International Justice

MICHAEL D. WIATROWSKI, JAMES J. VARDALIS, and AKIN KARATAY

The history of justice has evolved from the retributive models in the code of Hammurabi, the Bible, and Koran to modern ideals that there are international standards based on human rights and democratic values governing the distribution and administration of criminal justice. Yet during periods of conflict and tyranny, these systems may fail to hold those accountable for crimes against humanity. The idea of "international justice" is more than the description and comparison of the legal codes and procedures of nations. It is now about the evolution of international standards by which the quality of criminal justice is judged and the emergence of new conventions and institutions to hold individuals, groups, and countries responsible for actions that are determined to be crimes against humanity, genocide, war crimes, and fundamental violations of human rights.

In the aftermath of World War II, the International Military Tribunal in Nuremberg and the International Military Tribunal for the Far East provided the precedent for courts to adjudicate crimes that were committed during the war. These courts and tribunals involving crimes against humanity are founded on the idea that there is "international justice" that transcends national boundaries.

International courts that deal with criminal issues include the International Criminal Court (ICC), the International Criminal Tribunal for the Former Yugoslavia (ICTFY), and the International Criminal Tribunal for Rwanda. There are also hybrid courts that combine international and national jurisdiction in states that lack the capacity to investigate and try cases that rise to the level of war crimes, genocide, and crimes against humanity. Hybrid courts exist in East Timor, Kosovo, Sierra Leone, and Cambodia. The ICC was created by the Rome Statute in 2002. The tribunals and hybrid courts were created under various United Nations resolutions with specific reference to the countries where the crimes occurred.

These courts hold individuals responsible for their actions and present an international message that these criminals cannot behave with impunity. They cannot hide behind national sovereignty where the perpetrators of such crimes claim they were "just following orders" or "preserving stability." This extends to governments, military, police, intelligence services, and individuals, where these persons exercise authority to commit their horrendous actions. The purpose of individual accountability is to shield communities and nations from being labeled as collectively responsible for the commission of these crimes and laying the foundation for the reconciliation and reconstruction of countries transitioning from conflict and totalitarianism to democracy.

The history of international tribunals is relatively short. At the end of World War II, the victorious nations conducted war crime trials where those who were accused of war crimes and crimes against humanity were held accountable. Hence, a small number of military personnel and high-ranking civilians from Japan and Germany were executed. The period that followed saw the cold war and various vicious proxy wars between the free world and the communist states in Southeast Asia, Africa, Central America, and South America. The collapse of the Soviet Union resulted in the creation of international consensus that the crimes in the Former Republic of Yugoslavia and the failure to intervene in Rwanda constituted war crimes and crimes against humanity. However, an appropriate international jurisdiction and court to try these individuals was lacking. This was rectified in 2002 with the creation of the ICC, located in The Hague in the Netherlands, by the Rome Statute. The proceedings of the ICC may take place throughout the world; the ICC exercises jurisdiction when national courts are unable or unwilling to prosecute crimes within the boundaries of a state where the crimes were committed. There are 122 states that have ratified the statute.

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Forty-one members of the United Nations have neither signed nor ratified the statute. The United States, Sudan, and Israel will not become parties to the treaty.

Most states emerging from conflict lack the judicial resources to conduct investigations and trials consistent with international standards of justice. This has resulted in the creation of various international courts to deal with crimes in Cambodia, the former Yugoslavia, Rwanda, Sierra Leone, and Timor Leste. The trials are typically quite expensive and lengthy, as they are conducted consistent with international standards. A small number of convictions have been obtained, most notably in the ICTFY. Others, such as the trial in Cambodia, have become mired in delays.

Research on international justice consists of two elements. First, it must be noted that the number of individuals brought before the tribunals is very small, and the cost of prosecuting individuals consistent with international standards is staggeringly high, running into the tens of millions of dollars for each prosecution. Research conducted in this area is dominantly made up of case studies from which it is difficult to generalize about the administration of international justice. Second, the ability to view the world as a whole and assess how well individual states function with respect to the idea of "international justice" is significant but can only be assessed indirectly.

The goal of indices such as the Failed State Index (http://ffp.statesindex.org/) and the UN Human Development Index (http://hdr.undp.org/en) is to measure countries on various continuums of measures of development. In these indices one can point to states in Central and South America, Africa, and the Near, Mid, and Far East where crimes against humanity have been committed, providing context for understanding the crimes. In order to place international justice within criminological theory, the question of where and why crimes against humanity are and are not being committed must be asked.

The twentieth century saw the development and implementation of international standards of justice based on evolving human rights and practices of justice. The United Nations and other international bodies developed conventions about the administration of justice. Sovereign states then became signatories to these conventions. However, citizens within these states lack the ability to appeal to a higher authority to hold their states accountable to these standards.

The term "rule of law" inherently provides no compass for justice unless it is made consistent with democratic values and human rights. There is a schism in research and program development in international justice. This is exemplified by the difference between the minimalist and maximalist views of human rights standards. Call (2007) notes that the minimalist version of human rights has little impact on Security Sector Reform and by extension international justice because it is inconsistent with democratic values. Minimalist views are sheltered by sovereignty and thus create havens for horrific abuses when nations with like-minded interests in oppression band together and present a unified front. This is a significant problem confronting the United Nations, the UN Security Council, and international forums on human rights that have countries like Cuba, Syria, and Zimbabwe as members when those states, among others, have miserable human rights records. Others include measures of inequality and corruption and specific measures similar to the UN Index on Gender Inequality (http://hdr.undp.org/en/statistics/gii), which describes how women are treated throughout the world.

The idea of "international" is more than just the list of nations on the earth. It must also comprise the connections between nations through travel, commerce, the internet, and international relations. These connections affect nations in international systems and ultimately determine a nation's crime problem and how its crime problems affect other nation states.

The term "justice" is a philosophical construct that must be updated to reflect not only systems of justice but their underlying premises. *A Theory of Justice* by John Rawls (1999) and Michael Sandel's *Justice* (2010) exemplify the interest in justice and provide some insights into underlying dimensions of "justice." It is clear by their definitions that many states lack the capacity to meet the needs of their citizens and exist primarily to benefit a small faction while extracting wealth from the country. Justice is about the integrity of the justice systems that take away individual freedom.

The book *Why Nations Fail* by Daron Acemoglu and James Robinson (2012) similarly provides a wealth of case studies where failed states descend

into oblivion and perpetrate massive crimes against humanity. If "international justice" is to be more than an abstract concept, it must be empirically evaluated. In the past 10 years the documentation about state failure and the descent into genocide and totalitarianism has been complemented by states emerging from autocracy and terror and attempting to reverse the direction.

The era after the fall of the Berlin Wall has been a benchmark as some states emerging from tyranny have sought to transform and free themselves according to elements consistent with democratic theory. This period has seen the first trials and convictions at the ICC at The Hague. The Failed States Index and *Why Nations Fail* provide empirical data about successful states that provide justice and failed states that are relevant to the assessment of "international justice." Analysis of these variables shows a convergence of the following elements:

- The rule of law: described as universal standards encompassing the administration of justice in a manner that encompasses due process, presumptions of innocence, adequate legal representation, and a judiciary that is independent of political influence. Critical to this is whether the laws are made consistent with democratic standards or whether they are the product of a repressive regime. Totalitarian regimes typically offer that the rule of law represents stability while repressing their citizens with little concern for their welfare.
- Factionalization: relates to measures of whether there is equality before the law and whether social, economic, political, or religious groups have special status before the law and in society that result in preferential treatment and impunity.
- Corruption: is against the laws of most countries and exists as a function of the ability of the dominant class to extract wealth from the country for private gain, to use the security system to protect its ascendant position, and to avoid accountability for violations of international legal standards. There are huge incentives for brutally corrupt regimes to continue their domination and terror. They have the power to export illicit wealth to secure Swiss bank accounts and offshore tax havens. It is noted that

> the elites of 139 low-middle-income countries have parked up to $20 trillion of unrecorded wealth offshore. As with the euro zone, that turns some of them from big debtors into creditors. "Developing countries as a whole don't face a debt problem, but a huge offshore tax-evasion and money-laundering problem." (Henry, 2012)

Police and judicial corruption has historically been a recurring problem in police systems (Crank, 2004). It is a prime source of injustice in society. The extent of police and judicial corruption mirrors the quality of justice in society.

The control of the security sector, the coercive organs of the state comprised of the police, military, and intelligence services, differentiates tyrannies from democracies. This is especially relevant in policing because of the ability of the police to arrest, interrogate, torture, and engage in extrajudicial executions. This lack of accountability is the basis for police impunity. The intelligence services in repressive states monitor, infiltrate, and designate groups thought to be threats to the regime in power. This includes the ability to monitor internet and cellular communications of dissident and opposition groups. Finally, the military has two potential masters. In repressive states, it can keep an illegitimate regime in power through the use of lethal force. The security sector receives funding, status, and special benefits as well as access to corruption. This corruption most frequently occurs in the acquisition of weapons and resources needed to maintain the functioning of the military (Transparency International, 2013). In democratic societies, the military subordinates itself to democratically elected civil authority and has accountability and transparency in its activities. This provides impunity for the security services that protect the regime. The security services both perpetrate and fail to protect the victims of genocide and human rights violations.

The current discussion of justice has a significant subtext about the distribution of the benefits of society and the "general welfare." In failed states the elites benefit and the welfare of the

poor is not considered. This is the basis for terror and insurgency. Sandel (2010) and Rawls (1999) discuss historical and ethical criteria in which the distribution of the benefits of society accrues to one racial, ethnic, or social group to the detriment of others. They use the idea of justice as "fairness" and discuss the rectification of injustice. The extent of economic inequality as measured by the Gini Income Inequality Index (World Bank, 2014) is one indicator of this injustice and the extraction of wealth for the dominant group. This is important because if there is no social mobility in a society and one's position in society is fixed, the society may lack legitimacy and the related perception that it is a just society.

The ability to visualize and analyze these elements provides some insights into how "international justice" operates throughout most of the world. The question is whether these elements of justice at the national level are random or whether when compared internationally there is systematic variation that affects the quality of justice both within a society and whether this can be extended internationally to connote some idea of international justice. Finally, there will be some general discussion of whether the justice is best achieved through a democratic form of government.

The goal of international justice is laudable. Placing international justice within the realm of criminal justice renders it subject to evaluation and assessment of the consequences of the commitment to international justice. Bringing criminals to justice in international forums accomplishes the goal of individual justice. Making individuals accountable for their actions is the essence of justice and is assessed in the number of prosecutions and convictions. The typical paradigm for evaluating this is in terms of deterrence theory. In the past, the time between criminal action for the perpetrators of war crimes and crimes against humanity ranged from years to never seeing justice served.

The rewards for tyrants and their brutality are immense. A highly structured ecology of corruption and factionalism protects the elites and their rewards. This creates the ability to extract and export wealth out of the country to protected domains in Europe and offshore banks. The amount of wealth exported each year in Africa from corruption and conflict areas is estimated to be one trillion dollars a year (Henry, 2012). This is facilitated by a network of legal and financial advisors who specialize in this form of transaction.

Since the end of the cold war, conflicts have increased within states in the form of civil wars where there is competition for power and wealth. They are largely in Africa, the Middle East, and Asia and are tribal and religious in origin. Stephen Hopgood (2013) has noted that a pernicious situation is arising in legitimizing religion as a source of conflict at the expense of human rights. The freedom to practice religion is being superseded by the states organized around religious principles to force that set of beliefs on minority populations who practice other faiths. The separation of church and state, a fundamental principle in democratic development, is seeing a retrograde in the insertion of religion as a source of "values and principles" into state theory, which legitimates the oppression of minority perspectives. In essence, this allows the extinguishing of individual human rights. Hopgood notes in a damning assessment the ICC and human rights are failing to protect those who are powerless.

Citizen security is a new concept that orients human rights to the perspective that individuals have a foundational right to be safe and secure within their persons and lives from unlawful and undemocratic deprivations of freedom and life within a state. Rachel Neild (n.d.) has been instrumental in articulating the idea of citizen security in relation to police and military systems in South and Central America that continue to use state power to protect the minorities who controlled the states at the expense of the masses. These parts of the world have some of the highest levels of inequality, and in this area elites and their impunity are protected as they extract and export wealth.

Conflict areas are failed states and by the standards of criminological research the generators of human rights violations and war crimes. If international justice is to be a concept that provides the basis for a few prosecutions and convictions at massive expense, it must be evaluated by the standards of criminology and not just traditional jurisprudence. If the question were asked whether as a result of these trials there are fewer conflicts and civil wars that generate these crimes, the

answer at the level of general deterrence would be no. This is specific deterrence and individual justice. International justice cannot be viewed as a solution to the root causes of genocide and violence.

The "responsibility to protect" is antecedent to international justice. It is also an expanding concept that transcends the well-established precedent of humanitarian intervention to protect defenseless populations. The traditional boundary of "sovereignty," which gives a power the ability to deal with internal conflict without restriction, is not viewed as absolute. The report *Implementing the Responsibility to Protect* (United Nations, 2009) argues that the state has the responsibility to protect its populations from mass atrocities and ethnic cleansing. According to the second pillar, the international community has the responsibility to help states fulfill their responsibility and to prevent crimes against humanity.

The research presented here forcefully places the parts of the world where these atrocities occur within the purview of failed and conflict states where civil wars are common. International justice will take place only when these states are launched on a part of democratic development.

International Justice and Crime Prevention

The relationship between criminology and crime prevention has been formally established since the 1970s. This subsequently expanded with the development of situational crime prevention (Clarke, 1997). International justice is in an emaciated state of development if its proponents believe that strategies based in prosecution, deterrence, and accountability comprise the essences of strategies to control the incidence of genocide, war crimes, and crimes against humanity. The location of these crimes in failed states is directly analogous to the use of GIS to locate crimes in "hot spots" (Sherman, Gartin, & Buerger, 1989). If international justice is to advance, the perspective must be placed in this larger framework of academic criminology.

SEE ALSO: Crime Prevention; International Corrections; International Crime Statistics; International Policing.

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