Book Review:

Julie Fraser and Brianne M. Leyh (Eds.), *Intersections of Law and Culture at the International Criminal Court*

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ABSTRACT

Book Review: Julie Fraser and Brianne McGonigle Leyh (Eds.), *Intersections of Law and Culture at the International Criminal Court*, Netherlands Institute of Human Rights, Utrecht University, The Netherlands, Edward Elgar Publishing, 2020, 456 pp. ISBN: 978 1 83910 729 0

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Whose cultural values and practices are relevant? How and to what extent? In 'Intersections of Law and Culture at the International Criminal Court', the editors Julie Fraser and Brianne McGonigle Leyh bring together contributors to interrogate how culture impacts the (legal) work of the International Criminal Court ('ICC'), both at the micro level (inside the Court) and the macro level (in relation with other actors in the international community). The collection tries to highlight the nuances and tensions beyond the obvious cultural aspects and differences. The editors have done an excellent job illustrating these, and yet still provide serious reason for optimism. This is thought-provoking analytical work that calls for self-awareness and engagement with culture. The collection will interest anyone working in the international criminal law field, and with the ICC – whether practitioners or academics.

Interestingly, the editors have not set a working definition of culture, leaving this to the respective authors. Some contributors provide a definition of culture, helping to frame the conversation; others do not. This decision does not hinder the arguments but provides for different readings on culture. Despite the variety of professional backgrounds, disciplines, and methodologies of the authors, the collection lacks cultural diversity, with most of the contributors coming from the Global North, mainly Europe, the US and Australia. The collection would have been stronger with the addition of the perspectives of writers from the Global South because who we are and where we come from informs the way we discuss and see culture.

The main accomplishment of the book that it invites reflection, to question not only the cultural tensions at the ICC but one's own. The content of the book is as

diverse as the notions of culture within it. The book provides a well-integrated array of chapters arranged in four parts: substantive crimes; proceedings; defences, sentences, and victims; and global reach. Leigh Swigart's standalone ethnographic chapter focused on language, the cultural understandings and attitudes that are a corollary to it, which set the scene for the rest of the collection. There are recurrent topics throughout the collection, such as the focus on Africa and the ICC cases on Al Mahdi and Dominic Ongwen. In this sense, the book can also be read as an analysis of different aspects of culture in these two case studies.

The first part of the book is dedicated to substantive crimes. Most of the chapters in this part take different stances on this topic, specifically the destruction of cultural heritage and the importance of this conversation. Unfortunately, the lack of engagement with some issues weaken the overall argument. Peta-Louse Baggot's chapter argues for an introduction of cultural crimes as crimes against humanity. While the proposal is novel and a discussion on such reform is welcomed, to reach this conclusion Baggot takes a very restrictive approach of what constitutes 'during armed conflict', limiting it to the actual clash of hostilities. In doing so, Baggot disregards previous jurisprudence on war crimes and the nexus with armed conflict that have established that the perpetrator's conduct does not need to occur as part of the hostilities but can take place temporally and geographically outside of it, as long as there is a sufficient link to the hostilities.¹ Additionally, the first two chapters place a lot of importance on UNESCO's World Heritage listings. UNESCO has been criticised for being Eurocentric, as more than half of the UNESCO heritage listings are European. If the aim is to decentralise western ideas of culture, or at the very best incorporate others, why then is UNESCO relevant? Analysis of this impor-

tant tension and its consequences are absent. Martyna Falkowska-Clarys and Lily Martinet's chapter take a different approach; while acknowledging the eurocentrism criticism of UNESCO, they argue for a holistic approach to an intangible cultural heritage. This chapter excels in showing how intertwined culture is to life, the inherent cultural dimensions of certain offenses, and how identifying and taking this into account can help the ICC assess gravity and certain elements of crimes against persons. Finally, Alison Dundes Renteln's chapter on gender justice at the ICC focusses on the prosecution of gender-based crimes at the ICC, analysing strengths and weaknesses. Whilst it is an interesting contribution, specifically addressing the tensions with culture would have incorporated this chapter into the overall theme of the book. Whilst it is an interesting contribution, specifically addressing the tensions with culture would have incorporated this chapter into the overall theme of the book.

Part two of the book deals with legal proceedings, and both the editors and the contributing authors have done justice to incorporate this part with the main theme of the book. To highlight a few contributions, Adina-Loredana Nistor, Andrew Merrylees and Barbora Holá's chapter explores cross-cultural exchange, with emphasis on cultural understandings of spiritualism and maps these tensions in the trial of Dominic Ongwen. The authors argue that this cross-cultural exchange might involve assembling a new body, not in the sense of a new Court being created but rather one that instead of reflecting cultural diversity, creates its own culture. The chapter leaves the reader wondering whether the ICC is transforming into 'Frankenstein's cultural "monster"'. Cale Davis' chapter on justice as culture in the ICC is an essential read. The author discusses the Office of The Prosecution's ('OTP') ideas of justice as an intrinsic

¹ 'A war crime may also occur 'at a time when and in a place where no fighting is actually taking place, remote from the actual battlefield insofar the act is nonetheless closely related to the armed conflict'. Prosecutor v. Tadic', see note 52, para. 568. See also: Prosecutor v. Ntaganda, Judgement, para 696; Prosecutor v. Katanga, Judgement, para 1124; Prosecutor v. Lubanga, Judgement, para 517; 'the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. The conduct must have a sufficient nexus to the armed conflict by being closely related to it.' O. Triffterer and K. Ambos (Eds.) 2016. *The Rome Statute of the International Criminal Court: A Commentary*, Third edition, Munich, Oxford, Baden-Baden: C.H.Beck, Hart, Nomos, p. 315.

cultural value and how this is reflected in its public communications and the potential impact they have. He argues for a change of approach in the OTP's communication that better serves its mandate and avoids miscommunication. Overall, Part two contains an array of different topics and methodologies but the underlying theme in all the chapters is the clash between the assumptions of the western as universal with the local. The central message is the need for conscious awareness of differences.

Part three, on defences, sentencing, and victims, continues with this approach but here the authors make a judgement, advocating for a change in the ICC on the basis that the ICC that needs to adjust itself to better represent the world. Phoebe Oyugi and Owiso Owiso's chapter stands out. One of the few contributions from the Global South, these authors embedded within their chapter the long-standing question of the role that the ICC should fulfil. Is it just a court, or is it (or can it be) more? They argue for a restorative approach during plea negotiations, one that is mindful of cultural values and the needs of both victims and defendant, without negating the redistributive aspect of the ICC. Read in conjunction with Fiona McKay's chapter on victims, this section of the book calls for a court which truly listens to victims and accommodates their needs, within a redistributive framework.

The final part of the collection focuses on the ICC at a macro level, as an actor in the international community. Culture here is viewed in terms of, and in relation to, legitimacy. Nikhil Narayan's chapter on Asian countries and their reluctance to join the Rome Statute portrays Asia's wariness of the ICC as a double edge sword; such reluctance reinforces the idea of the ICC as a western-influenced culturally exclusive setting. Narayan advocates for Asia's engagement as a means to change

these western-centric ideas. Julie Fraser's chapter brings a (long awaited) necessary focus on Islamic Law, as a means not only of acknowledgement of Muslim communities but legitimisation as well.

Finally, the collection attempts to insert itself within the current trending conversation on decolonisation. The plea, for the ICC to be mindful of cultural differences and aware of its own cultural limitations and impositions, is in a way a call to 'decolonise' culture. Despite this plea, at times, the book reads a bit too 'white', 'western', or 'common law centric'. The tendency for some of the expressions and framings to place western culture at the centre, portrays these different cultures, as 'other'. For example, some chapters make assumptions based on essentialising common law and common law's practices; refer to 'multicultural countries such as US, Australia and UK', all first world English countries; talk about the cultural neutrality of the ICC; and focus on African superstitions as if the Christian western world is not equally superstitious. While this does not hinder the arguments made in the chapters, for a reader from the Global South, these oversights are obvious. The contributors' own assumptions of culture and their positionalities inform their description of others and unconsciously find a way in their writing and expressions. Whether this was intended or not, it invites reflections on how western culture essentialism is dealt with. This invitation to consider who we place at the centre (and why) is, in itself, a significant achievement.

To conclude, the collection operates as a wakeup call to the ICC, inviting much-needed changes at this important institution. The main accomplishment of the book is to encourage reflection and to challenge assumptions. Hopefully, the ICC seriously considers these criticisms.