Book Review

Karsten Gaede, Fairness als Teilhabe – Das Recht auf konkrete und wirksame Teilhabe durch Verteidigung gemäß Art. 6 EMRK, Duncker & Humblot, 2007, 992 pp.,

Neubacher and Klein have edited a collection of papers that provides an interdisciplinary outlook on the proliferating international criminal courts. The chapters are the result of a conference in Cologne in 2004. It is an impressive attempt at bringing together different views on a topic of ever-rising importance in the international legal arena, yet an area that still suffers from lack of interdisciplinary analysis of its empirical, political and legal background as well as its systemic effects on the people and legal systems it affects. The book intends to remedy this deficiency in part. The work sets out with a general overview by Neubacher on criminological aspects of international criminal justice, followed by Jäger’s question about the relationship between concepts of crime, traditional criminal policy and so-called macro-crime. Reese rounds off the introduction with a chapter on the ICC and the perceived lack of the so-called “Rechtsgefühl” and its attendant consequences. In the second part on conflicts and overlaps between legal concepts and the political aspects, ICC judge Kaul provides a report of his experience and the current state of affairs at the ICC. Kreß addresses the emerging practice of self-referrals by states, while Ambos looks at questions of vertical cooperation in prosecuting the persons responsible for lower-level crimes. Weigend investigates the relationship between state sovereignty and national codes of international
criminal law, at the example of the German “Völkerstrafgesetzbuch”. Part III moves on to a more historical, psychological and criminological perspective, with Steinbach describing and analysing the German experience of prosecuting Nazi criminals as a mechanism of coming to terms with societal guilt and political responsibility, a topic which is taken up and pursued further by Klein. Walter adds a study of terrorists and the possibilities available in the arsenal of traditional resocialisation schemes for rehabilitating offenders from this group. Fischer rounds off this part with a contribution from a victimological perspective on trauma, primary and secondary, and witness behaviour in court. Part IV contains practitioners’ reports from various jurisdictions: Judge Winter on her experience at the Sierra Leone Court, followed by Tätzsch’s evaluation of the combined work and interplay of court and truth and reconciliation commission. For Rwanda, Hankel tries to highlight the mechanisms of the Gacaca courts and how they relate to the work and effects of the ICTR. As a psychological practitioner, Mischnick adds her views on long-term effects caused in victims by experiencing collective violence. Finally, two papers on human rights issues and UN intervention by Schüler-Springorum conclude the volume. In a tour de force on merely 314 pages the editors and contributors have achieved an immensely helpful overview of various aspects of international criminal justice that do not always get the attention in the wide field of publishing in international criminal law that they deserve. The collection is a testament to the endeavours of the German ICL community to provide a more systematic approach to an area of law that is beset by the problem of a mass of uncritical or descriptive contributions that more or less celebrate the latest pronouncements by the high priests of international criminal justice, the judges at the international criminal courts. The German legal research culture as an example of the academically-driven approach to the development of the law prevalent in many continental countries in Europe may have many things to say to the players of the judicially-dominated international forum.

Rothe and Mullins, two criminologists from the University of Northern Iowa, have written a study of criminological, historical and political aspects of the creation of the ICC. It is a work that does not pretend to be similarly ambitious in variation as the combined effort of the multitude of contributors in the volume by Neubacher and Klein, but it is a very readable and well-written introduction to the question of what international criminal justice is after all about. Some may say that deterrence does not seem to work, retribution is often impossible to achieve at a level commensurate with the suffering caused by the perpetrators. The question then in effect becomes one of symbolic legislation. Is the ICC Statute a “symbolic gesture” in this context? The authors set out in their endeavour to answer this conundrum by using white-collar crime approaches, especially organisational crimes, leading to what they term an “integrated theory of state crime” which they then employ to find the common root to the crimes under the jurisdiction of the ICC. Chapters III – V move the debate to the historical and political level, from substance to procedure, so to speak. Chapter VI, co-authored