1. **Why Is Torture So Difficult to Eliminate?**

1.1. Torture and Human Intelligence

Human beings have showed great intelligence and creativity not only in their efforts to conquer nature, but also in their frenzied efforts to conquer their fellow human beings. While ancient China boasted a great variety of torture methods, such as *Lingchi* (the punishment of dismemberment and the lingering death), the ancient West was not a halfpenny the worse in this respect. For example, an inventor in ancient Greece designed a brass bull as a torture instrument and presented it to the tyrant Phalaris. The bull was so constructed that when a man was put inside and a fire lighted under the statue, the man’s cries coming out of the mouth of the bull was transformed into the delightful roaring of a bull by an ingenious musical device on the bullhead. ¹ Human beings are by nature afraid of pain. Therefore, in human history, both Chinese and foreign, there have been as many varieties of torture as there are varieties of unbearable pain. The essence of torture is the infliction of unbearable pain on another person for the achievement of certain plausible objectives.

Because of various plausible reasons, torture has been lawful for the larger part of human history. The legitimisation of torture can achieve three objectives: first, it enables torture to be used in an open and aboveboard way, thereby reducing (even totally dispelling) the torturer’s sense of guilt; secondly, it enhances the effectiveness of criminal punishments and demonstrates the

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deterrence force of the law; third, it enables the judicial officials to easily obtain a confession, thereby reducing the cost of criminal investigation and trial. In Black’s Law Dictionary, ‘torture’ is defined as follows:

To inflict intense pain to body or mind for purposes of punishment, or to extract a confession or information, or for sadistic pleasure. In old criminal law, the infliction of violent bodily pain upon a person, by means of the rack, wheel, or other engine, under judicial sanction and superintendence, in connection with the interrogations or examination of the person, as a means of extorting a confession of guilt, or of compelling him to disclose his accomplices.²

Apparently, in old criminal law, torture was a lawful method of punishment as well as a lawful method of obtaining a confession. The legitimisation of torture is in essence the legitimisation of state violence. To this day, all forms of state violence are lawful. The abolition of torture only means the abolition of one form of state violence.³

The campaign against torture has also demonstrated the great intelligence of mankind. Since the Enlightenment, especially since the promulgation of the Universal Declaration of Human Rights in 1948, criminal law, like all other laws, has undergone great changes and taken on an entirely new look. It becomes a just, honorable and relatively easy thing to denounce torture morally and theoretically from the perspective of human rights or to suppress torture through institutional design. Today, in a time when the discourse of human rights has become widely popular, it can be said that no one dares to speak in favour of torture and, apart from a handful of sadists, nobody likes torture. However, acts of torture, especially those committed by law enforcement officers

³ Incidentally, maybe influenced by the consciousness of such legitimization of torture, there are two frequently used phrases in modern Chinese language: ‘abuse of torture’ and ‘illegal infliction of torture’, which can also be found in the Chinese translation of some international human rights instruments. According to these formulations, it seems that torture is allowed or can be used in a lawful way and only the abuse or unlawful use of it is prohibited. The frequent use of these two phrases is exactly the reflection of the influence of the old criminal law.