

by others such as Armin von Bogdandy, should be applauded. There is much merit in the view that context matters and legal scholars have a great deal to learn from other disciplines. Law and its institutions do not exist, operate, or evolve in a vacuum. There is some degree of risk, however, in encouraging interdisciplinarity, particularly if comparative constitutionalists begin to dabble in fields outside their expertise. As Koen Lemmens has observed, comparative lawyers have been known to incorporate “bits and pieces” from other established disciplines, such as economics, history, and political science, without having received the necessary training or having a good understanding of those fields (particularly their limitations). Legal comparativists might therefore engage with other disciplines on a superficial – or, even worse, misguided – basis. This risk might be managed by a detailed review of the methodological choices made and the results obtained from experts within the relevant disciplines. A second challenge to Hirschl’s argument is that, by emphasising context and invoking the methodological tools and perspectives of other disciplines to help explain legal phenomena, the quality and rigour of *legal* analysis in the scholarship might decline in favour of these non-legal fields. Despite these risks, there is much room in the field for a diversity of approaches to flourish and Hirschl’s view of “comparative constitutional studies” set out in *Comparative Matters* makes a valuable contribution to that end. Its influence is likely to be felt for years to come.

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*Taking Economic, Social and Cultural Rights Seriously in International Criminal Law.* By EVELYNE SCHMID [Cambridge: Cambridge University Press, 2015. 359 pp. Hardback £75. ISBN 978-1-107-06396-9.]

At least since the 1993 Vienna Declaration of the World Conference on Human Rights, there has been a push towards breaking down the separation between civil and political rights and economic, social, and cultural rights. Because all human rights are indivisible and interdependent, they should be treated equally and given the same emphasis. This realisation has led to calls for paying more attention to economic, social, and cultural rights (ESCR). International criminal law has not been immune to this trend. *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* charts in detail the area where ESCR and international criminal law meet. Evelyne Schmid argues that current definitions of international crimes overlap with violations of ESCR.

The starting point of Schmid’s analysis is that there is a general belief that, while international criminal law targets conduct that can also be considered a violation of civil and political rights, it does not equally cover ESCR breaches. This assumption is even shared by those who advocate for further engagement of international criminal law with ESCR but think that this would require legal reforms. She calls this the “legal impossibility argument”, meaning that there is a legal barrier for international criminal law to tackle ESCR violations. Therefore, she sets about showing how international criminal law, as it stands today, already criminalises acts that can also be considered violations of ESCR. In order to do that, she painstakingly goes through each crime, examining its mental and material elements, and identifying violations of ESCR which would fall under that definition. As a consequence, the author concludes that international tribunals, national courts, and non-judicial mechanisms could and should engage further with ESCR violations.

The author begins by demarcating the ground she plans to cover. The first chapter clearly sets out the purpose and hypothesis of the book and introduces its structure. Schmid shows how ESCR abuses have been marginalised in international criminal law and transitional justice. She claims that the mandate and practice of criminal proceedings, truth commissions, and reparations programmes have not covered violations of ESCR. As a consequence of this neglect, international criminal law fails to realise its potential to contribute to the fulfilment of ESCR worldwide. She further posits that, given the trend towards emphasising ESCR, it is an opportune moment for international criminal law to follow suit. The second chapter examines the reasons for the neglect of ESCR in international criminal law and the prevalence of the legal impossibility argument. It traces this marginalisation to the division between ESCR and civil and political rights, and claims that there is a belief that international criminal law is restricted to the latter. International criminal lawyers, Schmid argues, assume that ESCR only comprises positive obligations, is limited to structural violence, and its obligations are vague. In so doing, they misunderstand the real nature of ESCR obligations. She concludes that the failure to question the legal impossibility prevents international criminal law to provide redress to victims of ESCR. In Chapter 3, Schmid draws together the two fields the book is concerned with: international criminal law and international human rights law. The author is careful to point out that international criminal law and international human rights law, comprising civil and political rights and ESCR, are two distinct branches of law which sometimes can be applied to the same factual situation. She delineates the nature of obligations under international human rights law related to ESCR, including the obligations to respect, protect, and fulfil. The chapter also defines international crimes and addresses the relationship of international criminal law, international human rights law, and international humanitarian law.

The next four chapters look into specific crimes to identify how they can cover conduct that also constitute a violation of ESCR. They are divided by categories of crimes. Chapter 4 focuses on crimes against humanity both under the Rome Statute and customary international law. It goes through the chapeau elements and the requirements of each underlying offence. Chapter 5 turns to war crimes, dividing them into crimes against persons, against property, use of prohibited methods of warfare, and use of prohibited means of warfare. The following chapter looks into the overlap between ESCR and genocide. It goes through the *mens rea*, the special intent, and contextual elements of genocide. It argues that the destruction of a protected group can be achieved through ESCR violations. Chapter 7 addresses all remaining international crimes, including slavery, torture, apartheid, aggression, terrorism, money laundering, corruption, destruction, or theft of national treasures and environmental offences. In these four chapters, Schmid meticulously examines each element of each offence and finds examples, from actual cases or potential ones, in which international crimes could also constitute violations of ESCR.

In Chapter 8, the author draws all the crimes together and summarises the implications that the identified overlap between international criminal law and ESCR can have. She argues that this would allow the International Criminal Court to exercise jurisdiction over ESCR violations and its victims could claim compensation under its regime. She also emphasises that national criminal courts could equally prosecute some ESCR breaches. The author examines in detail the obligations that international crimes impose on states and the consequences that breaching them can entail. She also argues that recognising that ESCR violations can amount to international crimes could help truth commissions and other non-judicial mechanisms to engage more with the former. The concluding chapter summarises the findings, anticipates potential criticisms, and explores avenues for further research.

This book offers an exhaustive analysis of the relationship of international criminal law and ESCR. By going through each crime and its elements, Schmid clearly identifies areas of overlap between both branches of law. She builds a formidable case for her argument that current international crimes already cover conduct which can also be characterised as violations of ESCR. After reading *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law*, it would be extremely difficult to hold the legal impossibility argument that international law would have to be reformed to cover ESCR violations. Schmid persuasively advocates for an international criminal law which puts more emphasis on the role that ESCR violations play in conflict situations. In this sense, it is interesting that she carefully delineates the implications that her findings could have for prosecutions, civil cases, and non-judicial investigations of international crimes. Moreover, the book covers the whole expanse of international crimes. Before assessing whether an international crime could overlap with a violation of ESCR, Schmid explains the requirements and scope of each element of the offence. Given the breadth of crimes it covers, under both treaty law and customary law, the book offers a comprehensive summary of current international criminal law. However, that same thoroughness can sometimes make some parts slightly repetitive. This issue is possibly inescapable given the overlap between some offences in different regimes (e.g. torture as a crime against humanity, war crime, and as a self-standing offence). But, at the same time, the enormous scope of crimes covered means that some offences are dealt with briefly. The book is well researched and draws from an abundance of cases before international and national courts. The structure is methodical and solid. Schmid clearly sets out her argument at the onset and follows it throughout the book. She also explains the focus of the book, its purpose, and addresses potential challenges.

While the author convincingly proves that international criminal law and ESCR overlap, the prevalence of the legal impossibility argument is less persuasive. It does not seem controversial that purposefully starving people to death would, under certain circumstances, constitute both an international crime and a violation of the right to food. Indeed, as Schmid shows, the definitions of many international crimes were forged in the aftermath of World War II where similar practices were successfully prosecuted. Thus, it should come as no surprise that, if international criminal law was modelled on cases involving forced starvation, human experimentation, and slave labour, its offences could overlap with violations to the rights to food, health, and work. Furthermore, at one point, the author conflates international criminal law and transitional justice. In order to strengthen her point regarding the legal impossibility argument, the author draws on literature criticising transitional justice for not addressing ESCR. However, international criminal law and transitional justice are not the same. Transitional justice is not limited to international law and the mandate of its mechanisms under domestic law (truth commissions, national prosecutions, and reparations programmes) could easily include ESCR violations irrespective of whether they constitute international crimes. In fact, transitional justice is rightly criticised for not addressing ESCR violations when there is no legal barrier to do it. Nevertheless, some authors have indeed advocated for modifying international criminal law to include more ESCR abuses and Schmid clearly shows in the book that it already does so.

At the same time, whilst the range of international crimes that Schmid's book covers is impressive, the corresponding violations of ESCR tend to be much narrower. These are mostly extreme abuses such as starving people to death, performing detrimental medical experiments without consent, and economic or sexual slavery. That the overlap between existing international criminal law and ESCR is

a narrow sliver of undoubtedly atrocious conduct has the potential of summoning two challenges to the author's argument.

First, inasmuch as most of the acts that the author persuasively identifies as constituting both international crimes and ESCR abuses are clearly criminal, to also label them as a violation of a discreet ESCR does not seem to add much. For instance, saying that genocide, by deliberately inflicting on a group conditions of life calculated to bring about its physical destruction, can also constitute a violation of the right to food could seem as unquestionable as to verge on the redundant. Nevertheless, labels do matter. From an advocacy point of view, Schmid's work serves the purpose of reminding us that international criminal law was not built on the, in large part later, division between ESCR and civil and political rights. But it is indisputable, and the author readily admits it, that the range of ESCR violations that constitute international crimes is very circumscribed. Moreover, although Schmid does mention that some scholars and campaigners advocate for an expansion of international criminal law to include more ESCR violations, she refrains from addressing this important question or expressing her views about it.

The second potential challenge is that the narrowness of the overlap could actually contribute to restrict the scope of ESCR. The recognition that some extreme cases of ESCR abuses are also international crimes could have the unintended consequence of detracting from the much larger expanse and potential of these rights. Focusing on the violation of the right to housing by forced evictions in a context of ethnic cleansing could perhaps divert us from more progressive aspects of this right in terms of positive obligations. Yet these policy considerations do not lessen in any way the breadth, timeliness, and persuasiveness of the legal argument put forward.

There is no doubt that, with *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law*, Evelyne Schmid has compellingly demonstrated that some ESCR violations are currently criminalised under international law. In her thorough analysis of the relationship between the two legal areas, she has identified judicial precedents of overlap as well as the potential for further prosecutions. In this sense, her book could help to spark more interest in the socio-economic dimension of international crimes – an outcome which should certainly be welcomed.

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*Remorse, Penal Theory and Sentencing*. By HANNAH MASLEN [Oxford: Hart, 2015. 232 pp. Hardback £40. ISBN 9781849465434.]

Hannah Maslen's ambition in this book, to show the relevance of penal theory to the more "real" world of sentencing practice, is exciting. For her, "examining the practical implications of a normative argument serves to prompt reflection on its validity" (pp. 4, 135). For me, the excitement is not so much exploring the validity of her theory, but exploring whether theory can actually help us resolve what to many practitioners appear as practical rather than theoretical questions. The key question of this book – whether remorse should affect the sentence an offender receives – is enormously important. Does Maslen succeed in her ambition? I am not sure. It is a very readable book (unlike many books of penal theory!), and one which summarises theoretical writings in ways which are very engaging. But, rather than