

PUNISHMENT AND PROCESS  
IN INTERNATIONAL  
CRIMINAL TRIALS

RALPH HENHAM

# Punishment And Process In International Criminal Trials International And Comparative Criminal Just

**Elies van Sliedregt, Sergey Vasiliev**



## **Punishment And Process In International Criminal Trials International And Comparative Criminal Just:**

**Punishment and Process in International Criminal Trials** Ralph Henham, 2017-03-02 International sentencing has become significant given the numerous events on the world stage which have focused attention on the justifications and adequacy of punishment for heinous crimes such as genocide and crimes against humanity In addition to providing a detailed evaluation of the philosophical and theoretical difficulties raised by this rapidly developing area of international criminal justice this book provides an integrated socio legal analysis of the law and process of international sentencing It considers the rationale and development of international sentencing structures and processes the nature and scope of legal and procedural constraints on decision making as well as access to justice and rights issues The book discusses sentencing within the context of international criminal law and examines internationalized trial processes and alternative mechanisms for resolution In seeking to comprehend the punishment of international crimes through the comparative contextual analysis of trial processes it challenges our present understanding of how and why particular sentencing outcomes are produced and the perceived legitimacy of international trial justice *The Genocide Convention* John Quigley, 2016-03-09 The Genocide Convention explores the question of whether the law and genocide law in particular can prevent mass atrocities The volume explains how genocide came to be accepted as a legal norm and analyzes the intent required for this categorization The work also discusses individual suits against states for genocide and finally explores the utility of genocide as a legal concept

International and Comparative Criminal Justice Mark Findlay, 2013-06-19 International criminal justice is in transition This book explores the growing internationalisation of criminal justice as a phenomenon of global governance It provides students with a critical understanding of the international institutions for regulating transnational crime the development of alternative justice processes across the globe and international and supra national co operation criminal justice policies and practices Key topics covered include The historical development of International Criminal Justice institutions and traditions International Restorative Justice Victim communities and collaborative justice The relationship between crime and war International Human Rights The War on Terror The globalisation of crime and control Developments in global governance communitarian justice and accountability This text will familiarize students with the literature and debates surrounding international criminal justice and enable them to critically appreciate their theoretical and policy context In doing so it encourages students to assess the strengths and weaknesses of different approaches to the study of global justice and the analysis of comparative policy convergence and research It will also help students to reflect on and communicate in an informed and critical way theoretical accounts and empirical studies within the field of international criminal justice This book will be essential reading for upper level undergraduates taking courses in criminal law international relations and governance and postgraduates engaged in international criminal justice international law regulation and governance and human rights **Beyond Punishment: Achieving International Criminal Justice** M. Findlay, R. Henham, 2009-11-30

International criminal justice is challenged to better reflect legitimate victim interest This book provides a framework for achieving synthesis between restorative and retributive dimensions within international criminal trials in order to achieve the peace making aspirations of the International Criminal Court Sentencing in International Criminal Law Silvia

D'Ascoli, 2011-04-01 This book deals with sentencing in international criminal law focusing on the approach of the UN ad hoc Tribunals for the former Yugoslavia ICTY and Rwanda ICTR In contrast to sentencing in domestic jurisdictions and in spite of its growing importance sentencing law is a part of international criminal law that is still under construction and is unregulated in many aspects International sentencing law and practice is not yet defined by exact norms and principles and as yet there is no body of international principles concerning the determination of sentence notwithstanding the huge volume of sentencing research and the extensive modern debate about sentencing principles Moreover international judges receive very little guidance in sentencing matters this contributes to inconsistencies and may increase the risk that similar cases will be sentenced in different ways One purpose of this book is to investigate and evaluate the process of international sentencing especially as interpreted by the ICTY and the ICTR and to suggest a more comprehensive and coherent system of guiding principles which will foster the development of a law of sentencing for international criminal justice The book discusses the law and jurisprudence of the ad hoc Tribunals and also presents an empirical analysis of influential factors and other data from ICTY and ICTR sentencing practice thus offering quantitative support for the doctrinal analysis This publication is one of the first to be entirely devoted to the process of sentencing in international criminal justice The book will thus be of great interest to practitioners academics and students of the subject **Fairness in International Criminal Trials** Yvonne

McDermott, 2016-01-21 With the acceptance of international criminal procedure as a self sustaining discipline and as the tribunals established to try the most serious crimes in the former Yugoslavia Sierra Leone and Rwanda have completed or are beginning to wind up their activities the time is ripe for a critical evaluation of these international criminal tribunals and their legacy By examining the due process standards embraced by the five contemporary international criminal tribunals the author draws conclusions about how the right to a fair trial should be interpreted in international criminal law This volume addresses key conceptual questions on fairness including should international criminal tribunals set the highest standards of fairness or is it sufficient for their practice to be just fair enough To whom does the right to a fair trial attach and can actors such as the prosecution and victims be accurately said to benefit from that right Does fairness require the full realization of a number of guarantees owed to the accused under the statutory frameworks of international criminal tribunals or should we instead be concerned with the fairness of the trial as a whole What is the interplay between domestic and international courts on questions of procedural fairness What are the elements of fairness in international criminal proceedings And what remedies are available for breaches of fair trial rights Through an in depth exploration of the right to a fair trial the author concludes that international criminal tribunals have a role in setting the highest standards of due process protection in their

procedures and that in so doing they can have a positive impact on domestic justice systems

Exploring the Boundaries of International Criminal Justice Mark Findlay, 2016-04-15 This collection discusses appropriate methodologies for comparative research and applies this to the issue of trial transformation in the context of achieving justice in post conflict societies In developing arguments in relation to these problems the authors use international sentencing and the question of victims interests and expectations as a focus The conclusions reached are wide ranging and highly significant in challenging existing conceptions for appreciating and giving effect to the justice demands of victims of war and social conflict The themes developed demonstrate clearly how comparative contextual analysis facilitates our understanding of the legal and social contexts of international punishment and how this understanding can provide the basis for expanding the role of restorative international criminal justice within the context of international criminal trials

Transforming International Criminal Justice Mark Findlay, Ralph Henham, 2005-06-01 This book sets out an agenda to transform international criminal trials and the delivery of international criminal justice to victim communities through collaboration of currently competing paradigms It reflects a transformation of thinking about the comparative analysis of the trial process and seeks to advance the boundaries of international criminal justice through wider access and inclusivity in an environment of rights protection Collaborative justice is advanced as providing the future context of international criminal trials The book's radical dimension is its argument for the harmonization of restorative and retributive justice within the international criminal trial The focus is initially on the trial process a key symbol of developing international styles of justice It examines theoretical models and political applications of criminal justice through detailed empirical analysis in order to explore the underlying relationship of theory and empirical study applying the outcome in theory testing and policy evaluation in several different jurisdictions The book injects a significant comparative dimension into the study of international criminal justice This is achieved through searching the traditional foundations of internationalism in justice by employing an original methodology to enable a multi dimensional exploration of contexts local regional and global so recognising the importance of difference within an agenda suggesting synthesis The book argues for a concept of international trial within a rights paradigm understood against different procedural traditions and practices and provides a detailed description of trials and trial decision making in various jurisdictions Transforming International Criminal Justice also sets out to develop effective research strategies as part of its interrogation of specific trial narratives and meanings in contemporary legal cultures Key themes are those of internationalisation fair trial and the exercise of discretion in justice resolutions sentencing in particular and the lay professional relationship and its dynamics Finally the book provides a searching critique of the relevance of existing criminology and legal sociology in relation to international criminal justice and speculates on trial transformation and the merger of retributive and restorative international criminal justice comparative analysis of the criminal trial process internationally argues for harmonization of retributive and restorative justice within the international criminal trial sets out an

agenda to transform international criminal trials and the delivery of international criminal justice to victim communities

**Sentencing and the Legitimacy of Trial Justice** Ralph Henham, 2013-03-01 This book discusses the under researched relationship between sentencing and the legitimacy of punishment It argues that there is an increasing gap between what is perceived as legitimate punishment and the sentencing decisions of the criminal courts Drawing on a wide variety of empirical research evidence the book explores how sentencing could be developed within a more socially inclusive framework for the delivery of trial justice In the international context such developments are directly relevant to the future role of the International Criminal Court especially its ability to deliver more coherent and inclusive trial outcomes that contribute to social reconstruction Similarly in the national context these issues have a vital role to play in helping to re position trial justice as a credible cornerstone of criminal justice governance where social diversity persists In so doing the book should help policy makers in appreciating the likely implications for criminal trials of mainstreaming restorative forms of justice Sentencing and the Legitimacy of Trial Justice firmly ties the issue of legitimacy to the relevant context for delivering justice It suggests a need to develop the tools and methods for achieving this and offers some novel solutions to this complex problem This book will be a valuable resource for graduate students academics practitioners and policy makers in the field of criminal justice as well as scholars interested in socio legal and cross disciplinary approaches to the analysis of criminal process and sentencing and the development of theory and comparative methodology in this area Judges and the Making of International Criminal Law Joseph Powderly, 2020-06-08 In Judges and the Making of International Criminal Law Joseph Powderly explores the role of judicial creativity in the progressive development of international criminal law This wide ranging work unpacks the nature and contours of the international criminal judicial function Employing empirical theoretical and doctrinal methodologies it interrogates the profile of the international criminal bench judicial ethics and the interpretative techniques that judges have utilized in their efforts to progressively develop international criminal law Drawing on the work of Hersch Lauterpacht it proposes a conception of the international criminal judicial function that places judicial creativity at its very heart In doing so it argues that international criminal judges have a central role to play in ensuring that modern international criminal law continues to adapt to a volatile global environment where accountability for crimes that shock the conscience of humanity is as much needed as at any moment in recent history **Research Methods for Law** Mike McConville, 2017-01-18 Introduces students to legalistic theoretical empirical comparative and cross disciplinary research methods grounded in working examples New for this edition New chapter on inter and cross disciplinary research essential reading for international students and students with a non law first degree undertaking research in the areas of law criminology psychology and sociology Research ethics has been expanded to a full chapter that includes current plagiarism and imperfect disclosure Brings existing chapters up to date with the newest thinking in legal research Drawing on actual research projects Research Methods for Law discusses how legal research as process impacts on research as product

The author team has a broad range of teaching and research experience in law criminal justice and socio legal studies and give examples from real life research products to illustrate the theory

*Contemporary Challenges to Criminal Justice* Paul Behrens, 2023-12-28 This study provides a critical examination of seminal issues within the main areas of criminal justice its theoretical framework domestic and comparative criminal justice transnational and international criminal law Exploring some of the most interesting challenges arising in these fields it examines the impact of public morality on sentencing policy murder and the mandatory life sentence genocide and the notion of magnitude and incitement to terrorism Taking an approach that is fully integrated in contemporary criminal justice scholarship it offers a diverse and expert perspective With a comprehensive introduction and conclusion drawing the various strands together it offers a rigorous coherent overview of the key issues in play in contemporary international criminal justice This diversity and expertise ensures its appeal to a large audience of students scholars and practitioners of criminal justice around the world

*Elements of Genocide* Paul Behrens, Ralph Henham, 2013-05-07 *Elements of Genocide* provides an authoritative evaluation of the current perception of the crime as it appears in the decisions of judicial authorities the writings of the foremost academic experts in the field and in the texts of Commission Reports Genocide constitutes one of the most significant problems in contemporary international law Within the last fifteen years the world has witnessed genocidal conduct in Rwanda and Bosnia and Herzegovina while the debate on the commission of genocide in Darfur and the DR Congo is ongoing Within the same period the prosecution of suspected genocidaires has taken place in international tribunals internationalised tribunals and domestic courts and the names of Slobodan Milosevic Radovan Karadzic and Saddam Hussein feature among those against whom charges of genocide were brought Pursuing an interdisciplinary examination of the existing case law on genocide in international and domestic courts *Elements of Genocide* comprehensive and accessible reflection on the crime of genocide and its inherent complexities

*International Crimes: Law and Practice* Guénaél Mettraux, 2020-04-09 This authoritative manual on the law of international crimes discusses in detail crimes against humanity and its relationship to other international crimes It is an invaluable tool for academics and researchers as well as legal practitioners who will be able readily to identify relevant legal standards and precedents

**Pluralism in International Criminal Law** Elies van Sliedregt, Sergey Vasiliev, 2014-10-02 Despite the growth in international criminal courts and tribunals the majority of cases concerning international criminal law are prosecuted at the domestic level This means that both international and domestic courts have to contend with a plethora of relevant but often contradictory judgments by international institutions and by other domestic courts This book provides a detailed investigation into the impact this pluralism has had on international criminal law and procedure and examines the key problems which arise from it The work identifies the various interpretations of the concept of pluralism and discusses how it manifests in a broad range of aspects of international criminal law and practice These include substantive jurisdiction the definition of crimes modes of individual criminal responsibility for international crimes sentencing fair trial rights law of

evidence truth finding and challenges faced by both international and domestic courts in gathering testing and evaluating evidence Authored by leading practitioners and academics in the field the book employs pluralism as a methodological tool to advance the debate beyond the classic view of legal pluralism leading to a problematic fragmentation of the international legal order It argues instead that pluralism is a fundamental and indispensable feature of international criminal law which permeates it on several levels through multiple legal regimes and enforcement fora diversified sources and interpretations of concepts and numerous identities underpinning the law and practice The book addresses the virtues and dangers of pluralism reflecting on the need for and prospects of harmonization of international criminal law around a common grammar It ultimately brings together the theories of legal pluralism the comparative law discourse on legal transplants harmonization and convergence and the international legal debate on fragmentation to show where pluralism and divergence will need to be accepted as regular and even beneficial features of international criminal justice Restorative Justice in Transitional

Settings Kerry Clamp, 2016-02-12 Restorative justice is increasingly being applied to settings characterized by large scale violence and human rights abuses While many embrace this development as an important step in attempts to transform protracted conflict there are a number of conceptual challenges in transporting restorative justice from a democratic setting to one which has been affected by mass victimisation or civil war These include responding to the seriousness and scale of harms that have been caused the blurred boundaries between victims and offenders and the difficulties associated with holding someone to account and compelling reparative activities Despite reams of paper being devoted to defining restorative justice within democratic settings where the concept first emerged restorative scholars have been slow to comment on the integration of restorative justice into the transitional justice discourse Restorative Justice in Transitional Settings brings together a number of leading scholars from around the world to respond to this gap by developing and further articulating restorative justice for transitional settings These scholars push the boundaries of restorative justice to seek more effective approaches to addressing the causes and consequences of conflict and oppression in these diverse contexts Each chapter highlights a limitation with current conceptions of restorative justice in the transitional justice literature and then suggests a way in which the limitation might be overcome This book has strong interdisciplinary value and will be of interest to criminologists legal scholars and those engaged with international relations and peace treaties

*Sentencing Policy and Social Justice* Ralph Henham, 2018-02-22 Sentencing Policy and Social Justice argues that the promotion of social justice should become a key objective of sentencing policy advancing the argument that the legitimacy of sentencing ultimately depends upon the strength of the relationship between social morality and penal ideology It sheds light on how shared moral values can influence sentencing policy at a time when relationships of community appear increasingly fragmented arguing that sentencing will be better placed to make a positive contribution to social justice if it becomes more sensitive to the commonly accepted moral boundaries that underpin adherence to the rule of law The need to reflect public



opinion in sentencing has received significant attention more recently with renewed interest in jury sentencing stakeholder sentencing and the involvement of community views when regulating policy The author however advocates a different approach combining a new theoretical focus with practical suggestions for reform and arguing that the contribution sentencing can make to social justice necessitates a fundamental change in the way shared values about the advantages of punishment are reflected in penal ideology and sentencing policy Using examples from international comparative and domestic contexts to advance the moral and ethical case for challenging the existing theories of sentencing the book develops the author's previous theoretical ideas and outlines how these changes could be given practical shape within the context of sentencing in England and Wales It assesses the consequences for penal governance due to increased state regulation of discretionary sentencing power and examines the prospects for achieving the kind of moral transformation regarded as necessary to reverse such a move To illustrate these issues each chapter focuses on a particularly problematic area for contemporary sentencing policy namely the sentencing of women the sentencing of irregular migrants sentencing for offences of serious public disorder and sentencing for financial crime

Cosmopolitan Justice and its Discontents Cecilia Bailliet, Katja Franko Aas, 2011-04-01 Cosmopolitan Justice and its Discontents pursues a reflection upon the institutional orders designed to ensure respect for the rule of law human rights and social justice The majority of literature on cosmopolitanism tends to be oriented in sociology political science or philosophy and is largely positive This book aims to fill the lacuna with respect to critical and legal perspectives in this field In particular it highlights the importance of international economic law and its institutions when evaluating the evolution of cosmopolitan norms In addition it provides critical and multidisciplinary perspectives on Cosmopolitan Justice and Sovereignty Institutions Civil Society and Accountability and Social Exclusion Migration and Global Markets This book will be of considerable interest to academics and students concerned with international public and private law international criminal law international economic law human rights migration criminology political science and philosophy

**War Crimes and Human Rights** William Schabas, 2008 This is a collection of essays and articles on human rights law and international criminal law authored by William Schabas one of the most prominent contemporary scholars and practitioners Particular attention is given to such topics as the limitation and abolition of the death penalty genocide and crimes against humanity the establishment and operation of the International Criminal Court and the ad hoc international criminal tribunals truth and reconciliation commissions reservations to human rights treaties and the implementation of international human rights norms in domestic law

*Capital Punishment: New Perspectives* Peter Hodgkinson, 2016-04-08 This collection asks questions about the received wisdom of the debate about capital punishment Woven through the book questions are asked of and remedies proposed for a raft of issues identified as having been overlooked in the traditional discourse It provides a long overdue review of the disparate groups and strategies that lay claim to abolitionism The authors argue that capital litigators should

use their skills challenging the abuses not just of process but of the conditions in which the condemned await their fate namely prison conditions education leisure visits medical services etc In the aftermath of successful constitutional challenges it is the beneficiaries arguably those who are considered successes having been saved from the death penalty and now serving living death penalties of one sort or another who are suffering the cruel and inhumane alternative Part I of the book offers a selection of diverse nuanced examinations of death penalty phenomena scrutinizing complexities frequently omitted from the narrative of academics and activists It offers a challenging and comprehensive analysis of issues critical to the abolition debate Part II offers examinations of countries usually absent from academic analysis to provide an understanding of the status of the debate locally with opportunities for wider application

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