

Those who have dealt with the police in India, would probably have been told a particular joke: Once upon a time there was competition between Scotland Yard, the Federal Bureau of Investigation, and the Indian police. They were asked to capture a lion from a jungle in as little time as possible. The FBI went in first, and using the latest technology – perhaps even drones and spy satellites perfected in the skies over Afghanistan and Pakistan – they capture and return with a lion in one day. Next, the Scotland Yard, much like their colonial predecessors, entered the jungle. Using native trackers and their network of *mukhbirs* or informants they returned with a lion two days later. Lastly, it was the turn of the Indian police. They entered the forest expecting to return quicker than the FBI and Scotland Yard, what with their covert cell phone intercepts and the use of secret evidence. One day passed and the Indian police did not show up. Another day, and still they did not return. The 3rd and 4th day went by. On the 5th day, fearing the fate of their counterparts, the FBI and Scotland Yard team went in search for the Indian police. As they entered the jungle, they came upon a peculiar sight. The Indian police had tied up a bear and hung him upside down from a tree. They were beating the bear with *lathis* and saying “*Kabool kar ki tu sher hai*”.

The joke perhaps unfairly singles out the Indian police for their use of violence, as torture and acts of cruelty by the police are surely worldwide, cross-cultural phenomena. The joke however, points towards the relationship between confessions and torture by the police. This fascinating, theoretically rich book traverses both these themes – the persistence of ‘excess’ violence in the form of torture in liberal democracies (in particular, in India and in the United States) primarily in the context of custodial interrogations and the use of confessions.

The book’s concern is to understand the relationship between law and violence and from this relationship to put forward an idea of the state. In doing so, it situates itself between theorists like Giorgio Agamben who place primacy on the state of exception, and the lawless, totalising violence of the state and those who argue that modern law is progressing towards a violence-free mode of governance, if this has not yet been already achieved. The book instead builds upon accounts that read violence into the texts produced by the state in the form of statutes, official reports, legal memos and judicial pronouncements.

The book begins with the, often unstated, premise that law and the art of government involves the wielding of violence, and that one of the hallmarks of state is its monopoly on legitimate violence. However, when the violence exceeds a certain limit, such as torture in Abu Ghraib or the blinding of prisoners in Bhagalpur, it threatens to undermine the liberal self-descriptions of the state. Torture appears as a paradox for liberal democracies simply because one of the self-defining features of liberal democracies is the absence of torture or indeed any ‘unnecessary’ state violence. The question for the state is then how much violence is too

What torture says about the State

Transnational Torture: Law, Violence and State

Power in the United States and India

By Jinee Lokaneeta

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much violence. It is the negotiation and the tension between this ‘excess’ violence and the law that forms the basis of this book.

In building her argument, Lokaneeta marshals a wide variety of writing by the state as her primary archive. She looks at court judgements from the United States and India, the infamous torture memos written under the Bush administration, reports by inquiry commissions into torture in colonial India and in the United States in the 1930s. In looking at this ongoing process of negotiation between excess violence and the law, the book picks on certain key moments. It begins with a discussion on the theorisation of violence in US Supreme Court judgements. These judgements provide a narrative of the progressive outlawing of torture in the context of interrogations. According to Lokaneeta, this has allowed a politics of denial to emerge in the US when torture does become a matter of public debate. Even when placing limits on violence by police officers has come up in the US Supreme Court, like in the iconic *Miranda* decision, this has meant that other forms of coercion and violence have been narrated away as something other than torture. By contrast, the Indian Supreme Court in its more well known pronouncements on torture avoided enumerating the types of illegitimate force and has accepted that a range of activities may be seen as torture, recognising the slipperiness of defining and distinguishing between acceptable and unacceptable forms of violence in interrogations. Thus, the Indian Supreme Court in the 1990’s had instituted procedural safeguards in an attempt to prevent custodial torture of prisoners.

The book also displaces the place of torture. The question of where and when torture occurs is as much one of geography and time as it is one of discourse. Torture is assumed

to be present in totalitarian regimes, uncivilised areas, and in the Third World. Torture is also assumed to be a thing of the past, no longer present in liberal democracies. We are told that if torture occurred after 9/11 in the US, this was a break with its past. The book compellingly argues that torture has been central to modes of governance in the modern state and that current methods of torture are founded on methods of inflicting violence that have existed in the past. Furthermore, far from being a product of the Third World, the United States, the United Kingdom and France invented and developed the technologies of torture.

The most important contribution of the book is to move the place of torture away from the state officials who commit acts of torture, to the texts produced by the state. A recurring form of mode of denial or torture is to blame the acts on a “few bad apples” in the US or in India, on the lower rungs of the police hierarchy. In responding to the Abu Ghraib pictures, blame was placed on a few military officers absolving the upper echelons of the military hierarchy. In investigating torture in colonial Madras, the Madras torture commission placed the blame on “native” police officers who populated the lower rung of the police. In contemporary India, blame is placed on these same levels, but instead of being a question of race, it becomes one of class and lack of education and the absence of supervision by senior police officers. The book however, does not resolve the questions of torture in terms of the lack of enforcement or improper implementation of the law. Instead, it brings back the question of violence into the interpretation of laws and the reading of stately texts.

For instance, the book points to the ways in which the first torture memo produced by the Bush administration effectively narrowed the scope of

protections against torture by a series of interpretative manoeuvres. The memo did not advocate an abrogating of existing laws, but rather was based on a particularly aggressive reading of executive powers under the US constitution and statutes that defined torture. This memo came to be withdrawn in the aftermath of the pictures emerging out of Abu Ghraib. The book suggests that the withdrawal became necessary because first, it created a direct link between the US policy-makers and the perpetrators of violence and second, the memo explicitly provided a framework for authorising acts that exceeded acceptable limits of violence in a liberal democracy. Pointing to act of its withdrawal, Lokaneeta argues that even at the height of the war on terror, the Bush administration could not defend torture as torture, and when the memo appeared to be the genesis of torture, it had to be publicly. The book also brings popular imagery of torture in the popular television show 24 to bear on US government reports on torture. It argues that torture in this show is seen as something that inflicts brutal physical harm, and allows everything less than these acts – mental torture, sleep deprivation, enforced nudity, water boarding – as not torture. Hence, official denials that certain acts are not torture, are not only based on the narrow definition of torture but also reflect an underlying popular imagery of torture as physical brutality. Torture is also narrated away by the use of sanitised speech and routinised terms. Hence water boarding is described as a “dunk in the water” and sleep deprivation something that everyone goes through on occasion and hence something less than torture. Torture itself is given the more sterile moniker of “enhanced interrogation techniques”.

If anything, the book’s biggest strength – the reading of the state’s texts – is also its primary limitation. In the state’s imagination, torture is used primarily to obtain a confession from a prisoner and there is a cause and effect relationship between torture and the confession. Elaine Scarry points out that torture as a motive for a confession is one of the state’s many fictions. This book does not de-couple torture and the confession perhaps because the book’s primary aim is to provide us, not with a theory of torture, but rather with a theory of the state.

Hence, *Transnational Torture* joins contemporary debates on ideas of the state and theories of sovereignty and argues for a reformulation of Foucault’s idea of governmentality. While Foucault argued that the modern state governs by the use of dispersed modes of discipline, gradually abandoning more spectacular forms of state violence, Lokaneeta argues that the state deploys ‘excess’ violence at some moments, only to seek to accommodate it in the next. The state attempts to push these forms of violence without appearing to be lawless and hence the category of excess violence is one that is constantly negotiated, but essential to modern methods of governance. ■

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Torture appears as a paradox for liberal democracies simply because one of the self-defining features of liberal democracies is the absence of torture or indeed any ‘unnecessary’ state violence. The question for the state is then how much violence is too much violence. It is the negotiation and the tension between this ‘excess’ violence and the law that forms the basis of this book