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Book Review

Atrocity, Punishment, and International Law, Mark A. Drumbl. Cambridge University Press, April 2007, 316pp. ISBN: 978-0521870894 - hardcover (\$80), paperback (\$29.99).

This timely book examines the practice and philosophy of punishment for atrocity crimes, both in international and domestic courts. It is a topic to which too little attention has been devoted, whether by the courts and tribunals that impose sentences for atrocity crimes or by academics that have so exhaustively considered and analyzed the substantive law that applies to the merits of the crimes themselves. As the author points out, that deficiency was marked at the Nuremberg and Tokyo trials and little improved in the UN tribunals. It is to be hoped that the International Criminal Court (ICC) will learn from this deficiency.

Professor Drumbl recognizes the problem inherent in comparing sentences for similar crimes. The facts of each case, and particularly the personal circumstances of each defendant, are unique. However, the careful analyses based on impressive research are helpful and one can usefully draw empirical conclusions from them. For this analysis, the book is essential reading for all interested in atrocity crimes, whether at the domestic or international level.

The author considers some of the thorniest problems associated with punishment for atrocity crimes. These include the disparity of treatment for defendants indicted for similar crimes before domestic tribunals, on the one hand, and international tribunals, on the other. In most cases, and especially Rwanda, the leaders who were most culpable appeared before the International Criminal Tribunal for Rwanda (ICTR) and received benefits from access to defense counsel, fair trial procedures and if found guilty, imprisonment in prisons supervised by the United Nations and regularly inspected by delegates of the International Committee of the Red Cross (ICRC). Those charged with lesser offenses appeared before the national courts of Rwanda or before 'gacaca' courts where those benefits were absent. Then there are the problems associated with plea and charge bargaining. During my term as chief prosecutor of both the Yugoslavia and Rwanda Tribunals, I was not prepared to consider such procedures. In my view, the atrocities were too heinous to submit to such a course. Some of my successors were of a different view and I welcome the impressive discussion of this issue by Professor Drumbl.

It is suggested that a 'coherent framework for giving weight to mitigating circumstances' should be worked out by international and domestic courts deciding on punishment for atrocity crimes. I am skeptical that this would be helpful or workable. I am confident that the author would not wish the problems inherent in United States Federal Sentencing Guidelines to be replicated in international tribunals. Sentencing has to be personalized and the appropriate norms and circumstances to be taken into account should be set by appellate courts. That trial

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chambers furnish full reasons for the punishments imposed by them make these developments possible.

Finally, I would refer to the interesting treatment given to the 'democratic deficit' in the work of the international courts. The role that victims will be allowed to play in the proceedings of the ICC could go some way to facilitating improvement in this critical area. This is especially necessary where, as is often the case, the seat of the court is hundreds of miles from the scenes of the crimes and the homes of the victims. Considerable attention is given, in this regard, to the need for competent outreach programmes by the international courts.

I have referred to only a small number of the important issues raised in this book. There are others that will stimulate discussion and research. That is the avowed intention of the author.

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