

Book Review

A Review of ‘Law’s Impunity: Responsibility and the Modern Private Military Company’

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Law’s Impunity: Responsibility and the Modern Private Military Company

Hin-Yan Liu

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The mercenaries and mercenarism are two points of concern for scholars studying the rules of war throughout history. Both in *jus ad bellum* (JAB) and *jus in bellum* (JIB) we can find a framework of international law crafted to impede the participation of individuals motivated to take part in hostilities to get private gain. Nevertheless, paradoxically, the problem is when corporations are supported by domestic law to perform serviced in ground combats abroad. In the latter case, Human Rights Law (HRL), International Humanitarian Law (IHL) and International Criminal Law (ICL) present numerous gaps that make it difficult to incriminate corporations, which perpetuate the impunity among private organizations involved in human rights violations in conflict zones.

In an effort to provide a comprehensive explanation for this impunity which is, unfortunately, very common since 9/11, the book *Law’s Impunity: Responsibility and the Modern Private Military Company* provides an unequalled analysis of legal structures that perpetuate and create impunity for private military corporations (PMC). Hin-Yan Liu—Associate Professor at University of Copenhagen—has a unique perspective, focused in elucidating the systemic ‘defects of ordinary juridical processes which are both more imperceptible, and potentially more pervasive’ (p.1). Hence, the main question for Liu is what ‘role the law itself plays in creating and maintaining the structures of impunity that benefit the PMC’ (p.1).

The work is divided into six chapters and the conclusion, the first chapter being central to the author’s argument. It

explores the fundamental concepts and theoretical framework that justify his radical argument that law itself creates and maintains structures of impunity. In this sense, the impunity for him is not a consequence of law’s malfunction, but the law itself creates impunity. Hence, Chapter 1 explores ‘the contested concept of impunity in order to elucidate its architecture and to express the manifold ways in which law both generate and sustains impunity’ (p.9).

Lin explains that creation of impunity is can be understood through two complementary concepts that are central to the whole discussion: passive and active impunity. On one hand, in the passive dimension ‘the structural properties and characteristics that are integral to the law are shown to generate impunity’ (p.9); it is *de facto* impunity. On the other hand, active impunity ‘is indicated within the suspension of the ordinary juridical process as well in situations where it is exempted altogether’ (p.9); it is *de jure* impunity.

Another two central concepts explored by Lin in Chapter 1 are interpretive denial, concerning the new classification of facts by the law attribute giving them a new meaning, and interpretive assertion, when a possible human rights violator—such as the PMC—‘aspires to form affinities with virtuous actors and actions, contributing to the prospect of impunity by distorting the context within which accountability and responsibility evaluations occur’ (p.10).

In Chapter 2, Lin makes a comprehensive analysis of the PMC phenomenon, detailing its characteristics, (dis)functions and the evolving nature of corporate mercenarism from the past decades’ mercenaries until the serious human rights violations seen in 9/11, Afghanistan and Iraq. Lin’s systematization of the nature of PMC brings not only an explanation of how this kind of corporation works and commits abuses, but also provides substantive historical analysis of examples of PMC criminal behaviour, namely, the case of Abu Ghraib prison torture, released by press in 2004, the disproportionate use of force in Iraq and the sex-trafficking case in Bosnia.

Chapter 3 examines how international law treats the mercenary activity. Lin takes into consideration several legislations like Geneva Conventions, UN Resolutions and the African Union organisation documents, among others. The author makes an encompassing analysis showing the defects of current conventions to obstruct mercenarism, like 'geographic restrictions, low ratification rates and the fact that the crime restrictively defines both the mercenary and the purposes for which the mercenary activity is deployed' (p.182).

Chapters 4 and 5 relate, respectively, the concepts of passive impunity and active impunity with PMC, as well as the idea of interpretive denial and interpretive assertion. The chapters are central to understanding the author's argument that law creates impunity. He shows that the structure of international law—and even in some cases of domestic law—excludes PMC from imputations of wrongdoing. The orthodox legal approach, in that case, does not show its efficacy and appropriateness. Instead, the current law framework opens gaps and subterfuges that make impunity be present in the most of cases.

Finally, Chapter 6 presents the nascent mechanisms to regulate PMC. Lin analyses cases in which States or international organizations are trying to create regulations, like the case of United Kingdom, the Montreux Process and the initiatives concerning self-regulation. The author shows that the 'prospects that the PMC will enjoy impunity for their activities into the future maintain high' (p.336), although forms of collective responsibility through self-regulation could be incentivized.

A minor drawback of the book is that the author overcomplexifies some conceptualizations for the reader, especially in Chapter 1 and 2, when he could be more didactic and clear in his accounts. For example, when he proposes a typology to segregate civilian and military corporations on the principles of distinction in Chapter 2: the use of charts and figures would be useful to understand distinct typolo-

gies and what is different in the author's proposal compared with current literature. The same applies when he explains interpretive denial and interpretive assertion in Chapter 1. By providing a more didactic language and explanation, the reading would therefore become more accessible for the general public. On one hand, such an intricate explanation is comprehensible given the theoretical-conceptual framework proposed for a radical analysis, focusing on law as creator of impunity. On the other hand, the book brings forward a very important and innovative discussion about a key topic for the contemporary international law and international relations that cannot be restricted to academic circles; it is necessary to clarify, for the general public, the findings and concepts used in such important research.

However, this shortcoming does not affect the whole explanation. The scholarship of the author and the quality of data analysis make the book an essential read for researchers concerned, not only with the PMC phenomenon, but mainly with the question of impunity in international law. In addition, Hin-Yan Liu's approach provides original evidence of how important it is to be critical and propositional towards a transformation of international law. Finally, the book also introduces yet another important hallmark concerning research structure: a careful explanation that logically connects concepts and cases studies. Unfortunately, a disconnection between concepts and empirical data, which often results in a fragmented analysis, is common in several international law books. Contrary to this however, Liu makes an astonishing work bridging complex concepts with a contemporary empirical analysis of the important issue of PMC.

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