

Introduction

TORTURE AND ITS PURPOSES

As a phenomenon, torture is very old, as the first United Nations (UN) Special Rapporteur on the question observed.¹ Historically, it was used to extract information from a witness and, especially, to coerce a confession from a suspect.² Torture is thus, in the words of Sir Nigel Rodley, ‘officially sanctioned infliction of intense suffering, aimed at forcing someone to do or say something against his or her will’.³ It is therefore purposive pain, not the agony that is wrought on another by a sadist.

Torture in the English language comes from the Latin word *torquere*, meaning to twist, reflecting one of the early, prevalent methods of inflicting great pain in interrogation.⁴ Still today, in some countries torture also serves as a punishment for certain offences and to deter others.⁵ The victims of torture are sometimes suspected common criminals who seem to law enforcement officials to be ‘getting away with’ crime.⁶

¹ Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report by the Special Rapporteur, Mr P. Kooijmans, appointed pursuant to Commission on Human Rights resolution 1985/33, UN doc. E/CN.4/1986/15, 19 February 1986, para. 2.

² Manfred Nowak has affirmed that in the contemporary world 90 per cent of the cases of torture are conducted with this purpose. M. Nowak and G. Monina, ‘Defining Torture and the Obligation of Systematic Review in the CAT Treaty’, Chap. 1 in S. J. Barela, M. Fallon, G. Gaggioli, and J. D. Ohlin (eds.), *Interrogation and Torture*, Oxford University Press, Oxford, 2020, 21–36, at 34.

³ N. S. Rodley with M. Pollard, *The Treatment of Prisoners under International Law*, 3rd ed., Oxford University Press, Oxford, 2011, 8. Peters similarly described torture as ‘torment inflicted by a public authority for ostensibly public purposes’. E. Peters, *Torture*, Expanded ed., University of Pennsylvania Press, Philadelphia, PA, 1999, 3.

⁴ ‘Torture’ (noun), *Oxford English Dictionary*, accessed online 1 April 2024 at: www.oed.com. That is so, even though *quaestio* was in fact the term jurists of the Roman empire used to denote ‘the torment and suffering of the body in order to elicit the truth’. Peters, *Torture*, Expanded ed., 1.

⁵ *Tormentum* was the Latin term used to denote cruel punishment in the Roman empire, including crucifixion.

⁶ Rodley and Pollard, *The Treatment of Prisoners under International Law*, 3rd ed., 12.

Torture persists despite repeated efforts since the Enlightenment to legislate it out of life. In 1874, following its statutory abolition in the criminal law of European nations, Victor Hugo famously claimed that torture ‘has ceased to exist’.⁷ One hundred and fifty years later, even the ‘unambiguous formulation’ of the prohibition by the UN in the Convention against Torture⁸ has not succeeded in eradicating this evil.⁹ Donnelly and Diehl argue that governments engage in torture either because they are weak and fearful or because they are paranoid.¹⁰ In their gruesome historical review of torture they describe the (relatively) benign treatment of citizens in the stability of ancient Egypt and contrast it with the ‘unbelievably horrific’ punishments imposed during the Dark Ages and early medieval period in Europe.¹¹ This tells part of the story, but not all. For some still deem torture to be a ‘necessary evil’ – an essential means to gather life-saving information.¹² But while torture may produce actionable intelligence if exercised over a prolonged period, ‘No torture has, or will ever, defuse a “ticking bomb”’.¹³

What is more, aside from its inherent immorality, the practice of torture may also stimulate opposition and even rebellion. Widespread French torture of members of *Le Front de libération nationale* (FLN) in Algeria spurred its emergence as a popular force (while diminishing support for more moderate groups).¹⁴ A former officer in the United Kingdom’s Security Service, MI5, similarly argues that whether or not forceful interrogations yield accurate information from terrorist suspects, torture may generate popular support for a burgeoning movement. Describing the forceful interrogation by the British of detained Irish Republican Army (IRA) paramilitaries in the 1970s he concluded: ‘You’ll end up radicalizing the entire population.’¹⁵

⁷ See Peters, *Torture*, Expanded ed., 4–5 and, for details of its progressive abolition, 74–102.

⁸ Art. 1(1), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; adopted at New York, 10 December 1984; entered into force, 26 June 1987 (hereafter, 1984 Convention against Torture). As of 1 January 2025, there were 175 States Parties to the Convention and 4 signatory States (Brunei, Haiti, India, and Palau).

⁹ J. H. Burgers and H. Danelius, *The United Nations Convention against Torture: A Handbook on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Martinus Nijhoff, Dordrecht, 1988, 13.

¹⁰ M. P. Donnelly and D. Diehl, *The Big Book of Pain: Torture & Punishment Through History*, The History Press, Cheltenham, 2022, 4.

¹¹ Donnelly and Diehl, *The Big Book of Pain: Torture & Punishment Through History*, 14.

¹² See, e.g., N. Jones, ‘Was Russia Right to Torture the Moscow Attackers?’, *The Spectator*, 26 March 2024.

¹³ R. E. Hassner, *Anatomy of Torture*, Cornell University Press, Ithaca, 2022, 6–7 and 4. See further R. E. Hassner, ‘The Myth of the Ticking Bomb’, *Washington Quarterly*, Vol. 41, No. 1 (March 2018), 83–94.

¹⁴ P. N. S. Rumney, ‘Is Coercive Interrogation of Terrorist Suspects Effective? A Response to Bagaric and Clarke’, *University of San Francisco Law Review*, Vol. 40, No. 2 (2006), Article 5, 479–513, available at: <https://bit.ly/3x451AR>, at 498, citing A. Shatz, ‘The Torture of Algiers’, *The New York Review*, 21 November 2002, at: <https://bit.ly/3PWDeZV>, 57; see also Hassner, *Anatomy of Torture*, 132.

¹⁵ Cited in J. Mayer, ‘Outsourcing Torture’, *The New Yorker*, 6 February 2005, at: <https://bit.ly/4cqceDpR>.

Common Methods of Torture

Methods used to torture a person are indeed ‘as infinite as the inventiveness of the dark side of the human imagination’.¹⁶ The Istanbul Protocol on the investigation of torture and other ill-treatment, published by the Office of the UN High Commissioner for Human Rights in 2002, offers a long but still non-exhaustive list of common forms of torture.¹⁷ Among the examples it proffers are the following:

- (a) Blunt trauma, such as punches, kicks, whipping, beatings with wires or truncheons, or forced contact with hard surfaces, such as floors and walls;
- (b) Positional torture, using suspension, stretching limbs apart, prolonged constraint of movement, and forced positioning;
- (c) Burns with cigarettes, heated instruments, scalding liquids, or caustic substances;
- (d) Electric shocks;
- (e) Asphyxiation, such as near-drowning, smothering, confinement in small or coffinlike boxes, choking, or use of chemicals;
- (f) Crush injuries, such as smashing fingers or using a heavy roller to injure the thighs or back;
- (g) Penetrating injuries, such as stab and gunshot wounds or wires under nails;
- (h) Chemical exposure to salt, chili pepper, gasoline, or other substances in wounds or body cavities;
- (i) Sexual violence to genitals, rape, or molestation;
- (j) Traumatic or surgical amputation of body parts, such as ears, fingers or toes, or limbs;
- (k) Surgical removal of organs;
- (l) Pharmacological torture, using toxic doses of sedatives, neuroleptics, paralytics, or hallucinogens;
- (m) Conditions of detention, such as heavily overcrowded cells, contaminated food and water, exposure to extremes of temperature, and forced nakedness;
- (n) Prolonged deprivation of normal sensory stimulation, such as sound, light, and sense of time;
- (o) Denial of medical and mental health care and treatment;
- (p) Incommunicado detention and denial of social contacts in detention and/or with the outside world;
- (q) Prolonged use of restraint devices, such as handcuffs, chains, irons, and straitjackets;
- (r) Prolonged solitary confinement and other forms of isolation;
- (s) Sensory overload, such as very loud music and bright lights;

¹⁶ Rodley and Pollard, *The Treatment of Prisoners under International Law*, 3rd ed., 11.

¹⁷ Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), Office of the United Nations High Commissioner for Human Rights (OHCHR), New York and Geneva, 2002, para. 372.

- (t) Exhaustion from forced exercise, often in combination with sleep deprivation;
- (u) The performance of humiliating acts on the basis of one's identity and actual or presumed sexual orientation;
- (v) Threats of death, harm to family, and mock executions; or attacks by animals, such as dogs, rats, or scorpions;
- (w) Psychological techniques to break down the individual, including forced betrayals, amplifying feelings of helplessness, and violation of taboos;
- (x) Behavioural coercion, such as forced engagement in practices against the religion of the victim (e.g. forcing Muslims to eat pork);
- (y) Manipulation of affect and emotions; and
- (z) Forcing victims to witness torture being inflicted on others, including members of their families.

Often, torture is regulated, either formally or informally. A 'manual' said to have been written by an anonymised captain in the French army officer set down 'rules' to govern the use of torture in Algeria:

1. It is necessary that torture be properly conducted (*'propre'*).
 2. It must not take place in front of children.
 3. It must not be performed by sadists.
 4. It must be done by an officer or another person in a position of responsibility.
 5. It must be *humane*; that is to say, that it stops as soon as the guy has talked.
- And above all it must leave no marks.¹⁸

Reflecting the generally accepted understanding of the term under international law today,¹⁹ in many instances, torture has also been performed without the infliction of pain but rather by threatening its application. With respect to the Spanish Inquisition, for instance:

Victims were first taken to the torture chamber and shown the tools of their forthcoming anguish. To get the victim's attention, the entire process was described in lurid detail. Then they were sent back to their cell and given some time to think things over. Unless the poor wretch had no more imagination than a cow, the mere contemplation of what was about to happen to them was often enough to make them spill everything they knew and a whole lot they didn't know.²⁰

Hassner agrees. In the 'shadow of torture' as he terms it, 'anticipation, uncertainty and dread play a crucial role in terrorizing torture victims'. Indeed, the Spanish Inquisition learned that the expectation of future pain also motivated its prisoners to divulge information.²¹

¹⁸ A. Mellor, *Je dénonce la torture*, Mame, France, 1972, 133–4 (original emphasis).

¹⁹ The credible threat of the infliction of severe pain or suffering is itself considered torture as Chapter 1 describes.

²⁰ Donnelly and Diehl, *The Big Book of Pain: Torture & Punishment Through History*, 5.

²¹ Hassner, *Anatomy of Torture*, 15.

Little has changed for the victims of torture since then. Many say that the worst mental suffering occurs before the torture actually starts as they did not know how far the torturers would go. ‘When the beating finally started, this was for some even a kind of relief’, it is claimed.²²

Torture to Extract Information or a Confession

Using brutality to obtain information from a suspect remains commonplace in many police and armed forces around the world. Indeed, in the domestic law of many States, torture is still defined by reference to its purposes of soliciting a confession or extracting information. Afghanistan’s penal code, for instance, limits the crime of torture to a public official who either tortures a suspect to obtain a confession or who issues an order to this effect.²³ Likewise, in Brunei, it is the voluntary causing of pain for the purpose of extorting from the victim, or from any person connected with the victim, any confession or any information.²⁴ In China, torture is – only – the forcible extraction of a confession.²⁵ But what the law says and what happens in practice, especially in totalitarian States, may be in contradistinction.

It has long been understood that torture is unlikely to produce quick and accurate results. In his detailed analysis of torture by the Spanish Inquisition, which began in the second half of the fifteenth century and continued until the Tribunal set up under the Spanish monarchy to identify heretics was abolished in 1834, Hassner describes the measured and methodical approach of the Inquisitors to eliciting information about heretical practices:

There was nothing slow, improvised or ad hoc about its methods. It tortured slowly, holding prisoners in its cells for months and years before tormenting them in the torture chamber. It did not torture primarily to punish or to terrify, nor did it torture with particular enthusiasm. It tortured as part of a bureaucratic procedure designed to collect information. It tortured in cold blood.²⁶

The Spanish Inquisition employed three methods of torture: the rack (*potro*), on which the victim was stretched by thick rope cords; the *garrucha* (a rope-and-pulley system that vertically suspended prisoners by their arms or wrists and led to the dislocation of limbs); and a form of waterboarding (*toca*) in which jar after jar of water would be poured into a prisoner’s mouth and lungs.²⁷ Yet despite the incredible suffering inflicted on the victims, relatively few died in the torture chamber.²⁸

²² Nowak and Monina, ‘Defining Torture and the Obligation of Systematic Review in the CAT Treaty’, 26.

²³ Art. 450, Criminal Code of Afghanistan.

²⁴ S. 330, Criminal Code of Brunei Darussalam.

²⁵ Art. 247, Criminal Code of China.

²⁶ Hassner, *Anatomy of Torture*, 17–18.

²⁷ *Ibid.*, 26.

²⁸ *Ibid.*, 21.

Moreover, torture was not ‘speculative’. It was inflicted upon those whose involvement in heretical practices was already almost certain, serving as a form of ‘corroboration’.²⁹ Nevertheless, many of the claims made under the torture of the Inquisition were simply untrue.³⁰

That torture may elicit false confessions or information has been known for millennia. At the beginning of the first century of the current era (CE), Seneca, the Roman philosopher and dramatist, recognised that torture inflicted in order to elicit information would not necessarily produce the truth. He debates this issue in his play, *Troades* through a confrontation between Ulysses and Andromache with the latter depicting torture as a method of exerting power.³¹ Yet despite concerns about its effectiveness – and morality – Seneca refused to condemn the practice of torture in all circumstances.³² Its exercise against slaves and later also freedmen would come to be regulated by imperial law – most notably in Justinian’s famous sixth century CE Code,³³ as well as in the contemporaneous Digest of the work of Roman jurists whose creation the emperor commanded.³⁴

What is also known is that false intelligence can have dramatic consequences. Ibn al-Shaykh al-Libi was an al-Qaeda operative who was first interrogated by the US Central Intelligence Agency (CIA).³⁵ Then, after being transported to Egypt by means of extraordinary rendition, he falsely claimed under torture that Saddam Hussein had supplied al-Qaeda with weapons of mass destruction.³⁶ According to al-Libi, he was locked in a tiny box less than twenty inches high and held for seventeen hours in an interrogation technique known as a mock burial. He said that, after being let out of the box, he was thrown to the floor and punched for fifteen minutes.³⁷ According to CIA operational cables, only then did he tell his story about al-Qaeda members being sent to Iraq – claims that would be used to justify the US invasion of Iraq in 2003.³⁸ But even within the CIA, there was concern that he was not always being truthful. An internal report from August 2002 noted that: ‘Questions persist about’ al-Libi’s ‘forthrightness and truthfulness’. In some instances, the Agency acknowledged, ‘he seems to have fabricated information’.³⁹

²⁹ Ibid., 24, 39.

³⁰ Ibid., 138.

³¹ M. F. Payne, ‘Torture, Truth and National Security in Seneca’s *Troades*’, *The Classical Quarterly*, Vol. 72, No. 2 (2023), 719–38, at pp. 719, 725, 736.

³² J.-C. Courtil, ‘Torture in Seneca’s Philosophical Works: Between Justification and Condemnation’, in J. Wildberger and M. L. Colish (eds.), *Seneca Philosophus*, Trends in Classics, De Gruyter, Berlin/Boston, 2014, 189–207, esp. at pp. 193, 198, 205.

³³ *Code of Justinian*, Book 9, Title 41: ‘Concerning Torture’, available at: <https://bit.ly/4cQFXwU>.

³⁴ *The Digest*, Book XLVIII, Title 18: ‘Concerning Torture’, available at: <https://bit.ly/3zoVGVl>.

³⁵ Mayer, ‘Outsourcing Torture’.

³⁶ D. Rejali, *Torture and Democracy*, Princeton University Press, Princeton, NJ, 2007, 504–05.

³⁷ M. Isikoff, ‘Senate Report’s New Findings on Pre-War Deception’, *Newsweek*, 10 June 2008 (updated 13 March 2010), at: <https://bit.ly/49aufuP>.

³⁸ Hassner, *Anatomy of Torture*, 128.

³⁹ Isikoff, ‘Senate Report’s New Findings on Pre-war Deception’.

Torture As Punishment

Torture also serves as a violent form of punishment for convicted or suspected offenders. The original Swedish/Dutch government draft of the 1975 UN Declaration on the Protection of Persons against Torture⁴⁰ had only two stipulated purposes: obtaining information or a confession and punishing a person for a crime he or she was suspected of having committed (or for which he or she had been convicted). Indeed, corporal punishment has long constituted an alternative (or an addition) to incarceration for a convicted person.

Whipping or flogging has long been practised against miscreants. The cat-o'-nine tails was a nine-thonged whip with each thong containing two or three knots along it. When a person was whipped, the knots ripped out a piece of flesh with each lash. It was widely used as a punishment for slaves in the Caribbean⁴¹ and for miscreant crew members on board ships. The 'cat' was once again decreed as a punishment by a judge in Barbados in early 1991 as a means of punishing drug dealers. Later that year flogging was set forth in statute as a punishment for certain offences.⁴² Five men were sentenced to lashes with the cat in addition to the terms of imprisonment imposed upon them. Lawyers for two of the men appealed against the sentences and, in a landmark ruling in September 1992, the Barbados Court of Appeal declared that flogging was itself 'inhuman and degrading punishment'⁴³ and thus contrary to the Constitution of Barbados.⁴⁴

Torture can also provide an opportunity to scapegoat a group in society for certain ills or divert attention away from a leader's responsibility. In July 64 CE, Nero picked on the Christians to divert gossiping Romans away from blaming him for the fire that had almost destroyed their beloved city.⁴⁵ Almost two thousand years later, a similar motivation could be seen in the response of the Russian authorities to terror attacks that their security services had failed to prevent. On 22 March 2024, a small armed group linked to Islamic State attacked the Crocus City Hall in a suburb of Moscow,

⁴⁰ Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, annexed to UN General Assembly Resolution 3452 (XXX), adopted without a vote on 9 December 1975.

⁴¹ See, e.g., E. Rediker, 'Courts of Appeal and Colonialism in the British Caribbean: A Case for the Caribbean Court of Justice', *Michigan Journal of International Law*, Vol. 35, No. 1 (2013), 213–51, available at: <https://bit.ly/43vWhPZ>.

⁴² Barbados Criminal Law (Measures) Act 1981; see H. S. Harvey, 'Of Flogging and Electric Shock: A Comparative Tale of Colonialism, Commonwealths, and the Cat-O'-Nine Tails', *The University of Miami Inter-American Law Review*, Vol. 24, No. 1 (Fall 1992), 87–119.

⁴³ Court of Appeals of Barbados, *Hobbs and Mitchell v. R*, BB 1992 CA 40, 1 September 1992.

⁴⁴ S. 15(1), Constitution of Barbados. See Amnesty International, 'Medical Concern: Corporal Punishment, English-Speaking Caribbean', Report, AI doc. AMR 05/01/93, 18 February 1993, at: <https://bit.ly/3TtFusv>, 2.

⁴⁵ Donnelly and Diehl, *The Big Book of Pain: Torture & Punishment Through History*, 44.

murdering those who had come for a concert. A total of 139 people were killed in the terror attack and more than 180 others were injured, many critically.⁴⁶ Suspects were swiftly arrested, including four Tajik nationals who were alleged to be the gunmen.⁴⁷ The following day, a court in Moscow ordered their detention on suspicion of an ‘act of terrorism’ as proscribed under Russia’s penal code.⁴⁸ Two of the accused pleaded guilty to some of the charges against them, while a third ‘admitted his guilt in full’. But as Amnesty International also reported, the four men showed signs of possible torture.⁴⁹

Russian law ostensibly prohibits torture, which it defines as the infliction of physical or mental suffering through systematic beating or ‘any other violent actions’ with a view to compelling someone to give evidence, to punish someone, or for other purposes.⁵⁰ *Aljazeera* referred to the four men ‘showing signs of severe beating’ and observed that Russian media had reported that the men were tortured during interrogation by the security services.⁵¹ Other media outlets were unequivocal in their reporting of torture, with several referring to one of the men having his ear cut off and being force-fed the mutilated organ – video posted online seemingly depicted the violence.⁵² The victim, Saidakrami Rachabalizoda, subsequently came to court with the right side of his face heavily bandaged. Another video released on social media showed security officials applying electric shocks to the genitals of a second suspect. The Kremlin did not comment on the allegations of torture, but they did not deny it.⁵³ Islamic State threatened revenge against ‘wild Russians’ for the torture of the men.⁵⁴ It seemingly came three months later, in Dagestan.⁵⁵

⁴⁶ R. Oliphant, ‘Putin Acknowledges Radical Islamists Carried out Moscow Terror Attack’, *Daily Telegraph*, 25 March 2024, at: <https://bit.ly/3VvQOXt>.

⁴⁷ Moscow’s Basmanny District Court identified the four suspects as Dalerdzhon Mirzoyev, a thirty-two-year-old; Saidakrami Rachabalizoda, thirty; Shamsidin Fariduni, twenty-five; and Mukhammadsobir Faizov, nineteen. Islamic State said on Telegram that the attack was carried out by four of its fighters ‘armed with machine guns, a pistol, knives and firebombs’. ‘Four Men Showing Signs of Severe Beating Charged over Moscow Concert Attack’, *Aljazeera*, 25 March 2024, at: <https://bit.ly/4adUNfV>.

⁴⁸ Art. 205(3)(b), Criminal Code of the Russian Federation.

⁴⁹ Amnesty International, ‘Russia: Truth and Justice for Victims of Crocus City Hall Attack Incompatible with Torture of Suspects’, 25 March 2024, at: <https://bit.ly/3VzEbL9>.

⁵⁰ Art. 117, Criminal Code of the Russian Federation.

⁵¹ ‘Four Men Showing Signs of Severe Beating Charged over Moscow Concert Attack’, *Aljazeera*.

⁵² Oliphant, ‘Putin Acknowledges Radical Islamists Carried out Moscow Terror Attack’; and see G. English, “‘DANGER TO RUSSIA’, ISIS Threatens REVENGE on Putin for Torturing Terror Suspects after “killers” Beaten, Electrocuted & “force-fed ear””, *The Sun*, 25 March 2024, at: <https://bit.ly/3PxCo6P>.

⁵³ C. Chiappa, ‘Kremlin on Whether Moscow Attack Suspects Were Tortured: No Comment’, *Politico*, 25 March 2024, at: <https://bit.ly/4cKNgaj>.

⁵⁴ English, “‘DANGER TO RUSSIA’, ISIS Threatens REVENGE on Putin for Torturing Terror Suspects after “killers” Beaten, Electrocuted & “force-fed ear””.

⁵⁵ F. Ebel and R. Dixon, ‘After Attack in Dagestan, Russian Officials Minimize Islamic State Claim’, *The Washington Post*, 24 June 2024, at: <https://bit.ly/3zvowRd>.

Execution As Torture

The method of an execution may contravene the prohibition on torture. That is so even when the imposition of the death penalty is not itself unlawful, but where pain or suffering is unnecessarily severe and especially where they are prolonged. Often, the most painful methods of capital punishment have been reserved for those who rose up against the sovereign. The Romans thus employed crucifixion as a brutal form of capital punishment to deter others from rising up against the empire. Jesus himself was crucified on the claim that he had instigated rebellion against Rome.⁵⁶ Described by one authority as ‘quite possibly the most painful death ever invented by humankind’,⁵⁷ crucifixion involves the victim being tied or nailed to a large wooden cross or beam and left hanging until eventual death from either exhaustion or asphyxiation or a combination of the two. Seneca often refers in his works to the cross as the ‘emblematic instrument of torture’⁵⁸ while the word ‘excruciating’ in English is derived from the practice of crucifixion, reflecting the extreme suffering it engendered.⁵⁹

King Henry III, who reigned as king of England from 1216 until his death in 1272, is credited with the introduction of hanging, drawing, and quartering as a means of capital punishment for those who committed treason.⁶⁰ This method of execution involved the condemned man (it was always a man)⁶¹ being dragged to their place of execution by horse, often lashed to a wicker ‘hurdle’ (or wooden frame), leaving them covered with lacerations.⁶² Arriving at the public place of execution, the traitor was hung until he was just about to lose consciousness then returned to earth where he was typically castrated and disembowelled. His entrails, once removed, might be thrown on the fire in front of his eyes, as was the case with William Wallace in August 1305. Only then was the man’s head cut off, ending the agony. Horses would be tied to the traitor’s body that would pull the corpse in four different directions, ripping it into four pieces. The sundered corpse was then displayed on city gates across the country – popular sites included London Bridge and Westminster Hall – to serve as a warning to would-be traitors and a portrayal of the consequences of betraying your sovereign.⁶³

⁵⁶ F. P. Retief and L. Cilliers, ‘The History and Pathology of Crucifixion’, *The South African Medical Journal*, Vol. 93, No. 12 (2003), 938–41, at: <https://bit.ly/3rzNb29>.

⁵⁷ C. Shrier, ‘The Science of the Crucifixion’, Azusa Pacific University, Azusa, 2002, at: <https://bit.ly/3Yufsp>.

⁵⁸ Courtil, ‘Torture in Seneca’s Philosophical Works: Between Justification and Condemnation’, 191.

⁵⁹ Shrier, ‘The Science of the Crucifixion’. The piece describes graphically the suffering that Jesus would have undergone before his physical death. See also D. P. Mannix, *The History of Torture*, Sutton, Stroud, 1964, 37.

⁶⁰ Donnelly and Diehl, *The Big Book of Pain: Torture & Punishment Through History*, 58.

⁶¹ Women were never subjected to this method of capital punishment but would instead be beheaded or burnt at the stake.

⁶² R. Simon, “‘Godly butchery’: The Horrifying History of Hanging, Drawing and Quartering”, *History Extra*, 10 December 2021, at: <https://bit.ly/3q9c9ER>.

⁶³ Ibid.

In 1241, William Marise, the son of an English nobleman, was convicted of piracy,⁶⁴ becoming the first person to suffer what was known then as ‘Godly butchery’ or ‘three deaths’. The penalty of hanging, drawing, and quartering was imposed upon any man convicted of ‘high treason’, an offence broadened by statute in 1351 under the Treason Act to encompass violating the eldest unmarried daughter of the king or his eldest son’s wife.⁶⁵ This method of execution was only abolished by the Forfeiture Act of 1870,⁶⁶ although the last recorded use of this method of execution was three centuries earlier in 1586. Seven men were killed in this way as punishment for plotting the murder of Queen Elizabeth I.⁶⁷ The death penalty for treason in England was abolished by the Crime and Disorder Act 1998.

In Qing dynasty China, which began in the middle of the seventeenth century CE, *lingchi chusi* involved a variety of different knives being used to cut off parts of the body one by one. The intent was to dishonour the victim and make it impossible for him to join his ancestors in the afterlife.⁶⁸ Usually translated in English as ‘death by a thousand cuts’ (even though in practice the ‘lingering death’ often amounted to no more than ten),⁶⁹ *lingchi* was devised mainly for repressing rebellions. That said, it was also used to punish other crimes considered especially heinous, such as the killing of close family members.⁷⁰ The 1,140 *lingchi* sentences pronounced between 1644 and 1905 (an average of 4.5 executions per year),⁷¹ are testament to its rarity.

In Europe, ordinary murder would typically cause a man to be led to the gallows, but a woman was more likely to be burnt at the stake. This is explained by the fact that the corpse on the gallows was routinely stripped and left to twist in the wind, an act that would have exposed a woman’s bare body ‘to the curious stares of the public’.⁷² That is not to downplay the horrendous suffering of being burnt to death. While some of the condemned would be strangled before the pyres were lit, saving them from the worst of the pain, others would be burnt alive, with death coming to the condemned within an hour. Until then, they would be ‘shrieking and

⁶⁴ The Treason Act of 1351 formally defined treason as conspiracy to kill the sovereign or fighting against the sovereign. Piracy had long been considered to fall within the definition of treason.

⁶⁵ Treason Act of 1351, text available in part at: <https://bit.ly/4a4B3LG>.

⁶⁶ S. 31, Forfeiture Act 1870 (‘An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto’), text available at: <https://bit.ly/4cq4FVd>.

⁶⁷ Donnelly and Diehl, *The Big Book of Pain: Torture & Punishment Through History*, 183.

⁶⁸ *Ibid.*, 150.

⁶⁹ J. Bourgon and J. Erismann, ‘Figures of Deterrence in Late Imperial China. Frequency, Spatial Repartition, and Types of Crimes Targeted by Dismemberment under the Qing Dynasty’, *Crime, History & Societies*, Vol. 18, No. 2 (2014), 49–84, at: <https://bit.ly/3PvzxSg>, para. 4.

⁷⁰ Bourgon and Erismann, ‘Figures of Deterrence in Late Imperial China. Frequency, Spatial Repartition, and Types of Crimes Targeted by Dismemberment under the Qing Dynasty’, paras. 36 and 41.

⁷¹ *Ibid.*, para. 22. Even if 65 ‘blank years’ for which two researchers suspect that the records have been lost are excluded, the average still only amounts to 5.5 per year.

⁷² Donnelly and Diehl, *The Big Book of Pain: Torture & Punishment Through History*, 17.

screaming, the fat oozing through their charred and cracking skin, their hands and feet reduced to blackened stumps while they still lived'.⁷³

Public executions are inherently degrading in nature, and thus unlawful, even though they do not necessarily contravene the prohibition of torture. The last public execution in England was in November 1783. The ending of this practice, which 'did more to excite a ghoulish populace than it did to eliminate crime',⁷⁴ was decried by the 'arguably most distinguished man of letters in English history', Dr Samuel Johnson.⁷⁵ 'The age is running mad for innovations', he declared. 'Sir, executions are intended to draw spectators. If they don't, they don't answer their purpose. The old method was most satisfactory to all parties; the publick was gratified by a procession; the criminal was supported by it. Why is all this to be swept away?'⁷⁶

THE LAYOUT OF THE BOOK

This book addresses the international prohibition of torture and other cruel, inhuman, or degrading treatment or punishment in fifteen chapters. Chapter 1 reviews the definition of torture under international law, focusing on the formulation in the 1984 UN Convention Against Torture. It also discusses regional variations in the definition of torture as well as how in a situation of armed conflict international humanitarian law, by contextual necessity, also amends the global definition. Particularities of the definition of torture in international criminal law are also identified. Chapter 2 turns to the definition of other ill-treatment under international law, delineating the different forms that other ill-treatment take and how they are distinguished from torture. The chapter summarises the nature and content of the duty to investigate alleged ill-treatment and the articulation of the death penalty as proscribed ill-treatment – issues addressed in more detail in Chapters 9 and 11, respectively.

Chapter 3 assesses the status and jurisdiction of the various prohibitions under international law, looking at both treaty law and general international law. The prohibition of other ill-treatment is a customary rule while the specific prohibition of torture is adjudged to be also a peremptory (*jus cogens*) norm. Jurisdictional issues involve geography, subject matter, the rights holders and duty bearers, and the temporal dimension of the prohibitions. Chapter 4 narrates an analysis of national legislation on torture in all 197 States,⁷⁷ reviewing the prohibition of torture in constitutional instruments, the criminalisation of torture in the penal code, and

⁷³ Ibid., 92.

⁷⁴ Ibid., 131.

⁷⁵ P. Rogers, 'Johnson, Samuel (1709–1784)', *Oxford Dictionary of National Biography*, Oxford University Press, Oxford, 2006, at: <https://bit.ly/3VWHj2p>.

⁷⁶ *The Life of Samuel Johnson* by James Boswell; Donnelly and Diehl, *The Big Book of Pain: Torture & Punishment Through History*, 131.

⁷⁷ This is as defined by the UN Secretary-General in his capacity as depositary of more than 550 treaties: the 193 UN Member States, the 2 UN observer States (the Holy See and the State of Palestine), and the 2 other States (the Cook Islands and Niue).

the manifold ways in which torture is defined, including in dedicated legislation or codes of criminal procedure. Torture is made illegal in some manner in all but two States – Niue and San Marino – as the chapter explains. Criminal penalties for the perpetration of torture are reviewed and categorised, including, in certain States, the imposition of the death penalty. In most, a lengthy term of imprisonment applies to those convicted of torture.

Chapter 5 considers the relationship between the prohibitions of torture and other ill-treatment and other fundamental human rights. These are, most notably: the right to life, the right to security, the right to liberty, the right to private and family life, and the right to a fair-trial, as well as the prohibitions on enforced disappearance and slavery in international law. Several of these rights are relevant to the protection of detainees in peacetime, the subject of Chapter 6. The treatment of those held in police custody is first addressed, including interview techniques and the forcible taking of physical evidence from a suspect, before attention focuses on the protection of prisoners. This encompasses the 2015 ‘Nelson Mandela Rules’, the management of prison, and the force-feeding of inmates as a form of ill-treatment. The protection of women and then children in detention is reviewed in turn, including the right of a young child to remain with an incarcerated mother. Finally, international legal regulation of the treatment of persons in the power of a private security company is summarised.

Chapter 7 reflects on how the prohibition of torture and ill-treatment under international human rights law applies to the members of armed forces. This concerns practices of hazing and beatings as well as the understudied and generally unaddressed prevalence of rape and other sexual violence. The legality of the recruitment of children into the armed forces is also examined. Chapter 8 reviews the regulation of extra-custodial use of force by the police, whether as a form of torture or, more commonly, as a form of other ill-treatment. The law of law enforcement has long set as common principles the necessity and proportionality for any use of force, while international human rights law has instilled the additional obligation for precautionary measures in policing operations.

Chapter 9 details the duty to investigate and prosecute torture and ill-treatment in peacetime, with particular reference to the guidance in the 2022 Istanbul Protocol. Case examples are presented of police investigations in Sri Lanka and of the torture of Uyghurs in China. The nature of the duty to prosecute, including the duty to establish domestic jurisdiction over torture are both expounded. This extends to the duty of universal jurisdiction (*aut dedere aut iudicare*) when an alleged offender is present on national territory. Chapter 10 addresses the prohibitions of torture and other ill-treatment in armed conflict under international humanitarian law, beginning with the classification of armed conflict under international humanitarian law. As noted, there are specificities in the way this body of international law defines torture. Deliberated are the multiple cases of torture by the United States in the Guantánamo Bay detention centre beginning in 2002, by Thailand’s security forces in the south since 2007, by the Syrian regime since 2012; by Russia in Ukraine since

its February 2022 invasion, and by Hamas since 7 October 2023, first in Israel and then against the hostages held in Gaza.

Chapter 11 reviews the inter-relationship between torture and other ill-treatment and the death penalty. It describes why the mandatory death penalty is construed as a violation of international law, recalls that certain individuals may never be executed, and discusses the extent to which death row may itself amount to ill-treatment. Further consideration is given to the manner of an execution as a form of torture or other prohibited ill-treatment. Finally, the application of the prohibitions to non-State armed groups is summarised.

Chapter 12 describes how and in which circumstances torture and ill-treatment amount to international crimes – war crimes, crimes against humanity, and genocide. It is also discussed whether torture is a discrete international crime under general international law. Chapter 13 considers the rule of *non-refoulement* in the Convention against Torture and general international law, which precludes the handing over of a person to another sovereign jurisdiction where there is a clear risk of their being subjected to ill-treatment. In many countries, this includes the risk of their being subjected to the death penalty following return.

Chapter 14 reviews global, regional, and local action against torture. Naturally, UN action encompasses the Convention against Torture and the oversight provided by the Committee against Torture of its implementation by the treaty's 175 States Parties. But it also considers norms beyond the 1984 Convention, such as the 2015 Nelson Mandela Rules, and also the important work of other UN treaty bodies. The role of the UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, first established in 1985, and the increasing involvement of commissions of inquiry under the Human Rights Council over the last twenty years are given particular consideration. They are all supported by the Office of the UN High Commissioner for Human Rights. Regional action against torture concerns especially the African human rights system, the Inter-American human rights system, and the European human rights system, as well as the far less developed Arab and Asian human rights systems. In the non-governmental arena, critical action against torture by the International Committee of the Red Cross and by numerous civil society actors that helped to bring about the global prohibition of torture, is considered.

Chapter 15 discusses State responsibility and remedies and reparations for the survivors of torture and ill-treatment. This includes the duty to ensure a remedy, with particular reference to the European Court of Human Rights' 2024 judgment in *Ukraine v. Russia (Crimea)*, the US Torture Victims Protection Act, and the form that the reparations to be made to the victims of torture must take. Dedicated or general funds for the victims of torture are referred to before consideration is given to the challenges of supporting the rehabilitation of the victims of torture. A few brief remarks on the future outlook for torture end the volume.