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**Margaret deGuzman, Shocking the Conscience of Humanity:
Gravity and the Legitimacy of International Criminal Law
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Review of M. deGuzman, *Shocking the Conscience of Humanity: Gravity and the Legitimacy of International Criminal Law* (Oxford University Press, 2020), 240pp, £80.00, ISBN: 9780198786153.

Drawing on an impressive collection of previous shorter pieces, Professor Margaret DeGuzman's new book, *Shocking the Conscience of Humanity: Gravity and the Legitimacy of International Criminal Law*,¹ offers a new perspective on the entire international criminal justice project. In the author's opinion, the concept of gravity of international crimes should be linked to the 'values of the international community' and, in particular, to the goal of preventing and punishing violations of human dignity. By linking the concept of gravity of international crimes to such values, deGuzman's book develops a thought-provoking critique of international criminal justice as whole, one that has the potential of challenging how scholars evaluate the theoretical foundations of international criminal law itself.

The book under review comprises an introduction, six substantive chapters, and a conclusion. In the introduction, the author sets the goals of the book and describes the conceptual framework applied throughout. In this, there is some overlapping with Chapter I, which has an introductory function as well, clarifying the concept of 'legitimacy' employed by the author,² and the cosmopolitan approach adopted in the analysis.³ The author aims at filling the concept of gravity, often used in international criminal discourse, with axiological meaning.⁴ In doing so, Chapter I takes into consideration the overall ensemble of the actors interested in the administration of international criminal justice, suggesting that, in this field, a concept of a global community that coincides with the concept of humanity as a whole should be employed.⁵

Chapter II traces the relevance of the concept of gravity in international criminal law as an element that is crucial both to justify international prescriptive authority and to exercise international adjudicative authority. This informative chapter demonstrates that, although gravity has been invoked to justify the activation of international criminal justice, there is actually no common understanding of what gravity means. This rich chapter offers plenty of details on the conceptualisation of gravity in the framework of the statutes and practices of different international courts and international non-adjudicative bodies, with a particular focus on the works of the UN International Law Commission.

Chapter III focuses on gravity and prescriptive authority. The author analyses why certain human acts have been considered so grave that they needed to be criminalised at the international level. The author successfully demonstrates that there is no unanimity as to why certain acts deserve international criminalisation, as demonstrated by a comparison between the definition of crimes against humanity in the statutes of different international courts and tribunals.⁶ The author advocates for a 'dialogical process' regarding the global values and goals that underlie the criminalisation of a certain

¹ See, e.g., M. deGuzman, 'Gravity and the Legitimacy of the International Criminal Court', 32 *Fordham International Law Journal* (2008-2009) 1400; M. deGuzman, 'How Serious Are International Crimes? The Gravity Problem in International Criminal Law', 51 *Columbia Journal of Transnational Law* (2012-2013) 18; M. deGuzman, 'The International Criminal Court's Gravity Jurisprudence at Ten', 12 *Washington University Global Studies Law Review* (2013) 475.

² M. deGuzman, *Shocking the Conscience of Humanity: Gravity and the Legitimacy of International Criminal Law* (Oxford University Press, 2020), at 10.

³ *Ibid.*, at 20.

⁴ *Ibid.*, at 11.

⁵ *Ibid.*, at 19-20

⁶ *Ibid.*, at 82.

conduct in light of its gravity.⁷ She argues that international crimes should encompass ‘any conduct or omission that is widely viewed around the world as harming or threatening to harm human dignity to such an extent as to give rise to criminal prohibition’.⁸ In this way, the protection of human dignity, with an emphasis on the prevention of harm, becomes the theoretical justification of international criminalisation. However, in discussing gravity as a foundation of international criminal prescriptive authority, deGuzman offers a dichotomy between international criminalisation versus domestic criminalisation that may be missing in nuance. There is arguably a third category to be taken into account, that of international obligations of domestic criminalisation, i.e., those international obligations that require states to create domestic offences.⁹ It could be argued that even these obligations aim at preventing (certain) violations of human dignity, and one might wonder how they would fit into deGuzman’s systematisation.

Chapter IV analyses the role of a values-oriented approach to gravity in relation to the exercise of jurisdiction by international criminal courts. The author addresses the pivotal issue of gravity as an admissibility threshold in the ICC Statute and its role in relation to the selection of situations and cases by the Prosecutor. Correctly, deGuzman argues that the threshold of sufficient gravity should be considered very low so as not to create a jurisdictional barrier.¹⁰ deGuzman is very critical of the current approach by the ICC Prosecutor and Chambers in relation to the identification of quantitative and qualitative factors relevant to the determination of sufficient gravity under Article 17 and 53 of the ICC Statute. In deGuzman’s opinion, the Prosecutor and the judges should depart from any pretence of applying objective factors,¹¹ and should link the gravity factors to the goals of the international community, as the Prosecutor has actually tried to do in relation to the selection of cases and situations.¹² However, deGuzman does not clarify whether her proposed approach would be allowed under the existing provisions of the Statute – though she admits that this approach should be adopted pursuant to the different concept of interests of justice under Article 53 rather than under the gravity threshold.¹³ When deGuzman advocates for a more flexible approach to prosecutorial discretion,¹⁴ it is unclear whether the dialogical approach to goals and values she invokes would be effective in preventing abuses of discretionary power. Rather, the attempt to apply objective gravity criteria, however imperfect they are, is clearly seen by the ICC as a bulwark against abuses of discretion in favour of powerful actors, which is arguably a rather important consideration in relation to the legitimacy of the Court.¹⁵

Professor deGuzman’s approach to gravity is applied in relation to the rights of the defendants and the availability of defences in Chapter V. Correctly, this chapter challenges the view that the gravity of the alleged crimes at stake may be used to reduce the rights of the defendants. The author concludes that, although the gravity of the alleged crimes is often invoked to justify the non-availability of certain defences or certain

⁷ *Ibid.*, at 91.

⁸ *Ibid.*, at 89.

⁹ See, e.g., Georg Schwarzenberger, ‘The Problem of an International Criminal Law’, 3 *Current Legal Problems* (1950) 263-296, at 266; Steven Malby, *Criminal Theory and International Human Rights Law* (Routledge, 2020).

¹⁰ deGuzman, *supra* note 2, at 108.

¹¹ *Ibid.*, at 105.

¹² *Ibid.*, at 114-115.

¹³ *Ibid.*, at 132-134.

¹⁴ *Ibid.*, at 136.

¹⁵ This reviewer took this position in M. Longobardo, ‘Everything Is Relative, Even Gravity: Remarks on the Assessment of Gravity in ICC Preliminary Examinations, and the *Mavi Marmara* affaire’, 14 *Journal of International Criminal Justice* (2016) 1011-1030; ‘Factors Relevant for the Assessment of Sufficient Gravity in the ICC. Proceedings and the Elements of International Crimes’, 33 *Zoom-In Questions of International Law* (2016) 21-41.

procedural limitations of the rights of the defendants (e.g., in relation to the abduction of suspects such as in the Eichmann trial),¹⁶ linking the idea of gravity to human dignity would prevent tribunals to accept human rights violations in the pursuit of international criminal justice.¹⁷ Limited differences in the rules on defences and defendants' rights are permissible only if the invocation of the gravity of the crimes is accompanied by an explanation on why said different rules would advance the goal and value of the international community to prevent and punish violations of human dignity.¹⁸

Finally, Chapter VI applies the author's values-oriented notion to gravity in relation to sentencing. International criminal courts should explain how their sentencing practices advance the values and goals that the international community aims at promoting through international criminal justice.¹⁹ Since these goals are not retributive, gravity should reinforce the preventive function of sentencing, so that the imposed punishment is sufficient to meet such goals, though never greater than necessary.

The conclusions of this book (summarised in Chapter VII) deserve attention because they have the potential to generate further debate on the very legitimacy of international criminal justice. deGuzman adopts a broader approach that is not limited to the ICC Statute, but rather, aspires to encompass past, present, and future mechanisms pertaining to the administration of international criminal justice. For this reason, the book under review is not, strictly speaking, a book on gravity; it rather presents a novel theoretical perspective that could be applied in relation to several specific issues pertaining to criminalisation, prosecution, and sentencing of international crimes. This broad perspective, free from the constraints of one or more specific legal instruments (e.g., the ICC Statute) and of *lege lata*, aims at reconceptualising the wider administration of international criminal justice and at asking questions on how the suggested values-oriented approach may, and should, strengthen the very legitimacy of the system itself.

The book is based on solid primary and secondary sources that are employed to support the author's arguments in a persuasive way. Professor deGuzman's analysis of the preparatory works of relevant international criminal statutes deserves particular praise as it is performed with rigour and care. The agile footnotes of the book offer good references to the existing literature on the issues addressed by each chapter, with several references to non-legal sources from jurisprudence. Unfortunately, and following a regrettable global trend, almost all the sources employed are in English.

Overall, even if the reader does not end up subscribing to all the conclusions offered by deGuzman, they will feel enriched at the end of this book. This remarkable contribution to the theoretical foundations of international criminal justice and this passionate invocation of a values-oriented notion of gravity to strengthen the legitimacy of international criminal law are sure to spark significant debate in the forthcoming years.

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¹⁶ deGuzman, *supra* note 2, at 149.

¹⁷ *Ibid.*, at 163.

¹⁸ *Ibid.*, at 161.

¹⁹ *Ibid.*, at 185.