

BOOK REVIEW

N. Eltringham, *Genocide Never Sleeps: Living law at the International Criminal Tribunal for Rwanda*, Cambridge, Cambridge University Press, 2019, 218 pp, £85.00, ISBN 978-1-108-48559-3
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There is no shortage of international criminal law scholarship. Some have suggested there is too much of it.¹ Original and innovative angles that genuinely provide the reader with an exciting and unexpected new perspective on a field that is progressively becoming mundane are increasingly harder to come by. But in his latest book, *Genocide Never Sleeps*, Nigel Eltringham has found one; taking the shutters off the social life of international criminal law practice.

Eltringham – a Reader in Anthropology at the University of Sussex – is no stranger to socio-legal studies. His corpus of work on the International Criminal Tribunal for Rwanda (ICTR) draws upon his personal experience conducting interviews and ‘deep hanging-out’ in Arusha over the course of eight months between 2005 and 2007.² His past work has focused on such diverse topics as the experience of visiting the ICTR and the creation of Foucault’s ‘validating public’³ to a critical review of the 2005 genocide film *Shooting Dogs*.⁴

In *Genocide Never Sleeps*, Eltringham again turns his eye to the ICTR. The book is structured around five chapters that broadly correspond to well-known issues in international criminal justice: legacy; outreach; the relationship between ‘civil’ and ‘common’ law approaches to trials; the interpretation of witness testimony; and the role of international criminal tribunals in establishing ‘the truth’. But unlike many scholars who have applied their treatments to these well-worn and faded debates, Eltringham’s purpose is not to resolve them; instead, he seeks to demonstrate how the functioning of the ICTR was born out of the way those who worked there engaged with them.

Eltringham appears to approach his subject with a sense of frustration. Disgruntled by what Meierhenrich termed ‘thin’ legal scholarship that is ‘so preoccupied with the technical minutiae of prosecution and adjudication’,⁵ Eltringham embraces the call for ‘thicker’ accounts of the law that factor in its people and the way they relate to each other, their work, and their role. This approach emphasizes that the practice of law is a social process; and that legal decisions and the evolution of institutions are not directed so much by doctrine, but rather by people. His primary concern is

¹C. Stahn, *A Critical Introduction to International Criminal Law* (2018), xiii.

²N. Eltringham, *Genocide Never Sleeps: Living law at the International Criminal Tribunal for Rwanda* (2019), 23.

³N. Eltringham, ‘Spectators to the Spectacle of Law: The formation of a ‘validating public’ at the International Criminal Tribunal for Rwanda’, (2012) 77(3) *Ethnos* 425.

⁴N. Eltringham, ‘Besieged History? An evaluation of *Shooting Dogs*’, (2008) 26(4) *Environment and Planning D: Society and Space* 740.

⁵J. Meierhenrich, ‘The Practice of International Law: A Theoretical Analysis’, (2014) 76(1) *Law and Contemporary Problems* 1, at 4 (quoted on p. 6).

therefore exploring how the ‘actions, motivations, consequences, philosophical assumptions [and] power relations’⁶ that existed within the ICTR shaped the institution; and demonstrating more broadly that international criminal justice is a ‘relentless, demanding process to be endured ... and it is enacted not by an institution, but by flawed (occasionally irreverent) humans’.⁷ In this respect, the book merely uses the ICTR as a case study to make the more broadly-applicable points that law cannot, and should not, be divorced from those who practice it; and that the practice of the law extends far beyond the simple acts of interpretation and argument. Indeed, much of what Eltringham observed at the ICTR would also be seen at the International Residual Mechanism for Criminal Tribunals, International Criminal Court, Special Tribunal for Lebanon, or any other international criminal tribunal for, while the ‘law’ may change, the importance of the social life of its people does not.

While Eltringham does engage with the literature on the topics he chooses to address, his purpose in doing so appears more to be to set up a frame of reference in which the reader can interpret and appreciate his recollections of his experiences at the ICTR. It is these personal accounts that give *Genocide Never Sleeps* its original and innovative angle. As an illustration, the title of the book is taken from a discussion Eltringham observed one night in Arusha:

One o’clock in the morning. The crowd packing Via Via bar, in Arusha, Tanzania, is made up of Tanzanians, backpackers, and staff from the ICTR. I stand at the bar with two lawyers. One bemoans another late night, “What we need is a decent cinema or a bowling alley, something other than drinking, then I can get some sleep”. “No”, his colleague jokes, “genocide never sleeps and neither should we”, and raises his glass in a mock toast, “genocide”.⁸

This short vignette is emblematic of many of the candid experiences Eltringham recounts. It is easy to dismiss remarks like this as flippant, but Eltringham encourages the reader to see how they produce and reflect meaning. One might consider it demonstrating the lawyers’ sense of *servitude*, extending long after the official close of business into the early hours of the morning; law as a *lifestyle* with an indistinct boundary between work and play; a *right* to speak facetiously of the ‘crime of crimes’. The thicker accounts of law that Eltringham pleads for demand that we do not artificially reduce ‘the practice of law’ to the sense that would be familiar to practicing lawyers; but instead broaden it and see how the daily ebb and flow of people dealing with people have a real and tangible impact upon ‘the practice of law’ in its narrowest sense.

When one starts looking, other examples that highlight the importance of the social lives of actors start appearing everywhere. Take Richard Goldstone’s recollection, in the context of laying the International Criminal Tribunal for the former Yugoslavia Office of The Prosecutor’s first charges, that one of the contributing factors to the urgency he felt was that one of the judges had said that they were embarrassed because ‘he couldn’t go to his club in his home town because his friends laughed at him’: ‘[w]hat kind of a judge are you?’, they asked, ‘[y]ou’re getting salary from the UN and you got no work to do?’.⁹ Or, in the context of deciding whether or not to appeal a judgment, one former Chief Prosecutor recounted to me that they were wondering ‘what the heck are these judges going to do for the next six months if I don’t send them this appeal?’.¹⁰ Thin accounts of the law would probably overlook these utterances completely; either because they are seen as irrelevant to the act of identifying or interpreting norms or are simply excluded by traditional doctrinal methodologies. But when they are factored in, they allow us to see how the direction of the law is shaped by social interactions.

⁶K. McEvoy, ‘Beyond Legalism: Towards a thicker understanding of transitional justice’, (2007) 34(4) *Journal of Law and Society* 411, at 414 (quoted on p. 7).

⁷Eltringham, *supra* note 2, at 24.

⁸Eltringham, *supra* note 2, at 23.

⁹Richard Goldstone in *Against All Odds, Sense Tribunal*, 2003, available at www.sense-agency.com/documentaries.42.html.

¹⁰Interview with P9, on file with author.

One must applaud Eltringham for his accessible and entertaining writing style. Unlike many international law scholars who appear to have an unfounded and outdated aversion to injecting first-person pronouns into their manuscripts, Eltringham embraces the *I*. When Eltringham is recounting his experiences in Arusha, the reader is placed in Eltringham's shoes: *I* saw, *I* noticed, *I* asked, *I* observed, *I* came to understand. Given his broader argument, it is a clever use of the literary device. The reader becomes Eltringham, seeing the ICTR through his eyes and significance in what he saw. In particular, they find themselves pondering things that might have once passed their lawyer's eye unnoticed: what role does the security screening play in the creation of a rarefied space? How does the deployment of simultaneous interpretation transform the nature of evidence and the trial? Why is it that a court's achievements are often demonstrated through things which can be quantified? What assumptions are inherent when people refer to the 'ICTR' or the 'Prosecutor' as 'super-people'? In these observations, Eltringham invites the reader to find meaning in the mundane; where international criminal law's development cannot be summarized in broad theories or claims, but rather as the cumulative effect of the minute and the daily lives of those who work within it.

Of course, how Eltringham experienced the ICTR is no doubt different to the experiences conveyed to his reader – which raises the question of just *who* Eltringham expected would be occupying his *I*. The answer that is apparent, from the frustrations expressed in his Introduction, are that this is a book for traditional legal scholars who Eltringham wants to emancipate from the thin view of law too many hold dear. But perhaps, though, it is with the corpus of practitioners Eltringham observed that *Genocide Never Sleeps* will have its greatest effect. After all, a common and unsettling theme in his oeuvre is his talent in holding a mirror up to lawyers, forcing them to reflect (perhaps for the first time) on their own identities and roles. His plea for traditional lawyers to demonstrate greater self-awareness may not necessarily result in radical changes to the direction or daily practice of international criminal law – nor even minor ones. But it may encourage them to question the degree to which their conduct and assumptions have been determined by the social environment in which they operate.

But, I think, *Genocide Never Sleeps* should also be read as a broader plea for universities to reflect on how they teach international law to their students. 'Traditional' or 'doctrinal' methodologies, long the province of lawyers who could claim to have the unique insight that would reveal the correct answers to problems, are quickly losing their attraction and relevance as scholars draw upon other disciplines to inform their work. Yet the teaching of law remains alarmingly traditional. There is the very real risk that students will be sent into the workforce ill-equipped to deploy and appreciate the methodologies that are used at – what is now – the cutting edge of international legal research; while simultaneously holding on to the naïve and limiting view that the answers to international law's problems can be found in doctrine. Teachers of international law must recognize that, in promoting the 'thin' view of law lamented by Meierhenrich and McEvoy, they are limiting the capacity of their students to see how law operates.¹¹ Eltringham's work is a perfect example of how the veil of law disguises a raft of more complex issues – identity, politics, new technologies, bureaucracy, and so on – that need to be considered if one is to appreciate how law and institutions develop in practice.

Genocide Never Sleeps is an entertaining, fascinating, and unsettling read. Eltringham has demonstrated the value in embracing thicker accounts of the law that allow us to develop a more nuanced understanding of how law works in practice. It is a book for which Eltringham should be commended; and which should be commended to all international criminal lawyers.

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¹¹McEvoy, *supra* note 6, at 411.

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