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## Epilogue: From Too Tall to Trim and Small

Mark A. Drumbl

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## EPILOGUE: FROM TOO TALL TO TRIM AND SMALL

Mark A. Drumbl\*

I grew very tall but didn't know what to do with my height, the  
burden was too great, my back became bent . . . .

—Franz Kafka, *Letter to Father* (1919)<sup>1</sup>

The *William & Mary Bill of Rights Journal* dedicates itself to the study of constitutions. Although the *Journal* begins in (and with) the United States, it also comparatively looks abroad to foreign venues. In light of its mission, however, the fact that the *Journal* holds a symposium on international law is a somewhat nifty—perhaps even *outré*—move. It is so because one major difference between law at the international level and law at the national level is that law at the international level lacks much in the way of intentional constitutionalism. While considerable scholarly work posits (or questions) an emergent constitutionalization of international law and the idea(l) of global constitutionalism,<sup>2</sup> one thing remains clear: the international legal order is bereft of any formal, unitary constitution.

Assuredly, there are “constitutionalish” instruments at the international level. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are two that spring to mind. Many other widely ratified international instruments serve “constitutionalish” functions to protect and empower specific groups: conventions, for example, promoting the best interests of the child, the elimination of all forms of discrimination against women, and the rights of persons with disabilities. Certain public international organizations moreover may have their own enabling instruments that functionally structure their internal and external operations and define them as legal entities. These instruments are more institutional or constitutive than constitutional, however. They can be loosely analogized to corporate articles of incorporation.<sup>3</sup>

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\* Class of 1975 Alumni Professor of Law and Director, Transnational Law Institute, Washington and Lee University, School of Law. I thank Russ Miller for his input.

<sup>1</sup> FRANZ KAFKA, LETTER TO FATHER 53 (K. Reppin trans., Vitalis 2018) (1919).

<sup>2</sup> See, e.g., RULING THE WORLD? CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009); JAN KLABBERS, ANNE PETERS & GEIR ULFSTEIN, THE CONSTITUTIONALIZATION OF INTERNATIONAL LAW (2011); Oliver Diggelmann & Tilmann Altwicker, *Is There Something Like a Constitution of International Law? A Critical Analysis of the Debate on World Constitutionalism*, in 68 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 623 (2008); Mattias Kumm, Antje Wiener, Anthony Lang James Tully & Miguel Poiarés Maduro, *Global Constitutionalism: Human Rights, Democracy and the Rule of Law*, 1 GLOBAL CONSTITUTIONALISM 1 (2012).

<sup>3</sup> Here too, constitution-talk emerges: there is a burgeoning literature on corporate

In any event, all these “constitutionalish” instruments are not constitutions in any number of classic senses. These instruments do not delegate to a hearty and hale judicial entity the power to strike down executive, legislative, or administrative action that may fail to conform to the norms (however defined) contained therein. Nor does such a judicial constituency even exist—there are no Justice Marshalls to affirm (or create) powers of judicial review.<sup>4</sup> What is more, extant instruments lack a universality—as Anne Peters notes, there is simply no “super-constitution” at the international level that hangs over domestic orders or all international subfields.<sup>5</sup> Nor can bootstrapping extant instruments from their currently fragmented state(s) lead to a sum that is larger than the parts. Whereas constitutions at the national level tend to stand above legislative enactments when it comes to normative value, no such arrangement exists internationally. While it certainly is true that international law is moving from a system of interstate order to a system that promotes the rights of the individual as articulated against the state (and insists that the state provide certain *minima* to individuals), when “compared to domestic constitutions, the participation of individuals, their *status activus* in international legal processes, is extremely underdeveloped.”<sup>6</sup> Vidya Kumar, moreover, points to the lack of inclusive representativeness amid conversations about global constitutionalism. Kumar notes the omission of the Global South from this discourse. She incisively invokes Boaventura de Souza Santos’s “sociology of absences” to conclude that “[t]he production of global constitutional theory by global constitutionalists involves the active non-production of the Global South—as an object or as a subject—of the global legal order.”<sup>7</sup>

In sum, then, for all sorts of good reasons, the international legal imagination is not (yet) keen on some sort of world government enforced by a transnational constabulary that implements a globalitarian constitutional order. A reluctance arises to replicate internationally what many states have built nationally. And if a global constitutional imperative were to emerge right now, well, it would likely reinforce all sorts of exclusions—as noted by Kumar, it would not be inclusively cosmopolitan.

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governance as constitutionalism. See, e.g., STEPHEN BOTTOMLEY, *THE CONSTITUTIONAL CORPORATION: RETHINKING CORPORATE GOVERNANCE* (2007).

<sup>4</sup> The U.S. Constitution, to be sure, does not textually or explicitly establish the power of judicial review. This power had to be divined by Justice Marshall. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Contemporary constitutions for the most part however explicitly provide for judicial review.

<sup>5</sup> Anne Peters, *Constitutionalisation*, in *FUNDAMENTAL CONCEPTS FOR INTERNATIONAL LAW: THE CONSTRUCTION OF A DISCIPLINE* (Jean d’Aspremont & Sahib Singh eds., 2017).

<sup>6</sup> Thomas Kleinlein & Anne Peters, *International Constitutional Law*, OXFORD BIBLIOGRAPHIES, <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0039.xml> [<https://perma.cc/J6FA-LZET>] (last modified Feb. 22, 2018).

<sup>7</sup> Vidya Kumar, *Towards a Constitutionalism of the Wretched: Global Constitutionalism, International Law and the Global South*, VOLKERRECHTSBLOG (July 27, 2017), <https://voelkerrechtsblog.org/towards-a-constitutionalism-of-the-wretched/> [<https://perma.cc/SH5N-MUHY>].

To be sure, in certain regional (at times continental) contexts tangible constitutionalism has emerged. The African Court on Human and Peoples' Rights, for example, applies the African Charter on Human and Peoples' Rights among those states that are parties thereto and who have filed the requisite declarations, including in matters that involve an individual's freedom of speech, arrest, detention, and trial at the national level.<sup>8</sup> The framework of the European Convention on Human Rights, and the powers it grants the European Court of Human Rights over the national practices of consenting states, reflects another example. John D. Jackson's contribution to this symposium unpacks the effect of the jurisprudence of the European Court of Human Rights upon exclusionary rules of evidence (notably in the context of right to counsel and right to examine witnesses) for implicated states.<sup>9</sup> In both the African and European contexts—and to differing degrees *inter se*—supranational courts have cultivated a doctrine of “margin of appreciation” in terms of the scope of remedial scrutiny that they may exercise over domestic state action.

But the international level is different. Things are not ripe at that level; there simply is no constitutional “there there” yet. International adjudication that occurs within this void of international constitutionalism presents a curious interface. From my view, this curiousness comes into sharp relief when international tribunals prosecute individuals for gross violations of international law such as genocide, crimes against humanity, and war crimes. Göran Sluiter, in fact, begins his contribution to this symposium by observing that “[w]ithout a constitution and without a history in developing due process norms, international criminal tribunals have to provide for instant incorporation of human rights in their respective criminal proceedings.”<sup>10</sup>

Other contributions to this symposium address this interface in the specific context of the International Criminal Court (ICC).<sup>11</sup> Based in The Hague, the ICC began operations in 2002 “with jurisdiction over the most serious crimes of concern to the international community as a whole.”<sup>12</sup> ICC judges (and prosecutors) lack an

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<sup>8</sup> See, e.g., *Ingabire Victoire Umuhoza v. Republic of Rwanda*, No. 003/2014, Judgment, African Court of Human and Peoples' Rights (Nov. 24, 2017), <http://www.african-court.org/en/images/Cases/Judgment/003-2014-Ingabire%20Victoire%20Umuhoza%20V%20Rwanda%20-%20Judgement%2024%20November%202017.pdf> [<https://perma.cc/9UBM-S3TY>].

<sup>9</sup> John D. Jackson, *Common Law Evidence and the Common Law of Human Rights: Towards a Harmonic Convergence?*, 27 WM. & MARY BILL RTS. J. 689 (2019).

<sup>10</sup> Göran Sluiter, *Human Rights in International Criminal Proceedings—the Impact of the Judgement of the Kosovo Specialist Chambers of 26 April 2017*, 27 WM. & MARY BILL RTS. J. 623 (2019).

<sup>11</sup> Susana SáCouto & Patricia Viseur Sellers, *The Bemba Appeals Chamber Judgment: Impunity for Sexual and Gender-Based Crimes?*, 27 WM. & MARY BILL RTS. J. 599 (2019); Stuart Ford, *Understanding Crime Gravity: Exploring the Views of International Criminal Law Experts*, 27 WM. & MARY BILL RTS. J. 659 (2019).

<sup>12</sup> The language is from the preamble to the Rome Statute, the ICC's enabling treaty. Rome Statute of the International Criminal Court, pmb., July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute, pmb.]. The ICC has to date convicted three individuals (one on a plea bargain) and sentenced them to terms of fourteen, twelve, and nine years.

imperative constitutional instrument to which to turn to guide, control, or justify what they do. To be sure, the ICC's enabling instrument (the Rome Statute) does contain procedural rights.<sup>13</sup> Interpretation *within* an enabling instrument nonetheless differs from application of rights guaranteed *outside* of that enabling instrument in the context of a normative hierarchy of sources of law. This means that, at the ICC for instance, an acquittal is just that—an acquittal—without any explicit linkage to the extrinsically higher-order mandated value of ensuring due process, respecting the rights of the accused, principled development of the law, or keeping prosecutors and police in check. Teleologically, due process at the ICC is to be determined by the ICC based on what is best in the moment for it and its functionalities. Due process is not to be determined in light of what is best—now and in the future—for broader constituencies or collectivities. Unsurprisingly, then, acquittals trigger consternation among many international lawyers because they are seen as impeding justice rather than creating justice. Acquittals are taken as signs of system failure. They are not at all taken as a “finest hour.” ICC judges lack the “cover” that a legitimate constitution provides. This is the cover that says: my hands are tied by my duty and my core duty is to uphold a (the) constitution.

The ICC was not set up to regulate routine affairs in the ways that ordinary national court systems do. The ICC exists to punish enemies of all humankind. Its preamble is eloquent in this regard. The state parties that established the ICC did so:

*Conscious* that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,  
*Mindful* that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,  
*Recognizing* that such grave crimes threaten the peace, security and well-being of the world,  
*Affirming* that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,  
*Determined* to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.<sup>14</sup>

No ordinary domestic criminal court self-identifies in such a fashion.

Normally human rights activists and advocates are somewhat leery of criminal courts and jailhouses. They tend to side with the defense. Criminal courts and prisons, after all, are seen in domestic settings to disproportionately pick on the weakest, give

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<sup>13</sup> See Sluiter, *supra* note 10, at 637.

<sup>14</sup> Rome Statute, pmb., *supra* note 12.

too much power to the intrusive state, and massively incarcerate minority groups (the “New Jim Crow,” for example).<sup>15</sup> Such themes are constant refrains—as they should be—in the teaching of criminal law in U.S. law schools. The very same themes mentioned above, in my experience, are virtually absent from the teaching of international criminal law in U.S. law schools. The energy of transnational activism and global civil society aligns with the prosecution of international crimes by international courts and tribunals.<sup>16</sup> Amnesty International, for example, was founded by British lawyer Peter Benenson to promote the amnesty (a goal so important that it became its namesake), that is, to release all unfairly convicted persons (in particular prisoners of conscience) languishing in national jails. Central to this movement was well-placed suspicion of the coerciveness of penal law. Over the past half-century, Amnesty International has expanded its work beyond release of prisoners to “upholding the whole spectrum of human rights.”<sup>17</sup> Along this journey, it has become a firm supporter of criminally prosecuting accused human rights abusers, including before international tribunals. And the amnesty in cases of alleged serious international crimes—no matter whether it would help promote peace or not—has become ostracized as an option. In these contexts, Amnesty International denounces the amnesty.

International courts when enforcing international criminal law are seen as different from national courts when enforcing ordinary national law. There is no lonelier, and less glorious, place in international criminal law enforcement than being a defense counsel. Often, defense counsel are constructed as representing monstrous abusers. They are not appreciated in the way that U.S. public defenders are. Their clients, after all, are preordained with guilt. A senior official in a genocidal government is not a case of mistaken identity or the “wrong person in the wrong place.”

The ICC actuates the view that human rights are to be promoted through prosecution and punishment. Fighting impunity has come to hinge upon the coercive force of international criminal law. Karen Engle, Zinaida Miller, and D.M. Davis unpack how this new and unquestioned (and at times obsessive) emphasis on criminal punishment represents a deep-rooted change in the positions and priorities of human rights practitioners.<sup>18</sup> And this change, this trend, is accelerating. There is increasingly a sense that victims have a right to criminal punishment of others, and that failing to

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<sup>15</sup> MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

<sup>16</sup> MARK A. DRUMBL, *ATROCITY, PUNISHMENT, AND INTERNATIONAL LAW* 9 (2007); William Schabas, *Sentencing by International Tribunals: A Human Rights Approach*, 7 *DUKE J. COMP. & INT’L L.* 461, 515 (1997).

<sup>17</sup> See *Who We Are*, AMNESTY INT’L, <https://www.amnesty.org/en/who-we-are/> [<https://perma.cc/4R6W-XMWA>].

<sup>18</sup> *ANTI-IMPUNITY AND THE HUMAN RIGHTS AGENDA* (Karen Engle, Zinaida Miller & D.M. Davis eds., 2017) (noting also that the focus on anti-impunity has created blind spots that lead to a constricted response to human rights violations, a narrowed conception of justice, and an impoverished approach to peace).

criminally punish someone who “deserves” it is itself a human rights violation.<sup>19</sup> This move may further incent any or all of the following: permissive theories of criminal liability; diluting *mens rea* requirements; bending the rules of admissibility; tolerating lengthy delays; countenancing non-disclosures and anonymous testimony; overlooking prosecutorial overreach; and nudging invasive searches, seizures, and wiretaps at the investigatory stage. In domestic systems, penal law tends to be interpreted restrictively in light of principles of *nullum crimen sine lege*; internationally, however, calls often arise for international criminal law to be interpreted purposively with restrictive interpretations seen as stymying. Indeed, Sluiter’s “instant incorporation of human rights” is not a straightforward process, as he notes, since “the effect of human rights law in international criminal proceedings has proven at times to be problematic.” Procedure may be prone to being seen skeptically because it gets in the way of what is self-evident, that is, to get on with condemning that accused war criminal (who is already so difficult to bring into custody and put on trial).<sup>20</sup> And when ICC judges are faced with departures from “rules,” well, they have no imperative to point to say: “Hey, prosecution, get with this because there’s a bigger game in town and that’s the constitution.” Similarly, Stuart Ford in his contribution to this symposium unravels the conversations that redound regarding the meaning of the term “gravity” which is central to many stages of the ICC’s jurisdiction and operation.<sup>21</sup> Clearly, without being moored by some sort of gravity (in the sense of the laws of physics), the meaning of gravity (in the sense of the laws of international crimes, that is, seriousness) may become too elastic and may trigger jurisdiction over conduct that, at first blush, might only ostensibly fit within the condemnatory solemnity of a major trial in The Hague.

International judges being who they are, namely human, in some instances do acquit accused *génocidaires* and war criminals. This is seen in many quarters as a betrayal; as damaging the entire architectural handiwork of international lawyers and as harming the very courts on which those judges sit. Without a constitution backing them up, ICC judges lack shelter (or cover) from or for such commentary.

The *Bemba* appeal, adroitly discussed by SáCouto and Sellers’s contribution to this symposium, is a telling example. Jean-Pierre Bemba Gombo is a senior Congolese politician who was unanimously convicted by the ICC in 2016 at trial as a commander for failing to prevent or repress the actions of his subordinates (rape, murder, pillage) from 2002–2003 in the Central African Republic. In June 2018, the ICC Appeals Chamber in a splintered decision reversed his convictions. A majority

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<sup>19</sup> See, e.g., Jens David Ohlin, *The Right to Punishment for International Crimes* (Cornell Legal Studies Research Paper No. 18-31, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3134092](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3134092) [<https://perma.cc/H9ZZ-XQJJ>]. For a critique, see Saira Mohamed, *Criminal Punishment as a Human Right?* (2018) (working draft) (on file with author).

<sup>20</sup> Sluiter aptly observes that “[t]here are, unfortunately, some examples in the case law of international criminal tribunals . . . in which the special character of international criminal proceedings has played a role in reducing the protection of human rights as they otherwise would have been available at the national level.” Sluiter, *supra* note 10, at 634.

<sup>21</sup> Ford, *supra* note 11.

of three judges (Judges Christine Van den Wyngaert (Belgium), Howard Morrison (United Kingdom), and Chile Eboe-Osuji (Nigeria, and ICC President)) did so by ruling, first, that some of the convictions involved acts that were outside of the scope of the initially confirmed charges, and second, by finding that at trial the application of command responsibility in the context of a “remote” commander was seriously in error.<sup>22</sup> The ICC Prosecutor responded with an extraordinary statement criticizing the majority judges in which she noted how the acquittal is unfortunate, in particular in the case of crimes of sexual violence, in light of the “acute need to send a clear signal globally that such abhorrent crimes must not go unpunished.”<sup>23</sup> It seems that the judges damaged the ICC by acquitting, and then the Prosecutor piled on and further sapped the ICC’s legitimacy by faulting the decision not to convict. Academic commentators, as well, have lamented the acquittal,<sup>24</sup> noting in one instance that it presents “extremely negative consequences” for the ICC.<sup>25</sup>

Intriguingly, were there to be a global constitution to which ICC judges were beholden, then perhaps a more solid basis would arise for the sort of criminal law interpretation urged by the Prosecution and supportive observers. In *Bemba*, a central concern is that the approach to command responsibility applied by the Appeals Chamber fails to fit with the kinds of situations in which sexual violence becomes pervasive. SáCouto and Sellers persuasively argue that the application of liability theories, including command responsibility, at the ICC occurs in a discriminatory manner. This is because, from a vicarious liability perspective, sexual violence “often occurs because it is tolerated and permitted rather than explicitly ordered or planned.”<sup>26</sup> Hence, a more liberal view of penal liability is warranted. If there were a constitutional framework, and if that framework actively included women’s equality protections that judges were duty-bound to respect when interpreting the criminal law, those exogenous imperatives could then infuse endogenous interpretive needs.

This Epilogue begins to end by looking back to where it began, namely, with the words of Franz Kafka: “I grew very tall but didn’t know what to do with my height,

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<sup>22</sup> Two of these judges (Van den Wyngaert and Morrison) acquitted entirely on the facts instead of ordering a new trial. Judge Sanji Mmasenono Monageng (Botswana) and Judge Piotr Hofmański (Poland) appended a joint dissenting opinion that disagreed with the majority’s decision to acquit. See *ICC Appeals Chamber Acquits Mr. Bemba From Charges of War Crimes and Crimes Against Humanity*, ICC (June 8, 2018), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1390> [<https://perma.cc/PD3E-RAWZ>].

<sup>23</sup> *Statement of the ICC Prosecutor, Fatou Bensouda, on the Recent Judgment of the ICC Appeal Chamber Acquitting Mr. Jean-Pierre Bemba Gombo*, ICC (June 13, 2018), <https://www.icc-cpi.int/Pages/item.aspx?name=180613-OTP-stat> (noting that “[n]otwithstanding the ultimate outcome of this decision, the Court will continue with renewed determination its fight against impunity for perpetrators of the most serious crimes”).

<sup>24</sup> See SáCouto & Sellers, *supra* note 11, at 599–600.

<sup>25</sup> AlexWhiting, *Appeals Judge Turns the ICC on its Head With Bemba Decision*, JUST SECURITY (June 14, 2018), <https://www.justsecurity.org/57760/appeals-judges-turn-icc-head-bemba-decision/> [<https://perma.cc/N4EV-LCL3>].

<sup>26</sup> SáCouto & Sellers, *supra* note 11, at 600–01 n.10.



the burden was too great, my back became bent . . . .”<sup>27</sup> Kafka’s is not a letter about law, whether international, national, or local. It is a letter about childhood, to wit, his childhood in Prague. Along with masterpiece novels, Kafka wrote over 1,500 letters in the forty-one years of his life. *Letter to Father*, which he penned at the age of thirty-six, is his longest. It filled over 100 sides of written manuscript pages. Yet Kafka never sent it. Instead, it published well after his death and after the death—several years later—of his father, to whom the letter was addressed. Hermann Kafka, his father, was by all means a towering—if not omniscient—figure (certainly to Franz). Starting from nothing in a village in Bohemia, Hermann began as a haberdasher only to become a commercially successful shopkeeper. His shop, located in the center of Prague’s gorgeous Old Town, was a fixture of Franz’s childhood. Franz’s memories, however, were sour. His father was strict and demanding. He was tough. Franz, the eldest and only surviving boy, was not. Franz struggled—as all children do, though Franz struggled a great deal—to be himself, to become himself, to move out of the shadows of the adult, to speak and not only be spoken to. So when Franz grew up tall, well, he never became strapping for he never knew what to do with his height. For Kafka, height was too much of a burden. So he became bent, his shoulders sloped, he shuffled and slogged along.

As for international law, it is taken by so many to be so tall. And it is my intuition that, as it becomes taller as a repository for so many hopes and dreams, well, it buckles and bends. It becomes brittle. It doesn’t know what to do with all that responsibility. The sheer weight of those hopes and dreams simply becomes too much.

What, then, to do? Ramrodding international law, buttressing it with the titanium spine of constitutionalism, is not a solution. As I mentioned earlier, the international legal imagination does not seem ready for global constitutionalism in a hard and firm sense. Instruments that are softer, more aspirational, and more scattered are likely more reflective of the current *Zeitgeist* and the headspace *du jour*. So, then what? For me the answer involves (re)calibrating expectations. It lies with anticipating less from international law in all its forms and varieties; to gaze less beseechingly at its hues and colors; to lighten the load squared upon its institutions, including international criminal courts and tribunals. It is paradoxical to avoid global constitutionalism, on the one hand, and then remain vexed when the half-way houses that actually are created do not keep out all the rain (nor stave it off in the first place). The goals placed on international criminal tribunals—to end war, bring closure to victims of atrocity, and imagine justice for “unimaginable atrocities”<sup>28</sup>—are altitudinous. It is unfair—such daunting goals set the institution up for failure from the start for it is made to portend something it can never produce. The result, then, is a chronic state of disappointment. Courts of law cannot deliver us from evil. They are not the “hand of the Almighty,” to draw from Bob Marley’s beautiful “Redemption Songs,” whose “touch” messianically lifts from “the bottomless pit.”

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<sup>27</sup> KAFKA, *supra* note 1, at 53.

<sup>28</sup> Rome Statute, pmb., *supra* note 12.

Critics of these international courts, particularly from the political realist side, should also temper their vociferousness. They should do so because their fears of the “height” of these institutions are wildly exaggerated since the institutions cannot deliver the threats with which critics imbue them. The institutions lack the capacity. So this vociferousness becomes nothing more than spittle and bloviating.

What if international lawyers did a *volte-face*? What if international lawyers engaged a bit more with private orderings and alternate frameworks and welcomed smaller yet trimmer scales: less grandiosity and globalism and more modesty and localism? When it comes to atrocity crimes, for example, alternate methods of transitional justice in the aftermath of collective violence—truth commissions, traditional ceremonies, public inquiries, memorials and commemorations, bottom-up initiatives that may look less like “law” but look a lot more like “life”—are seen by the international legal imagination at most as “second best.” The international criminal trial—beginning at Nuremberg—has captured the international legal imagination as the “first best” way to deliver justice.<sup>29</sup> Perhaps it makes sense to revisit this.

Lan Cao, in her bold contribution to this symposium, guides her readers in this direction.<sup>30</sup> She does not do so in the case of war criminals, to be sure, but in the context of the possibilities of economic development and social ordering under “charter cities.” From Cao’s perspective, cities “have become innovative global actors participating in the international arena in their own right, even as they retain their subordinate status within the nation.” Flowing from this, charter cities represent special economic zones in which improvised practices that depart from national laws may regulate economic and social life. Although on the one hand charter cities may be viewed dubiously for the deregulation, lack of democracy, and neocolonialism that they may bring, on the other hand they open spaces to refresh the intersections between local private ordering and global public governance that, in certain ways, might alleviate some of the unattainable burdens that currently yoke international institutions. Charter cities may also be more nimble and adept. One example is how cities, often chock full of citizens with more congruent political bandwidths, might be better able to achieve consensus on addressing climate change than nations (let alone the sprawling international community), whose failures to do anything meaningful in this regard pose a wretched threat to sustainable intergenerational equity. Other examples may arise, as well, ranging from provision of health care services, to housing, to education.

To actually end, then, albeit by gesturing ahead: perhaps a future *Journal* symposium could be as successful as this one by jumping to the far other point of the geographic spectrum to explore inchoate constitutionalism(s) at the local or municipal level(s).

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<sup>29</sup> Mark A. Drumbl, *The Future of International Criminal Law and Transitional Justice*, in RESEARCH COMPANION TO INTERNATIONAL CRIMINAL LAW: CRITICAL PERSPECTIVES 531, 532 (William Schabas, Yvonne McDermott & Niamh Hayes eds., 2013).

<sup>30</sup> Lan Cao, *Charter Cities*, 27 WM. & MARY BILL RTS. J. 717 (2019).