

Human Rights Brief

Volume 18 | Issue 2

Article 10

2011

Book Reviews

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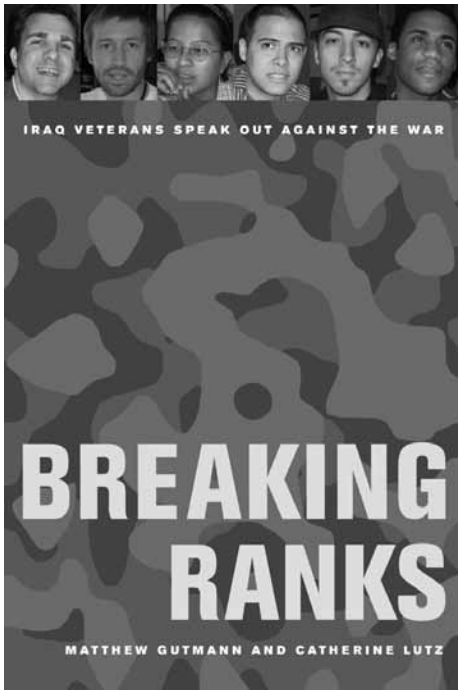
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Recommended Citation

Human Rights Brief. "Book Reviews." Human Rights Brief 18, no.2 (2011): 63-65.

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BOOK REVIEWS



MATTHEW GUTMANN AND CATHERINE LUTZ, *BREAKING RANKS: IRAQ VETERANS SPEAK OUT AGAINST THE WAR* (UNIVERSITY OF CALIFORNIA PRESS 2010)

The United States is engaged in two wars abroad, which have claimed the lives of over 5,800 military men and women.¹ Thousands more have been injured, changing their lives and the lives of their families dramatically. Millions of citizens who live in the countries in which the U.S. military engages have also had their lives drastically altered, or worse, ended. Yet many U.S. citizens fail to fully realize how the wars in Afghanistan and Iraq are shaping the world around them. Many fail to understand the impact fighting a war has on a service member or the impact the fighting service member has on a foreign population. Many in the U.S. are eager to shake a service member's hand and say "thank you." However, this kind gesture is symbolic of how short the conversation has been in the U.S. regarding what the military member sees, thinks, feels, and has to contribute.

In *Breaking Ranks: Iraq Veterans Speak out against the War*,² Matthew Gutmann and Catherine Lutz dispel myths of mili-

tary uniformity and argue that the experiences many service members have in Iraq turn them against the war. The book tells the stories of six service members who served during Operation Iraqi Freedom. The service members, five men and one woman, served in different branches of the military, had differing reasons for joining, performed different jobs, and coped with their experiences in different ways. Although they all ultimately speak out against the war in Iraq, their reasons for doing so are not all the same. The authors show the reader that behind every uniform is an individual person, and these individual people have a lot to teach the American public about the heavy burdens placed on them.

Gutmann and Lutz extensively interviewed the six selected subjects about their experiences from recruitment into the military until reentry into the civilian world. Throughout the book, the service members' stories are told mostly in their own words: the authors heavily quote the service members to provide authenticity to their messages. Gutmann and Lutz do not tell one subject's complete story at a time, but instead guide the reader through the book topically. For example, all recounts of training are compiled in one chapter, and their first military assignments are in the next. In this way, the reader has an opportunity to compare each service member's experience stage by stage.

The point at which many service members turn against their military mission, thereby breaking ranks, occurs during and after their experiences in Iraq. Most of the subjects tell stories of human rights tragedies with which the service members have difficulty coping. In one example, a subject describes seeing thousands of refugees walking down a road, and one man carrying a sleeping child on his shoulder. The service member tried to offer the man water for his child, and the man refused in broken English: "You done enough." The service member then noticed the child had shrapnel in her head — she was not sleeping, but dead. The service member recalls his grief: "That kid didn't do anything. That kid wasn't a threat to freedom."³

Another service member recounts his experiences as an interrogator, frequently questioning innocent people who were at the wrong place at the wrong time: "After a year of lack of accountability and abuses, that's when people started building this resentment."⁴

For other service members, the decision to break ranks was very personal. At the time the subjects gave their stories to the authors, the U.S. policy "Don't ask, Don't tell"⁵ was still in effect. For the female subject, this policy prohibited her from openly seeking comfort from her girlfriend back home. To compound her distress, she was the frequent target of male soldiers' advances, and was doubly afraid of the consequences, physical or career-wise, for deflecting them. These experiences left her disenchanted with the military.

The book also contributes humanizing insight into the perceived hardened military culture. It does not just factually describe the training and missions from a historical standpoint, but asks each of the subjects to analyze what they thought and felt during their progress through the military. The subjects' personal responses to the human tragedies they witnessed tell of thoughtful, reflective, and insightful reactions.

While the authors do well to reveal the human aspects of conflict, there are times where the authors' true argument for the book is vague. Although the book is designed to reveal soldiers' dissatisfaction with the war in Iraq, the authors implicitly argue against all military participation. The authors' commentary about the service members' words sometimes appears to be an effort to guide the subjects' thoughts to comport with the authors' argument. For example, the authors frequently criticize the "machismo" culture of the military — a term never used by any of the subjects. In another example, many of the service members in the book either left the military at the end of their term, or defected from the military prior to their terms' expiration. The authors' commentary on these events suggested that leaving the military is the only option open to soldiers who disagree

with the war. This may be a very inaccurate portrayal about the subjects' actual feelings towards the military in general – many expressed happiness and fulfillment serving as peacekeepers in the Balkans.

Regardless of author bias, the book ultimately indicts the American public. The authors remind the public that this is a U.S. war for which U.S. citizens are all responsible. When the world looks at the war, they do not see one particular administration, but the entire country's policies. Also, when service members return home from the war, it is everyone's responsibility to understand the burdens the country has demanded of them. These soldiers have seen large scale atrocities, and they often find few avenues to fully cope with their experiences once they return home. As one soldier so insightfully stated, "Post-traumatic stress disorder? It's not a disorder. It's a natural reaction of culture shock, of being in a combat zone, and the realities and expectations of fighting, and being expected to kill people, and then coming back home to what we have here."⁶

Holly Chapin, a J.D. candidate at the American University Washington College of Law reviewed Breaking Ranks: Iraq Veterans Speak out against the War for the Human Rights Brief.

JAVIER CHINCHÓN ÁLVAREZ,
DERECHO INTERNACIONAL Y
TRANSICIONES A LA DEMOCRACIA Y
LA PAZ: HACIA UN MODELO PARA
EL CASTIGO DE LOS CRÍMENES
PASADOS A TRAVÉS DE LA EXPERIENCIA
IBEROAMERICANA (INTERNATIONAL LAW
AND TRANSITION PROCESSES TO DEMOCRACY
AND PEACE; TOWARDS A MODEL FOR
PUNISHING PAST CRIMES THROUGH
LATIN AMERICAN EXPERIENCE)
(PARTHENON, 2007)

The establishment of the first permanent international criminal court has not resolved one of the most important questions in the field: what is the best mechanism that a state can use to address the gravest violations committed before transitional justice processes to peace and democracy are established? Should states investigate and prosecute violations of international law or, should states grant amnesty to perpetrators? If states choose to investigate and prosecute grave crimes, then two questions emerge: 1) what crimes should they investigate, and 2) how should

they go about investigating and prosecuting them?

*Derecho Internacional y Transiciones a la Democracia y la Paz: Hacia un Modelo para el Castigo de los Crímenes Pasados a través de la Experiencia Iberoamericana*⁷ by Dr. Javier Chinchón Álvarez, addresses these pressing questions. The origin of this book is the Ph.D. dissertation presented by Dr. Chinchón, Assistant Professor of International Law at Complutense University in Madrid. As a Ph.D. candidate, he developed his expertise in international law through work at the Inter-American Court of Human Rights, University of Buenos Aires, Rafael Landívar University, and New York University. His academic experience and his work with several NGOs are reflected in a book that combines legal and political analysis to suggest a new international framework to investigate, prosecute and punish crimes within double (from war-time violence to peace and democracy) or single (from authoritarian to democratic regimes) transitional justice processes. The framework rests upon the assumption that there is a prohibition of impunity for gross violations of international law.

The aim of this book is as ambitious as necessary, especially for a country like Spain. Its Amnesty Law of 1977 is not only contrary to the Spanish Constitution of 1978 but also inconsistent with international legal obligations. On the one hand, the Amnesty Law denies victims their constitutional right to justice because it prohibits the prosecution of members of Franco Government either for crimes committed during the Spanish Civil War (1936-1939) or the subsequent regime, which ruled the country from 1939 to 1975. On the other hand, as party to several international human rights treaties, the Amnesty Law causes Spain to infringe on its international obligations to provide effective remedies to victims, including reparations.

The challenge faced by emerging democracies to reckon with atrocities committed by members of former regimes is not new. For decades, blanket amnesties were the main instrument used by politicians responsible for transitional processes. Accountability for mass atrocities was sacrificed in search of peace. Peace versus justice was the dilemma faced by Latin American and African countries in the 1980s and 1990s. However, history has

shown that justice is necessary to build democratic societies. "No peace without justice," is the slogan supported by some of the most relevant scholars, such as Mahmoud Cherif Bassiouni, Michael P. Scharf, and Paul Williams. They remind us that transitional justice is a multidisciplinary field that requires a balance between political peacemaking and human rights defense.

Choosing to pursue democracy through the provision of amnesties, and at the expense of justice, is not the only approach to dealing with the gravest violations of human rights. Modern values and interests have redefined the concept of sovereignty and the scope of international law. States must comply with both domestic laws and with international obligations. Unfortunately, recent experience in transitional processes demonstrates that international legal obligations are not always respected and enforced, and blanket amnesties have been granted to the perpetrators.

Dr. Chinchón does not challenge the quality of previous studies regarding the challenges of transitional justice, but notes that few studies engage with the topic from an international legal perspective. As a result, he designed a model to address violations of international humanitarian law and international human rights law, while taking into account difficulties and limitations of each transitional process to peace and democracy.

Derecho Internacional y Transiciones a la Democracia y la Paz is divided in two parts and nine chapters. The introduction establishes the distinction between the international responsibility of the states and the international criminal responsibility of individuals. This distinction plays a crucial role throughout the book in order to identify violations, responsibilities, and obligations under international law. International criminal responsibility of individuals is carefully examined in the first part of the book. Chapters II and III analyze the historical and theoretical evolution of international obligations of states to prosecute and punish persons accused of serious violations of international law. Chapter IV discusses issues of jurisdiction, addressing additionally the implementation of international laws and principles within national systems from monistic and dualistic approaches, while also exposing their enforcement by national criminal tribunals.

Chapters V and VI seek to contrast violations of international human rights law with violations of international criminal law in order to identify international obligations of states. The author identifies four main areas of state responsibility: to investigate the facts; to prosecute the perpetrators; to punish them; and, to provide reparations to the victims.

Once the meaning and scope of these ideas have been set out, Dr. Chinchón turns to the second part of his research: to develop a suitable concept of “transition to democracy and/or peace.” The book contains continuous references to the Colombian and Peruvian experiences, in addition to six case studies that exemplify realities and challenges in transitional processes. The case studies include: Guatemala, Honduras, El Salvador, Argentina, Uruguay and Chile. Amnesties, self-amnesties, absolute pardons, selective procedures and trials are some of the measures implemented in those countries. Nevertheless, within these states, questions regarding victims’ reparations were not answered. For that reason, they are suitable case studies for an analysis of transitional justice processes and the role of impunity for mass scale human rights violations.

The systematic and comprehensive reasoning allows the author to reach several conclusions. First, states have an international legal obligation to respect and apply international criminal law. Although Dr. Chinchón recognizes that in some cases governments could pardon perpetrators, he notes that pardons will always depend on the special circumstances of the country involved in a transitional justice process. Furthermore, factors such as the number of victims and the nature of the crimes committed ought to be taken into account in determining whether amnesty should be granted.

Second, a useful interpretation of the international obligations of a state is required. By “useful” the author means an interpretation that neither rejects core international obligations nor precludes the enforcement of other kinds of global measures. Restitution, compensation to victims and their relatives, justice reforms, fact-findings bodies, and truth and reconciliation commissions are always positive measures, according to Dr. Chinchón. Nevertheless, none of these transitional justice mechanisms can ever imply the end of judicial procedures initiated to investigate and punish international crimes. The

implementation of those remedies and the collaboration of the international community could avoid the dangers and threats of future *coup d’états* by empowering domestic courts and democratic institutions.

Once again, the success of a theoretical model will not depend on its utility for academic purposes. The model shaped by Dr. Chinchón is a valuable instrument for governments and professionals interested in politics, justice, and memory. His book is also recommended for those responsible for building or rebuilding democratic and peaceful societies.

Dr. Amparo Martínez-Guerra, Professor of International Criminal Law at Universidad Pontificia de Comillas (ICADE, Madrid) reviewed Derecho Internacional y Transiciones a la Democracia y la Paz: Hacia un Modelo para el Castigo de los Crímenes Pasados a través de la Experiencia Iberoamericana for the Human Rights Brief. This book review is a contribution to Dr. Martínez-Guerra’s research project funded by the Spanish Ministry of Education (SEJ2007-66573/JURI). HRB

ENDNOTES: Book Reviews

¹ See *Faces of the Fallen*, Wash. Post, updated Jan. 16, 2011, available at <http://projects.washingtonpost.com/fallen>.

² Matthew Gutman and Catherine Lutz, *BREAKING RANKS: IRAQ VETERANS SPEAK OUT AGAINST THE WAR* (University of California Press 2010).

³ *Breaking Ranks* at 111.

⁴ *Breaking Ranks* at 111.

⁵ 10 U.S.C. § 654 (Policy Concerning Homosexuality in the Military). Policy was repealed by H.R. 2965, “Don’t Ask, Don’t Tell Repeal Act of 2010” signed into law Dec. 22, 2010.

⁶ *Breaking Ranks* at 152.

⁷ Javier Chinchón Álvarez, *DERECHO INTERNACIONAL Y TRANSICIONES A LA DEMOCRACIA Y LA PAZ: HACIA UN MODELO PARA EL CASTIGO DE LOS CRÍMENES PASADOS A TRAVÉS DE LA EXPERIENCIA IBEROAMERICANA* (Parthenon, 2007).