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Morocco and torture

International human rights law has often been characterised as a product of colonialism and cultural imperialism. In the [words of Makau Mutua](#) (https://wiki.duke.edu/download/attachments/9509995/Mutua-Savages_Victims_and_Saviors.pdf), a Kenya-born professor of law: “The west was able to impose its philosophy of human rights on the rest of the world because it dominated the United Nations at its inception.”

Historically, there is a degree of truth in this. The Universal Declaration of Human Rights was drafted in the aftermath of the Second World War, partly in response to wartime atrocities, with the countries that had emerged victorious taking the lead.

But that is by no means the whole picture. The drafting process was much more of an inclusive effort than is often supposed. Among those who played an influential role were Charles Malik of Lebanon, Alexei Pavlov of the Soviet Union, Hernan Santa Cruz of Chile, and Peng Chen Chang of China. Arab states, including Egypt and Syria, helped to ensure that a right to education and various socio-economic rights were included in the declaration. China and the Soviet bloc pressed for the inclusion of racial equality – partly as a way of criticising the United States, where discrimination was rampant at the time.

Nor were debates about the declaration’s content split particularly along east-west lines. [Gita Sahgal](#) writes (<http://www.opendemocracy.net/5050/gita-sahgal/who-wrote-universal-declaration-of->

human-rights):

Political differences were very evident. But the arguments were not necessarily divisions between blocs. There were political divisions among Muslims on religion and marriage, two very contentious areas. Saudi Arabia objected to Article 16 on the right to choice in marriage. Begum Ikramullah [of Pakistan] opposed the Saudi view, making a speech against child marriage ... Egypt's Wahid Rifaat accepted the language on marriage, noting that marriage limitations based on race (as in the US) were more shocking to his country than limitations based on religion or nationality ...

The clause on being able to exercise freedom of religion was supported by a number of Muslim delegates. The Foreign Minister of Pakistan, Zafarullah Khan, quoted the Qur'an: 'Let him who chooses to believe, believe and him who chooses to disbelieve, disbelieve.' He believed that the right to change religion was consistent with Islam ... However, Saudi Arabia objected to it, and eventually abstained from voting on the Declaration itself.

The fact remains, though, that many countries were excluded from the process of drafting the Universal Declaration simply because they had not yet gained independence. This in turn has helped fuel cultural relativist arguments – often as a means of excusing abuses.

International human rights law has developed considerably since the 1940s, however, and a broad range of countries, plus non-governmental organisations, have been able to take part in formulating it. One example is the Convention Against Torture which was approved by the UN General Assembly in 1984 and has since been accepted as binding by 115 countries.

The emergence of the convention makes an interesting case study because torture is not culturally specific: everyone feels obliged to condemn it and yet many governments, in many parts of the world, persist in resorting to it. To that extent, the Convention Against Torture was an example of poachers acting as gamekeepers, and the fact that it came into existence at all was largely due to the efforts of non-government organisations, particularly Amnesty International. Amnesty's campaign focused heavily on Chile where a U.S.-backed coup in 1973 had brought the brutal Pinochet regime to power.

Morocco was among the members of the UN working group charged with drafting the convention, and a recent book by Osire Glacier, a professor at Bishop's University in Canada, looks in detail at its role.* In doing so, Glacier makes a significant contribution to the debate about human rights and cultural relativism.

Considering that torture had become an integral part of Morocco's judicial system and a way of controlling political opposition, it might seem surprising that the country would choose to be involved at all. Part of the explanation lies in reputation management: appearing as a "responsible" player on the international stage, and as one engaged with human rights issues, "indirectly reinforces the legitimacy of the state and of ruling elites," as Glacier puts it.

Probably the most striking example of this is Saudi Arabia which, despite its institutionalised discrimination against women, is nevertheless a party to the Convention on the Elimination of Discrimination Against Women (CEDAW). While claiming the credit for signing up to CEDAW, Saudi Arabia excuses itself from most of its obligations under the convention by citing the requirements of sharia law.

Engaging in human rights processes at an international level also gives offenders an opportunity to weaken their impact and make them less effective. That, more or less, is what happened with Morocco and the Convention Against Torture.

Although the Moroccan government looked favourably on the convention as a project, its actual contribution to the drafting was minimal. It did, however, show resistance in two key areas: on the definition of torture and the question of universality.

Regarding definitions, Morocco – not surprisingly – sought to treat torture as a problem caused by wayward individuals rather than government policy. Glacier comments:

Such a proposition would act as a legal loophole for the state's practising torture systematically. Indeed, doing so would reduce the systemic practice of torture and degrading treatment to isolated acts, or in other words, to acts performed by individuals ...

According to the official point of view, the Moroccan state's national legislation protects citizens against all abuses of power. Moreover, according to this perspective, practices of torture and degrading treatment do not exist or, at most, can be reduced to isolated cases, which the state penalises.

Although the development of international norms for protection against torture was intended as an inclusive process, Glacier says Morocco limited its own role to opposing all forms of universal jurisdiction:

According to the Moroccan state, the cultural relativism of fundamental rights failed to allow for the establishment of universal rights principles, let alone a universal jurisdiction. Second,

the Moroccan state argued that the continued hegemony between states encouraged the use of fundamental rights for the consolidation of colonial practices and unequal power relations between states.

Invoking cultural relativist arguments seems to have been mainly a knee-jerk reaction since torture is not associated with any particular culture and Glacier says Morocco made no attempt to provide a “culturally acceptable” alternative. She also notes [Roland Burke’s observation \(http://mtw160-198.ippl.jhu.edu/login?auth=0&type=summary&url=/journals/human_rights_quarterly/v028/28.4burke.pdf\)](http://mtw160-198.ippl.jhu.edu/login?auth=0&type=summary&url=/journals/human_rights_quarterly/v028/28.4burke.pdf) that cultural relativism was actually a western invention:

The cultural relativist challenge to human rights first emerged not from the Third World states, but from the established western democracies. In the debates on the human rights covenants in the early 1950s, delegates from Britain, France and Belgium argued for a special clause exempting colonial territories from their application. They justified this clause by a feigned reverence for cultural difference ... Human rights were for advanced, civilised people, not those in African and Asian colonies.

A more serious argument about the Convention Against Torture centred on questions of national sovereignty versus universal jurisdiction. Morocco was by no means alone in resisting even a limited degree of extra-territorial jurisdiction: Australia, France, and the Netherlands did so too, and in their case it seems to have been a matter of principle. However, Glacier suggests Morocco’s opposition was not purely, or even mainly, about principles.

During negotiations over the torture convention, Morocco sought to portray very modest proposals for universal jurisdiction – that states should not provide refuge for suspected torturers from other states, for example – as a form of colonialism.

Morocco likened this to a sensitive issue in the country’s history: a series of “capitulations” that date back to the 16th century. Under this system, the Moroccan authorities renounced all legal powers in relation to foreign citizens living in the country. Instead, they were placed under the jurisdiction of their home countries. Inevitably, this led to injustices and eroded Morocco’s sovereignty.

But it was in no way comparable to what had been proposed under the Convention Against Torture, as Glacier points out. The convention dealt only with cases of torture – not legal matters in general – and the loss of sovereignty would only occur “if a given state fails to bring to justice those responsible for acts of torture within their borders.”

Furthermore, the sovereignty argument was something that Morocco invoked opportunistically in connection with torture, while ignoring it in connection with other issues that had far more impact on the country:

With independence, [King] Mohammed V understood that if he wanted to reign and govern, he needed to join the western powers. This alliance launched Morocco into an era of neocolonialism ... The colonial power conceded legal independence without granting true independence. The independence granted renewed colonial interests under the guise of cooperation and interdependence with the colonial power.

Arab regimes in general are very quick to assert national sovereignty and the principle of non-interference whenever unsavoury practices are challenged from outside. Glacier usefully points out that what they are talking about here is not really national sovereignty but the sovereignty of the ruling elite.

Citizens who are on the receiving end of the elite's policies are far more likely to welcome international efforts to protect them from abuses, without worrying about foreign "interference." If Moroccan rights activists had been involved in drafting the Convention Against Torture, Glacier suggests, rather than watering it down they would have tried to make it a much more robust document.

**Universal Rights, Systemic Violations, and Cultural Relativism in Morocco* (http://www.amazon.com/Universal-Systemic-Violations-Cultural-Relativism/dp/1137339608/ref=sr_1_2?ie=UTF8&qid=1405912174&sr=8-2&keywords=Osire+Glacier), by Osire Glacier, is published by Palgrave Macmillan.

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