CHAPTER ELEVEN

REFLECTIONS ON INTERNATIONAL CRIMINAL JUSTICE: PAST AND FUTURE*

Fiat Justitia Pereat Mundus
Let there be justice though the world perish.
—Immanuel Kant (1795)

SECTION 1. INTRODUCTION

Ideally, laws reflect social values. Legal systems are designed to achieve the value-oriented goals of social policy, and are to be distinguished from their justice meanings and contexts. However, that has seldom been the case in the history of law and legal institutions. Laws, no matter what their value contents and goals, may have existed in human societies as far back as anthropological and historical studies have been able to record. However, their substantive justice meanings and contents have varied over time, within each society, and also between societies. Laws and legal systems have been recorded for some five thousand years, and more often than not, they reflect control mechanisms established by rulers or ruling elites to further their power and wealth goals.

The history of law and legal institutions reflect the occasional migration of legal concepts from one civilization to the other, as in the case of Roman law’s absorption of certain philosophical and legal concepts from ancient Greece. This was followed by the influence of Roman law on Western European legal systems, including different historic legal traditions such as the English Common Law, which occurred after the Norman Conquest in 1066. In turn, European colonialism in the Americas and the Caribbean in the 1600s, and Africa and Asia in the 1800s, saw the transfer of continental and English legal systems to colonized societies. As a result of this complex historical process, most of the

2 See generally Coleman Phillipson, The International Law and Custom of Ancient Greece and Rome (1911).
3 See generally David & Brierley, Major Legal Systems in the World Today, supra note 1.
world's legal systems have belonged to a few major families of law, thus engendering some degree of rapprochement between national systems belonging to the same family.\(^5\)

This historical process has in turn had an impact on international criminal law (ICL), which has borrowed from the major families of law in order to form its substantive and procedural part, which is applied by international and mixed model criminal tribunals.\(^6\) This is evident in the “general part” of criminal law as applied by international criminal tribunals, which relies on comparative law techniques to deduce principles and norms common to the major families of legal systems.\(^7\) Moreover, the harmonization of criminal procedural laws in many contemporary legal systems reflects the growing influence of international human rights law on domestic laws.\(^8\) This is evident in a comparative analysis of national constitutions, which demonstrates not only a high level of commonality in the formulation of individual rights, but also a certain level of similarities between the constitutions and international instruments on the protection of human rights.\(^9\) Chapter 9 describes these developments, as well as the congruence of the statutes, rules, and jurisprudence of the international and mixed model tribunals with international human rights standards and norms on due process of law in criminal proceedings.\(^10\) Consequently, laws and legal systems in contemporary times manifest a higher level of congruence with moral and social values than at any other time in history.

The contemporary quest for ICJ demonstrates a high level of demand by international civil society and by some governments. This is due to the convergence of shared moral and social values of constituencies supporting ICJ and intergovernmental agencies’ policies on maintaining international peace and security. However, while this demand for ICJ has increased in postmodern times, its supply, as described below in this chapter, is still low, notwithstanding the establishment of several ICJ institutions in the past fifteen years.\(^11\)

\(^5\) Id.
\(^6\) Such as the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Extraordinary Chambers of the Courts of Cambodia, the Special Tribunal for Sierra Leone, the ‘Regulation 64 Panels’ of Kosovo, the Court of Bosnia-Herzegovina, the Ad Hoc Tribunal for East Timor, and the Special Tribunal for Lebanon.
\(^7\) See supra Chapter IV.
\(^8\) See Jean Pradel, Procédure pénale comparée dans les systèmes modernes: Rapports de synthèse des colloques de l’ISISC, 15 Nouvelles Études Pénales (1998); supra Chapter IX.
\(^9\) For a list of constitutions that have been comparatively analyzed as such, see supra Chapter IX.
\(^10\) For a comprehensive compilation of the jurisprudence of these bodies, see ANNOTATED LEADING CASES OF INTERNATIONAL CRIMINAL TRIBUNALS (25 vols., Andre Klip & Goran Sluiter eds., 1999–2010).
\(^11\) See supra Chapters VI–VIII. For the impact of international criminal law, international criminal tribunals, and hybrid tribunals on the rule of law building efforts of post-conflict societies see