

# Spectacle in international criminal law: the fundraising image of victimhood

Christine Schwöbel-Patel\*

This paper explores the relationship between spectacle and law as it unfolds in international criminal law. The spectacularised construction of the victim of international crime as a replica of the familiar fundraising image of victimhood serves as a critical lens into narratives of international criminality and its seeming antithesis of humanitarianism.

‘... for the other, even when not an enemy, is regarded only as someone to be seen, not someone (like us) who also sees’.<sup>1</sup>

In the discipline of international criminal law and transitional justice, there is a growing body of work that is concerned with victims of international crime.<sup>2</sup> International criminal justice, with its paradigms of fighting against impunity and for individual accountability, is often found to have neglected the rights and interests of the victims of the atrocities it has criminalised. Much of the literature which has turned attention to victims focuses on their procedural rights and responsibilities. This includes studies on victim participation rights as witnesses or, as is the

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\* Senior Lecturer in Law, University of Liverpool. Email: [c.schwobel@liverpool.ac.uk](mailto:c.schwobel@liverpool.ac.uk). I am very grateful to Robert Knox for conversations which helped shape some of the central thoughts in this article. Michelle Farrell, Wouter Werner, the LRIL editors, and the anonymous reviewers provided valuable feedback and challenges. All errors are my own.

1 S Sontag, *Regarding the Pain of Others* (Penguin, 2004). Susan Sontag’s work is central to this piece. Many thanks to Sofia Stolk for directing my attention to it.

2 See, e.g., L Moffett, ‘Elaborating Justice for Victims at the International Criminal Court: Beyond Rhetoric and the Hague’ 13 *Journal of International Criminal Justice* (2015) 281; H Hobbs, ‘Victim Participation in International Criminal Proceedings: Problems and Potential Solutions in Implementing an Effective and Vital Component of Justice’ 49 *Texas International Law Journal* (2014) 1; T Bonacker & C Safferling, *Victims of International Crimes: An Interdisciplinary Discourse* (Asser Press, 2013); B McGonigle Leyh, *Procedural Justice? Victim Participation in International Criminal Proceedings* (Intersentia, 2011); R Letschert et al., *Victimological Approaches to International Crimes: Africa* (Intersentia, 2011); TM Funk, *Victims’ Rights and Advocacy at the International Criminal Court* (Oxford UP, 2010).

case at the International Criminal Court (ICC), participation rights as victims *qua* victims, independent of their role as witnesses.<sup>3</sup> Indeed, much of the preoccupation with these questions arises in relation to the institutional framework of the ICC. The ICC has 124 State Parties and is therefore the largest institutional manifestation of the ambition to fight impunity for international crimes.<sup>4</sup> There has been less of a focus on the construction of a particular victim image inside and outside the courtroom. As practices and rhetoric around victimhood are being institutionalised in international courts and tribunals, this is an issue that requires urgent attention. Questions which arise include: what type of victim is being imagined in the courtroom? What type of victim is imagined, construed, and evoked in the areas of conflict and suffering? Which idea of victimhood is imagined and institutionalised at the ICC?

My point of departure for addressing these questions was a sense of familiarity about the victim images used and evoked inside and outside the courtrooms of international criminal justice. To me, the images were reminiscent of those used by non-governmental organisations (NGOs) for fundraising purposes. In the global North, we tend to have a catalogue of fundraising images in our minds. While they might not be specific in terms of subject or even subject-matter, the images have shared features in terms of geography and aesthetics. The images used, for example, on the homepage of the International Criminal Court's Trust Fund for Victims (TFV),<sup>5</sup> or on the web page of the ICC dedicated to victims,<sup>6</sup> could be interchangeable with those used by one of the global human rights NGOs such as Amnesty International or Human Rights Watch. And while the TFV has a fundraising aspect to it, including a 'Donate Now' button on its website, it raises wider questions about the political economy of the construction of victimhood through international criminal institutions. To address these questions, I use *spectacle* as an analytic. Understanding victims of international crime as spectacularised directs attention to the visual and rhetorical signification of the

3 See, e.g., H Friman, 'The International Criminal Court and Participation of Victims: A Third Party to the Proceedings?' 22 *Leiden Journal of International Law* (2009) 485; E Baumgartner, 'Aspects of Victim Participation in the Proceedings of the International Criminal Court' 90 *International Review of the Red Cross* (2008) 409; S SáCouto & K Cleary, 'Victims' Participation in the Investigations of the International Criminal Court' 17 *Transnational Law and Contemporary Problems* (2008) 73; MC Bassiouni, 'International Recognition of Victims' Rights' 6 *Human Rights Law Review* (2006) 203.

4 ICC, 'The States Parties to the Rome Statute', available at [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx) (last visited 16 May 2016).

5 The Trust Fund for Victims, available at <http://www.trustfundforvictims.org/> (last visited 11 May 2016).

6 ICC, 'Victims', available at <https://www.icc-cpi.int/about/victims> (last visited 11 May 2016).

social construction of victimhood, to the political-economic motivations and neoliberal logic at the heart of this construction, and more broadly to the understanding of international criminality and its apparent antithesis of humanitarianism.

The term ‘spectacle’ is derived from the Latin noun *spectaculum*, meaning ‘a show’, and in turn coming from the verb *spectare* ‘to view’. The *Oxford English Dictionary* defines spectacle as

- (1) A specially prepared or arranged display of a more or less public nature (esp. one on a large scale), forming an impressive or interesting show or entertainment for those viewing it; (2) A person or thing exhibited to, or set before, the public gaze as an object either (a) of curiosity or contempt, or (b) of marvel or admiration; (3) A thing seen or capable of being seen; something presented to the view, esp. of a striking or unusual character; a sight . . . .

Spectacle, according to these definitions, is made up of two elements: the performance/event and the visual/image. It can have both positive and negative connotations—as an object of ‘marvel or admiration’, or as an object of ‘curiosity or contempt’. This is reflected in everyday usage of the term: ‘to make a spectacle of oneself’ or ‘this is spectacular!’ The dictionary definition encompasses a passive object (that which is seen/displayed) and an active subject (the entity exhibiting). The idea of the spectacle, in other words, concerns the social construction of people and events in order to make a striking impression.

Using spectacle as an analytic in ICL emphasises first and foremost the significance of the visual. The visual world of ICL includes images, real and imagined, around the main characters of ICL (the victim, the perpetrator, the lawyer, the witness). Furthermore, employing spectacle as an analytic draws attention to the social construction of the characters of ICL (in their leading and in their minor roles), in particular the dichotomy between ‘seeing’ and ‘being seen’, between ‘the spectator’ and ‘the spectacularised’. This perspective not only sensitises us to *how* events and characters are constructed, but also enables an understanding of *why* they are constructed in this particular way.

Arguably, imagery and performance around victimhood in international criminal law evoke a particular (stereo-)type in our collective imagination.<sup>7</sup> The

7 As one of the editors quite rightly pointed out, the use of the possessive ‘our’ is potentially problematic since it raises questions on who ‘we’ are. This is connected to the problem of representation—who am I representing in my critique of representation and from where do I take this privilege? These are all valid concerns and ones which I can only address with an admission of complicity, generalisation and inadequacy. When I talk about a collective imagination, I am talking about *my* imagination as a white, Western observer. I am addressing, in the first instance, those who I believe to be in a similar position. For questions about representation are, moreover, also about

stereotypes vary according to context but, when it comes to victims of international crime, these tend to be women and children, non-white, perhaps with some form of mutilation, often sparsely clothed, sometimes carrying make-shift weapons, unsmiling. The victim of international criminal law constructed inside and outside the courtroom seemingly corresponds with what I call the *fundraising image* of victimhood. The fundraising image is not an image particular to ICL; it is rather one that is easily accessible from a catalogue of images, created by fundraising agents concerned with suffering in the global South. I argue that, in their construction of the victim of international crime, the actors inside and outside the courtroom are utilising, reproducing and institutionalising this commonplace notion of humanitarianism.

Yet, even where the simplified use of imagery is acknowledged, its downsides are said to be outweighed by the purpose of bridging distance and awareness-raising. The ‘humanitarian dilemma’ that ensues would appear to be the following: on the one hand, the fundraising image of victimhood seemingly closes a gap between ‘us’ and ‘them’; it raises awareness of post-conflict and conflict situations which are distanced from the Western world. The fundraising image, or in even more market-oriented terms, the fundraising *brand*, is believed to play an important role in education. On the other hand, the use of this brand also stigmatises victims, constructing and reconstructing images of victimhood that are racialised, feminised and infantilised.<sup>8</sup> This type of stereotyping and subjecting to a public gaze (spectacularising) is not only problematic for those who do not fall within the accepted image (because they may struggle for recognition of their victim-status) but also for those who do fall within the accepted image (because this image is dependent on an understanding of victims as lacking agency). Representations of victimhood are therefore presented as a double-edged sword. A central purpose of this article is to dispel the idea that the use of the fundraising image of victimhood creates a dilemma for international criminal law.

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taking sides. And here I am asking whether I am comfortable in the role of a consumer of images and stereotypes, or whether I, even if limited in my approach, can do something to unsettle an imagery which has become stereotyped. Immi Tallgren has highlighted the problematic doctrinal and rhetorical ‘we-talk’ in ICL in I Tallgren, ‘The Voice of the International. Who is Speaking?’ 21 *Journal of International Criminal Justice* (2015) 1; and on the critical voice in I Tallgren, ‘Who are ‘we’ in international criminal law? On critics and membership’, in C Schwöbel (ed.), *Critical Approaches to International Criminal Law: An Introduction* (Routledge, 2014) 71.

8 I explore the features of the ‘ideal victim’ in a blog post: C Schwöbel-Patel, ‘Nils Christie’s “Ideal Victim” applied: From Lions to Swarms’, *Critical Legal Thinking*, 5 August 2015, available at <http://criticallegalthinking.com/2015/08/05/nils-christies-ideal-victim-applied-from-lions-to-swarms/> (last visited 11 May 2016).

Guy Debord's work on spectacle is employed as a point of departure to understand the true purpose of ICL's fundraising image of victimhood.<sup>9</sup> Debord, writing in the 1960s in the context of an increasingly media-saturated world, said of spectacle that 'it cannot be understood as an abuse of the world of vision . . . . It is, rather, a *Weltanschauung* . . . a world vision which has become objectified'.<sup>10</sup> Spectacle is, therefore, understood not simply as a collection of images, it is a social relationship, a relationship of domination. Debord and the group of avant-garde Marxist revolutionaries he belonged to (the so-called *Situationist International*) exposed spectacle's ideological purpose. Spectacle, then, is to be understood as something that naturalises stereotypes for the public gaze in order to secure the domination of those already privileged. Domination is, accordingly, not simply an effect of spectacle, it is the purpose of spectacle.

I begin, first, by examining victims of international crime and the 'world of vision'—the images used and evoked inside and outside the courtroom as well as the performances which make these images into a 'striking impression' (in the sense of the above definition of spectacle). I then consider to what extent the spectacularisation of victimhood is symptomatic of a 'world vision'—as a condition of social relationships around domination (in the sense of Debord's understanding of spectacle). The *Weltanschauung* which emerges is one that construes victimhood according to a market-oriented ideology of inequality (neoliberalism): in order to maintain an imbalance of power in favour of the 'Great Powers'; in order to maintain the division between the global South and the global North (with the global North as the saviour from violence and the global South simultaneously as the perpetrator and victim of violence); and ultimately in order to legitimise intervention. The imagery of victims of international crime as (black) women and children suffering physical trauma is, arguably, crucial for the legitimisation of this world order. The world of vision around victimhood is ultimately exposed as a condition of a particular world vision of neoliberalism.

9 On Debord's work in relation to human rights projects, see WS Hesford, *Spectacular Rhetorics. Human Rights Visions, Recognitions, Feminisms* (Duke UP, 2011).

10 G Debord, *The Society of the Spectacle* (Black & Red, 2010) [1967] para. 5. My gratitude to Robert Knox for drawing my attention to the relevance and importance of Guy Debord's work in relation to imagery and spectacle. See Knox on spectacle at R Knox, 'Law, Spectacle and the Production of Imperial Violence' (2013), available at [https://www.academia.edu/3515283/Law\\_Spectacle\\_and\\_the\\_Production\\_of\\_Imperial\\_Violence](https://www.academia.edu/3515283/Law_Spectacle_and_the_Production_of_Imperial_Violence) (last visited 11 May 2016); R Knox, 'Law and Debord', *Law and Disorder*, 29 December 2008, available at <http://pashukanis.blogspot.co.uk/2008/12/when-i-was-younger-about-17-or-18-i.html> (last visited 11 May 2016).

## VICTIMS OF INTERNATIONAL CRIME AND THE WORLD OF VISION

Spectacle, as Debord observed, privileges the sense of vision over all other senses.<sup>11</sup> One might assume, however, that the world of vision is only incidental to international criminal law. After all, the written word makes up the ‘official’ face of the court: the purpose of the court is to compile a written judgment. Transcripts are, alongside judgments, additional written records of court proceedings. Such transcripts of spoken speech, just like judgments, omit all ‘gestures, hesitations, clothing, tone of voice, laughter, irony’, which might be *seen* in the courtroom.<sup>12</sup> The visual cues perceptible within the courtroom—a flicker of uncertainty in the demeanour of a speaker, the addressing of certain parties in the courtroom, the choice of speaking freely or reading a pre-prepared speech—are omitted from the accepted end-product. As a consequence, the written word, in the form of judgments and transcripts, helps construct the law as aesthetically neutral. The omission of visual nuances in the written word paints a picture of finality and certainty. Significantly, the bias in favour of the written word also means that the creation of imagery through the spoken word can be more powerful in law than the actual object of the imagery. The image of victimhood which a judge, prosecutor or a victim representative paints in the courtroom may be more lasting and incisive than the victims’ presence in the courtroom and their lived experience.

Other character constructions in the international criminal courtroom could also serve as a lens for demonstrating spectacle and spectacularisation; other protagonists include the perpetrator and the legal representative. While acknowledging the mutually constitutive roles, the analysis of the construction of victimhood is paramount for two reasons: first, victims are often invoked as the *raison d’être* of the entire discipline. In their instructive article on victim representation before the ICC, Sara Kendall and Sarah Nouwen refer to several parties who invoke the centrality of victimhood for the ICC and the international criminal justice system at large. They refer to the discursive invocation of victims (as the *telos* of the work of the ICC) as ‘abstract victimhood’.<sup>13</sup> The second reason is that no other party is so much set before the public gaze yet so much ignored as victims. Images of

11 Debord (2010) para. 18.

12 J Clifford, ‘Identity in Mashpee’, in *The Predicament of Culture: Twentieth-Century Ethnography, Literature and Art* (Harvard UP, 1988) 178.

13 S Kendall & S Nouwen, ‘Representational Practices at the International Criminal Court’ 76 *Law and Contemporary Problems* (2014) 235.

victimhood, as will be seen below, abound. But despite this exhibition, very little is really known about victims as people.

The construction of roles and characters through imagery—the legitimised images used and images evoked—is connected with the struggle for control of narrative and ultimately the struggle for interpretive power.<sup>14</sup> Control of narrative in international criminal law occurs both inside and outside the courtroom, whereby the narrative created in the courtroom is often regarded as the defining narrative, given its ambitions for truth-telling.<sup>15</sup> This article explores the interplay between image and narrative in the struggle to construct the fundraising image of victimhood.

### The construction of victimhood in the courtroom

Opening statements in the international criminal courtroom are interesting for seeing the construction of victimhood at play. As opposed to the rest of the case, with its rather tedious repetition of procedure, protocol and legal detail, opening speeches attract public interest. The relevant legal representatives therefore tend to take more liberties in rhetorical and performance terms.<sup>16</sup> Take, for example, the opening speech of David Crane, chief Prosecutor at the Special Court for Sierra Leone, in *Prosecutor v. Samuel Hinga Norman and ors*.

On this solemn occasion, mankind is once again assembled before an international tribunal to begin the sober and steady climb upwards toward the towering summit of justice. The path will be strewn with the bones of the dead, the moans of the mutilated, the cries of agony of the tortured, echoing down into the valley of death below . . . . The pain, agony, the destruction and the uncertainty are fading. The light

14 See a recent analysis of ‘the turn to narration’ as connected with a focus, in some quarters, on international law as a profession in M Windsor, ‘Narrative Kill or Capture: Unreliable Narration in International Law’ 28 *Leiden Journal of International Law* (2015) 743. See also O Schachter, ‘The Invisible College of International Lawyers’ 72 *Northwestern University Law Review* (1977) 217 and a recent ICL application of the invisible college metaphor in C Kress, ‘Towards a Truly Universal Invisible College of International Criminal Lawyers’, FICHL Occasional Paper Series No. 4 (2014).

15 For a critique of this in International Criminal Law, see M Koskeniemi, ‘Between Impunity and Show Trials’ 6 *Max Planck Yearbook of United Nations Law* (2002) 1.

16 S Stolk writes of the way in which international prosecutors attempt to justify the legitimacy of trials and tribunals through the invocation of a tribunal’s own history in “‘The Record on Which History Will Judge Us Tomorrow’: Auto-History in the Opening Statements of International Criminal Trials” 28 *Leiden Journal of International Law* (2015) 993.

of truth, the fresh breeze of justice moves freely about this beaten and broken land.<sup>17</sup>

Crane uses dramatic rhetorical devices to evoke images of justice and victimhood. Metaphors abound: justice as a ‘summit’ to be climbed, as a ‘fresh breeze’. This is counterposed with the victims’ bones, moans and cries and the alliteration of the ‘beaten and broken’ land. Each sentence is heavily injected with pathos. The rhetoric used is one that constantly moves between the contrasts of the roles of victims, perpetrators and the law. In this aesthetics of contrasts, the victims are portrayed as ‘maimed, mutilated, and violated’, asking from the ‘bright and shining spectre of the law’ for ‘a just accounting for the agony of those ten long years in the valley of death’; meanwhile, the perpetrators are marked by ‘greed’ and ‘avarice’.<sup>18</sup> Although war crimes and crimes against humanity are often described as unimaginable atrocities, or in Crane’s words, ‘horrors beyond the imagination’, the trial process is clearly precisely about imagining the unimaginable.<sup>19</sup> Indeed, this imagination is encouraged to be as colourful and dramatic as possible.

In the International Criminal Court’s first trial case, *Prosecutor v Dyilo Lubanga*, the chief Prosecutor Luis Moreno-Ocampo, although perhaps not reaching the peaks of pathos in the same way as Crane, refers to the victims of international crime (in this case child soldiers) in the following way:

The children still suffer the consequences of Lubanga’s crimes. They cannot forget what they suffered, what they saw, what they did . . . . Some of them are now using drugs to survive. Some of them became prostitutes, and some of them are orphaned and jobless. However, some of them will come to court to be witnesses. They will come to confront the past crimes and the present prejudice . . . .<sup>20</sup>

In this passage, a similar story of the role of international criminal justice is presented: justice is, first and foremost, a means to save victims of international crime. The excerpt paints a picture of victimhood and lack of agency. The sole agency attributed to victims comes through being a witness before the court. The sole alternatives available for victims are addiction, prostitution and

17 Prosecutor’s opening statement in *Prosecutor v Norman and ors*, SCSL-04-14-T-125, 3 June 2004, available at <http://www.rscsl.org/Documents/Press/OTP/prosecutor-openingstatement060304.pdf> (last visited 11 May 2016).

18 *Ibid.*

19 W Werner, “‘We Cannot Allow Ourselves to Imagine What it all Means’: Documentary Practices and the International Criminal Court” 76 *Law and Contemporary Problems* (2013) 320, 330.

20 *Prosecutor v. Dyilo Lubanga*, ICC-01/04-01/06-T-107, Transcript, 26 January 2009, 4, 5.

poverty, on one hand, or acting as a witness in the court on the other. Ruin or the ICC.

What is interesting here is that neither Crane nor Moreno-Ocampo appear to be constructing a victim *particular* to international crime. The victim images are easily accessible, because they come from an already available catalogue of images of victims. The ‘beaten and broken’ land, for example, is a land familiar from discourses of international humanitarianism: inhabited by black people, by innocent women and children. Images of children snatched from their families to become soldiers, recycle common representations of black children as vulnerable and impressionable.<sup>21</sup>

This is what I call the *fundraising* image of victimhood, because it is produced most obviously and powerfully by humanitarian agencies, particularly NGOs, in the context of their fundraising activities. ‘When we imagine humanitarianism—indeed, when we think of much of the non-Western world—we imagine it through frames advanced by aid agencies and the mass media’, writes Denis Kennedy.<sup>22</sup> Such frames characteristically deploy essentialised and decontextualised images, and they simplify an often very complicated story. Suffering—*bodily* suffering—is central in fundraising imagery. Furthermore, the image of the fundraising victim in humanitarian discourse is accompanied by a parallel image of the saviour—the aid agency in question. This narrative, the so-called ‘humanitarian narrative’, revolves around the helpless victim, exposed to this situation through local and cultural problems, who relies on the heroic agency. The mass media also employs the humanitarian narrative through the transmission of images—and with the images, the transmission of notions of criminality and the mediation of moral and normative boundaries.<sup>23</sup>

The humanitarian narrative is constructed in large part with a view to the targeted audience of assumed spectators and donors. It is assumed that those *seeing* the images of suffering are those in the global North, or the West, as the case may be; while those who are *seen* are those in the global South or ‘the other’. In this sense, victims are presented not only to a public gaze, but a very particular privileged gaze.

The above excerpts from opening statements are seemingly conducted with a similar humanitarian narrative in mind. A victim of international

21 See Mark Drumbl’s excellent account of the narratives and assumptions around child soldiers: M Drumbl, *Reimagining Child Soldiers in International Law and Policy* (Oxford UP, 2012).

22 D Kennedy, ‘Selling the Distant Other: Humanitarianism and Imagery – Ethical Dilemmas of Humanitarian Action’, *The Journal of Humanitarian Assistance*, 28 February 2009, available at <http://sites.tufts.edu/jha/archives/411> (last visited 11 May 2016).

23 G Mythen, *Understanding the Risk Society. Crime, Security and Justice* (Palgrave Macmillan, 2014) 69.

crime, like the ‘fundraising victim’, is largely understood as being located in the global South (an imagery which is reinforced through the ICC’s focus on Africa), and the saviours, those attached to the international criminal justice system, are largely located in the global North (an imagery which is deepened through the location of many international courts and tribunals in The Hague). The ICL saviours stand in stark contrast to the victims in that they are usually male, white, from the West, representing an ordered justice system. The legal representative is (just like the representative’s discipline) presented as neutral, measured, professional; victims and perpetrator are conversely portrayed as partisan, emotional and unskilled. The image of victimhood in international criminal law is not, therefore, a *new* image; it is one which already thrives as an accepted image of humanitarianism.

What international criminal law, and to a certain extent international human rights law, have added to the victim-saviour image is the construction of a villain. Humanitarian organisations are often compelled to create a narrative around complicated contexts such as poverty or natural disasters; ICL, however, has created a narrative around the ‘warlord’. In some respects, this warlord is the antithesis of the victim of international crime: he is typically male, strong, independent and gruesome. Although the prosecutions of the International Tribunal for the former Yugoslavia (ICTY) did not concern African warlords and victims, the imagery used and the roles constructed are much the same. For example, in the opening statement of *Prosecutor v Ratko Mladić*, the Prosecutor Dermot Groome speaks of the accused Mladić as assuming ‘the mantle of realising, through military might, the criminal goals of ethnically cleansing much of Bosnia’. He then moves on seamlessly to tell the story of a village massacre from the perspective of a 14-year-old boy, who lost his father and other family members.<sup>24</sup> This panning from evil perpetrator to innocent victim is a common aesthetical choice in international criminal courts and tribunals. The passivity of the victim is exaggerated against the activity of the warlord, who seemingly makes decisions on slaughtering, enslaving and violating victims without regard to humanity. The image of the victim of international crime and the perpetrator of international crime are therefore interdependent. Their contrasting properties enable their constitution and construction as each other’s antithesis. The perpetrator is only strong in relation to the victim’s weakness; the victim is only innocent in relation to the perpetrator’s guilt. In other respects, however, the warlord is similar to the victim: he

24 *Prosecutor v. Ratko Mladić*, ICTY-IT-09-92, Transcript, 16 May 2012, available at <http://www.icty.org/x/cases/mladic/trans/en/120516IT.htm> (last visited 11 May 2016) 402-04.

is also not white;<sup>25</sup> he needs to be taught what justice is; and he is a victim of his culture.

Makau Mutua's three-dimensional compound metaphor of the savage, victim and saviour of human rights law corresponds with the imagery created in ICL. Mutua writes of this relationship as 'uni-directional and predictable, a black-and-white construction that pits good against evil'.<sup>26</sup> While international human rights law seeks accountability in the state, international criminal law seeks the accountability of the villain/savage. In bringing the 'warlord' into the frame, ICL is employing, deepening, but more importantly institutionalising, the humanitarian narrative, and with it the fundraising image of victimhood.

In this comparison, the spectacularisation of victimhood (through the aesthetics of contrasts at play, the pathos, and the stereotypes), takes on a distinct flavour of political economy. Just as humanitarian agencies use images of victims as a strategy for competing in the marketplace for aid dollars, I understand 'spectacle' to operate in the same way in the international criminal justice system—as a mechanism employed for marketing purposes. While these marketing purposes may be distinctly donor-focused, understanding victimhood as spectacularised highlights how the discipline of ICL is generally subjected to market-based rationalities. Actors of humanitarianism, including institutions of ICL, NGOs, governments and others acting in the name of humanity, arguably conduct themselves with a view to competition, growth and profits.

In today's visual society, if you are not seen, you do not exist. Debord observes that: 'The spectacle presents itself as something enormously positive, indisputable and inaccessible. It says nothing more than "that which appears is good, that which is good appears."<sup>27</sup> International criminal law and its institutions have several rivals, all seeking credibility as agents of humanitarianism, and all seeking more funding. Disciplines that compete for legitimacy and exclusivity are, for example, international humanitarian law and international human rights law. The disciplines of transitional justice and peacebuilding also claim ownership over the question of peace and justice in post-conflict situations. Disciplines are in competition with one another for funding, students, impact and public attention, all of which are interlinked. While some

25 Whereby white-ness is not necessarily a physical feature, but also a social construction. See, for example, N Ignatiev, *How the Irish Became White* (Routledge, 1995) in which he traces the social evolution of the Irish from an oppressed social class to members of the white racial class, *inter alia* by their embrace of white supremacy in 19th-century American society.

26 M Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' 42 *Harvard International Law Journal* (2001) 201.

27 Debord (2010) 12.

governmental and non-governmental organisations work closely with international criminal justice institutions, some of them also worry about its effects on humanitarianism, causing a certain rivalry between them. For example, the ICC arrest warrant for Sudanese president Omar al-Bashir was met with mixed reactions, particularly when it prompted the expulsion of aid agencies from Sudan. NGOs, the African Union, as well as Chinese and Russian UN delegates openly challenged the humanitarian credentials of the ICC. AU commission chairman Jean Ping was widely quoted as stating that ‘the need for justice should not override the need for peace’.<sup>28</sup> Apart from an ethical rivalry, institutions stand in competition for funding, attracting the most skilled workers, public awareness and legitimation.

Having a competitive edge increases the likelihood of growth and, for some, profits. Condensing the idea of a victim of international crime down to a particular victim *brand* appears, in marketing terms, to make sense. The brand works by simplifying attributes for the purpose of recognisability; it is ultimately there to ‘market’ the promise of international criminal law as a product. The victim brand does not only have the ability to edge out the competition, it also allows for the discipline and institutions to grow by extending their reach into new markets (new state parties to the ICC, the establishment of new ICL institutes and courses, new investors in post-conflict tribunals).

Practices around the construction of victimhood certainly vary from court to court and from practitioner to practitioner. Crane and Moreno-Ocampo were admittedly extreme in their use and creation of spectacle. However, apart from eager prosecutors, there are certain institutional and structural practices that make for fertile ground for the spectacularisation of victimhood. In this regard it is worth highlighting the practices at the ICC in particular.

The most immediate representations of victimhood supposedly come from victim testimonies in the courtroom. One would presume that this provides victims with the opportunity of setting out their lived experience, of introducing context, and of challenging the given stereotypes. This is particularly salient at the ICC where victim participation is permitted in the courtroom by Article 15(3) of the Rome Statute and at the pre-trial stage by Article 19(3)—and more generally by Article 68(3). In addition, the Rome Statute regime provides for a Trust Fund for Victims under Article 79 of the Rome Statute. The ICC has therefore introduced a significant institutional shift towards centralising victim concerns in international criminal justice. Despite these provisions, it appears that there are several reasons why victims are institutionally

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28 See, e.g., ‘World Reacts to Bashir Warrant’, *Al Jazeera*, 5 March 2009, available at <http://www.aljazeera.com/news/africa/2009/03/2009341438156231.html> (last visited 11 May 2016).

and structurally unable to free themselves from the fundraising image presented above. First, lived experiences of suffering cannot necessarily be shared in words or translated into evidence in a courtroom. Second, representational practices at the ICC mean that victims are not always directly involved but rely heavily on their representatives. Third, the courtroom itself does not offer the opportunity for relating experiences of victimhood. I will explain these points in turn.

Suffering, whether it is physical or psychological trauma, cannot always be expressed—it is a deeply personal experience. Apart from it being questionable whether the verbal act of expressing pain helps eliminate the physical fact of the pain,<sup>29</sup> the legal procedure not only requires the expression of suffering, but the ‘transformation’ of suffering into evidence.<sup>30</sup> Accounts of suffering must be matched against the charges of the accused. The expression must be subsumed under a legal language which has set out the criminalisation of certain acts. Personal experiences are further diluted in international criminal law due to the requirement for *mass* crimes. Given that the threshold from a domestic crime to an international crime will generally mean that there is more than one victim, the suffering of an individual has no legal meaning of its own.<sup>31</sup> It is only as one of a mass that it takes on meaning. The victim of interest to international law is, according to Mutua, but one of a collection of ‘hordes of nameless, despairing, and spired masses’.<sup>32</sup> In the court proceedings, the experience of suffering is taken from the personal and brought into the legal realm.

The possible alienation that this ‘transforming’ exercise prompts can be aggravated through the various forms of presentation and representation before the ICC. In court proceedings, victims are represented by Victim Representatives who speak on behalf of the victims as a group. In the run-up to the trial, intermediaries speak with and on behalf of victims. The prosecution team regularly tells victims’ stories on their behalf, as well as referring to the victims of international crime as the reason for pursuing accountability.

29 E Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford UP, 1985) 10.

30 For an outline of the legal and bureaucratic requirements at the ICC, see the ‘Order regarding applications by victims to present their view and concerns or to present evidence’, Situation in the Central African Republic in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, 21 November 2011, available at [https://www.icc-cpi.int/CourtRecords/CR2011\\_19958.PDF](https://www.icc-cpi.int/CourtRecords/CR2011_19958.PDF) (last visited 11 May 2016).

31 This is generally the case at the ICC but could be disputed, for example, in the case of the The Special Tribunal for Lebanon, which was set up for the accountability of those responsible for the 14 February 2005 killing of 22 people, including former Prime Minister Rafik Hariri. Special Tribunal for Lebanon, ‘About the STL’, available at <http://www.stl-tsl.org/en/about-the-stl> (last visited 11 May 2016).

32 M Mutua, *Human Rights: A Political and Cultural Critique* (University of Pennsylvania Press, 2002) 28–29.

In addition, a host of actors outside the courtroom refer to victims' interests, from the President of the Court, to international civil servants supporting the court's creation, to NGOs.<sup>33</sup> Kendall and Nouwen have described the appropriation or usurpation of victims' voices at the ICC as 'juridified victimhood'.<sup>34</sup> These chains of representation mean that the accounts in court can be far removed from the lived experience.

Finally, the courtroom setting is one that is designed to intimidate, creating and constructing respect for and obedience to law's power.<sup>35</sup> Moreover, the distance between the international criminal law courtrooms and the places in which suffering was experienced can cause additional discomfort and hardship for victims. In contrast to international courts and tribunals, domestic courtroom proceedings can be followed by family, neighbours and other supporters in the public gallery. Given the geographical distance between international tribunals and those affected by crimes, most of the public gallery in international criminal tribunals is taken up, not by those supporting the accused or the affected, but by researchers and, occasionally, the media.<sup>36</sup> A witness who is far-removed from their usual social support networks might be more impressionable, both by the seeming force of the law as well as by any coaching prior to appearing in court.<sup>37</sup> In terms of the construction of imagery, therefore, victims themselves either have a minor or no role to play.

### The construction of victimhood outside the courtroom

It is important to note moments of contestation of the fundraising brand of victimhood outside the courtroom. In particular, there is a growing interest in the academy in questioning representational practices,<sup>38</sup> and the political

33 Kendall & Nouwen (2015).

34 Ibid.

35 Nigel Eltringham illustrates this powerfully from a spectator's perspective at the International Criminal Tribunal for Rwanda in 'Spectators to the spectacle of law: the formation of a "validating public" at the International Criminal Tribunal for Rwanda' 77 *Ethnos: Journal of Anthropology* (2012) 425.

36 'LRA commander Dominic Ongwen Appears before ICC in The Hague', *BBC News*, 26 January 2015, available at <http://www.bbc.co.uk/news/world-africa-30976818> (last visited 11 May 2016).

37 Coaching witnesses was accepted practice at the ad hoc tribunals but prohibited at the ICC in the *Lubanga* case: *Prosecutor v Lubanga Dyilo*, ICC-01/04-01/06. See a critique of the practice in W Jordash, 'The Practice of "Witness Proofing" in International Criminal Tribunals: Why the International Criminal Court Should Prohibit the Practice' 22 *Leiden Journal of International Law* (2009) 501.

38 See Kendall & Nouwen (2015).

economy of ICL more generally.<sup>39</sup> However, these efforts appear fairly marginal in the discipline as a whole.

International criminal tribunals, perhaps more than any other international institutions, have relied on videos and other forms of images to narrate their purpose—and arguably to spectacularise the discipline of ICL and its main protagonists. The website of the ICTR provides a good example. On the homepage, one finds a four-minute video clip, titled ‘20 Years Challenging Impunity’. The story of the ICTR and the Rwandan genocide is narrated as a story of desperation leading to salvation through the United Nations and the establishment of the Court. It is not only the images (the more graphic ones depicted in a Nuremberg-style black and white) that tell this story—the American narrator’s soft voice and the music assist in the story-telling.<sup>40</sup> The predominant message is one of truth-telling; yet, the protagonists in this ostensible truth-telling process are spectacularised with cinematic tools.

Similarly scripted versions of reality are portrayed in many documentaries on international criminal law. These include both institutional videos such as that of the ICTR mentioned already as well as film-length explorations of individual accountability for international crimes. *Prosecutor*, *The Reckoning*, *Watchers of the Sky*, are just a few examples of documentaries concerning international criminal law.<sup>41</sup> While original footage and interviews give the impression of co-presence with the protagonists, there is a clear construction of characters and a creation of narrative at play. The camera angle is carefully chosen, the interview is edited to tell a story, a plot is created, heroes and villains are selected, and victims are carefully constructed.<sup>42</sup> This is, of course, the case for the great majority of documentaries, but international criminal law documentaries stand out for how the characters portrayed often mirror stylised fictional characters. Take for example a line from the documentary *Prosecutor*, which follows the work of Moreno-Ocampo on the ICC’s first

39 In regard to political economy and ICL, see S Kendall, ‘Commodifying Global Justice: Economies of Accountability at the International Criminal Court’ 13 *Journal of International Criminal Justice* (2015) 113; G Baars, ‘Making ICL History. On the Need to Move beyond Pre-Fab Critiques of ICL’, in Schwöbel (ed.) (2014) 196; T Krever, ‘International Criminal Law. An Ideology Critique’ 26 *Leiden Journal of International Law* (2013) 701, 705.

40 United Nations Mechanism for International Criminal Tribunals, ‘Legacy Website of the International International Criminal Tribunal for Rwanda’, available at <http://unictr.unmict.org> (last visited 11 May 2016).

41 *Prosecutor*, dir. B Stevens (2010); *The Reckoning: The Battle for the International Criminal Court*, dir. P Yates (2009); *Watchers of the Sky*, dir. E Belzberg (2014).

42 In regard to the screen as an object which both reveals as well as obscures, see C Schwöbel-Patel & W Werner, ‘“What are You looking at?” The Screen as an Object of International Law’, in J Hohmann & D Joyce (eds), *Objects of International Law* (Oxford UP, forthcoming).

trial. In the film, Moreno-Ocampo describes the deputy chief prosecutor (now the chief prosecutor) Fatou Bensouda to the viewer: ‘Fatou is great with witnesses. Like a mother, inviting the children to talk.’<sup>43</sup> The choice to include this quote reinforces certain tropes which are characteristic of the genre as a whole: that of the dependent and infantilised witness, the maternal deputy chief prosecutor coaxing the right kind of information out of witnesses, and the chief prosecutor, who in his masculinity is not sufficiently sensitive to the needs of the vulnerable witnesses.

A further example of the ICC’s role in the perpetuation of the fundraising image of victimhood is provided in its (travelling) multimedia exhibition ‘Justice Matters’.<sup>44</sup> Launched in 2012 to commemorate the ICC’s 10th anniversary, the exhibition ‘uses photographs and video clips to explore how justice matters to the individuals and communities affected by crimes under the Court’s jurisdiction, and how justice matters in the world’.<sup>45</sup> The exhibition is made up of three parts. It begins with an introduction, which concerns the functioning and running of the ICC, including larger-than-life pictures of the judges in their black gowns. The next part, titled ‘Matters of Justice’, includes a virtual courtroom. The final part, ‘Justice Matters’ introduces the visitor to photographs of individuals and communities affected by crimes. This latter section is dominated by the familiar fundraising images: ballooned headshots of black women and children, some mutilated, some unsmiling (those who have yet to grasp the benefits of ‘justice’), some smiling (those who are actively participating in the ICC’s work ‘on the ground’). As Susan Sontag has observed, photographs of victims of conflict are themselves a species of rhetoric. ‘They reiterate. They simplify. They agitate. They create the illusion of consensus.’<sup>46</sup> The exhibit was erected for delegates at the ICC’s Assembly of State Parties (ASP) in both 2012 and 2013. The annual meeting of state representatives at the ASP (the plenary organ of the ICC responsible for management oversight including the budget) largely concerns justifications of expenditure.<sup>47</sup> Kendall observes that the exhibition has been operating as ‘a kind of trade exhibition, allowing the court to showcase its work to those who provide its material

43 *Prosecutor* (2010).

44 For information on the Justice Matters exhibit, see <https://www.icc-cpi.int/display-exhibit> (last visited 11 May 2016); for the Justice Matters slide show, see <https://www.icc-cpi.int/iccdocs/PIDS/other/JusticeMattersSlideshow-ENG.pdf> (last visited 11 May 2016).

45 ‘“Justice Matters”: Multimedia Exhibit opening in The Hague to commemorate the ICC’s 10th anniversary’, *ICC Press Release*, 15 November 2012, available at <https://www.icc-cpi.int/Pages/item.aspx?name=pr853&ln=en> (last visited 11 May 2016).

46 Sontag (2004) 5.

47 Art. 112 Rome Statute.

support'.<sup>48</sup> The exhibition is now permanently installed in the new (permanent) premises in The Hague, greeting anyone who enters the court.

As already briefly mentioned, the media, both professional and social, plays an important role in constructing and reproducing notions of victimhood outside the courtroom. International criminal law has without doubt captured the imagination of the media. Notwithstanding the more critical voices that have been given a forum through social media, ICL, with its roles of Prosecutor (hero), Accused (villain) and Victims, speaks to the sensationalism of a competitive media economy.<sup>49</sup> Given the abundance of information circulating, the news outlets stand in stiff competition for attention. Although a sense of witnessing, or even of co-presence, is created through modern media technologies, what is hidden from view are the selective processes around reporting. There is, of course, the media trope 'if it bleeds, it leads' which is relevant for conflict situations. In addition, the simplified aesthetics of contrasts has taken hold of reporting on international criminal justice, reproducing the fundraising image of victimhood, whereby victims may go from spectacle to obscurity. Scenes from the courtroom, ostensibly neutral, sensible, reasonable, are interrupted by disruptive characters. Enter the male, black, defendant who does not speak English. Enter the beautiful celebrity who allegedly received diamonds from the defendant. Enter the victim, passive, shy, broken through the ordeal of survival, yet providing hope for the future. Such scenes were played out and reported extensively by the media at the Special Court for Sierra Leone's Charles Taylor trial.<sup>50</sup> In 2010, supermodel Naomi Campbell and Hollywood actress Mia Farrow were witnesses in the trial of the former Liberian Head of State. They testified in regard to blood diamonds ostensibly handed to Campbell during a dinner. CNN ran a special report written by former prosecutor of the Special Court, Christopher Santora, titled 'The supermodel, warlord and dirty little diamonds'.<sup>51</sup> In this scene, the celebrity injects glamour and excitement. In this scene, the victim disappears.

The current stereotype of victimhood in ICL, today's fundraising image, has evolved over time. The Nuremberg trials, often regarded as marking the birth of

48 Kendall (2015).

49 The so-called CNN effect. Virgil Hawkins illustrates how potential lack of media coverage can contribute to lack of action: see, e.g., V Hawkins, 'Media Selectivity and the Others Side of the CNN Effect: the Consequences of not Paying Attention to Conflict' 4 *Media, War & Conflict* (2011) 55.

50 *The Prosecutor v. Charles Ghankey Taylor*, SCSL-03-01-T.

51 C Santora, 'The Supermodel, Warlord and Dirty Little Diamonds', *CNN*, 11 August 2010, available at <http://edition.cnn.com/2010/OPINION/08/11/santora.taylor.diamonds.naomi/> (last visited 11 May 2016).

the discipline of ICL, engrained images of emaciated bodies and mass graves; but in that case, many of the victims were white.<sup>52</sup> The ICTY, described as the first international war crimes tribunal since the Nuremberg and Tokyo tribunals, appears to employ the Nuremberg imagery of victimhood as a kind of visual descendant. Indeed, the first images shown on the 'Crimes and Investigations' page of the ICTY website, which provides a sample of images presented as evidence in ICTY trials, are also black and white photos of mass graves.<sup>53</sup> This choice of aesthetic is interesting, given that colour photography was, of course, widely available, and the most dominant form of photography, in the mid-1990s. With the ICC, however, the aesthetic appears to change. The images are chiefly in colour, portraying a different type of black and white, where the victims are black and the experts in the courtroom are mainly (although not exclusively) white.

The fundraising brand of victimhood is, in sum, both specific—in race and gender—and abstract—in the missing specificity of individual traits such as individual suffering, names and context. This reflects the inherent tension in character stereotypes. Through visual and performative elements, the stereotype is both deployed and deepened, causing a spectacularisation of victimhood.

Yet, spectacle has in a way become trite, itself a stereotype. Spectacle is everywhere. It is not the exception; it is the norm. This is particularly the case for conflict where spectacle has become 'ritualised'. Death, mutilated bodies, the devastation of everyday life and terror are, according to Danilo Zolo, the ingredients of ritual spectacle. In his view, these ingredients have ceased to provoke any emotional reaction.<sup>54</sup> Whether this is true or not, there is a certain tension in international criminal law between the sanitising of spectacle through the form-fitting of experiences of suffering into elements of crimes on the one hand, and the creation of spectacle to attract attention—or ostensibly to raise awareness, on the other hand. Indeed, the ordinary nature of legal procedure and proceedings set against the extraordinary nature of the subject-matter is a particular peculiarity of criminal law. Rebecca West, who was in Nuremberg to observe and report on the trials, famously described them as 'boredom on a huge historic scale'.<sup>55</sup> In light of this tension, it appears useful to

52 Although no less racialised.

53 ICTY, 'Crimes and Investigations', available at <http://www.icty.org/en/content/crimes-and-investigations> (last visited 11 May 2016).

54 D Zolo, *Victors' Justice: From Nuremberg to Baghdad* (Verso, 2009) 8. Sontag has voiced some doubt as regards this numbing experience through the flooding of images of bodily horrors of conflict. Sontag (2004) 93-101.

55 R West, 'Greenhouse with Cyclamens I (1946)', in R West (ed.), *A Train of Power* (Ivan R Dee, 2000) 11.

be mindful of the occasions on which spectacle is at work, and the occasions where sanitisation occurs.

### The educational purpose of the world of vision

Against this background, one might argue that images of suffering which essentialise and stereotype victimhood could have an important educational purpose. Perhaps it is only through particularly evocative images that the distance between victims and those in the Western world can be bridged, and only through crude stereotypes that awareness can be raised. If this is the case, then there is a choice between either education through stereotypes and consequently relief, or the lack of awareness of suffering and the consequent lack of relief. Although contentious, ‘celebrity humanitarianism’, is often invoked as instrumental in raising awareness. The celebrity-turned-philanthropist’s star power is thought to outstrip the downsides of the essentialised imagery, which often includes a picture of the celebrity up close with a ‘local’.<sup>56</sup> Denis Kennedy describes the choice between awareness-raising through stereotypes or obscurity of the cause as ‘a fundamental humanitarian dilemma’.<sup>57</sup>

In the international criminal law courtroom, the distance to be bridged between the victims of international crime and other participants is immense. It is often both geographical and socio-economic. The ICC, ICTY and Special Tribunal for Lebanon are all based in The Hague. The ICTR was based in Tanzania. Even the so-called hybrid courts are often far away from the places and people involved in events and actions classed as international crimes. The Special Court for Sierra Leone (SCSL), for example, moved its hearings from Freetown to The Hague mid-proceedings. The majority of international criminal trials are heard in the global North—the accused, witnesses and victims have to be brought from the global South to the global North to participate in courtroom proceedings. Socio-economic distance here refers to the fact that there will generally be a distance in terms of wealth and influence between those working in and for the courts and the victims and witnesses.<sup>58</sup> There is also a great disjuncture between the representatives (those representing the prosecution or those representing the victims) and those with the lived experience of suffering in regard to the power they are able to exercise over the imagery

56 C McHugh, ‘World Humanitarian Day: Celebs Who Use Their Power for Good’, *Biography*, 19 August 2015, available at <http://www.biography.com/news/celebrity-humanitarians> (last visited 11 May 2016). For a critique, see I Kapoor, *Celebrity Humanitarianism: The Ideology of Global Charity* (Routledge, 2012).

57 Kennedy (2009).

58 It merits mentioning that in the above case of Naomi Campbell and Mia Farrow testifying, the income gap between witness and court officials is reversed.

deployed. But the distance, of course, does not just concern those in the courtroom; international criminal justice has a much larger audience. The audience of potential donors for international criminal justice projects is no less important to those with the power to construct the leading characters in the courtroom drama. The STL is, as was the SCSL, funded through donor contributions. The potential audience of funders includes states, organisations, corporations and philanthropists. These must be presented with legitimate characters; the simpler the message of humanitarianism, the better.<sup>59</sup>

Amidst such market pressures, spectacle seemingly provides a competitive edge over rivals. Given that court proceedings are often tedious and dull, the narrative has to be all the more spectacular for this competitive edge to be achieved. Branding victims according to a particular stereotype appears necessary for raising awareness—‘an abuse of the world of vision’ seems inescapable.

Debord claims that spectacle is not just an abuse of the world of vision, as a product of the techniques of mass dissemination of images. He claims it is ‘a *Weltanschauung*’ which has become actual, materially translated. It is a world vision, which has become objectified. The spectacle is not, then, a collection of images: it is much more than that. It is ‘a social relation among people, mediated by images’.<sup>60</sup> The following section seeks to unpack this in regard to the fundraising image of victimhood and its implications for the supposed humanitarian dilemma.

## VICTIMS OF INTERNATIONAL CRIME AND A SPECTACULAR WORLD VISION

Kamari Clarke has described international tribunals as ‘a visual domain for the global consumption of rule of law spectacles’.<sup>61</sup> This understanding edges towards Debord’s understanding of spectacle as a social relation. Debord and the Situationists sought to articulate a form of Marxist social critique focusing specifically upon the question of alienation and mass consumption. The late 1950s and early 1960s were a time in which mass dissemination of imagery was newly prevalent—in cinema, in TV, in print media, in advertising, in art. In particular, imagery and consumerism were becoming increasingly intertwined. Spectacle, according to Debord, was the ‘present model of socially dominant

59 In regard to simplification in ICL and the comfort this provides, see C Schwöbel, ‘The Comfort of International Criminal Law’ 24 *Law and Critique* (2013) 169.

60 Debord (2010) 4.

61 KM Clarke, ‘The Rule of Law through its Economies of Appearances: The Making of the African Warlord’ 18 *Indiana Journal of Global Legal Studies* (2011) 7, 8; KM Clarke, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (Cambridge UP, 2009) 94.

life'.<sup>62</sup> The Situationists identified as a group which engaged critical thinking 'in and against its institutional forms of journalism, art and the academy'.<sup>63</sup> Debord's analysis of the *Society of the Spectacle* centres on a theorisation of the replacement of social life, as a lived authentic experience, with representation—and the detachment and alienation that results.

### Spectacle as ideology

A critique of social relationships of domination (as in Debord's theorisation of spectacle) evokes examinations of ideology critique. In her work on ideology and international law, Susan Marks used the term ideology to refer to the '*ways in which meaning serves to establish and sustain relations of domination*'.<sup>64</sup> Tor Krever's ideology critique of ICL raises the concern that by foregrounding individual acts abstracted from their social context, international criminal law is 'naturalising and legitimising the political-economic social structures in which crime is rooted'.<sup>65</sup> The current predominant capitalist model, which creates and maintains inequalities, is seen as natural, criminalising those who are already disenfranchised and hiding from view the relationship between privileged and disenfranchised. Our spectacularised archive of images is, then, representative of a particular ideology. The images are representations of common ideas, which have been given significance; their purpose is to trigger predictable thoughts and feelings. In this way, a collective memory is constructed. Sontag calls this 'collective instruction'.<sup>66</sup> The fundraising image of victimhood is, therefore, not only about raising funds, or even about ICL as such: it is an image which has been constructed for the purpose of maintaining the status quo—for keeping those who have power in power.

Spectacle, however, is not only a means to naturalise and legitimise the current global (neo)liberal political order, it is also itself *productive*. Karl Marx observed that:

The criminal breaks the monotony and everyday security of bourgeois life. In this way he keeps it from stagnation, and gives rise to that

62 Clarke (2011) 6.

63 M Wark, *50 Years of Recuperation of the Situationist International* (Buell Center/FORuM Project, Princeton Architectural Press, 2008) 6.

64 S Marks, *The Riddle of all Constitutions* (Oxford UP, 2000) 10, with reference to JB Thompson, *Ideology and Modern Culture: Critical Social Theory in the Era of Mass Communication* (Polity Press, 1990) (italics in original).

65 Krever (2013) 705.

66 Sontag (2004) 76.

uneasy tension and agility without which even the spur of competition would get blunted. Thus he gives a stimulus to the productive forces.<sup>67</sup>

The criminal needs both a stage and an audience in order to give a stimulus to the productive forces. The international criminal law courtroom is the stage and the audience are the advocates of fighting impunity. Breaking the monotony and everyday security of bourgeois life through the consumption of spectacle is an escape into representation and a depoliticised world. If one follows the narrative of the evil warlord, the innocent victim and the hero lawyer, one becomes blind to the real social injustices behind those roles. The courtroom drama hides context and root causes. Even as a spectator one is not innocent in the production and reproduction of spectacle. The consumption of the narrative means one becomes an accomplice in the reproduction of the status quo. In its most damning aspect, not even feelings of sympathy towards the nameless victims prevent complicity. Indeed, it has been argued that it is often feelings of sympathy that make the viewers feel like they are *not* accomplices to what caused the suffering. 'Our sympathy proclaims our innocence as well as our impotence'.<sup>68</sup> Feelings of sympathy are often not self-reflective, are mostly fleeting and are seen as an excuse for inaction. Spectacle, then, makes the spectator both productive *and* placid in life.

The paucity of context in international criminal law allows for the exaggeration of the monstrous side to human nature. Such emphasis on monstrosity at the expense of context not only invites a one-dimensional kind of sympathy for the victims, it also fuels demands for penal severity and public protection with the audience outside the courtroom.<sup>69</sup> In other words, moral and normative boundaries and frameworks are mediated through a spectacularised idea of individual criminal accountability. At the same time, the spectacle blinds us to the relationships of exploitation that have led to the criminalised acts. Spectacularised victimhood blinds the spectator to the part played by Western powers in *creating* conflict in the first place. The fundraising image of victimhood is more than an abuse of images: it is symptomatic of a market-oriented global order of inequality; this political and economic order is marked by a disparity of power in favour of the global North at the expense of the global South and the seeming naturalness of this order.

67 K Marx, *Theories of Surplus Value* (1863), available at <https://www.marxists.org/archive/marx/works/1863/theories-surplus-value/> (last visited 11 May 2016).

68 Sontag (2004) 91.

69 CA Freeland, 'Realist Horror', in CA Freeland & TE Wartenberg (eds), *Philosophy and Film* (Routledge, 1995) 126.

The fundraising image of victimhood, created through spectacle, consequently closes down some fundamental structural questions: why is it that African warlords are viewed as being perpetrators of international crimes but not Western politicians? Why are the dependencies created through the colonial encounter and sustained throughout decolonisation not (or rarely) considered as an important historical setting of conflict? Why is it that the scope of international criminal law does not encompass financial crimes, say the renegade practices of a few finance magnates who had a part in the global financial crisis? Why is it that individual accountability is generally connected with the rhetoric of military interventionism of the powerful states? Why do we know the names of the perpetrators and celebrity witnesses but not the names of a single victim of international crime?

Debord, it is true, has been criticised for his own ‘breathtaking provincialism’.<sup>70</sup> Sontag points out that the claim that all lived experience has turned into representation is largely the experience of a privileged minority living in the rich part of the world, where ‘news has been converted to entertainment’, assuming that ‘everyone is a spectator’.<sup>71</sup> In defence of Debord, however, he does limit the parameters of his theory to ‘societies where modern conditions of production prevail’.<sup>72</sup> Of course, if one attaches spectacle to a particular ideology, and in particular to an ideology which is market- and expansion-oriented in its form of domination (generally described as neoliberalism), then one must acknowledge the universalised nature of spectacle, given the near universal reach of neoliberalism.<sup>73</sup>

### **Spectacularising suffering**

Spectacularising suffering means allowing suffering to enter the realm of exhibition for the public gaze. In international criminal law, this is often the presentation of suffering as bodily suffering—maiming, amputations, death through injuries. The humanitarian narrative would have us think that such a spectacularised version of suffering (surely connected to a form of voyeurism) bridges distances between those in the comfort of their Western parliaments, boardrooms and homes, and educates about a far-away suffering. However, the fundraising brand of victimhood appears to maintain a distance between the

70 Sontag (2004) 98.

71 Ibid 98, 99.

72 Debord (2010).

73 Debord, of course, was describing society in the 1960s, at a time when neoliberalism did not yet span most geographies, from North to South, and, crucially, most imaginations.

global North and the global South, and between those who are 'the seeing' and those who are 'seen'.

This can be exemplified in the difference between the portrayal of suffering in the global North and the portrayal of suffering in the global South. Victims of international crime from the global South are typically presented with striking frankness, with close-ups of disaster-injured bodies. Take, for example, the image presented to us on the ICC's victims web page. The image is of a black child or adolescent, whose face is turned slightly away from the camera, bringing to prominence scars on the side of the head and neck. The back of the head is covered by a makeshift bandage, which has been fixed through several strips of tape. The child is looking into the distance. The image takes up the entire screen.<sup>74</sup> 'The more remote or exotic the place, the more likely we are to have full frontal views of the dead and dying', states Sontag.<sup>75</sup> When (re)presenting subjects closer to home, more discretion is expected. Sontag uses the example of the representation of victims of the World Trade Centre in the immediate aftermath of the attack on 11 September 2001 to illustrate the restraint of news outlets when it comes to images of suffering from the Northern hemisphere. Even the tabloids exercised self-policed constraints on what was considered within the bounds of good taste. It is as though those responsible for the creation and dissemination of the image are stating that suffering is something which belongs elsewhere, engrained in the culture of the other; an exception at home, the norm in distant places. This creates the sense of an 'inevitability of tragedy in the benighted or backward—that is, poor—parts of the world',<sup>76</sup> thus hiding modes of exploitation between the poor and the rich.

This spectacularisation of victims from the global South and the restraint in regard to victims in the global North is closely connected to a progress narrative in which the West states that such horror once had a place at home but has now been overcome. It states that these places have matured, have acquired a moral higher ground yet to be achieved by those in the global South. ICL's progress narrative, beginning with atrocities in the global North which were overcome with the Nuremberg and Tokyo tribunals, via war crimes committed in the former Yugoslavia in Europe's 'back yard' and addressed through the ad hoc tribunal, to today's placing of atrocities within the global South is a case in point. And this idea of progress achieved and progress to be desired, of course, is connected to the legitimisation of intervention. Today, those in the global North are the spectators, those who see.

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74 ICC, 'Victims'.

75 Sontag (2004) 61-64.

76 Ibid 64.

The legal inflection of spectatorship is the configuration of the spectator as the holder of rights and also as the distributor to those who are unable to claim them themselves.<sup>77</sup>

In its repetition of the fundraising image of victims, ICL sustains rather than overcomes geographical and socio-economic divides, and it, therefore, obscures relationships of domination, particularly ones of a political-economic nature. Contrary to the suggestion that there is a ‘fundamental humanitarian dilemma’, the use and construction of the fundraising brand of victimhood are perpetuating a deeply flawed and unequal system.

The fundraising brand which is reproduced and constructed by ICL actors inside and outside the courtroom risks alienating victims from their experiences of suffering. ‘The spectacle within society corresponds to a concrete manufacture of alienation’, claims Debord.<sup>78</sup> If we follow Debord on this line of argument, victims could become alienated from their experiences of suffering as various modes of representation appropriate their experience and condense them into that which is marketable under the fundraising brand. Spectacularisation ‘steals their experience, and puts in its place a cheap and ghastly imitation’.<sup>79</sup> Suffering is then to be understood as commodified: ‘the tangible world is replaced by a selection of images which exist above it, and simultaneously impose themselves as the tangible *par excellence*’.<sup>80</sup> The authentic experience of suffering is replaced by a stereotype of images of victimhood that exist above the lived experience, and simultaneously impose themselves as the experience itself.

Despite the danger of alienation that ensues through spectacularisation, there may be a possible avenue for resistance available to those who experience harm and suffering. As mentioned above, there is an essence of suffering, which is inherently and deeply personal, and, therefore, in a sense, defies spectacularisation—and perhaps even representation. In particular, this goes for suffering which is not directly physical—grief over the loss of a loved one, mental health problems which arise as a consequence of participating in and experiencing conflict or worry about providing for a family. These are experiences that are difficult to spectacularise because they are difficult to visualise. Nevertheless, they are still experiences that may need to be related outside the world of ICL. Indeed, the ensuing institutional exclusionary effects of non-spectacularised suffering pose an opportunity for reclaiming the narrative over the experience.

77 Hesford (2001) 4.

78 Debord (2010) 32.

79 S Marks & A Clapham (eds), ‘Victims’, in *International Human Rights Lexicon* (Oxford UP, 2005) 399.

80 Debord (2010) 36.

The challenge is to present and represent this suffering without falling into accepted tropes around branding, humanitarianism and intervention.

## CONCLUSION

An integral relationship between international criminal law, imagery and performance exists. This relationship is one of spectacle. Spectacle is not, as we have found, simply the abuse of the world of vision, it is itself a world vision. This idea of spectacle as world vision highlights the ideological prominence of a business logic within international (criminal) law. The victim image employed and constructed inside and outside the international criminal courtroom is the same victim image used by aid agencies and the media in the Western world to appeal to donors and stakeholders. The employment of this fundraising image of victimhood brings to the fore the market-oriented ideology of inequality of the discipline and of the world in which the discipline exists. It was argued that the fundraising image of victimhood deepens existing inequalities, further disenfranchising victims and empowering agents of humanitarianism. The branding of the victim is ultimately to be understood as part and parcel of a strategy of legitimating intervention in the global South—a strategy that is so cleverly marketed that its purpose appears to be humanitarianism.<sup>81</sup>

What then to do with the realisation of the ideological connection between fundraising images of victims of international crime and a structure of exploitation? As was mentioned above, the victim label itself still has an important place and can play an important role—perhaps even as a means of resistance. Susan Marks and Andrew Clapham state that despite its downsides and dangers, it is nevertheless important to ‘ask the victim question’.<sup>82</sup> By this they mean a range of questions, particularly those suggested by the discipline of victimology. Marks and Clapham argue that questions around victimhood may open up a debate, which goes beyond an interrogation of the individual perpetrator’s wrong-doing. Using the example of the photographs of Private Lynndie England and her involvement in the torture of Iraqi prisoners at the Abu Ghraib detention centre, Marks and Clapham illustrate a series of questions one might ask and perspectives one might adopt. They emphasise that ‘asking the victim question’ leads one to query the responsibility of former President George Bush and former Secretary of Defence Donald Rumsfeld in the creation

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81 In regard to the marketing of ICL, see C Schwöbel, ‘The Market and Marketing Culture of International Criminal Law’, in Schwöbel (ed.) (2014) 264.

82 Marks & Clapham (2005) 407. They credit M Davies, *Asking the Law Question* (Lawbook Company, 2002) for the phrase ‘asking the question’.

of the conditions that led to the acts of torture as well as the rhetoric around responsibility. Asking the victim question is, importantly, not (only) about individual responsibility; it includes wider issues. Identifying victims of international crimes might allow one to ask: who is suffering from and who is benefiting from conflict? Which states and corporations are producing and supplying the weapons used? Which natural resources are fought over? Who wishes to extract them? Who requires them? What are the allegiances or points of disagreement between those in power and those promising foreign intervention? Asking the victim question allows one concretely to pinpoint those who are suffering; asking about the context of their suffering assists in the necessary enquiry into who is benefiting, either from conflict itself or from the promised outcome of conflict.

In addition to the utility of the victim question as a way into structural issues, oftentimes victims *are* interested in the representation of their suffering.<sup>83</sup> However, they may want to be able to direct the representation, to be an active not a passive party to it. Can victimhood be invoked without spectacle? The courtroom is seemingly inescapably spectacular: the fixed roles invite performance, simplification and an inability to introduce context, certainly in an international court. One might embrace this spectacle for victim ends, as was arguably the purpose of the Russell Tribunal. Constituted in 1966 by Bertrand Russell and supported by several intellectuals including Jean Paul Sartre, the tribunal, also referred to as the International War Crimes Tribunal, had the purpose of investigating crimes committed in Vietnam. The idea was to focus on the victims of domination, to tell the story of the oppressed, in this case those harmed by US aggression in Vietnam. A recent example of this is the Russell Tribunal on Palestine. Supported by the Bertrand Russell Foundation, the tribunal was set up in 2009 to investigate international law violations of which Palestinians are victims. Rather than discarding international law as a form of domination, the tribunal 'reaffirm[s] the supremacy of international law as the basis for a solution to the Israeli Palestinian conflict'.<sup>84</sup> International law, and international criminal law, can be understood as a means to provide an alternative, a legal, language for a political process. This utilitarian view requires the abandonment of the assumption that international law is reflective of morality. In an interview with the *New Left Review* on the initial war crimes tribunal, Sartre stated that the point was not 'one of condemning a policy in the name of history, of judging whether it is or is not contrary to the interests of humanity';

83 Sontag (2004) 100.

84 Russell Tribunal on Palestine, 'About', available at <http://www.russelltribunalonpalestine.com/en/about-rtop> (last visited 11 May 2016).

rather, he considered it useful to judge whether the policy was contrary to *existing* international laws.<sup>85</sup> In other words, there is utility in determining whether ‘imperialist policies infringe laws formulated by imperialism itself’.<sup>86</sup> For victims of international crime this means an alternative representation of events, one that is not determined by the narration of the hegemonic power.

Alternatively, one might be engaged in projects outside the courtroom that confront stereotypes rather than deepen them. Confronting stereotypes means, above all, addressing victimhood as a rhetorical device. In particular, it entails the abandonment of representations of the ‘generic’ victim, which leads to stereotyping or branding exercises. For example, one might engage in projects of victim-identification, naming victims, asking them to speak of their suffering, providing a platform for their specific context. Projects designed to demystify drone attacks and to identify victims of drone strikes might serve as an example. The use of drones on the battlefield as a means for targeted killings has been mystified in a legalised and technicalised language surrounding euphemisms such as ‘collateral damage’ and obtuse issues such as the ‘principle of distinction’. The joint Stanford and NYU project ‘Living under Drones’ interrogates, and proves as false, the predominant narrative that drones are a precise and effective tool that makes the US safer.<sup>87</sup> A part of the US administration’s narrative of precision in terms of targets hides from view the civilian victims of drone strikes. Interviews with victims of drone strikes and their families highlight the physical and the psychological consequences for communities in Pakistan. The effort of showing and interviewing individuals who have suffered is an attempt to make visible the seemingly invisible and insignificant generic ‘collateral damage’. These projects highlight the importance of ‘asking the victim question’.

International criminal law may, therefore, play a role in the contextualisation of victimhood and the confronting of stereotypes. In order for this shift to take place, actors in and around the courtroom must change the emphasis from shocking to understanding. A useful starting point is to raise awareness of the pitfalls of marketing and branding victimhood—clarifying that the fundraising brand only harms victims further. This awareness should prompt the denouncing of efforts to spectacularise victims of international crimes and instead to ask questions which may provide insights into the root causes of conflict.

85 J-P Sartre, ‘Imperialist Morality’ *I/41 New Left Review* (1967) 3, 5.

86 *Ibid.* 6.

87 International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, *Living Under Drones: Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan* (2012), available at <https://law.stanford.edu/publications/living-under-drones-death-injury-and-trauma-to-civilians-from-us-drone-practices-in-pakistan/> (last visited 6 June 2016).