

The politics of the “war on terror”

Two Australian academics openly advocate torture

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In a widely-publicised call, two Australian academics have championed the “morality” of torture and advocated its legalisation for use by governments and their security agencies. The July edition of the *University of San Francisco Law Review* will publish a paper, entitled “Not Enough (Official) Torture in the World?” submitted by Professor Mirko Bagaric, the head of Deakin University’s law school, and fellow Deakin law lecturer, Dr Julie Clarke.

As the title of the article suggests, Bagaric and Clarke do not simply defend the use of torture. They positively embrace it, arguing that it would “verge on moral indecency” not to impose excruciating pain and suffering on suspected “wrongdoers”, even if they were innocent and it caused their death. When numerous other lives are in imminent danger, they insist, governments must have the power to inflict “all forms of harm” on suspects, including “annihilation”.

Normally, contributions to academic law journals hardly rate a mention in the mass media. Moreover, until recently, advocacy of torture—which has been banned unconditionally by international law since the horrors of World War II—would have been regarded as beyond the pale of civilised society. But Bagaric and Clarke’s views have been splashed all over Australian newspapers, featured in radio and television discussions and become the topic of a public debate at the University of San Francisco. There, Bagaric was a keynote speaker alongside General (now Colonel) Janis Karpinski, the former commanding officer of Iraq’s Abu Ghraib prison, notorious for US military torture, abuse and humiliation of inmates.

The far-reaching character of the torture proposal, and the legitimacy afforded to it by media, government and university representatives, must be taken as a serious warning. It is another chilling demonstration that in the official climate generated by the “war on terrorism”, the extinguishment of the basic rights of asylum seekers and escalating “law and order” state repression, no democratic right is safe—not even the fundamental right not to be physically or mentally tortured by those in power.

Bagaric and Clarke are not the first to argue for overturning the absolute prohibition on torture codified in international law. By publishing in an American journal, they are entering into a “debate” that has already been launched in official US circles. After the terrorist atrocities of 11 September 2001, Harvard law professor Alan Dershowitz proposed allowing US judges to issue “torture warrants” where law enforcement agencies claimed it was necessary to prevent potentially catastrophic terrorist attacks.

Meanwhile, in the White House, President George W Bush’s counsel, Alberto Gonzales (now the US Attorney General) drafted an infamous memo justifying the practices that were to be employed at Guantánamo Bay and Abu Ghraib. Gonzales argued that for physical pain to amount to

torture it had to cause serious injury or death and that, in any case, Bush, as commander-in-chief, had the constitutional authority to authorise the torture of prisoners.

Like others who have sanctioned the use of torture, Bagaric and Clarke invoke the now familiar “ticking bomb” scenario. Asked by the *Melbourne Age* if he believed interrogators should be able to legally torture an innocent person to death if they had evidence the person knew about a major public threat, such as the September 11 attacks, Bagaric replied: “Yes, you could.”

Torture is permissible and indeed necessary, Bagaric insisted in a summary of the paper published in the *Age*, “where the evidence suggests that this is the only means, due to the immediacy of the situation, to save the life of an innocent person.” Even if the individual tortured were killed and later proven innocent, or even if the threat of harm turned out to be false (e.g. the “terrorist’s” gun was not loaded), torture still would have been justified because “we must decide on the best evidence at the time”.

But who comprises the “we” which would make such a decision? It would be the same governments, military and intelligence chiefs who insisted that Iraq had to be invaded because “on the best evidence” Saddam Hussein possessed “weapons of mass destruction” and was poised to unleash them on the world’s population. Bush and his leading associates, Dick Cheney, Donald Rumsfeld and Colin Powell, claimed there was no room for doubt. CIA head George Tenet said it was a “slam dunk”. Knowing that the invasion was illegal, British Prime Minister Tony Blair sought to create support for the war by citing intelligence reports that Baghdad could strike the British people within 45 minutes.

Lie after lie was concocted, echoed by the other direct participant in the invasion, Australian Prime Minister John Howard, who orchestrated similar “ticking bomb” reports from his Office of National Assessments. Every one of the fabrications has since been proven false and tens of thousands of innocent people—Iraqi citizens and coalition soldiers—have died as a result.

Bagaric asserted that “we” must authorise torture and argued that the interests of “society” must be paramount, not those of “wrongdoers”. “Society,” however, does not make the decision. Rather, government ministers, security chiefs, intelligence officers and other state officials would become the judges, juries and possibly executioners of “suspects” they considered to be in possession of relevant information.

While purporting to speak for “society”, Bagaric and Clarke are agitating for virtually unlimited power for the state to brutalise members of society, up to and including death. According to Bagaric, in his *Age* interview, “you would start with a minimum degree of harm and, if that didn’t work, escalate it.” By this logic, a well-trained torturer, confronted by failure in extracting information from an innocent person, must not cease short of death.

Bagaric, a former police officer, even volunteered his preferred method of torture. Inserting needles under the fingernails of prisoners would cause them extreme pain without leaving permanent scars, he advised. But why stop there? Why not go back to the rack and thumbscrew of the Catholic Inquisition and the English Star Chamber?

According to a recent Amnesty International survey, the techniques currently employed by various governments include “beating, whipping, burning, rape, suspension upside down, submersion into water almost to the point of suffocation, and electric torture with shocks of high voltage on various parts of the body, very often on the genitals.”

Alternatively, torture “can be psychological, including threats, deceit, humiliation, insults, sleep deprivation, blindfolding, isolation, mock executions, witnessing torture of others (including one’s own family), being forced to torture or kill others, and the withholding of medication or personal items.”

There have been centuries of political and social struggles to stop such barbaric methods being utilised by the state. Demands for strict limits on the powers of the formerly monarchical and absolutist state were at the centre of the great bourgeois revolutions in England in the seventeenth century and France and the United States in the eighteenth century. The struggle against such methods formed the basis of the liberal doctrines, based on the rights of the individual, associated with the rise of the bourgeoisie.

But after the horrors of the first decades of the twentieth century—two world wars, fascism, mass unemployment and depression—the claims of bourgeois liberalism to represent progress were looking somewhat tattered. Confronted with a widespread hostility to capitalism, and the belief that fascism and its horrors were its ultimate product, bourgeois politicians were anxious to issue assurances that such barbarities, including torture, could “never happen again”.

Article 5 of the Universal Declaration of Human Rights, adopted in 1949, provides that “no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was written in 1975 and eventually came into force in 1987, amplified this prohibition, specifying that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or other public emergency, may be invoked as a justification of torture”.

Scores of torture survivors, academics, students, lawyers and ordinary people have come forward to voice dismay and disgust at the utterances of Bagaric and Clarke. One caller to Australian Broadcasting Corporation radio, for example, wondered if the next suggestion would be to torture children in front of their parents to induce “confessions”.

Academic and official responses, however, while condemning the Deakin pair, have tended to legitimise their call as a contribution to a “debate”. Writing in the *Sydney Morning Herald*, law lecturer Ben Saul stated: “Discussion on torture should not be taboo, but arguments for it must withstand scrutiny.” Immigration Minister Amanda Vanstone reiterated the Howard government’s official rejection of torture, yet rejected calls for Bagaric to be dismissed as a part-time member of the government’s Refugee Review and Migration Review tribunals, whose assigned tasks include assessing visa applicants’ claims to have fled torture.

For his part, Bagaric expressed surprise at the storm of criticism, then added: “I’m happy we’re having the debate.” With few exceptions, none of the commentators who have entered this supposed “debate” have asked the key questions: Why has torture been placed back on the political agenda? Who is responsible for the practice re-surfacing internationally? What are the connections between torture and the “war on terror”?

Perversely, Bagaric and Clarke argue that because international covenants are now being widely violated, humanity would be better served by lifting the exception-less ban and regulating the practice of

torture. They cite a 2003 Amnesty International report, which found cases of torture and ill-treatment in 132 countries.

A recent Amnesty survey presented even more shocking statistics. Of 195 countries and territories surveyed, “there were reports of torture or ill-treatment by state officials in more than 150 countries. In more than 70, they were widespread or persistent. In more than 80 countries, people reportedly died as a result.” Given the official suppression of information about torture, these figures almost certainly underestimate the true picture.

Amnesty states: “People may be tortured because they are activists for human rights, labour rights, or any other cause, because they are family members of these activists, or because of their identity (ethnicity, gender, sexual identity, etc). Quite often they are criminal suspects or prisoners. People may also be tortured at random if the state or an opposition group is trying to create a climate of terror in a population—even if the torturers do not consider this person ‘guilty’ for any reason.”

Whatever the precise political purposes of various ruling elites, the lengthening lists of victims and offending states cannot be separated from the “war on terrorism” proclaimed by Washington and its allies, and taken up by one regime after another as a pretext for repression. In the first place, there is mounting evidence of a wide-ranging US program to illegally “render” prisoners to be tortured in countries such as Egypt, Afghanistan and Uzbekistan. Amnesty has documented 30 individual cases, but press reports suggest the total may be 150 or more.

More fundamentally, the push to rehabilitate torture is part of a wider trampling over of international law by the US and its partners. Above all, the Bush doctrine of “preemptive intervention” and the illegal invasion of Iraq, violate the rule, enshrined in the Nuremberg trials, against unprovoked aggression. Torture goes hand in glove with the Bush administration’s flouting of the Geneva Conventions by arbitrarily designating Guantánamo Bay prisoners as “illegal combatants” and its approval of “interrogation techniques” such as hooding, use of dogs and “mild, non-injurious physical contact”.

Some of the academic critics of Bagaric and Clarke have pointed to the notorious unreliability of information obtained by torture. People subjected to unbearable pain are liable to say anything, whether it is to “confess” crimes or falsely accuse others of involvement. But as one *Age* columnist, Jeff Sparrow, aptly observed, this misses the point about the real function of torture:

“The ritualised abuses of Abu Ghraib represent the reality of torture far more accurately than Bagaric and Clarke’s fantasies. Lynndie England and Charles Graner brutalised those under their watch not with any direct intention of gaining information but to humiliate and terrify the prison population and, beyond it, the people of Iraq.

“The Abu Ghraib guards understood, even without a Deakin law degree, that the agonies inflicted in the punishment cells are not directed solely, or even primarily, at the person stretched on the table. Torture targets society itself. It degrades the social body as much as the victim’s body. The torturer, with his or her ability to hurt a prisoner at will, demonstrates to them an unconstrained power, a concept fundamentally at odds with any civilised judicial code.”

It must be stressed, however, that those directing the operations at Abu Ghraib were not the handful of low-level soldiers, like Graner and England, who have since been convicted as convenient Pentagon scapegoats, but the occupants of the highest offices in Washington.

Nor is it coincidental that Bagaric has been serving on the Howard government’s immigration and refugee tribunals. As the recent revelations of unlawful imprisonment, denial of medical and psychiatric treatment and wrongful deportation involving Cornelia Rau, Vivian Alvarez and many others have highlighted, Australia’s mandatory detention of asylum seekers requires the systemic dehumanisation and stripping of all legal rights from one of society’s most vulnerable layers.

Significantly, Bagaric and Clarke extol the virtues of German police

who used torture in a domestic kidnapping case, even though, as it happened, the victim intended to be saved was already dead. By implication, torture would have sweeping domestic applications. Handing state police forces the power to torment and assault prisoners would provide the ultimate weapon in the vast array of police powers created over the past two decades of escalating “law and order”.

From the summary of Bagaric and Clarke’s paper published in the *Age* it is clear that their aim is wider than simply the rehabilitation of torture. They demand the “serious ethical rewiring” of society to eradicate the very notion that any absolute democratic or human rights exist. They denounce opponents of torture for exhibiting the “absolutist and short-sighted rhetoric that lies at the core of many distorted moral judgments that we as a community continue to make”.

Such is the police-state ideology cultivated by the global eruption of American militarism and the accompanying assault on democratic norms, which are in turn driven by the deepening economic and social tensions of US and global capitalism. It is another striking measure of the advanced decay of parliamentary democratic forms of rule, under these pressures.



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