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AFRICAN YEARBOOK ON INTERNATIONAL HUMANITARIAN LAW

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***Informers Up Close* by Mark Drumbl & Barbora Hola (2024)**
Oxford University Press, 272 pp, ISBN 9780192855138
Price: £90.00

Mark Drumbl likes grey areas. *Informers Up Close*, his new book, co-authored with Barbora Hola, goes deeper into the grey than ever before. Drumbl's prolific work on child soldiers as illustrated in his book, *Reimagining Child Soldiers,*[1] as well as in his work on the *Ongwen* case,[2] shows an appreciation for the complex duality of being both perpetrator and victim. So does his highly original work on kapos in Nazi concentration camps, who are described as 'victims that victimises'.

In *Informers Up Close*, Drumbl once again explores a subject that defies easy categorisation. Despite the book's distinct lively Drumblian style and pace, *Informers Up Close* is grey in various respects.[3] It both reveals and challenges the greyness associated with communist regimes—in this case, communist Czechoslovakia.

Barbora Hola is a criminologist, transitional justice expert and Associate Professor at the Free University of Amsterdam. Similar to Drumbl, she has written on complex topics such as examining the paradoxical question of whether *Ongwen* is the ICC's 'poster child' or 'problem child'.[4] In the context of *Ongwen,* she co-concluded with Thijs Bouwknegt: 'The legal and moral threshold that marks the transition from an angel into a devil, and from the future of humanity to someone most responsible for the most heinous crimes, remains ambiguous.'[5]

The book focuses almost exclusively on informers in the context of communist Czechoslovakia. The authors state explicitly that, but for a sideways glance here and there, the book is not comparative in

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1 Mark Drumbl *Reimagining Child Soldiers in International Law and Policy* (2012).

2 ICC (Appeals Chamber) *Prosecutor v Ongwen* (Judgment on the appeal of Mr Dominic Ongwen against Trial Chamber IX's decision on Defence motions alleging defects in the confirmation decision, Case No ICC-02/04-01/15 OA4, ICC-02/04-01/15-1562, ICL 1950 (ICC 2019)) (17th July 2019) (hereafter *Ongwen*).

3 See Gregory Gordon for use of the term 'Drumblian': 'Reply by Gregory S Gordon: On the General Part, the New Media and the Responsibility to Protect' *Opinio Juris* (2017), available at <https://opiniojuris.org/2017/07/14/reply-by-gregory-s-gordon-on-the-general-part-the-new-media-and-the-responsibility-to-protect/> (accessed on 25 February 2024).

4 Thijs Bouwknegt and Barbora Hola Justice 'Dominic Ongwen: The ICC's Poster and Problem Child' *JusticeInfo.Net* (2020), available at <https://www.justiceinfo.net/en/44014-dominic-ongwen-icc-poster-and-problem-child.html> (accessed on 25 February 2024).

5 Ibid.

nature. It zooms in on the secret police or StB (*Státní bezpečnost*) in Czechoslovakia. This strict geographical and temporal focus is useful since it allows the readers to truly immerse themselves into that specific time and place. It also prevents the generalisation and coarse reductiveness often associated with transitional justice. Much of the oversimplification in transitional justice stems from a tendency to over-compare. Perhaps one can argue that the particular pathologies attaching to Czechoslovakia during the period under scrutiny *belong* to that time and place, which means that we need to move away from a theoretical model that strains to find commonalities in the unfree societies that transitional justice focuses on—societies transitional justice seeks to 'liberate', democratise and transform.

The authors essentially resist conceptualising StB informers as tragic victims. Throughout the book, they insist on 'granularity'—delving into the fine particularities of each individual informer's specific situation, motivations, peculiarities and fate.

In engaging with greyness, the book shows the banality, conformity and grimness of everyday life in communist Czechoslovakia. But it also contrasts the dark hand of the state and the darkness of persecution and practices, such as interrogation, with some of the joys of social and family life in this period. The authors even depict architectural greyness, including illustrations of buildings associated with communist-style political violence—structures that are nothing, if not intimidatingly grey. Never before have I seen an academic book engaging with greyness so vividly.

Embracing greyness extends to the authors' scepticism toward transitional justice. Early on in the book, the authors reveal one of their core concerns with regard to transitional justice—the lack of the emotional quotient (EQ):

> … transitional justice would do well to recognize the full panoply of diverse emotional motivations of informers and their handlers in all of their hues. Such recognition would augment the emotional quotient (EQ, so to speak) of transitional justice interventions.

Later in the book, transitional justice is described as 'coarsely reductive'.[6] But much of *Informers Up Close* builds on and relies on transitional justice—similar to the relationship described between the informers and the informed upon, it is a complex and uneasy relationship, but a relationship of loyalty, nevertheless.

A point the authors make up front is that the topic of informers, as well as the closely related topic of lustration, has received scant attention in transitional justice literature thus far. In a field as saturated and

6 Mark Drumbl and Barbora Hola *Informers Up Close* (2024) 198.

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possibly overpopulated as transitional justice, this gap is interesting in itself. It seems that transitional justice has generally opted for simpler topics and has not been particularly adept at analysing communist transitions, or at exploring grey areas, which defy the 'tool-kit' approach to transitional justice or the clear oppositional nature of transitional justice—good versus bad; perpetrator versus victim.

Fundamentally, the book is interested in why people spoke to the StB. The authors consider this question more important than the veracity of the information obtained by informers. This means that the authors take a psychological dive into the informers' motives. This book seeks to identify the emotions that drive and animate behaviour; specifically in the context of informing and interacting with the secret police.

Throughout the book, the authors remain fascinated with the scapegoating of informers. 'The informer was largely constructed as a distrustful threat to society, as loyal to a failed and ugly ideology, as a menace to the new enlightened order, and scorn-fully dumped—"we are not like them"—from the remainder of society.'[7] But the authors ultimately say, 'We conclude that totalizing informers as ideological and condemning them as inimical to the new regime departs from what our research actually suggests drove informers to engage with the StB.'[8] If Drumbl's book on child soldiers aimed 'to approach child soldiers with a more nuanced and less judgmental mind', [9] this book takes a similar approach to the topic of informers. Just as Drumbl aimed 'for social repair within afflicted communities'[10] in the former book, this publication aims for much the same.

In an attempt to get as close as possible to individual informers, Chapter 4 contains distillations of four informer files and forms the heart of the book. Six informers were chosen—Vera, Vasek, Lily, Goldfus, Volny and Soukup. The StB records of these informers were translated and recounted in great detail. According to the authors, '[e]ach file-story showcases a cocktail of (e)motions that pulled informers towards and pushed informers away from the StB and vivifies how these sentiments morphed over time'.[11]

Whereas one would expect that the authors might only summarise the lives of the informers and provide mere outlines of their lives, the authors go far beyond this, describing informers' lives in near-

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7 Ibid at 102.

8 Ibid.

9 Kevin Jon Heller 'Drumbl – Reimagining Child Soldiers' *Opinio Juris* (2012), available at <https://opiniojuris.org/2012/02/02/drumbl-reimagining-child-soldiers/> (accessed on 25 March 2024).

10 Drumbl op cit note 1.

11 At 230.

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excruciating detail. The material makes for interesting reading—at times surprising and amusing, other times fascinating, and occasionally tedious and downright boring. But herein lies the magic of the book. Since these files have been opened to the public, all Czech citizens over the age of 18 have the opportunity to access them. The experience of reading Chapter 4 mirrors the experience of a reader who has requested access to such files. This experience is often awkward, uncomfortable and downright voyeuristic.

Informers Up Close is meticulously researched. This is one of the prime strengths of the book. One has the sense of being able to immerse oneself in that time and place because the authors immersed themselves so fully. The authors further took the more difficult and strenuous route by having large parts of the transcripts in the files they refer to translated and engaging with it in granular fineness.

In spite of its largely grim subject matter, the book is highly entertaining. Drumbl's characteristic way with words is discernible on every page. Informing in communist Czechoslovakia was no laughing matter, but advertently or inadvertently, the book even contains bits of humour. In describing informer Vera's life, the short sentence, '[t]hings get a bit cryptic',[12] comments on the absurdity of the entire exercise. And one cannot but smile at the comment that informer Goldfus 'appeared addicted to informing'.[13]

Like an informer who, from time to time, attempts to escape the grip of the StB, the authors seem to strain to break free from the transitional justice genre.

Mainstream transitional justice theory has long been under fire from critics from all kinds of persuasions. Some have argued that the scope of transitional justice should be expanded to address economic violence, structural violence and cultural and gender violence, and that it should be more inclusive and less marginalising.[14] In sum, it is argued that transitional justice should take a more holistic approach.

The authors argue that the value of transparency, another undisputed 'good' in transitional justice theory, is highly context dependent. They argue that the post-communist opening up of files occasionally had cruel consequences. They also warn against the assumption that all truth telling is inherently good. Many informers were later excluded from public service through lustration, a practice that often did more harm than good.

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12 At 108.

13 At 161.

14 Dustin Sharp 'What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice' *International Journal of Transitional Justice* (2019), available at <https://academic.oup.com/ijtj/article/13/3/570/5549801> (accessed on 25 February 2024).

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Whereas the section discussing architecture as one of various transitional justice mechanisms implemented in the Czech Republic is interesting and to some extent novel, and whereas it is clear that architecture has often been 'instrumentalised for political and social engineering', its link with informers is not clear enough.[15] While the pictures have strong atmospheric value, more needs to be explained.

Significantly and refreshingly different from other legal academic publications, this book makes room for emotions. Chapter 5, in particular, examines the role of emotions as catalysing and then sustaining these dimensions of interaction. The book defines emotions as:

> … a set of evaluative and motivational processes, distributed throughout the brain, that assist us in appraising and reacting to stimuli and that are formed, interpreted, and communicated in social and cultural context … They are dynamic processes that are integral to decision making.[16]

Although the authors acknowledge that emotions 'represent something beyond themselves', they do not make enough of the undefinable nature of emotions and all that flows from that undefinability. Ironically, in attempting to overdefine emotions, the authors somehow miss the essential fact that emotion defies definition. Their focus on emotion is, however, powerful in the sections where they analyse the motives of individual informers, as discussed in Chapter 4. The authors zoom in on four emotions that motivate informers—fear, resentment, desire and allegiance.

The irrationality of attempting to construct a rational definition of emotion spills over into the broader meta-attempt to find sense in the chaos and non-sense of informing. What struck me more than anything else was the deep and essential arbitrariness of the system. If the rule of law requires consistency, rules and reason, Czech-style communism represents the exact antithesis of the rule of law.

But these are small concerns, concerns that can provide a springboard for fertile academic debate on how law should cater for irrationality. *Informers Up Close* stands out as the most interesting book to have appeared in the broad field of transitional justice in many years. It is interesting not only for its novelty and ambition, but also for introducing and opening up entirely new fields of study. Many of the subtopics, including the impact of emotion, lustration and architectural transitional justice, warrant separate research

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15 Drumbl and Hola op cit note 6 at 95.

16 Susan A Bandes and Jeremy A Blumenthal 'Emotion and the Law' (2012) 8 *Annual Review of Law and Social Science* 161, 163–164.

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projects and publications. Innovatively, the book is accompanied by an educational website (http://www.nscr.nl/ Informers-Up-Close) that can aid and facilitate teaching on the topic.

The authors do a superb job of highlighting the limitations of transitional justice, but one yearns for them to propose an alternative paradigm or lens through which to consider the plight of informers and others similarly situated.

How does and should the law deal with informers and those they inform upon and to? In the case of informers, possibly more than any other category of agents or players in the grand and perhaps overly popular and populated theatre of transitional justice, it is clear that the line between informer and informed upon ('us' and 'them') is terrifyingly thin. In this space, especially, virtue signalling only shows up those who do the signalling. This is not only evidenced by the fact that many informers themselves were informed upon, but also by the fact that the behaviour of informers are common to that of opportunistic or scared people everywhere. Vaclav Havel expressed the pervasiveness of guilt and the futility of assigning guilt in this context when he wrote the following:

> We are all in this together— those who directly, to a greater or lesser degree, created this regime, those who accepted it in silence, and also all of us who subconsciously became accustomed to it.[17]

Regarding the pervasiveness of informing, the question shifts to: can the law deal with it, or do informers, particularly under communist rule, present too hard a case? And what does all of this mean in a post-pandemic surveillance society? The lives of informers are simultaneously the lives of others, lives we struggle to identify with, but also lives that are every bit as prosaic and banal as the lives of the rest of us. Granted, informers seemed particularly prone to behaviour that would classify them as societal 'misfits', but what we read in the files is also terrifyingly familiar; prompting one to think, 'there but for the grace…'.

Go spread the word—*Informers Up Close* is brilliant.

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[17] Adam Michnik and Václav Havel 'Confronting the Past: Justice or Revenge?' (1993) 4 (1) *Journal of Democracy* 20–21 (in dialogue).

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