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Julie Fraser, Brianne McGonnigle Leyh (eds.), *Intersections of Law and Culture at the International Criminal Court*, Edward Elgar Publishing, Cheltenham: 2020, pp. 456

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If we wanted home truths, we should have stayed at home.
Clifford Geertz

This famous quote from one of the most important contemporary anthropologists gives us a good chance to welcome research endeavours which constitute an invitation to understand what the truths are "outside" our homes – including our own home's legal landscapes. The volume edited by Julie Fraser and Brianne McGonnigle Leyh, both from the Netherlands Institute of Human Rights (Utrecht University), responds to this call and constitutes a long-awaited invitation to visit the intersection of law and culture – in the specific arena of the International Criminal Court (ICC or the Court). Being an international truth and justice organ, "with 123 States Parties, staff representing some 100 nationalities and situations being addressed in more than a dozen localities" (p. 8), it unavoidably engages in seeking diverse, culturally grounded "truths" and making decisions on how to deal with this diversity. The volume examines the basis on which the Court accepts, misunderstands, or ignores culturally-specific arguments in its daily work. It brings the leitmotiv and central theme of cultural anthropology – "culture" – into the confines of a legal analysis, and by doing so it lays down the theoretical, methodological, and practical foundations for dialogue between these disciplines. The dialogue between law and anthropology, planned here by the editors themselves (p. 4), is however only the starting point: it turns into a *polilogue* of many more disciplines: political science, criminology, psychology, sociology, history, and linguistics. They all enter into a sophisticated battle of arguments.

The book is composed of 20 chapters divided into four sections: 1) Substantive Crimes and Culture, 2) Proceedings and Culture, 3) Defences, Sentences, Victims and Culture, 4) The ICC's Global Reach and Legitimacy. Each part contains 4 or 5 chapters,

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framed by a thought-provoking introduction and afterword to the whole volume. The volume has been designed by relatively young scholars (PhD in 2011 by Brianne McGonnigle Leyh and in 2018 by Julie Fraser, both dissertations receiving awards and distinctions), who at the same time are professionally engaged and experienced in legal practice in the ICC and in other organizations. They have both been editors of the Netherlands Quarterly of Human Rights, presenting an understanding on the limitations of law extracted from other disciplines. McGonnigle Leyh has been promoting the idea of interdisciplinarity in the series of podcasts titled *Travelling Concepts on Air*. Fraser assisted the UN Committee on the Elimination of Discrimination Against Women with their 65th session in Geneva in 2016, and undertook field research in Java, Indonesia in 2017. They have worked on several research projects together earlier. Thus it is not surprising that they managed to invite or attract (as the open call for papers to this volume was also published) an impressive group of scholars and practitioners, such as Mark Goodale, Justice Teresa Doherty, and Alison Dundes Renteln, among others.

The 25 contributors include junior and senior practitioners and scholars, engaged in their daily work in proceedings pursued in the ICC, other international criminal tribunals, or international special courts (Peta-Louise Bagott, Joshua Isaac Bishay, Michelle Coleman, Cale, Davis, Teresa Doherty, Julie Fraser, Fiona McKay, Andrew Merrylees, Nikhil Narayan, Phoebe Oyugi, Ingrid Roestenburg-Morgan). They include interdisciplinary scholars who pursue their research between the paths of anthropology, general international law, human rights law and heritage studies (Kelly Breemen, Vicky Breemen, Mark Goodale, Barbora Hola, Alison Dundes Renteln, Leigh Swigart), and researchers focused on law (Martyna Fałkowska-Clarys, Noelle Higgins, Lily Martinet, Gregor Maucec, Brianne McGonngle Ley, Adina Loredana-Nistor, Owiso Owiso, Suzanne Schot). Their diverse scholarly backgrounds and experiences bring to the volume the spirit of multidisciplinary additional depth, providing intriguing and novel guidance on how to analyse the intersections of law and culture. An additional interesting advantage arises when one analyses these practical and scholarly paths with the aim of identifying centres of knowledge, expertise, and experience for this particular topic. The group of contributors mainly has either studied in, or pursued an important part of their career in the United Kingdom, Australia, United States of America, The Netherlands, Belgium, Switzerland, France and Luxembourg (English and French speaking countries). In the group of 25 contributors only three (literally only three!) have pursued their studies or career outside these educational power centres. This tells a lot about the long shadow of colonial power structures (and in the case of the USA – the hegemonic position it occupied after the World War II) that led to the creation of powerful academic centres attracting until today ambitious and devoted students. It also tells us a lot about the location of the most powerful centres of international (criminal) law infrastructure.

So what message(s) can one decode while reading twenty chapters?

At least four of them are intentionally made visible, and each might be linked to one of the four parts of the book (but at the same time not be limited to it). The first one is: lawyers need to understand the cultural and social norms in which legal norms

operate and with which they are interlinked, and their impact on both the presentation of evidence as well as on attitudes of what constitutes a crime. These "cultural lenses" are taken for granted when a legal regime operates inside a country with a more or less homogenous cultural background (Foreword by Justice Teresa Doherty). However, the very same "cultural lenses" cannot be used when the cultural context is dramatically different, as is the case when international courts are being established and when nationally-diverse judges come together to decide about international crimes. They have to find a common ground in their diverse educational, cultural and legal backgrounds and at the same time operate in compliance with the Courts Rules of Procedure and Evidence and with international jurisprudence. The same conflation of diverse backgrounds in international courts also appears on the side of prosecutors, counsels, advocates, witnesses, victims, and oppressors. The language interpretation provided during these proceedings is another sphere where cultural sensitivity as well as cultural awareness are needed. The impact of cross-cultural awareness is analysed throughout the entire book in the context of a vast number of actual cases. Thus readers wanting to understand this impact and its meaning can find plenty of useful examples and case studies. The book also makes for wonderful reading for university courses. For example, the book's readers may find examples of beliefs and reliance on sorcery, matters of witchcraft, or spiritual engagement which, according to Western concept of causal effect would be dismissed or disregarded. However, as described in chapter 8 (*Spellbound at the ICC: the intersection of spirituality and international criminal law*), in the case of the trial of Dominic Ongwen, a member of Lord Resistance Army in Northern Uganda who was kidnapped as a child, the inaccuracy of the Western perspective and way of rationalizing the arguments used was perceived to be crucial. One of the victim's representatives, a psychologist and professor at Columbia University, openly admitted: "[For] Western psychologists like me, it's hard for us to get our head around this because our cultural beliefs and identity are different" (p. 159).

The second important message would be: legal analysis and proceedings must adapt to more frequent use of and cooperation with ethnographic methodology (e.g. fieldwork, participant observation, interviews) if it is to remain credible, grounded, and bring about justice. The utility of ethnographic research in creating cultural awareness is visible throughout the entire book. Chapter 2 (*Now you see it, now you don't: culture at the ICC*) offers an interesting example how the ethnographic approach helps to grasp linguistic diversity in the Court: as reported in late 2018 the Court was working with 32 languages over nine situations in Africa, which included three distinct dialects of Arabic and two dialects of Swahili (p. 15). Knowledge and understanding gained "in the field" are undoubtedly a highly demanded resource when bringing abstract "justice" to the ground, or when introducing changes in the proceedings to be able to take such knowledge into account. The understanding of "the field" might be supported by discourse analysis (chapter 11), which helped to analyse how statements by public officials foreground certain "cultural" values while marginalising others, and to recognise the importance of language in the construction of reality (p. 212).

The third important message is: justice is a gender and culturally relative concept. Thus, in order for justice at the ICC to have any significant relevance for the societies in which the crimes ocurred, a transformative approach that adopts elements of dispute resolution from the communities concerned is necessary (see chapters 6, 11, 13 and 14). This would result in making the ICC's practices more relevant and meaningful to those societies. The authors propose, for example, that plea negotiation – which has already been applied in the *Al Mahdi* case – be used more frequently, as it enables perpetrators "to admit to their guilt, disclose the nature and circumstances of their wrongdoing, acknowledge the harm caused to victims, offer apologies and express remorse, serve appropriate and reasonable punishment, provide reparation and participate in the processes of reintegration unique to their societies" (p. 267). This appeal brings the general content of the first message to the ground, by proposing a judicial framework for practically involving cross-cultural awareness in the Court's practice and, as a result, diminish the level of distrust and opposition towards ICC proceedings and sentences (as reported in, e.g., the case of Dominic Ongwen). Taking into account that the Court has wide discretion when determining a sentence (except for the general prohibition of capital punishment), it allows it to create "its own legal culture or to incorporate legal cultures of other jurisdictions" (p. 268). This appeal should however be read strictly as an appeal – the thorough analysis the book provides of the potentiality to address cultural considerations by the Court in many cases (Katanga, Lubanga, Ntaganda, Bemba cases) demonstrates that in numerous instances the Court did not address them in a satisfactory way (pp. 286-7).

The fourth important message, challenging all of the above three, is that there is a fundamental tension between the claims of legal universality and cultural particularity – and there are no easy solutions ready at hand (*see* Afterword, p. 404). This is one of the greatest challenges for the whole international criminal justice system. There is no clarity about the extent to which the ICC judges should take account of cultural factors when ruling on criminal cases (chapter 10: *The power of culture and judicial decision-making at the ICC*, p. 195, *see* also chapter 9: *'Questioned by the Court': The role of judges and sociocultural aspects of testimonial evidence in Katanga*). "Almost in every courtroom (…) there are moments of cultural misconception and miscommunication" (p. 198). It seems that only an awareness by judges of the impossibility to avoid them opens the door for the very much needed cultural expertise – and this has already proved to be an efficient way to bridge the gaps in cultural comprehension. It does not however constitute procedurally obvious and always reliable solutions, as is explained by Gregor Maucec. Another solution is analysed by Suzanne Schot, who underlines awareness and sensitivity on the side of the Court in the case of Katanga. The Court identified the need to understand the concept of fetishes and fetish-priests, the concept of ethnicity and how it influenced the conflict, as well as the role of semantics and spelling (pp. 178-183).

On the basis of what has been said above, the only thing that I found lacking in the book is a (re)construction at some point of what the contributors mean in their usage of various concepts that appear almost at every page of the volume, such as: "cultural

sensitivity," "(cross)cultural awareness," "cultural competence," "cultural understanding," "cultural lenses." These expressions are used very often by contributors discussing the preparation (or incapacity) of judges, prosecutors, advocates and interpreters to understand the cultural context of the case and the culturally-grounded dynamic of proceedings in the courtroom (which is especially important for the victims, who may be traumatised again by the lack of cultural respect within the proceedings, as is aptly described in chapter 15: *A delicate mosaic: the ICC, culture and victims*). These concepts have their own history and a vast literature, which could have been used as a reference and possibly be reflected in a separate chapter or in the form of conclusions with some recommendations.

The greatest strength of the book is the powerful, well-proven message it sends to all lawyers: Never ignore culture! This message is clear and convincing, as this book offers stimulating reflections on the responses to cultural entanglements observed in the Court's legal foundations, operations, and deliberations at all levels, i.e.: micro, where individuals come into contact with the ICC; meso, which applies to the internal, organisational culture of the ICC; and macro, referring to the "global reach and legitimacy of the ICC as it positions itself as an authoritative cultural agent in a world of difference" (*Introduction*, p. 8). The book is thus a must-read for international criminal lawyers, international relations scholars, political scientists, heritage scholars, anthropologists and sociologists of law, as well as practitioners, students, and activists engaged in the international criminal law regime. In addition it creates an appetite for more research in this area, which would offer insights into other international power centres where law and culture go hand in hand and play a crucial role. This volume is – as claimed by its editors – a call to action for researchers and practitioners, and especially for "those working at the Court – from interns to the judges, to the defence victims and prosecution, and others across the board – [that] need to engage in self-reflection and humility in relation to the knowledge they have, what knowledge they need to learn and how they can acquire such knowledge."[1]

Coming back to the quote from the beginning of this review: the home of the ICC is in the Hague (The Netherlands), but this does not tell us any particular truth about it. What is important here is not the ICC's geographical location but the "location of minds" of its international staff, trying to deliver justice to the victims of crimes which are of the greatest concern to humanity: genocide, crimes against humanity, war crimes, and the crime of aggression. We cannot stay at home if we want to understand "outside home" truths – and this means being aware of the victims' trauma, emotions, and the need to find internal as well as societal peace. We have to leave our "mental homes," leave the cultural and legal environments so familiar to us and learn outside them – to come back, reflect, and view ourselves in the mirror as "the Other." This book offers a guide to this difficult path, explaining the main pitfalls and traps along this

[1] Interview with Brianne McGonagle Leyh, Cross Cultural Human Rights Review, undated, available at: https://www.cchrreview.org/featured-brianne-mcgonigle-leyh (accessed 30 May 2021).

challenging journey. Because "culture denotes a set of ideas far more complex than only shared understanding and practices, and laws are more than a means to enforce cultural norms in that they also 'revise and reshape' culture, and are themselves part of culture" (Introduction, p. 1). We could not have imagined a better guidebook for this. The hope is that it will not remain a "guidebook" only, but will also be accepted as "a reflexive manual" for the ICC's judges and staff.[2]

[2] The eBook version is priced from £22/$31 from Google Play, ebooks.com and other eBook vendors, while in print the book can be ordered from the Edward Elgar Publishing website.