S. Sharat, *Gender, Shame and Sexual Violence: The Voices of Witnesses and Court Members at War Crimes Tribunals* (Farnham: Ashgate, 2011), 184pp, £55.00

Reviewed by Catherine O’Rourke

*Gender, Shame and Sexual Violence* examines the prosecution of sexual violence as a war crime in the International Criminal Tribunal for the former Yugoslavia and the War Crimes Court of Bosnia-Herzegovina. The book is the product of three years of extensive empirical examination of the prosecutions between 2006 and 2009, involving interviews and questionnaires with Court personnel and witnesses, as well as trial observations. The author sets out to assess the effectiveness of the courts in dealing with conflict related sexual violence. “Effectiveness” is determined by three criteria, namely: the gender competence of Court personnel, victims’ experiences of the Court, and the presence and impact of women as court personnel. The premise of the book is that law is neither neutral in its design nor its application, thus an examination of the prosecution of sexual violence as a war crime must adopt an actor-oriented approach. A feminist assessment of a court must shift its focus away from the law and towards those who deliver justice.

The clear strength and contribution of the book is the wealth of original empirical data that Sharat brings to the fore. In conducting the research, she benefitted from an extraordinary level of access to the research subjects, in particular to court personnel. The book includes (anonymized) interview data from several of the judges and prosecutors of the respective courts, as well as quantitative data based on a very high return rate of questionnaires from officers of the court. The interview data that explores the perceptions of judges and prosecutors of their roles and obligations, their responsibilities to victims and their requirement to act neutrally is perhaps the most enlightening content of the book. In the chapter dealing with protective measures open to victims, such as *in camera* proceedings and guaranteeing the victim’s anonymity, the data collected through trial observations is also fascinating in revealing the practical limitations (often to the point of meaninglessness) of measures such as protecting witness identities.

Through this triangulation of interview, questionnaire and trial observation data, the author exposes many novel and intriguing aspects of the court’s operations. For example, the author found that many husbands accompanied victims to testify and that these men were the main sources of support to witnesses, debunking the notion that all husbands abandon their wives following sexual victimization. Similarly, the finding that most witnesses were glad they testified and would testify again demonstrated the value of legal acknowledgement. The book also illustrated that the common NGO emphasis on post-testimony psycho-social care was misdirected.
and did not reflect the stated economic needs of victims. This poses challenging and important questions for NGOs in this area. Also fascinating was the finding that it was judges and prosecutors who most commonly sought closed sessions and protective measures in general (for example, making proceedings in camera, or using voice distortion technologies or pseudonyms) in order to control the court room. This was generally undertaken because of their fear of women’s emotionality, and did not primarily reflect the interests of witnesses or result from requests by victims’ legal representatives.

These nuggets of fascinating and important information were, however, often buried within some quite dense reporting of the empirical findings. Moreover, and more problematically, these nuggets were not typically linked to any broader theoretical discussion of the questions at the heart of the book. The research underpinning the book was funded by the Soros Foundation. In addition, the author has an impressive background in feminist advocacy in this area. One suspects that these are the factors that resulted in a more NGO-type report on the issues under investigation, rather than primary concern with questions of scholarly or theoretical debate.

The book begins with two, quite dense, descriptive chapters that detail, firstly, the historical background of the documentation of war crimes for prosecution at the ICTY, and secondly, the legal background to the international criminal tribunals. It is only in Chapter 3 that the author begins to discuss a theoretical framework, and it is this chapter that is perhaps the least developed in the book. As feminist scholars (and advocates) in international law increasingly question the material value to women of doctrinal gains in international law, and go through a period of critical-reflective evaluation of the ostensible feminist “gains” of the past two decades, this book contains unique empirical evidence to inform this reflection. This is not the debate, however, with which the author seems either fluent or interested in engaging. Rather, the author’s recurring concern throughout the book is of the essentialization and infantilization of women’s experiences of conflict as passive victims of sexual violence that is performed through the prosecution of sexual violence as a war crime. The book’s thesis is that the focus on prosecutions of sexual harms obliterates the diversity of harms that women experience in conflict situations, denies the resilience of female victims of sexual violence, and reaffirms rape as “the worst crime that can happen to a woman”. Is rape the worst fate? This question is frequently either alluded to or explicitly posed in the book, but nowhere is it systematically examined and answered. Even the chapter analysing witness interview data dedicates only a little over a page to discussing the findings on victim responses to this question. The concluding chapters of the book are made up entirely of policy-based recommendations, and do not link the empirical findings to the scholarly debates, although these debates do receive a nod in Chapter 3.
Neither is the question of women’s presence and impact as court personnel systematically examined. While examples of prominent female court officials are mentioned, and some gender differentials in the attitudes to sexual violence of court personnel are observed, there is no effort to discern or define any particular “impact” made by the presence of women as court officials. Moreover, the analysis of NGOs appears very stilted. There is no discussion of the data collected from NGOs, and neither does it appear as a specific line of questioning in the data collected from court personnel and the victims, yet there is an implicit criticism that NGOs are involved in the instrumentalization of victims. The reasons and evidence for this are not explored or explained.

Inevitably, these deficiencies in the research design mean that the book’s discussions of rape, the difference made by the presence of female court personnel, and the role of NGOs in prosecutions, feel quite speculative and not entirely convincing. The book concludes with a raft of “recommendations” directed variously to the courts, to court officials, to NGOs, to witnesses, and to future witnesses. There are simply too many recommendations, directed to too many actors, to be meaningful. Surprisingly, the recommendations are grounded directly in testimony gathered from interviewees, rather than from a systematic examination of the study’s outcomes. These problems in the research design are not helped by a frequent lack of rigour and detail in the footnoting. These weaknesses around the depth of theoretical engagement and research design reflect a larger shortcoming of the book, namely that of having too many research questions. With so many research questions, it is difficult to satisfactorily answer any of them, or to craft a clear argument supported by the evidence. Thus the analysis often feels truncated, with the argument and discussion of evidence unduly compressed and under-elaborated. The overall readability of the book is not enhanced by the presence of punctuation errors and malapropisms.

These identified shortcomings should not, however, distract the reader from the many strengths of the book. The discussion, analysis and investigation around “gender competence” – the capacity of court personnel to investigate, prosecute or adjudicate on sexual violence, while treating victims sympathetically and responsibly – is interesting and novel and offers a real contribution. The concept of “gender competence” contributes greater clarity around just what is required in order to deliver gender justice through courts. The author has created and operationalized a concept with significant transferability to broader studies of women’s experiences of legal institutions and processes.

Moreover, the richness of the data that emerges from this study can be attributed directly to the well-designed interview schedules and questionnaires, which are helpfully all detailed in the book’s appendices. There is a clear sense in which the author is asking the right data collection questions to reveal the practical operation of the prosecutions and women’s experiences of them, even if the relationship between
the data collection and broader research or theoretical questions is not always clear. The result is data that is likely to make a substantial contribution to future feminist scholarly and theoretical understanding of prosecution of sexual violence as a war crime, although the author has not herself articulated that theoretical contribution. She has, nevertheless, very successfully shone a light on the daily practical operations of war crimes tribunals and how they both serve and disserve women.

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