International criminal law has gained momentum since the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda and the International Criminal Court in the 1990s. Through case law, these courts have transformed rudimentary notions of accountability for mass atrocity into comprehensive concepts of individual criminal responsibility for war crimes, crimes against humanity and genocide. This process has been characterised by a high degree of judicial creativity. The courts have progressively advanced and modernised underdeveloped and outdated international crimes and theories of liability.

The author analyses and evaluates the creative practice of international courts by using insights from casuistry. In particular, the author takes the theory and methodology of casuistry as a starting-point for assessing three substantive legal issues: the policy element of crimes against humanity; the distinction between Joint Criminal Enterprise and joint perpetration; and the contextual embedding of genocide. This assessment complements prevailing notions of substantive international criminal law and adds a new voice to existing debates on judicial reasoning.