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Abstract

A review of:

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Keywords

Human rights, International law, Universal human rights, Justice

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Atrocity, Punishment, and International Law by Mark A. Drumbl. New York, Cambridge University Press, 2007. 316 pp.

Mark A. Drumbl's Atrocity, Punishment and International Law is not only a novel and insightful analysis of the effectiveness of criminal trials and punishments of mass violence, but also an interesting normative exploration of how this system can be improved. This text is unique in that it is one of the few that attempts to assess the penological system for core crimes (i.e., genocide, crimes against humanity, and war crimes). There are numerous accounts of the institutional formation process, the definitional process surrounding these crimes, and even the effect prosecution has on political transition. However, there is limited analysis on the question of whether the punishment of these core crimes is actually accomplishing its intended goal. In an extremely detailed account of the current international and national penological system, Drumbl exposes the failures of the current system in punishing these crimes. According to Drumbl, "The preference for an incarceration following what liberal international lawyers deem to be an acceptable criminal trial on the whole falls short of its penological objectives, in particular retribution and deterrence" (180). He is more accepting of the notion that these trials and resulting sentences accomplish some sense of expressivism, albeit in a limited fashion, rather than retribution or deterrence. The expressivist, according to Drumbl, "punishes to strengthen the faith in rule of law among the general public, as opposed to punishing simply because the perpetrator deserves it or because the potential perpetrators will be deterred by it" (173).

However, Drumbl is not content with simply exposing the flaws in the current system. In one of the most interesting and provocative sections of the book (chapter 7), Drumbl moves beyond a critique of the system in an attempt to propose a means by which inherent flaws may be rectified. He proposes a model of reform that entails an intertwining of both a pluralistic nature and cosmopolitan theory. His model, appropriately termed "cosmopolitan pluralism," endeavors to institute a bottom-up approach to justice that invokes a broader set of punishments for each specific atrocity. The bottom-up approach accepts "qualified deference" to national or local institutions in an attempt to create a more culturally acceptable process for those affected by the crimes. This notion of qualified deference does not entail "a blind retreat to national or local institutions," but it does require that international criminal legal procedures not be imposed on national or local attempts to ascertain justice. This type of diversification of punishment, according to Drumbl, promotes a more inclusive set of sanctions that may be invoked in the promotion of justice. These sanctions might include: imprisonment, collective reparations, community service, constitutional reforms, and others.

Drumbl's foundational arguments concerning the international atrocities' penological system are clear, cogent and most importantly qualified, and the proposals that encompass the final chapters of this text are provocative; yet, some shortcomings still exist. The most important of these is Drumbl's attempt to define the core crimes (again, genocide, crimes against humanity, and war crimes) as universal (*hostis humanis generis*), without the acknowledgement that punishment of these atrocities has to have some sense of universality also. The only universality in punishment that Drumbl appears to acknowledge is the universal notion that victims have a right to demand accountability for crimes committed. But the question regarding whether a pluralist model of justice, without a socially accepted baseline of punishment, is even a plausible solution, remains. In other words, who in each society will determine the form of justice? What if that form of

justice is not acceptable to all affected by the crimes? And is it not possible that even a national or domestic form of justice will be an imposition of justice that is as “imperialistic,” or more appropriately, compulsory on some as with the current international system? These are all questions that must be addressed prior to accepting Drumbl’s cosmopolitan pluralist model.

However, even these nagging questions do not detract from the academic excellence of this text. In some ways, readers should think of Drumbl’s text as the foundation for change, in that its means for justice are not intended as a political blueprint, but as a theoretical exploration of a new approach to a most horrific problem. One would hope that future scholars of mass atrocity would build upon this solid foundation in an attempt to initiate a system of justice that reflects Drumbl’s cosmopolitan pluralism. In the end, it remains undeniable that Mark Drumbl’s conclusions concerning the world’s current penological system are accurate. The system fails to achieve its defined goals, and therefore requires change. And as a result, this book remains a must read for all those striving to understand the current atrocities regime and its system of justice.

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