Book Review


‘Atrocity, Punishment, and International Law’ is arguably the first book to provide a comprehensive analysis not only of broad notions of international criminal justice but also punishment and sentencing. Phenomenally well researched and compellingly argued, ‘Atrocity, Punishment, and International Law’ addresses a key question of international criminal law (ICL) of how, why, and under what circumstances perpetrators of ICL atrocities should be punished.

The current situation in Darfur and the ICC Prosecutor’s application for an arrest warrant against the Sudanese president Hassan Ahmad al Bashir, the recent capture of Radovan Karadžić and his transfer to the International Criminal Tribunal for the former Yugoslavia in The Hague, have once again called the attention of the international community to international criminal law and to the question of punishment for atrocity crimes in particular. Mark Drumbl’s book could not be better timed.

‘Atrocity, Punishment, and International Law’ places the question of punishment for atrocity crimes at the forefront of international criminal lawyers’ concerns by purporting a clever and original approach to the ICL system: Professor Drumbl argues that international criminal justice is dysfunctional and oftentimes counterproductive to its primary goals. ‘Atrocity, Punishment, and International Law’ critiques ICL’s one-size-fits-all response to mass atrocity and its uniformity addressing a wide range of diverse circumstances. For Professor Drumbl, the Western liberal ICL model has become the Procrustean bed for wronged societies all over the world.

‘Atrocity, Punishment, and International Law’ is organised into 8 chapters. At the outset Professor Drumbl makes an important distinction between ‘ordinary’ and ‘extraordinary’ crimes: the former are committed in situations of (relatively) functional polity and are fundamentally different from the latter, which are defined as “conduct – planned, systematized, and organized – that targets large numbers of individuals based on their actual or perceived membership in a particular group that has become selected as a target on discriminatory grounds” (p. 4) and take place in the context of war, ethnic conflict, genocidal authoritarian regimes, etc. If reduced to a basic binary, this distinction would look like “crime-exception vs.
crime-norm” reflecting, respectively, the elements of deviance or conformity in the crime, which Professor Drumbl elaborates upon in Chapter 2.

In Chapters 3 and 4, Professor Drumbl focuses on punishment of international crimes in international criminal tribunals and in national and local criminal justice institutions. He questions ICL’s general assumption of appropriateness and validity of the Western liberal model of criminal justice that transposes national response to ‘ordinary’ crimes to the international level of ‘extraordinary’ crimes. The ‘white man’s burden’ of ICL’s liberalism, Professor Drumbl suggests, lies in the thoughtless application of foreign values to alien context, which are not just different but may even be contradictory to the socio-cultural setting of a particular wronged community. The ICL’s liberal paradigm fails insofar as ‘extraordinary’ crimes are concerned as the nature of those crimes is fundamentally different from that of ‘ordinary’ ones, the core difference lying in the element of deviance: ‘ordinary’ crimes are a product of deviance while ‘extraordinary’ ones are notably a result of conformity. To borrow Professor Drumbl’s words, “participation in atrocity becomes a product of conformity and collective action, not delinquency and individual pathology” (p. 8).

In the fifth chapter, Professor Drumbl voices his concerns about the effectiveness of “transplants” in dealing with perpetrators of mass atrocity: since ‘ordinary’ crimes are essentially different from ‘extraordinary’ crimes, they cannot be addressed by mere transplantation of domestic measures into the ICL context. Professor Drumbl argues that in addressing ‘extraordinary’ crimes, ICL cannot employ conventional punitive paradigms used by domestic systems because ‘ordinary’ crimes from national jurisdictions are not the same as the ‘extraordinary’ crimes of mass atrocity.

Professor Drumbl devotes the sixth chapter of his book to examining local, national, and international sentencing modalities and verifying whether they live up to the “stated values of punishment” (p. 149) of retribution, deterrence, and expressivism.

As an alternative to the liberal model, Chapter 7 proposes ‘cosmopolitan pluralism’ that would serve as an umbrella to diverse indigenous local responses, in situ justice modalities, and “bottom-up approaches to procedure and sanction” (p. 18), which would provide for a more holistic approach to ICL justice and mass atrocity as opposed to a strictly punitive one.

According to Professor Drumbl, the assumption of transitional justice is that alternatives to the liberal model, e.g. truth commissions, hybrid courts, amnesty, etc., may be the lesser evil of the many legal responses available. This may very well be so but when Professor Drumbl talks about restorative and reintegrative justice, one may wonder whether its practicability is not problematic in post-conflict communities where past ethnic violence may not necessarily have catered for a spirit of reconciliation.