
Review

Reviewed Work(s): Moral Accountability and International Criminal Law: Holding Agents of Atrocity Accountable to the World by Kirsten J. Fisher

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practitioners, for two reasons. First, the instrumentalist and reformist ambition of development initiatives is only partly compatible with the descriptive and often conservatory attitude of proponents of legal pluralism. Even if development and pluralism know more of each other, they may therefore not lose their mutual suspicion. Second, legal pluralism, as a general theory, may be of only limited use to development agencies. They know about normative pluralism from their work, and whether these plural norms are law or not matters little to them. The book is most instructive where it goes beyond generalizations and presents concrete examples—and here, it turns out that the practitioners sometimes have more to teach than the scholars.

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Moral Accountability and International Criminal Law: Holding Agents of Atrocity Accountable to the World. By Kirsten J. Fisher. London: Routledge, 2011. 224 pp. \$135.00 cloth.

Reviewed by Shannon Brincat, School of Political Science and International Studies, University of Queensland

This timely volume makes a significant contribution to exploring the normative dimensions of International Criminal Law (ICL), a subfield that has been underexplored and clearly outpaced by the quantity of works in (positive) ICL. Fisher makes a worthy entry into these debates, one free of legalistic jargon, and this book will serve as a foundational text in this subject-area for students in the years to come. The book makes a number of important contributions, including developing threshold criteria to define international crime and substantiating a framework of justice for international criminal prosecution and punishment based on retributive and expressive models.

Fisher aims to examine “how responsible agents, individuals and the collectives they comprise, ought to be held accountable to the world for the commission of atrocity.” The volume evaluates international prosecution as the “right” response to a range of international crimes, such as crimes against humanity, war crimes and genocide (p. 3). More specifically, the book attempts to define the proper domain of ICL and its ambit regarding international crime. To this end, Fisher constructs a useful typology of international crimes and offers a normative engagement with the question

of the need for international prosecution. Her argument is that ICL is normatively justified as a response to international crimes defined as those that assault basic human rights and which constitute a travesty of political organization.

For Fisher, to be identified as an international crime—and be considered devastating enough to require explicit condemnation by the international community—actions must meet a dual threshold test, firstly regarding the type of human rights that are violated, and secondly, in terms of the manner in which those rights are violated (Chapter 1). Severity refers to the type of human rights violations, divided according to the categorization of the infringement and level of urgency. Fisher judges that it is the infringement of basic rights that meets the required level of severity—those rights that secure the (pre)conditions of all others such as physical security, bodily integrity and sustenance. These “physical security human rights” are distinguished from liberty human rights that Fisher argues only give rise to human rights violations rather than constituting international crime *per se*. The second threshold—the associative threshold—refers to how a physical security human right is violated in such a way that involves political organization. This associative threshold is met where criminal act/s attack our fundamental need to politically organize (pp. 23–25). This unique criterion captures not only direct attacks on forms of political organization but also those instances where political organizations operate contrary to their primary function as a protector or promoter of the interests of its members. Fisher explores a number of acts against the severity and associative thresholds, including crimes against humanity, genocide, war crimes and crimes of aggression—all of which are shown to satisfy these two requirements and thereby justify condemnation and prosecution (Chapter 2). Of note is how Fisher also explores the crime of aggression and terrorism under ICL against these two criteria, finding that such acts can be seen to threaten the most basic security human rights and the natural inclination of humans to politically organize.

After these largely definitional explorations, in later chapters Fisher turns to more vexing questions including individual and collective responsibility and punishment, retributive justice, and the question of the moral relativism of ICL, among other things. The key thread throughout these chapters is Fisher’s justification of international criminal prosecution and punishment through what she calls a retributive-expressive theory, a hybrid of retributive justice that justifies itself on punishment, equity and fairness, and expressive theory that justifies punishment on its ability to communicate moral condemnation, to promote moral education and to strengthen public awareness, respect and understanding of the rule of law in international society.

Yet there are a number of assumptions that limit the volume's ability to account for, or promote, change in ICL. Fisher refers to the international community as holding a set of liberal values as a loosely cooperative interactive site of global actors (pp. 5–6), an assumption that feeds into the importance attached to expressivism as reflecting the process of normative internationalization in ICL. At a certain point, however, the justification of the law through expressivism becomes circular. The symbolic significance of the law is upheld as the guiding ethical component of punishment for it teaches the wrongdoer and the public what is considered morally reprehensible by international society. Yet what the law upholds are the pre-existing, dominant norms of international society, i.e. specific and limited conceptions of human rights and humanitarian law, that are subsequently taken to justify specific categories of international crime. ICL then is not the reflection of normative behavior in an ideal sense, but the embodiment of dominant interests and power. The charge of victors' justice, or Western imperialism, is soon to follow.

Fisher does couple expressivism with a refinement of retributive justice to reach her hybrid model that can add elements of fairness and equity to justify prosecution and punishment of the law. Yet the question of normative progress in ICL—how we can expand the content and inclusivity of the law for all in international society—remains to be explicated. Given that, as Fisher claims, changing future behavior is about “changing norms” rather than incentives (p. 59), we may need an alternative foundation that better reflects the diversity in international society rather than its dominant interests. Of course, such a question is beyond the express intention of Fisher's volume. What is of importance is that her work sets up a clear framework—and one that remains unique in this field—for such difficult normative questions to be posed and grappled with by students and researchers in the future.

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Lovesick Japan: Sex, Marriage, Romance, Law. By Mark D. West.
Ithaca and London: Cornell University Press, 2011. 259 pp.
\$29.95 cloth.

Reviewed by Chika Shinohara, Momoyama Gakuin University

Expressions of love matter greatly in our lives. But how do love and emotions shape the processes of trials and legal decisions by