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Torture

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Definitions of torture vary in national and international laws, but an internationally accepted definition is enshrined in the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT). UNCAT entered into **[p. 1490 ↓]** force in 1987 and in 2006 had 142 ratifying countries accepting its provisions, some with reservations such as the United States. Article 1 defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.” It goes on to limit torture to only cover certain purposes, such as “obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.” Article 1 further requires government involvement, that is, the “pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.”

Human Rights Protection

In the contemporary era, torture constitutes a human rights violation. International human rights norms, created in response to the horrors and violence of World War II, have provided the negative inspiration for a revolution in international law to forge the principle that people should have rights as humans and not merely as protected classes of subjects. The right not to be tortured became a human right through the development of international norms prohibiting the practice of torture and establishing legal liabilities and penalties for its use. International norms that began this process include the Universal Declaration of Human Rights (1948), the Four Geneva Conventions (1949) and their Additional Protocols I and II (1977), the International Convention on Civil and Political Rights (1996), and finally the Torture Convention, the UNCAT (1984).

Many human rights are derogable, that is, states can temporarily suspend them, in circumstances of war or emergency, but this does not apply to the right not to be tortured. Torture is prohibited under all circumstances. According to article 2(2) of the Torture Convention, “No exceptional circumstances whatsoever, whether a state of war

or a threat of war, internal political instability, or any other public emergency, may be invoked as a justification for torture."

Beyond the coverage of UNCAT, the prohibition of torture has ripened into customary international law, which means that it has the status of a "universal norm" in the law of nations. The prohibition of torture attaches universal jurisdiction: if a perpetrator is not prosecuted in her own country, she could be prosecuted in a competent legal system elsewhere in the world.

The prohibition of torture is so strong (nonderogable and universal) because it involves purposefully harming someone who is "in custody"—someone who is not free to fight back or protect herself and who is imperiled by that incapacitation. Many other violent practices (such as domestic violence, battery, or military combat) involve the purposeful causing of pain, but they lack the public dimension of custodianship. Legally, severe pain, suffering, humiliation, and injury constitute torture only if it serves some public purpose, if the status and role of the torturer emanates from a public authority, and if the person harmed is in custody.

The international prohibition of torture represents an ideal human rights norm because it invests people, regardless of their social status, gender, political identity, or affiliations, with a right not to be tortured, even if that right is limited to situations or practices that fall within the legal definition. In contrast, the right not to be exterminated in a genocide hinges on a collective identity as a member of a national, racial, religious, or ethnic group. The right not to be deliberately targeted in war hinges not on one's humanity but on one's status as a civilian, noncombatant, or as a surrendered or captured combatant.

The right not to be tortured is stronger than the right to life because there are many circumstances under which the state may legally kill people (including self-defense, war, or the death penalty) but absolutely none under which the state can legally torture people.

History and Politics of Torture

The practice of torture has existed for millennia. It came to be regarded as illegitimate, and eventually illegal, in **[p. 1491 ↓]** the modern era through a centuries-long process that traces to social and penal reforms of the Enlightenment, the rise of modern states, and the development of international institutions and laws. In earlier periods, political rulers and religious authorities used public spectacles of pain, punishment, and death to make their power visible and to impose order, control, and obedience. Enlightenment thinkers such as Cesare Beccaria (1738–1794), Voltaire (1694–1778), and Jeremy Bentham (1748–1832) argued that sanguinary torture and public spectacles of pain were unenlightened and "unmodern." These critiques, however, did not lead to the eradication of torture; rather, torture and punishment were "modernized" by moving them out of public view and into new types of institutional spaces such as prisons, police departments, and interrogation centers.

Another effect of the Enlightenment was a critical reevaluation of the utility of torture and pain as means of ascertaining truth. In many classical and premodern legal systems, torturing someone to confess was integral to law enforcement. In the eighteenth century, ideas about the relationship among truth, pain, and the law began to change with the rise of liberal democracies in which people became rights-bearing citizens and the law limited government powers. In the United States, the Eighth Amendment to the Constitution stated the prohibition against "cruel and unusual punishments" because it impinges on bodily integrity and the autonomy and dignity of the individual.

Over the course of the nineteenth and twentieth centuries, countries around the world achieved political independence from Western imperial rule, thus globalizing sovereign bureaucratic states. Although governments differ substantially, all sovereign states have a right and a responsibility to provide for domestic order and national security, and many modern states have used torture to interrogate people to elicit their confessions, to obtain intelligence information, or merely to punish them. However, in the aftermath of World War II, through the creation of the United Nations and the development of new international norms, the rights of states to unfettered autonomy and unregulated discretion to use violence were circumscribed; the legal prohibition of torture was one of these restraints.

The continuation of torture illuminates the gap that plagues the enforceability of human rights—the gap between “law in the books” and “law in action.” This gap problem gave rise to human rights activism, and torture was the break-out issue, starting in the early 1960s with the establishment of Amnesty International. Much of what we know about torture is the result of monitoring and reporting by human rights organizations. Ironically, the success of efforts to publicize torture has not substantially reduced torture. Instead, tactics such as beatings and burnings, which leave traces on the bodies of victims, have been replaced, at least by torturing states that feel pressed to have plausible deniability, with standing-position abuse, sensory and sleep deprivation, electric shocks, mind-altering drugs, water immersion, and other measures.

According to Amnesty International, today torture occurs in two-thirds of the world's countries. However, because of its universal prohibition, no torturing regime defends or even acknowledges its own torture as torture. Denial takes one or more of three forms. *Literal denial* occurs if a state refutes allegations by saying that nothing happened. *Interpretative denial* involves a state response to allegations that argues that what happened is not torture but something else, invoking euphemisms such as moderate physical pressure, stress and duress, or abuse and humiliation. *Implicatory denial* occurs when a state acknowledges torture but blames it on aberrant agents who breached official norms and policies.

A major challenge to impunity for torture took place with the case against former Chilean dictator Augusto Pinochet (1915–2006), who was arrested in London in 1998 on an indictment by a Spanish magistrate. Although Pinochet ultimately was released from British custody because of ill health, the Pinochet precedent—holding that he was indictable—was a landmark: no *raison d'état* could be invoked to justify torture, and not even a former head of state could claim legal immunity from prosecution on charges of torture.

In 2004, photographic revelations of the use of torture by U.S. agents in Iraq, particularly at the Abu Ghraib prison and Bagram prison, as well as the publication of official memoranda authorizing interrogation tactics that constitute torture for suspects in the “war on **[p. 1492 ↓]** terror,” escalated into a major crisis for the administration of President George Bush (2001–2009). The actions constituted a breach of federal law as

well as treaties that the United States had ratified. This crisis led the United Nations to reaffirm the universal and nonderogable prohibition of torture.

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See also

- Beccaria, Cesare
- Bentham, Jeremy
- Customary Legal Norms, International
- Gap Problem
- Genocide
- Globalization, Processes of Legislative
- Human Rights, International
- Nongovernmental Organizations
- Terrorism

Further Readings

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