A NOTE ON PSYCHOANALYSIS AND THE CRIME OF TORTURE

*Justin Clemens and Russell Grigg**

'All questioning is a forcible intrusion. When used as an instrument of power it is like a knife cutting into the flesh of the victim. The questioner knows what there is to find, but he wants to touch it and bring it to light. He sets to work on the internal organs with the sureness of a surgeon. But he is a special kind of surgeon, one who keeps his victim alive in order to find out more about him, and, instead of anaesthetizing, deliberately stimulates pain in certain organs in order to find out what he wants to know about the rest of the body.' — Elias Canetti¹

'Torture is senseless violence, born in fear. The purpose of torture is not only the extortion of confessions, of betrayal: the victim must disgrace himself, by his screams and his submissions, like a human animal.' — Jean-Paul Sartre²

1. TORTURE AND CRIME

Let's be clear.³ Torture is an international crime under all circumstances. Countries in which torture is sanctioned are considered states that violate human rights — to the extent that they

* Justin Clemens teaches in psychoanalytic studies at Deakin University. He is a member of the Lacan Circle of Melbourne, and has published extensively on psychoanalysis and philosophy. Russell Grigg is a member of the Lacan Circle of Melbourne, the Ecole de la Cause freudienne and the New Lacanian School. He lives in Melbourne where he practices psychoanalysis and teaches philosophy and psychoanalytic studies at Deakin University. He is the translator of Lacan's *Seminar XVII, The Other Side of Psychoanalysis* (Norton, 2005). Mailing address: Faculty of Arts, Deakin University, Burwood Highway, Burwood VIC, 3125.

¹ Canetti Elias *Crowds and Power* Stewart Carol (trans) Farrar, Straus and Giroux 1984 p 284.

² Sartre Jean-Paul 'Preface' Alleg Henri *The Question* Calder John (trans) Braziller New York 1958 p 23.

³ This article originated in a forum on 'The Crime of Torture' organised by the Psychoanalytic Studies program at Deakin University, and held 25 June 2005 at the Immigration Museum in Melbourne, the day preceding the International Day for Torture Victims. Speakers included politicians, lawyers, civil rights activists, philosophers, sociologists, mental health and other professionals working with the victims of torture: Lindsay Tanner, Patrick McGorry, Robert Sparrow, Paris Aristotle, Brian Walters, Marius Smith, Stan van Hooft, Geoff Boucher, Matthew Sharpe, Lynne Alice, Ian Weeks, Les Thomas and Max Charlesworth. The presentation dealt with a variety of issues thrown up by the recent revivification of the alleged 'goods of torture.' Political, psychological, legal, philosophical and pragmatic questions were discussed in detail, from a number of professional and personal perspectives. We would also like to thank Juliet Rogers for her help and encouragement with this article, as well as our two anonymous referees, whose comments have enabled us to sharpen our points, clarify our language, and, in some cases, saved us from errors.

may well be vernacularly denominated 'criminal states.' Every country has a legal and moral obligation to prevent the use of torture. This includes prosecuting those who have engaged in torture or otherwise supported its practice, discouraging other states from the use of torture, and, if the acts have been committed outside their jurisdiction, to extradite the alleged perpetrator to a state that has such jurisdiction.

The prohibitions against torture are so foundational that the states which sanction it are sometimes pursued by a range of extra-legal measures, such as military intervention, economic sanctions, ideological or humanitarian exertions. If torture does not in itself provide adequate *legal* grounds for intervention by such extraordinary means, there is no question that evidence of torture provides one of the strongest possible public supports for such intervention. If torture is an individual criminal offence and not a state offence, the distinction has shown itself to be difficult to maintain, one of the places where the difference between strictly legal concerns and broader political ones is unavoidably blurred (for reasons we will examine below). There is no distinction between sins of omission and sins of commission where torture is concerned; to prevent the circumstances under which torture is carried out is a duty every bit as much as to desist from torture itself.

For a long time even to discuss publicly the possible uses of torture — under any circumstances whatsoever — has been close to unthinkable in Western states. Torture has been understood as archaic, ineffective, antidemocratic, a sign of barbarity and a falling away from the ideals of a civilised society. In the discussions leading up to the 1948 *Universal Declaration of Human Rights*, the strictures dealing with the prohibition of torture were accepted without any dissent. Article 7 of the 1966 *International Covenant on Civil and Political Rights* interdicts torture absolutely, as well as certain other 'cruel, inhuman or degrading' practices from which torture is often legally, conceptually and pragmatically distinguished. Unlike almost all other Articles of the Covenant, Article 7 is 'non-derogable,' that is, there are no circumstances, however extreme, under which its dictates might be circumvented or mitigated.⁴ If the UN *Convention against Torture* introduced in 1984 was not ratified by all democratic nations, many of these nations had led the way on promoting the letter and spirit of its articles. Moreover, the prohibition against torture is such that it is considered a norm of customary international law, binding even states that have not ratified the Convention. Human rights abuses, including the use of torture (e.g., in countries such as China and Iraq) have frequently been grounds for considering democratic countries as morally superior to non-democratic regimes. Moreover, when democratic states have themselves covertly resorted to torture, this has been publicly considered an assault on democratic values and grounds for pursuing those responsible.

Yet the prohibition against torture now appears not to be absolute. Today virtually all Western states endorse this absolute prohibition, even as — as official images and documents attest — some of them are prepared to entertain situations under which the prohibition is at best relative. The denial of human rights and the failure to seriously investigate allegations of torture in such places as Guantánamo Bay and Abu Ghraib suggest that torture may now not only be

⁴ As one of our anonymous referees added, this stricture also applies 'to some other articles in the ICCPR: art 4(2) lists the non-derogable provisions arts. 6, 7, 8(1) and (2), 11, 15, 16 and 18, and also non-discrimination art 4(1).'

considered acceptable under certain circumstances — but that it would almost be some kind of dereliction of duty *not to torture suspects*.⁵ It is clearly not a matter of a ‘few bad apples,’ as the Bush Administration claimed of torture allegations.⁶ The U.S. academic Alan Dershowitz has engaged in high-profile debates about torture, in which he has offered what he believes to be adequate justifications for its limited but official use as a security measure; he has recently been supported in an Australian context not only by other academics, but also by major legal, administrative and political figures.⁷ We believe that this tendency must be seriously resisted, not primarily on moral, but on psychological and political grounds.

2. TORTURE, DEMOCRACY AND FREE SPEECH

There is an unbreakable link between democracy and the prohibition of torture. This link is at once historical, political, and philosophical. Historically, the emergence of modern Western democracies in the eighteenth century was bound up with a concerted international struggle against the power of the sovereign to torture his subjects. Emblematic in this regard is a very famous incident from eighteenth-century France. Damiens, convicted of the attempted murder of Louis XV (with a small rusted penknife, mind), was publicly torn apart by horses after being mutilated, burned with sulphur, and disembowelled.⁸ In Michel Foucault’s reconstruction of the event, such spectacular torture had the function of exemplifying and legitimating the power of the king. Torture for the Ancien Régime was at once an indispensable epistemological tool, ritual observance, punishment, dissuasion and a show of justice — a sort of (negative) advertising campaign *pour encourager les autres*.⁹ Torture was essentially a *public* device, whether pursued in dungeons of interrogation where professional torturers would ply their trade and clerks would note every unavailing scream, or in the open execution grounds attended by large crowds.

Damiens’s horrific execution would barely have raised eyebrows even a few decades previously. Stephen Greenblatt memorably writes that Shakespeare’s London:

-
- ⁵ See Greenberg Karen J and Dratel Joshua L (eds) *The Torture Papers: the road to Abu Ghraib* Lewis Anthony (intro) Cambridge University Press New York 2005. For commentary, see Greenberg Karen J (ed) *The Torture Debate in America* Cambridge University Press Cambridge 2006; Harbury Jennifer K *Truth, Torture and the American Way* Goodman Amy (foreword) Beacon Press Boston 2005; Strasser Steven (ed) *The Abu Ghraib Investigations* Whitney Craig R. (intro) PublicAffairs 2004.
- ⁶ ‘When the Abu Ghraib photographs were released, President Bush, Secretary Donald Rumsfeld, and others initially condemned the abusive acts they depicted as the work of “a few bad apples,”’ Bowker David W ‘Unwise Counsel: The War on Terrorism and the Criminal Mistreatment of Detainees in U.S. Custody’ in Greenberg Karen J (ed) *The Torture Debate in America* Cambridge University Press Cambridge 2006 p 194.
- ⁷ See Dershowitz Alan ‘The US Military need not obey the Geneva Conventions when dealing with suspected terrorists’ in Head Tom (ed) *Is torture ever justified?* Greenhaven Press Detroit 2005; also ‘Tortured Reasoning’ in Greenberg Karen J (ed) *The Torture Debate in America* Cambridge University Press Cambridge 2006 pp 257–280.
- ⁸ The event was so horrific that even Sanson the chief executioner was incapable of discharging his duties, and offered 100 Louis to a subordinate to help with the job (i.e. plying the red-hot pincers).
- ⁹ See Foucault Michel *Discipline and Punish: The Birth of the Prison* Sheridan Alan (trans) Vintage New York 1979.

was a nonstop theater of punishments. Shakespeare had certainly witnessed corporal discipline before he came to London...but the frequency and ferocity of sentences meted out on public scaffolds at Tower Hill, Tyburn, and Smithfield; at Bridewell and the Marshalsea prisons; and at many other sites both within and outside the city walls would have been new. Almost daily he could have watched the state brand, cut, and kill those it deemed offenders.¹⁰

Yet only a few years later, in the turbulence that preceded the Civil War, England would ban torture, the first European state to do so. But what the rest of the seventeenth-century accepted, even craved and enjoyed, the eighteenth abominated. Many of the greatest political activists and intellectuals of the day weighed in. It is no accident that Voltaire, the century's most vocal advocate for free speech, also led the most energetic attacks against judicial torture.¹¹ Jeremy Bentham — despite the distortions inflicted on his work by over-enthusiastic commentators — clearly directed his attentions to minimizing physical coercion. If one cannot a priori exclude the possibility of torture for utilitarians, Bentham resists the temptation to support the use of physical violence for infractions, and indeed becomes a brilliant designer of institutions that encourage non-violent responses to criminal acts.¹²

Despite their brevity, the above remarks can serve to clarify some of the confusions surrounding 'torture.' Certainly, what 'torture' is, its function, regulation, and value change over time. For example, the uses of torture have included: torture as an 'information-gathering device'; torture as punishment; torture as a tool of terror; torture as a pedagogical method; torture as a scene of perverse enjoyment for its perpetrators and spectators (indeed, the knowledge that the torture is being recorded, let alone broadcast, can often be part of the torture itself); torture as a kind of ritualised practice; torture as an experiment with the body; torture as an index of a sense of loss of authority (e.g., when you're desperate, you torture as a last resort).¹³

Only the first of the above points has (so far) proved explicitly admissible as part of the contemporary 'argument,' even if it has commonly been confounded with the others. Indeed, what was crucial about the eighteenth-century critique of despotic power is that it identified, isolated and separated features that had previously been fused in torture's deployment by the Ancien Régime (or, in England, by the pre-Civil War monarchs). But the eighteenth-century theorists also recognised that, while it could serve a number of functions, the nature of torture was such that it invariably *confused* such functions, to the point where it was practically useless as a method for getting at the truth, and positively harmful for the cause of free speech. The Italian theorist Cesare Beccaria's very influential *On Crimes and Punishments* of 1764 (it struck Thomas Jefferson as strongly as it did Voltaire) notes that a man is either guilty or not guilty of the crime for which he is charged; if guilty, he should suffer the punishments ordained by law, but if he isn't

¹⁰ Greenblatt Stephen *Will in the World: How Shakespeare became Shakespeare* Jonathan Cape London 2004 p 178.

¹¹ See Gay Peter *Voltaire's politics: the poet as realist* Yale University Press New Haven 1988.

¹² See Bentham Jeremy *The Panopticon Writings* Bozovic Miran (ed) Verso London 1995.

¹³ See the articles collected in Crelinsten Ronald D and Schmid Alex P (eds) *The Politics of Pain: Torturers and their Masters* Westview Press Boulder 1995. Though now outdated in several ways, Scott George Ryley *A History of Torture* Senate London 1995 [1940] provides some substantial background material.

guilty, then it is itself a terrible crime to torture the innocent.¹⁴ And since it is empirically the case that people have shown themselves capable of resisting torture, those strong or lucky enough to hold out against it may then be acquitted for lack of evidence though they are guilty. Evidence produced by torture is irredeemably unreliable and in itself unjust.¹⁵

The public struggle against torture therefore involved the identification of torture's manifold aspects, as well as showing how these are at odds with the justifications for its use. The Enlightenment writers thereby also demonstrated that an essential part of torture's harm consists in the pragmatic impossibility of ever thoroughly separating these elements, e.g., is torture a tool

¹⁴ See Beccaria Cesare *On Crimes and Punishments and other writings* Bellamy R (ed) Davies R et al (trans) Cambridge University Press Cambridge 1995.

¹⁵ For a completely different view of how and why judicial torture disappears from European law, see Langbein J H *Torture and the Law of Proof: Europe and England in the Ancien Régime* University of Chicago Press Chicago & London 1977. Langbein persuasively demonstrates that the public and political outcry against torture in the 18th century relied on arguments as old as judicial torture itself. Moreover, the little the abolitionists had to add to these ancient arguments was based on ignorance if it was not simply irrelevant — to the point that Langbein charges them with holding back a struggle that had in fact already been quietly won. It is not the abolitionists who we should thank for the abolition of torture, but certain changes internal to the law itself, that is, what Langbein calls 'a revolution in the law of proof' regarding the admissibility of circumstantial evidence. It is because weaker forms of evidence than those available through torture become admissible in certain sorts of cases that the law gradually shifted toward the use of such evidence, relying less and less on torture as a result. This is a strong thesis, as far as it goes. Langbein, however, makes certain initial delimitations which thereafter lead him to misrepresent the real problem; indeed, he refuses to admit the fact that *political* struggles against sovereign power were fought *within* the restricted domain of the law itself — and in such a way as to cipher their wider intent. The legal and the political cannot be separated in the way which Langbein presumes, and especially not when it is a question of torture. Let's take just one instance of Langbein's misrepresentation of the historical evidence. In Chapter 7, Langbein notes that Sir Francis Bacon completely fails to mention torture in his tract on the kingly prerogatives, adding that Sir Thomas Smith and Sir Edward Coke also 'deny the existence or the legality of torture.' For Langbein, all this suggests why the crime of torture in England was ultimately just let drop, because the stakes were now elsewhere. However, it is possible and, we believe, necessary, to read these very documents in the opposite sense to Langbein. First, we need to remember that the struggle against despotic power at this time dare not speak its name, that those seeking to restrict the unlimited power of monarchs had to be chary of saying so directly. Thus, second, this struggle had to be prosecuted in more 'esoteric' or covert ways. The place at which sovereign power expresses itself most forcefully, most clearly and most unjustly is in the domain of torture. This is why Coke and his allies — crucially, in this context, the committed enemies of Bacon — deny the legality of torture. By doing so, they are directly seeking to limit sovereign power. So Bacon's refusal to mention torture in his tract really does demonstrate that he is the perfect royalist he claims he is, because he is writing in a context in which everyone knows that it is torture that is helping to render the exceptional claims of sovereign power suspect. Bacon's strategy is therefore of the genre 'best not mention it under the circumstances,' at the same time that, in his allegedly protoscientific works, he is urging that nature herself be 'put to the question' (i.e., tortured). So when Langbein continues '[w]e suggest that the power to torture did inhere in the prerogative, not affirmatively but defensively. It derived from the doctrine of sovereign immunity. The sovereign was immune from suit in his own courts. Not only were King and Council immune, they could immunise their agents' (pp 129–30), this confirms our own analysis, not his. Torture and unrestrained sovereignty are integrally bound, so it is no surprise, then, that 'King and Council kept tight control over the use of torture' (p 131). This is why we would like to stress the irreducible ambivalence of Langbein's position: he can only make the advances that he has because he has so carefully restricted himself to a study of the legal documentation, but it is also *because* of this restriction that his claims that judicial torture simply 'fell into desuetude' miss the concerted political struggle that was going on behind the scenes. Langbein's revisionism underplays *that* there was such a struggle, and *how* this struggle was played out. As Langbein phrases the position he contests, 'The abolition of judicial torture was both a juristic and a political event.' We agree with this (Langbein doesn't), for it is precisely the *indissociability* of law and politics on just this point that must not be missed in any discussion of torture.

of truth or a punishment for an infraction? Is it part of a bureaucratic apparatus or the entertainment of justice? Pedagogical principle or vengeful satisfaction? And is it intended to have these consequences just for the individuals directly concerned in an act of torture, or for their communities as well? What the eighteenth-century democratic revolutionaries and reformers like Beccaria and Voltaire realised is that the very threat of torture makes it impossible in principle to distinguish interrogation *from* punishment, speech *from* being, the individual *from* the coercive authority. Aside from all its other features, torture invariably *confuses* these operations — and therefore, too, what people can say about these operations — and consequently this *confusing* aspect of torture is an integral part of its harm. Torture by definition mixes up act, knowledge, the victim, the voice, the official and truth in such a way that they thereafter cannot be adequately distinguished.¹⁶ As a tool of interrogation, torture is tantamount to a forcing of speech, but it is then no longer clear *who* is really speaking, the torturer or the victim, and nor is it clear whether *what* is being said is true. As a punishment, torture is barbaric, and its utility dubious. Moreover, that the abolitionists made their claims very publicly is part of their point: these issues should no longer be restricted to a technical language and a cadre of professionals.

So it is crucial to note that the present discussion about torture is about the legitimate powers of the state. No one contributing to the discussion is arguing for the rights of individual torturers to do so (murderers, serial-killers, terrorists, etc.). The modern democratic disgust with torture is based on moral grounds; we are not dealing with a question of squeamishness or of faintheartedness, but of what is impermissible on *moral* grounds. However, it is not *purely* a moral issue; the argument also needs to be made that whatever might be said about a given, individual situation (the 'ticking bomb' scenario), the *futility* of torture is its greatest political weakness. Why is it, then, that this simple point has to return again and again? Moralizing about conflict does not help here. As the French sociologist of science Bruno Latour notes, talk of the 'Axis of Evil,' the 'War on Terror,' or 'World War III' will have damaging consequences for politics if allowed to continue unabated. A 'War on Terror' is not a war in any traditional sense, because 'there is no frontline, no territory, no camps, not even two parties.'¹⁷ This inability to identify the 'war' and its perpetrators has undoubtedly fuelled the anxieties that have led some to suggest that torture may be a useful device in our brave new world. The 'shadowy and obscene' nature of our new enemies (to invoke John Howard's words) is being used to legitimate extreme measures. Surely, this demonisation of the enemy evokes the strategy of the 'beautiful soul' whose outrage at the immorality of the world around belies the disorder within his own heart.

¹⁶ Let us praise here — of all things — quotation marks for their role in safeguarding our democratic freedoms. As Magreta de Grazia writes 'Lax use of quotations summons up the grisly shadow of compulsory self-incrimination, of being forced to bear witness against oneself, in this instance by being made to speak (or, more precisely, by being made to *look in print* to speak) self-condemnatory words....Lurking behind the Courts' dread of misquotation is, I would like to suggest, a long history of the gruesome inquisitorial procedures deployed in Europe and England to exact self-incriminating testimonies. Defamatory misquotation and coerced confessions are both procedures for putting self-incriminating words into another's mouth,' de Grazia M 'Sanctioning Voice: Quotation Marks, the Abolition of Torture, and the Fifth Amendment' in Jaszi P and Woodmansee M (eds) *The Construction of Authorship: Textual Appropriation in Law and Literature* Duke University Press Durham & London 1994 p 286. De Grazia immediately continues: 'The Fifth Amendment to the U.S. Constitution was drafted to guard against the juridical horror of coerced confessions and testimonies,' p 286.

¹⁷ Latour Bruno 'In Terror there is Error' *Domus* May 2005 p 71.

If modern democratic states have in part been founded on the official banning of torture (or, at least, the drive to ban torture), this ban is not simply due to a revulsion about the mutilation of bodies. Neither is it simply due to a desire to place limits on the arbitrary reign of monarchs, although this is indeed an ideal for modern states. It is also linked to a new commitment to the powers of speech. Take the very famous declaration of the philosopher Immanuel Kant: 'For enlightenment of this kind, all that is needed is *freedom*. And the freedom in question is the most innocuous form of all — freedom to make *public use* of one's reason in all matters.'¹⁸ (It is no accident that Frederick the Great, who Kant cites admiringly in this essay, and who at one point provided refuge for Voltaire, was one of the first European rulers to ban torture in 1740). The founding eighteenth-century theorists of modern liberal democracy are very clear on this point.

It is through speech that actions will be commenced, evaluated, commended or punished, and such speech permits an ongoing re-evaluation of actions and their grounds.¹⁹ What happens with the panopticon is that punishment will no longer involve torture (i.e., direct and intrusive physical coercion ratified and dispensed by the state), but will be in and of itself a re-education camp that suggests appropriate forms of action through the interiorisation of the gaze of authority. In other words, *speech itself becomes a central activity in democratic modernity*; statements under this condition are never absolute, but always exploratory, experimental.²⁰ Punishments come to have less and less to do with incursions into the body, and more and more to do with regimes that focus on a criminal's physical containment and retraining.²¹ In a democracy, one can (and

¹⁸ Kant Immanuel 'An Answer to the Question: 'What is Enlightenment?'' in *Political Writings* Reiss H (ed) Nisbet H B (trans) Cambridge University Press Cambridge 1991 p 55. Again, this is why, if many of the arguments offered by the 18th century critics of torture have a long history, it is the very fact that they offer them to the public for its response that renders their contribution *democratic*.

¹⁹ In this context, see the very interesting work of Frances Ferguson, especially *Pornography, the Theory: What Utilitarianism Did to Action* University of Chicago Press Chicago & London 2004, a book whose argument uses pornography to exemplify some key, if usually overlooked, features of modern social systems. As Ferguson phrases her argument, 'The utilitarian perspective of both Sade and Bentham moved discussion from individual identities to actions and highlighted the uses that even fictitious representations came to have in encouraging people to feel that they can *see* actions, which are by their very nature less conspicuous than persons themselves. In utilitarian systems, power does not, as Foucault puts it, come from everywhere as a contribution of all the participants in a social group. It is also continually being redistributed,' p xv.

²⁰ This is another crucial point, and one which will be missed if one sticks purely to a 'moral' or a 'legal' framework for examining the discourses of this era. The very ways in which the Enlightenment *philosophes* promulgated their doctrines attempted to maximize the values of *public*, *open* and *ongoing* debate — which makes the transformations they effected upon the media an integral part of their message. As Dena Goodman puts it, 'Through the circulation of letters, a network of intellectual exchange was defined that was the first circle of expansion beyond the walls of the *salons*. As letters and correspondences became the bases and models for print media of broader circulation, these networks expanded and went truly public,' Goodman Dena 'Letters into print: correspondence and communication in the French Enlightenment' *Transactions of the Eighth International Congress on the Enlightenment* Alden Press Oxford 1992 Vol II p 884.

²¹ Even a brief glance at the dates at which European states banned judicial torture is revealing: England, 1640; Scotland, 1708; Prussia, 1740; Austria, 1776; Italy, 1786; France, 1789; Russia, 1801; Spain, 1812. We take these dates as indices that major democratic upheavals (even if 'unsuccessful') have something to do with the interdiction or cessation of judicial torture. If the specific preconditions for such a development go back a lot further (e.g., immanent legal developments), it is notable that it takes real political agitation to get things moving along. Moreover, though it took a lot longer for physical torments to disappear from the education system altogether (e.g., floggings), this banning of torture is accompanied by a welter of arguments condemning the use of physical coercion in schools.

sometimes should) be *punished* for what one has said, but must not be tortured for such — neither at the point of interrogation nor after conviction. In fact, this is one hallmark of democracy *tout court*: the ban on judicial torture. Everything else is up for grabs.

Aside from disgust at the horrific mutilation of bodies, then, the ban on state torture not only aims to ensure freedom of speech but, paradoxically, it aims at ensuring a perhaps even more important freedom: *the freedom not to speak*. An alleged criminal will no longer be forced to implicate him- or herself in a crime at the point of interrogation; rather, trials will now have to rely upon evidence that is not based on extorted testimony. This is undoubtedly why one of the most utopian moments in TV cop shows is not the jury's verdict, but when the arresting officer announces 'You have the right to remain silent'. The representatives of the law can no longer do what they will, and have to begin by telling their subjects just that.

Thus it is with the struggle for democracy that the previously 'indispensable' uses of torture lose all justification. It is also why any real affirmation of 'free speech' doesn't mean 'the right to say anything whatsoever no matter how offensive.' In fact, democracies need to affirm restrictions on speech; when they do so, they have not thereby become non-democratic. On the contrary, the necessity of civil suits for defamation as well as racial vilification laws is evidence that 'free speech' doesn't mean the right to say whatever one likes. Rather, 'free speech' means: *the state shalt not torture*. Not even a little bit. If there is even the *suspicion* that a speech has been coerced through torture, or has taken place under the threat of such coercion, we no longer have democracy; true debate is rendered impossible wherever there is a suspicion that what was said may have been said unfreely. One is no longer in a democratic frame. So democracy is not about passing laws once and for all for or against, say, racial vilification. It rather entails an intense *anxiety* about the legitimacy of any such laws, and the possibility that they may have to change again — because a certain number of people have *said* so, and have said so without the threat of bodily mutilation. This is why the central liberal distinction between 'public' and 'private' is inherently unstable (and no doubt why modern democracies, which began by giving a political voice only to a tiny fraction of the male population, have now extended this franchise to an unprecedented range of persons). In any particular political matter, participants might be acting according to economic interests, they might well be deluded, they might be lying, and they might have less easily-comprehensible reasons for their opinions. But the democratic state has to listen, as it has to punish; and it has to keep on listening. In fact, if the democratic state has certainly shown itself capable of acting, and acting ferociously, it has also shown itself capable of *vacillating* and *recanting*, except on one point: torture. It is extraordinary how often this fundamental point is missed by the contemporary liberal defences of (or, for that matter, attacks upon) democracy, though it was a staple for the eighteenth century radicals fighting against arbitrary power.

Given this state of affairs, the contemporary pressing necessities to rethink security issues may, if improperly handled, result in some very unpleasant political consequences. It seems that the consequences of a return to torture in today's geopolitical context will include: fishing for evidence; disavowed extrajudicial punishment; a presumption of guilt; a legitimization of sadistic acts and affects; a signal that there are now no limits to the power of state officials and secret agencies; and, perhaps, an expression of an obscure drive for destruction. Given this context, the new proselytizers for torture add their voices to those who are demanding the vitiation of existing

democratic bulwarks against arbitrary detention, *habeas corpus*, presumption of innocence, open and transparent legal procedures (including appeals procedures), etc. As many humanitarian organisations have argued with respect to present US governmental practice, disappearing people, or holding them in arbitrary detention is close to if not indistinguishable from torture.²²

It might further be suggested that this does not only involve tampering with certain particular *laws*, but is tantamount to an assault on *the foundations of law in general*, i.e., by treating prohibitions as if they were merely guidelines, and principles as if they were merely techniques.²³ The routinisation, the naturalisation, of allegedly exceptional measures is only one aspect of such a process. Ultimately, such developments tend to devolve absolute power to a sovereign executive that no longer needs submit to any restraints on its actions — not even to the restraints of a Hobbesian monarch, to whom one submits because he is the only agency capable of preserving one's life in the war of all against all. Any state that sanctions torture has already neutralised democracy.

So one of the most disturbing aspects of this 'debate' is that it is not and cannot be a *debate* at all. On the contrary, as soon as one believes that *this* issue can be debated and discussed just like any other, one is already lost. Once one starts arguing in such a fashion, then all that can be expected is the escalating intensity of claim and counter-claim, a slippage from legal and political concerns to moral problems of affect, the proliferation of distinctions without difference (for example, those allegedly 'clear eyed reexaminations' of the evidence which insist on discriminating between, say, 'sleep deprivation and amputation or burning or some other horror' in Jean Bethke Elshtain's words) — and a concomitant occlusion of the real issues at stake.²⁴ It is not that such distinctions may not have their place; it's that they do not have a place *here*, other than as obscurantist rhetoric. As we noted above, it is this *confusion power* of torture that the eighteenth century recognised as one of torture's primary harms to the democratic state.

Does the polity you live in guarantee democracy qua freedom of speech? If it does, then it must, by definition, in intention, in spirit and letter, *prohibit torture as a tool of state*. This is so because the exclusion of torture (we might even say physical coercion more generally) constitutes the conditions for free speech — and thus for free debate — anyone who tries to act as if torture might be reintroduced (even 'a little bit,' as it were) is already lost. Pragmatically, yes, states will undoubtedly always try to torture in one circumstance or another (e.g., the French in Algeria, the British in Northern Ireland, the Coalition of the Willing in Iraq), but this 'fact' in no way vitiates the necessary absolutism of the principle. On the contrary: without such a principle, there will not even be any *possible* recourse or restitution for the victims of torture. Lest we forget: in principle,

²² For a discussion of the very public ongoing issues around detainees in American detention centres, see McCoy Alfred W 'The Outcast of Camp Echo: The Punishment of David Hicks' (June 2006) *The Monthly* 20.

²³ On some of the consequences of a permanent 'state of exception,' that paradoxical situation in which laws are suspended by the sovereign *at the same time* that they are fully maintained, see Agamben Giorgio *Homo Sacer: Sovereign Power and Bare Life* Heller-Roazen Daniel (trans) Stanford University Press Stanford 1998. For Agamben, this 'suspension of law' is the 'orginary operation of law' rather than its perversion. See also Agamben Giorgio *State of Exception* Attell Kevin (trans) University of Chicago Press Chicago 2005.

²⁴ Elshtain Jean Bethke 'Reflection on the Problem of "Dirty Hands"' in Greenberg Karen J (ed) *The Torture Debate in America* Cambridge University Press Cambridge 2006 p 86.

anyone who wishes to abrogate the absolute prohibition on torture, no matter how allegedly well-meaning or pragmatic, no matter how much of a hard-nosed realist they would like to think of themselves as being, is nothing of the kind. They are simply the inhabitants of one or another anti-democratic frame of reference.

3. TORTURE AND PSYCHOANALYSIS

Why have psychoanalysts become involved in this experience at all? What interest could psychoanalysis have in the crime of torture? What expertise could psychoanalysis bring to this political, legal and moral question? As very many commentators have shown, the claims made by the proselytizers for torture are for the most part inaccurate and unfounded. To take only the most extreme of these here: to hold, as have several local Australian legal academics, that torture is an 'excellent information-gathering device' is plainly wrong. No one acquainted with the extensive body of psychological evidence could make such a claim. Donald Rumsfeld has himself admitted that the extensive information acquired from years of prisoner abuse at Guantánamo Bay has been 'low-grade.' The claims that torture can provide *useful* information are not only empirically false, but fit rather uneasily with other claims often made as part of the same argument; for example, that hypothetical 'thought-experiments' are effective tools for thinking about the possibilities for torture. Perhaps this latter claim is true. But it is difficult to maintain a declared allegiance to 'hard-nosed realism' on the one hand even though you provide no facts (there aren't any), and, in their place, proffering only extraordinary imaginary scenarios of 'ticking time-bombs.'²⁵ (Note here the desperate anxieties about 'speeding up the process,' and ensuring 'efficiency,' themes that seem to have been exported from the rhetoric of business-management). There has also been a notable absence in the discussions of those in favour of torture around the sorts of institutions, regulations and personnel which would be necessary to run state-sanctioned torture chambers. How does one train government torturers, for instance? In special schools? With what tools? And with what subjects? Very disturbingly, empirical evidence tends to suggest a kind of 'slippery slope' aspect to the naturalisation of torture. In Kate Millet's words, 'Once established, the practice of torture seems to become applicable to any group or situation. A convenience, a way of dealing with certain elements, certain social problems, a brutality that establishes itself as expedient.'²⁶

In this context, we were particularly struck by Michael Ignatieff's 'acknowledgement' that the 'argument that torture and coercion do not work is contradicted by the dire frequency with which both practices occur.'²⁷ What's false about such an acknowledgement — which tries, in its otherwise exemplarily liberal fashion to contend rigorously with the objections of such fellow-

²⁵ For an excellent account of some of the problems with such scenarios, see Kleinig John 'Ticking Bombs and Torture Warrants' 10 *2 Deakin Law Review* 614.

²⁶ Millet Kate *The Politics of Cruelty: An Essay on the Literature of Political Imprisonment* Norton New York & London 1994, p 291.

²⁷ Ignatieff Michael "Moral Prohibition at a Price" in Roth Kenneth and Worden Minky (eds) *Torture: Does it make us safer? Is it ever OK?* The New Press London & New York 2005 pp 25–6.

travellers as Richard Posner — is that it participates in the misrepresentation that Posner and others continue to promulgate. The misrepresentation is this: *that those who torture know that it gets results*. The problem here reduces to this: *what constitutes 'results' under those conditions must remain obscure and confused*. Enjoyment of brutality, the abuse of power, generating terror in a subject population, and so on, are all unquestionably 'results' generated by torture — they're just not the results that are being claimed for it. Torture, yes, terrorises, but there is little evidence that it provides the 'crucial information' that is currently *the* alibi for its revivification as a tool of state. Nor does torture ultimately make states safer. We find it difficult to believe that any of the South American dictatorships that used torture as an integral part of their statecraft were any more secure as a result (they were certainly more violent, iniquitous and corrupt); it doesn't seem that the current U.S. policy of 'rendition' will ensure a better result.

Yet to have disproved a claim or a theory is by no means to have vanquished it. Nor does undermining the justifications for a practice necessarily hinder the continuance of that practice. On the contrary, it seems unlikely that proponents of torture will be swayed by any calls for a reality-testing of their ideas. This 'force of the incoherent,' that is, the *force of fantasy*, is a particularly important phenomenon for psychoanalysis.²⁸ Indeed, psychoanalysis properly begins when its founder, Sigmund Freud, realised that, although patients do in some way know the truth of their situation, their sickness derives from their inability to recognise or acknowledge that it is essentially self-sustained. Resistance to (one's own) truth is as much a feature of large political movements as it is of individual pathologies.²⁹ Much more important than truth in the motivations and behaviours of individuals and groups are primal affects — shame, fear, loathing, envy, panic, anxiety — and the socio-cultural rituals that have developed to master them.

In the case of torture, this feature should give us cause for concern. The very weakness of the claims for reinstating torture as a tool of state security organisations, the inconsistency of the arguments for doing so, and the resolute rejection of the historical, political and psychological

²⁸ This is the title of a well-known book, in which the origins and uses of individuals' fantasies are discussed in detail. See Person Ethel *By Force of Fantasy: How we make our lives* Basic Books New York 1995.

²⁹ Though psychoanalysis as a clinical practice has for the most part restricted itself to the treatment of individuals, work with groups is not unknown. Clinical group-work has, most famously, been practiced at the Tavistock Clinic in London, just as there continues to be a flourishing trade in group analysis, group therapy and family therapy of a psychoanalytic inspiration. Moreover, psychoanalysis has not hesitated to theorise the workings of larger groups, and though it may be that the categories appropriate to individual psychopathology (such as 'hysteria,' 'obsessional neurosis' or even 'the Oedipus complex') are inapplicable in their pure form to larger human groups, there are nonetheless shared processes that psychoanalytic interventions have revealed. Freud himself opens his *Group Psychology and the Analysis of the Ego* (1921) with the statement, 'The contrast between individual psychology and social or group psychology, which at a first glance may seem to be full of significance, loses a great deal of its sharpness when it is examined more closely. It is true that individual psychology is concerned with the individual man and explores the paths by which he seeks to find satisfaction for his instinctual impulses; but only rarely and under certain exceptional conditions is individual psychology in a position to disregard the relations of this individual to others. In the individual's mental life someone else is invariably involved, as a model, as an object, as a helper, as an opponent; and so from the very first individual psychology, in an extended but entirely justifiable sense of the words, is at the same time social psychology as well,' Freud Sigmund *The Standard Edition of the Complete Psychological Works of Sigmund Freud* Vol. XVIII Strachey J *et al* (eds) The Hogarth Press London 1955. In *Group Psychology*, Freud himself examines such cases as the Church, the army, wild street mobs, and a teenage girls' boarding school; since Freud, psychoanalysts have extended their analyses to a wide range of groups and their dynamics.

evidence in the name of 'realism' are indices of a very dangerous contemporary political fantasy. One should not believe that the best way to disarm such a fantasy is by simply pointing to empirical evidence, to logic, to morality, or even to existing legal provisions — because these are what this fantasy (or bundle of fantasies) is attacking. Certainly, one must continue to argue by recourse to empirical evidence and the rest, but such a recourse remains insufficient on its own to neutralise the manifest drive to reinstate torture as a necessary, desirable and viable governmental defence against 'the global terrorist threat' in 'the wake of September 11.' The fact that these scare-quoted phrases, and others like them, have so quickly become such familiar slogans — in and of themselves supposedly adequate to justify the abrogation of existing legal systems — is itself disturbing, symptomatic of just such a fantasy. A fantasy is almost never corrected by the truth, as it has very little to do with any state of affairs in the 'real world'; rather, a fantasy is a kind of frame through which the 'real world' can appear at all.

This may require some further explanation. Certainly, every psychoanalytic orientation agrees on the crucial importance of fantasy in subjective life. As Ethel Person puts it: 'Fantasies — daydreams, castles in the air, mental scripts, and scenarios — filter our experience of the inner and outer worlds to a surprisingly large extent....in truth, fantasy is as essential as air, forming the medium or the ether in which all the other activities of mind take place. Fantasy also impacts on the world outside our mind.'³⁰ Such a sweeping statement is relatively uncontroversial; on such an account, fantasy is just a name that we can apply to almost any of the aspects of mental life that don't simply correspond to reality and can be equated with a kind of spontaneous fiction-making in which one cannot help but indulge, often without knowing it.

There are of course intra-psychoanalytic disagreements about what fantasies are, their aetiology and function, and how they should be analysed. This is in some ways a consequence of Freud's own ambiguities. As J. Laplanche and J-P. Pontalis put it, Freud's doctrine of fantasy seems to be located 'exclusively within the domain of opposition between subjective and objective, between an inner world, where satisfaction is obtained through illusion, and an external world, which gradually, through the medium of perception, asserts the supremacy of the reality principle.'³¹ The 'reality principle,' however, is not the same as what is commonly taken for 'reality'; the point for Freud is that everything that comes to be denominated 'reality' is the consequence of later psychological 'secondary revisions' of infantile experience. Human consciousness begins with fantasy, not reality, and reality itself is built out of the often-brutal interactions between an individual's fantasies and external events.

Freud's basic positions were further developed by practitioners that came after him. For Melanie Klein and Susan Isaacs, fantasy remains an immediate and primordial fact, operative in the infant from the beginning, incorporating a relation — indicatively, sadistic or mortificatory — to an object of some kind. This relation is irreducibly 'sexual,' in the expanded sense that Freud gives to this term. Moreover, fantasy is linked to trauma (one might almost say torture): 'Freud's view that sexuality *itself* is traumatic; and Lacan's contribution has been to theorise how it is that

³⁰ See Person, *op. cit.*, p 1.

³¹ Laplanche Jean and Pontalis J-P 'Fantasy and the Origins of Sexuality' in Burgin Victor et al (eds) *Formations of Fantasy* Methuen London & New York 1986 p 6.

trauma is related to a lack.³² So what's absolutely central for almost all psychoanalytic orientations — despite their notorious differences — is, first, the conviction that fantasy underpins what counts as reality; second, that fantasy is based on a lack (of reality); third, that fantasy is the name for the operations that try to canalise traumatic experience. Fantasy is therefore 'fictional' (not being 'really real'), but it is not simply one fiction among others; rather, it is tied directly to psychic drives and, as such, is not susceptible to the sorts of interpretation and 'reality-testing' to which one might submit fictions that we can recognise as such.³³ Fantasy thereby defends against both reality and other fantasies. Indeed, once the aetiology and role of fantasy is taken seriously, 'reality' itself can no longer be considered an 'objective situation' on which we could all agree if we were just serious about the thing, but will instead be something like what it is that forces humans to keep inventing new ways to sustain their inability to give up on infantile experience. Humans only become acquainted with reality through experience, but this experience is itself integrally shaped by (erotic and aggressive) drives which are never quite overcome, but whose modes of expression instead become more and more insidious and ramified with time.

There are therefore a number of interconnected reasons why material evidence is never enough on its own to shift a fantasy. First, a fantasy indiscernibly shapes in advance the world within which certain events can appear as evidence at all. What counts as evidence in one framework may not even be able to be registered at all in another. It may not even be possible to point out this incommensurability to either of the parties. It is difficult, almost impossible, to see the limits of one's own fantasies (though they may be only too clear to others). Second, a fantasy emerges to canalise and redirect a subject's otherwise unspeakable feelings. Attempts to transform such a fantasy, however minimally, may therefore be experienced as (and, indeed, may well be) an attack on the subject itself.³⁴ A fantasy is not an optional extra, but a necessity for a subject. We are all fantasists. Third, fantasy involves a certain misdirection: to respond to what the fantasy seems to be addressing is to misunderstand what the fantasy is actually *doing*. What fantasy makes possible for the subject's activities may have little or nothing to do with the apparent *content* of the fantasy itself. Fourth, a fantasy may well feed on opposition as part of its mechanisms of self-stabilisation. Certain sorts of fantasy — take, for instance, the popular

³² Grigg Russell 'Signifier, Object, and the Transference' in Bracher Mark and Ragland-Sullivan Ellie (eds) *Lacan and the Subject of Language* Routledge New York 1991 p 111.

³³ In addition to the texts already cited, for a range of further reading on the topic of fantasy, see Akhtar S and Volkan V D (eds) *The Seed of Madness: Constitution, Environment, and Fantasy in the Organization of the Psychotic Core* International Universities Press Madison 1997; Grolnick S and Barkin L with Muensterberger W (eds) *Between Reality and Fantasy: Transitional Objects and Phenomena* Jason Aronson London & New York 1978; May R *Sex and Fantasy: Patterns of Male and Female Development* W W Norton & Co New York & London 1980; Segal H *Dream, Phantasy and Art* Tavistock/Routledge London & New York 1991; Shengold L *Soul Murder: The Effects of Childhood Abuse and Deprivation* Fawcett Columbine New York 1989; Zizek S *The Plague of Fantasies* Verso London & New York 1997.

³⁴ Indeed, some psychoanalytic theorists have gone so far as to suggest that what torture ultimately aims at — beyond its only-too-familiar uses as information-extraction, prejudicial punishment, and a warning to others — is the total destruction not only of the sufferer's physical being, but of his/her fundamental fantasy, the frame that structures his/her entire way of life. This brings in the problem of *enjoyment*, of the affective bases of human action. See also Zizek S *The Metastases of Enjoyment* Verso London 1994, esp. p 75.

doctrine of 'the enemies of the people' — may actually *gain* in plausibility when attacked. After all, who would attack those who attack the enemies of the people, except of course the aforementioned enemies of the people? This sort of fantasy is particularly difficult to budge: if the people themselves protest, they must have been infiltrated by the enemies of the people.

This is where psychoanalysis can be of use. Psychoanalysis — unlike many other comparable accounts — insists that a substantial part of human psychology involves the desire to dominate and torture others.³⁵ Indeed, every society is founded on physical violence, and this violence must find its support in the human body, its pleasures and pains, its emotions and thoughts. The surprise for psychoanalysis is not that people torture, but that people *don't* torture, that they sometimes refrain from and even abominate the practice. Sadistic drives are integral to human life. As Freud famously writes in *Civilisation and its Discontents*:

men are not gentle creatures who want to be loved, and who at the most can defend themselves if they are attacked; they are, on the contrary, creatures among whose instinctual endowments is to be reckoned a powerful share of aggressiveness. As a result, their neighbour is for them not only a potential helper or sexual object, but also someone who tempts them to satisfy their aggressiveness on him, to exploit his capacity for work without compensation, to use him sexually without his consent, to seize his possessions, to humiliate him, to cause him pain, to torture and to kill him.³⁶

Psychoanalysis, moreover, insists that we all, in some way, suffer from infantile traumas, even in the best of cases; furthermore, that we continue to inflict this suffering on others, in a variety of self-deceiving ways. No one is exempt from this state of affairs; there is no way in which we can make an absolute break either with our own formative pain or with our own self-deceptions. When the tension between self-deception and reality becomes too great, illness may ensue. Yet psychoanalysis aims to counteract the worst ravages of such illnesses through a non-intrusive process of listening and talking. 'Free association' means: keep talking, about anything whatsoever that comes into your head, no matter how apparently irrelevant, stupid or obscene, and know that you will not be judged by your interlocutor (the analyst) — and certainly not punished — for anything that you might say. If drugs are sometimes unavoidable in the treatment of

³⁵ This also holds for the institutions which humans build, and into which they are born. As Eric Santner affirms, building on the work of Michel de Certeau, 'Torture is the way an institution simultaneously confesses and represses its deepest secret: that its consistency, its enjoyment of recognition as a really existing social fact, ultimately depends on the magic of performative utterances, on the force of their own immanent process of enunciation. The abjection produced in the torture victim, his betrayal of everything that matters and is dear to him, his confession of his own putrescence, is, as it were, the 'substance' that stands in for the lack of substantial foundations to which the institution might appeal for final and ultimate legitimation,' Santner Eric *My Own Private Germany: Daniel Paul Schreber's Secret History of Modernity* Princeton University Press Princeton 1996 pp 42–3.

³⁶ Freud Sigmund *Civilisation and its Discontents* in *The Standard Edition of the Complete Psychological Works of Sigmund Freud* Vol. XXI (1927–31) Strachey J *et al* (eds) The Hogarth Press London 1961 p 111. It is also worth noting Friedrich Nietzsche's remarks that 'In the act of cruelty the community refreshes itself and for once throws off the gloom of constant fear and caution. Cruelty is one of the oldest festive joys of mankind. Consequently it is imagined that the gods too are refreshed and in festive mood when they are offered the spectacle of cruelty — and thus there creeps into the world the idea that *voluntary suffering*, self-chosen torture, is meaningful and valuable,' *Daybreak: Thoughts on the Prejudices of Morality* Hollingdale R J (trans.) Cambridge University Press Cambridge 1982 p 16.

psychological disorders, psychoanalysis (as well as many other forms of psychotherapy) reminds us that such dispensing can *also* be experienced as a violent incursion into the body of a patient — a foreign substance with often quite disturbing physiological-mental side-effects, allegedly delivered for the patient's 'own good,' by a powerful authority figure.³⁷ This is also why anyone who insists on 'doing good' for others, even with the best of intentions, may be irremediably compromised in advance.

For such reasons, added to the wealth of clinical evidence, budging even an individual's fantasy is an extremely difficult and volatile affair (let alone the social fantasies that traverse larger agglomerations of people). It requires not only listening closely to what people are saying — no matter how apparently obscene, irrelevant or incoherent — but slowly working, often over extended periods of time, to reattach these utterances to their lives in a less damaging way. (This was part of the justification for organizing a forum on 'The Crime of Torture' in the first place.) The work of listening must go on, even if all it ultimately gathers is mere information about why, for example, torturers themselves today insist that they are the real victims (e.g., that their nations are threatened as never before by suicidal terrorists, that security forces cannot be hamstrung by restrictive laws, that any attempt to restrict new measures plays directly into the hands of enemies, etc.).³⁸

As Brian Stagoll once put it in an article entitled 'Epistemology and Torture,' 'torture is the antithesis of the therapeutic process.'³⁹ The therapeutic process requires the testimony of victims, the (often public) listening to and inscription of their stories, over a protracted period of time. If torture drives at the hostile takeover of a victim's entire existence, to the point where even the very words they speak are no longer permitted to be their own, psychoanalysis depends, above all, on 'free association,' on the patient talking and talking about anything whatsoever — until the patient is finally able to assume responsibility for his or her freely-uttered words. As psychoanalysis suggests, *you* are often the unfree state of which you complain. What such patients often need is not to be told what to do, what they 'really think,' or what's (allegedly) best for them, but simply to be listened to, to find somewhere to deposit their thoughts, the residues of experiences, that continue to torment them. Psychoanalysis, perhaps scandalously, would insist that the torturers as much as the victims are worthy, needy of such attention. But attention is not tantamount to affirmation.

So, perhaps unexpectedly, torture and the psychotherapies are inextricably linked. The long-term consequences of torture are an insistent refrain throughout Joseph Schwartz's recent history of psychoanalysis, *Cassandra's Daughter*, in which he mentions the child-torturers of

³⁷ In this context, Kate Millet notes 'the medicalization of torture,' *op cit*, esp. pp 311–12, and Elaine Scarry gives a particularly chilling example: 'In Uruguay, doctors assisted in the administration of drugs causing hallucinations and acute sensations of pain and asphyxiation; those who refused to assist the torturers disappeared at such a rate that Uruguay's medical and health care programs entered a state of crisis,' *The Body in Pain: The Making and Unmaking of the World* Oxford University Press Oxford 1985 p 42.

³⁸ For an exemplary case-study of the extraordinary powers of murderous fantasies, see Theweleit Klaus *Male Fantasies Volume 1: Women, Floods, Bodies, History* Conway S with Carter E and Turner C (trans) University of Minnesota Press Minneapolis 1987; *Male Fantasies Volume 2. Male Bodies: Psychoanalyzing the White Terror* Carter E and Turner C with Conway S University of Minnesota Press Minneapolis 1989.

³⁹ Stagoll Brian 'Epistemology and Torture' (1986) 27 *Australian and New Zealand Journal of Family Therapy* 97.

Nicaragua, who had been taught to pluck out the eyes of the regime's enemies. What do you do with such children when (if) the terror finally stops? These children are being treated by psychoanalysts.⁴⁰ The French historian and psychoanalyst Michel de Certeau has suggested how torture subsists at the heart of modern democracies as a routine and indispensable administrative practice.⁴¹ And there is now a vast psychological literature on the long-term effects of the traumas suffered by torture-victims, effects that have consequences for families, communities, health-systems, and so on, far beyond the immediate context of the crime.⁴²

But if, in this context, psychoanalysis might function as: a diagnostic tool (e.g., in the analysis of political fantasies); an organisational procedure (e.g., a way of getting people to speak to each other in unfamiliar or hostile circumstances); a therapeutic activity (e.g., helping to treat victims of torture); and an early-warning device (e.g., human beings find torture desirable, and so any attempts to legitimate the practice must be strenuously and immediately combated), it must nonetheless remain marginal to this so-called 'debate.' It must take a back-seat (or couch) to those forms of legal, ethical and political activism now concerned to protect our democracies from sliding into an authoritarianism prepared to torture suspects on principle. As the South Vietnamese torturers used to say, 'If they are not guilty, beat them until they are.'

We do not pretend to offer a definition of what democracy is. But it seems to us that an absolute, necessary condition for any democracy, whether in its ancient Greek form of participatory democracy or the varied modern forms of representative democracy, is: *an absolute interdiction upon torture as a tool of state*. We have already presented some of the unexpected consequences of such an interdiction. Theorists of democracy, undoubtedly puzzled by the manifold ambivalent and shifting forms that democracy has historically taken, have found it difficult to say exactly what constitutes a democratic polity. To pick any particular state of the system as representative is already to have missed what's essential. We believe that what is essential to democracy is that what can and can't be said, what can and can't be done, must be in ceaseless mutation, simply because the separation and tension between 'authority' and 'voice,' between 'action' and 'being,' that is at the heart of democracy constantly presses at all actual psychological, social, political and legal limits. As we have argued here, torture is one limit it must not cross.

⁴⁰ See Schwartz Joseph *Cassandra's Daughter: A History of Psychoanalysis* Viking New York 1999. One shouldn't forget that, when torture becomes an option for states, children are routinely tortured and 'disappeared.'

⁴¹ As de Certeau writes, 'The goal of torture, in effect, is to produce acceptance of a State discourse, through the confession of putrescence. What the torturer in the end wants to extort from the victim he tortures is to reduce him to being no more than that, rottenness, which is what the torturer himself is and knows that he is, but without avowing it. The victim must be the voice of the filth, everywhere denied, that everywhere supports the representation of the regime's 'omnipotence,' in other words, the 'glorious image' of themselves the regime provides for its adherents through its recognition of them,' Certeau Michel de *Heterologies: Discourse on the Other* Massumi B. (trans) University of Minnesota Press Minneapolis 1986 pp 40–41.

⁴² 'Politically driven torture may not seem a likely factor in the course of much conventional clinical work, but the unfortunate fact is that the consequences of barbarity inflicted elsewhere are increasingly to be encountered within resettlement populations here and throughout the world,' Gorman William 'Refugee Survivors of Torture: Trauma and Treatment' (2001) 32 5 *Professional Psychology: Research and Practice* 443.

Democracy, like any other form of human community, cannot avoid violence, and is perhaps even founded on violence. But, unlike every other form of political organisation to date, it has *constitutively* forbidden itself the possibility of torturing its subjects. Given that one necessary condition of democracy is an absolute interdiction on state torture, when the state seeks to reintroduce official torture, on whatever grounds, this is tantamount to a constitutional assault. What the practice of psychoanalysis enables us to say is that 'free association' and torture are political antitheses; whoever speaks up for torture as a tool of state under any circumstances is, consciously or not, assaulting the foundations of democracy. And they do so because, as psychoanalysis has demonstrated in any number of ways over the past century, human beings love torture but can't always admit to it; the drive to reinstate torture, to be anti-democratic, is an insistent temptation for human beings. If we wish to continue to live in a democratic polity, such a drive must be resisted at all costs. ●

Minerva Access is the Institutional Repository of The University of Melbourne

Author/s:

CLEMENS, JUSTIN;Grigg, Russell

Title:

A note on psychoanalysis and the crime of torture

Date:

2006

Citation:

Clemens, J. & Grigg, R. (2006). A note on psychoanalysis and the crime of torture. Australian Feminist Law Journal, June, 24, 161-177.

Publication Status:

Published

Persistent Link:

<http://hdl.handle.net/11343/35016>