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# Torture is inhuman, illegal and futile

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## **The Deakin academics' case for torture fails morally and practically, write Sarah Joseph and Marius Smith.**

Despite the ban on torture in international law and the domestic laws of almost every country, the "war on terror" has tempted many people to argue that it as an effective and justified method of combating terrorism.

In a paper to be published by the University of San Francisco Law Review, Professor Mirko Bagaric and Julie Clarke of Deakin University make unfounded assumptions about the usefulness of torture and fail to consider how damaging its legitimisation would be to society.

Bagaric and Clarke's argument is based on the premise of the "ticking bomb terrorist" - a person in custody who knows beyond a shadow of a doubt where, when and how a terrorist attack is about to occur. In this situation, they argue, it is justified to torture the person to prevent the attack.

There is an assumption in the Bagaric/Clarke view that torture is an effective means of getting information in such a situation, but the consequences of torture are extremely unpredictable. Suspects may pass out or die, a useless result. False information is routinely given because the victim simply wants the pain to end. The torturer also has no reference point for when he or she should stop. How can one know when the victim has told the whole truth?

In many circumstances, information cannot be quickly verified. How long might it take, for instance, to verify the assertion that a bomb has been planted in the concrete pylon of a grandstand, as was the case in 2004 when terrorists attempted to assassinate the president of Chechnya? Should authorities continue torturing the "wrongdoer" during the hours or days that it takes to complete the verification? In any case, that time period takes us outside the ticking bomb scenario.

In reality, it is unlikely that a case would arise where authorities know they have in custody the person who has information about a ticking time-bomb. Even if this did occur, terrorists work in cells and may well change plans on an associate's capture.

Furthermore, seemingly incontrovertible evidence can prove to be false: for two weeks during investigations last year into the Madrid train bombings, the FBI mistakenly thought it had found the fingerprint of an American lawyer, Brandon Mayfield, on evidence linked to the terrorists.

Suppose the fingerprint had been found on a set of plans before the bombing. It would have been difficult to convince interrogators that Mr Mayfield was not a "wrongdoer" and therefore a legitimate target of torture. This would not only have resulted in the torture of an innocent man, but likely diverted resources away from other avenues of investigation.

The legalisation of torture would have an effect on wider society by necessitating the establishment of a

torture infrastructure. The most obvious aspect of this is that people would have to be trained to be torturers.

In countries such as Uruguay, Zimbabwe and Greece, this involved encouraging trainees to dehumanise certain suspected groups of people before torture commenced.

Studies have shown that torturers often end up with serious psychological problems and develop drug and alcohol addictions. This has predictable knock-on effects for their families.

These perils would extend to judges, lawyers and medical staff, who would be needed to approve torture warrants and tend to victims. Medical personnel would have to treat tortured victims and advise torturers of how much more pain a victim could withstand. This has been a feature of torture systems worldwide.

In stating (*The Age*, 17/5) that "it is verging on moral indecency to prefer the interests of the wrongdoer" rather than using torture to save an innocent person, Bagaric verges on the extraordinary claim that it is sometimes immoral not to torture. One cannot seriously advocate that torture, or complicity in torture, should become a job for people.

And what works for one side works for both. Is Bagaric comfortable with Douglas Wood being tortured by his captors if they genuinely believe that his torture would save lives by prompting a military withdrawal?

Legalising torture in order to bring its use above the "radar of accountability" would inevitably result in more torture, not less. Personnel who are trained to use prohibited techniques would believe those techniques useful in a range of situations that, while dangerous or important, would not be life-threatening. There is simply no reason to believe that legalising torture in certain circumstances would prevent its use beyond those circumstances.

The arguments of Bagaric and Clarke are legally and morally wrong, and they fail their own test of "greatest good for the greatest number". Torture is not reliable and the effects it would have on its victims and on segments of society would be catastrophic.

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