



## ESSAY

# WATERBOARDING & THE PLATINUM RULE

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In the movie, *Guarding Tess*, Nicholas Cage plays the role of a Secret Service agent assigned to protect a former president's widow, played by Shirley MacLaine. When, late in the movie, she's kidnapped, he manages to connect a cigarette-lighter burn on her chauffeur's neck to the crime, and he demands that the injured driver, recovering in a hospital bed, tell what he knows.

When the fellow refuses, Cage pulls out his pistol and threatens to shoot off his toes one at a time. When he gets no response, Cage fires a shot (perhaps hitting a toe), and the man starts talking. On the basis of this information, they find MacLaine buried in a box with an air pipe, over four feet underground. They dig her up in the nick of time, surmising that, whether or not the ransom had been delivered, the kidnappers would have left her there. It would have been a horrible death, being buried alive, forced to suffocate or starve in a very tight space, soiled by her own waste.

Instead of being horrified at Cage's play, viewers typically cheer his willingness to do what was needed to rescue MacLaine. Is this reaction perverse or decent common sense? And what if Cage had merely been bluffing? Would that have been wrong? What if he had waterboarded the accomplice? Would that have crossed the line?

I think that the Golden Rule gives us some guidance here.

### GOLDEN RULE

A number of years ago, I was thinking about whether one

might love an enemy soldier on the battlefield and still shoot him. I understood that one could justify killing an aggressor out of love for those he puts in peril, whether one's own family, the Jews of Poland, or even one's buddies in the unit. But what about love for the man in your rifle sights?

It occurred to me that I was doing him no moral favor by letting him continue to stain his hands with innocent blood by serving Hitler or ISIL. And the Golden Rule came to mind in this connection: If I were serving a tyrannical murderer





The bronze Statue of Freedom (1863) by Thomas Crawford crowns the dome of the United States Capitol. In Liberty's right hand is a sheathed sword – suggesting the necessity of armed Liberty – and in her left a laurel leaf – symbolizing victory – and the Shield of the United States – announcing defense, martial strength, and patriotic zeal. While a classical figure, Liberty's traditional toga has been coupled with a heavy, Native-American styled fringed blanket. Credit: National Park Service

unwittingly, would I want someone to stop me? If so, then I should stop the SS trooper or jihadist intent on beheading Kurds. If I could stop him short of killing him—by intimidation, subterfuge, leaflet propaganda, or torment, as with harassing and interdicting fire or tear gas—so much the better. But killing remained an option.

So what about the Golden Rule? Doesn't it say, "Surely you would not want to be tortured, so you shouldn't do it"? But the Golden Rule is not quite so simple as this definition. It relies upon a strong level of decency in the one applying it. Otherwise, a sadomasochist could use the

Golden Rule to justify whipping people, because that's what he enjoyed. This is the old problem of "base desires", which characterize the stage mother with suffocating attention to her little Jean Benet Ramsey; Immanuel Kant's hermit who wishes to be left alone, and so has no interest in being benevolent'; L.J. Russell's "quarrelsome person who loves to be provoked" and so goes about provoking others; R.M. Hare's Nazi, who would assent to his own annihilation should Jewish blood be found in his lineage.

And the problem need not arise with loathsome people. One can misuse the Golden Rule amiably, as with the chocolate ice cream lover who insists on buying that very flavor for his friend, even though the friend wants vanilla; or Ishmael in *Moby Dick*, who joins in Queequeg's pagan worship because he would enjoy Queequeg's joining in his worship.

Also, a special problem arises if the Golden Ruler is an egoist. If he cannot imagine acquiescence to just punishment, if he thinks of his own death or discomfort as the greatest evil, then he is in no position to apply the Golden Rule here.

As Paul Weiss puts it, the Golden Rule is "pyrite and tinsel" in the hands of the wrong man. Picking up on his alternative-metal template, we might speak then of:

**The Golden Rule:** "Therefore all things whatsoever ye would that men should do to you, do ye even so to them."

**The Tin (or Fool's Gold) Rule:** "As men want to be treated, you must so treat them."

**The Platinum Rule:** "As you would wish to be treated if you were admirable, so treat others."

This last iteration (which is essentially the Golden Rule properly understood) allows for waterboarding. It leads one to say, for instance, "If I became so deluded as to be engineering the death of thousands of innocents, would I want someone to obtain life-saving information from me, even by means of terrifying me, yet without lasting harm?"

## HYPERSENSITIVITY

Granted, ours is a very litigious day, when the slightest offense becomes actionable tort. In this setting, we can lose our bearings, exaggerating the horror of things once deemed ordinary. I remember an APA paper read by a Mennonite friend in the 1970s. He was impatient with breezy overuse of the word "violence" for such things as employment discrimination and insulting speech. He feared that we would become so acclimated to the word that we would lose our ability to condemn real violence when it came along. We'd lose our ability to cry wolf when it really mattered.

In this connection, calling waterboarding "barbaric" or "unspeakable" is overwrought. After all, Christopher Hitchens submitted to it for the sake of journalism; one British protester took it on a London sidewalk during the Iraq War; and thousands of US troops have received it as a hardening exercise in Survival Evasion Resistance Escape (SERE) training.<sup>2</sup>

## "TORTURE"?

But it's torture, isn't it? Well, what exactly makes waterboarding torture? Is it the agony? The terror? If so, then I've suffered a lot of licit torture in my life—whether, in college, doing laps with the swimming team; whether, in infantry school, walking all-night patrols in the driving rain or getting the dry heaves during morning



While Crawford's original designs featured the expected Phrygian Cap, for the final version Crawford created a crested version of a Roman helmet, the crest of which is composed of the head of a bald eagle. In American symbolism, Liberty is often accompanied by a Bald Eagle—emphasizing the tight unity between freedom and the United States. Credit: National Park Service

calisthenics; whether watching Michael Myers at work in the *Halloween* movies—a lot of agony or fear in all of these.

But maybe it's the involuntary nature of the act that makes it torture. After all, I joined the swimming team and chose to attend those movies. It's not so clear my military experience was voluntary since the draft was still in effect when I enlisted. But that aside, what about spanking a child or threatening, "Just wait until your father gets home"? Should those be illegal? Some say yes, but it's not so clear that this sort of suffering and fear is illicit.

I suppose one can insist that coaches, drill sergeants, parents, and filmmakers are actually torturers, that expressions like "corporal punishment", "physical conditioning drill", and "horror flick", are just weasel words for grave wrongs. But this is a hard stance to hold.

Unfortunately, the word

"torture" is loaded, making it ill-suited for clear thinking on matters of policy. It's like the word "vilify", which always sounds transgressive. It even sounds wicked to vilify Hitler, though he deserved it if anyone did. Similarly, when someone asks, "Is it ever okay to torture?" the answer seems to be an automatic "No". But the question has been begged.

That's one reason why the anti-torture side is so opposed to efforts to describe waterboarding as "rendition" or, as Jean Bethke Elshtain suggests, "coercive interrogation".<sup>3</sup> She's not suggesting a euphemism, such as "pass away" for "die"; rather, she offers a more clinical expression in place of an inflammatory word, though, of course, "coercive" has its own emotive punch.

Some ask rhetorically how can we even think of "stooping" so low as to waterboard, but, again, that begs the question of whether it is stooping at all. It's not

helpful to add that we've gone to the level of our enemy, since we regularly "go to their level" when we ambush convoys or encode our messages. The question is whether those levels are illicit per se. And to those who open with the claim that waterboarding "erodes the character of the nation",<sup>4</sup> we should press for more than bald assertion.

Furthermore, just as "torture" can serve as a conversation stopper, so also can too-ready employment of the words "justice", "humaneness", and "dignity", which lends themselves to BOMFOG. (This acronym originated in the 1960s, when New York Governor Nelson Rockefeller was running for president. Reporters began to tire of his constant use of the expression, "The Brotherhood of Man and the Fatherhood of God", to cast a warm glow on his speeches, without analytical content.) We need to demand the cash of demonstration when rhetorical checks start to fly.







## THE FIVE S'S

When I was in infantry school, during our Geneva Accord/Law of Land Warfare training, we were given the five S's for handling prisoners—secure, safeguard, segregate, silence, and speed (them to the rear as soon as possible). But here we ask, “Does ‘safeguarding’ mean protecting them from all coercive interrogation?” Well, certainly it rules out actions producing lasting physical harm (e.g., the sort which keeps John McCain from typing or raising his arms above his shoulders), but it’s not so clear that it proscribes sleep deprivation and other such transient miseries.

At base, the “safeguard” standard turns on the just war principle that non-combatants not be harmed. As POWs, they are no longer fighters, so we avoid “targeting” them for injury or death. And I’ve heard no better testimony to American scruples than the words of our Khartoum cab driver who marveled at both the technological prowess and decency in our hitting the Al-Shifa pharmaceutical plant post-midnight on an August 1998 weekend, with no damage to nearby homes and factories. As we walked through the tightly contained debris (where nerve gas was once believed to be produced), he told us, admiringly, that only a couple of guards were on duty when the cruise missiles hit.

No doubt, civilians and guards at other factories just up the road from Al-Shifa were horrified. Indeed, non-combatants suffer a range of terrors and sorrows in most wars. And I can attest to the anxiety that parents feel when their sons are in combat, as was mine in the Iraq War in 2003. But these shocks don’t constitute injustice per se.

## USEFULNESS

Many argue that torture is useless or counterproductive. Why

risk moral transgression when it simply doesn’t work? But then must one ask for sure evidence that it accomplishes nothing? This certainly seems counter-intuitive. If the editor of this journal had bent back my thumb to get me to stop writing this essay, I’d have been inclined to cooperate. But maybe that’s just me.

Perhaps so, but there is other testimony. In his memoir, *Decision Points*, President Bush spoke of the rendition of a high-level bin Laden associate, recruiter, and operative, Abu Zubaydah:<sup>5</sup>

The new techniques proved highly effective. Zubayah revealed large amounts of information on al Qaeda’s structure and operations. He also provided leads that helped reveal the location of Ramzi bin al Shibh, the logistical planner of the 9/11 attacks, whom the Pakistani police captured on the first anniversary of 9/11.

Zubaydah later explained to interrogators why he started answering questions again. His understanding of Islam was that he had to resist interrogation only up to a certain point. Waterboarding was the technique that allowed him to reach that threshold, fulfill his religious duty, and then cooperate. “You must do this for all the brothers,” he said.

Later, they captured Khalid Sheikh Mohammed, “the chief operating officer of al Qaeda, the murderer of Danny Pearl, and the mastermind of 9/11”—which left a pregnant widow in Pearl’s case and 2,973 dead in the case of 9/11. When waterboarding broke Khalid Sheikh Mohammed, “He disclosed [for starters] plans to attack American targets with anthrax and directed us to three people involved in the al Qaeda

biological weapons program.”

Critics retort that, even if Bush is telling the truth, these examples are the exception, that much useless and misleading testimony comes from torture—as if we were doing epistemology, comparing tea leaf reading to John Stuart Mill’s principles of induction. The question, though, is not whether, on balance, rendition is equal to direct observation, the scrutiny of certifiable documents, and such. The comparison is with having nothing at all to go on, and with the clock ticking. If, for instance, we have a captured terrorist who is now laughing maniacally as he says a dirty bomb will go off in Manhattan that day, and we have nowhere to start looking, who knows what we might learn from water boarding—information either from the terrorist or from an associate looking on.

Of course, we’ll search the obvious places—Times Square, the Empire State Building, the UN, and such—but it might be that this fellow will spill the beans and we can get lucky and find the device, perhaps, in a trash can beside the Cathedral of St. John the Divine or in a parked van in the midst of the Chelsea galleries. There’s nothing to lose in “asking” in an enhanced sort of way. We’re not looking for a substitute to the scientific method; we’re trying just about anything we can to get a clue.

## SLIPPERY SLOPE

Some opponents of rendition construct a slippery slope argument: If we permit waterboarding, the next thing you know, we’ll be pulling fingernails out with pliers. But slippery slopes can run both ways. What if we refuse to terrify someone who has mass-murdered civilians and knows who, how, and when others are about to do the same? The next thing we know, someone will insist that we must not wake him up at odd hours to the sound of William Hung’s



version of “She Bangs”.

Jean Bethke Elshstain observes that some civil rights groups insist on the exclusion of “unpleasant or disadvantageous treatment of any kind”—an “ideal” with all sorts of problems, including its damage to freedom of speech. The sad fact is that there is no limit to the delicacy we might find foisted upon us by the fastidiously delicate. We see it, for example, in the claim that lethal injection is a “cruel and unusual punishment”. As Bishop Butler argued ably in his essay, “Upon Resentment”, we can slide into unwarranted squeamishness as well as unwarranted callousness.

## SO WHAT ARE PROPER GUIDELINES?

I hope it’s clear that I don’t think just anything goes, as it should be clear I don’t think nothing goes. As for the particulars, theologian Wayne Grudem provides a good starting point when he draws lines against a wide range of coercive acts including rape, sadistic humiliation, mutilation, and the violation of religious scruples, such as forcing a Muslim to eat pork. He also insists that medical care be provided to the prisoner.<sup>6</sup>

This all fits the Golden Rule model, which could not affirm anything which would undermine essential just war behavior, including the torture of the captive’s relatives, which might be “effective” but certainly abominable. And I would agree with Grudem that terrorists who operate outside the strictures of *jus ad bellum* and *jus in bello* are particularly compelling candidates for coercive interrogation, should there be good promise of life-saving information.

Of course, the captive’s dignity counts, but it is not an absolute, any more than it is for the soldier in boot camp who has to sing in the teargas-orientation

tent while gagging, to clean the latrine with a tooth brush, or to do seemingly endless pushups because he forgot to jog in the company street. I’m not suggesting these as means for coercive interrogation; only suggesting that should interrogators employ them, it would not be the end of the moral world.

## THE DUKAKIS GUIDELINES

In the October 13, 1988 presidential debate, CNN’s Bernard Shaw asked Michael Dukakis, “Governor, if Kitty Dukakis [his wife] were raped and murdered, would you favor an irrevocable death penalty for the killer?”

With scarcely a pause, Dukakis responded smoothly and dispassionately:

No, I don’t Bernard, and I think you know I’ve opposed the death penalty all of my life. I don’t see any evidence it’s a deterrent, and I think there are better and more effective ways to deal with violent crime. We’ve done so in my own state. It’s one of the reasons why we have the biggest drop in crime of any industrial state in America, why we have the lowest murder rate of any industrial state in America.

America did not take well to this answer, and his poll numbers dropped dramatically that night. There was something wrong with his detachment, with his formulaic, “lofty” approach.

In this same vein, let us imagine that an absolutist against coercive interrogation suffers the kidnapping of his pre-teen daughter. He’s the ambassador to a foreign nation, and he thought it would be safe to bring his family with him. But he was wrong. Those who are holding her for ransom have already sent the family the severed little finger of her left hand and are

promising to send another one every day until a bundle of money appears or other terrorists are released from prison.

By good fortune and some dogged police work, they nab an accomplice who’s run out for groceries. They have him in custody, but he’s not talking. Someone suggests waterboarding him in hopes of discovering the hideaway, but the father intervenes, “Absolutely not! This can *never* be appropriate.”

Of course, this would hearten and even thrill some hearers, but for others, it would seem strange. I am one of them. Indeed, I argue that that waterboarding this fellow is doing him a favor. For who, in his right mind, would want a mutilated little girl’s blood on his hands? **P**

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### (Endnotes)

1 Jeffrey Wattles, *The Golden Rule* (Oxford: Oxford, 1996), 84, 176, 179.

2 Wayne Grudem, *Politics According to the Bible: A Comprehensive Resource for Understanding Modern Political Issues in Light of Scripture* (Grand Rapids: Zondervan, 2010), 430.

3 Jean Bethke Elshstain, “Reflection on the Problem of ‘Dirty Hands,’” *Torture: A Collection*, edited by Sanford Levinson (Oxford: Oxford, 2004), 87.

4 David Gushee, “Six Reasons Why Torture Is Always Wrong,” *Torture is a Moral Issue: Christians, Jews, Muslims, and People of Conscience Speak Out* (Grand Rapids: Eerdmans, 2008), 73-91.

5 George W. Bush, *Decision Points* (New York: Crown Publishers, 2010), 169-171.

6 Grudem, 428.