Debate


Michael J. Struett
Assistant Professor of Political Science,
North Carolina State University

When the International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the UN Security Council in 1994, it was immediately controversial and had many critics. Some saw it as a second best option to more robust military intervention by the international community to stop the ongoing violence (Bass 2000). Others, mostly the Serbs and their allies, feared that the ICTY was a political tool of the West, intended to demonize the Serb political leadership. Many feared that the ICTY would be ineffective, especially as its early cases focused on low level perpetrators who were convenient to detain. Others argued that justice processes could interfere with delicate peace processes in the region, and that it would prolong peace settlements. Human rights activists and lawyers who favored the establishment of the new institution replied that responsible accounting for the worst atrocities could contribute to long term peace, but there was little historical experience on which to base such claims, particularly for truly internationalized transitional justice mechanisms. In Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal’s Impact in a Postwar State, Lara J. Nettelfield shows that over the longer haul, the ICTY has had tremendously positive impacts on the societies where the violence actually took place. This book now offers substantial evidence that war crimes trials can do more than just punish a few individuals who are guilty of atrocities; they also can create a record of facts, and help to
build the culture of accountability that is an essential component of peace processes and transitions to democracy.

Nettelfield’s approach to gathering evidence is exhaustive. She spent years interviewing, observing, and working with the local community groups in Bosnia-Herzegovina that are the main focus of her analysis. She conducted two original attitudinal surveys of the leadership of Bosnian NGOs in 2004 and of the soldiers that make up the Armed Forces of Bosnia and Herzegovina in 2005. Her broader generalizations are supported by adherence to the highest standards of research design, including carefully designed stratified sample surveys, but the fact that she knows well the people she is writing about is evident on nearly every page.

In Chapter 2, Nettelfield begins by showing that negative attitudes about the effectiveness of war crimes trials are partly driven by press reports that tend to emphasize negative events, while failing to provide coverage of less dramatic, but important triumphs. Nettelfield notes that much of the academic community also shares a fairly pessimistic, but in her view inaccurate, view of the effectiveness of international legal mechanisms (pp. 25-26). She attributes this in part to positivist methodologies that rely on limited tests to quantify the impact of courts in the context of transitional justice processes, and a reluctance of some scholars to use counterfactual logic to assess how much worse things could have been if transitional justice mechanisms had not been put in place. In the rest of the chapter, Nettelfield conducts an excellent review of best of the academic literature that takes a broader view of the role of legal justice mechanisms, discussing work from political science, legal theory, sociology, and anthropology. She especially focuses on works that have linked legal efforts to broader efforts to consolidate transitions to democracy. Her review serves to remind us that trials do much more than punish the perpetrators of crimes and provide redress for victims. Nettelfield makes a powerful argument for a fully constitutive understanding of the role of international law on the development of societies generally. “[…] International law […] cannot be measured simply by numbers of specific trials or legal precedents” but instead has to be understood for its role in channeling contentious political forces and shaping the nature of communities” (p. 50). Law serves in part to express the essential normative commitments of a society.

In chapter 3, Nettelfield addresses the fact that the very design of the ICTY made it unlikely to have desirable effects on consolidating peace and democracy in Bosnia-Herzegovina proper, especially in the short run. Because justice was internationalized, trials occurred in the Hague far from the victims, in languages that are foreign to the peoples of the region. Therefore, it was not obvious that the ICTY would ever have much traction with Bosnians