



The Promise and Limitations of International Human Rights Activism

By Rebecca Evans

Breaking Silence: The Case that Changed the Face of Human Rights by Richard Alan White. Washington D.C.: Georgetown University Press, 2004. 320 pp.

International human rights doctrine and international law have increasingly come to recognize that the international community has an interest in and responsibility to uphold fundamental human rights. This recognition means that states have come under increasing scrutiny for the way in which they treat their own citizens. Although some scholars continue to maintain that universal human rights do not challenge national sovereignty or state control (for example, see Krasner 2001), the immunity that state officials enjoyed from external interference in their domestic affairs has eroded quite significantly over the past fifteen years. As Andrea Bianchi notes, “while state sovereignty remains one of the pillars on which the system hinges, its actual content has undergone a gradual process of erosion. Matters which once indisputably belonged to the domestic jurisdiction of states, such as the way a state treats persons under its jurisdiction, nowadays may be the object of international scrutiny” (Bianchi 1999: 117). While realists dismiss such scrutiny as meaningless and ineffectual, they fail to recognize that casting a spotlight on violations of internationally recognized human rights is the first step in holding violators accountable for their actions. Although it ultimately remains the responsibility of national governments to make respect for human rights effective, the international human rights community wields significant power in its ability to “name and shame” violators. This “power to embarrass” is significant because “no government wishes to suffer the exposure of systematic human rights violations by agencies under its authority or its failure to fulfill obligations to which it has agreed” (Pinheiro 1998: 42).

Governments that violate their citizens’ human rights are increasingly being held responsible for their actions by other governments and by international bodies. On the international level, tribunals have been established to try perpetrators of crimes against humanity from Yugoslavia to Rwanda to Sierra Leone. The formal initiation of a permanent International Criminal Court in 2002 signals a growing willingness on the part of many states to hold heads of state and other public officials accountable for their actions, although the United States remains a notable opponent.¹ On the national level, criminal prosecutions and civil claims have been filed in domestic courts against foreign officials accused of violating international human rights norms. Courts in countries such as

¹ The United States has refused to ratify the treaty establishing the International Criminal Court and took the unprecedented step of withdrawing its signature from the treaty in order to signal its strong opposition. The United States’ primary concern is that the Court would infringe upon U.S. sovereignty and subject American politicians and military personnel to prosecution. For an explanation of this position, see Rubinfeld (2003).

France, Spain and Belgium have embraced the principle of universal jurisdiction and have used this to claim “criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction” (Scott 2001: 267). This was dramatically demonstrated in the legal proceedings against former Chilean General Augusto Pinochet, who was detained by British authorities for eighteen months pursuant to an extradition request from a Spanish court. In a landmark 1999 decision, a British panel of judges ruled that crimes against humanity, such as the systematic torture of individuals for policy reasons, canceled the sovereign immunity traditionally granted to heads of state (Méndez 2001: 25). More recently, a Spanish court has convened a genocide trial of a former captain in the Argentine navy accused of involvement in the “dirty war” that led to the deaths and disappearances of tens of thousands of Argentines.

Although U.S. foreign policy leaders have been conspicuously unsympathetic to the creation of the International Criminal Court and have objected to the application of universal jurisdiction, there have nonetheless been momentous rulings in U.S. courts that have had important implications for international human rights law. The recently published book Breaking Silence: The Case that Changed the Face of Human Rights by Richard Alan White looks at just such a case. In the case of *Filártiga v. Peña-Irala* (1980), a U.S. federal judge ordered a former Paraguayan police officer living in the United States to pay \$10 million to the family of Joel Filártiga, a Paraguayan citizen who was tortured and killed by police in 1976. The judgment was based upon a new interpretation of a statute dating back to 1789—the Alien Tort Claims Act (ATCA). The ATCA allows aliens living within the United States to file civil claims in U.S. courts against foreign nationals who violate international law, particularly by committing human rights abuses (Quigley 1998: 557).

Rather than providing an academic or legal analysis of this landmark decision, however, Breaking Silence focuses on the personal story of the human rights activists in Paraguay and abroad whose determination ultimately led to a symbolic victory for human rights. The book does so in a way that the author describes as “dramatic nonfiction” (xix) and one reviewer praises for “putting the human back into the study of human rights” (Claude 2004: 790). Rather than assume the more detached perspective of a traditional academic researcher, White deliberately makes his account highly subjective. Although he notes in the prologue that the book is based on some 12,000 pages of documentation from primary and secondary sources, he recounts events in the first-person, even sharing such personal details as his struggle with chronic back pain. Much of the text is written in a conversational form that allows the reader to identify with the protagonists in the unfolding drama. White’s use of dialogue also has an obvious didactic goal, as the following conversation between the author and a Paraguayan insurgent leader illustrates:

“OK,” I began, “international organizations involved in human rights can be divided into two major types. Those funded by governments, the UN or the OAS for example. And those privately financed, like Amnesty or the International League for Human Rights ... They’re called Non-Governmental Organizations. NGOs for short.”

“What’s the difference?” Soledad asked.

“As a general rule, the NGOs are made up of activists. Human rights is what they do, their raison d’être,” I explained. “Whereas, in the governmental organizations, human rights work is more or less a poor cousin, low on the institutional totem pole, almost a concession to their formal mandates ...” (77).

Breaking Silence begins by explaining how White came to meet the Filártiga family and situates the family in the context of General Stroessner’s repressive, corrupt regime. White makes it clear from the outset that Joel Filártiga’s role as a human rights champion stemmed from his experiences as a physician working at a rural clinic treating poor peasant farmers. In the black-and-white reality of a Third World country like Paraguay, poverty, injustice, exploitation and disease are all undeniably linked. Greed and corruption explain why the government does nothing to regulate the use of powerful insecticides by big cotton growers even though these cause appendicitis and spontaneous abortions among local peasants; children die of common diseases because the government is unwilling to spend “ten centavos” for an immunization (6-7, 75).

Yet while Filártiga ultimately wins financial support for his rural medical clinic from wealthy supporters in the United States and Europe, his story comes to international attention not because of the violation of socioeconomic rights but because of the torture and murder of Joel’s 17-year-old son, Joelito. White notes that his own commitment to the struggle to hold those responsible for Joelito’s death accountable stemmed from his “gut level reaction to the mindless inhumanity of the torture-murder of Joelito” and “the devastation it wrought upon the family” (23). In the campaign to bring international pressure to bear upon the Stroessner regime, White also makes it clear that the focus on an individual case was key to winning international support; a photo of Joelito’s “youthful body obscenely defiled by torture... became one of our most powerful weapons. It broke down people’s psychological defenses, overcoming their apathy, fear and cynicism” (49). This particular example reflects a broader reality, as international human rights organizations like Amnesty International have consciously decided to focus on rights of the individual rather than socioeconomic or ecological rights on the assumption that more people can be moved to support individual rights than group rights (Burgerman 1998: 911; Sikkink 1996: 59, 64-65). In addition, Joelito made an ideal hero because his circumstances made him especially attractive to the media and his family possessed the knowledge, resources and stature to pursue justice, unlike other victims of human rights abuses (and other kinds of violence) who have much less of a chance at redress.

While the Filártiga family’s struggle is at the center of Breaking Silence, White’s account concentrates to a large extent on the role of non-state actors in making this case into a human rights success story. At various points in the book, White notes that justice is impossible under a repressive police state such as Stroessner’s Paraguay. Although the Filártigas courageously launched their own criminal complaint in Paraguayan courts, this never held out the prospect of any real justice. While the Filártigas influenced public opinion in Paraguay by using the media, White makes it clear that the Paraguayan media were not free to directly criticize the regime (147-148). Moreover, even though Stroessner wanted to avoid getting the public “so riled up that their outrage would override his culture of fear,” the only real threat that worried the regime was the possibility of cuts in foreign and military aid (49, 131).

Not only was international pressure “the best chance of breaking the impasse” (131), but international networks proved to be the best vehicle for mobilizing diplomatic pressure. White does include some disclaimers—such as a caveat from an Amnesty International official “that one

cannot expect wonders from Amnesty interventions” (15) and protestations that the family “had blown out of all proportion anything that I was even remotely capable of doing” (62)—but the overriding message in his story is that individuals and non-state actors have the power to make a difference. In this respect, White’s conclusions are consistent with analyses by various human rights scholars who argue that international advocacy networks, including international and domestic non-governmental organizations (NGOs), have the power to transform the human rights behavior of states by exerting moral pressure at the international and domestic level (Burgerman 1998; Finnemore and Sikkink 1998; Keck and Sikkink 1998; Risse, Ropp and Sikkink 1999). Although NGOs are not powerful in the same way that nation-states or even multinational corporations are, human rights advocacy networks do wield considerable influence through their ability to influence global opinion and lobby powerful governments to pressure leaders in developing countries to comply with international human rights norms. Richard Price also notes that the moral principles that international advocacy networks champion are themselves a form of power insofar as “their enactment empowers some actors and not others” (2003: 590). Moreover, while international human rights NGOs rely heavily on persuasive techniques, they also employ coercive techniques: “shaming and boycotts are clearly forms of coercion designed less to persuade than to change the cost calculus of targets” (Price 2003: 590).

Some question the participation of NGOs in international affairs, citing the undemocratic nature of such organizations as well as their lack of transparency and accountability (see, for example, Rieff 1999). Even Jessica Mathews, who praises NGOs for their special ability to deal with “soft” threats such as environmental degradation, denial of human rights, etc., also acknowledges that they

are special interests, albeit not motivated by personal profit. The best of them, the ablest and most passionate, often suffer most from tunnel vision, judging every public act by how it affects their particular interest. Generally, they have limited capacity for large-scale endeavors, and as they grow, the need to sustain growing budgets can compromise the independence of mind and approach that is their greatest asset (1997: 64).

Nonetheless, even though NGOs may have their own problems with democracy and transparency, their activism reflects the fact that existing governments and institutions have generally been unresponsive to calls for greater respect for human rights (Price 2003: 591).

Since White does not provide much of a tutorial on the function and nature of international human rights organizations, it is instructive to look at scholarly analyses of international advocacy networks and see how they worked in the case that White describes. For Susan Burgerman, domestic and international activists each need the other. Internationally based actors provide vulnerable populations with protection as well as vital material resources and other forms of assistance (1998: 905, 910). This can clearly be seen in the case of Joel Filártiga, who was able to count on protests by influential international supporters in order to protect himself from arrest. Burgerman also notes that once international activists become participants in the local system—living in the community and accompanying domestic actors in their daily activities—they provide a kind of safeguard for domestic activists (1998: 909-910). White’s role as a “participant-observer”—who lives with the family in Asunción as well as the rural clinic—demonstrates this better than anything else. At the same time, Burgerman argues that domestic activists are important for outside organizations, which need information on local conditions to further their own organizational

interests (1998: 910). As White describes, Amnesty International's campaigns require extensive documentation and fact-checking in order to guarantee that the organization's charges are credible; in the case of Paraguay, Amnesty depended upon a steady supply of information from reliable local sources in order to back up its charges that the regime engaged in widespread human rights violations. All in all, White's discussion of the Filártiga case gives a concrete example of the scholarly argument that support for human rights and justice for rights abuses not only require the active intervention of international actors but also require the courageous involvement of domestic actors (Brysk 1993).

Beyond the mutual dependency of international and domestic human rights actors, human rights scholars emphasize the fact that national leaders must increasingly consider not only the domestic but also the international repercussions of their actions (Lutz and Sikkink 2001: 283). In a widely discussed theory, Thomas Risse, Stephen Ropp and Kathryn Sikkink have proposed a "spiral model" that shows how international norms are able to penetrate spheres that have traditionally been controlled by national actors—including human rights policy (Risse, Ropp and Sikkink 1999). In the first phase of the model repressive governments are not constrained by international human rights norms because opposition is too weak to pose a significant challenge and international advocacy groups lack sufficient information on repression. Once international advocacy groups gather reliable information, however, they put rights violations by targeted regimes on the international agenda, thus moving the situation to the second phase of the model. In this second phase international public attention increases and the transnational network starts lobbying international human rights organizations as well as Western states. The target state typically reacts by denying the allegations and rejecting the suggestion that its national practices are subject to international jurisdiction in an appeal to national sovereignty and the principle of non-intervention. Despite the target state's efforts, however, moral pressures make the state vulnerable and lead to the third phase, in which the government makes tactical concessions in order to diffuse and deflect pressure. In doing so, the government may inadvertently strengthen local networks of human rights activists. In addition, officials may unintentionally trap themselves in their own rhetoric, paving the way for a transition to the fourth phase. In this phase governments proclaim adherence to human rights norms, although some violations continue; it is not until the fifth and final phase where rule-consistent behavior is assured (Schwarz 2004: 201).

White's description of the Filártiga case shows the strengths and weaknesses of this predictive model. Certainly, Stroessner's Paraguay begins as a "neglected tyranny" that traditionally received little international attention or criticism (163). As discussed above, international human rights organizations faced considerable difficulties collecting sufficient, reliable information about the regime's abuses since local human rights organizations were infiltrated by police informers and activists were subject to torture and arrest for anti-regime activities (80). Moreover, the "hard ball reality of U.S. foreign policy" meant that the United States supported Stroessner as a head of state and ally in the international fight against communism (149).

Yet thanks to the determined efforts of local activists like Joel Filártiga and international advocacy groups, Paraguay's human rights violations came to be placed on the international agenda. Armed with credible, damning evidence, NGOs such as Amnesty International, the International League for Human Rights, the Latin American Documentation Center, and the United States Catholic Conference of Bishops published scathing attacks on the regime's abuses. These groups

lodged official complaints with the Inter-American Commission for Human Rights, triggering a process to conduct an on-site investigation. Members of the U.S. Congress were lobbied, and several influential congressmen came to support the cause of human rights in Paraguay. International attention also came from the domestic and international media blitz that accompanied exhibitions of Joel Filártiga's politically inspired art in Paraguay and abroad. Once Paraguay became a "hot" story, White writes that it was relatively easy to get out information, increase public support and keep up international pressure on the regime (172). As such, *Breaking Silence* certainly illustrates the successful use of various strategies by transnational advocacy groups that appeal directly to the public, mobilize moral outrage through media campaigns, petition international organizations to formally investigate human rights violations, and mobilize diplomatic pressure (Burgerman 1998: 910).

As predicted by the model, focusing the international spotlight on Paraguay's human-rights record placed the regime in an extremely uncomfortable position. As Robert White, then Ambassador to Paraguay, commented to the book's author: "You know international pressure is the only thing Stroessner responds to. And the avalanche these past six months has catapulted him right up there along with Idi Amin as the poster boys for cattle prods. The bastards are really worried" (163). Faced with the prospect of a mortifying blow to its international reputation, the regime sought to deflect this unwanted attention. With respect to the Filártiga case, the regime made token concessions to create the illusion that it would uphold the rule of law by allowing the case to proceed in Paraguayan courts. Meanwhile, it sought to cast Joelito's death as a case of domestic violence rather than police torture in order to "muddy the waters enough to create doubt among the international human rights NGOs" (89). In response to the Inter-American Commission, the regime resorted to its "usual stalling tactic" to keep its international accusers at bay (141). When this proved ineffective, the regime sought to portray criticisms as part of an international human rights conspiracy that not only threatened national sovereignty but attacked Paraguay's honor as well (228-230).

While the regime sought to deny and deflect the charges against it, it was also compelled to make certain concessions. White reports that "Stroessner reacted to this onslaught of domestic and international problems with compromise and concession—and not repression—for damage control" (123). On the domestic front, the government transferred dozens of prisoners from secret police dungeons to less appalling prison facilities in order to secure opposition cooperation for Stroessner's reelection plans (121-122). On the international front, Stroessner realized that "high-powered scrutiny from powerful U.S. officials made it too risky to harass the Filártigas and their friends" (163). Similarly, the immediate mobilization of international protest following the arrest of an opposition politician forced his release and compelled the regime to retract legislation that threatened to revoke the citizenship of anyone who criticized the regime while abroad (180-181).

Yet unlike the virtuous spiral set in motion by the theoretical model, the case of Paraguay shows that reversals also occur. Whereas the spiral model suggests that most obstacles are at the beginning of the process and that, once underway, the process acquires a momentum that makes reversals difficult, actual events in Paraguay cast doubts upon this optimistic reading. While Stroessner was willing to engage in a few face-saving measures in order to bolster his regime's credibility, he did not hesitate to crack down when he felt truly threatened. Although he could not do anything to prevent international human rights NGOs from continuing their campaign, he could and did crack down on

opponents in Paraguay, where he “unleashed his police and hunkered down to ride out the storm” (129). White makes it clear that the regime skillfully used fear and paranoia to undermine opponents of the regime and their supporters (168-169). In fact, Paraguay’s experience suggests that even though states may change their rhetoric and adopt minor corrective actions in order to assuage powerful international patrons, once the crisis is over, reversal is quite possible (Schwarz 2004: 208-210).

Within this context, the Paraguayan case suggests that international human rights norms have not experienced a steady, continuous increase in power and legitimacy but have waxed and waned with variations in the international context. As Susan Burgerman has argued, in order for transnational human rights activism to produce actual changes in state policy or behavior, the “structural context must be permissive,” that is, no major state can strongly oppose international cooperation with human rights efforts (1998: 907). While White points to a “power shift in the human rights community” symbolized by the decision to grant Amnesty International the Nobel Peace Prize in 1977, he also provides evidence that human rights gained international salience in large part because of the Carter administration’s determination to use human rights to regain the moral high ground (151-152). In contrast, once the Reagan administration came to power in 1981, human rights lost ground to Cold War considerations. Encouraged by the fact that the United States no longer deemed Paraguay to be a gross violator of human rights and buoyed by the resumption of economic aid, the Stroessner regime was confident enough to drop all semblances of working for justice (272). This suggests that Paraguay’s leaders did not move beyond the third stage of tactical concessions; rather than working to overcome Paraguay’s negative international reputation by adopting the rhetoric of human rights, they bided their time, waiting for the international context to change.

While Paraguay’s experience shows the importance of the international context for moving violator states toward greater compliance with human rights norms, it also shows the weaknesses of international institutions and non-state actors (Schwarz 2004: 203-204). Without the backing of the U.S. government, Paraguay’s leaders would not have been convinced to make any concessions. Even though “the emergence of crimes against humanity as a distinct category of norms as well as the principle of individual responsibility have taken firm root in the international community,” international tribunals and the International Criminal Court have not proven particularly effective in enforcing international law (Bianchi 1999: 97-98). It has therefore been up to domestic courts in countries like the United States to hold individuals, including former heads of state, accountable for crimes against humanity. As legal scholar Andrea Bianchi argues, both theoretical and practical considerations mandate that domestic courts work to implement international human rights law: theoretically, “the very essence of the notion of individual crimes is that they threaten the international community as a whole and that any state is entitled to punish them. On a more practical level, the absence of any permanent international criminal tribunal makes international prosecution merely illusory” (1999: 108-109). While the International Criminal Court has come into existence since Bianchi wrote these words, the opposition of the United States continues to undermine its effectiveness and the Court has not tried a case since its creation in July 2002.

At the same time, however, it is important to remember that for all their current limitations, international tribunals may become effective agents of international human rights law in the future. In the landmark case of *Democratic Republic of Congo v. Belgium* (2002), the International Court of

Justice raised just such a possibility, ruling that only international tribunals—not foreign states—may override the immunity of acting heads of state or foreign ministers. In this case, the ICJ ruled that Belgium had overstepped its legal prerogatives by issuing an arrest warrant against the acting foreign minister of Congo on charges of inciting violence against Tutsi citizens in his country; nonetheless, the ICJ ruled that

where multilateral treaties and other instruments purport to supersede immunity from prosecution, the decision in Congo v. Belgium—which was based on the rules of customary international law—does not override their explicit language. That means that Congo v. Belgium poses no obstacle to the proceedings of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, or the coming International Criminal Court (Dorf 2002).

More recently, despite its long-standing opposition to the Court, the United States agreed to allow the ICC to investigate and prosecute human rights abuses in Darfur in Western Sudan (Simons 2005).

These developments hold out future promise for international tribunals and organizations; progress to date, however, has been restricted to domestic courts, as [Breaking Silence](#) shows. While human rights defenders were certainly heartened by the publication in 1978 of a scathing report by the Inter-American Commission on Human Rights that hammered away at institutionalized human rights abuses in Paraguay, White notes that the report did not cause the regime to ease up on repression and, if anything, conditions for political prisoners worsened (178). In order to achieve some measure of justice, the Filártiga family and their supporters ultimately wound up pursuing legal action in U.S. courts. In what initially seemed like a far-fetched strategy, lawyers for the family invoked the Alien Tort Claims Act of 1789, which authorizes U.S. district courts to exercise original jurisdiction in a suit brought by one alien (in this case, the victim’s sister) against another alien (the alleged perpetrator) for an act committed in violation of the law of nations. Joelito’s murder qualified since the UN Charter, Universal Declaration of Human Rights, American Convention on Human Rights and UN Declaration on Torture all make torture a violation of the law of nations. Through many twists and turns, White describes how U.S. courts ultimately came to issue a \$10.4 million judgment in favor of the Filártigas, thereby demonstrating that U.S. “courts are open to judge actions in any corner of the world” (279).

For optimistic defenders of such human rights litigation, internationalized prosecutions such as *Filártiga v. Peña* “will deter violence, redress victims, secure public order, permit national reconciliation, and establish the truth by preserving the historical record in a courtroom setting,” but other scholars warn that this rosy picture may be misleading (Mathews 2003: 274). Proceedings tend to be lengthy and complicated, and access to witnesses, materials, information tends to be inadequate. In the Filártiga case that White describes, the huge monetary reward turned out to be purely symbolic—the Filártiga family never received any part of the \$10.4 million award, since Peña had long since returned to Paraguay. Back in Paraguay, the courts dismissed the Filártigas’ charges that Joelito was a victim of torture and upheld the regime’s explanation that Joelito had been killed in a crime of passion. To add insult to injury, the courts ruled that Joelito’s alleged murderer—the cuckolded husband—had temporarily lost control and was not responsible for his actions. This ruling reflects a widespread tendency in many countries throughout the world to exonerate domestic

violence, deeming “crimes of passion” to be natural and even legitimate (Finley and Dickstein 1997: 21). The Filártiga family was ordered to pay for all court costs as well as damages awarded for slander and defamation of character.

Moreover, those individuals charged by the family with complicity in the crime or in defending the regime against human rights charges wound up enjoying lucrative positions—even after Stroessner was overthrown in a military coup in February 1989. Yet when asked whether the family’s efforts had been in vain, Joel Filártiga vehemently affirms that “in a life of permanent opposition, the effort becomes the goal... we have broken the silence of people to speak out. The taboo of shame and fear that the dictatorship has always counted on to cover up its crimes... Our struggle has opened a channel of hope” (281). While retributive justice might seem to demand that perpetrators are punished, the mere act of bringing perpetrators to trial can play a significant role in allowing victims and their families to tell their stories; this can serve justice by uncovering the truth and exposing the false narrative of repressive regimes (Phelps 2004: 41, 61-62). Moreover, the *Filártiga* case has left an important legacy, triggering progeny cases that have been used to punish crimes against humanity as well as international environmental and labor rights law (286). In a contemporary case, a former Salvadoran military official living in the United States is currently being sued for damages in the assassination of Archbishop Oscar Romero, as human rights defenders once again invoke the Alien Torts Claim Act to try to hold individuals civilly liable for gross violations of human rights accountable for their crimes. Since the accused man is in hiding and is being tried in absentia, it is unclear whether the Archbishop’s relatives would ever be able to collect monetary damages (Menchu Tum 2004). For the Archbishop’s family, however, the case is not about money but justice, that is, about ensuring that the assassin is not free to go about with impunity.

The inspiring story of the Filártigas that is chronicled by Richard Alan White shows both the promise and the limits of efforts to reshape international and domestic norms. Foreign nationals seeking justice in American courts for atrocities committed in their own countries have made limited, though not insignificant gains in recent years. While justice has been only imperfectly served, the fact that any justice has been achieved at all reflects the extraordinary efforts of human rights defenders. Furthermore, to the extent that this case and others like it demonstrate that authorities who commit or condone human rights may eventually be held accountable for their actions, the power of human rights norms increases. While some governments may hunker down and ride out the storm, as was the case in Stroessner’s Paraguay, most governments confront real pressure to respect human rights in order to maintain good international standing. The current dilemma of Francisco Flores, former president of El Salvador, shows the kind of pressure that human rights can bring to bear. While Salvadoran presidents have blatantly disregarded calls to investigate a 1981 massacre, Mr. Flores now finds that his chances of being named secretary general of the OAS have been tarnished by his failure to act (Urbina 2005).

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