Chrisje Brants and Susanne Karstedt (eds.)

Transitional Justice and the Public Sphere Engagement, Legitimacy and Contestation, Oñati International Series in Law and Society (Hart Publishing, Portland, 2017), ISBN 978-1509900169, hard cover, 360 pp.

This edited volume discusses what are increasingly becoming central issues in the scholarship on transitional justice: transparency, credibility and legitimacy. It does so extraordinarily well, with contributions from scholars and practitioners from a variety of disciplines, and with experiences in different regions of the world and with varied institutional frameworks. For too long, transitional justice research neglected some of the questions this book put front and centre: how to reconcile the emotional and the rational in atrocity trials, what constitutes 'public' in 'public trials', how to regulate memory and denial, and how to go about prosecuting someone that is at the same time both a possible victim and an alleged perpetrator. This, and much more, is explored in depth in this volume, and will enrich the understanding of complex challenges of designing transitional justice measures in just about any context.

Back in the year 2000, Ruti Teitel wrote the classic *Transitional Justice* and since then, the field has exploded, and developed arm in arm with the policies, and institutions designed to help societies come to terms with their repressive or violent pasts.[1] Since then, lawyers working internationally and domestically, social scientists, human rights activists and survivors, policy-makers and parliamentarians, grappled with complex questions that the authors in this book confront head on. What is truly outstanding about this book is its balanced approach, and intellectual rigor with which the topics are discussed. Transitional justice as a focus of scholarly attention benefits from a sober assessment, neither overly optimistic and faith-based as some of the work of transitional justice advocates sometimes is, nor excessively negative, dismissive to the entire endeavour, judging it as inseparable from politics and thus inherently flawed.

The book is divided into three parts, which in turn are made up of fourteen chapters. The first part discusses principles of justice, the second the relationship between the courts and the public, and the third focuses on transitional justice beyond the courtrooms. For the purposes of this review, the focus will be on just a few of those chapters. One brilliant contribution comes from Chrisje Brants, on the emotional discourse in a rational public sphere, focusing on victim participation in international criminal trials. It is a fascinating read on an issue that 'divides opinion like perhaps no other issue in international criminal justice' (p. 41).

1 Ruti Teitel, *Transitional Justice* (Oxford University Press, Oxford, 2000).

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Brants masterfully unpacks the issues surrounding victim participation in criminal trials, making it possible for the reader to gain a deeper insight into the complex relationship between law and justice, selectivity in criminal proceedings, and procedural constraints to victim participation. Examples are given from national jurisdictions, the International Criminal Court and the Extraordinary Chambers in the Courts of Cambodia. When discussing victim expectations, on page 58, Brants touches upon something that practitioners will immediately recognize as a frequent frustration: victims demanding that the crimes they suffered are classified and prosecuted as genocide and considering other charges as both inadequate and even insulting. Christian Axboe Nielsen wrote about this particular tendency in Bosnia and Herzegovina, where genocide as a crime and a criminal charge, has been the focus of numerous political manipulations through the years.[2] Nielsen suggests that the excessive focus on genocide as a legal and analytical concept is misguided, and even counterproductive. Finally, this chapter by Brants goes well beyond its intended purpose, and really highlights some of the key purposes of criminal proceedings in cases of atrocity, and the limitations they invariably confront.

Another chapter that requires particular attention deals with atrocity trials, their legitimacy, credibility and the challenges of communicating what goes on in the courtroom. The author Susanne Karstedt discusses how and why trials are assessed as credible, and what challenges courts have when facing politicised, divided communities in the aftermath of violence or repression. This contribution can be read side-by-side with Marko Milanovic's brilliant analysis of how these and similar problems burdened the International Criminal Tribunal for the former Yugoslavia (ICTY).[3] His sobering findings, along with Karstedt's, serve as a warning that legitimacy and credibility among constituent populations are hard to obtain (and maintain), and that they depend on a number of different factors.

The chapter by Olga Kavran takes the challenges of communication and public outreach a step further, discussing the ways in which proceedings are made public, and how the courts can engage constructively with their primary constituencies in ways that have the capacity to strengthen the rule of law and democratic governance in post-conflict environments. On page 131, she discusses outreach, and its humble beginnings at the ICTY where it started, in

2 Christian Axboe Nielsen, 'Surmounting the myopic focus on genocide: the case of the war in Bosnia and Herzegovina', 15 *Journal of Genocide Research* (2013) 21–39.

3 Marko Milanovic, 'The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem', 110 *The American Journal of International Law* (2016) 233–259.

1999, by Judge Gabrielle Kirk McDonald, who wisely recognized that press releases are simply not enough when it comes to bringing the court proceedings in The Hague closer to the communities of the former Yugoslavia. This contribution can be read in combination with Matias Hellman's chapter on challenges and limitations of outreach,[4] as well as with another article by Kavran, on international criminal courts and the right to information.[5] These readings discuss, in depth, some of the lessons learned by the international and hybrid courts in the past quarter-century. Among them, innovative approaches to communicating about complex proceedings that are often ongoing for years.

If a point of critique is to be found, it is in the geographical and thematic focus on issues and challenges that are often discussed in scholarly and practitioners' circles. It would have been beneficial to try to engage more with transitional justice, and in particular focus on transparency and legitimacy, in regions such as North Africa and the Middle East, or Asia, which remain blind-spots of sorts in the transitional justice field. An excellent article was published in 2017 by Corri Zoli et al., on Islamic law and Muslim communities as stakeholders in transition.[6] Another great topic for exploration, from the perspective of transparency and legitimacy is evidence material that is admitted in atrocity trials, and that remains recorded for posterity. It is based on that evidence that individuals are convicted or acquitted, and yet this material is often unavailable to the public whose trust these institutions seek. The one institution that has taken a step forward in this regard was the International Criminal Tribunal for the former Yugoslavia (now Mechanism for International Criminal Tribunals), which put evidence material online into its Court Records Database, accessible to anyone with an e-mail address, free-of-charge.

Today, the Rome Statute is twenty years old. The ICTY had closed in December 2017, after almost twenty-five years of proceedings. There is a new institution dealing with the crimes committed in Syria: The International, Impartial and Independent Mechanism based in Geneva. Iraq, Myanmar, and Yemen are just some of the contexts where transitional justice measures are

4 Matias Hellman, 'Challenges and Limitations of Outreach', in C. De Vos, S. Kendall and C. Stahn (eds.), *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (Cambridge University Press, Cambridge, 2015) 251–271.

5 Olga Kavran, 'International Criminal Courts and the Right to Information', 15 *Journal of International Criminal Justice* (2017) 953–983.

6 Corri Zoli, M. Cherif Bassiouni and Hamid Khan, 'Justice in Post-Conflict Settings: Islamic Law and Muslim Communities as Stakeholders in Transition', 33 *Utrecht Journal of International and European Law* (2017) 38–61.

being implemented, contemplated, or at least sought. Thus, the observations made in this book are a valuable contribution towards a future where a measure of justice is provided for the victims of the gravest atrocities. After all, the success of transitional justice mechanisms depends largely on the key themes of this book: transparency, legitimacy, and the ability of institutions to engage productively with their constituencies.

In sum, the multitude of perspectives and experiences that scholars and practitioners brought to this book make is outstanding. Legal scholars of criminal law and procedure, criminologists, political scientists, anthropologists, victimologists, communications specialists – they all add to this book their unique perspectives, emphasising once again that transitional justice is an interdisciplinary field. Without cross-disciplinary conversations, which must be inclusive and open to practitioners, our understanding of its complexities will remain limited. A step forward in that regard is, unmistakably, the publication of this rich volume.

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