CHAPTER 8

From the Spanish *Toca* to the American Waterboard: The Strange Yardstick of Ethical Progress

Let us turn to the second aspect of the New Atheists' assumption as to the ethical superiority of atheism: that atheists, as evidentialists and rationalists, are better protected against the kinds of (un)reasoning that leads religious people to think and behave badly. Central to this is a notion that the failure of religious moral guidance is inescapable. Ungrounded in any reliable epistemology, yet drawing the narrowest boundaries around the membership of its moral communities, religion simply cannot give us, in Sam Harris' words, 'real reasons for human solidarity.' In fact, 'no ideology is so eloquent on the subject of what divides one moral community from another.'[1] If atheism will not in itself make us good, it will free us from these influences. No longer bound by archaic strictures, and free to seek our morals in what we can empirically know about our species, we can build our ethics up from the foundation of our shared humanity. Atheism might allow us to actually become humanists.

At the heart of this lies a deep sense of historical separation. The post-Enlightenment ethical course is to be contrasted with a brutal past. Brutal not because it lacked ethics, but because those it had were so straitened, being innocent of the scientific rationalism that dissolves the artificial barriers created by ignorance and superstition. Distinctions in ethics, then, are to be understood as the products of fundamental inequalities in the distribution of intellectual resources. Religion has ever been the least well-provisioned, its ethical history read backwards (by the self-defined intellectually wealthy) as a study of rational and scientific impoverishment.[2]

It would perverse to deny that there are real issues here, yet we are entitled to ask: if atheism might free us from artificial limitations to our moral concern, to what extent are the fruits of this discernible in the writings of the New Atheists themselves? Has their intellectual provisioning made them, as they would have us believe, so much more ethically rational than our benighted religious ancestors and their current descendants? Certainly the New Atheism gives regular voice to numerous modern progressive concerns over race, gender, sexuality and the environment. Yet these are its inheritances, not its innovations. When it comes to its true Other—the religious—the picture is strikingly different.

Here we will examine the most extreme example of the contrast claimed between the ethical superiority of modern atheist rationalism and the indicative failure of the religious past: Sam Harris' now notorious advocacy of the torture of Muslim terror suspects.

Torture: Then and Perhaps Now

> As practiced by medieval Christians, judicial torture was merely a final mad inflection of their faith. That anyone imagined that *facts* were being elicited by such a lunatic procedure seems a miracle in itself.
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> …our disavowal of torture in the case of Khalid Sheikh Mohammed seems perverse. If there is even one chance in a million that he will tell us something under torture that will lead to the further dismantling of Al Qaeda, it seems we should use every means at our disposal to get him talking.[3]

These two quotes are separated by a hundred pages in *The End of Faith*. Explaining the apparent double standard, Harris, in an interview for *AlterNet* in 2007, explicitly invoked rationalism as the factor dividing inquisitors from modern interrogators. The first used torture to impose their delusions upon innocents, the second may uncover crimes that are all too real.[4] Rationalism can apparently act as an ethical gun sight, zeroing in on the circumstances in which torture will be the moral choice. Where the resort to torture exemplified the sheer weakness of the medieval mind overwhelmed by superstition, the modern secular mind can be unencumbered and accept the hard realism of a rational ethics awakened by an unprecedented global crisis. The ability to correctly engage with torture could, Harris concludes, be a confirmation of our intellectual and moral progress. It is a striking claim for the sheer distance between the ethical power of theist and atheist. The *toca* of the Spanish Inquisition and the waterboard of the CIA are the same, yet the intellectual clarity of

people like himself might finally afford torture the precision that so tragically eluded the Inquisition's befuddled and bigoted ecclesiastics.

Harris' position on torture could not fail to attract controversy.[5] 'Many readers', he complains, 'have mistakenly concluded that I take a cavalier attitude to torture. I do not.'[6] This is true up to a point, and those who caricature Harris as an enthusiast for violence misrepresent his views.[7] He argues instead for the existence of a moral reality beyond the witting invention of human beings and 'waiting to be discovered.' Neuroscience will explain our moral functioning, and identify which circumstances genuinely stimulate our experience of well-being. Inch by inch the yardstick will be revealed that will allow us to test humanity's competing ethical systems. Torture, Harris believes, is as an example of the ways in which we might access these ethical realities, and, notably, of the discomfort they are likely to cause us.

Our moral intuitions, Harris argues, are the products of a remote evolutionary history and often inadequate for the realities of the modern world. Take the ticking bomb scenario.[8] A suspect is known to hold information that could avert an immanent terrorist attack: would we not be bound to accept torture as the moral course of action?[9] We need an ethical absolute by which to deny that it is the lesser of the two evils. Without one there is no basis to reject torture *on principle*. Harris argues that we have no such absolute yet the discourse of liberal ethics reads almost invariably as if we did. The human brain evolved to be acutely sensitive to the pain of another individual, but it may be simply incapable of dealing with suffering on the scale we are now able so easily to inflict. Thus the irony that we instinctively balk at the intimacy of torturing a single terrorist whilst exhibiting so much less concern for those faceless innocents killed by the bombs we drop far away. These ethical illusions are hardwired, contextually illogical but feeling powerfully real. But, Harris concludes, they are an indulgence we can no longer afford if 'many innocent lives could be lost as a result of our inability to feel a moral equivalence where a moral equivalence seems to exist.'[10]

Thus Harris is claiming that we have reached a crossroads in our ethical development. Such is the danger we are now in, that we may have to reject our outmoded moral hardwiring and accept that our survival takes precedence over the luxury of our feelings.

For all its neuroscientific underpinnings, the real force of Harris' argument rests in abstract ethical theorising and in the avoidance of the history of torture itself. Harris has issued a public challenge to his opponents to give a purely principled argument against the logic of torture in his crisis scenario.[11] We may concede the point without following him

too quickly into the torture chamber.[12] For whilst he deftly uses the language of the civilisation clash and of the new 'realities' of 'post-9/11' terrorism to suggest that we are in uncharted territory and gravely in need of the hard rationalism of a new scientific ethics, the truth is that we have been here many times before. The history of torture has much to tell us about the naive faith Harris places in rationalism as a force for its limitation. A truly objective ethics of torture will want to take account of precedent, and precedent does not favour Harris.

Between the end of the Roman Empire and the late-twelfth century torture had fallen into disuse in Europe. Harris might be surprised to learn that Christendom owed its reintroduction not to bloodthirsty clerics, but to scientific jurists concerned to free justice from the reliance on God's intervention and to champion human judicial competence. In both medieval Europe and modern-day America, then, societies that had abandoned torture contemplated its reintroduction as a rational necessity, but the medieval story—the one for which we know the ending—recounts the failure of rationalism to control its own offspring.

Torture: Europe's Rational Innovation

The long-term context of the medieval rise of judicial torture was the move from private to public justice, and the rationalisation of law that followed the rediscovery of the imperial Roman law code of the Emperor Justinian in around 1070.[13] Before the twelfth century, as we have seen, trial proceedings revolved around the religious formulae of the oath and the ordeal,[14] forms of community justice that, in theory, placed limited expectations upon human judicial competence.[15] The ordeal was a resort in cases taken to be beyond earthly determination. The logic of torture was entirely different. It made no appeal to God, rather it expressed openly a confidence in the ability of humans to investigate crime and determine guilt. That torture should be considered an example of Christian man's new-found judicial sophistication might seem repellent to us, but so it was.

The ordeal itself was outlawed by the Fourth Lateran Council in 1215. 'Henceforth', the legal historian, John Langbein, notes, 'humans were going to replace God in deciding guilt or innocence, humans called judges.'[16] The term 'inquisition' rings sinister to us now but what developed, the medieval *quaestio* (inquest), expressed these ideals of progressive, self-confident and human jurisprudence. The role of court officials became

fully investigatory rather than only presidial. Guilt was to be established through the progressive gathering of evidence and the recorded interrogation of defendant and witnesses. As the medievalist, Edward Peters, author of an important study of the history of torture, has noted:

> The inquisitorial procedure offered much that would seem familiar and acceptable to the modern litigant: the avoidance of rigid, excessively formalised, and ritually announced and answered charges; the open airing of testimony and the weighing of evidence from both parties; the presence of a trained judge who might also act equitably in weighing intangibles. At its outset in the twelfth century at least, inquisitorial procedure seemed to reflect precisely that reliance upon reason, conscience, and a broadened concept of the social order that historians have praised in other aspects of life in this period.[17]

The cultural underpinning of jurisprudence continued, of course, to be religious, but the role of supernaturalism in the court was massively reduced.

Instead the inquisitorial system held to a remarkably high standard of terrestrial proof, one that disallowed as too weak many types of evidence upon which a modern jury might convict. The Romano-Canonical law of proof, adopted by the new system and based on the Roman law of treason, demanded nothing less than a confession or the testimony of two eyewitnesses.[18]

In this lies an uncomfortable irony for the New Atheists. They would have it that medieval torture reflected the shameful credulity of a theocratic judicial system enthralled by its own fantasies. In fact, however grotesque inquisitorial practice would become, the reasons for the adoption of torture lay in the precise opposite. As Peters has shown, it was *incredulity* that drove the willingness to torture. How were the new procedures to offer the kinds of definitive judgements so readily apparent through the ordeal? Hence the attraction of the Romano-Canonical law of proof. Circumstantial evidence or hearsay might be suggestive, but they would be *indicia* only: indications but not confirmations of guilt. This, Langbein argues, reflected the sheer gravity of the change whereby medieval Europeans lost the ability to appeal to God's omniscience. Such a demanding system of statutory proof made the judgement of men palatable if it could rest 'upon standards of proof so high that no one would be concerned that God was no longer being asked to resolve the doubts. There could be no doubts.'[19]

But still one form of evidence was clearly superior. Confession required no lucky happenstance that two trustworthy people should be on hand to witness the crime. It was also the only acceptable proof for clandestine offences, an inherent weakness in a system that accorded circumstantial evidence no convictional force.[20] Thus jurists elevated confession to the status of 'the queen of proofs.' It was unlikely that confession would long remain a matter only for the conscience of the accused, especially when strong *indicia* were against them. Indeed, Langbein argues that the possibility that unwitnessed offenders might so readily escape justice would have entirely discredited the Romano-Canonical proof system had the principle of coercion not been swiftly accepted.[21] To the hard logic of the new rational jurisprudence, torture appeared an entirely reasonable means by which to furnish a trial with the queen of proofs, and it became an established part of mainstream legal procedure.[22]

Here it was, in theory, governed by very strict rules. Its advocates hardly accorded to Harris' stereotype of unthinking tormentors besotted with the power of torture to confirm their delusions. Rather they were acutely aware of the dangers of abuse and far from credulous as to the value of the testimony extracted. Torture could only be used when a number of strict criteria had been met. It could never be applied in cases where the suffering inflicted would outstrip that imposed by the eventual punishment. There had then to exist sufficient strong *indicia* to allow a reasonably confident expectation of confession once it was applied.[23] This was not the same as relying on torture to be self-justifying after the accused had been forced to say whatever was required. Rather the burden lay in demonstrating that all other means of establishing the truth had been exhausted. In the *inquisitio generalis* a judge had first to produce a *prima facie* case against an individual. The trial proper, the *inquisitio specialis*, then assessed the type and strength of the *indicia*, which were defined in a rigid hierarchy ('quarter-proofs', 'half-proofs' and their combinations) to guard against subjective judgements.[24] When a set of *indicia* merited torture the defendant had to be allowed to challenge each individually, to cross-examine witnesses and to appeal if the judge still decided to proceed. If all the criteria had been met, threat was always to be tried first with the accused being implored by a priest to confess and shown the instruments under which he would suffer.[25]

The investigating magistrate was to supervise the application itself, accompanied by two observers, with a physician present if severity

was expected. The details of the specific tortures and the defendant's responses were to be recorded, and suggestive questioning was to be avoided. Torture should not cause permanent injury, and should only be by prescribed methods. Whilst undoubtedly terrible, the *strappado* or the thumb-screws were used in part because, in working on the body's extremities, they reduced the danger to the life of the accused and were capable of instant relaxation upon confession. They could also be effectively controlled. Predetermined rules, for example, governed how long the accused should be suspended in the *strappado*. Further restrictions limited the duration of the procedure as a whole. All forms and grades of torture were to be applied only on a single day and torture was thereafter not to be repeated. This reflected not a hypocritical concern for the accused but the rationalism of torture's jurisprudence. Confession had to be trustworthy and powerful as torture was, its results were uncertain. The guilty might be able to endure, whilst the innocent might condemn themselves to escape the pain, and so the success of torture relied on the correct balance being achieved between severity and limitation. Certainly, no confession given under torture was to be considered valid in itself. The presiding judge was responsible for verifying all of the details provided, and the confession was validated only if it was repeated away from the place of torture.[26]

The Harris Method: A Superior Rationality?

Contrast the above with the notions of acceptable practice put forward by Harris and consider to whom we should attribute the greater rationality. He claims precision in the restricting of torture to extreme crises, yet, when examined, the circumstances in which Harris can imagine its use are highly nebulous, and far broader that those envisaged by his medieval forebears.

Instead of a suitably narrow and rationalised set of criteria, we get a series of casually employed examples, which obscure rather than focus the ethics of torture. The definition of 'imminent' threat turns out to be highly elastic. In 2004 Harris called openly for the torture of senior Al Qaeda operative, Khalid Sheikh Mohammed (and later Osama Bin Laden), on the speculative basis that 'his knowledge of planned atrocities must be extensive.'[27] This 'brings us *closer* to the "ticking bomb" scenario', and that, apparently, is enough.[28] But what was the imminent atrocity, the foreknowledge of which drove Harris reluctantly to

demand torture? He simply assumed that Sheikh Mohammed *must know something*. This is not the ticking bomb scenario, but rather the flattening of the perception of urgency as all terrorist activities, from intention to conception to planning to execution, are accorded a single level of emergency. For Harris, the timer is attached not so much to the bomb as to the mind of the fundamentalist. A grave threat no doubt, but one unlikely to be countered by subverting our ability to seriously assess relative levels of urgency.

That Harris is really envisaging a fishing expedition is further demonstrated by his casual attitude to the usefulness of the information torture might produce. 'Make these confessions as unreliable as you like', he notes, 'the chance that our interests will be advanced in any instance of torture need only equal the chance of such occasioned by the dropping of a single bomb.'[29] For this argument to have force, torture must be seen as a net cast wide by interrogators with the time to sift the good information from the bad. Surely, in the true ticking bomb scenario the likelihood of catastrophe is *increased* if security services are distracted by false information. Harris' conclusion, that the possibility of a terrorist misleading his interrogators appears 'less of a concern' than opponents of torture might imagine, only makes sense if he is not really envisioning an imminent attack but a future one.[30]

We again find a sharp contrast with medieval rational theory in Harris' apparent indifference to the real question of guilt and innocence. Far from any formalised *indicia*, he is content with a generalised assumption of guilt which he takes as sufficient to forfeit a suspect's human rights. Indeed, in deciding whether Khalid Sheikh Mohammed should be tortured we apparently needed only to consider that 'his membership of Al Qaeda more or less rules out his "innocence" in any important sense.'[31] A figure as shameful as Sheikh Mohammed is unlikely to engage our sympathy, but that should not overshadow the fact that Harris has here implied that there exists a criterion of *unimportant innocence*, the definition of which he leaves us to guess at. Similarly, the detainees in Guantanamo Bay—'rather scrofulous young men, many of whom were caught in the very act of trying to kill our soldiers'—revealed themselves in their belligerence to the West and forfeited our restraint.[32] So what began with the use of torture against terror cells has moved seamlessly to encompass Taliban fighters and Iraqi insurgents. Attacks on American civilians and attacks on American soldiers on the battlefield are made equally criminal by simply ignoring the obvious differences between

them. In the end, Harris advocates an inversion of justice. Medieval jurisprudence held that torture could not be a first response and established strict criteria to ensure this. Harris instead defines an entire class of criminals on the basis that they are by default tortureable. So general are his criteria for sufficient guilt that it would be more meaningful to ask what *disqualifies* a Muslim suspect from the waterboard?

Should we accept the misapplication of torture? Harris apparently believes we must. On the one hand, there is the sheer breadth of his notion of sufficient guilt. Since detainees will almost certainly be guilty of something (he believes), cases of the torture of the genuinely innocent will be few. Torture may reveal a suspect to know nothing about the specific plot that concerns the interrogators, yet he/she remains one of the 'scrofulous' belligerents who are beyond our sympathy. After all, their lack of involvement in *this* plot is merely a case of unimportant innocence; a tactical misapplication of torture perhaps but not necessarily a moral one. On the other hand, the rare cases of the torture of the importantly innocent should not be as difficult to come to terms with as we seem instinctively to believe. In 'collateral damage' we have already accepted the precedent that innocents may be harmed as a consequence of warfare undertaken in the pursuit of a greater good.[33]

Having claimed both the existence of a moral absolute that justifies torture and a superior rationalism in the targeting of its application, Harris' attitude to its legality is then strange to say the least. He denies the slippery slope argument that precedent would lead to proliferation, but concedes that torture must remain illegal to avoid 'unacceptable consequences.'[34] Yet,

> …our interrogators should know that there are certain circumstances in which it will be ethical to break the law. Indeed, there are circumstances in which you would have to be a monster not to break the law. If an interrogator finds himself in such a circumstance, and he breaks the law, there will not be much of a will to prosecute him (and interrogators will know this).[35]

The medieval torturer was a supervised functionary of the court empowered only to act on a decision taken after open consideration. His actions were recorded and set within known parameters of severity and duration.[36] For his use of torture to remain conveniently illegal, however, Harris' interrogator must be a free agent, uncontrolled by any judicial body, and able to inflict whatever torments he sees fit for whatever

length of time he finds appropriate.[37] Those who indulge in the kind of abuses made notorious by Abu Ghraib, Harris reassures us, will know that they court a long prison sentence.[38] The notion that this could in any way guarantee sufficient restraint is fanciful. Harris' interrogator need only claim that his actions, however brutal, were undertaken in good faith (in an atmosphere of crisis) to be beyond reproach; and remember 'interrogators will know this.' Such a claim might be legally challenged, of course, but, as we have seen, the crisis latitude Harris envisions is discouragingly wide.

Such a position seems strikingly at odds with Harris' claims for the existence of moral absolutes and of a 'science of good and evil.' Having identified one such absolute, and challenged any doubter to refute it on principle, he then claims that the law is incapable of assimilating it. Where should moral absolutes have influence if not in the shaping of our laws? Harris tells us that, as responsible scientists must accept good research even if it overturns established paradigms, so rational, scientifically informed ethicists must accept such moral absolutes as can be identified regardless of the discomfort they may cause. Indeed this is how we will know they are 'adequate to the task.'[39] If, then, the moral choice to torture really is an absolute in the ticking bomb scenario, are we not obliged to incorporate it into law? If we are not, what use are moral absolutes? Harris' invitation to hypocrisy hardly seems to epitomise the moral confidence he promises in his espousal of hard rationalism over soft relativism.

But it might be objected that my comparison is inappropriate, even if it is invited by Harris' own juxtaposition of medieval and modern torture in *The End of Faith*. Medieval torture was a route to the correct application of punishment. Harris is concerned with crime prevention, where an over-precision in legal niceties could only hinder the urgent measures being undertaken. But the comparison does stand, for the very reason that Harris' version of torture is what medieval and early modern practice would become when, in the face of apparently unprecedented crises, strict regulation was abandoned. There emerged in European justice classes of criminals who were tortureable by definition and whose crimes, seen as assaults on civilisation itself, placed them beyond the protection of normal criminal procedure. The irony is that Harris' ideas of acceptable practice in torture do not resemble those of his twelfth-century predecessors because they are actually much closer to those of the witch-hunters.

Crimen Exceptum

No historian has any illusions about the reality of medieval torture. For all its rationalist origins, and for all its ideals of rigorous procedure, it was a brutal system open immediately to abuse.[40] Yet historians are agreed that had the rules of torture been adhered to the great witch-hunts of sixteenth and seventeenth centuries could never have occurred. They did so because in a number of jurisdictions the strict regulation of torture came to be seen as unsuited to the urgency of rooting out a terrifying threat to the community. Witchcraft came to be understood as a *crimen exceptum*, literally an exceptional crime so serious that the normal rules of jurisprudence did not apply.[41] It was a development fatal to the rational principles with which the inquisitorial system of proof had been created.

Large-scale witch-hunting occurred when the fear of *maleficium* turned into moral panic. Individual acts of harm were here understood to be the tell-tale sequels to a more fundamental spiritual and intellectual crime: that of diabolic apostasy. Where God ordained order, harmony, charity and peace, Satan pursued disorder, chaos, malice and conflict. Witches internalised these anti-values. They rejected human sentiment and fellowship, and renounced their baptism in a ritual of departure from the moral community. But more than this, witches were the conspiratorial members of a terroristic anti-society. They attacked *caritas* by breeding discord and disrupting community harmony. They overturned nurture through infanticide, and assaulted the family through illness, impotence and even the infliction of demonic possession. They encouraged fear through economic instability, destroying livelihoods by attacks on animals and crops. In all this, witches sought not only to victimise but ultimately to disempower Christian governance. As government and magistracy aimed to embody and protect the social order that God had ordained, witches promoted its inversion; in the words of historian, Stuart Clark, they sought a 'regimen of misrule': a government of chaos, the organising principle of which—its cardinal anti-virtue—was pure, unwavering hate.[42]

Witch-hunting, then, tended to undertaken in an atmosphere of alarm, even crisis. As the historian of Scottish witchcraft, Christina Larner, remarked,

> There was really no period in the whole of the witch-hunting era when the indictment, trial, and execution of a witch was regarded by either authorities or populace as completely routine. A witch was by definition an abnormal person. The execution of a witch was a demonstration of group

> solidarity. It removed the provocative deviant and redefined the boundaries of normality to secure the safety of the virtuous community. For witch trials to have been made a routine procedure would have robbed them of their principal social meaning.[43]

A *crimen exceptum* required exceptional methods, and witch-hunters found ample justification to abandon the rigours of the inquisitorial system when these seemed hamper their efforts against an enemy whose motives and actions could not be assimilated into standard jurisprudence.

The particular utility of torture in not only in securing confessions but also identifying accomplices had long been recognised. As we have seen, in 1252 Pope Innocent IV legalised its use upon suspected heretics for that purpose, and here he seems to have been following developments within secular courts. As another crime understood to be conspiratorial by definition, witchcraft was inherently vulnerable to torture being used to ask 'who else is guilty?', and to the escalations that must result. Further relaxation of inquisitorial procedure was, however, necessary to make prosecution tenable in the first place. For the *inquisitio generalis* witchcraft left little or no tangible evidence of its performance, and even identifying symptoms of bewitchment was deeply uncertain. No *corpus delicti* was likely to be established by a scrupulous inquisitorial judge. But this fact only contributed further to witchcraft's status as an exceptional crime that, *since* it left no trace, must be allowed a lower standard of evidence in the construction of a *prima facie* case.[44] Witch-trials themselves (the *inquisitio specialis*) were thereafter perhaps uniquely reliant on confessions to render a guilty verdict. Indeed, as the practice of witch-hunting developed and knowledge of it was transmitted, magistrates probably learned to expect that this would be the case.

Torture was a concomitant of such a reliance under the inquisitorial system, but it was also regarded as suitable to the treatment of what was as much a mental crime (a crime of attitude) as a physical one. Since physical evidence of *maleficium* was so unlikely to be found, emphasis was increasingly laid on proving that the defendant was a witch in mind—i.e. that she had committed diabolic apostasy in giving her allegiance to Satan—and only secondarily that she was guilty of performing witchcraft. Once her status as a demonic servant was established, her guilt with regards to specific acts of harm could reasonably be inferred. Eventually a reliable confession was expected to begin with diabolic recruitment. In effect, the witch was to admit to her internalisation of the anti-values of

malice, violence and chaos. This in turn dissolved the restraint on torture still further. To order its use, judges now had only to assure themselves that suspects were likely to be guilty of the mental crime of satanic allegiance. The defendants were, to appropriate Harris' terminology, 'scrofulous' belligerents whose evident anti-societal allegiance 'ruled out [their] innocence in any important sense.' Under sufficient coercion, the details of the witch's crimes would be revealed and she would be forced to share her knowledge of the wider conspiracy in which she was embroiled. She would name those she had seen at the witches' sabbat, those she had personally conspired with and those others she knew to be diabolic agents. She would uncover for her tormentors the actions being undertaken to terrorise the community.

In numerous jurisdictions restraint in the torture chamber itself was abandoned. Cases notorious in the history of witch-hunting illustrate the extremes to which the torment could sometimes be taken as the medieval ideal that torture should leave no permanent injury was ignored. Both the Scot, Dr Fian, and the Frenchman, Urbain Grandier, for example, were subjected to the 'boots', a torture in which the legs were crushed to such a degree that it was claimed that bone marrow spurted from them. Other recorded brutalities included burning with hot irons, filling the mouth and nostrils with lime, gouging out the eyes, genital torture and burning brandy or sulphur over the defendant's body.[45] These torments were almost certainly illegal under the law codes of early modern Europe. Ignored also was the rational demand that the duration of torture should be strictly limited. In 1376, Nicholas Eymeric, writing a manual for inquisitors, had set the precedent for the casuistic circumvention of the rule on the non-repetition of torture. An unproductive session could be considered unfinished and so, at another time, might be 'continued' instead of 'repeated.' During the witch-hunts the duration of torture was often significantly extended, in some cases indefinitely until the victim confessed. Such cases subverted utterly the idea that resistance to torture might act as proof of innocence. In many cases, the question was no longer if but *when* the accused would talk.[46]

Two factors seem to have informed this willingness to inflict the severest torments on witchcraft suspects. One was the commonly held belief that the Devil provided his agents with supernatural means to withstand pain, forcing the authorities to rely on especially cruel methods.[47] A second was the perceived urgency of the need for conviction and the pursuit of co-conspirators. Through her confessions the witch would empower

the authorities to break the ongoing conspiracy, providing redress for those who had suffered, but also preventing further harm. As important, it would re-establish the stability and order the conspirators had sought to destroy, reinforcing the values witchcraft challenged and the status of magistracy and Church as their protectors. The popular image of witch-hunting associates it with the cruelty of self-serving fanaticists (think Vincent Price in *The Witchfinder General* or F. Murray Abraham in *The Name of the Rose*). But historians have long understood that such figures were very much in the minority. Fear drove witch-hunting, unregulated torture and the abuse of a judicial system once given authority by its rationalism. Those involved believed that they were protecting their way of life from a terrifying threat. Some no doubt could be condemned as over-zealous, some as paranoid and some as simply sadistic; but many others, if only under the Harris defence of acting in good faith in the face an apparently extreme crisis, would have to be exonerated.

Islam as *Crimen Exceptum*

Sam Harris has found his own *crimen exceptum* and his own anti-society to perpetrate it. The differences between witchcraft and Islamic terrorism are obvious, of course, not the least of which is the fact that, however strongly it was believed in by contemporaries and however widespread its practice, witchcraft was never real. None but the most inventive conspiracy theorist would deny the reality and seriousness of Islamic terrorism. Yet, given the emphasis Harris' places on witch-trials as an exemplar of theist irrationalism, it is striking that he seems unaware that his own depiction of 'the problem with Islam' bears many of the hallmarks of the kind of moral panic that drove the persecution. The civilisational conflict between society and anti-society, between value and anti-value, the notion of the belligerent 'Other' and of violence as the expression of a more fundamental intellectual crime—all these factors are present in Harris' depiction of the threat from Islam. His resulting acceptance of the torture of Muslim terror suspects is already prey to the same jaded logic of fear that marked the point at which the rationalism of inquisitorial jurisprudence and judicial torture failed.

We might indulge here in the type of thought experiment of which Harris is fond. Imagine an interrogator, inspired by the promise of a superior rationality, leafing through *The End of Faith* hoping to

understand 'the problem with Islam', and in search of guidance as to whether or not the circumstances of his investigation merited torture. What would he find?

Admonitions to tread warily, no doubt, with an open-eyed acknowledgement of the brutality of torture and a demand that it only be used in the direst circumstances. But at the same time he would find an uncompromising elevation of all Islamist activity to a single level of civilisational emergency. He struggles, it seems, against the 'roiling ocean of Muslim unreason', and may need to 'protect our interests in the world with force.'[48] Only the economic and technological weakness of the Islamic nations shields us (for now) from being 'doomed to witness the Islamification of the earth', and unless the very principles of the faith are dissolved, 'it seems all but certain that our newspapers will begin to read more and more like the book of Revelation.'[49] An attack within an hour, within a day, a month, a year, sometime in the future? These, he would realise, should be assessed not as discrete crises with relative levels of threat but rather as equivalent manifestations of a now permanent emergency precipitated by the very existence of the Islamic anti-society.

Islamist violence, our interrogator would learn, is merely the most honest expression of the anti-values that lie at the heart of the religion—the mental crime of Islam. The conflict between Western value and Islamic anti-value is stark and should be obvious to anyone not in thrall to multiculturalist 'wishful thinking.' Western cultures embrace life and self-expression, and revolt against their fragility. This shapes even the ethics of war. Islam idealises subservience to theocratic totalitarianism and the overpowering of those who cannot be assimilated into the faith.[50] The 'only future devout Muslims can envisage—*as Muslims*—is one in which all infidels have been converted to Islam, subjugated, or killed.'[51] Non-Muslims have no separate identity and no human value beyond that in relation to God's plan for the faithful. They are either Muslims-to-be, slaves-to be or targets-to-be.[52] To every Muslim with the honesty to admit their creed, 'the people who died on September 11 were nothing more than fuel for the eternal fires of God's justice.'[53] This is the 'irrescindable militancy' of a religion that sees only a fallen world 'desperately in need of conquest.' It normalises the idea of killing in the name of God.[54]

But our interrogator would be made aware of an even more sinister anti-value driving Muslim aggression. Islam 'more than any other religion human beings have devised, has all the makings of a

thoroughgoing cult of death.'[55] Muslims are fixated by death (and hell) as the punishment for infidelity, in love with death (and paradise) as the reward for faith.[56] This whole necrocultic fixation can, Harris believes, be read in a single quote from the father of modern Islamism, Sayyid Qutb:

> The Koran points to another contemptible characteristic of the Jews: their craven desire to live, no matter at whatever price and regardless of quality, honour and dignity.

'Stare at it for a moment or two', our interrogator would be promised, 'and the whole machinery of intolerance and suicidal grandiosity will begin to construct itself before your eyes.'[57] To understand this terrifying reality he need only consider the prospect of an Islamist regime procuring nuclear weapons. No system of deterrence can operate against those who grow 'dewy-eyed at the mere mention of paradise.'[58] The death fixation is often associated with nihilism and the pursuit of destruction for its own sake, but the Islamic case is driven by its opposite—sheer, unwavering belief in the transformatory virtue of death. Muslim irrationalism makes the love of death ironically rational: 'Devout Muslims simply *know* that they are going to a better place…Why not, then, delight in the death throes of a sinful world?'[59]

Nowhere is Islamic thanatophilia more apparent than in the supposedly near-universal reverence for self-martyrdom through suicide bombing. The martyr's eternal 'bordello' makes it 'seem like a career opportunity.'[60] Our interrogator would learn that the case must not be seen, as apologists for Islam would claim, as a perversion of the faith. The single Koranic statement prohibiting suicide, Harris would tell him, is swamped by those others sanctifying hate, enjoining violence towards unbelievers and celebrating martyrdom. Put together it is a particularly lethal combination of ideas in which 'suicide bombing hardly appears to be an aberration of [Islamic] faith.'[61] Indeed, 'The Koran's ambiguous prohibition against suicide appears to be an utter non-issue.'[62]

What might this mean for our interrogator's suspects? In the end they may be implicated or not. But he can rest assured that, as Muslims, 'they' have murdered 'us' time and again in their minds. 'If', Harris asserts, 'you believe anything like what the Koran says you must believe in order to escape the fires of hell, you will, at the very least, be sympathetic with the actions of Osama bin Laden.'[63] Mental guilt can be safely inferred if we can finally learn to believe that Muslims believe what they read.[64]

'Open the Koran', the interrogator would be instructed, and, as it pours relentless vilification on infidels, 'simply read it with the eyes of faith.'[65] The inability to do so is the downfall of most liberal commentators who prefer to blame politics or economics because they cannot understand sheer belief.[66] Better the Harris rule of thumb for our interrogator: 'insofar as a person is *observant* of the doctrine of Islam – that is, insofar as he *really* believes it – he will pose a problem for us.'[67]

Reading *The End of Faith*, our interrogator would gain a reassuring, legitimating sense of the moral gulf between himself and his quarry. On issues of morality, he would learn, Muslims are simply not as developed as us.[68] The truth of this he would instinctively recognise. Is it even conceivable, Harris wonders, that the Iraqi Republican Guard would have fought any war, as the US military does, by attempting to minimise civilian casualties?[69] 'What are the chances', our interrogator would be asked, 'that Iraqi soldiers would have wept upon killing a carload of American civilians at a checkpoint unnecessarily?'[70] He would be expected to answer 'zero.' Not because he specifically imagines these men to be power-hungry psychopaths, Baathist loyalists, delusional Islamists or even merely desensitised to violence by a lifetime's experience of tyranny, but because he imagines them simply to be Muslims.

How, then, might a Muslim caught up by coalition forces convince an interrogator with *The End of Faith* in his pocket that he is among that apparently elusive group: the importantly innocent? If he looks, talks and acts like a 'devout' Muslim he confesses his membership of the anti-society. He admits to the mental crime of reading the Koran through the 'eyes of faith' and so to his internalisation of its anti-values. He reveals his fantasies of global domination for his religion, his delight in the worldly and otherworldly suffering of the infidels, and his fixation with death. He might deny this, but his interrogators should be slow to believe him. Muslims, Harris declares, are well practiced at casuistry, obfuscation and even downright dishonesty when it comes to disguising the nature of their faith from outsiders. Our suspect might claim an alternative reading of the Koran, perhaps emphasising the spiritual meaning of jihad as a personal internal struggle to live in faith. A contrivance, Harris assures us, aimed at obscuring Islamic militarism. He might claim to be tolerant of the views and lifestyles of others, and give evidence of a long and peaceable involvement in a multicultural community. Another smokescreen. 'What minority', Harris asks, 'even a radicalised one, isn't generally "tolerant" of the majority for most of its career? Even avowed

terrorists and revolutionaries spend most of their days just biding their time.'[71] Harris has even asked if honesty is not 'the Muslim world's scarcest resource?'[72] Unless our suspect can convince his captors that he is not really devout—not really a Muslim—his thought crime can be safely inferred and his call on the restraint of his interrogators is, at the very least, significantly diminished.

A New Superior Rationality, or Old-Fashioned Moral Panic?

Is this really the product of a superior rationality, at the cutting edge of a scientific ethics? Does it really exemplify a liberation from the delusional fears that strangled the reason of our ancestors? The threat from Islamic terrorism is serious, and it cannot be Harris' concern itself that qualifies as moral panic. What does, however, is his insistence that such extremism is representative of all faithful Muslims, that the very existence of 'our' society is at stake, and that, as a consequence, a specific type of criminal is now to be considered tortureable by default. If his discussion of Islam and torture is an example of his scientific ethics, then his scientific ethics is curiously insubstantial.

Much is reliant not on real evidence but on a discursive sleight of hand. Harris moves blithely from 'Islamism' to 'Islam', from 'Islamist states' to the 'Muslim world', from 'Muslim terrorists' to 'Muslims', and back again; all to imply that no meaningful differences exist between them. His only qualification is to equate anti-values with 'devout' Muslims. But the distinction is then rendered all but meaningless by his insistence that 'moderate Islam – *really* moderate, *really* critical of Muslim irrationality – scarcely seems to exist.'[73] His simplistic understanding of the relationship between religious text and action is offered as a new first principle for the analysis of Islamic motivation, one apparently missed by all other commentators.[74] The Koran shows *what* Muslims believe, and the fact *that* they believe it more than adequately explains their behaviour. Complicating factors, such politics, economics, cultural and technological stasis, can be downplayed as of only secondary importance ('good' questions but not the 'deeper' ones).[75] Perhaps this is the result of a scientist's yearning for explanational efficiency. But instead of demonstrating the overriding influence of literalism, he simply cudgels his readers with Koranic expressions of hate, then points to cases of Muslim violence as if the causal link were

obvious.[76] It would be naive to think that no such relationship exists. But simply juxtaposing scripture and examples of behaviour is not in itself evidence of a connection so overwhelming as to render all other factors tangential. It is not strictly evidence of a link at all.

No theologian, philosopher of religion or religious historian would deny the importance of considering what it means to take holy texts literally. Writers such Bernard Lewis or Malise Ruthvern, whose interpretations Harris believes are too muddied by political and economic contextualisation, do not deny the centrality of the Koran to Muslim worldviews. They are hardly unforthcoming in locating extremism within traditions and tendencies of Islamic faith. Rather they seek to show how those tendencies relate to others that oppose them, to show the processes of selectivity by which Koranic traditions both of extremism and moderation are shaped, and to identify the political and social catalysts which periodically activate competing internal trends. It is not that they deny the power of reading the Koran through 'the eyes of faith', but that they are aware of how the focus of those eyes can differ between believers. They seek, in short, to chart the fluidity of Muslim culture without denying or exaggerating its potential for extremism and violence.[77]

Harris prefers to offer the entire of Islam as a monolithic culture, defined by a single unchanging—indeed unchangeable—relationship between holy text and reader. Indeed it is the exegetical motives, not of fundamentalists but of 'moderates' that are to be questioned. It seems impossible to Harris that a Muslim stressing the spiritual interpretation of jihad might be making a sincere exegetical case (whatever Harris himself thinks of its validity). Whilst claiming to hope for the reform of Islam from within, he seems determined to meet any evidence of a moderating exegesis with accusations of dishonesty. Better also to believe that seemingly peaceable Islamic communities in the West are simply 'biding their time' than to allow the possibility that they might have found living among their neighbours a barrier to wishing them dead.

Harris' approach, then, does not appear to exemplify a new hard ethical rationality. Rather it is a polemic of 'otherisation' so obvious that it can only be supported by his rejection of any form of analysis that might lead him to examine his own prejudices. It is not so much a bid for explanatory efficiency as a rebellion against the inconvenience of nuance. 'Undoubtedly we should recognise the limits of generalizing about a culture', he declares, whilst manifestly failing to do so.[78] Secularists should indeed take seriously the motivating force of belief. However, they will

be better served by those academics and commentators who have always done so but as a means to produce analyses of the interactions of culture and politics worthy of the complexity of the human beings they study. Harris is very far from the enthusiast for violence that some of his critics make him out to be, but given its tendency to interpretive dogma and moral panic, we should hardly relish the idea of an interrogator with *The End of Faith* in his pocket.

Notes

1. *TEoF*, 176–177.
2. See, for example, *WiG*, chapter 4; *IDoA*, passim.
3. *TEoF* 85, 198, author's emphasis.
4. John Gorenfeld, 'Sam Harris's Faith in Eastern Spirituality and Muslim Torture', http://www.alternet.org/story/46196.
5. See for example, William T. Cavanaugh, 'Colonialism and the Myth of Religious Violence', in Timothy Fitzgerald (ed.), *Religion and the Secular: Historical and Colonial Formations* (London, 2007), 259; Hedges, *I Don't Believe in Atheists*, 155–157; Andrew Brown, 'Sam Harris, Torture, Quotation', *The Guardian*, 8 August 2009, http://www.guardian.co.uk/commentisfree/andrewbrown/2009/aug/08/religion-atheism; Jonathan Derbyshire, 'The NS Profile: Sam Harris', *New Statesman*, 20 April 2011, http://www.newstatesman.com/religion/2011/04/harris-science-moral-faith.
6. Sam Harris, 'Response to Controversy', 4 April 2013, http://www.samharris.org/site/full_text/response-to-controversy2/.
7. Sam Harris, 'Why I'd Rather Not Speak About Torture', 28 April 2011, http://www.samharris.org/blog/item/why-id-rather-not-speak-about-torture1/.
8. Alan M. Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (New Haven and London: Yale University Press, 2002), chapter 4.
9. But see also Bob Brecher, *Torture and the Ticking Bomb* (Oxford: Blackwell, 2007), chapter 2, in which he systematically and convincingly lays out the internal contradictions (the 'fantasies') of the scenario.
10. *TEoF*, 198–199.
11. Harris, 'Response to Controversy'.
12. On the debate surrounding the ticking bomb scenario see Bob Brecher, *Torture and the Ticking Bomb*; Jonathan Allen, *Warrant to Torture? A Critique of Dershowitz and Levinson*, ACDIS Occasional Paper, 13

(University of Illinois at Urbana-Champaign, 2005); Sanford Levinson, 'The Debate on Torture', *Dissent*, Summer 2003, http://www.dissent-magazine.org/article/?article=490; Sanford Levinson (ed.), *Torture: A Collection* (Oxford, 2004); Alex J. Bellamy, *Fighting Terror: Ethical Dilemmas* (London: Zed Books, 2008).

13. James Heath, *Torture and the English Law: An Administrative and Legal History from the Plantagenets to the Stuarts* (Westport: Greenwood Press, 1982), 15.
14. On the practice of the ordeal see Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Oxford University Press, 1986), esp. chapter 3.
15. Edward Peters, *Torture* (Oxford: Basil Blackwell, 1985), 42–43.
16. John Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: University of Chicago Press, 1977), 6.
17. Peters, *Torture*, 51.
18. Langbein, *Torture and the Law of Proof*, 4.
19. Ibid., 6–7.
20. Ibid., 7.
21. Ibid.; Bartlett, *Trial By Fire and Water*, 140–142.
22. Peters, *Torture*, 49–50.
23. Langbein, *Torture and the Law of Proof*, 5.
24. Peters, *Torture*, 57; Langbein, *Torture and the Law of Proof*, 12–14.
25. Peters, *Torture*, 57.
26. Ibid., 57–58; Langbein, *Torture and the Law of Proof*, 5, 14–16.
27. *TEoF*, 198; Harris, 'Response to Controversy'.
28. Ibid., my emphasis.
29. *TEoF*, 197.
30. Harris, 'Response to Controversy'.
31. *TEoF*, 197–198.
32. Ibid., 194.
33. Ibid.
34. Harris, 'Response to Controversy'; on the potential consequences of the normalisation of torture see Brecher, *Torture and the Ticking Bomb*, chapters 4 and 5.
35. Harris, 'Response to Controversy'.
36. Similarly see Dershowitz, *Why Terrorism Works*, 159.
37. Harris takes his strategy for the application of torture from journalist Mark Bowden, who appears enthralled by the interrogators/torturers he has interviewed, accepting unquestioningly their claims of skill and success, and the moral grey area it seems to justify. See *Road Work: Among Tyrants, Heroes, Rogues and Beasts* (London: Penguin, 2006), 71–110.
38. Harris, 'Response to Controversy'.

39. *TEoF*, 175.
40. Langbein, *Torture and the Law of Proof*, 8–9.
41. The classic study is Christina Larner, 'Crimen Exceptum? The Crime of Witchcraft in Europe', in V. A. C. Gatrell, Bruce Lenman, and Geoffrey Parker (eds.), *Crime and the Law: The Social History of Crime in Western Europe Since 1500* (London, 1980), 49–75.
42. Clark, *Thinking with Demons*, 86–87.
43. Larner, 'Crimen Exceptum?', 57.
44. Langbein, *Torture and the Law of Proof*, 14.
45. Levack, *The Witch-Hunt in Early Modern Europe*, 80–81; Larner, *Enemies of God*, 108–109.
46. Levack, *The Witch-Hunt in Early Modern Europe*, 80–82; Briggs, *Witches & Neighbours*, 216–217.
47. Although sleep deprivation might also be used on this basis, see Larner, *Enemies of God*, 107–108.
48. *TEoF*, 132–133, 152.
49. Ibid., 152.
50. Equally strident assertions on this are made by Onfray, see *IDoA*, 199.
51. *TEoF*, 110, author's emphasis.
52. Again, see *IDoA*, 199.
53. *TEoF*, 117.
54. Ibid.
55. Ibid., 123.
56. Ibid., 118–120.
57. Ibid., 123.
58. Ibid., 128–129.
59. Ibid., 136, author's emphasis.
60. Koran 47:15, 55:54–56, 56:12–40, 76:12–22; *TEoF*, 127, 32.
61. Ibid., 123–124.
62. Ibid.
63. Ibid., 132, 133, 117.
64. Ibid., 110–111.
65. Ibid., 112, 117–123.
66. Ibid., 117, author's emphasis.
67. Ibid., 28, author's emphasis.
68. Ibid., 143–145.
69. Ibid., 142–146.
70. Ibid., 146.
71. Ibid., 114.
72. Sam Harris, 'Honesty: The Muslim World's Scarcest Resource', 14 March 2011, http://www.samharris.org/site/full_text/honesty-the-muslim-worlds-scarcest-resource/.

73. *TEoF*, 111, author's emphasis.
74. Ibid., 123.
75. Ibid., 116–117.
76. Ibid., 117–123.
77. For example, Malise Ruthvern, *Islam in the World* (London: Penguin, 1991); id., *A Fury for God: The Islamist Attack on America* (London: Granta, 2002); id., *Fundamentalism: The Search for Meaning* (Oxford: Oxford University Press, 2004); Bernard Lewis, *What Went Wrong? Western Impact and Middle Eastern Response* (London: Phoenix, 2002); id., *The Crisis of Islam: Holy War and Unholy Terror* (London: Phoenix, 2003); see also Karen Armstrong, *The Battle for God: A History of Fundamentalism* (New York: Ballantine Books, 2001); Charles Allen, *God's Terrorists: The Wahhabi Cult and the Hidden Roots of Modern Jihad* (London: Abacus, 2007).
78. *TEoF*, 130, 142.