

M Cherif Bassiouni, *The Institutionalization of Torture by the Bush Administration* (Intersentia, 2010), ISBN 978-94-000-0005-6, 301 pages

REVIEWED BY KATE BONES AND BEN SAUL*

Ten years after '9/11' (11 September 2001), the shell shock of the Bush Administration's counter-terrorism practices still resonates. For lawyers accustomed to expect the rule of law and strict controls on law enforcement, the *laissez-faire* approach of the Bush years, exemplified by its licensing of torture, is staggering. America, light of the world, wellspring of democracy, a constitution of liberty, brought so low by its exceptional disregard for the dignity of any person not born or embosomed American.

The violence of the Bush years was terrifying, but pedestrian. It spoke to gut instincts and invoked biblical parables: an eye for an eye. To this day, Donald Rumsfeld insists that 'aggressive interrogation' of terrorist suspects was not torture. And because taking off the gloves worked, it must be right. The only criterion for limiting action is effectiveness. Success and power are the only law. And those who wield it need be nothing special: small men and women in uniform, clutching their implements of pain; assassins in sneakers smiling for the digital cameras.

This is a book about ugly, brutal practices masquerading as 'law' in America's empire of fear. Written by one of the world's longest standing and widely recognised scholar-practitioners of international criminal law, the book catalogues Bush's torture regime and how it came about. It is a strong call to correct the slipping of the United States' (US) 'moral and ethical compass' (p xii) and to bring those responsible to account.

The first chapter provides a brief overview of the relevant international and US law, focusing on how the US misinterpreted and misapplied the law to justify 'enhanced interrogation'. The second chapter then outlines these techniques in detail, through specific case studies that provide horrific accounts of torture, and cruel, inhuman and degrading treatment. A thorough Appendix then provides a list of detention-related abuses across different locations.

Bassiouni then considers how the Bush Administration brought about its 'torture-enabling policy'. He colourfully describes a 'hub-like conspiracy whereby the center radiates its influence out through the wheel's spokes' (p 2), as the Executive effectively rewrote the law through a 'variety of subterfuges' (p 109). This takeover by the Executive branch, through the acquiescence of Congress and timidity of the courts,

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exposes a lack of accountability at the heart of American government, which allowed Bush, in a time of crisis, to take full advantage of to violate US and international law.

Chapter 4 then describes the practices of ‘extraordinary rendition’ and the use of ‘black sites’, analysing the US and international laws it violated. Interesting here is Bassiouni’s concluding discussion of the practical and policy effect of these practices, and his argument that the US succeeded only in discrediting itself morally, and invited its enemies to respond in kind. Violence reproduces itself.

Yet Bassiouni’s main purpose in the book is clear. The repeated call for accountability — which concludes each chapter — culminates in a lengthy chapter discussing responsibility, where perhaps the most interesting analysis comes through. Identifying three categories of responsibility — political, legal and ethical — Bassiouni clearly states upon which actors these fall. He laments that so far the US has failed to seriously address any of these, and is particularly critical of the recent exoneration of lawyers Jay Bybee and John Yoo from allegations of professional misconduct. The Department of Justice merely deemed their memoranda ‘poor judgment’. Whilst being hopeful about the Obama Administration’s intentions, he notes that its promises are yet to be realised, and that ‘the jury is still out’ on whether the Obama Administration will restore the rule of law (p 263).

Much has already been written on torture under the Bush Administration, and this book is not especially novel in its subject, approach or argument. It is, however, a clear, comprehensive yet succinct account of the issues, by a respected author. The scathing nature of Bassiouni’s critique is particularly striking in the parallels he draws: adopting euphemisms for illegal acts, or voiding the law of substantive meaning through narrow interpretation, are tactics common to authoritarian regimes. One can hope that the book’s call for those responsible to be brought to justice will be heard and heeded as America seeks to resurrect its reputation and restore faith in itself.