

REVIEW ESSAY

# Situating ‘law’ as ‘culture’ in scholarly discourse on the International Criminal Court: a reflection on Fraser and McGonigle Leyh’s *Intersections of Law and Culture at the International Criminal Court*

Tomas Hamilton

Assistant Professor of International Criminal Law, University of Amsterdam, Netherlands

[t.f.b.hamilton@uva.nl](mailto:t.f.b.hamilton@uva.nl)

doi:10.1017/S1744552322000295

## 1 Introduction

Within the rich literature on the International Criminal Court (ICC), across international criminal law scholarship, transitional justice and international relations, the study of ‘law and culture’ has a lengthy pedigree. After the ICC came into operation on 1 July 2002, several years followed before the first monographs on the Court’s law and culture were published, notably Sarah Nouwen’s *Complementarity in the Line of Fire* (2013) and Phil Clark’s *Distant Justice* (2018). This delay reflected the years of field-based research necessary for empirically minded scholars to usefully comment on the Court. The writing of these scholars was informed by long periods spent in the field in ICC situation countries, enabling them to bring a meaningful understanding of the lives of affected communities to their analysis of the Court’s impact. Clark’s book, for instance, was the culmination of eleven years of research and fieldwork in ICC situation countries (Clark, 2018). These extensive periods of contact with victims and survivors have brought fresh perspectives on the ICC to those of us whose work is, necessarily, focused on proceedings in The Hague and who are, inevitably, unable to claim genuine long-term familiarity with the local meaning of the Court’s proceedings for those whose lives we believe or hope we are (positively) impacting. Well-executed field-based research has so much to offer because it can be at once intellectually distanced from court proceedings in The Hague, while intellectually proximate to the *locus delicti* of international criminal justice in affected communities.

This field-based research is important, not least because it views the ICC as an object of social inquiry. In this scholarship, the Court is seen as an institution whose legal proceedings are viewed as cultural phenomena from what we might describe as a ‘law as culture’ perspective. Also writing from this perspective, a small number of trained anthropologists have written monographs on the ICC’s law and culture, notably Kamari Maxine Clarke, whose books *Affective Justice* and *Fictions of Justice* reveal some of the driving motivations of the ICC project (Clarke, 2009; 2019). This scholarship sits alongside anthropological work on other international(ised) courts, including Nigel Eltringham’s *Genocide Never Sleeps* (2019) and Alex Hinton’s *The Justice Facade: Trials of Transition in Cambodia* (2018). There are also political scientists who have expressly addressed culture in international courts – most notably Tim Kelsall, in *Culture under Cross-examination* on the Special Court for Sierra Leone (2009) and Richard Wilson, whose work takes the broader view of the role of social science in both the practice and research of international criminal law (Wilson, 2011; 2017). More recent work by Kjersti Lohne (2019) and Mikkel Christensen (2020) has turned the ethnographic spotlight onto the institutional cultures of international criminal justice.

What these works of ‘thick’ description have in common is their scholarly foundations in disciplines that are versed in methodologies of cultural exegesis. They reflect a growing interest in

ethnographically – or empirically – informed work on international criminal justice more generally. As Nicola Palmer (2021) has argued, a deeper understanding of the operation of international and transnational criminal justice can be gained through greater engagement with the ethnographies of penalty and the rich traditions of criminology that have developed through scholarship on national criminal justice systems. The ethnographic work Palmer has in mind looks not only to the experience of communities affected by international justice mechanisms, but also at the construction of knowledge by those who observe these mechanisms. In this way, Palmer (2021) emphasises the importance of paying attention to the ‘othering’ work of law (and legal scholarship) and the need to turn the Western ethnographic gaze to its own ways of knowing the social world of international criminal justice. Understanding ‘law and culture at the ICC’ must, then, be as much about cultural exegesis of the discourse of those who comment on the ICC as it is about examining the ‘culture’ of affected communities. In other words, there is an important epistemological difference between, on the one hand, legal processes understood in their cultural context (*law as culture*) and, on the other hand, understandings of the role of culture in legal process (*culture in law*).

A general edited volume on law and culture at the ICC has therefore been much anticipated and long overdue. The project of Julie Fraser and Brienne McGonigle Leyh, both at the Netherlands Institute of Human Rights (SIM) at Utrecht University, is particularly welcome, since it holds the potential to redress some of the critiques of the existing field of scholarship on the ICC that posit an excess of doctrine and a disconnection from the communities that are affected by the Court’s work. Such concerns had motivated Elies van Sliedregt’s timely essay (2016) in which she asked whether international criminal law is ‘over-studied and under-achieving’, consistently with the critique that excessively formalistic scholarship overlooks (or at least is not well positioned to see) some of the real problems that are facing the Court. A focus on culture can therefore help to illuminate how seemingly ‘extra-legal’ and ‘extra-political’ factors are, in actuality, important components of the law and politics of the ICC. Such an understanding of culture shows how the meaning that is ascribed to the ICC’s activities is not only of sociological interest, but also ends up constituting the Court’s legal practice (see the work of Palmer (2015) on the constitutive role of culture that has been made in relation to tribunals preceding the ICC).

The volume edited by Fraser and McGonigle Leyh is therefore a timely and innovative addition to the literature on international criminal law. McGonigle Leyh, Associate Professor at the Netherlands Institute of Human Rights (SIM), has a background in human rights, victims’ rights, accountability for serious human rights violations and transitional justice, and is a Senior Counsel at the Public International Law & Policy Group. Fraser, Assistant Professor with SIM and the Montaigne Centre at Utrecht University, has a background in transitional justice, human rights and criminal accountability, as well as having worked at the ICC. Both authors have extensive experience in academia, legal practice and human rights advocacy and a wide range of research and teaching. The book was launched at the Assembly of States Parties on 10 December 2020 at a book launch event. The event was co-hosted by Australia, The Netherlands, Montaigne Centre, Public International Law & Policy Group (PILPG), SIM and UGlobe (Utrecht University).

## 2 A highly anticipated volume on the ICC’s law and culture

The book is thoughtfully well structured in four parts: ‘Substantive crimes and culture’, ‘Proceedings and culture’, ‘Defences, sentencing, victims and culture’ and ‘The ICC’s global reach and legitimacy’, covering a broad range of different aspects of ICC proceedings. The chapters of Part I ‘Substantive crimes and culture’ engage with legal questions as to how cultural interests can protect and are protected by the Rome Statute, specifically in the context of current and proposed Rome Statute crimes regarding tangible and intangible heritage and in the context of gender-based violence (Fraser and Leyh, 2020, pp. 38–126).

The work in Part I on ‘Substantive crimes and culture’ contributes to the doctrinal scholarship on crimes that involve the protection of culture and suggests deficiencies. Notably, this part highlights

important lacunae in the Rome Statute's criminalisation of non-state armed group's destruction of culture, as revealed by the *Al Mahdi* case in Peta-Louise Bagott's chapter 'How to solve a problem like Al Mahdi: proposal for a new crime of attacks against cultural heritage' (Fraser and Leyh, 2020, pp. 47–48). These chapters in Part I are primarily considered with questions of the role of culture in ICC legal proceedings, from the definition of protections of 'cultural property' in *Al Mahdi*, to insights into international cultural heritage law, to questioning the legal construction of terminologies of community and heritage, to political interpretations of the role of strategic litigation in developing a global system of gender justice through international criminal law and the ICC.

In Part II, the focus shifts to more immediately practical questions surrounding 'Proceedings and culture' at the ICC, and while therefore focusing in on more specific questions for the courtroom about how culture manifests itself in legal proceedings, these chapters also move further away from the broader questions surrounding the role of cultural examination at the Court. The first of these insightful chapters examine the solemn undertaking that witnesses must declare before giving oral testimony before the Court in its cultural context and here is perhaps the writing of the book that sits most closely with anthropological writing on cultural, since Joshua Isaac Bishay examines the 'thicker' symbolism involved in oath-making, hypothesising that aside from the practical benefits of an oath, it is first and foremost a ritual, which 'can be knitted with the cultural understandings and beliefs' (Fraser and Leyh, 2020, p. 64) of the witnesses and affected communities through the use of symbolism and tradition. Here the book is extrapolating and interpreting the meaning involved in oath-making with the oath as a cultural artefact in its own right. Bishay's contribution is particularly brought to life by the broad range of comparative examples of oaths that he draws from Afghanistan, India, Serbia and *neak ta* spirits of Cambodia that threaten oath-breakers with bullets, electrocution, lightning, tiger attack, snake bites, family disintegration and extreme poverty, and which were invoked in the oath required of witnesses at the Extraordinary Chambers in the Courts of Cambodia. Bishay also surveys the oaths of the international(ised) criminal tribunals, to provide a pluralistic palette of oath-making practices, to justify a conclusion that the ICC should be more aware of what parts of its procedure are rooted in Western traditions and what parts could benefit from cultural flexibility. This really brings to life a powerful critique of the Western hegemonic aspect of determining how individuals are compelled to tell the truth.

Next is a fascinating chapter on the role of 'spells' and 'spirituality' in court proceedings, a case-study chapter of testimonial evidence in *Katanga* and engagement with the debate on meanings of 'justice' in prosecutorial culture (Fraser and Leyh, 2020, pp. 127–128). Gregor Maučec's chapter engages with the importance of cultural aspects of judicial decision-making, seen from the perspective of judicial sensitivity to culture, as well as the need for cultural expert witnesses to assist judges. Maučec is therefore focused primarily on discussing the 'other' culture of ICC defendants, witnesses and victims from situation countries, rather than focusing – reflexively – on how the intersubjective meanings that ICC judges ascribe to their cases is itself culturally constructed through the judges' own cultural understanding. The chapters of Part II will be of particular interest to the practitioner perspective of ICC judges and lawyers since they engage closely with problems of procedural international criminal law in the Rome Statute and therefore have immediate practical applications in motions and decisions before the Court.

The perspective then shifts slightly as Part III looks at defences, sentencing, victims and culture, focusing in turn on specific aspects of Rome Statute procedure in relation to the grounds for exclusion of responsibility, the potential for plea negotiations with ICC defendants, the sentencing practices of the Court and the very important role of cultural representation of victims' interests (Fraser and Leyh, 2020, pp. 229–311). Noelle Higgins's chapter reflects a substantial engagement with the themes of Part III in her 2017 monograph, 'Cultural defences at the International Criminal Court'. Higgins interrogates the malleable and evolving definition of culture and the implications of this vagueness of the concept for defences, in particular asking whether the defence of self-defence could have a cultural dimension. In this regard, while Higgins engages with the quixotic nature of attempts to pin down the definition of 'culture', she also does so very much from a 'culture in law' perspective, since she is primarily interested in how this works out in the pleading of defences at the ICC.

Higgins does an admirable and rigorous job of working through each of the available defences in Articles 31 and 32 of the Rome Statute, elaborating for each of the grounds for exclusion of responsibility on the possible nuances introduced by a putative role for cultural conceptions in interpreting and applying these defences.

A particularly interesting chapter for the practical perspective it brings is Fiona McKay's chapter, whose professional experience within the ICC heading the Victims Participation and Reparations Section provides fascinating insights into the challenges of the Registry's work in this regard. Given the centrality of victims' concerns to the debates about how 'culture' is represented in the ICC's work, it would have perhaps been beneficial to include in the volume more than one chapter dedicated to the wide range of issues surrounding victim representation, although many other chapters do touch on victim representation issues and questions surrounding reparations.

Part IV stands apart from the rest of the book in that it zooms out to look at broader macroscopic questions of the global reach of the ICC as an institution and about the place of culture in fundamental assessments of the ICC's legitimacy, in the eyes of its proponents and opponents (Fraser and Leyh, 2020, pp. 312–405). In the ICC's relatively short history to date, the representation of African culture in the Court's proceedings is a central concern, addressed here by Roestenburg-Morgen. The allegation that the ICC is a racist institution is a frequent critique that deserves to be taken very seriously, especially when brought by those who support the underlying aims and purposes of international justice. The seriousness of this critique is not inconsistent, Roestenburg-Morgen points out, with the fact that this critique and other critiques of cultural imperialism are frequently weaponised by opponents of the Court and are used, *mala fides*, to undermine the Court's work. Part IV then turns to assessing cultural features that have impacted political decisions to disengage from the Court in the US and Asia, as well as the potential for a greater role for Islamic law in the Court's work.

### 3 A focus on culture in legal proceedings

An important feature of the content of *Intersections of Law and Culture* is therefore its distinctiveness from the 'canon' of field-based work on the ICC referred to above. *Intersections of Law and Culture* draws on its authors' understandings of 'culture' in ICC situation societies and brings to us their views on how cultural difference, understood in this way, impacts on the substantive and procedural aspects of the Court's work. Importantly, while authors such as Nouwen and Clark were concerned with the social description of the Court as an institution (or in Clark's case as a form of political intervention in Africa) – their *metier* is to understand the ICC's impact in terms of how it has been interpreted by those engaged in, or subject to, the authority of the Court's legal processes. Their research proceeds from this perspective. While anthropologists would be concerned with legal processes understood in their cultural context (*law as culture*) and imbedding their scholarship in the existing literature written from that perspective, *Intersections of Law and Culture* is concerned primarily with the role of culture in legal process (*culture in law*) (see Rosen, 2017).

Indeed, the book's original call for submission in October 2018 characterised culture in the following terms: 'Culture influences our view of the law, of the facts to which it applies, and the fairness of any outcome' (e-mail regarding Brill publication, 'Call for Submissions', 18 October 2018, on file with author). This is consistent with an understanding of law and culture as it relates to ICC proceedings, with the goings-on of the courtroom as its primary concern, leaving as a secondary concern the ethnographic sense of law and culture that would prioritise examining the institution of the ICC, as well as victim communities, as social phenomena in their own right. This is both a positive distinguishing feature of the book and the basis for a critique. That this volume takes a markedly different approach to field-based work on the ICC is underlined by a general lack of engagement with the work of field-oriented researchers of the Court. For instance, the work of Nouwen, a leading figure in this field, is cited only once, in the text of a footnote. Several contributors refer to Clark only in passing (Fiona McKay does engage critically with his work). This seems to give short shrift to the work of Nouwen and Clark and others, whose insights are based on years spent in ICC situation countries

in close proximity to the crime sites and by building up long-term, independent relationships with members of affected communities.

Overall, this could leave the impression that the edited volume is not always aware of the foundational scholarship that precedes it, or of the methodological importance of ethnography whenever ‘culture’ is under the microscope. The contributors to this volume have an extremely impressive range of experiences, professional and academic backgrounds, legal qualifications and a fascinating range of research interests. But based on the contributors’ biographical pages (excepting Leigh Swigart’s project ‘Global court, local languages: how the International Criminal Court pursues multilingual justice’), there is no indication that any of the contributors have conducted long-term field-based research in an ICC situation country, so the primary value of the work must be emphasised as contributing from the perspective of ‘culture in law’, with less attention on ‘law as culture’. This would not be per se a weakness of the book, such that my observations here would simply clarify where the book is situated in the existing literature on the ICC, except there is little acknowledgement or recognition of the range of perspectives on the ICC’s law and culture that are omitted from the book.

With this in mind, I am underlining the distinction between ‘law as culture’ and ‘culture in law’ not to undermine the value of *Intersections of Law and Culture*, but to attempt to identify its place within the rich literature on the ICC and the contribution it makes. It would be unfortunate if the space for critical scholarship on the ICC based on cultural analysis was usurped by those whose perspective is primarily shaped by legal practice rather than field-based engagement with ICC situation countries. I refer to Nouwen and Clark not because they are unique, but because their work represents a very different critical standpoint on international justice, and therefore comes from a very different intellectual place from the majority of commentators on the ICC. Moreover, their fieldwork-oriented expertise deserves respect and acknowledgement for what it contributes to the ICC’s project (rather than viewing their criticisms as a threat) and it is hard to overlook the relevance of their work to any discussion on law and culture at the ICC.

#### 4 Dual intersections: ‘culture in law’ vs. ‘law as culture’

This distinction between ‘law as culture’ and ‘culture in law’ can be interrogated a bit further while reading *Intersections of Law and Culture*. It is clear that the contributors to the book adopt a range of analytic perspectives, varying in the extent to which their didactic aims are directed primarily at legal or cultural analysis. As Fraser and Leyh (2020) recognise, these are intersecting, mutually constitutive concepts.

In one set of understandings of ‘culture’, it is viewed as an extrinsic factor, external to legal proceedings, which in some circumstances enters into the litigation and plays a role in the outcome of legal decision-making. Following this understanding of ‘culture’, Justice Teresa Doherty’s foreword to *Intersections of Law and Culture at the ICC* provides fascinating examples from Northern Ireland, Papua New Guinea and Sierra Leone of the role of culture in her work as a lawyer and judge at national and international courts. Doherty is able to provide first-hand courtroom experience of the ways in which a witness’s culture can impact their testimony: from the role of gender norms, taboo, dialect, representations of the human body, linguistic *faux amis*, religious and spiritual belief systems (Doherty, 2020). This is very much an example of cultural attributes seen from the courtroom perspective, as constitutive of the decisions made in court: ‘culture in law.’

Meanwhile, Fraser and Leyh position the volume in terms of their view of law ‘as an expression of culture, drawing heavily from anthropology’ and they recognise the prevailing narrow view of law in legal scholarship as ‘neutral, objective and independent of cultural concerns’ (Fraser and Leyh, 2020, p. 4). The editors thus recognise a problem that ICC scholarship probably shares with international law in general – the constant temptation to overemphasise the universalist claims of international legal principles and shared values, at the expense of the locally specific features of a particular cultural setting. In other words, the utopian, supranational nature of international criminal law means that the practice of international criminal law inevitably involves applying general rules to specific cases, rather than distilling general rules from the specificities of the case. Accordingly, most international lawyers

are probably better equipped to apply general principles and concepts than they are to elucidate the minutiae of ethnographic description and explanation.

The editors thus recognise the problem that, while the ICC is grounded in claims of shared values, the reality of its practice reveals that each case involves a different cultural setting. The aspirational nature of the ICC in striving for universal acceptance of the Rome Statute also means that inevitably its practice will always have an 'apologetic element', as Martti Koskeniemi would put it, for failing to live up to those universalist goals (Koskeniemi, 2006). However, the book is not primarily concerned with these limitations. Understandably, from a pragmatic point of view, most legal practitioners who pick up a copy of *Intersections of Law and Culture at the ICC* will be less interested in whether the ICC is a utopian project or not and more interested in the wealth of case-studies and insights that they can use to support their legal advocacy in cases before the ICC. The book absolutely delivers in this respect, providing a springboard for legal drafters in the Office of the Prosecutor, defence teams, victims representatives, the chambers of the judiciary and other organs of the Court to enrich their legal arguments with observations about the Court's culture.

It is not always clear whether the book was intentionally conceived as a project to speak solely to the 'culture in law' discourse. In this regard, another possible critique of the book is that its contributors do not always attempt to interrogate their own cultural perspective. This critique would also be linked to a limited awareness of the existence of a 'law as culture' discourse in the literature, consistently with the limited extent to which some of the contributors engage in deconstructing their own cultural perspectives. Cultural anthropologists tend to be highly self-reflective. They tend to understand other people's 'culture' not a static object that can be labelled and categorised. When attempting to describe culture, cultural anthropologists do so as part of an interpretive process in which the description is contingent on the describer's point of view. If we are to describe our understanding of Ugandan or Congolese 'culture' in the context of ICC proceedings, a cultural anthropologist would remind us that this notion of 'culture' only exists thanks to our own construction of it, which in turn is entirely dependent on how we view ourselves, our own culture and our place in the world. The cultural anthropologist Clifford Geertz, known for his work on how humans rely on symbolism to construct meaning, would probably encourage us to reflect first on the place of the ICC in our own cultural cosmologies and how we ascribe symbolic meaning to our understanding of Ugandan or Congolese 'culture', before we attempt to offer our insight into the culture of others (Clarke, 2019).

Perhaps one of the risks of looking at culture primarily from the perspective of 'culture in law' is that it may encourage quick resort to the most visible, dramatic, exoticised or orientalist understandings of other cultures, leaving unquestioned the social reality of legal proceedings and the way in which our beliefs about ICC situations are constructed. In their discipline, anthropologists repeatedly return to the deconstruction of, and self-reflection on, their own imagined representations of other cultures. In doing so, they find themselves reassessing the predilections and prejudices of their own culture as much as they analyse the culture of the societies that they study.

## 5 Commentary from lawyers and anthropologists

By their nature, edited volumes show us a community of commentators who are writing on a particular topic. In the ICC context, the nature of these communities is particularly interesting because the ICC has often been described as an international organisation that is particularly pronounced in the extent to which it is shaped by academic and civil society critique. Compared to many other institutions, academic scholars and civil society have both had a marked influence on the development of the ICC. The Court's practice has generated a remarkable amount of commentary during its short life and, in turn, its practice has been shaped by academics, non-governmental organisations and other civil society commentators (compared, for example, to the evolution of regular national criminal law systems in most jurisdictions). As well as through the Article 15 mechanism for providing information to the Prosecutor, public advocacy can have a tangible impact on the situations that are selected for preliminary examination and investigation, the cases that are then selected by the Prosecutor and the

Pre-Trial Chambers, the specific legal charges that are brought in a given case and the chambers' interpretation and application of the Rome Statute.

It makes sense, then, that if we want to understand the interactions of law and culture at the ICC, we should be just as interested in the 'culture' of the *communities of commentary surrounding the ICC* (as well as the institutional culture of the ICC itself), as we are in perhaps more familiar understandings of 'culture' as something that takes place in 'other' societies, far away from The Hague (Wilson, 2017). In other words, while there is a clear understanding of the need to better understand the culture of those who are affected by the ICC's proceedings and practices, this is only one part of the broader endeavour to describe and explain the activities of the Court on its own terms as an object of social inquiry. Arguably, it is only by looking more directly at the ICC's judges and lawyers themselves, as well as those who construct the critical discourse about the ICC, that we will come to understand more about how the ICC views itself, what it believes it is aiming to do, how it views the outcomes of its work to date and, ultimately, how it relates to victim communities.

A challenge for anyone writing on law and culture is therefore to speak to the twin audiences of culture scholarship and legal scholars – no small feat. In the ICC context, this is coupled with the peculiar challenge of writing about international criminal law, a legal discipline that engages a spectacular range of different disciplinary perspectives and methodologies. A high level of knowledge and training in both legal studies and social science is required to speak persuasively about the full range of aspects of the ICC's work. At the least, after their general legal training, international criminal lawyers must get to grips with public international law, international human rights law, international humanitarian law and the criminal law of their home jurisdiction, and, if they want to be truly 'international' in their perspective, obtain a comparative perspective of criminal law in other jurisdictions (Fletcher, 2019). Meanwhile, in the anthropological tradition, ethnography of a specific culture takes time and it is very difficult for an international criminal lawyer to claim any depth of knowledge and understanding of a situation country's culture when compared to an ethnographic expert. A doyen of the anthropology of law, Lawrence Rosen, admits that his book, *Two Arabs, a Berber, and a Jew* (2016), was the product of over fifty years of research, writing and fieldwork. As mentioned above, Clark's *Distant Justice* took eleven years to write and involved numerous interviews. Even an undergraduate degree in anthropology often requires over twelve months of fieldwork immersed in a community with limited interaction with the outside world and language training to a level of fluency.

It is unsurprising, then, that few scholars have sufficient grounding in both law and social science to write comprehensively about the ICC from both perspectives (culture in law/law as culture). This is not meant to be a flippant criticism, but to locate the impressive work of the twenty-five contributors to *Intersections of Law and Culture at the ICC* within a broader field of scholarly activity. It is said only to highlight the strengths and limitations inherent in different specialisms and to express support for writing that is humble enough to recognise its own limitations. A central challenge for legal scholars who write about 'law and culture' is surely to combine fine-grained legal analysis that is doctrinally persuasive with an understanding of culture as an interpretative process through which individuals give meaning to their activities. Anthropology is the discipline that has developed ethnographic methods aimed at this difficult task of explaining and elucidating culture. Since it is anthropologists who claim 'culture', as opposed to 'society' or 'demographics' or 'economic relations', as their domain of specialism, the challenge is for legal scholars who write about ICC 'law and culture' to attempt to engage with anthropology or at least with field-based research, without falling into the trap of asserting that a narrow, incomplete legalist understanding of culture in the sense of 'culture in law' is comprehensive. All this is therefore to say that any attempt at cultural analysis that looks only at the impact of external features colloquially referred to as 'cultural' as they impact on legal proceedings (culture in law) does not involve a full appreciation of culture in a sense that would be recognised by anthropologists (law as culture). There is a risk, then, of attempting to reinvent 'cultural studies within law' while failing to recognise the extensive in-depth social science work that already exists.

The epistemic challenge that this paper has sought to highlight is compounded, perhaps, by a tendency for both disciplinary standpoints (anthropologists writing from the perspective of cultural

analysis and lawyers writing in the methodologies of legal scholarship) to see past each other. International lawyers may feel that anthropologically informed writing lacks the rigour of legal analysis, substitutes positive argument with conjecture or mistakes the law. Meanwhile, the anthropologist reads the writing of the 'black letter lawyer' and maybe suspects an excess of comfort in describing legal practice in fictive terms of rules and principles, rather than empirical reality.

A last point about situating *Intersections of Law and Culture at the ICC* in the existing literature is simply to acknowledge the need for edited volumes to reflect the ethnic, national and linguistic diversity of the international justice community as a whole, particularly the diversity of affected communities. There is a prevailing risk of bias in international justice scholarship towards Global North universities, nationalities, ethnicities and/or languages. While this is a pervading criticism of international criminal law scholarship in general that Kamari Maxine Clark explores in *Fictions of Justice*, it should be of particular concern where the scholarly work in question is focused on representing 'law and culture' in international criminal justice. Where the 'cultural' subject of the work is, in essence, about how international criminal justice institutions represent their understanding of 'cultures' from the Global South, it is even more damaging if representatives of those Global South cultures are not heard from and represented. That being said, a diversity of backgrounds and opinions are represented in this volume, but perhaps a self-reflexive recognition of the authors' perspectives, and their contingency, would sometimes have led to more moderate claims about the cultural features of ICC situations.

*Intersections of Law and Culture* is an exciting and important contribution to legal scholarship on the ICC and it extends several of the existing discussions about ICC substance and procedure in new directions. Its focus is very much on topics that are concerned with the role of 'culture in law' and it is important to situate this contribution to the academic literature as only one field amongst several in the existing literature on ICC law and culture. It would be beneficial for further research on these topics to draw on the field-based work of authors such as Nouwen and Clark, as well as to build on methodologies from the anthropological *corpus* that can illuminate the social reality of international justice and its construction. Doing so would respect the central tenets of anthropology – the self-reflexive nature of the discipline – and would engage commentators in the unending process of deconstructing their own perspective of others, so that, ultimately, we might see more clearly the cultural lives of both those who develop and apply the law, and those who are impacted by it.

**Acknowledgements.** The author is grateful to Dr Nicola Palmer and Sjors Polm for their helpful thoughts and advice on this essay.

**Conflicts of Interest.** None

## References

- Christensen MJ** (2020) The creation of an ad hoc elite and the value of international criminal law expertise on a global market. In Heller K *et al.* (eds), *The Oxford Handbook of International Criminal Law*. Oxford: Oxford University Press, pp. 89–105.
- Clark P** (ed.) (2018) *Distant Justice: The Impact of the International Criminal Court on African Politics*. Cambridge: Cambridge University Press.
- Clarke KM** (ed.) (2009) *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. Cambridge: Cambridge University Press.
- Clarke KM** (ed.) (2019) *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback*. Durham: Duke University Press.
- Doherty T** (2020) Foreword. In Fraser J and Leyh BM (eds), *Intersections of Law and Culture at the International Criminal Court*. Cheltenham, England: Edward Elgar Publishing, pp. xiix–xxiv.
- Eltringham N** (ed.) (2019) *Genocide Never Sleeps: Living Law at the International Criminal Tribunal for Rwanda*. Cambridge: Cambridge University Press.
- Fletcher GP** (ed.) (2019) *The Grammar of Criminal Law: Volume Two: International Criminal Law*. Oxford: Oxford University Press.



- Fraser J and Leyh BM** (ed.) (2020) *Intersections of Law and Culture at the International Criminal Court*. Cheltenham: Edward Elgar Publishing.
- Hinton A** (ed.) (2018) *The Justice Facade: Trials of Transition in Cambodia*. Oxford: Oxford University Press.
- Kelsall T** (ed.) (2009) *Culture under Cross-examination: International Justice and the Special Court for Sierra Leone*. Cambridge: Cambridge University Press.
- Koskenniemi M** (ed.) (2006) *From Apology to Utopia: The Structure of International Legal Argument*. Cambridge: Cambridge University Press.
- Lohne K** (ed.) (2019) *Advocates of Humanity: Human Rights NGOs in International Criminal Justice*. Oxford: Oxford University Press.
- Nouwen S** (ed.) (2013) *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan*. Cambridge: Cambridge University Press.
- Palmer N** (ed.) (2015) *Courts in Conflict: Interpreting the Layers of Justice in Post-genocide Rwanda*. Oxford: Oxford University Press.
- Palmer N** (2021) Immigration trials and international crimes: expressing justice and performing race. *Theoretical Criminology* 25, 419–436.
- Rosen L** (ed.) (2016) *Two Arabs, a Berber, and a Jew: Entangled Lives in Morocco*. Chicago: University of Chicago Press.
- Rosen L** (ed.) (2017) *Law as Culture*. Princeton: Princeton University Press.
- Van Sliedregt E** (2016) International criminal law: over-studied and underachieving? *Leiden Journal of International Law* 29, 1–12.
- Wilson RA** (ed.) (2011) *Writing History in International Criminal Trials*. Cambridge: Cambridge University Press.
- Wilson RA** (ed.) (2017) *Incitement on Trial: Prosecuting International Speech Crimes*. Cambridge: Cambridge University Press.