

Torture forum May 2017

Why, in the 21st century, are efforts being made to re-legitimise torture?

In response to the public revulsion generated by the atrocities committed in two world wars during the first half of the twentieth century, governments eventually agreed, via an international convention, to unconditionally outlaw the use of torture.

Yet this grotesque and inhuman practice is again being publicly canvassed.

In an interview with America's ABC News in January, just days after he was inaugurated, President Donald Trump enthusiastically endorsed waterboarding in interrogating prisoners, and said he would consider seeking to repeal the current legal ban on torture if his top national security officials recommended it.

"If they don't want to do [torture], that's fine. If they do wanna do, then I will work toward that end."

Asked by David Muir of ABC whether he personally advocated waterboarding, Trump replied, "But do I feel it works? Absolutely, I feel it works." He added, "I have spoken as recently as 24 hours ago with people at the highest level of intelligence and I asked them the question. 'Does it work? Does torture work'—and the answer was 'Yes, absolutely.'"

As is usual with arguments supporting torture, Trump argued there were exceptional circumstances. He declared that torture was required in order to match the brutality of Islamic State. "When they're chopping off the heads of people because they happen to be a Christian in the Middle East," he said, "when ISIS is doing things that nobody has ever heard of since medieval times, would I feel strongly about waterboarding? As far as I'm concerned, we have to fight fire with fire."

Similar arguments were used to justify torture by US personnel at Iraq's Abu Ghraib prison after the 9/11 terrorist attacks.

Trump's interview was conducted the same day that the *Washington Post* made public a draft memorandum discussing the

possible reopening of CIA secret prisons overseas, where individuals seized by the US military-intelligence apparatus were taken to be tortured.

The order would reinstate a version of the program approved by George W. Bush which included “rendition,” the kidnapping of “terrorist” suspects and their transfer to third countries willing to host a CIA torture center.

The most notorious such “black sites” were in Poland, Romania and on the British possession of Diego Garcia, an isolated island in the Indian Ocean.

As many as 54 countries were involved in the program, counting those that permitted CIA-chartered planes to refuel and overfly as they transported prisoners to the torture centers.

In some cases, as with the military dictatorship in Egypt, the CIA contracted out the abuse of prisoners to local government torturers, who worked in collaboration with the agency.

What is torture?

Under Article 1.1 of the United Nations Torture Convention of 1984, torture is: "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ..."

Despite this ban, according to a 2005 Amnesty International survey, the techniques actually 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.”

By advocating such measures, the Trump White House is taking their practice to a qualitatively more reactionary and menacing

level. George W. Bush came close to an open defence of torture, but never celebrated it as openly as Trump.

Barack Obama publicly disavowed torture, yet insisted the country had to “look forward, not backward.” This was a euphemism for shielding the torturers and their Bush administration superiors from prosecution, based on the understanding that their methods might be needed again.

Trump’s administration has continued the effort by Obama to suppress the Senate Intelligence Committee report on CIA torture, which has never been made public, just a 600-page executive summary released in December 2014.

According to the heavily redacted summary, prisoners were forced to stand chained to a wall for up to 17 days, sometimes on broken limbs; deprived of sleep for more than a week; threatened with death and “mock burials;” placed in “ice water baths” to the point of hypothermia and death; subjected to repeated near-drowning in a practice euphemistically called “waterboarding;” reduced through repeated beatings to cowering and submission; and on and on.

There have been centuries of political and social struggles to stop such barbaric methods being utilised by the state and religious institutions. Demands for strict limits on the powers of the formerly monarchical and absolutist state were at the centre of the great revolutions in England in the seventeenth century and France and the United States in the eighteenth century.

One of the most notorious cases was that of Galileo, the famous scientist who maintained, on the basis of telescopic observations, that the earth rotated around the sun, not the other way around.

Why was Galileo threatened with torture by the Pope?

Precisely because his scientific conclusions represented a challenge to the authority and power of the church and state. In the end, the ageing scientist was not tortured. But he was shown the instruments of torture and that was reportedly enough to convince him to recant his absolutely correct scientific observations, which were branded heresy.

For further centuries, torture remained an instrument of the

colonial authorities, not least those of the British Empire. Karl Marx reported in the *New-York Tribune* in 1857 of the evidence of the official use of torture in British India.

Marx concluded: “In view of such facts, dispassionate and thoughtful men may perhaps be led to ask whether a people are not justified in attempting to expel the foreign conquerors who have so abused their subjects.”

Then came the horrors of the first decades of the twentieth century—two world wars, fascism, mass unemployment and depression. Confronted with a widespread hostility to capitalism, and fearing social revolution, capitalist 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, which was written in 1975 and eventually came into force in 1987, amplified this prohibition.

It specified 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”.

Despite this, claims are always made for exceptional circumstances, such as the alleged need to match the atrocities of ISIS.

This push is not confined to the United States.

In a widely-publicised call in 2005, two Australian academics championed the “morality” of torture and advocated its legalisation for use by governments and their security agencies. The *University of San Francisco Law Review* published a paper, entitled “Not Enough Official Torture in the World? The Circumstances in Which Torture Is Morally Justifiable” 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 did not simply defend the use of torture. They positively embraced 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 insisted, governments must have the power to inflict “all forms of harm” on suspects, including “annihilation”.

This is another chilling demonstration of the official climate generated by the “war on terrorism.”

Along with the extinguishment of the basic rights of asylum seekers and escalating “law and order” measures, no democratic right is safe—not even the fundamental right not to be physically or mentally tortured by those in power.

Bagaric and Clarke were not the first to argue for overturning the absolute prohibition on torture codified in international law. By publishing in an American journal, they entered into a “debate” that was already underway 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.

In the White House, President George W Bush’s counsel, Alberto Gonzales (later 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 invoked the now familiar “ticking bomb” scenario. Asked by the *Melbourne Age* if 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,

“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, torture still would have been justified because “we must decide on the best evidence at the time”.

But who comprises the “we” who 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. Knowing that the invasion was illegal, British Prime Minister Tony Blair sought to create support for the war by citing lying 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 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?

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 this misses the point about the real function of torture.

It is to brutalise, dehumanise and terrorise, not just the individuals tortured, but their families and loved ones, entire communities and whole societies. It is to intimidate, silence and suppress all resistance and opposition to the dictates of the prevailing authorities. It degrades society as much as the victim. It demonstrates an unconstrained power, operating with impunity.

Torture, both physical and mental, seeks to crush people psychologically and indeed break the human spirit. Leon Trotsky, writing in 1936 of the false confessions extracted by the Stalinist regime in the Soviet Union from leaders of the 1917 Russian Revolution who were then executed via the Moscow show trials: “The torture of calumny, of uncertainty, and of terror destroys the nervous system of the accused just as surely as physical torture.”

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 US doctrine of “preemptive intervention” and the illegal invasion of Iraq, violate the rule, enshrined in the Nuremberg trials, against unprovoked aggression.

Torture also has 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 four decades of escalating “law and order”.

Bagaric and Clarke’s aim was wider than the rehabilitation of torture. They demanded the “serious ethical rewiring” of society to eradicate the very notion that any absolute democratic or human rights exist. Invoking the tradition of utilitarianism, they denounced 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.

That is why it is necessary to speak up and insist: No to torture, not under any circumstances. And why it is necessary to overturn the political and economic order that is responsible for the revival of torture.