

Book Notes

Torture: A Collection. Ed. Sanford Levinson. New York: Oxford University Press, 2004. Pp. 319. \$29.95, cloth.

In the wake of the terror attacks of September 11, 2001, torture has been debated as a method of handling suspected terrorists and preventing future violence. The topic of torture presents a significant moral, legal, and political challenge. The treatment of detainees at the Abu Ghraib prison in Iraq and rumors of abuse of prisoners at Guantánamo Bay, Cuba have implicated America's armed forces and government contractors in a global human rights controversy. In addition, the United States has sent some suspected terrorists to allied countries that engage in torture. Although the use of such methods has been recognized as a tool of last resort in some unofficial circles, the absolute ban on torture required by the Convention Against Torture, which the United States ratified a decade ago, remains intact.

Written before the May 2004 allegations of torture in Iraq and Afghanistan, the essays in *Torture: A Collection* wrestle with the wisdom of America's absolute ban on torture and what it means for societies to reject torture in any and all circumstances. Although some of the eighteen essayists argue that torture as a policy must be rejected as morally indefensible and legally unjustifiable, others make an ethical case for the use of torture in exceptional circumstances. Editor Sanford Levinson, a Professor at the University of Texas Law School, divides the essays written by leading lawyers, philosophers, and political and social scientists into four sections: "Philosophical Considerations," "Torture as Practiced," "Contemporary Attempts to Abolish Torture Through Law," and "Reflections on the Post-September 11 Debate About Legalizing Torture." As a note of interest, Levinson and the contributors agreed that all of the royalties from the book will go to the Torture Abolition and Survivors Support Coalition.

The essays grapple with nearly all facets of the issue: definitions of torture, legal history of torture, distinctions between torture and interrogation, political implications of torture, effectiveness of coercive techniques, and laws regarding the use of torture. "Philosophical Considerations" includes a classic essay by Princeton ethicist Michael Walzer. Explaining a state's "problem of dirty hands," he discusses why leaders normally loyal to moral principles are willing to "dirty their hands" when confronted with extreme circumstances. In "Torture as Practiced," another essayist presents the history of secret, illegal, and tacitly sanctioned torture practice in the United States, Europe, and South America. "Contemporary Attempts to Abolish Torture Through Law" examines case law in Israel, whose Supreme Court outlawed coercive inter-

rogation in 1999, and explores the interpretation of the U.N. Torture Convention and the European Convention on Human Rights. The fourth and final section, "Reflections on the Post-September 11 Debate About Legalizing Torture," is a kind of interlocutory debate among Alan Dershowitz, Richard Posner, Elaine Scarry, and Richard H. Weisberg. This last section is arguably the most compelling. Dershowitz argues that torture can be an acceptable option in an extreme situation, such as the interrogation of a captured terrorist who has knowledge of a "ticking bomb."

Dershowitz argues that the normative case against torture remains strong but that, in the face of emerging threats and current practices (torture is practiced in more than 100 countries today), state prohibitions will inevitably soften. He suggests that torturous interrogation should be explicit and controlled. Rejecting absolute opposition to torture, he raises the possibility of torture authorized by a judicially issued "torture warrant." Critics counter that even contemplating such regulation can serve to legitimize torture. For Posner, it is better for America to continue observing the country's "perhaps overly strict rules . . . trusting executive officials to break them when the stakes are high enough to enable the officials to obtain political absolution for their illegal conduct." Dershowitz answers: "[B]etter to legitimate and control a specific practice that will occur than to legitimate a general practice of tolerating extralegal actions so long as they operate under the table of scrutiny and beneath the radar screen of accountability."

Some of the essays in *Torture: A Collection* recount personal experiences. Ariel Dorfman, who experienced first-hand the oppressive practices of Chilean dictator Augusto Pinochet, argues in the Foreword that civilized countries require a prohibition against torture in all circumstances. "If it were done to you and those you love, one by one by one, wouldn't you want that practice abolished? I am still waiting. I believe many of us are still waiting for an answer to that question."

In any event, the practice of torture under international law remains as illegal as slavery and genocide. With unusually aggressive tactics being adopted in even the most torture-averse countries, *Torture: A Collection* questions whether and how torture should be exposed and regulated. The comprehensive review offered in this book advances the discussion by presenting an important assessment of the moral legitimacy of torture in extreme cases and evaluating whether the technique should continue receiving legal sanction in all cases. The considered opinions of Jean Bethke Elshtain, Oren Gross, Miriam Gur-Arye, Oona A. Hathaway, John H. Langbein, Fionnuala Ní Aoláin, Mark Osiel, John T. Parry, Henry Shue, and Jerome H. Skolnick, along with the other essayists, demonstrate that reasonable scholars committed to human rights can reach diverse conclusions.

—Amos Jones

State Crime: Governments, Violence and Corruption. By Penny Green and Tony Ward. London: Pluto Press, 2004. Pp. 255. \$75.00, cloth.

As the U.S.-led "War on Terror" surges on, questions about the legitimacy of and motivation underlying the war continue to capture public debate. On a broader level, the war has raised issues concerning criminal activity that was once considered the unique problem of a few "rogue" nations, but which is now recognized as an evil affecting even the most stable democratic countries. In *State Crime*, Penny Green and Tony Ward explore state criminal behavior using a theoretical analysis of state crime, bolstered by numerous examples from international case studies. Because of the complexity of their analysis, the authors are only able to discuss a few practical solutions for preventing state crime. However, the book still provides an excellent foundation for understanding the conditions that both permit and encourage states to act in criminal ways.

Green and Ward begin by developing a working definition of "state crime" that they employ throughout the book. Pointing to the conceptual difficulties in defining "state crime" when it is states themselves that determine what activities are considered criminal, the authors argue that criminologists must look to broader, universal norms to determine when state action is deviant. As such, they define state crime as "state organizational deviance involving the violation of human rights." Breaking down this definition into its three components—the state, organizational deviance, and human rights—the authors then elaborate on each term for the sake of their working definition. When speaking of "states," the authors rely upon a Marxist conception of "public powers" possessing an exclusive authority to use force. They define "organizational deviance" as a violation of certain standards of behavior in order to achieve the state's operative goals. Finally, the authors classify "human rights" broadly as moral claims made to the satisfaction of fundamental needs.

Following this conceptual introduction, Green and Ward explore several variants of state criminal activity. These categories include the more commonplace and underreported crimes (corruption, state-corporate crime, and organized crime), crimes considered particularly heinous (state terror and terrorism, torture, war crimes, and genocide), and crises where the state is not the direct criminal actor (natural disasters and police crime). Green and Ward demonstrate how in each category, the criminal state commits deviant acts that violate human rights in pursuit of an organizational goal. The authors then return to a more conceptual discussion of the relationship between political economy and state criminal activity. They conclude by outlining the criminal acts characterizing both Saddam Hussein's Iraq and the policies of Iraq's recent "liberators"—namely, the United States and the United Kingdom.

The nine chapters cover a range of state crimes, focusing on several major themes. Such themes reiterate the conditions that encourage state actors to engage in criminal behavior. What is interesting about these conditions is their cumulative nature—crimes that develop under one condition are often

sustained and magnified by another. For example, Green and Ward regularly revisit how debt repayment schemes in developing countries create an atmosphere ripe for state crime. These schemes place such a financial burden on states that they often collude with corporations offering prospects of capital growth. Such collusion frequently entails the softening of environmental and other regulations. The debt service obligation can also exacerbate political instability in countries where the legitimacy of state power is questioned. Such political volatility leads states to adopt clientelistic or patrimonialist patterns of governance, fostering organized crime, corruption, and authoritarianism. As Green and Ward argue, this political atmosphere becomes a breeding ground for the horrific crimes of torture and genocide.

Interestingly, though, the authors do not limit their analysis of debt repayment structures to the states most directly affected, but also criticize the powerful democracies and global finance institutions that propagate the circumstances under which state crime in the developing world flourishes. In Chapter Eleven, "The Political Economy of State Crime," the authors focus on three paradoxes: (1) international financial institutions attach to loans a set of "good governance" and human rights conditions, yet set strict requirements that force indebted nations to cut nutrition, health, and education expenditures for the poorest citizens, which further strains political legitimacy and encourages greater authoritarianism; (2) human rights serve the interests of the economically powerful by providing a language "that make[s] the ruling institutions of global society appear to serve universal interests" when they are actually serving their own; and (3) powerful states and institutions will seek to uphold human rights violations by force.

One of the book's strongest themes is the role of civil society in countering state criminal activity. Green and Ward argue that countries with strong civil societies are best equipped to constrain state crime by (a) identifying the behavior as criminal, (b) implicating the state that supports the behavior, and (c) imposing informal sanctions. This leaves the reader wondering what specific form such "organized public intolerance" would take, as well as how concerned global citizens can forge "a united front that will oppose and denounce state crimes by any means." Perhaps such issues lie outside the scope of Green and Ward's analysis; still, their cursory treatment here may be unsatisfying to an audience seeking more concrete solutions.

Readers with limited background in sociology and criminology may find the authors' numerous references to sociological theories daunting. In this sense, the book is better suited to scholars undertaking more in-depth research into state crime—who have a reason to consult the extensive reference list—than to students of human rights with a broader interest in understanding state criminal behavior. Still, *State Crime* provides a solid conceptual framework for future investigation in the area.

—Christine A. Monta

The "Huddled Masses Myth": Immigration and Civil Rights. By Kevin R. Johnson. Philadelphia, Pa.: Temple University Press, 2004. Pp. 254. \$59.50, cloth.

Kevin R. Johnson's *The "Huddled Masses Myth": Immigration and Civil Rights* is a fascinating and important comment on the intersection of race and the law in the United States. Johnson's expressed intent is to write his book for a general audience, and for the most part, he succeeds. The book is divided into eight chapters. Chapter One discusses immigration and civil rights in the United States. The common theme running from Chapter Two through Chapter Five is the exclusion and deportation of racial minorities, political undesirables, the poor, and criminals. Chapter Six analyzes the marginalization of women under U.S. immigration and nationality laws. Chapter Seven examines the exclusion and deportation of lesbians and gay men. The book closes with Johnson's perspective on the future of immigration and civil rights in this country.

In an almost clichéd statement, Johnson emphasizes that the United States accepts many more immigrants than most nations. Other facets of U.S. immigration history, however, are a source of shame for those who are committed to equality under the law. Contrary to popular beliefs, a review of American history reveals a lack of openness to, and acceptance of, the "huddled masses," the "tired," or the "poor." This is the central premise of *Huddled Masses*: U.S. immigration laws and their enforcement have barred racial minorities, political dissidents, the poor, actual and alleged criminals, and gay men and lesbians from this country—often pursuant to procedures that are difficult, if not impossible, to square with the notion of due process of law.

Johnson starts by discussing a lengthy history of excluding and deporting the immigrant poor and disadvantaged minorities. His survey begins by examining restrictions that limited the immigration of potential benefit recipients. He then reviews the efforts of federal, state, and local governments to "exclude those categories of immigrants who share common characteristics with groups that are disfavored in this country." He cites a few well-known examples: the segregation of African American and white children in schools, the genocide of Native American peoples, the internment of Japanese Americans during World War II, and the deportation of Mexican Americans (and their American-born children) during the Great Depression. Johnson acknowledges that episodes of volatile xenophobic attacks on aliens are a cyclical matter, and will likely continue, along with popular stereotypes about "foreigners." He argues that immigrant status, like race, is an immutable characteristic. "The law creates 'alien' as outsiders who are allocated few political and legal rights. Moreover, the legal construction of 'aliens' not only affects the general public view of non-citizens but also contributes to their harsh treatment."

Johnson's treatment of Asian American issues represents a major contribution to immigration literature. Johnson contends that unequal treatment of foreigners was reflected in the Chinese exclusionary laws and was reincar-

nated in the laws excluding Indochinese refugees during the late 1970s. Johnson argues that these are part of the war on non-citizens on the basis of their race, not their immigration status. Another particular strength of the book is Johnson's comparisons between the experiences of Asians and African Americans. The treatment of African Americans and other racial minorities, including Asians, can be traced back to nineteenth century constitutional jurisprudence and historical events that pitted ethnic/racial groups against one another.

Reminding the reader of the book's wide analytical scope are the later chapters regarding gender and sexual identity issues in the immigration context. In Chapter Six, Johnson provides an insightful discussion of the treatment of women in U.S. immigration history. In doing so, he dispels the persistent stereotype of immigration as a male phenomenon. Women have a long-documented history of immigration to the United States. Unfortunately, treatment by the U.S. has been inequitable and often harsh. For example, Johnson identifies how women were treated as extensions of their spouses without any independent legal identity. Here, he makes two related points: (1) nationality laws permitted women to be stripped of their U.S. citizenship upon marriage to an immigrant, since a woman's citizenship was treated as contingent on the nationality of her spouse; and (2) immigrant women of color were exploited in the low-wage domestic labor market. "Single immigrant women have often presumed to be likely to become public charges . . . women's ability to immigrate has often turned almost exclusively on their spouses' income, skills, and ability to immigrate."

In Chapter Eight, Johnson details the exclusion of lesbians and gay men. Homosexuals were legally barred from immigrating to the United States from 1953 until 1990. He states that "[o]ver and over, the Supreme Court rejected several constitutional challenges to the classification of homosexuals attempting to enter this country as 'psychopathic personalities,' leading lives of 'sexual deviation.'" Congress finally repealed homosexual exclusion laws in response to political activism and social awareness of the rights of lesbians and gay men.

On balance, *Huddled Masses* is well-written and often provocative. Johnson provides a valuable dialogue and a solid set of information about the privileges of being an American and the historical roots and contemporary sustenance of anti-immigration fervor. In particular, Kevin Johnson's book provides an important analysis for Critical Race scholars to weave into intricate mosaics of the relationship(s) between civil rights and immigration. The interested reader and scholar will not be disappointed by Johnson's in-depth study.

—Harvey Gee

Mixed Signals: U.S. Human Rights Policy and Latin America. By Kathryn Sikkink. Ithaca, N.Y.: Cornell University Press, 2004. Pp. 259. \$29.95, cloth.

The second half of the twentieth century brought political and institutional challenges for those seeking to promote a comprehensive human rights policy. It represented a period of intense repression in Latin American countries, coupled with a shift in the United States' conceptualization of its human rights policy and national identity. In *Mixed Signals*, Kathryn Sikkink chronicles an attempt to integrate human rights into U.S. policy toward Latin America. *Mixed Signals* is an important book for politicians and organizations shaping human rights policies and for members of the public concerned with the human rights issues in places like Iraq.

As the title suggests, the central theme of the book concerns the implications of the mixed signals that the United States sends to foreign governments. Part One of the book begins by providing the reader with an introduction to human rights theory and human rights policies. This introduction comprises roughly one-third of the book—enough background to aid novices, but not bore readers with a background in human rights.

Part One notes that in the mid-twentieth century, human rights were thought to be a moralistic concern inappropriate for foreign policy discussions. American policies focused on eradicating communism further limited implementation of a human rights policy in Latin America. However, after the political and military failure in Vietnam, human rights policy considerations reemerged. Chairman Donald Fraser's subcommittee in the House of Representatives generated momentum for legislation that created an Office for Human Rights within the State Department. Sikkink argues that it was President Carter who institutionalized a robust human rights policy. President Carter, motivated by both his own beliefs and the tangible political benefits of uniting his party under the banner of human rights, created a high-profile "bully pulpit" for promoting human rights, which further cemented the institutionalization of a human rights policy.

Sikkink asks and answers the important question of why such institutionalization occurred at this time. She argues that the identity conflict between rights ideals and the previous support of dictatorships finally came to a head. A global movement supporting human rights policies was underway, and internal factions within Congress signaled the uneasiness some representatives felt about providing support to repressive Latin American countries.

In Part Two of *Mixed Signals*, Sikkink evaluates the effectiveness of human rights policies toward Latin America. She focuses on "repression," or what she calls a narrower subset of human rights violations that were the initial concern in Latin America. She proposes a "spiral model" of human rights change, where exchanges between the repressive state, groups in civil society of the repressive state, and international actors eventually result in the invocation of human rights norms and pressure on the repressors to change. The rest of the book develops Sikkink's addendum to the "spiral model," which draws

on a “sensemaking” approach to explain how mixed signals regarding human rights undermine human rights policy.

Sikkink illustrates her theoretical model in the context of U.S. human rights policy toward Latin America over the course of six presidential administrations. She meticulously details how the Nixon and Ford administrations gave a “green light” for repression in Chile and Argentina; each administration engaged in private diplomacy that sanctioned human rights violations in these countries, but at the same time promulgated a public message to the contrary. These are the mixed signals that Sikkink says undermine attempts to protect human rights. When the repressing country interprets the message as a tacit acceptance of its gross violations of human rights, Sikkink documents a corresponding increase in repression. Sikkink further supports her argument by comparing these policies to the great progress in human rights made under President Carter—a time when the administration sent relatively clear, forceful messages condemning human rights violations. One of the most disturbing examples that Sikkink describes is the Reagan administration’s attempt to strengthen relations with Guatemala while a massive genocide was being conducted. The events in Guatemala, Chile, and Argentina highlight Sikkink’s conclusion that mixed messages give a “green light” for repression with devastating human rights implications.

Kathryn Sikkink provides an excellent account of U.S. human rights policy in Latin America. However, the book has two drawbacks. First, Sikkink’s theoretical framework for understanding the origin and effectiveness of human rights policies is interesting, but not comprehensively enough discussed. Although the book seeks to be more descriptive than theoretical, establishing background knowledge of her theory would make the book more intellectually satisfying. Second, as Sikkink recognizes, the main proposition she advances, that consistently condemning human rights violations makes a difference in countering repression, depends entirely on counterfactual reasoning. If one is not willing to accept that the human rights situation in Latin America would have been different had the United States sent clear, forceful messages, then *Mixed Signals* has little relevance for the reader. However, Sikkink has made a valuable contribution by reminding the reader of the dire effects of divorcing human rights from foreign policy. In an age where “anti-terrorism” is the justification for massive intervention, harking back to the time when “anti-communism” was the justification for policies that resulted in massive human rights violations, Sikkink provides a timely reminder that the fight against terrorism must incorporate respect for human rights and the rule of law.

—Luke W. Nikas

Breaking Silence: The Case that Changed the Face of Human Rights. By Richard Alan White. Washington, D.C.: Georgetown University Press, 2004. Pp. 300. \$26.95, cloth.

Though many human rights attorneys know the outcome of *Filartiga v. Pena-Irala*—the precedent-setting legal case that paved the way for enforcing international human rights in U.S. courts—few may be aware of its genesis. The story of this tragic case began in March 1976 when seventeen-year-old Joelito Filartiga was tortured and killed under official state orders by a police inspector named Americo Norberto Pena-Irala. *Breaking Silence* is a dramatic chronicle of the Filartiga family's journey to find justice, which ultimately led to the arrest and trial of Pena in New York and a \$10 million damages award. Author Richard Alan White provides this account from his intimate perspective as a longtime family friend who returned to Paraguay to travel with the Filartigas on their pursuit for justice.

A death such as Joelito's was not unusual under the Paraguayan military dictatorship of General Alfredo Stroessner, who routinely used mass arrests, torture, and extrajudicial executions as tools of political repression. Joelito's father, Joel Filartiga, was an educated doctor from Paraguay's aristocracy who had devoted his life to running a clinic for the poor in the rural Ybycui village. In another country his work may have been deemed an inspiration, but in Paraguay his sympathies for the impoverished were quickly targeted by the right-wing government as evidence of communist subversion. Joelito's torture and death were part of a state kidnapping meant to intimidate his influential father.

Under Stroessner's reign of terror, it was the unwavering refusal of the Filartiga family quietly to bury the truth of Joelito's murder that distinguishes this story from countless unknown others. With the attention to documentation that underpins his historian's training, White traces the story from the Filartigas' futile struggle to bring the perpetrator to justice in Paraguay, to the redress that they finally found in U.S. courts by relying on an almost forgotten statute enacted in 1789.

This statute, the Alien Tort Claims Act ("ATCA"), allows certain civil suits arising in tort to be heard in U.S. district courts, even if both the plaintiff and defendant are non-American and the action in question occurred abroad. In the *Filartiga* case, the Second Circuit Court of Appeals was the first appellate court to rule that violations of internationally recognized human rights law, such as the state-sanctioned torture, constitute torts that fall within the meaning of ATCA. Since then, the *Filartiga* precedent has enabled foreign human rights victims to force their tormentors—their identities ranging from deposed dictators to rapists to multinational companies—to defend their actions in U.S. courts.

Breaking Silence is not only a gripping personal story, but also a powerful counterargument to critics who say that U.S. courts are an improper forum for adjudicating crimes perpetrated in other countries. White illustrates through

the Filartiga case how U.S. courts may, in certain cases, be the victim's sole hope for redress. Since Pena received Stroessner's full protection, a fair trial in Paraguay was impossible. After being beaten by state agents, Pena's relative Hugo Duarte testified to killing Joelito in a concocted crime-of-passion story. Witnesses sympathetic to the Filartigas mysteriously disappeared. The coroner's reports omitted any reference to the electric shock and beating marks found on Joelito's body. Outside the courtroom Joelito's supporters became political targets. The Filartigas' attorney was disbarred for filing detrimental motions against the government. The family received frequent death threats, and mother Nidia and daughter Dolly were imprisoned in the police's attempt to intimidate the family into dropping their suit.

Human rights practitioners will also find the book to be a fascinating case study of advocacy in practice. As an active participant in the international movement to support the Filartigas, White shares his insights into the relationships, strategies, and even mistakes of the advocacy community—traced from Amnesty International's first campaign to the final verdict won by attorneys at the Center for Constitutional Rights.

White's unique access to the plaintiffs enables him to portray in rich detail the institutional and personal politics that shaped the legal strategies and arguments of the case as it progressed through the U.S. courts. The reader may desire, amidst White's colorful retelling of the plaintiff's position, an equally detailed account of the defendant's perspective. The meticulous chronicle of the complicated context of the case not only underscores the Filartigas' difficult journey, but also provides what may be one of the book's most important legal insights: human rights law should be understood in relation to the process involved as much as it is understood in relation to the outcome.

White himself warns that “[a]mong activists it is not uncommon to get lost in the cause, fighting for humanity while overlooking human beings.” His account of the Filartigas' unusual path to justice is a valuable addition to human rights literature, reminding the reader, in riveting style, that the urgency of recognizing human rights lies not as idealized abstraction, but as a lived reality for individuals.

Over thirty years after Joelito's murder, *Breaking Silence* arrives at a highly relevant time. As recently as 2004, the Supreme Court has sought to limit substantially the application of the Filartiga principle and the reach of ATCA in *Sosa v. Alvarez-Machain*. Perhaps there is no better occasion to revisit the Filartigas' story.

—Nancy Chu

Guantánamo: What The World Should Know. By Michael Ratner and Ellen Ray. White River, Vt.: Chelsea Green Publishing Company, 2004. Pp. 184. \$15.00, paper.

Guantánamo is an account of political journalist Ellen Ray's interviews of human rights lawyer Michael Ratner. Using an almost narrative technique, *Guantánamo* discusses a complex developing human rights issue in a way that is accessible to the average reader.

The first part of the book is arguably the most illuminating. Michael Ratner's experience at Guantánamo Bay in its former incarnation as an HIV camp for Haitian refugees makes him knowledgeable about how this so-called "legal black hole" came into existence. Ratner's explanation (in response to Ray's questions) of how the United States established a lease for Guantánamo from Cuba seems hard to believe. Under the terms of the Platt Agreement, the lease can only be terminated by "mutual assent." Thus, although Cuba has not agreed to the lease, and has not accepted rent payments since 1959, the United States retains the lease because it chooses to do so. Second, the lease contains a provision that gives the United States "complete jurisdiction and control over the territory," but "recognizes the continuance of the ultimate sovereignty of the Republic of Cuba." This provision lies at the heart of the U.S. Supreme Court decisions that have applied unique standards in assessing the actions of the U.S. government with respect to Guantánamo detainees. In the arguments that were pending before the Supreme Court at the time of the book's publication, the U.S. government invoked these clauses to argue that U.S. courts lack jurisdiction over Guantánamo detainees because Guantánamo is under the sovereignty of Cuba, but that Cuba has no authority as to what goes on in Guantánamo because the United States has complete jurisdiction over it.

The second half of Chapter One is timely in light of recent changes within the Bush Administration—namely, the resignation of Colin Powell as secretary of state and the nomination of Alberto Gonzales to the position of attorney general. Ratner describes the argument between Gonzales and Powell over whether the Geneva Conventions apply to Guantánamo detainees. Gonzales's memo to the President argued that the Geneva Conventions do not apply. He further advised that President Bush has the constitutional power to take such a position. Ratner describes the memo as "the beginning of the end of the rule of law" with regard to Guantánamo detainees. Powell's dissenting advice stood in stark contrast. According to Ratner, the fact that the President did not heed Secretary Powell's warnings seems, in hindsight, to have been a sign of things to come. Finally, this first Chapter demystifies the term "enemy combatant." Ratner first describes the origin and current usage of "enemy combatant." During this explanation, he references the recurring theme throughout the book: the rights of Guantánamo detainees are bestowed and retracted entirely at the discretion of the President, in the name of the security of the American people and the War on Terror.

Chapter Two deals with the interrogation, abuse, and torture of detainees while Chapter Three provides testimonial support for the allegations of mistreatment. With each passing day, news reports render the claims put forth in these chapters less surprising and less subject to dispute, but no less shocking to the conscience. Nonetheless, the impact of this section of the book is likely to diminish over time, as the general public grows more and more accustomed to hearing stories of prisoner abuse from the testimonies of detainees, such as those recently released without charge to Britain and Australia.

The final Chapter turns to the standards that the Supreme Court applies to military tribunals. Once again, Ratner asserts that the Supreme Court has allowed Guantánamo's unique and contradictory legal status to trump other human rights considerations. He states that if the detainees really were captured in "war," then the Laws of War apply. If not, then criminal law and human rights standards apply. Yet the Bush Administration's policy on the trial of detainees suggests a third alternative in which neither the standards of the Geneva Conventions nor of criminal law apply to enemy combatants. Ratner's argument against military tribunals as a means for trying the detainees is that this "third way" does not have any legitimate basis in law and does not include the proper safeguards for detainees that exist under domestic and international human rights law.

Perhaps the most important contribution of the book is the compilation of government documents in the comprehensive appendix. Should anyone reading *Guantánamo* be skeptical that Ratner's view is a leftist distortion of the arguments put forth by the Bush Administration, the appendix of governmental documents should provide a succinct rebuttal. Ironically, it seems that the significance of the appendices' role in this regard will also diminish over time, as the evidence coming to light through the news media gives the evidence of mistreatment in *Guantánamo* additional credibility.

—Rebecca J. Hamilton

Bait and Switch: Human Rights and U.S. Foreign Policy. By Julie A. Mertus. New York: Routledge, 2004. Pp. 263. \$19.95, paper.

Though many people have become concerned about America's commitment to human rights since the terrorist attacks of September 11, Julie Mertus argues that causes for concern were actually present much earlier. Setting out to confirm Martha Finnemore and Catherine Sikkink's thesis that the language and norms of human rights have become integrated into the practice of the U.S. government and military, Mertus conducted over 150 interviews and surveys that led her to a different conclusion. State and civilian actors in the United States rhetorically embrace an universalist perspective on human rights, espousing the idea that fundamental human rights and duties

to one another exist regardless of the specific relationships between people. But these actors simultaneously act on a much more particularist ethic, pragmatically determining the content of human rights duties in light of existing relationships between groups. Mertus focuses on the disconnect between rhetoric and action in three interrelated groups: the civilian government (particularly the executive branch), the military, and "civil society."

While the United States has long considered human rights to be an essential part of its self-image, the rhetoric of human rights has increased in recent history. At the same time, Mertus argues that countervailing policies such as anti-communism—and, particularly in the last four years, counterterrorism—have enjoyed sustained prominence. These competing priorities have facilitated double standards in each succeeding administration. George H. W. Bush's idealist rhetoric contradicted his "prudent" courses of action in Yugoslavia and Somalia, while Bill Clinton's attempts to link human rights concerns to essential national interests were undermined by Congress's refusal to endorse the International Criminal Court. George W. Bush's administration has extended the principle of American exceptionalism and broadened the practice of embracing compliant governments regardless of their human rights abuses.

The policies of the U.S. civilian leadership are reflected in military leadership as well. Mertus, however, notes strong potential for improvement in this area. The rigid nature of the military control structure is both a drawback and a benefit for the promotion of human rights principles: the military is resistant to change, but when change is made, it is efficiently and rapidly propagated through the commanding hierarchy. Many military campaigns in recent years have tasked the armed forces with humanitarian, constructive projects rather than the destruction of a well-defined enemy. As Mertus's research demonstrates, this role has been genuinely embedded into the identity of the military. However, there are obstacles to the full adoption of this identity. The military is still fractured by a lack of consensus about the compatibility of these projects with the core task of national defense. As a result, a corresponding aversion to risk accompanies so-called "nation building" operations, which impedes their success. Furthermore, some of the military's particular actions work to subvert the human rights agenda in many instances. Examples include the training of foreign armies in non-democratic nations and the military's internal opposition to reducing discrimination based on sexual orientation.

The third major group that Mertus analyzes is "civil society," made up primarily of NGOs, but also including consultancy groups, think tanks, and lobbyists. Mertus notes that the people involved in these groups are often the same people who operate the civilian government and the military, and frequently share the common career motivation of using their expertise to help people. Civil society's traditional mechanism for promoting human rights has been publicity campaigns to shame those who breach human rights obligations. However, an increasing number of NGOs and others have focused on

policy advocacy in a direct effort to influence government actors. This technique requires an ability to work with the government as a partner, rather than an adversary, on programs such as the delivery of social services. To the extent that it is successful, this partnership can allow the established interests of the state to co-opt the agenda of NGOs. Mertus insists that civil society must be wary of this potential for subordination, and her last section espouses some techniques for resisting it.

Mertus ties together the evidence of a disconnect between American speech and American action on human rights into her central metaphor: America as a used-car salesman using the rhetoric of human rights as the "bait" to entice other countries to act compliantly, which is then "switched" for actions in America's direct self-interest. However, Mertus goes beyond utilizing this metaphor and introduces concrete suggestions for improving U.S. compliance with human rights standards. One technique Mertus suggests is "rhetorical coercion," which, unlike simple persuasion, attempts to close off avenues of rebuttal by framing human rights issues in such a way that suggested alternatives become repellent to the target audience. She likens this to raising consumer expectations in order to prevent vendor impropriety.

Finally, Mertus argues that civil society's direct efforts to influence policymakers and other powerful actors are misplaced. Instead, she recommends that human rights discussions be aimed at creating a broad-based "human rights culture," which must go beyond the adoption of human rights language and address the implementation of substantive norms. Mertus suggests that state and even municipal governments should take steps in this direction by adopting U.N. standards and passing laws against trading with states known to abuse human rights. While one hopes for their success, the litigious resistance met by some such efforts, like the Massachusetts Burma Law, should moderate expectations of this approach.

—Robert Kent

The Genocidal Temptation: Auschwitz, Hiroshima, Rwanda and Beyond. Ed. Robert S. Frey. New York: University Press of America, 2004. Pp. 288. \$35.00, paper.

Genocide and mass killings have become an historical fixture on the landscape of the last century and the present one. The Shoah (the holocaust taking place in World War II) and other genocides have left indelible imprints on the collective conscience. Robert Frey's collection of multidisciplinary essays focuses on the definitional intricacies of "genocide," as well as on the religious implications of the existence of mass killings. The collection forges a strong connection between the two iconic pillars of Auschwitz and Hiroshima, questioning their causes and exploring possible steps towards prevention.

The book is provocative on many levels. In drawing comparisons between Auschwitz and Hiroshima, the first two essays, "Ethics after Auschwitz and

Hiroshima” and “Reflections on the Holocaust and Hiroshima,” explore the definition of genocide in the context of mass killings of civilians in wartime. Hiroshima is not generally considered to be a genocidal event and no action was ever taken to discipline those who developed the atomic bomb, sanctioned it, and executed its use. At the same time, the killing was arguably targeted at civilians in a way that did not allow for individual surrender. By expanding the term “genocide” to include mass killings like Hiroshima, Frey revises the traditional understanding that genocide is only the purposeful annihilation of a specific group.

Frey’s collection also explores the complexity of the duty to intervene in conflicts that become genocidal. The essays examine whether dilution of the meaning of genocide risks painting victims as collaborators or masks conflicts so that perpetrators are free to continue with their genocidal agenda. Dovilė Budrytė contributes an essay that addresses the history of the Soviet oppression in Lithuanian society. In this Chapter, the attribution of genocide to the displacement of Lithuanian dissidents threatens to mask the anti-Semitism in contemporary Lithuanian national memory. While the construction of Soviet oppression as genocide was vital to the unification of Lithuanian independence forces, Budrytė exposes the problems that may arise in using an overly broad definition of genocide.

On the other hand, the United States has often been accused of manipulating the term genocide to excuse its inaction. Essays that discuss this are neatly framed by the opening question of Hiroshima: has the United States neglected genocides in other parts of the world, especially in Rwanda, because of its own status as a perpetrator? While never directly posed, this question frames Frey’s selection of essays and the order in which Frey has arranged them. Frey starts with the accusation that the U.S. has committed genocide and then presents essays that further define genocide in ways that would implicate the U.S. as a perpetrator of genocide.

The book also includes a rich discussion of why genocide happens and what can be done to prevent it. The most common proposition is that modern managerial life and the technology that accompanies it have led to an atomization of decision-making processes. One essay proposes that business students be given the Holocaust as a case study in ethics courses. Frey includes an essay by William A. Rottschaefer entitled “Naturalizing Moral Agency” that deals with the biology of morality. In including this piece in the middle of a discussion about the Holocaust, the collection comments on the changing context of our society and the moral perils it presents. Our romance with technology can be seen in rhetoric about atomic power: one author points out that “enlightenment” cannot have the same meaning in a post-Hiroshima world for those who have seen the flash of light of an atomic bomb. In Steven Carter’s essay “Romancing the Apocalypse,” the beauty of atomic explosions is seen as eschatological: how can we condemn the use of the atomic bomb when we accord it divine provenance?

The effect of Auschwitz and Hiroshima on religion is a third theme that is woven into this collection. Carter's concern that our theological imagery has led us into a dangerous love affair with mass death is complemented by Blumenthal's essays that examine the impact of the Shoah on Jewish faith. Blumenthal concludes that the problem of evil, so starkly portrayed in the Shoah, has deep theological consequences. If God is somehow excused from participation in the Shoah, then by implication there exists an excuse for collaborators and perpetrators. Blumenthal contends that the theological approach necessary is one of challenge—recognition that God was in fact involved and present as a God of history during genocidal periods, and that a person must challenge God's actions through prayer and questioning. Blumenthal presents this theological posture as the one that is most likely to aid in the prevention of genocide because it is the posture that will prevent the eschatological thinking Carter highlights as so dangerous: if God does not intervene, was killing divinely ordained?

Through definitional preciseness, concerned with avoiding a definitional process that dehumanizes conflict, and the adept marshalling of theological arguments, Frey's collection poses important and haunting questions. His multidisciplinary approach is a provocative introduction for the student interested in the topic of genocide and willing to grapple with its complexities.

—Sarah Rice

Why Did They Kill? Cambodia in the Shadow of Genocide. By Alexander Laban Hinton. Berkeley, Cal.: University of California Press, 2005. Pp. 360. \$21.95, cloth.

Trying to understand how once rational, compassionate individuals could slaughter one-fifth of the Cambodian population is tantamount to comprehending the incomprehensible. Crushing class conflict, political unrest, and economic stagnation help to tell the story of the overall society. Telling the story of those who actually worked in Cambodian extermination centers, however, is another matter—this is a place where structural explanations have very limited applicability.

Explaining why a *person* would kill is how Alex Hinton, an anthropologist by training, begins to explain the death of 1.5 million Cambodians at the hands of the Khmer Rouge between 1975 and 1979. Hinton argues that a thorough analysis of a particular genocide is incomplete without understanding the cultural context in which the perpetrators and victims operate. It is a person's body of localized, cultural knowledge—which, in this case, largely derived from Buddhism—that shapes his or her response to an oppressive, dictatorial regime. Consequently, this ethnography seeks to understand the Cambodian genocide by navigating between the larger political processes

and socioeconomic conditions of the nation and the localized, culturally driven understandings of the average Cambodian. In reconciling these two perspectives, Hinton makes a valuable contribution to the growing body of work examining how a genocidal regime successfully emerges and finds supporters in an otherwise largely peaceful population.

The first part of Hinton's book is concerned with understanding how this particular genocide developed. He first focuses his analysis on Cambodian and Buddhist notions of disproportionate revenge. When shamed, an individual seeks not only to exact revenge but also to eradicate an entire lineage, rooting out the cause of his humiliation. The strong protection—as well as direction and, at times, tyranny—of Cambodian patronage networks helps Hinton understand why the Khmer Rouge worked to extinguish the population of property-owning elite that threatened the ruling Maoist philosophy. Hinton's cultural analysis, supported by years living in Cambodia and extensive interviewing, is quite strong in this first section, and lends credibility to his later assertions.

The author is clearly more captivated, however, by what motivates seemingly innocent *individuals* to slaughter friends, neighbors, and even family members. He therefore concentrates the second part of his analysis on perpetrator motivation. Here, his extensive interviews (which avoid judging the perpetrators, unlike many other bodies of work devoted to genocides) help the reader understand how his complex cultural models resonate at the local level. Examining the Cambodian killing centers and the Khmer Rouge cadres who interrogated and killed within their walls, Hinton wants to know not only why people killed, but why they killed with such vicious abandon. Although the links seem at times tenuous, Hinton weaves together the fear and anxiety present in Buddhist and existentialist thought to explain how performing extensive execution processes, designed to do more than simply kill, served as a demonstration of loyalty, and therefore helped secure the safety of perpetrators.

The book relies on nightmarish examples to document the cultural meaning Hinton uncovers in atrocious acts. In the closing pages of the ethnography, Hinton details the gruesome disembowelment of a prisoner and the eating of his liver by the Khmer Rouge cadres. Killing demonstrated one's ability to "cut off his heart," or sacrifice weak emotion to prove loyalty and adherence to the party line. The brutality with which the cadres treated the prisoner illustrates the construction and demonization of the opponent social group that facilitated the genocide.

Truth commissions have long been lauded for helping societies rebuild after atrocities; the healing process is often uniquely tied to survivors being able to share their stories, uncensored, in a public forum. A privately undertaken individual study certainly cannot achieve what a nationwide truth commission can, but the importance of Hinton's record should not be underestimated. Telling the tales of those who survived, and those who did not, is an awesome responsibility that has great power to heal. By combining these stories

with previously unavailable documents about the genocide, Hinton's book provides a personalized, detailed understanding of life under the Khmer Rouge.

Though Hinton presents a compelling set of narratives, his conclusions are not entirely novel. The findings of Stanley Milgram's obedience experiments, for example, have been applied to acts of genocide numerous times before, as the author does here. The author is careful, however, to seek explanations for genocide beyond the help that Milgram and his obedience experiments offer. As Hinton notes, Milgram himself was taciturn about extending his findings to situations of such vast wrongdoing. Hinton contends that perpetrator motivation largely stems from the movement's creation of a diseased, threatening "other"; from the leadership's ability to funnel social, political, and economic unrest toward their own ends; and from the mounting insecurities and fear induced by the most authoritarian of regimes. None of these are entirely new ideas, and it is when Hinton tries to draw sweeping (and familiar) conclusions that the study starts to falter.

Thus the real power of the book lies in the study of Cambodian social structure, embrace of Buddhism, and familial norms. By grounding his study in the everyday details of Cambodian society, Hinton's ethnography helps us understand the Khmer Rouge genocide from the perspective of those who wielded the knives and guns. Though the horror of genocide can never be excused, it can be understood in more nuanced ways; Hinton makes a very important contribution to developing a holistic understanding of the roots of the genocide in Cambodia.

—Stacy Humes-Schulz

Reigns of Terror. By Patricia Marchak. Montreal, Canada: McGill-Queen's University Press, 2003. Pp. 306. \$75.00, cloth.

Genocide is politics by other means. Although Carl von Clausewitz is never mentioned in *Reigns of Terror*, this paraphrase of his famous maxim describes the central tenet of Patricia Marchak's latest book. With exceeding breadth, Marchak analyzes the conditions under which states commit acts of violence—in particular, "crimes against humanity"—against their own people. Informing and controlling her theory is a stalwartly Marxian and Weberian view of the institution of the state, which results in an original, albeit not wholly persuasive, analysis of state violence.

Reigns of Terror is divided into two parts, offering two organizational approaches to the material. Part One assesses various factors previously raised as causes of state violence, culminating in Marchak's own theory in Chapter Six. Part Two describes and reviews particular cases of crimes against humanity. Those considered are the Ottoman Empire 1915–16 (Armenian genocide); U.S.S.R. 1932–33 (Eastern Ukraine); Nazi Germany 1933–45; Burundi and

Rwanda 1972–95; Chile 1973–88; Cambodia 1975–79; Argentina 1976–83; and Yugoslavia 1990–94. These case studies include information about both the historical background of these episodes and the violent periods themselves. While the summaries are not comprehensive, they provide a good context for a reader who lacks expertise regarding one or more of these cases.

The heart of Marchak's project is her study of state violence theory in Part One. Marchak frames her analysis by the metaphor of the "Janus State." Janus, meaning "opening" or "gate," was a Roman God with two faces. Just as Janus simultaneously looks outside the city and within it, Roman armies marched out to conquer new populations but also recognized a duty to maintain order at home. Marchak is more interested in Janus's inward face and the circumstances under which states use force at home.

Marchak argues that states exist only because they are effective instruments of maintaining extant inequalities and hierarchies within their populations. This purpose underlies all state actions. According to Marchak, crimes against humanity are no different than any other acts of government. When internal or external circumstances (such as severe environmental problems or foreign economic influence) paralyze states, nonviolent governance becomes ineffectual and states turn to violence. Marchak asserts that this phenomenon threatens both old regimes with crumbling legitimacy and new regimes struggling to achieve their purported objectives.

Common theories about why states commit crimes against humanity focus on tensions arising from differences within a population, most notably those related to race, class, culture, and political views. Marchak does not dismiss these differences as irrelevant; however, she is skeptical of the causal link between these differences and violence. In her view, population differences merely present opportunities for state exploitation. In this vein, Marchak maintains that state ideologies can be consciously deployed to harness underlying divisions and breed the conformity necessary to embark on genocidal campaigns. Even though Marchak rejects population differences as the ultimate motivation, she is persuasive in her descriptions of a process through which states can transform ordinary citizens into instruments of violence.

Marchak argues that crimes against humanity are usually based on material concerns. She writes that "an overriding theme in human affairs is greed, which may be entirely personal, or displaced, on behalf of a collectivity." It is the almighty dollar (or mark, peso, or dinar as the case may be) that invigorates states to resort to heinous crimes in defense of the inequalities inherent in their political systems. While the number of pages dedicated to this claim may be few—most of Part One criticizes other theories of state violence—the state's inherent connection to inequality and the material motivation for crimes against humanity represent the intellectual hallmark of *Reigns of Terror*.

Marchak's material theory is intriguing, but the arguments she musters against other theorists are equally damaging to her. Marchak asserts that scholars who concentrate on race or politics as the cause of mass atrocities make

the fundamental error of mistaking correlation for causation. Yet her theory does not fare much better. Simply articulating a material motivation for state violence does not establish causation. The paucity of ink devoted to defending her argument is particularly problematic, especially given that some of her cases include states materially disadvantaged by their policies of violence (such as the case of Eastern Ukraine). Marchak should be commended for decoupling crimes against humanity and identity, but she must be viewed critically for only re-coupling the violence with materialism.

More generally, *Reigns of Terror* falls short of one of the main challenges facing scholarly works in this field—explaining why a particular set of factors (whether they be material or not) produce crimes against humanity only in certain states and only at certain times. A more complex analysis would allow for predictive theories about state violence and provide guidance to practitioners in international affairs. As almost an afterthought and with little commentary, Marchak briefly lists “necessary conditions” and “additional, but not necessary, conditions” that can combine to predicate crimes against humanity. Making such a list without then providing guidance leaves readers in the same position as when they began.

Patricia Marchak’s *Reigns of Terror* is a good starting point for a reader new to the study of state violence or a scholar interested in an alternative explanation for this phenomenon. While her argument is not wholly persuasive, her parsing of various factors related to crimes against humanity—including the means by which states can manipulate these factors using ideology—is important in understanding and ultimately trying to prevent such heinous acts.

—Zachary D. Clopton