

## Book Notes

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*Crimes of the Holocaust: The Law Confronts Hard Cases.* By Stephan Landsman. Philadelphia, Pa.: University of Pennsylvania Press, 2005. Pp. 304. \$49.95, cloth.

The international community's response to genocide has been one of the most significant legal developments in the post-World War II world. How the world in 1945 came to grips with this radical crime—the deliberate attempt to exterminate an entire people—has been the subject of volumes of academic material. In *Crimes of the Holocaust*, Stephan Landsman, an American trial lawyer and legal academic, analyzes this development by rigorously evaluating the Nuremberg Trials, with their underpinnings in the Anglo-American devotion to adjudication through adversarial proceedings. He explains why the prosecution of genocide-related charges of crimes against peace, war crimes, and crimes against humanity present real difficulties for a judicial system that remains committed to justice. His penetrating examination of the proceedings against accused Nazi henchman strongly supports his central argument: the procedural problems that marked the Nuremberg Trials set unfortunate precedents for subsequent criminal prosecutions of individuals suspected of participating in the Nazis' campaign against the Jews.

Landsman begins by chronicling key details of the international tribunal at Nuremberg, where, he writes, “[N]azism itself was put on trial.” In describing a proceeding that favored the prosecution, he outlines the difficulty inherent in an adversarial event that serves to determine guilt and innocence while simultaneously endeavoring to establish a detailed historical record of the atrocity at issue.

Landsman bases his critique in the origins of the proceedings, when World War II's victorious Allied powers decided to rely primarily on the apparatus of criminal law, thereby expressing their desire for a new and more effective response to the misdeeds of those who had committed among the most heinous and depraved acts in human experience. The International Military Tribunal's prosecutions at the Nuremberg Trials drew on pre-existing national justice systems but converted them into mechanisms suited to the adjudication of the Nazis' gravest crimes. These prosecutions proved exceedingly difficult because the crimes lacked a single geographical or political locus and because they involved the operations of an entire government's bureaucratic apparatus. Moreover, the record included millions of pages of documents and hundreds of thousands of feet of film to be examined.

Landsman identifies “successor trials” as evidence of the tensions inherent in proceedings that have the dual mission of determining guilt and inno-

cence while attempting to establish a detailed historical record of the atrocity at issue. He examines the trials of Adolf Eichmann in 1961 and of John Demjanjuk in 1986, both conducted in Israel, and of Imre Finta in Canada in 1990. Meticulously distilling volumes of testimony and documentary information about each case, Landsman elaborates the difficulties inherent in achieving both a fair trial and justice in the aftermath of heinous crimes. These challenges include, among others, the "looseness of evidence rules that admitted reams of hearsay, prejudicial, and entirely irrelevant material." In the face of few historical and legal precedents, each legal action relies on the framework of its predecessors. This reliance only compounds the imperfections arising from the Nuremberg proceedings. The resulting jurisprudence, Landsman asserts, has left a trajectory of development that has heightened difficulties in prosecuting individuals accused of committing genocidal acts.

The most significant contribution of Landsman's book might be its final chapter, which focuses on the international legal response to recent acts of genocidal violence and the world's attempts to create international forums to address such criminality. Considering cases in the former Yugoslavia and Rwanda, Landsman assesses the effectiveness of international criminal tribunals created to resemble the one at Nuremberg. In this analysis, his critiques focus on procedure. The evidentiary rules in Yugoslavia, Landsman argues, were implemented based upon Nuremberg's adversarial model, resulting in similar shortcomings. As for Rwanda, the United Nations limited the Tribunal's jurisdiction to crimes committed in the calendar year 1994, assigned a "pitifully small contingent of six judges," located the Tribunal in Tanzania rather than in Rwanda, and refused, in accordance with a ban in the Universal Declaration of Human Rights, to sanction the death penalty. To fulfill the additional obligation of creating reliable historical records, both tribunals also ignored the types of limits ordinarily established in the name of justice. In addition, the proceedings have been marked by a substantial material disparity between prosecution and defense. The result has been a long-winded proceeding expected to conclude in 2008 without having "provided a prototype worthy of emulation." Despite experiencing more difficulties than its Yugoslav counterpart, the Rwandan Tribunal experienced some success when, four years after its inauguration, the world's first conviction for the specific crime of genocide came forth. The Tribunal convicted Jean-Paul Akayesu, who, as mayor of the Taba Commune in the Prefecture of Gitarama, had either directly or indirectly been responsible for the killing of as many as 2,000 Tutsis in 1994. As an observer of this legal process, Landsman surmises: "The *Akayesu* case and the others that followed were Nuremberg's progeny, big, slow-moving affairs that relied on an adversarial system but ignored evidentiary restrictions and devoted overwhelming attention to atrocity evidence."

In light of these strengths and weaknesses, Landsman evaluates the International Criminal Court, suggesting refinements that would enhance its mission of complementing existing national judicial systems while exercising

jurisdiction when national courts are unwilling or unable to investigate or prosecute such crimes. Finally, Landsman proposes guideposts for contemporary tribunals that attempt to prosecute atrocities' perpetrators. Atrocities trials could readily be improved by reforming their rules of procedure and evidence. Proceedings must be streamlined. Limits should be imposed on the amount of time each side is permitted to present its case. The number of witnesses and documents should be strictly controlled. Repetitive testimony should be restricted. No international prosecution should run more than nine months—the time it took to try the Nuremberg case. According to the author, unless restrictions are enforced, the system “will collapse under its own weight.” Major atrocities cases must be carefully shaped during the pretrial process. Landsman claims, “[t]aking three years to try Slobodan Milosevic is unacceptable.” *Crimes of the Holocaust* thus anticipates concerns that persist as the world watches the trial of deposed Iraqi president Saddam Hussein.

—Amos Jones

*My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*. Eds. Eric Stover and Harvey Weinstein. New York: Cambridge University Press, 2004. Pp. 368. \$22.00, paper.

Transitional justice has risen to the forefront of international criminal law as a means by which countries seek accountability for mass atrocities or widespread human rights abuses. The international community has lauded large-scale efforts to use international legal structures as a means of “restoring” post-conflict societies. Yet little empirical evidence has been offered as to their effectiveness. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* attempts to gauge the impact of transitional justice operations in societies recovering from large-scale ethnic and religious conflict, principally in the former Yugoslavia and Rwanda. In it, Eric Stover and Harvey Weinstein advance a compelling argument that both international and local trials do surprisingly little to advance justice and reconciliation as it is perceived by the communities of survivors.

Stover and Weinstein have assembled an impressive cadre of scholars and practitioners whose works represent a broad spectrum of fields. Many have longstanding ties to the regions they examine. Although the authors draw from a range of qualitative and quantitative research methods, all authors advocate for a holistic approach to community rebuilding, arguing that a multi-systemic approach to rebuilding is essential for addressing the individual and institutional needs of those affected by the conflicts. The work is grouped into three sections. The first section analyzes institutional responses to mass atrocities in the former Yugoslavia and Rwanda and how they relate, or often clash with, communities' perceptions of justice and reconciliation. The sec-

ond set of chapters assesses communities' perspectives on the process of social reconstruction. The final section briefly highlights individual responses to mass atrocities.

A pervasive theme emerging from the first six chapters is communities' deep distrust of international tribunals. Drawing from a survey of Bosnian legal professionals, Weinstein and Fletcher suggest that those of Serb and Croat nationality believe the International Criminal Tribunal for the former Yugoslavia ("ICTY") has shown political bias against members from their respective ethnic groups. The ethnically Serb and Croat legal professionals believe the nation would be better served by a body that works more directly to reform the corrupt Bosnian legal system, instead of operating completely independent of it. Other chapters criticize the International Criminal Tribunal for Rwanda ("ICTR") and the ICTY for their insensitivity toward witnesses and survivors or their dismissive attitude towards local forms of conflict resolution. The chapter by Karekezi, Nshimiyimana, and Mutamba creates an interesting extension of this topic by highlighting the benefits and drawbacks of *gacaca*, a community-based court system adapted from the traditional Rwandan system of dispute resolution, which draws heavily on community participation to adjudicate all but the most serious genocide offenses.

The second group of chapters argues that while criminal tribunals fulfill an essential function of naming the perpetrators of mass conflicts, they do not bring about the more holistic effects often ascribed to them including repairing society and restoring the survivors. For example, Freedman et al. reveal how the public education system supports the propagation of stereotypes and inter-ethnic hatred in Bosnia-Herzegovina, Croatia, and Rwanda. Their work delineates how a lack of public education about the work of the ICTR and ICTY, combined with negative government propaganda, further insulates communities from positive gains made by the tribunals.

The final three chapters take a closer look at how genocide has unraveled the social fabric of Bosnia and Croatia, including a chapter in which Blotner examines how artists have responded to the genocide, and a chapter by Ajdukovic and Corkalo that presents interview data with a handful of Serbs and Croats who were compelled to end a close inter-group relationship as a result of the conflict. This section provides a human slant to the conflict, but lacks the sweeping impact of the other chapters.

The holistic framework provides a strong complement to the contributors' works. By analyzing the polycentric quality of social relations in the process of rebuilding, the authors make an evocative argument that the impact of the tribunals cannot be measured on a single plane. These arguments seem best supported by focus group data, which use open-ended questions to elicit responses beyond the scope of common considerations of the tribunals' impact. At times, however, the research in *My Neighbor, My Enemy* perhaps depends too heavily on qualitative methods, particularly closed-ended survey questions, to draw out social perceptions of stereotypes or "ethnic distance."

The book's use as a prescriptive work is limited. It is evident that the editors have gone to great lengths to present a diversity of perspectives, drawing from inter-disciplinary research, representing the views of most parties affected by mass conflicts, and cautioning readers against making false assumptions about the meaning of ambiguous or loaded terms in the international justice lexicon. In spite of this thorough approach, the reader hoping to harmonize these diverse criticisms into a set of best practices receives little practical help from this book.

The principal strength of the volume is its creation of a forum by which genocide and ethnic cleansing survivors can contribute to the international dialogue on transitional justice. Their apathy or even outright distrust of international efforts toward reparations offers a compelling counterpoint to the common assumption that the ICTR and ICTY are indeed serving the best interests of the survivors. *My Neighbor, My Enemy* strikes a note of caution against the dangers of oversimplifying both the goals and outcomes of international criminal tribunals. It also challenges members of the international community to acknowledge the limitations of the tribunals in concert with their strengths.

—Anna Ferrari

*American Exceptionalism and Human Rights*. Ed. Michael Ignatieff. Princeton, N.J.: Princeton University Press, 2005. Pp. 392. \$75.00, cloth.

The United States is sometimes praised, both within its borders and around the world, for its support for human rights. But it is just as frequently criticized for its rejection of certain international human rights norms. Can these complex and seemingly contradictory positions be reconciled? In what ways does the United States make an exception of itself and with what consequences? *American Exceptionalism and Human Rights* seeks to explain "the paradox of being simultaneously a leader and an outlier" in terms of American human rights behavior.

The book features essays by ten scholars from the fields of international law and international relations, who presented earlier versions of their essays at a year-long lecture series at Harvard University's John F. Kennedy School of Government. Editor Michael Ignatieff organizes the essays under three themes: "The Varieties of Exceptionalism," "Explaining Exceptionalism," and "Evaluating Exceptionalism."

Ignatieff begins the introductory essay by naming three types of American exceptionalism. He points to *exemptionalism* as the practice of supporting international conventions and treaties but only with exemptions, signing treaties but refusing to comply with the terms, or negotiating agreements but then failing to ratify them. Exceptionalism can also take the form of *double*

*standards*, where the United States uses a different rule for itself than it does for others, or a different rule for friends than foes. Finally, *legal isolationism* refers to judicial resistance to foreign law. Ignatieff introduces various explanations for exceptionalism—realist, cultural, institutional, and political—and concludes that the political explanation, the relative strength of American conservatism, is the most compelling. He writes, “current American exceptionalism . . . is fundamentally explained by the weakness of American liberalism.”

Ignatieff raises two questions that become lines of inquiry running through the essays. First, is American exceptionalism a temporary or a long-term phenomenon? Second, are the consequences of American exceptionalism good, bad, or both? In addressing the questions, he presents three competing perspectives—nationalist, realist, and liberal internationalist. Here, he appears to favor liberal internationalism, but he expresses doubt that the American people will support the conception of the United States as a “benevolent superpower voluntarily restricting its sovereignty for the sake of the greater global good.” Ignatieff concludes by noting the implications of an American refusal to engage in discourse that reaches across national boundaries. He warns: “The critical cost that America pays for this exceptionalism is that this stance gives the country convincing reasons not to listen and learn. Nations that find reasons not to listen and learn end up losing.”

Following Ignatieff’s introduction, three chapters focus on particular policy positions that make the United States exceptional in terms of its divergence from the international norm: Frederick Schauer examines the First Amendment’s protection of freedom of expression, Carol Steiker considers possible explanations for the continuation of capital punishment, and Cass Sunstein discusses the lack of social and economic guarantees in the Constitution. Interestingly, both Steiker and Sunstein credit the change in the Supreme Court following President Nixon’s election with the resultant “exceptional” policies. This historical contingency explanation suggests the possibility of changes in the future. This question is taken up by other contributors.

Harold Koh takes a more pointed stance in his essay, “America’s Jekyll-and-Hyde Exceptionalism,” discussed at length here because it serves as a helpful guide to the key themes raised by other contributors. While critical of American exceptionalism, especially the so-called Bush Doctrine, Koh is careful to note that exceptionalism has both good and bad faces. After discussing problematic consequences of double standards, which Koh considers the “most dangerous and destructive” form of exceptionalism, he describes the concept of *exceptional global leadership*. Calling on the United States to put forth its “best face” through the promotion of the rule of law, Koh writes: “American exceptionalism succeeds best when it seeks not simply to coerce but, rather, to promote sustainable solutions through the generation of legal process and internalizable legal rules.”

Koh concludes that public and private actors outside the U.S. government are well-positioned to “trigger transnational legal process[es]” that can initi-

ate change. His point here, focusing on the increasingly important influence of informal actors, is echoed by several other contributors. The view shared by these writers is, therefore, that American exceptionalism is a time-limited phenomenon, at least in its current form. Stanley Hoffmann, Anne-Marie Slaughter, and John Ruggie each emphasize the “unavoidable momentum” of globalization and predict an erosion of exceptionalist positions, even in areas where historically the United States has been most resistant. Ruggie describes how the “reconstituted global public domain,” which involves states plus other actors and interests, makes it harder if not impossible for a state, even one as powerful as the United States, to remain exceptionalist. Paul Kahn’s essay offers a contrast here. He criticizes liberal internationalists for their attempt to substitute human rights for “state sovereignty and the irreducible quality of the political.” In his opinion, such efforts cannot succeed because they fail to recognize the state as a self-interested being.

Most contributors are critical of American exceptionalism insofar as it supports a double standard. The evaluation of this negative impact is focused, somewhat surprisingly, more on the effect of exceptionalism on the United States than on the rest of the world. Andrew Moravcsik’s essay helps make sense of this focus. He argues that America’s exceptionalism simply does not have a significant impact on international actors directly. Instead, the United States is the primary recipient of any negative consequences, making American citizens the real “winners and losers.” Slaughter’s evaluation of judicial resistance to foreign law also focuses on its impact on the United States. In her opinion, the real problem is uninformed divergence, or the resistance to “cross-fertilization,” regardless of the merits of the argument. Frank Michelman posits the interesting idea that the judiciary’s consideration of international legal precedent may actually help strengthen the U.S. legal system by restoring faith in American judicial objectivity.

The take-away lesson from this important and timely book is that any single explanation or evaluation of American exceptionalism is complicated and likely incomplete. The strength of *American Exceptionalism and Human Rights* lies in the very fact that the pieces of the puzzle do not necessarily add up to a uniform picture. One thing is clear, however: the trend toward globalization will continue to evolve in new and significant ways, making the American response to international human rights norms even more critical, perhaps most importantly for the United States itself.

—Colette Connor

*A New World Order.* By Anne-Marie Slaughter. Princeton, N.J.: Princeton University Press, 2004. Pp. 368. \$45.00, cloth.

In *A New World Order*, Anne-Marie Slaughter presents an alternative conceptualization of global governance in an increasingly interconnected world. Challenges facing contemporary states disregard borders, and yet a world government is, according to Slaughter, appropriately feared. What, then, is the solution to this “globalization paradox”? Rejecting proposals by other scholars, Slaughter argues that neither one-dimensional states, nor a world government created from the amplification of inter-governmental organizations, will govern the world of the future. There may, instead, be another path: governance by the expanded transnational government networks of multi-faceted states. In her book, Slaughter not only presents a vision of what is happening, but also offers a normative prescription for a more effective and just world order.

There is no shortage of evidence that this process is under way, and the author points to the three branches of American government as proof. In the executive branch, government networks form around international law and problems that transcend state borders. Slaughter shows that transnational networks already address financial stability, environmental regulation, trade policy, debt management, poverty reduction, corporate accountability, international crime, and terrorism. Regulatory agencies harmonize rules and procedures as part of an effort to facilitate cooperation and share expertise with foreign counterparts.

At this point, Slaughter anticipates two main critiques. First, widened use of executive orders and regulatory mandates to determine policy can undermine self-government, especially where these sources of policy are either unelected bureaucrats or foreign specialists. Second, these methods challenge the representative character of government and alter the original procedures for policy formation. The author notes that traditional international treaty organizations are often criticized for being removed from the people they are meant to represent, and that the distance between supra-national policymakers and those who live by their decisions drives popular reticence to the idea of global government. While Slaughter flirts with this dilemma and some potential solutions, her view is disappointingly narrow.

What the author fails to consider is that regulatory policy by bureaucratic consultation, while efficient, comes at the cost of public input. It increases the likelihood that the involved public will be comprised of groups closest to the issues and with capacity for monitoring, and not necessarily those who represent citizens' interests. For better or for worse, the current system is not a technocracy, but one of input from a public with average knowledge. Without questioning the value of highly capable appointees and regulators, there is a well-founded anxiety that permitting bureaucrats to formulate policy without the input of the general public will undermine the representative process. Congressional advice and consent typically ensures that policy modifications for harmonization are considered in light of the broader interests of the



public. As transnational policymakers and bureaucratic negotiators take on greater responsibility, become more apolitical, and acquire more technical expertise, they are likely to become less responsive to the general political will. Senators who consider treaties must communicate their reasoning to their constituencies, but the public is less likely to hear from decision-makers with no electorate. Finally, the form of bureaucratic cooperation on specific transnational issues proposed by Slaughter comes at the expense of comprehensiveness. This part-and-parcel approach treats issues such as environmental regulation as insular when, in reality, the boundaries between policy arenas are artificial. Traditional avenues hold greater potential to develop broad policies that consider the interplay between, for example, public health, environment, and industrialization. Slaughter is effective in endorsing transnational networks as a solution to common problems, but she is less persuasive in proving that they should be the primary means of international cooperation.

*A New World Order* also fails to present the full impact of its vision on all states. Transgovernmental networks, as the principal latticework constructing global governance, would have dramatic effects on less powerful countries. It is difficult to imagine that smaller and less-developed states will subscribe to Slaughter's portrayal of sovereignty as merely the capacity to participate. They will instead perceive transnational networking (as the exclusive means to establish trade policy, for example) as eroding their sovereignty, a concept weaker states will continue to understand as the ability to determine what policies best suit their countries without having to give superseding consideration to the interests of other, more powerful states. In her analysis, Slaughter does not offer any semblance of democracy among states. For example, she touts the World Bank as an example of how "soft law" will replace the "hard law" of traditional treaty organizations. However, states would likely reply that institutions such as the World Bank sometimes offer transitioning states little in the way of local input and civic participation in policies. Slaughter indicates that the influence of organizations such as the World Bank on transnational networks will ensure the availability of the best information and highest expertise. But even if she is correct in that assumption, Slaughter fails to reassure less-influential states that the new world order will afford their citizens meaningful or equal participation.

The vision of transgovernmental networks is simultaneously insensitive and responsive to the reality that not all states benefit from the same approach to a shared problem. It is responsive by accommodating input from a variety of states and transferring ideas in all directions. However, the network-system may also be insensitive to the diversity of national experiences, spawning policies that are ill-fitted for particular national situations. Under such a system, less-powerful states will likely have to make more, not fewer, concessions to a dominant partner.

While Slaughter assumes that a disaggregated state is a present and desirable reality, its price is not meager. Regulatory policy from transnational experts may be functional and effective, but its threat is *over-specialization*. Without

comprehensive discussions, negotiations, and critiques, policy formation by highly specialized experts will likely yield a host of unintended externalities in other domains. Perhaps the clearest example is the Structural Adjustment Policies put forth by the International Monetary Fund ("IMF") during the late 1980s and early 1990s. IMF policies often had an unintended but significant impact upon labor, healthcare, agriculture, urbanization, education, and poverty in less-developed countries. Such externalities are less likely in a multi-issue organization that permits greater public discourse on potential consequences of proposed policies. Without such valuable discourse, decentralized decision-making may create issue-specific policies which contradict efforts of other policymakers.

In the legislative and judicial arenas, Slaughter's primary portrait is less controversial. The author claims that the current practice is for legislators and judges to confer regularly and share professional approaches to universal challenges, and she is persuasive in showing the benefits of such interactions. The rewards of learning from the experiences of others are priceless, especially for countries in governmental transition. However, Slaughter's discussion of the "cross-fertilization" between judges, evidenced by their opinions, overlooks several nuanced contentions. She cites the widespread awareness of international law by American scholars and judges, and then expands this to support international and foreign law as a persuasive authority in American opinions. She notes, for example, that Americans find little problem with the influences of English law on U.S. jurisprudence or the influence of their own Constitution on foreign governments. However, Slaughter's discussion of this topic ignores the distinction between the use of foreign law as an interpretive tool and its use as an authority with which to override domestic law. The oversimplification of this debate, like her cursory and insufficient discussion of the development of human rights law, is to the detriment of her commentary. Otherwise, she has constructed an elegant expansion on a long line of articles discussing the manner in which judges cooperate, conflict, consult, and negotiate on overarching questions.

*A New World Order* is excellent when it is descriptive, providing an outstanding account of how regulators, legislators, and judges interact with their foreign counterparts to share expertise and find solutions to common problems. It is when the book adopts a prescriptive tone that it raises more concerns than it resolves. Slaughter's expansion on Keohane and Nye's now classic concept of complex interdependence reveals its proliferation, but it does not provide a clear roadmap for how this phenomenon will buttress the ideal global order. Instead, Slaughter persuasively promotes transnational networks in concert with traditional intergovernmental organizations. Throughout her book, she sets out to show that such networks will eventually come to replace traditional avenues of international cooperation in all but a few arenas.

—Melanie Conroy