

Book Review

Richard Carver & Lisa Handley,
Does Torture Prevention Work?

(Liverpool: Liverpool University Press, 2016) 622 pages.

Callum Haslam[†]

An uncomfortable but extraordinarily important subject within academic and social discussion concerns the prevalence, use of and prevention of torture in the 21st century. Given the persistence of torture across the world and its profound health consequences, torture is an increasingly important issue in the fields of global health and human rights.¹ *Does Torture Prevention Work?*² stands as a significant contribution to the examination and analysis of the issue of torture and torture prevention. The title of the book continuously serves as the underlying research question that guides Carver and Handley's examination of multiple countries, examining empirical indicators that point to an overall decline in torture in 16 countries over the span of 30 years. Using a simple but effective model to analyze on-the-ground research collected over four years, they are able to present a compelling case regarding what strategies, factors and situations are required to reduce torture on a large scale.

Through a mixture of qualitative and quantitative analysis, Richard Carver and Lisa Handley examine the prevalence and prevention of torture in 16 different countries, separating their findings into four distinct categories: (1) areas where prevention is sustained; (2) areas where prevention has stalled after initial success; (3) areas that have recently made dramatic improvement in torture prevention but it is unclear that it will continue; and (4) areas where torture prevention has not improved. The book is focused on identifying practical effects of a relatively limited range of obligations related to the prevention of torture. The authors describe the results of their research as follows, "that safeguards in the first hours and days after arrest contribute crucially to lessening the risk of torture."³ The most effective prevention mechanisms are safeguards granted to detainees when they are first arrested, including access to lawyers, family members, and doctors. Barriers to these

[†] Master Of Public Policy and Law, York University Department Of Public Administration

¹ Danielle D Celermajer & Jack Saul, "Preventing Torture In Nepal: A Public Health And Human Rights Intervention" (2016) 13:2 J Biomedical Inquiry 223 at 223.

² Richard Carver & Lisa Handley, *Does Torture Prevention Work?* (Liverpool: Liverpool University Press, 2016).

³ *Ibid* at 2.

prevention practices occur primarily within countries experiencing civil war, a recent transition from dictatorship to democracy, or a judicial system that fails to adequately prosecute torture offenses. By examining common themes and context specific factors in each country, Carver and Handley argue that the prevalence of torture in a country is perpetuated by multiple social and structural failures that limit the extent to which torture can be monitored, reported, prosecuted and prevented.

Carver and Handley develop their argument by identifying and applying various indicators to each country, each indicator pointing to degrees of success or failure in the prevention of torture within a range of social and political climates. The overall project examines the gap between law and practice related to torture prevention in each country. The strength of their methodology is in part due to their application of a robust model highlighting the multi-sectional importance of how law, training and political environment influence the actual practice of torture in any given country.⁴ Practice lies at the heart of the model, with Carver and Handley's analysis focusing on how, while "practice is determined partly by law, it is also affected by other considerations, such as the political and social environment and the level of knowledge and skills that practitioners have acquired through training."⁵ Countries are analyzed with a focus on how various changes in each area led to a reduction in the practice of torture, and ultimately (in some cases) the prevention of torture.

With respect to the relationship between law and practice the countries studied can be divided into three groups. In the first group torture is forbidden under law, but these laws are ignored in practice. In the second group torture is expressly allowed within law, resulting in an increase in the practice of torture. In the third group no specific legislation exists to prohibit torture and the practice persists. For the purposes of this review, it suffices to examine only a few examples from the expansive research to gain a sense of these three relationships between law and the practice of torture.

Carver and Handley's work reveals that torture prevention was sustained by the United Kingdom in spite of ambiguous legal language around the criminalization of torture. In the United Kingdom at the time of the study, "torture was not explicitly criminalized in British law, although acts that constitute torture would undoubtedly have been serious crimes under both common law and statute."⁶ Examples where prevention has been stalled, in countries such as Indonesia, highlight cases in which the practice of torture is not outlawed under criminal legislation, and no law articulates an explicit

⁴ *Ibid* at 48–49.

⁵ *Ibid*.

⁶ *Ibid* at 128.

prohibition of torture.⁷ This lack of criminalization leads to a pervasive and systemic practice of torture, which today remains “a serious human rights concern in Indonesia, and measures to prevent it are inadequate.” Similar themes are identified with countries such as Ethiopia, which, from 1985–1990, experienced “very high levels of torture at [the] time [that] were attributable to the absence of the rule of law”.⁸

Lastly, the book examines countries where torture is integrated and permitted by state legislation. This integration results in torture being practised openly by state authorities during times of declared emergency. This pattern is consistent throughout many countries (e.g. Chile, Turkey, India and others). One example is India where, in June of 1975, “a state of emergency was declared[,]...[r]ights were suspended, tens of thousands of people [were] arrested, [and] incidents of torture and extrajudicial execution multiplied”.⁹ The practice of torture resulting from this type of legislation is related directly to the political and social circumstances in each country. Although the specific conflicts, emergency situations and instability were caused and perpetuated by unique events in each country, each demonstrates a relationship between torture law and torture practice that does not lead to the full prevention of torture. The cross-sectional analysis of each country reveals a disturbing trend. During unstable transitions of power, the expansion of authoritarian emergency powers or political strategies that favour security over freedom, laws permitting torture in each country directly led to an increase in the practice of torture.

The specific occurrences, legislation, practices and political factors in each country are too numerous to be magnified and examined in this review. What is clear is that Carver and Handley divide their analysis into these three themes, and use them as frameworks to examine the relationship between law and the practice of torture prevention. Their conclusion states that while all preventative measures seem to have some degree of impact on torture prevention, some preventative measures are far more effective than others. The data used to represent successful or unsuccessful prevention focuses on influential factors such as detention, prosecution, complaints and monitoring in each country. These indicators grant the reader a comprehensive understanding of how changes in laws related to each area have the potential to contribute to the increase or decrease in the practice of torture overall.

The attention paid to specific indicators builds a compelling case that changes to these areas have the potential to provide a broad-based method of improvement capable of furthering the efforts of torture prevention

⁷ *Ibid* at 258–59.

⁸ *Ibid* at 475.

⁹ *Ibid* at 501.

practice in various countries. There is clearly no one-size-fits-all methodology to preventing torture, another point that Handley and Carver strive to make abundantly clear throughout the analysis. To their credit, Carver and Handley do not set out in their work to suggest that there is a one-size-fits-all methodology to torture prevention. Instead, the relationship between law and practice is supported through the analysis and presentation of compelling data focusing on specific factors such as cases of death in police custody, recordings of police interrogations, outcomes from investigations of complaints, verdicts and convictions (among many others). This model allows the researchers the flexibility to examine systematic changes that have occurred and systemic failures that persist that influence the practice of torture across multiple countries.

Although there is no one-size-fits-all approach to preventing torture, Carver and Handley examine common themes that have been identified by other authors as essential to successful torture prevention efforts. In *The Twilight Of Human Rights Law*,¹⁰ Eric Posner argues that adhering to rights such as the prohibition of torture demands that states, individuals and agencies do far more than just refrain from the specific prohibited action of torture. Similar to Carver and Handley, Posner argues that the enforcement of negative rights associated with torture prevention require training and monitoring.¹¹ States cannot always uphold and provide training and monitoring because of social and political conditions (e.g. authoritarian rule, transition from dictatorship to democracy, states of emergency). Therefore there is an obligation on international bodies, NGOs and government agencies to enforce the negative rights associated with torture through efficient monitoring and complaint mechanisms. The Human Rights Committee has asserted that the protection of negative rights imposes positive obligations.¹² Sheri P. Rosenberg explains this simply, stating that “[t]he best way...to protect populations from mass atrocities is to ensure that they do not occur in the first instance.”¹³ Carver and Handley’s work contributes to an ongoing conversation regarding the negative and positive obligations of the state to ensure compliance with international regulations and monitoring mechanisms to ensure torture prevention.

Carver and Handley argue that oversight and monitoring are extremely important preventative tools.¹⁴ Training is of equal importance in the prevention of torture according to Carver and Handley who state that if

¹⁰ Eric A Posner, *The Twilight Of Human Rights Law* (Oxford: Oxford University Press, 2014).

¹¹ *Ibid* at 92-93.

¹² Office of the High Commissioner for Human Rights, General Comment No. 20 Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), UNCHROR 44th Sess, UN Doc HRI/GEN/1/Rev.9 (1992) at para 2.

¹³ Sheri P Rosenberg, “Responsibility To Protect: A Framework For Prevention” (2009) 4:1 Global Responsibility To Protect 442 at 442.

¹⁴ Carver & Handley, *supra* note 2 at 67.

figures of authority are highly disciplined and well trained, they are both more able and more likely to abide by detention laws.¹⁵ This analysis contributes to an ongoing discussion of the influence of training and monitoring on the practice of torture prevention further expanded in the work of Carla Ferstman. She argues that some of the most significant factors that can reduce the occurrence and likelihood of torture are: (1) safeguards in the context of arrest and detention; (2) the obligation to make sure torture is a punishable offense; (3) obligations to provide education and training for law enforcement and to review interrogation methods.¹⁶ It is no coincidence that these factors commonly arise in research by various scholars using alternative methods. The significance of these shared findings show that Carver and Handley have reached a conclusion that verifies a long-standing hypothesis: changing laws and institutions in countries employing torture can lead to a significant reduction in the actual practice of torture.

Overall, Carver and Handley's work stands as a massive contribution to the field of human rights, building upon previous knowledge to engage in an important discussion highlighting contemporary situations and educated solutions. *Does Torture Prevention Work?* demonstrates how far torture prevention efforts have come in the last several decades, shifting the incidence of the practice of torture in multiple countries from prevalence to prevention. While articulating a realistic measurement of how much further the field of human rights must go to move anywhere near the eradication of torture, Carver and Handley present a compelling overview showing what methods have worked in reducing the practice, what changes need to be made in areas experiencing sustained practice and specific barriers and opportunities that will shape the future of torture prevention. This work will greatly interest scholars focusing on international human rights issues, judicial practice and development and those wishing to learn more about a complex and important subject.

¹⁵ *Ibid* at 629.

¹⁶ Carla Ferstman, "Reparation As Prevention: Considering the Law and Practice of Order for Cessation and Guarantees of Non-Repetition in Torture Cases" (2010) 6:2 *Essex Human Rights Rev* 7 at 13.