

# JustComment

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## No more Torture

**Torture – the intentional infliction** of severe mental or physical pain or suffering – is a violation of the most basic of all human rights.

**Robert Alan**

*Open your newspaper – any day of the week – and you will find a report from somewhere in the world of someone being imprisoned, tortured or executed because his opinions or religion are unacceptable to his government.*

**Peter Benenson, founder of Amnesty International**

There is nothing new about torture. It has always occurred either directly or by proxy, but the unthinkable becomes possible during times of crisis or fear. On April 28 2004, a CBS television revealed the nature and scale of abuse being inflicted upon Iraqi prisoners. The more notorious photographs showed a prisoner standing on a box with his head covered and wires attached to his fingers, and another showed a female soldier, Lynndie (Lindy) England, holding a leash tied to the neck of a naked man on the floor.<sup>1</sup> Recently some members of the American Psychological Association attempted to justify the practice of torture and fought against any moves to impose restrictions on the treatment of prisoners. whilst in contrast, the American Medical Association and the American Psychiatric Association have barred their members from participating in interrogations.<sup>2</sup>

According to Professor George Williams,<sup>3</sup> the policies pursued by the Bush Administration, mean that, 'We're now in a position where the use of torture is more acceptable than it was before 9/11.'<sup>4</sup>

The Bush Administration overrode morality and made methods of torture 'common'. To give itself the 'flexibility' to use methods defined as torture it

covertly redefined torture as 'extreme acts' which resulted in 'death or organ failure'.<sup>5</sup>

*The degree of civilization in a society can be judged by entering its prisons.*

**Fyodor Dostoyevsky**

### A different world

The September 11 2001 attacks in New York, Washington and Philadelphia, and the terrorist attacks in London, Madrid and Bali were followed by policies designed to change the balance between

rebalancing of human rights and security, leading to suggestions that effectively changing 'the rules of the game' have changed. Breaches of international rule of law occasioned by terrorism and its targeting of civilians have been used by states to justify further violations and further disregard for the international rule of law.<sup>6</sup>

Philippe Sands suggests that disregard of rules by key states in dealing with new realities of the 21st century are a greater challenge to international rule of law than international terrorism. Can torture ever be justified to obtain information in face of a terrorist attack? Or to detain people indefinitely without rights? May the rule of law be subordinated to concerns such as national security?<sup>7</sup>

Though prohibited by international law and recognised as inhumane, torture continues to be widespread [practised in 132 countries involving security forces, police, or other state authorities] and justified in many forms that individuals, groups and governments continue to justify.<sup>8,9</sup> Some methods have been



given their own names.<sup>10,11</sup>

*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*

**United Nations Convention against Torture**

In 1975 the United Nations (UN) General Assembly unanimously approved the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment where member nations agreed to eliminate torture.<sup>12</sup> It was agreed that exceptional events, situations, or factors would not provide an exception to the prohibition against torture.<sup>13</sup>

### Women and torture

As well as physical torture, there are also psychological aspects and consequences particularly when a person has become a party to the torture of family or friends;

receives false information about the torture, death, or betrayal of loved ones; experiences a mock execution; is told that he or she is forgotten or that no one cares for them; is told that, if they survive, no one will believe them; appears to be an active participant in torture by being forced to choose which family member, friend or fellow prisoner should be tortured or put to death; or is made to use torture devices on another or oneself.

According to Amnesty International the 'hidden scandal' is the torture of children which receives very little attention. The torture of women has also been denied or discounted, not to mention the risks and costs – sometimes fatal – of seeking asylum or speaking about their torture. However, there is growing recognition of how women are targeted for torture. Rape and other forms of sexual violence were ignored (as rare events), discounted (as of little importance or consequence), or dismissed (as false memories) and the rape of prisoners of war, people in police custody or jail, abductions or 'disappearances' were often dismissed. As refugees, women [and children] may face special risks and hardships such as lack of food, clothing, shelter or other resources as well as lack of familiarity with the country's language, customs, and laws. Such circumstances may leave them vulnerable to sexual demands (in exchange for survival) and to attack.<sup>14</sup>

## The Rule of law

The rules of international law were abandoned by the Bush Administration when it waged an illegal war against Iraq; when it created legal black holes in Guantánamo and elsewhere; when it denied detainees the rights under common Article Three of the Geneva conventions; when it ignored the constraints of the 1984 convention on the prohibition of torture; and, when it pursued a policy of extraordinary rendition beyond the norms or procedures of international law.<sup>15</sup>

Such actions have spurred other states

to flout international law to further curtail human rights and outlaw political dissent.<sup>16</sup>

## Effectiveness of torture

The effectiveness of torture in eliciting information is much debated. The implied argument is that the ends, i.e. good information, saving lives, etc. justifies the means.

One case that is often cited is that of the 'ticking bomb'. This scenario has been used by supporters of torture and even some opponents if they believe it will save lives. Careful analysis of the effectiveness of torture allows for the possibility of its success in rare instances, but in most cases security agencies have not provided adequate documentation of success. More importantly, the historical accounts, psychological studies, and case analyses of the failures and problems with coercive interrogation are legion.<sup>17</sup> CIA and FBI reports also point out the problems of inaccurate recollection and false confessions. The use of torture in Algiers, Northern Ireland and Israel did not and have not produced desired political results.

There is also evidence that torture methods have created terrorists<sup>18</sup> thus putting at risk service personnel, who are protected by Geneva Conventions against mistreatment in the event of their capture. There is no evidence to justify torture on the basis of its effectiveness in eliciting information. The evidence actually suggests that a person under torture will offer any information that is sought by the perpetrator in order to have the torture cease. It is useful to remember that the perpetrator is also demeaned by failing to value the human dignity and sanctity of the person – not to mention usurping the moral authority of the state.<sup>19</sup>

'Do whatever it takes,' basically means that the inchoate fears and primal emotions of the people should override morality and law. This widely shared attitude is like a dormant virus: It may appear to be harmless now, but it

could come to life at any time.<sup>20</sup>

However, we must ask: who calls to account those countries that tender or outsource<sup>21</sup> for torture? Those interrogators abroad also practice on their own citizens, e.g., Egypt. Instruments of torture are made in factories but little information exists as to where these exist. Torture is tendered out or outsourced to obliging nations that offer these services without transparency which allows us to believe that we are more civilised. We can claim ignorance of those cells where screams pierce the darkness. It works for all sides in this conspiracy and mutuality in evil.<sup>22</sup> During the apartheid era in South Africa, there were willing black operators and the transatlantic slave trade depended on black suppliers.

Powerful people in Washington think it is a crazy-leftist-fringe position to think the intellectual authors of a torture regime should be investigated and prosecuted. Recent polling suggests at least 50% of the American population favours an independent investigation or criminal prosecution of members of the Bush administration for torture. Half is not fringe. Maybe they say this because they're scared, and well they should be.<sup>23</sup>

## Conclusion

The absolute injunction against torture remains as unjustifiable means to whatever the end, including avoiding further terror attacks. If we fail to uphold that principle 'precious all is lost and there can be nothing left for any of us to live and die for'.<sup>24</sup>

## Suggested action

Urge the Australian government to support investigations into allegations of torture, by the Bush or any other administration. To call for wider ratification of Convention Against Torture<sup>25</sup>, and to call for a report to be made to the Human Rights Council on the RC on the observance of the Convention Against Torture.

*Full set of references are on the ERC website*



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