

The Prohibition of Torture in Transformation: A Review of Lutz Oette's *The Transformation of the Prohibition of Torture in International Law*¹

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The prohibition of torture occupies an unusual position in international law. It is absolute, non-derogable and recognised as a *jus cogens* norm. Yet the apparent solidity of these propositions conceals considerable movement beneath them. Understandings of what constitutes torture or other cruel, inhuman or degrading treatment or punishment have changed; the situations in which the prohibition is invoked have multiplied; approaches to prevention, accountability and reparation have developed; and the prohibition increasingly operates across different fields of international law. At the same time, torture and other ill-treatment remain widespread, while forms of severe suffering associated with discrimination, migration, poverty, environmental degradation or new technologies test the conventional boundaries of the prohibition.

Lutz Oette's *The Transformation of the Prohibition of Torture in International Law* is an ambitious attempt to understand these developments as parts of a broader transformation of one of international law's foundational norms. Its subject is considerably wider than the evolution of the legal definition of torture. The book examines how the absolute prohibition has been challenged and defended; how the concepts of torture and other ill-treatment have evolved; how discrimination shapes exposure to torture and the recognition of suffering; how prevention, accountability and reparation have increasingly incorporated structural and contextual perspectives; how the prohibition operates across international human rights, criminal, humanitarian and migration law; and how it might respond to emerging technologies and widespread or systemic forms of suffering not traditionally approached through the torture framework. Oette organises these processes under six headings: contestation, conceptualisation, diversity, contextualisation, complexity and expansion.

What connects these developments is a tension between what Oette calls "conventional understandings and widening lenses". This produces the "prohibition's dilemma". The exceptional stigma attached to torture and the particularly strong legal status of its prohibition create an incentive to bring serious forms of suffering within its scope. Yet drawing the boundaries too narrowly privileges certain experiences—historically, above all, violence inflicted by state agents on persons in detention—while leaving others insufficiently recognised. Conversely, interpreting the prohibition too widely may dilute its specificity and provoke doctrinal and political resistance. Oette takes this concern seriously: widening interpretations must be justified by reference to the prohibition's rationale, fundamental values and key legal concepts, as well as its place within international law.

The first chapter examines how the absolute prohibition has been challenged and defended, particularly where states have sought to justify coercive practices on grounds of security or necessity. Oette places the post-9/11 "war on terror" within a longer history that includes French practices in Algeria, British interrogation practices in Northern Ireland and Israeli interrogation of Palestinians. The German debate over *Rettungsfolter*, or "rescue torture", provides a revealing example. In *Gäfigen v Germany*, police threatened a kidnapping suspect with severe suffering in an attempt to discover the whereabouts of a child believed to be in imminent danger. The case helps distinguish between determining whether conduct falls within the prohibition and allowing an exception once it does. The European Court of Human Rights rejected the latter possibility.

But doctrinal survival did not mean that the "war on terror" left the prohibition untouched. Secret detention, extraordinary rendition, weakened safeguards, reliance on information potentially obtained through torture and barriers to accountability affected its practical operation. At the same time, these practices stimulated litigation and doctrinal developments concerning extraterritoriality, complicity, non-refoulement, arbitrary detention, universal jurisdiction and remedies. Transformation, in Oette's account, is therefore not synonymous with progress: the prohibition may become legally more sophisticated while prohibited practices persist or mutate.

Oette then turns to the conceptual foundations of the prohibition. Oette revisits the principal elements traditionally used to define torture—severity of suffering, intention, purpose and official involvement—and gives particular attention to powerlessness as a relational characteristic that helps illuminate the nature of the wrong. He then develops a holistic and relational understanding of torture.

1 Lutz Oette, *The Transformation of the Prohibition of Torture in International Law* (Oxford University Press 2024), 368 pp.

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This relational approach is particularly persuasive. It resists understanding torture predominantly through isolated techniques. The inquiry concerns the person subjected to the treatment, the relationship of power, the context in which conduct occurs and the cumulative production of suffering. This is particularly important for psychological torture and for what Pau Pérez-Sales has conceptualised as a torturing environment: a milieu composed of contextual elements, conditions and practices that together obliterate the victim's will and control and compromise the self. The concept shifts attention from cataloguing individual methods towards their cumulative and interactive effects. A torturing environment is thus not simply a place where torture occurs, but a framework for understanding how multiple forms of coercion can interact to produce powerlessness and suffering.

The relational approach ultimately shifts attention from what a perpetrator does to a person's body or mind towards the relationship of power and the environment within which suffering is produced. It does not replace the legal elements of torture; it shows how those elements acquire meaning in context and why an assessment focused on isolated acts may fail to capture the experience as a whole.

The discussion then moves to how discrimination shapes exposure to torture, the forms that torture and other ill-treatment take, and the ways in which suffering has been recognised—or overlooked—within the conventional anti-torture framework. Oette considers gender-based violence, violence against LGBTQIA+ persons, racial discrimination, disability and children. The chapter does more than add neglected groups to an existing framework. It shows how discriminatory structures affect who is exposed to violence, which practices become normalised and which forms of suffering are legally recognised.

Oette does not present recognition within the prohibition as an uncomplicated victory. He engages with feminist and other critiques of rights-based and criminal-law strategies and acknowledges that legal inclusion does not necessarily deliver the protection sought. Nor does he treat legal recognition as a substitute for structural change. His response is an integrated approach in which torture prevention interacts with obligations relating to equality and non-discrimination, economic, social and cultural rights and other areas of human rights law. Legal strategies form part of, rather than a substitute for, wider political and social struggles against the structures that generate torture.

From there, the book moves from interpretation to prevention and justice. Oette traces preventive obligations and visiting mechanisms before examining structural, situational and empirically informed approaches to prevention. He then

reconsiders accountability and reparation, culminating in an account of transformative prevention, accountability and reparation. The practical importance of this part of the argument is considerable. Detailed legal standards do not themselves explain why torture occurs or how it can effectively be prevented. A structural perspective requires attention to institutional cultures, discrimination, incentives, safeguards and the environments in which coercion becomes normalised.

Oette does not reject criminal responsibility, but he questions the assumption that punishment should exhaust accountability and examines the tensions between anti-torture commitments and predominantly punitive responses, particularly where criminal-law interventions individualise violations and leave their structural conditions unaddressed. Reparation is similarly reconceived. Because torture is characterised by powerlessness, reparation must attend to survivors' agency and priorities and, where violations have systemic causes, to the institutional arrangements that reproduce them.

The fifth chapter examines the increasingly complex operation of the prohibition across international criminal law, international humanitarian law and international migration law. Oette characterises the prohibition as a "multiple-regime norm": different bodies of law prohibit torture, but their definitions, purposes, structures of responsibility and institutional mechanisms do not fully coincide. International criminal justice can provide recognition and accountability, yet jurisdictional limits, prosecutorial discretion and political considerations make its operation selective, often privileging prominent cases while routine and systemic torture of marginalised persons remains less visible.

Migration offers an equally revealing example because international law occupies an ambivalent position. It protects against refoulement to torture and other ill-treatment, but also structures systems of border control, detention and exclusion within which exposure to coercion and suffering occurs. The prohibition therefore operates not only as a rule against particular abuses but also as a lens through which violence authorised or normalised by other areas of international law can be scrutinised.

The sixth and final substantive chapter is the book's most exploratory. Oette considers less-lethal and autonomous weapons, digital torture, access to healthcare, poverty, environmental harm, disasters and climate change. These phenomena are not simply relabelled as torture. Rather, they test whether the concepts and values underpinning the prohibition can respond to technological change and to widespread or systemic suffering outside the traditional custodial paradigm.

Digital torture provides a relatively clear illustration. Technology may alter the means through which domination and suffering are produced without changing the underlying dynamics of coercion. Digital surveillance, threats, harassment or manipulation may operate together with physical practices and contribute to a torturing environment. Poverty, health and environmental degradation are more difficult. Oette does not argue that such conditions are per se torture or other ill-treatment. Instead, he asks when dependency, power asymmetry, disregard for dignity and indifference to suffering may bring particular situations within the prohibition.

Importantly, Oette explains what the prohibition may add in these settings. Its application can foreground dignity and integrity, make state responsibility and indifference more visible, strengthen preventive and due-diligence obligations and, in some legal systems, provide avenues of redress that economic and social rights may not offer with equivalent force. The prohibition can therefore challenge the normalisation of suffering that political and economic systems present as inevitable or merely distributive.

There remains room for discussion about whether the arguments for engaging the prohibition are equally compelling across all the areas explored in this final chapter. The case may appear more immediate where new technologies reproduce recognisable relations of coercion and control than where suffering results from complex economic or environmental structures involving multiple actors across jurisdictions. But this does not undermine Oette's inquiry. It illustrates the importance of the test he himself sets: widening interpretations must be justified by reference to the rationale and fundamental values of the prohibition and to the meaning of its legal elements. The strength of the chapter lies partly in refusing to predetermine the outcome of that inquiry.

The book's critical orientation is inseparable from its methodology. Oette writes as a participant-observer whose analysis emerges from longstanding involvement in the anti-torture movement. He conceptualises that movement through the overlapping ideas of an epistemic community, a community of practice and transnational advocacy networks. Importantly, he does not treat this community as neutral: he expressly recognises power dynamics and inequalities among civil society actors and acknowledges that they may privilege certain interpretations while leaving others underdeveloped.

Oette's reflexivity also suggests a further line of inquiry. If understandings of torture are partly produced through legal, medical, academic and advocacy networks, it would be valuable to examine more systematically how institutional authority, resources, professional expertise and access to international

mechanisms affect which experiences become legible as torture. Which actors have historically been able to place particular forms of suffering on the international anti-torture agenda? Which forms of expertise have carried greatest authority? Which experiences have remained peripheral? Such an inquiry would extend rather than correct Oette's analysis; it follows from his own recognition that the meaning of the prohibition is produced through relationships and practices structured by inequalities.

By this point, the scale of the transformative project Oette is describing has become clear. Oette places resistance to torture within a wider struggle against structures of domination, inequality and abuse of power, but does not dissolve the prohibition into a general theory of social justice. In his conclusion, he assigns it a particular place within that broader project: as bearer of the torture taboo, a conceptual and legal yardstick, a foundation of mechanisms of implementation and oversight, and a mobilising resource. He also insists on permanent self-reflection and calibration between legal and non-legal strategies.

The Transformation of the Prohibition of Torture in International Law makes an important contribution because it refuses to treat the prohibition as a finished legal achievement. Oette shows instead that its meaning is continually shaped through contestation, interpretation, changing understandings of discrimination and power, evolving approaches to prevention and justice, interaction between legal regimes, and the recognition of forms of suffering previously left at the margins. The book's achievement is not to offer a single enlarged definition of torture, but to provide a framework for thinking rigorously about how and why the prohibition changes.

For scholars and practitioners in the anti-torture field, the book is valuable for precisely this reason. It combines close engagement with doctrine with an unusual awareness of the limits of legalism, the importance of empirical and interdisciplinary knowledge, and the political and institutional structures within which torture is produced and resisted. It leaves the reader with a demanding but productive task: to preserve the absoluteness and distinctive normative force of the prohibition while remaining attentive to forms of suffering, domination and exclusion that inherited legal paradigms may fail to see. In that sense, Oette's book does more than describe the transformation of the prohibition. It invites the anti-torture field to participate in that transformation with greater conceptual clarity, reflexivity and care.

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