

international trials in a foreign country, conducted in a foreign language and by foreign judges, have any real prospect of buttressing the rule of law where it matters most—with the survivors of mass atrocity. As he suggests in his contrasting description (p. 344) of the domestic reaction to the trial of Karamura (the only suspect Rwanda succeeded in extraditing from abroad), it is not at all clear which venue—local or international—will have the more credible impact on affirming the rule of law.

Gourevitch also raises questions about the goals of international forms of accountability and the audiences such fora are intended to serve. There is a clear divide, for example, between the demands for the death penalty heard among many Rwandan survivors and the sentiments of international lawyers, especially human rights advocates, who applaud the ICTR's renunciation of the death penalty precisely because it may pave the way toward worldwide abolition of the death penalty. Meanwhile, tiny, impoverished Rwanda, whose citizens suffered and died, is forced to forgo the death penalty for the high-level perpetrators prosecuted at the ICTR.

In a revealing passage, Gourevitch suggests the hypocrisy involved in the United States' and many international lawyers' positions. Gourevitch relates the plots of "A Time to Kill" and "Sleepers," two in-flight Hollywood movies he saw on his way to Rwanda. He notes how both these films lead audiences to cheer for vigilante justice culminating in perpetrators' extrajudicial deaths. Yet, the same society that recognizes the power (and arguable merit)⁸ of such retaliatory urges, and that inflicts the death penalty on many of its own citizens, objects to Rwandan executions of locally convicted genocidaires and forces Rwanda to forego the death penalty on high level perpetrators chosen for trial by the ICTR.

More generally, Gourevitch's indictment of the international community in the case of Rwanda should imbue international lawyers with unaccustomed humility. A community that was so inept in the face of frequent warnings of impending genocide, and that has shown itself unwilling and unable to prevent renewed genocidal incursions and predictable retaliations by the Rwandan authorities, should retain a healthy skepticism about the post-genocidal solutions it seeks to impose, top-down, on a reluctant Rwanda. As does Martha Minow in her more philosophical

rumination on vengeance and forgiveness (previously cited), Gourevitch warns us that there are no tidy resolutions to particular instances of mass atrocity, that neither trials nor any other legal vehicles can provide a shortcut to "closure" and national reconciliation, and that we may need to tone down our expectations for legalistic "solutions" (including for the permanent international criminal court) in favor of an honest modesty about what can be accomplished by internationalist solutions, including ad hoc war crimes tribunals created by a politicized Security Council.

But Gourevitch's book does not recommend inaction or elicit despair. His journalistic storytelling gives voice to genocide's victims. Like truth commissions, his narrative is a species of truth-telling which awakens the sympathetic engagement of its readers while empowering the victims of mass atrocity. In his own modest way, Gourevitch has drawn on the restorative power of truth-telling and may have helped at least some of Rwanda's victims to begin to heal.

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War Crimes Against Women: Prosecution in International War Crimes Tribunals. By Kelly Dawn Askin. The Hague, London, Boston: Martinus Nijhoff Publishers, 1997. Pp. xviii, 455. Index. \$133, £84.

Although women have been the targets of abuse in wars throughout history, it was documentation of the systematic use of rape in the conflicts in Bosnia-Herzegovina and Rwanda that catalyzed international lawyers to take a keen interest in the issue. Many recent law review articles focus on developments in humanitarian law and war crimes against women, but Kelly Dawn Askin, visiting scholar at the Center for Civil and Human Rights, Notre Dame University, is one of the first authors to write an entire book on the subject. *War Crimes Against Women*, the initial volume in a two-part series, seeks to survey early historical developments on the issue and to discuss "why" gender crimes must be, and how they can be, prosecuted in the Yugoslav Tribunal" (p. xiii). A second volume will discuss the war crimes trials before the Rwanda Tribunal and detail specific cases before the Yugoslav Tribunal. *War Crimes Against Women* makes an important contribution to our understanding of the ways in which international tribunals have responded, and should respond to gender-based war crimes.

⁸ For an interesting defense of retribution, as distinguished from vengeance, see Minow, *supra* note 7, at 10-12.

War Crimes Against Women is divided into seven chapters and one appendix. The first chapter, which surveys the treatment of gender-based violence under humanitarian law prior to World War II, makes the most unique contribution to the literature on humanitarian law. Askin weaves an evocative narrative of how recognition and treatment of gender-based violence have evolved in international humanitarian law. From ancient times through World War II, she explains, soldiers treated conquered women as property of the enemy nation, to be used by the conquering army without restriction. Like other booty of war, "Then, as now, women as combatants or noncombatants, were treated differently than men as combatants or noncombatants. Then, as now, rape was considered an effective weapon of war, a 'spoil' of war, and an inevitable consequence of war" (pp. 33-34).

Askin makes the important point that, despite the pervasiveness of sexual violence against women in both peacetime and wartime, rape has long been considered a punishable violation of the customs of war. Askin sets the date that rape was recognized as a violation of customary international law to coincide with what she calls the "first international criminal trial," the 1474 trial of Peter van Hagenbach (p. 5, n.11). While it may be hard to establish an exact date for the emergence of customary prohibitions against gender-based violence, Askin's analysis certainly destroys the careless rhetoric of some of today's activists who contend that recognition of rape as a war crime represents a wholly new departure in international law. She clarifies that while customary and treaty-based international law on the conduct of armed conflict existed in the early part of the twentieth century, the political will to prosecute and punish violators of such rules did not. Even when the violations were prosecuted, tribunals generally treated the conduct as acts against men and family honor, not against the individual women. Only "sluggishly [did domestic or international law] acknowledge . . . that the woman victim was the injured party, rather than the male proprietor of the woman" (p. 28).

The next four chapters in *War Crimes Against Women* focus on World War II and the Nuremberg and Tokyo war crimes trials. This is well-trod territory. The significance of Askin's contribution lies in her breadth of coverage and in her endeavor to lend a gender perspective to our understanding. In other parts of the book, Askin runs the risk of conflating all types of gender-specific crimes, at times discussing rape as if it

were the only violation against women in conflict (see, e.g., p. 163, which talks exclusively about "rape crimes"). In chapter 2, however, she offers a richer description of the types of gender-specific crimes committed in Europe and Asia during World War II. Her decision here to single out forced prostitution and sterilization is helpful, as it ensures that these topics are not overlooked as in previous studies.

The separate chapters on the events leading up to Nuremberg and Tokyo and on the trials themselves, chapters 3-5, demonstrate that "indictments for abuses against women were conspicuously absent, even though laws and customs clearly prohibited wartime rape" (p. 95). Askin's talent here lies in her reports of the facts. Her exploration of the transcripts at Nuremberg and Tokyo and her review of the secondary literature paint a clear picture of callous neglect of sexual violence in those proceedings. Rape was not punished at Nuremberg and sexual assault was prosecuted only as a "secondary crime" in Tokyo (p. 203). Nonetheless, as Askin correctly points out, "the general principles established or confirmed at Nuremberg [and Tokyo] can still be used to prosecute gender specific crimes, along with customary law prohibiting wartime rape" (p. 163).

Askin's decision to describe the sexual abuses in "minute detail" (p. xv) in the book is well taken, as the description accurately reflects the "heinous nature of the crimes" (*id.*). There was no need for Askin to address the argument that "providing details of sexual assaults in an avenue available to the public is tantamount to pornography" (pp. xv-xvi). As she herself notes, "[s]urrounding sex crimes with secrecy . . . has displaced the shameful nature of the act onto the victim/survivor, instead of on the perpetrator, where it belongs" (p. xvi). To be valuable, scholarship on the historical treatment of sexual violence must describe the subject matter as set forth in trial transcripts, field reports and other sources. The main argument for focusing on more than the acts themselves is not an anti-pornography stance. Rather, a focus on acts neglects both the material circumstances which give rise to the acts and the consequences, far beyond any trial.¹ To her credit, Askin specifically notes that *War Crimes Against Women* will not discuss "social issues" (p. xvii) and thus readers are forewarned not to expect an analysis of the

¹ See Julie Mertius & Pamela Goldberg, *A Perspective on Women and International Human Rights After the Vienna Declaration: the Inside/Outside Construct*, 26 N.Y.U. J. INT'L L. & POL. 201, 223 (1994).

impact of sexual violence and international tribunals on women's lives. What they can expect—a lawyerly account of examples of gender-based war crimes and attempted prosecutions—is well done. Lawyers working on war crimes prosecutions before present and future international tribunals will find that the illustrations in Askin's work make a strong case for the specific inclusion of sexual violence as prosecutable offenses.

Askin's contribution is less valuable when she moves from facts to analysis. Dotted throughout the book are brief conclusory statements on weighty points of international law without sufficient analysis. When dropped into conclusions of chapters, these statements only obfuscate. The conclusion of chapter 2 (on gender-specific crimes in World War II), for example, ends with a one-paragraph suggestion that "gender" be added to the definition of genocide because "[g]ender, representing the largest categorized group, should not be rendered a lesser classification than race, religion, ethnicity, nationality, or political group" (p. 94-95). With no discussion, Askin equates "gender" with "women," a move contrary to contemporary thinking in international circles.² She also fails to address the difficulties inherent in expanding the legal definition of genocide to include gender (see p. 94 and pp. 342-343). Similarly, Askin uses a few brief paragraphs to argue that certain gender abuses should be considered *jus cogens*. She contends that "since rape is a war crime and war crimes have already received *jus cogens* status, rape committed during the course of armed conflict constitutes a violation of *jus cogens*" (p. 241). The nature and potential application of such a *jus cogens* norm warrants further discussion than provided here.

² A Report of the Secretary General of the Commission on Human Rights summarizes the emerging consensus on the meaning of the terms sex and gender:

As sex refers to biologically determined differences between men and women that are universal, so gender refers to the social differences between men and women that are learned, changeable over time and have wide variations both within and between cultures. . . . The use of the term 'gender' as an analytical tool focuses not on women as an isolated group, but on the roles and needs of men and women.

Integrating the human rights of women throughout the United Nations System, Report of the Secretary-General, UN ESCOR, Hum Rts. Comm'n, 53rd Sess, Provisional Agenda Item 9, para. 20, UN Doc. E/C.4/1997/40 (1996).

The sixth chapter, "The Evolution of the Status of Women in Domestic and International Law and Practice," suffers from attempting to do too much. The stated goal of this chapter is to "examine domestic and international laws and practice prior to the Second World War, domestic and international laws and practice after the Nuremberg and Tokyo War Crimes Trials, and relationships which exist between the status of women in municipal and international law" (p. 205). The exploration of municipal laws appears ad hoc (relying heavily on U.S. jurisprudence) and the analysis of the status of women in international law makes suspect generalizations and conclusions. For example, Askin asserts that "[t]he international community holds violence against women as private, falling under the exclusive authority of the state" (p. 217) and thus not public matters of international concern. Perhaps this was true at one time. However, to the extent that we can speak of a contemporary "international community," the consensus has now moved toward recognition of gender-based violence as an international human rights issue. Treatment of sexual violence as a purely "private matter" has become the minority approach, at least in policy-making quarters of the "international community." This important point gets lost in Askin's work.

While enforcement mechanisms are not sufficient, the "international community" has, as Askin notes, formally recognized that states cannot hide behind the rhetoric of the "private sphere" in failing to address violence against women. Four examples illustrate the point: In 1992, the Committee on the Elimination of All Forms of Discrimination Against Women adopted General Recommendation 19, which reaffirmed that both public and private violence against women are indeed human rights violations.³ In 1993, 171 state representatives from around the world, meeting at the World Conference on Human Rights in Vienna, adopted a Declaration and Platform for Action which recognizes public and private violence against women as a human rights issue for state concern.⁴ Spurred by the Vienna Conference, the UN General Assembly in 1993 adopted a Declaration on the Elimination of

³ *General Recommendation No. 19*, Comm. on the Elimination of Discrimination Against Women, 11th Sess., at 1, UN Doc. CEDAW/C. 1992/L.1/Add.15 (1992).

⁴ *Vienna Declaration and Programme of Action*, World Conference on Human Rights, June 25, 1993, UN Doc. A/CONF. 157/23 (1993), reprinted in 32 *ILM* 1661 (1993).