
Examining Peace and Justice at the International Criminal Court

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REVIEW OF RICHARD GASKINS

*The Congo Trials in the
International Criminal Court*

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The history of international criminal law is long, complex, and politically charged. Some say it began at the founding of the International Criminal Tribunal for the former Yugoslavia in 1993. Others claim it began at the International Military Tribunal at Nuremberg and the subsequent International Military Tribunal for the Far East in the wake of World War II. Still other scholars trace lineage back further to discrete trials of military and civilian leaders throughout history.

All scholars of the discipline certainly agree, however, that the founding of the International Criminal Court (hereinafter “the ICC” or “the Court”) in Rome heralded a new era of international criminal justice.

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For the first time in history, as of July 17, 1998, there would be a permanent institution dedicated solely to the investigation and prosecution of those crimes. Spirits were high that day in Rome, and expectations continued to grow all the way through the ribbon cutting at the ICC's first headquarters in the sleepy Hague suburb of Voorburg.

The tenor of story of the Court over the last twenty years will depend on the teller. ICC cheerleaders will say that it is a story of great expectations tempered by realism and hobbled by logistical constraints. Conversely, the Court's opposition will claim that it is a story of a neo-colonialist, neo-imperialist project bravely resisted by its historically oppressed targets in the global south.

Irrespective of one's position on the Court's efficacy, Richard Gaskins's new book *The Congo Trials in the International Criminal Court* is a refreshing addition to the conversation. Meticulously researched and artfully crafted, this book will surely mark a watershed in the way the Court is understood and evaluated.

Gaskins structures his book telescopically—he begins with the big picture and with every chapter, he zooms in to finer details. The book begins with a stirring chapter about the idealism and sense of purpose that animated the ICC's founding. He then takes the reader into Ituri, the war-plagued Eastern region of the Democratic Republic of Congo (DRC), which has laid claim to much of the ICC's attention. After explaining the conflict in the DRC—the factions, the stakes, the collapse of civil society, and the reasons why the most egregious violators of human norms enjoy impunity there—Gaskins takes us back to The Hague and walks the reader through the details of the Court's operational structure.

Gaskins' dual academic training in law and philosophy especially shine in Chapter Six, "ICC Structures, Dynamics, Tensions." It will doubtless be assigned in countless classes on international courts and organizations in policy schools, undergraduate political science departments, and law schools across the globe.

The chapter opens by framing the limitations placed upon the Court by the very virtue of it being a court, rather than a different sort of organization with a broader mandate. "The ICC courtroom is a legal space, governed by the dynamics of law as a human process," Gaskins explains. He goes on to depict the court as not merely a mechanical legalistic institution, but also as an international organization dedicated to aspirational ideals, such as peace, justice, and post-conflict reconciliation. Gaskins writes further, "Within these confines, the first ICC trials released strong tensions that had been held in check during the high optimism of creation.

The Court's founding creed was reconfigured within legal boundaries. Moral values in the Preamble were compressed into a legal code, organized within the rule of law. Humanitarian principles were embedded in legal definitions of crimes, with special mechanisms developed to channel moral responsibility into particular modes of individual liability."

To a student of the law, the process Gaskins describes is perfectly natural. Lawyers build their entire careers trying to adapt rhetorical flourishes to suit their client's objectives within the constraints of the fact pattern of a specific case or controversy. In the American context, for example, the religion clauses of the first amendment of the United States Constitution states, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Lawyers practicing in the United States routinely attempt to apply this very highfalutin language to banal everyday disputes.

Hague-based lawyers face the same challenge making cases at the ICC. What specific elements of a crime does a prosecutor need to prove, and according to which standard, to secure a conviction for a concept as opaque as a "crime against humanity?" That question is still litigated in ICC courtrooms every day.

Nevertheless, the framing used here is valuable for two groups of prospective readers: one for lawyers and one for lay observers. First, lawyers are often so entangled in the mundanity of daily process (filing motions, making deadlines, taking depositions, etc.) that they forget what it is all for. It is worthwhile for an international criminal lawyer to remember that the precarious pile of rules, case law, and academic commentary on their desk is the progeny of boundless optimism in humanity's ability to heal itself.

Now for the layperson: The non-lawyer must understand that the International Criminal Court is first, foremost, and exclusively a court. While the lawyers within the institution often lose sight of the better angels of the Court's nature, exactly the opposite is true for the commentators and observers outside the court. The layperson will see the court precisely as a beacon of hope, an instrument of change, and an organ of peacebuilding, coexistence, and radical reconciliation. Conversely, as mentioned above, a different layperson may see the court as a projection of imperialist power, with the Chief Prosecutor operating as the colonial governor in exile of a "Situation" country (which, in the case of this book, is often the DRC). Whether the Court stands for good or evil in a layperson's mind, it will invariably stand for more than just a court.

Gaskins makes this complex point in plain language: Yes, the Court has a press office, responsible for sharing information about trials with

the general public, especially situation countries. And yes, the ICC has a department responsible for paying reparations to victims for post-conflict rebuilding and reconciliation. But at the end of the day, though the ICC may stand for more than any other court in its founding mission, one cannot fully understand the ICC's scope and limitations without a deep understanding of the legal mechanisms at the heart of it all.

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After demonstrating the crucial importance of understanding the daily functions of the legal mechanism, the court itself, the book uses three case studies (one chapter each) to support the thesis. The three case studies selected are three of the first cases that completed their trials at the ICC. These three cases include the trial of Thomas Lubanga of the DRC, the trial of Germain Katanga and Mathieu Ngudjolo of the DRC, and the multiple trials of Jean-Pierre Bemba of the Central African Republic. Each case study is unique. In-depth case

studies of these trials have never been done before to this extent, and with this level of scholarly attention paid simultaneously to the history of the respective conflict, the detailed knowledge of the Court's legal processes, and the analysis of the general public's awareness of the proceedings. These case studies read like the finest non-fiction bestsellers: they are fast paced and entertaining, without sacrificing one iota of accuracy.

In the end, Gaskins, ever the meticulous humble scholar, does not pass judgment on the Court's first two decades. He does not proclaim "failure" or "success." Instead, he writes "There are many ways to read the overall results: the scorecard of convictions, the record on sexual and gender crimes, the impact on victims, and the long-term contributions to restorative justice in the conflict zones, among other perspectives." He writes also of the length of time and tremendous financial expense to maintaining the institution.

Gaskins concludes the book by reminding us that his goals were to peel back the curtain of the rhetoric, and truly evaluate the work the ICC has produced. He writes, "Although it is tempting to stand in rapt contemplation of the Rome ideals, the focus of this book has been the testing process of active trials."

So much of the lay discussion around the ICC's capabilities (including in respected publications) is about concerned with "inchoate trials, aborted trials, or even the imagined trials of idealized suspects, anticipating confrontations with errant states." Indeed, a cursory search of the ICC's mentions in news media and foreign affairs publications reveals a great deal of coverage of prospective investigations in Israel, Afghanistan, Ukraine, Venezuela, and China—countries that have never had a single defendant appear before the ICC, and likely will not in the short or medium term future. The cases that have been completed by the Court (whether a conviction or an acquittal), from which true lessons can be learned, earn far fewer column inches. That makes this book's deep dive study of those very cases all the more valuable.

With this book, Gaskins has not only made a valuable contribution to the scholarly literature, but also composed a narrative to be perused by the casually interested reader. His analysis of the first trials at the ICC, and the impact they had both inside and outside the court's workings, will be must-cites for generation of scholars in the field. And, unusually in the academic genre, Gaskins has also written this book for an audience outside the ivory tower. This book is eminently readable. The prose is elegant, precise, and inventive. It is simply a joy to flip the pages. *f*