

give serious thought to the question of which functions properly fall to them.

The inertia of the international actors is one of many obvious indications of how difficult it is for international law to adjust to the exigencies of this newcomer to the playing field, criminal law. On a number of occasions, I have pointed out the problems inherent in attempting to graft these two legal disciplines together, so that criminal sanctions can be used to secure compliance with international humanitarian law. Public international law was initially intended to regulate relations between states, and as such it is essentially consensual law. It is concerned more with the principle than with the fine details of rules, and is very mindful of state practice, from which a large portion of its substance is derived. It incorporates concepts and traditions from a variety of legal systems, is respectful of states' interests and is very sensitive to political considerations. Criminal law, on the other hand, is coercive, authoritarian and rigid. It is concerned with details and particular facts, and it is applied on the basis of precise rules. It has little use for the methodology of comparative law. It perceives political considerations as irrelevant, or even as pernicious or dangerous. In the final analysis, however, there are certain basic principles that are common to both disciplines. In their modern incarnations, both seek to protect individual rights and to preserve peace and order. Grafting public international law onto criminal law is unquestionably a challenge, which is exacerbated by the cultural clash that occurs when the different legal traditions meet. As I said earlier, the gulfs between private and commercial legal systems have already been narrowed to a considerable extent, in order to meet the needs of the modern economy and business world. No such cross-fertilization has yet occurred in criminal law, there being generally little exchange between the different systems. Criminal trials in common law jurisdictions are, therefore, still fundamentally different from criminal trials in civil law jurisdictions.

As well, we too often cling to petty battles about things like minute procedural details that reflect the contributions of the major legal systems found in the West, which derive from or are related to the common law or the civil law (whether it is called Roman or Continental law), when what needs to be done first is to firm up the fundamental premises of criminal justice. On the question of procedure, only a few major principles should be non-negotiable. I would suggest that the most important of these principles are the independence and integrity of the judiciary and the right to a fair and public trial with a real possibility of acquittal.

It is only liberal states that genuinely support the idea of war crimes trials.