# *International Criminal Law and Philosophy*, Larry May and Zachary Hoskins (eds), ASIL Studies in International Legal Theory, Cambridge University Press, Cambridge, 2010, 268 pages (ISBN 978-0-521-19151-7)

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*International Criminal Law and Philosophy* is a thought-provoking and valuable collection of essays, all of which are intended to examine both the conceptual and normative grounding of international criminal law, which is supposedly individual responsibility for mass atrocities (May and Hoskins 2010:1). This Book Review considers the key ideas encountered in order to answer the question of who should read the book and why. It does so by identifying how the different contributions either fill or identify gaps in the knowledge regarding how to hold individuals culpable for acts done *en masse*. This is to say, the standard used to gauge each contribution is how far they illuminate the central issue identified of how to hold a select few persons responsible for mass communal violence both by themselves and also for others. Readers interested in legal theory generally or challenges to international criminal law specifically would have the most to gain from this material and should read on.

The work is divided into four parts (Parts A–D) dealing with the varied themes of: sovereignty and universal jurisdiction; culture, groups and corporations; justice and international criminal prosecutions; and punishment and reconciliation. Win-chiat Lee opens the Part A dealing with international crimes and universal jurisdiction. This author takes up the question of the conceptualisation of an international crime as opposed to one of a municipal variety. Lee frames the core question regarding this as: 'what crimes are properly subject to universal jurisdiction?' (May and Hoskins 2010:3). After reviewing historical examples, his contribution is that universal jurisdiction is most appropriate in cases in which a State commits, condones, or is unable to prevent international crimes or punish international criminals or protect its own citizens from international crimes (May and Hoskins 2010:38).

Kristen Hessler, like Lee, also proceeds into the debate on the contentious issue of universal jurisdiction. She examines when State sovereignty can be an obstacle to international criminal law and asks when, and to what extent, State sovereignty should constitute a hurdle to international prosecutions. Hessler claims that the increasing willingness among theorists to endorse limits on sovereignty in emergency cases represents a move away from the traditional Westphalian notion of sovereignty and ponders whether this exception can be extended to other serious cases that do not extend to an emergency. Hessler strikes a cautionary note over the risk of State sovereignty arguments cloaking more or less arbitrary applications of international criminal law.

According to Leslie and John Francis in their chapter concerning building justice in times of injustice, respect for State sovereignty may often be in tension with the goals of deterring violence. They contend that, whereas the goals of justice and prevention of violence may be mutually supportive (ideally speaking), these goals may pull in different directions in circumstances of partial compliance (ie in circumstances of widespread violence and injustice). They argue that when considerations of ideal justice tend to undermine the goal of preventing atrocities, then prevention must be paramount. Therefore, rule of law restrictions, such as due process and limits on retroactivity, may prevent the successful prosecution of persons who are in fact guilty of serious crimes. Their argument is that attempting to

provide the full panoply of the traditional fair trial may be inappropriate in the context of grave injustices the like of which are the subject matter of international criminal justice.

Part B of the anthology looks at 'Culture, Groups, and Corporations'. Opening this, Helen Stacy examines the 'criminalization' of culture. She asks whether international criminal law is the appropriate mechanism for addressing human rights violations that are not a result of civil or political conflict, but are due to cultural practices such as female genital cutting. According to Stacy, rather than preventing such practices, international criminal sanctions may instead only force these practices underground and, therefore, render them perhaps more egregious. Consequently, a bigger role for the State at domestic level is envisaged, as opposed to the International Criminal Court handling such issues.

Larry May, in his chapter discussing how to identify groups in cases of genocide, addresses the conceptual puzzle of how victim groups should be defined, which has a direct bearing on whether a charge of genocide is appropriate. May endorses the recognition of more than the four categories of groups (national, ethnical, racial and religious) identified in Article 2 of the *Genocide Convention* and reproduced in Article 6 of the *Rome Statute for the International Criminal Court*, so long as any additional groups meet the requirements of self-identification and identification, as such, by the alleged perpetrators of the genocide.

Joanna Kyriakakis looks to the prosecution of corporations for international crimes, focusing on the role of domestic criminal law. Kyriakakis explains how criminal law has been reluctant to recognise corporate criminal liability because of doubts over whether corporations could act with criminal intention or, indeed, make moral determinations. She advocates including private corporations within the jurisdiction of the International Criminal Court through a creative re-evaluation of domestic implementation legislation in light of the complementarity regime of the International Criminal Court.

The subject of Part C of the anthology is 'Justice and International Criminal Prosecutions'. In it, Douglas Lackey's chapter 'Post war environmental damage: a study in jus post bellum' focuses on the environment and advocates international criminal law as the appropriate domain for ensuring environmental clean-ups in the wake of armed conflicts. Lackey proposes a *jus post bellum* (law-after-war) regime, in addition to the more traditional *jus ad bellum* (law-of-war) and *jus in bello* (law-in-war) regimes. The new regime is intended to make the parties in the war responsible for cleaning up and restoring repairing environmental damage inflicted by military operations.

Steve Viner's chapter 'On State self-defense and Guantánamo Bay' focuses on the injustices of the United States (US) policy of indefinite detention at Guantánamo Bay as part of the 'war on terror'. He argues that while US claims of self defence are plausible due to the immediacy of the threat along with the necessity and proportionality of the military response, US policy fails the principle, which Viner introduces, of due diligence. This failure is apparently due to insufficient 'truth conducing' procedures being brought to bear that is to say due process. Viner's approach, although sound in law, fails to engage with the argument implicitly proffered by the US authorities: that the state of exception brought on by the war on terror provides for its own law, which is in turn based upon whatever is necessary to survive (Agamben 2005).

In her chapter on 'Politicizing human rights (using international law)', Anat Biletzki examines the role of international law in securing social justice. Using the example of the Israeli-Palestinian conflict, Biletzki contends that maintaining a strict distinction between

human rights and politics is untenable and, ultimately, undesirable. The more appropriate question according to her is, instead, how human rights groups are to embrace the political without being partisan. In this way, politically feasible solutions may be reached.

Deirdre Golash opens Part D of the book, examining 'Punishment and Reconciliation', with her chapter on the justification of punishment in the international context. Golash provides an illustration and critique of the circumstances and the justification of punishment as an international response to international crimes. She suggests that the threat of punishment is unlikely to be a deterrent in most cases. This is not only because most perpetrators see themselves as simultaneously victims, but also from the point of view of their society, they are conformists rather than deviants.

Colleen Murphy closes the collection looking into the question of political reconciliation and international criminal trials. She provides an account of the contribution that international criminal trials can play in promoting political reconciliation. Her claim is that such trials foster the social and moral conditions necessary for law to be effective in transitional societies.

Anyone taking their cue from the book's title and approaching this anthology with a view to understanding how legal theorists are dealing with philosophical challenges to the discipline would be disappointed. Although 11 diverse authors drawn from both law and philosophy wrote the anthology, lawyers interested in philosophy generally or philosophers interested in law should really look elsewhere. However, the core constituency of international criminal law scholars of whatever discipline would find this a good read and a worthy addition to their library.

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## International Conventions

*Convention on the Prevention and Punishment of the Crime of Genocide*, adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) ('*Genocide Convention*')

*Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002)

## References

Agamben G (2005) *State of exception*, University of Chicago Press, Chicago