
Guénaël Mettraux’s The Law of Command Responsibility adds clarity to the complicated entanglement of statutes, custom, and court rulings that together make up the law on command responsibility and, as the first book devoted entirely to the goal of defining a general theory of command responsibility, is a welcomed contribution to the field. With ever-increasing calls for the application of international criminal law to bring to justice those actors, both civilian and military, who are perceived to be the most culpable for violations of international criminal law, though separated from events on the ground by their positions of power, this book is a timely and necessary publication. A recent example of the relevance of this doctrine can be found in the calls for investigations into the responsibility of members of the Bush administration in the United States for torture committed by their subordinates in the field. Though it is far from clear how, whether, and by whom these officials might be charged, the focus on the responsibility of those at the highest levels of government for the actions of their subordinates is key to the discussion. Similar questions of high-level command responsibility will also be brought to the fore in cases before International Criminal Court. As the United Nations ad hoc tribunals wind down their prosecutions, and new demands for the application of this doctrine arise, The Law of Command Responsibility, will surely prove of interest to a wide range of readers, including not only international criminal law practitioners, legal academics, and students of law, but also historians, political scientists, and those superiors who may find themselves in command positions to which the law applies. Mettraux has written for all of these audiences, it seems, with careful attention to detail and a commitment to clarity that makes this work not only extremely useful but also an enjoyable read throughout.

In Part I, the introduction, Mettraux places this work in historical context. This section is more than a dry chronology of decisions however, as Mettraux takes the reader on a tour of legal issues, highlighting the major developments in the law that have shaped the command responsibility doctrine from the post World War II trials up to today. He provides a clear and concise history and, with the commendable use of footnotes, offers abundant resources and direction for those interested in a more in-depth historical investigation. The final section of
the introduction provides useful background on the development of the command responsibility article in the ICC Statute through a discussion of its drafting history and a comparison to the ad hoc tribunals and customary international law. This historical review of the law of command responsibility will not only prove useful to academics interested in the history of law, but will also hold the attention of the most impatient of practitioners.

In Part II of the book, Mettraux addresses the general nature and scope of the application of the doctrine of command responsibility. He aptly explains the type of liability incurred, its application to international conflicts, internal conflicts and in peacetime, and the various types of superiors to whom the law on command responsibility may apply. This general overview acts as a segue from Parts I to III on the elements of command responsibility. Although Mettraux’s solid academic background is evident throughout the book, Part II provides space to express another voice, that of a seasoned international defense lawyer. These moments are particularly beneficial to the reader, offering added context to the development of the law. One such example is evident in his explanation of the need for commanders to have a specific, pre-existing legal duty to act and fail to do so in order to be held liable for the actions of subordinates. Mettraux’s dissatisfaction with the conflicting and unsubstantiated ruling of the Yugoslav Tribunal in the Čelebići Case comes through in his criticism of the court’s holding that there is no need to find a legal duty to act in order to hold a commander liable. In that judgment the court first states that such a duty is required and then without reference to any authority or precedent changes its view. The frustration this causes a defense attorney attempting to defend against command liability is obvious in his critique here and throughout the book when Mettraux is addressing inconsistencies in the law on command responsibility. In this second part of the book Mettraux examines many of the more contentious issues related to the nature and scope of the command responsibility doctrine and adds much needed clarity to the subject.

Another timely contribution to the development of the law of command responsibility in Part II is found in Mettraux’s comments on the applicability of the doctrine to leaders of terrorist groups. Mettraux notes in this section the benefits and challenges in charging a terrorist leader under the doctrine. There could be, for example, difficulty in proving a superior-subordinate relationship between the accused and the perpetrator in a loosely connected terrorist organization. Even if a chain of command does exist, it may be difficult to prove that the leader could control the perpetrators’ actions, that he or she knew about the acts and that he or she failed to take necessary and reasonable measures considering the difficulty in defining which measures the superior had at his or her discretion. Despite these hurdles, Mettraux points out that in terrorist organizations with an established command structure, command responsibility may prove a useful prosecutorial tool. He suggests that in cases where a chain of command can be established but evidence connecting the accused directly to the commission of