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INTRODUCTION TO THE SYMPOSIUM ON INTERNATIONAL CRIMINAL LAW'S CRITICAL AFTERMATHS

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Over the last decade, there has been a turn to structural critiques of International Criminal Law (ICL) in the form of Third World Approaches to International Law (TWAIL), feminist, critical race, and Marxist approaches. These approaches have sought to challenge the liberal assumptions of the anti-impunity project as a benevolent force by tracing the gendered, racialized, and colonial forms of violence that often underpinned ICL intervention in situations of conflict and atrocity.[1] Yet despite these important contributions, structural critiques have so far failed to transform or reconstruct the field in which they intervened. In this symposium on ICL's critical aftermaths, we suggest that we critics often lacked a methodology and vision of radical transformation. We have failed to draw out and mobilize both the subversive potential and the reparative needs emerging out of ICL's relationship to neocolonialism, capitalism, and racialization. The provocation animating this symposium is to take seriously the question of "what happens next?": If we take questions of race seriously, should this involve a more explicit engagement with abolitionism? Should we foreground redistribution and revolution in the context of anti-capitalist and anti-imperialist critiques of ICL? Should we learn from reparative pedagogies as part of feminist critiques? The objective of this symposium is ultimately to turn the accountability lens *on* ICL and its critics and ask what transformative work it demands.

ICL Critique in Times of Genocide

Amidst the harrowing reality of destruction and death in Gaza, invocations of individual criminal responsibility—*send them to The Hague!*—surfaced across liberal and critical international law scholarship. For many critical scholars, however, Gaza appears to confirm something already known: international law's predictable failure to stop an ongoing genocide;[2] its blindness to the colonial violence that made ongoing atrocities in Gaza possible; and the futility of "bad apple" justice impugning individuals rather than structures.[3] While the idea for this sym-

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[1] Kamari Clarke, Affective Justice: The International Criminal Court and the Pan-Africanist Pushback (2019); Gender And International Criminal Law (Indira Rosenthal, Valerie Oosterveld & Susana SáCouto eds., 2022).

[2] Marina Velickovic, *International Law and Failure in the Context of Gaza*, Critical Legal Thinking (Apr. 2, 2024).

[3] Ata Hindi, *International Law is Dead*, TWAILR: Extra (Nov. 20, 2023). *See* Nora Jaber, *The Biggest Lie Known to History*, 229 London Rev. Int'l L. 14 (2024).

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posium on "International Criminal Law's Critical Aftermaths" came about before the latest siege on Gaza, to us, the genocide, scholasticide,[4] domicide,[5] urbicide,[6] and epistemicide[7] of Palestinians since October 2023 not only marked a turning point for liberal international (criminal) law, but also for the crucial yet well-rehearsed critiques around ICL's structural violence. We were keen to center the killing of more than 45,500 Palestinians by the Israeli Defence Forces, with the support and funding of Western governments in our thinking about transformative work. It became an urgent task to learn from and amplify those voices for whom the latest iteration of Palestine's seventy-year-long Nakba has prompted a reorientation, less beholden to the limits of legal articulation[8] and less enamored of familiar critical tools.[9] Aftermaths in this sense are never truly "after" but still entangled in the debris of political struggle and critical praxis that had nonetheless exposed some fault lines and assumptions. Attending rallies, teach-outs, departmental meetings, conferences, speaking with students, colleagues, and friends, writing, marching, shouting, centering care, surprise, even fleeting joy, it seemed as though the practice of repair, as opposed to despair, was driving us toward "*other* international law(s)."[10]

In this vein, the editors found insight, companionship, and repair in the writings of abolitionists, Black and socialist feminists, decolonial Third Worldists, and more. Legal reparation became Olúfẹ́mi O. Táíwò's "constructive reparation," while national self-determination turned into Adom Getachew's "worldmaking" as we looked to notions of revolution, pedagogy, and abolitionist geographies as cues for the field's critical aftermaths. Before turning to the contributions on these themes, we consider some of these ideas as starting points for looking beyond ICL's well-trodden trenches of support and critique. In doing so, we respond to a long-standing charge that the "crits" only ever engage in deconstructive (or even destructive) critique rather than reconstructive work. This symposium aims to reclaim, reimagine, and transform the space, vocabulary, institutions, resources, and relations of global justice that are currently occupied by ICL. What concepts and institutions of ICL can be reimagined or repurposed and which ones should be discarded? And how can reimagining the future avoid lapsing into a purely utopian project, disconnected from the material realities of a global capitalist world order?

In pursuing these questions, we do not have to go it alone. Instead, we can draw on rich traditions of struggle and debate on the methodologies of transformative change beginning with reform and revolution, and working our way through abolition, worldmaking, constructive reparation, and critical pedagogies. We did so in autumnal Cambridge, portending both winterly destruction and the hope of new beginnings.

[4] Scholars Against the War on Palestine, Toolkit: International Actions Against Scholasticide (2024).

[5] *UN Rights Expert Condemns "Systematic" War-Time Mass Destruction of Homes*, UN News (Mar. 5, 2024).

[6] Martin Coward, Urbicide: The Politics of Urban Destruction (2009).

[7] Boaventura de Sousa Santos, *Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledge*, 30 Rev. 45 (2007).

[8] Vasuki Nesiah, *Performance and Heresy Before the Law*, 12 London Rev. Int'l L. 224 (2024).

[9] Ihab Shalbak, *Cruel Optimism*, 12 London Rev. Int'l L. 295 (2024). *See* Michelle Burgis-Kasthala & Barrie Sander, *Contemporary International Criminal Law After Critique: Towards Decolonial and Abolitionist (Dis)Engagement in an Era of Anti-impunity*, 22 J. Int'l Crim. Just. 127 (2024).

[10] Abdelghany Sayed & Luis Eslava, *On the Question of Palestine Solidarity*, 12 London Rev. Int'l L. 282 (2024). We acknowledge that discourses of repair are not without their own limitations and have been subject to radical critique in, *inter alia*, Patricia Stuelke, The Ruse of Repair: US Neoliberal Empire and the Turn from Critique (2021).

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Prompting ICL's Critical Aftermaths

Our starting point for this collective reconstruction and reimagining of ICL's critical aftermaths was Táíwò's warning that "racism keeps you answering other people's questions."[11] This can be reframed for our inquiry as follows: A global, racial-capitalist, and patriarchal state system keeps you answering other people's questions about what global justice means and how it can be achieved. Prompted by the work of Táíwò, Getachew, and Gilmore,

[11] Olúfémi O. Táíwò, Reconsidering Reparations 6 (2022).

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we offered the following five conceptual tools on transformative justice to our contributors, who picked up on some more than others in developing their own radical resources to answer their own questions about ICL.

Reform and Revolution: Intervening in the Left-political debate on reformism at the beginning of the twentieth century, Rosa Luxemburg fiercely reminded her comrades that reforms that propped up the existing structures only further entrenched the capitalist imperial system.[12] This, however, did not mean that reform and revolution always stood in opposition to one another. Instead, the political task was to test which reforms could tactically bolster, and which would merely undermine, a revolutionary strategy. Those "revolutionary reforms," dubbed "nonreformist reforms" by French socialist philosopher André Gorz,[13] have been further developed by abolitionist activists to reorient us toward abolitionist horizons.[14] Far from being constrained by what is possible or realistic within the existing system, non-reformist reforms actively seek to transform the system's balance of forces—by building the political strength of the working class or the intellectual power of prisoners or victims—even if gradually and painstakingly.

Abolition: Abolitionism has become an important political movement in domestic criminal justice, particularly in the United States, and has also slowly made its way into debates about ICL.[15] A key principle of abolitionism is to move from a crime-centered to a harm-centered conception of the social world. The question is no longer "how do we respond to crime and what do we do with criminals?" but rather "how do we conceive of and address harm and build a world which produces less of it?" As Ruth Wilson Gilmore puts it,

> Abolition is not *absence*, it is *presence*. What the world will become already exists in fragments and pieces, experiments and possibilities. So those who feel in their gut deep anxiety that abolition means knock it all down, scorch the earth and start something new, let that go. Abolition is building the future from the present, in all of the ways we can.[16]

Abolition, therefore, does not necessarily mean shutting down the International Criminal Court (ICC) (although it can also mean that). Instead, it demands that we understand both the harm ICL responds to and the harm it produces. This also means being attuned to victims' demands for justice and connecting to the political struggles and alternative justice practices that emerge as affected communities grapple with structural violence and the mass atrocities it gives rise to.

Worldmaking: In *Worldmaking After Empire*, Getachew argues that national self-determination was not merely a European construct belatedly extended to the non-European world, but rather a radical demand to rethink and reshape the world from the periphery that developed in the context of anti-colonial struggles since the 1950s.[17] Are there moments of worldmaking in the praxis of international criminal justice that need to be highlighted and amplified so as to rewrite its history? Can, for example, Peoples' Tribunals that seek accountability of imperialist states or actors outside the regular court system be considered places of worldmaking?

Constructive Reparation: Our initial proposal for this symposium was inspired by the *constructive view* of reparations that Táíwò developed in part by building on Getachew's concept of worldmaking and its roots in anti-colonial struggles. These struggles, Táíwò and Getachew forcefully show, were not simply *against* existing structures of colonial capitalism but *for* building and "imagining new institutions, different relationships between

[12] Rosa Luxemburg, Junius Pamphlet (Dave Hollis trans., 1996 [1916]).

[13] André Gorz, *Reform and Revolution*, 5 Socialist Register 111 (1968).

[14] Ruth Wilson Gilmore, Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California 242 (2007); Thomas Mathiesen, The Politics of Abolition Revisited (2014).

[15] Sophie Rigney, *Building an Abolition Movement for International Criminal Law?*, 22 J. Int'l Crim. Just. 211 (2024).

[16] Ruth Wilson Gilmore & Léopold Lambert, *Making Abolition Geography in California's Central Valley*, The Funambulist (Dec. 20, 2019).

[17] Adom Getachew, Worldmaking After Empire: The Rise and Fall of Self-Determination (2019).

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countries, and also, crucially, the most recognizable aspect of reparations politics: redistribution of global wealth from the First World (back) to the Third World."[18] Reparation, Táíwò argues, requires nothing short of rebuilding our world system, a "global racial empire" born in the crucible of transatlantic slavery and colonialism, which has ensured that those who started winning, kept winning.[19] What would such a constructive reparative approach mean for international justice?

Critical and Reparative Pedagogies: Critique of ICL also concerns the Eurocentric knowledge that its institutions and elites reproduce. Law, however, goes much further than that, profoundly shaping who we are, how we know, and how we relate to one another (as formally equal property owners).[20] How can we as legal educators break with given knowledge hierarchies and create participatory, critical, and reparative pedagogies of liberation?[21] After all, (as much as many of us like to imagine ourselves as revolutionaries storming the barricades), what we, as academics, are best at is supporting and learning from those engaged in struggle, including our students. As we contemplated how to bring Palestine into our classrooms, our students already brought Palestine to our campuses, creating their own teach-ins and libraries, and organizing food and care for the campers.[22] They taught us—their lecturers—not only how to demand accountability, disclosure, and divestment from the university administration but also how to de-escalate conflict with hecklers and (dis)engage with the police. Perhaps therefore, more than anything else, these short contributions foreground the pedagogy around ICL's critical aftermaths.

Contributions

yassin brunger and Sophie Rigney begin the symposium by directing the view beyond ICL's carceral imaginaries of justice toward abolitionist geographies and reparative pedagogies.[23] They engage this disruptive bottom-up approach through a vignette of university encampments for Palestine as alternative accountability places. Reminding us that the structure of violence and oppression remains intact with carceral justice, Rigney and brunger invoke the encampments as exemplary of abolitionist praxis, and explore the radical pedagogy enacted there.

Marina Veličković's contribution is more cautious about abolitionism as a pathway to ICL's critical aftermaths, echoing concerns over prioritizing (system-reinforcing) reform over (system-disrupting) revolution.[24] She emphasizes the material conditions under which Black feminists in the United States have been calling for the abolition of the carceral system, to explain that such calls cannot necessarily be adopted like-for-like to ICL as it operates very differently as a mode of capital accumulation. After all, ICL's centrality to capitalism does not stem primarily from its capacity to extract surplus value from black (prison) labor, but from its ideological role in enabling circulation and accumulation of surplus value from the periphery to the core by framing justice in a way that foregrounds individual/physical violence and legitimates slow/structural violence. From a Marxist perspective, Veličković argues, investing our limited political energies and resources in abolitionist struggles of ICL risks reproducing what ICL does: designating one form of violence as worse, and more worthy of abolishing, than any other.

In the next contribution, Margaret deGuzman and Rachel López disrupt the exclusivity of ICL's punitive approach to justice by adopting a standpoint feminist perspective that foregrounds the views of marginalized

[18] Táíwò, *supra* note 11, at 5.

[19] *Id.* at 27.

[20] Foluke Adebisi, Decolonisation and Legal Knowledge: Reflections on Power and Possibility 10 (2023).

[21] Paulo Freire, Pedagogy of the Oppressed (Myra Bergman Ramos trans., 2005).

[22] Basma Hajir & Mezna Qato, *Academia in a Time of Genocide: Scholasticidal Tendencies and Continuities*, Globalisation, Societies & Educ. 1 (2025).

[23] yassin brunger & Sophie Rigney, *Abolitionist Geography: Disrupting ICL Through Pro-Palestine University Encampments*, 119 AJIL Unbound 48 (2025).

[24] Marina Veličković, *Abolition of International Criminal Law: A Marxist Critique*, 119 AJIL Unbound 54 (2025).

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women, who have unique insights into the workings of systems of oppression.[25] Echoing the transformative practices of abolition feminism and the imaginative politics of constructive reparation, deGuzman and López turn to feminist dreaming as a form of prefigurative struggle that is guided by internationalism, communitarianism, solidarity, love, communication, and empowerment.

How experts, affected communities, and other actors relate to one another is a central concern of Sujith Xavier's analysis of the "transitional justice industrial complex" in post-conflict Sri Lanka.[26] Borrowing from Homer's tale of the Lotus eaters as enchanted consumers, Xavier points both to the colonial legacies of truth inquiries and the North-South political economy of transitional justice professionals as "truth eaters." Building on the TWAIL tradition and centering dynamics of local commemoration, Xavier shows, can reconfigure authority, knowledge, and truth in potentially reparative ways.

Lastly, and recalling the graduality of non-reformist reforms, Vasuki Nesiah ends the symposium by thinking productively with the notion of the unfinished (or unfinishable) and the interrupted in order to resist the urge toward closure that ICL generates and satisfies.[27] Drawing on debates around Holocaust memorialization in Germany as necessarily irresolvable, and pointing to several pertinent examples of unfinished/interrupted worldmaking—the *Pinochet* case, the trial of the Chicago Eight, and the ongoing *South Africa v. Israel* proceedings at the International Court of Justice—Nesiah locates the power of these legal processes in their interruption and repurposing by social movements and their use as part-answers to alternative questions. It is appropriate, then, that our symposium closes by problematizing closure, not only vis-à-vis ICL itself, but also for those questions, readings, and tools that will form its critical aftermaths.

In this vein, and inspired by Sophie and yassin's reparative pedagogical vignette style, we want to end with a short vignette recalling our experiences of one of the Palestine encampments, which illustrates everyday practices of non-reformist reforms, abolition, worldmaking, and disruptive pedagogy in the interstices of the global and the local:

> The grass is soggy from the rain and the mud has crawled up our trousers and legs. It's community check-in time: we form a little circle in the communal area. Some students sit on camping chairs, others on card box panels on the ground, many stand. The loudspeaker passes around as campers share updates, thoughts and emotions after the arrest of several students at a sit-in the previous day. Many are still visibly shaken by the police response and worried about their arrested friends. They hug and console each other. Suddenly, a young woman joins the circle to interrupt. She is on the phone with her friend from Gaza. His voice crackles through the mobile phone now held to the small loudspeaker: he describes the ordeal of fetching drinkable water for his family, how they risk their lives sneaking out to take a quick bath in the sea after weeks of not showering, and how they huddle together every night seeking a fragile sense of safety and comfort. He spares us details of famine, death, loss and destruction and instead talks about our joint struggle for freedom; how what we are doing, the student encampments around the world, are important and give them hope. "It's nothing compared to what you are doing for us," a young man from the circle shouts out. "The Palestinian struggle is a global struggle for justice and freedom for all." Later we are joined by healthcare workers from a local hospital. A surgeon who recently returned from Gaza shares his experiences. We feel inadequate. What do we have to offer other than being a human part of the sometimes chaotic, sometimes organized community created here? What does our knowledge of international criminal justice add to those struggling in Gaza, or for that matter, to those sitting beside us on the camping chairs? Then a nurse strikes up a song: "There is no such thing as humanity until Palestinian children are free," she sings. We all join in.

[25] Margaret M. deGuzman & Rachel López, *Feminist Dreams of Justice*, 119 AJIL UNBOUND 59 (2025).

[26] Sujith Xavier, *Truth Eaters: TWAIL and Transitional Justice in Sri Lanka*, 119 AJIL UNBOUND 64 (2025).

[27] Vasuki Nesiah, *Unfinished*, 119 AJIL UNBOUND 69 (2025).

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