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**Kurt Mills on Governance, Order, and the International Criminal Court: Between Realpolitik and a Cosmopolitan Court. Edited by Steven C. Roach. Oxford: Oxford University Press, 2009. 289pp.**

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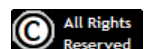
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**Abstract**

A review of:

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**Keywords**

International Criminal Court (ICC), Human rights, Security Council, Rationalism, Constructivism

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Since the Rome Statute of the International Criminal Court (ICC) was approved in 1998, and the ICC officially came into being in 2002, a vast literature has appeared on the court. Much of this literature, although certainly not all of it, has portrayed the ICC as the next step in the international human rights regime, an indicator of a vigorous global society that takes human rights seriously and which will deal with the perpetrators of the most egregious of human rights violations in a robust manner. It is frequently seen as an unmitigated good thing.

The authors in this edited volume take a more critical approach. They are sympathetic to the goals of the ICC, but they are also more realistic regarding its potential and import. They aim to explain the creation of the ICC and to evaluate its potential impact on the international system. It is quite a hefty book intellectually, given the theoretical approaches it employs to investigate the nexus of international law and politics the ICC represents—including various strains of realism and neo-liberal rationalism, constructivism, Habermasian communicative action theory, legalization theory, and English School cosmopolitanism. I will highlight just a few of the many approaches used.

Caroline Fehl analyzes the institutional design of the ICC, using rationalist and constructivist perspectives to understand choices made during the negotiations—the independent prosecutor, the “trigger mechanisms” for investigation, and the role of the Security Council. Rationalist design theories focus on the degree of centralization of decision-making authority, control over the institution by members (and nonmembers), and flexibility for members (such as the temporary opt-out clauses new members can invoke). Discussion revolves around issues of sovereignty, power, and uncertainty, and helps to explain why certain decisions were made during the negotiations. However, Fehl argues that we need a constructivist explanation, focusing on the role of norms, to explain why states decided on an independent prosecutor even though this would ensure that the United States would not join the Court. She discusses the significant role of Non-Governmental Organizations (NGOs) lobbying in the latter stages of the negotiations and the so-called “new diplomacy,” in which states decide it is better to have a good, workable treaty without powerful states like the United States than to dramatically water down a treaty just to get such states onboard. Her chapter helps to explain these crucial decisions, but also sheds important theoretical light on the interaction between state interests and international norms.

Charles Smith and Heather Smith approach the opposition of the United States to the ICC from a unique perspective. While going over traditional realist explanations of US hostility, they point to the role of electoral politics in the Senate in generating opposition. This places the analysis firmly in the domestic realm. The authors argue that as a result of a lack of public discourse over the jurisdiction of the ICC, many people would see the ICC as a threat to US service personnel. Senators voting for cooperation with the ICC would thus encounter a hostile reaction from many of their constituents which could endanger their re-election.

Jason Ralph draws on English School theories about international society and constructivism to understand the creation of the ICC. He sees the ICC as a complement to international society rather than being *of* international society or attempting to overthrow it. As a result, he argues that the English School framework needs reworking since it cannot provide adequate theoretical purchase to understand the ICC. Michael Struett addresses the issue of legitimacy, maintaining that the permanence of the ICC, in contrast to the ad hoc nature of previous tribunals, will contribute to its legitimacy. The Court will be able to use its permanent nature as a background to build up legitimacy for the Court through its actions and the use of reasoned argument to counter objections regarding partiality in prosecution, and to resist the imposition of power politics.

Patrick Hayden, Antonio Franchet, Amy Eckert, and Steven Roach all interrogate the ICC from the perspective of cosmopolitanism. They raise questions about the role of political evil, control, order, governance, peace, and justice in the world today. They question whether the ICC heralds a new utopian cosmopolitan order, or whether it is a recognition of the role of power and politics in any new international order, including one where the position of the individual in international law and politics is significantly elevated. The authors provide hopeful yet skeptical answers to this question.

Throughout this book, we see glimpses of the actual situations the ICC was intended to address—Darfur, Uganda, and the Democratic Republic of Congo. Various theoretical approaches are deployed to understand how the ICC might be used to address these situations. However, those hoping for in-depth discussions of the cases will be disappointed. Rather, the strength of this book is the vast array of approaches used to understand the ICC. The various chapters go over much of the same ground such as independence of the Prosecutor and the principle of complementarity but in interesting and varied ways. They help us to understand better not only the dynamics of the creation and functioning of the ICC, but also the possible implications of the Court for the international community, and how the relationships between states and non-state actors and traditional state interests, power, and norms about human rights may develop in the future. This highly theoretical collection of essays will be of greatest interest to academics and graduate students – and some advanced undergraduates – who are looking to conceptualize the place of the ICC in the international political system.

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