

Britain's law lords reject use of torture evidence

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Evidence that may have been obtained by torture cannot be used against terror suspects in UK courts, the law lords ruled on December 8.

The ruling by Britain's highest court relates to eight men, most of whom were detained in December 2001 in high-security prisons under the Anti-Terrorism, Crime and Security Act. This law allowed indefinite detention of foreign nationals without charge. The identities of most of the eight—a Palestinian, five Algerians, a Tunisian and an Egyptian—are unknown. Some are still being held in detention pending deportation, whilst others have been released on bail, subject to severely restrictive "control orders."

Human rights groups and much of the media hailed the ruling as a major victory in the struggle to uphold civil liberties and a significant defeat for the Labour government of Prime Minister Tony Blair.

The law lords' unanimous verdict was certainly damning of the government. Lord Bingham, the former lord chief justice, who headed the seven-member panel, said: "The issue is one of constitutional principle, whether evidence obtained by torturing another human being may lawfully be admitted against a party to proceedings in a British court, irrespective of where, or by whom, or on whose authority the torture was inflicted.

"To that question I would give a very clear negative answer."

English law had abhorred "torture and its fruits" for more than 500 years, he continued. Referring to the fact that the men had been held without being informed of the evidence against them, Bingham said it was "inconsistent with the most rudimentary notions of fairness to blindfold a man and then impose a standard which only the sighted could hope to meet."

Several of the judges referred directly to US practices in Guantánamo Bay. Lord Hoffman stated that the use of torture "corrupts and degrades the state which uses it and the legal system which accepts it.... In our own century, many people in the United States have felt their country dishonoured by its use of torture outside its jurisdiction and its practice of extra-legal 'rendition' of suspects to countries where they would be tortured."

Lord Hope concurred. Describing torture as "one of the most evil practices known to man," he said that the methods employed at the Cuban base "would shock the conscience if they were ever to be authorised for use in our own country."

"Torture is not acceptable," said Lord Nicholls. "This is a bedrock moral principle in this country. For centuries the common law has set its face against torture."

However, it would be wrong to believe that the decision will lead to any rethink on the part of the government, or to place any confidence in the ability of the judiciary to prevent a descent into criminality by both government and the state.

An examination of events leading up to the ruling paints a devastating picture of the government's indifference to basic democratic norms. Amnesty International declared, "It is deplorable that the UK government had to be taken to court over this. Over the last two-and-a-half years, the authorities have shamefully sought to defend the indefensible."

The *Times* leader of December 9 also noted that the very fact the lords had been forced to rule against the use of evidence obtained through torture "suggests that courts already accept 'confessions' obtained by the use of electrodes or that the government is pushing for a relaxation of the rules so that terrorists can be convicted more easily....

"What is strange is the apparent need now for this basic principle of justice to be reaffirmed. So fraught has been the attempt to find a legal response to terrorism, so urgent the need to reinforce national security and so ambivalent the language of some politicians that a perception has arisen that somehow torture has become 'acceptable' in the fight against terrorism. It has not."

This is not a matter of perception. There is a mountain of evidence that Britain has directly collaborated with, and benefited from, the use of torture by the US and a network of allied states.

The law lords' ruling was made necessary because the government was not satisfied with secretly utilising such techniques to extract evidence. It wanted evidence obtained through torture to be accepted as the basis for convictions under British law.

This desire was part and parcel of the pseudo-legal machinery established on the pretext of combating terrorism. The detainees were imprisoned under government order without any public trial or explanation of the charges against them.

In October 2003, their detention was upheld by the Special Immigration Appeals Commission (SIAC), which meets in secret to review terrorist-related cases. The SIAC has no obligation to reveal to either the defendants or their lawyers the evidence on which prisoners are held.

Lawyers for those detained challenged their detention without trial and also argued that some of the evidence against them had been obtained through torture. The SIAC, with the support of the government, continued to argue for their detention without trial,

and for its right to use evidence extracted through torture.

In August 2004, in an extraordinary verdict that broke all legal precedents, an appeals court upheld the continued detention of the defendants and ruled that torture evidence could be used in a British court so long as the state itself had not “procured” it or “connived” at it.

That ruling was challenged before the law lords in December 2004, which ruled that detention without trial was unlawful.

The government responded by introducing “control orders,” a form of house arrest that prevents any form of contact not explicitly authorised by the state, and continued its offensive against democratic rights by pushing through a new Terrorism Bill.

Lawyers for the detainees then focussed on challenging the appeals court’s decision permitting the use of torture evidence, forcing the government to seek a ruling on the issue by the House of Lords. Once again, the government demanded the right to use torture evidence, and did so with the support of the security services. The director general of MI5, Eliza Manningham-Buller, argued before the lords that evidence obtained from foreign security services was vital to the war on terror and could not be jeopardised by asking questions as to the means employed to achieve it.

The lords’ decision rejects this argument, but this will not deter the government. Home Secretary Charles Clarke responded to the verdict by stating that it would “have no bearing on the government’s efforts to combat terrorism” and would not affect those detainees currently being held without trial. Home Office minister Tony McNulty said the government could only establish “as far as we possibly can” that evidence had not been gathered under torture.

Gareth Peirce, the solicitor representing the detainees, said such statements “strengthen our view the government will even now go to any lengths to avoid the implications of the judgment.” This view is confirmed by the political events unfolding even as the lords made their ruling.

It has already been established that Britain was complicit in the detention and torture of its own citizens by the US at Guantánamo Bay. When this arrangement proved impossible to maintain, the Bush administration responded by escalating its policy of renditions—transferring detainees overseas to CIA facilities or those run by foreign governments that are known to practice torture.

Records show that Britain was second only to Germany as a stopover for the CIA rendition flights. More than 210 CIA flights have landed in the UK since 9/11, involving at least 12 airports in England and Scotland. Responding to a question in Parliament on whether the US had requested permission for such landings, Foreign Secretary Jack Straw claimed that there was no record of “such flights through United Kingdom territory.”

Deniability has become the government’s standard means of defence when challenged on its breaches of international law. And the law lords’ ruling enables the government to employ this device in order to continue the use of torture evidence—largely extracted through the renditions programme.

The law lords stated that where there is a probability that

evidence was obtained through torture it must be excluded from court. But in a four-to-three judgement, they accepted that where this was only a possibility and had not been proven, national security dictated that such evidence be admissible. Additionally, they accepted that the operational use of torture evidence by the police and security services was entirely legitimate.

This is not so much a loophole for abuse as an open door. The SIAC has no obligation to make public the evidence that forms the basis for detention. The lords’ ruling therefore leaves it to the SIAC to determine whether torture has occurred.

The Blair government, like its co-conspirator in Washington, cannot abandon its resort to authoritarian and undemocratic measures. These practices flow inexorably from a political agenda shaped by the interests of an international financial oligarchy whose privileges and wealth depend upon the impoverishment of the mass of the population.

On a global scale, it is the drive by this elite and its political representatives such as Blair and Bush to seize control of vital resources and markets that has plunged the world into a renewed period of colonial wars of subjugation. Domestically, these same concerns demand the destruction of social programmes and welfare provision and the elimination of all restraints on the accumulation of personal wealth.

There is no possibility of imposing this agenda by democratic means. Socially criminal aims demand politically criminal methods. And the layers to whom Blair is answerable have no compunction against a resort to illegality. They would view any retreat by the government in the face of popular oppositional sentiment as an unpardonable sign of weakness.

The lords’ ruling articulates the fear that the government’s reckless disregard for legal principles is destabilising social and political relations and undermining the democratic legitimacy of the British state. There is a genuine element of shock at the power that has been accrued by what amounts to a global plutocracy and the readiness of the Blair government to do its bidding, whilst seemingly oblivious to the long-term political consequences.

But disputes within ruling circles will not lead to a renewal of democracy, as has been claimed by much of the media in the wake of the lords’ ruling. Such tensions are only a pale reflection of more fundamental social conflicts that are driving the bourgeoisie as a whole in the direction of dictatorship.

The defence of civil liberties cannot be entrusted to any section of the bourgeoisie. The unprecedented and widening gulf between the wealthy few and the majority, who face worsening economic insecurity and hardship, is paving the way for explosive class struggles. The fate of democracy is bound up with the development of an independent socialist movement of the working class that sets out to replace the profit system, which is the source of social inequality, militarism and war.



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