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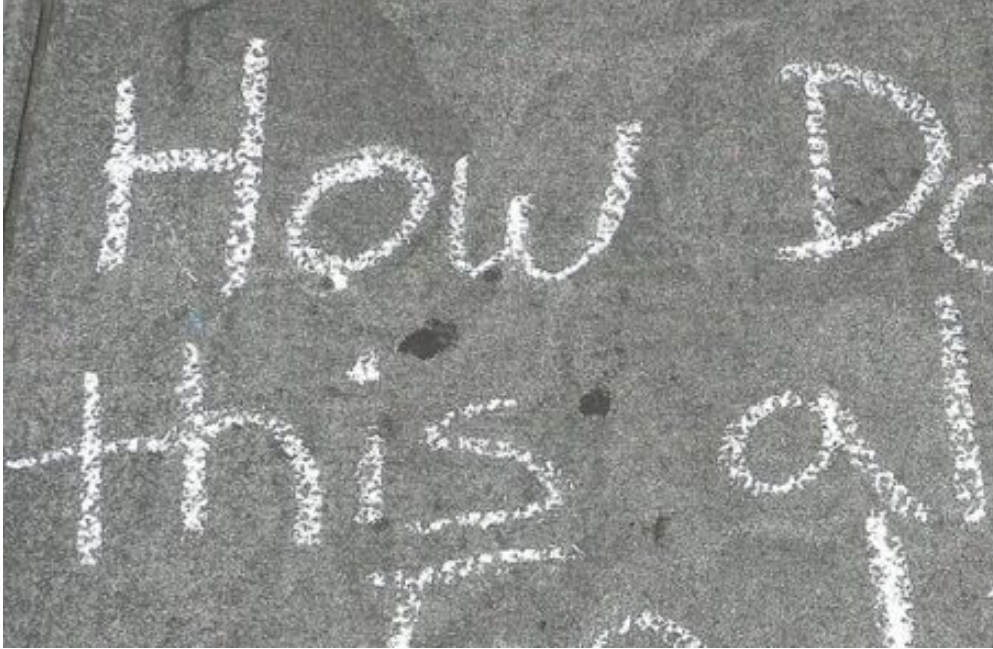
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Customary Barbarity: Britain's SAS in Afghanistan



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The insistence that there is a noble way of fighting war, one less bloody and brutal, has always been the hallmark of forces self-described as civilised. Restraint characterises their behaviour; codes of laws follow in their wake, rather than genocidal impulses. Killing, in short, is a highly regulated, disciplined affair.

The failed wars and efforts of foreign powers in Afghanistan have destroyed this conceit. Lengthy engagements, often using special forces operating in hostile terrain, have been marked by vicious encounters and hostile retribution. Australia's Special Air Services supplied a very conspicuous example. The 2020 report by New South Wales Court of Appeal Justice Paul Brereton on the alleged murders of Afghan non-combatants was an ice bath for moralists claiming they were fighting the good fight.

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Known rather dully as the Inspector-General of the Australian Defence Force Afghanistan Inquiry Report, Brereton claimed that 39 alleged non-combatant murders were perpetrated by Australian special service units during their tours of duty. The report was inspired, in no small way, by the work of consultant Samantha Cromptoets, a sociologist commissioned by the Special Operations Commander of Australia (SOCAUST) to conduct a “cultural review” of the Special Operations Command in mid-2015.

Her January 2016 report makes grim reading, noting such endemic practices as body count competitions and the use of the Joint Priority Effects List (JPEL). The JPEL effectively constituted a “sanctioned kill list” characterised by tinkered numbers.

Units of the British SAS are now accused of almost identical practices, a point that will come as little surprise to some in the Royal Military Police. Titled Operation Northmoor, the RMP initiated a number of investigations in 2014 that covered 675 criminal allegations, some of which were said to have been committed by the special forces. In 2019, the Ministry of Defence closed the investigation claiming that there was no evidence of criminality.

The RMP team disputed the finding, and had to face an atmosphere of hostility encouraged by then Minister for Veterans’ Affairs Johnny Mercer. According to Mercer, the whole effort was a crusade by overly keen human rights lawyers keen to harass the MOD. In his sights was the solicitor’s firm Leigh Day, which was twice cleared of allegations of professional misconduct for their handling of compensation claims against the MOD over alleged incidents in Iraq.

A recent BBC investigation has revisited Britain’s military efforts, finding evidence of unlawful killings during 2010-11. One unit took its work so seriously as to be allegedly responsible for the deaths of 54 people over six months. The pattern of behaviour is markedly similar to those of the Australian special forces: detainees supposedly shot after producing a concealed weapon; the use of “burner” weapons rather than formal issue to do the deed. Institutional complicity is also alleged, with officers higher up the pecking order covering up the misdeeds of their subordinates.

The investigation also suggests that vital information was not shared with the RMP. A claim is made that General Sir Mark Carleton-Smith, director of the special forces, did not disclose to the RMP earlier concerns about unlawful killings, or the existence of a review into the squadron.

With these allegations come enormous impediments to accountability. The British government, captured by a Brexit atmosphere of exceptionalism, has busied itself with

making prosecutions harder than ever. In 2020, the Overseas Operations (Service Personnel and Veterans) Bill was introduced to provide serving and former military personnel “more legal protection from prosecution for alleged offences resulting in overseas operations.”

The press release announcing the Bill went on to note the number of compensation claims against the UK Ministry of Defence – near 1,000 – for unlawful detention, personal injury and death. To this could also be added 1,400 judicial review claims against the MOD seeking investigations and compensation for a number of human rights violations.

Instead of seeing such figures as an instance of cultural blight and abuse in the UK military forces in their conduct of overseas operations, Defence Secretary Ben Wallace preferred a different reading. The “vast majority” of personnel had “acted in accordance with the rule of law and often at great personal risk” but had been “faced with the prospect of repeated investigations by inquest and police”.

The Bill became law in 2021. Under the law, prosecutors are discouraged from initiating actions in various ways. There is a general presumption against the prosecution of soldiers for overseas offences committed five years after the alleged incident. The original bill even went so far as to apply this presumption to all crimes bar sexual offences, though this was subsequently amended to exclude torture, war crimes, crimes against humanity and genocide.

“Particular weight” must be given by the prosecutor to a range of matters, such as “being exposed to unexpected or continuous threats, being in command of others who were so exposed, or being deployed alongside others who were killed or severely wounded in action.” It was imperative for the prosecutor to “have regard to the exceptional demands and stresses to which members of Her Majesty’s forces are likely to be subject while deployed on overseas operations, regardless of their length of service, rank or personal resilience.” If the prosecutor favours prosecution, another limitation must be negotiated. Any action against military personnel can only proceed with the consent of the Attorney General.

The UK authorities have also insulated themselves from civil claims based on harmful overseas acts that might arise in connection with the Human Rights Act. The time bar there is six years.

Given that the acts alleged in the BBC investigation took place over a decade ago, the prospect of genuine, fully committed prosecutions is almost impossible to envisage. An investigation of some shape or form is likely to happen, though it will be carefully

managed to fail. Britain has shown, time and again, that the rich rhetoric of human rights can be uttered even as its soldiers butcher for Queen and country.

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