

By Bruce Ledewitz

From InfiniStreams.com | Original Article

John Yoo, author of the infamous torture memo that manipulated legal materials to justify the use of torture for interrogation during the Bush Administration, has been crowing all over the media that the death of [Osama bin Laden](#) shows that torture works. I'm glad that Yoo is able to make that claim in a credible way because it moves the torture issue away from technical issues of effectiveness to the moral realm, where the matter of torture should always have been discussed and decided.

Yoo is a moral relativist or even nihilist. In his recent defenses of torture that I have read, he does not even mention morality. Yoo believes that the end justifies the means. And he finally now has the end — the death of bin Laden — that he feels justifies the means he is responsible for introducing: torture.

We have to be clear as to what Yoo means when he claims that torture works. In his [Wall Street Journal piece](#)

on May 4, Yoo says that the “United States located al Qaeda’s leader by learning the identity of a trusted courier from the tough interrogations of

[Khalid Sheikh Mohammed](#), the architect of the 9/11 attacks, and his successor, Abu Faraj al-Libi.” Yoo does not claim that torture is necessary, in the sense that this information could not have been acquired through other means. He does not know whether the identity of the courier was in fact acquired through means other than torture during the past ten years. He would have no way of knowing that one way or the other, having presumably been out of the intelligence loop since he left federal service in 2003.

Yoo does not even claim that torture was “worth it” in the sense that the information gained balanced out the harm that these interrogation techniques did to the moral leadership of the United States in the world, the aid it gave to the recruitment of terrorists and the radicalization of Muslims to which it contributed. The interrogation policies that John Yoo championed certainly harmed his country.

But with the death of bin Laden, Yoo can credibly claim that torture led to useful intelligence information. That is important because liberal religious believers and secularists have wanted to leave the torture debate in the realm of effectiveness. They have wanted to be able to say that torture does not work, that it only leads to unreliable information. We now see that this is not always the case. Now the moral issue must be engaged.

The defenders of torture have always asked whether critics of the practice would be willing to use such techniques on a suspect in an emergency — such as when an atomic bomb is poised to go off under New York City. But one must be very careful with arguments from emergency. For in such a case, I suppose there is nothing that one would not do. Yoo is coy with his claims about interrogation. He never admits that the “enhanced interrogation techniques” he approved actually constituted torture. He never expressly argues that there should be no limits on interrogation tactics.

But in the emergency scenario, there really would be no limits on what might reasonably be done. With the bomb about to go off and kill millions of people, you shoot the suspect in the groin and tell him that he will bleed to death if the bomb goes off. You round up his parents, his wife and his children — and you shoot them one by one in front of him until he cracks. You don't stop with waterboarding.

Given the stakes and the necessity in an emergency, such otherwise immoral actions might well be morally justified. And that is precisely what was wrong with America's use of torture. We used immoral means when the absolute dictates of an emergency were not present. Thus, our actions were simply wrong. And since they were wrong, their possible effectiveness is irrelevant.

Why did the torture debate fail to engage fundamental morality? Why hasn't Yoo's amorality banished him years ago from any voice in public debate?

The answer is, unfortunately, that America has become a culture of moral relativism. We now measure all actions not by right and wrong, but by effectiveness and even profit. That is why Yoo is so smug today.

America was not always like this. There is a story about the addition of the words “under God” to the Pledge of Allegiance that illustrates the change. There used to be a tradition, adhered to by some presidents, of honoring Abraham Lincoln’s birthday by sitting in Lincoln’s pew at New York Avenue Presbyterian Church on the Sunday nearest February 12. On February 7, 1954, President Eisenhower was in that pew and listened to a sermon by George MacPherson Docherty in which Docherty repeated the — possibly apocryphal — story that Lincoln added the words “under God” to the Gettysburg Address to show that America’s might lay not in military power, but in its spirit and higher purpose and that these same words should therefore be added to the Pledge of Allegiance. Eisenhower agreed and apparently arranged for a bill to be introduced to that effect the very next day.

Secularists and others devoted to the separation of church and state have always misinterpreted the addition of the words “under God”. Those words probably did not indicate a supernatural being for Lincoln. And Docherty was not proposing the change in wording to settle a theological issue about the existence of God. Docherty meant to suggest that America stands, or at least tries to stand, for moral principles in the world. That is how Lincoln always used religious imagery.

Imagine telling John Yoo that he has fundamentally misinterpreted America. The greatness of America does not lie in military power. It is not represented by achievements like the killing of [Osama bin Laden](#), as justified as that killing was. No, the greatness of America is that, unlike other countries, there are certain things we will not do even though they are in our national interest. At least we used to be like that. Imagine John Yoo finally realizing that because of him, and people like him, America has ceased to be a nation under God.

Ledewitz is Professor of Law at Duquesne University School of Law.