

BOOK REVIEW

**Gerry Simpson (ed), *War Crimes Law, Volumes I and II*
(Ashgate, 2004)**

These two volumes form part of the second series of *The International Library of Essays in Law and Legal Theory*. The Series Editor, Tom Campbell, in the preface to the volumes explains the purpose of the series as making available 'essays of central theoretical importance in its subject area'. The two volumes on *War Crimes Law* edited by Gerry Simpson, run to almost 1,000 pages and, as with the other collections in the series, contain previously published essays with the original page numbers and font reproduced. Because the essays have been in print before, it would be a mammoth task to offer a detailed critique of the individual theories, approaches and responses to them in the space of a book review. I will therefore confine myself to commenting on the general format of the volumes and provide a brief overview of the subject matter in them.

Beth Gaze in a review of another volume in the second series has pointed out that 'it is ... difficult to see a role for such a collection in 2004 when electronic access to law materials on the internet is pervasive'.¹ This may mean that the market for these volumes will be confined to libraries rather than individual purchasers. On the other hand, the main benefits of having previously published works put together in book form are the ease of reading printed pages rather than a computer screen and having a selection of disparate essays to dip into every now and then.

The title of these two volumes in the second series is perhaps a little misleading as the essays cover not only approaches to how best to deal with violations of the law of war, but issues of international criminal law in general, including the prosecution of those who have committed the 'most serious crimes of concern to the international community as a whole',² whether or not the crimes have occurred during times of war.

Gerry Simpson has written a very useful 20 page introduction to the collection which not only summarises and critiques the main arguments presented in the essays, but places them in an historical setting and in the context of the many problems and issues raised by the development of international criminal law.

It must have been an exceptionally difficult task to decide which essays to include, given the burgeoning literature in the field in recent years with the advent of the ad hoc Tribunals for the Former Yugoslavia and Rwanda and the International Criminal Court. Simpson writes that he selected those essays that offered a 'theoretically-aware perspective' on the subject rather than those outlining the mechanics of the system. Many of the essays are of relatively recent

¹ Beth Gaze, 'Book Review: Anti-Discrimination Law, Christopher McCrudden (ed)' (2004) 20 *Monash University Law Review* 323, 323.

² *Rome Statute of the International Criminal Court* (1998), art 5.

origin and, as Simpson points out, were chosen not because of a 'fetishism for the contemporary' but because of 'the renaissance of the field'.

War crimes law has long been dominated by male academic writers and while the fields of international criminal law and human rights law are perhaps more open to writings by female academics, it is probably fair to say that writings from male academics, particularly from America, still dominate the journals in these areas. Therefore it is gratifying to see included in these volumes articles by the former New South Wales Law School graduate and current Harvard Law doctoral student, Rosalind Dixon, historian, Elizabeth Kopelman Borgwardt, New York attorney, Ann Marie Prévost and comparative literature and French scholar, Shoshana Felman. While many of the articles are reprinted from American Journals, European journals are also represented. It would appear that Gerry Simpson has met head on previous criticism of the series being unreasonably biased in favour of American models and authors.³

The two volumes are divided loosely into 'General Problems' and 'Dissenting Judgments'. The first heading in volume I 'Selectivity and Incoherence' consists of three articles from 1950, 1998 and 2001. It is interesting to see the changing approaches to international criminal law across this time period. The 1950 article by Georg Schwarzenberger expresses his concerns about whether a field of law entitled international criminal law can in fact exist. Many of his arguments seem antiquated in the light of the wealth of material currently being generated on the subject. This is followed by the speciously named 'The Schizophrenias of International Criminal Law' by Steven R Ratner⁴ which highlights some of the problems in the developing field, but accepts that the international community is committed to using this branch of the law to respond to the most serious breaches of human rights and humanitarian law. The article by Robert Cryer also accepts the developing law, but highlights its selective use through 'safe' tribunals where citizens of the states creating them will not appear before them and 'unsafe' tribunals which have the potential to turn against their creators. These three articles provide broad theoretical frameworks for approaching international criminal law. The other articles in volume I focus on more specific questions under the headings 'Why Prosecute and Where?' and 'Who to Prosecute?'.

Mark Osiel and Payam Akhavan shift the focus to the many problems associated with war crimes trials in their respective articles while José Alvarez and Rosalind Dixon highlight national models as alternative methods of pursuing justice in relation to the crimes of genocide and sexual violence. The two articles under the heading 'Who to Prosecute?' by George P Fletcher and Sanford Levinson deal with the notion of collective responsibility, the latter author having written his

³ Raimo Siltala, 'Tom D Campbell (Series Editor) et al: The International Library of Essays in Law and Legal Theory' (2000) 13(4) *Ratio Juris* 424, 426.

⁴ Schizophrenia is a type of psychotic disorder characterized by hallucinations and/or delusions, disorganised speech and thought and often, social withdrawal. The term's use to reflect the antiquated and misleading notion of a split personality and therefore some form of schism unfortunately buys into myths about the condition and it is disappointing to see it used in this way.

article during the Vietnam War. George Fletcher criticises the current focus on individual responsibility as concealing the fact that international crimes are committed by groups typically against members of other groups. He wants a return to a notion of collective guilt in addition to that of individual responsibility. Levinson takes a different slant, by focusing on who can be held individually responsible when decision-making occurs in the context of large, complex organisations and systems of the state.

In the final essay in volume I, under the heading, 'What Sort of Project?' Gerry Simpson take another look at war crimes trials, arguing that they have four functions or effects: they serve as an historical record, they enhance legality, they offer legitimisation by delineating between prosecuting state and the accused and they can also have unintended consequences by producing 'dissident histories' via the approaches of maverick defence counsel, observers and dissenting judgments. It will be fascinating to see how these four functions or effects carry over to the work of the International Criminal Court.

The essays in volume II deal with critiques of specific war crimes trials and tribunals. Under the general title, 'Dissenting Judgments', the articles deal with the various trials at Nuremberg, Tokyo and Manila, the Eichmann Trial, the legitimacy of the first Gulf War, the work of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and problems that may be faced by the International Criminal Court.

As a teacher of international criminal law, I found the four essays on the international criminal tribunals for the former Yugoslavia and Rwanda, and the one essay on the International Criminal Court particularly stimulating. They take up some of the earlier themes concerning the problems of ad hoc tribunals and victors' justice. Makua Mutua's essay in particular, provides a confronting critique of the ad hoc tribunals as political tools to assuage Western guilt over inaction in the Balkans and Rwanda. While he concedes that the tribunals afford an opportunity to develop international criminal law, he is unrelentingly pessimistic about their effectiveness. This essay was written prior to the indictment of Slobodan Milosevic, but one assumes that this trial would not make the author any more optimistic about the Tribunal, given that he believes that its rationale is based on the United Nations' efforts to prosecute war criminals with whom it also seeks to make peace.

The final essay by Frédéric Mégret sets out a framework for some of the problems that may be faced by the International Criminal Court. The Court's legitimacy has recently been boosted by Resolution 1593 of the Security Council made on the 31 March 2005, which referred the situation prevailing in Darfur since 1 July 2002 to the Prosecutor. Mégret places the enthusiasm for the Court within a framework of 'liberal international criminal justice' which is based on an individualistic, rule-oriented approach. He is concerned that the Court is being seen as an ideal form of adjudication somehow divorced from the political and encompassing the notion of deterrence which can only lead to failure.

Overall, these two volumes provide a commendable compilation of essays in the fields of international criminal and war crimes law. The essays by female writers and those from European journals provide an antidote to the temptation to rely solely on essays by male American academics writing in this burgeoning field. Gerry Simpson is to be congratulated for his choices and for his erudite introduction to these two volumes.

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