

Book Review

Human Rights and the Care of Older People: Dignity, Vulnerability, and the Anti-Torture Norm

By Maeve O'Rourke

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Since 2020, advocates and scholars alike call for adoption of a much more robust human rights approach to policy development and holding government accountable for its actions and inaction in relation to ageing issues (for example, see Byrne 2020). The concepts and language of human rights speak to the obligations of the state and the responsibilities of citizens, including duties to refrain, duties to protect and duties to provide (Fisher & Robinson, 2023, pp. 2–3).

Human Rights and the Care of Older People: Dignity, Vulnerability, and the Anti-Torture Norm is aspirational and makes an important contribution to theoretical and policy debates about adopting explicit human rights considerations in the design of social care regimes.

Drawing from legal debates (especially human rights related literature) and social care literature, O'Rourke highlights the pervasiveness of older people's care-related mistreatment across the globe, from denial of legal capacity to lack of access to end-of-life care and palliative medication (pp. 1–2). Under international law, such as the UN *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, the prohibition of torture and

other cruel, inhuman, or degrading treatment or punishment is absolute ('the anti-torture norm' for short). The term 'ill-treatment' refers to all forms cruel, inhuman, or degrading treatment or punishment (p. 13). A conduct and/or suffering must reach a minimum level of 'severity' in order to amount to torture or ill treatment (p. 39). Crucially, no emergency, financial constraint, nor domestic law will justify a failure to comply with the prohibition (pp. 19–20). States are obliged, first and foremost, to refrain from engaging in acts of torture or ill-treatment (negative duty) (p. 21). There are also a range of 'positive' obligations to prevent and protect that states bear (p. 18). Such responsibility is extended to 'privately' inflicted torture or ill-treatment of which the state knew or ought to know (p. 19). This book focuses on the anti-torture norm (especially on ill treatment) because it is an 'essential backstop to how social policy is designed and implemented' (p. 4).

After introducing readers to the basic tenets of the anti-torture norm and its progressive interpretation and expanding application over time (chapters 1 and 2), the rest of the book proposes a principled method of interpreting the norm that can illuminate older people's care-related mistreatments and corresponding states' obligations. Chapter 3 explains how the concept of vulnerability is used in case law to specify further positive obligations. Chapter 4 turns to legal rules that have the potential to prevent the anti-torture norm's application to older people's care-related mistreatment. Chapter 5 explores the role of dignity in interpreting and applying the anti-torture norm more effectively. Chapters 6 and 7 provide a thoughtful account of the problems of inadequate continence care and deprivation of liberty for care. The concluding chapter briefly reflects on how a new UN Convention on the rights of older persons (if it is adopted) will interact with existing human rights law.

The book's central argument is that the anti-torture norm in international human rights law (and, by extension, in domestic legal systems) should be harnessed to protect older people from care-related mistreatment (pp. 8–9). O'Rourke contends that human rights norm applicators should recognize a positive obligation on states to ensure access to consensual care as an element of the anti-torture norm's overarching preventive obligation. The sub-obligations inherent in this positive duty should be recognized to include an obligation to ensure access to decision-making support in the care context, an obligation to ensure access to self-advocacy support in the care context, and an obligation to provide consensual care services where people have insufficient resources to obtain the assistance necessary to meet their basic needs (p. 7).

The idea of 'dignity violation' is integral to the book's argument as one must decide whether torture or ill treatment has occurred or is occurring. O'Rourke conceptualizes 'dignity violation' as 'an interference with a core aspect of the personality, which the person is situationally powerless to avoid' (p. 106). This conceptualization of dignity violation is sufficient to breach the anti-torture norm in principle and to prompt state obligations and response (p. 106). The notion of situational powerlessness, which O'Rourke equates with vulnerability (p. 139), is particularly useful in linking state obligations and the harm experienced by older people in relation to care. Sources of older people's situational powerlessness include: the unavailability of consensual care services and supports, paternalistic culture and an accompanying denial of communication avenues or support, the related inaccessibility of complaints and other accountability mechanisms, institutional priorities that are not concerned with the individuals in need of care, and policies and modes of resourcing that do not centre the human rights of those giving or receiving care (pp. 179–180). States' positive obligations must be applied in response

to and with the aim of combatting these structural contributors to older people's care-related mistreatment (p. 16).

This is an accessible reference book for non-legal scholars and practitioners who are interested in furthering the human rights of older people through careful design and implementation of social policies. The book's legal research incorporates insights from international law, regional European, Inter-American, and African perspectives. As international law expands to address more areas and deepens its grip on domestic law, it is assuming more of a central role in advancing the rights of older persons (Tolub et al., 2024, p. 320). Weaving in the anti-torture norm in our analyses of social care opens up new space to interrogate government actions and inactions that frequently normalize care-related sufferings – even after the pandemic. This provocative book shows that there is a pressing need for further dialogue between legal and social policy scholars in order to advance our understanding of realisation of human rights of older people around the globe.

References

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