denial of this notion of the dignity of human beings as such.

Consider now four kinds of outrage to dignity, four species of degradation: (α) bestialization; (β) instrumentalization; (γ) infantilization; (δ) demonization.⁴⁵

(α) *Bestialization*. The “higher than the animals” sense of human dignity gives us a natural sense of “degrading treatment”: it is treatment that is more fit for an animal than for a human, treatment of a person as though he were an animal. It can be treatment that is insufficiently sensitive to the differences between humans and animals, in virtue of which humans are supposed to have special status. So for example a human is degraded by being bred like an animal, used as a beast of burden, beaten like an animal, herded like an animal, treated as though he did not have language, reason or understanding, or any power of self-control. It might also include cases of post-mortem ill-treatment: e.g., failing to properly bury a human, or dragging a corpse.⁴⁶

(β) *Instrumentalization*. We exploit animals as though they were mere means, objects to be manipulated for our purposes. This can generate a broader sense of degrading treatment associated with the Kantian meaning of indignity—being used as a mere means, being used in a way that is not sufficiently respectful of humanity as an end in itself.⁴⁷ This sense of degradation may be particularly important with regard to *sexual* abuse.

(γ) *Infantilization*. A third type of “degradation” might have to do with the special dignity associated with human adulthood: an adult has achieved full human status and is capably of standing upright on his or her own account, in a way that (say) an infant is not. So it is degrading to treat an adult human as though he or she were an infant or in ways appropriate to treating an infant. This is particularly important with elementary issues about care of self, including taking care of urination and defecation. A number of the ECHR cases deal with treatment that involves a person “being forced to relieve bodily functions in [one’s] clothing.”⁴⁸ And we know to our shame that this has been an issue in some recent forms of American mistreatment as well.⁴⁹ Again, we should remember the context: these predicates are applied to the plight of vulnerable people in total institutions, with very limited powers to control their own self-presentation.

45. The account that I give in these paragraphs is similar to that found in Avishai Margalit, *The Decent Society* (Cambridge, MA: Harvard University Press, 1996), though his account is about humiliation, not degradation.

46. See *Tachiona v. Mugabe* 234 F.Supp.2d 401 S.D.N.Y., 2002 at 438.

47. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Mary Gregor, ed. (Cambridge: Cambridge University Press, 1998) 37-38.

48. See, e.g., *Hurtado v. Switzerland*, Application no. 1754/90, Judgment of 28 January 1994.

49. See, e.g., Jane Mayer, *The Dark Side: The Inside Story of how the War on Terror Turned into a War on American Ideals* (New York: Doubleday, 2008) at 207.

(*δ*) *Demonization*. The prohibition on inhuman and degrading treatment has particular importance in the way we treat our enemies or terrorists or criminals, those we have most reason to fear and despise. And obviously one of the functions of the “degrading treatment” standard is to limit the extent to which we can treat someone who is bad or hostile as though he were simply a vile embodiment of evil. There are specific prohibitions in the Geneva Conventions against putting prisoners on display. And we might also mention in this connection the ancient biblical injunction in Deuteronomy 25: 2-3, on the number of stripes that may be used if someone is sentenced to be beaten: ‘Forty stripes may be given him, but not more, lest . . . your brother be degraded in your sight.’⁵⁰

I have said that ‘degrading’ is an impact word. How important is it that the degradation be experienced subjectively as humiliating? Some ECHR commentators suggest that the connection is definitional,⁵¹ but this is not so, at least not in my dictionary. But it is very common in the case law to emphasize the subjective element almost to the exclusion of everything else. Treatment is degrading, we are told, if it arouses in its victim ‘feelings of fear, anguish and inferiority capable of humiliating and debasing them.’⁵² (And it is worth bearing in mind that the Common Article 3 of the Geneva Conventions does also use the word ‘humiliating.’)

It is an interesting question whether treatment can be ‘degrading’ if the person subject to it is unaware of it. In a recent English decision, the English High Court grappled with this, drawing upon considerable ECHR authority, and concluded:

Treatment is capable of being ‘degrading’ within the meaning of article 3, whether or not there is awareness on the part of the victim. However unconscious or unaware of ill-treatment a particular patient may be, treatment which has the effect on those who witness it of degrading the individual may come within article 3. It is enough if judged by the standard of right-thinking bystanders it would be viewed as humiliating or debasing the victim, showing a lack of respect for, or diminishing, his or her human dignity.⁵³

I think this is right. What I have said here about bestial, instrumental, infantile, and demonic degradation focuses in the first instance on what objectively happens to the person in relation to some objective standard of dignity. If anyone’s conscious

50. Deuteronomy 25: 2-3 (ESV). See also Martin Luther’s observation in “Lectures on Deuteronomy,” in *Luther’s Works*, vol. 9, ed. by Jaroslav Pelikan and trans. by Richard R. Caemmerer (St. Louis, MO: Concordia, 1994) 248, that the purpose of this limit is “so that your brother and his humanity should not be made contemptible . . . in your presence.”

51. Harris, O’Boyle & Warbrick, *Law of the European Convention on Human Rights*, *supra* note 7 at 80.

52. *Tysiaogonc v. Poland* (2007) 45 E.H.R.R. 42, ECHR Paragraph 67, citing *Ireland v. United Kingdom* (A/25) (1979-80) 2 E.H.R.R. 25 at [167]. Also the International Criminal Tribunal for Rwanda defined degrading and humiliating treatment as ‘[s]ubjecting victims to treatment designed to subvert their self-regard.’ *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Judgment and Sentence, §285 (Jan. 27, 2000). However, in some contexts this is left open; the ITFY defined this offense as requiring: ‘an act or an omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity.’ *Prosecutor v. Kumarac, Kovac, & Vokovic*, Case No. IT-96-23 and IT-96-23/1 (Appeals Chamber), Judgment, 161 (June 12, 2002).

53. *Regina (Burke) v. General Medical Council (Official Solicitor intervening)* [2005] Q.B. 424, at §178.

reaction is emphasized it is the reasonable on-looker, not the victim. Of course human degradation is usually accompanied by a decline in self-regard. Dignity has a conscious component, if only because it is commonly associated with conscious aspects of our humanity such as reason, understanding, autonomy, free will, and so on. But though degradation is typically experienced as subjective humiliation, it need not always be so; and in some cases we may judge that treatment is objectively degrading even if the victim consents to it or welcomes it.⁵⁴

5. The Moral Reading

At the outset, I emphasized that the provisions we have been reflecting upon—provisions prohibiting inhuman and degrading treatment—are *standards*, not rules; they use evaluative rather than descriptive predicates. As I said then, one approach to standards is to view them as inchoate rules, formulated in half-baked fashion by the lawmaker, and awaiting determinate elaboration and reconstruction by the courts. I said that I prefer an approach which takes more seriously the normative significance of the evaluative terminology that is used. They require us to make evaluations of a certain sort and it is our task to figure specifically what kinds of evaluations are called for. As we have just seen, this is a daunting but—I hope you will agree—an enriching task.

But the evaluations that are involved need not be thought of in the first instance as the idiosyncratic values of particular individuals, as though each person appealing to or applying these provisions had to make the evaluations on his own, using his own faculties of critical moral judgment. Perhaps a better way to understand these provisions is that they purport to rely upon some shared sense of positive morality, and that they aim to elicit some “common conscience” we already share,⁵⁵ that already exists or resonates among us. I believe that these provisions, these standards, make an appeal to social facts and not just to individual moral judgment; they evoke positive morality not critical morality or the philosophers “moral reality.”⁵⁶ They appeal to a shared sense among us of how one person responds as a human to another human, a shared sense of what humans should be expected to endure, a shared sense of what it is to respond appropriately to the elementary exigencies of human life. The prohibition on inhuman and degrading treatment reminds us that we share such a sense (if we do); it brings it to the forefront of our attention; and it requires us to apply it in these circumstances. We sometimes think of these standards as prohibiting conduct that “shocks the conscience.” Again, I prefer to think of that not as an appeal to the moral sensibility of the solitary individual, but to some sort of shared conscience, (“con-science” in the etymological sense of “knowing together”). Of course this is a massive act of faith in social morality, but it seems to me more satisfactory to view these provisions

54. See, for example, the upholding of a dignity-based prohibition on the activity of dwarf-throwing in Conseil d’Etat, Ass., 27 October 1995, Cne de Morsang-sur-Orge, Recueil Lebon 372.

55. See Sandy Levinson, “In Quest Of A ‘Common Conscience’: Reflections on the Current Debate about Torture” (2005) 1 J. National Security Law & Pol’y 231 at 243.

56. For this distinction, see Hart, *The Concept of Law*, *supra* note 24 at 180-84.

in this social and positive light than to see them simply invitations to make our own individual moral judgements.

Some may say that this talk of shared standards and common conscience works perhaps for a single society, but that it is much more problematic in the case of human rights standards that supposedly govern all or almost all the nations of the earth. Given the massive moral differences that exist between peoples and cultures, how can the provisions we have been studying possibly be read as credible invocations of a common positive morality?

We have to be careful how we understand the impact of cultural relativity on the operation of these provisions. It is commonly observed that something that is experienced as “degrading” in one culture may not be experienced as degrading in another. For a Muslim man it might seem degrading to be shaved or forced into close proximity with a scantily clad woman, whereas this would not necessarily be degrading to an American. At another level of abstraction, however, the meaning of degradation remains constant here: it connotes (or includes) something like being forced to violate one’s fundamental norms of chastity, modesty or piety. The meaning is the same, but different norms are referenced in the two cases. I think the court in *Forti v. Suarez-Mason* made a silly mistake when it complained about the relativity of the “degrading” standard.⁵⁷ In every culture, it is degrading to be forced to violate one’s own deeply held principles of modesty. The principles may vary from context to context but the standard which prohibits degradation remains the same. (Analogously religious persecution in one country may prevent someone from following Jewish ritual on a Saturday, and religious persecution in another country may prevent someone from practicing Catholic ritual on a Sunday. But it would be silly to say that the word “persecution” changes its meaning with these changes in application, or that there couldn’t be a universal right not to be persecuted for one’s religion, or that a norm that changes its application from Saturday to Sunday can’t be a universal right.)

This leads to a larger point. Whatever the relativists think, the fact is that 164 nations have signed (and most of those have ratified) the ICCPR, which includes the provision condemning inhuman and degrading treatment and punishment. No doubt some governments have done this for the most opportunistic and hypocritical of reasons. Still we are entitled to ask of the various nations that signed it in good faith: what—given the well-known facts about variations in peoples’ views about cruelty, inhumanity and degradation—should we suppose they were committing themselves to?

One possibility is that each nation thought itself entitled to read Article 7 in accordance with its own moral traditions. Another possibility is that the representatives of the nations of the earth took themselves to be aspiring to standards that they thought did or could transcend the particularity of cultures and moral traditions. Terms like “humanity” and “inhumanity” for example seem to express such an aspiration: they seem to suggest that, for all the differences that there are among peoples,

57. *Forti v. Suarez-Mason* 694 F.Supp. 707, at 712 (N.D. Cal., 1988). See text accompanying note 10 above.

still there are standards that define the way in which any human being should respond to the predicament of others or define extremities that no human being should be expected to endure. I believe it is a common feature of all moral cultures in the modern world that they have such an idea (which of course does not mean that the content of the idea is the same in every society). I am not resting anything here on the existence of moral universals; but I am suggesting that every moral culture in the modern world contains materials which are oriented in a universalistic direction. So it may be that there are enough universalistically-oriented materials in the morality of every society to make intelligible a public and international commitment by the government of that society to play its role in nurturing and upholding common standards and aspirations in the world.

As the United States has found to its cost and shame in the years 2002-2008, a commitment to standards like Article 7 of the ICCPR or Common Article 3 of the Geneva Convention commits us to privileging some elements over other elements in our moral and cultural repertoire. Americans like to swagger around and blow things up; they like movies and TV shows in which the hero breaks people's arms in order to elicit vital information.⁵⁸ But American culture is also riddled with powerful universalistic humanitarian and dignitarian ideas about the proper and respectful treatment due to every human being. Being committed to these conventions requires Americans to privilege humanity over swaggering. It is not a matter of their being forced to submit to funny foreign standards; it is about privileging some of their own standards (that they happen to share with others). I think something similar is true of every society, and it is on the basis of this truth that we can make sense of our formal commitment to extirpate inhuman and degrading treatment from the face of the earth.

58. See Teresa Wiltz, "Torture's Tortured Cultural Roots" *Washington Post* (3 May 2005) C1 ("If you're addicted to Fox's '24,' you probably cheered on Jack Bauer when, in a recent episode, he snapped the fingers of a suspect who was, shall we say, reluctant to talk. ... Torture's a no-brainer here. Jack's got to save us all from imminent thermonuclear annihilation.") For an example of the use of Fox's *24* to elicit support for the torture of terrorist suspects by United States interrogators, see Cal Thomas, "Restrictions Won't Win War on Terror for US" *South Florida Sun-Sentinel* (4 May 2005) 25A.