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Valerie King

University of Tennessee, Knoxville, jross26@vols.utk.edu

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Constructing Victims in the International Criminal Court: A Critical Discourse Analysis

VALERIE KING

Advisor: Dr. Lois Presser

The International Criminal Court (ICC) was established in 1998 to address serious crimes of concern to the international community, including genocide and crimes against humanity, among others. This paper examines the construction of victims in ICC proceedings. Through a critical discourse analysis of ICC web pages and other documents intended for victims, I argue that the ICC's construction of victims reproduces criminal justice logics, which marginalize victims and denies them agency. Said marginalization occurs in an effort to balance retributive and restorative justice. Discourses concerning the role and agency of victims in the Court reproduce institutional neglect and disempowerment.



Introduction

The International Criminal Court (ICC) was established in 1998 to “end impunity for the perpetrators of the most serious crimes of concern for the international community” (International Criminal Court). Governed by the *Rome Statute of the International Criminal Court* (UN General Assembly), the Court addresses crimes of greatest concern to the international community, including genocide, crimes against humanity, and war crimes. While the ICC is modeled on a balance of retributive and restorative justice, the Court has been criticized for its treatment of victims (Clarke 2009, Garbett 2013, Henham 2004, Wemmers 2009, Gegout 2013). These critiques engage with criminal justice ideologies, constructions of victims, and the discourses that sustain power relations.

The ICC proceedings are founded on certain logics of justice. These logics of justice form the grounds of the ICC and determine all aspects of the Court. However, a certain tension between retributive justice and restorative justice exists, and that tension is apparent in the discourses that construct victims and victim participation. Victims are left on the sidelines of court proceedings and are constructed through ICC discourses in such a way that the Court denies them agency.

In this paper, I will analyze ICC discourse about victim participation to reveal the criminal justice frameworks that are central to the operations of the Court. I examine the construction of victims in this discourse and the ways in which victims are marginalized from processes of justice and are denied agency. I then address the Court’s efforts to balance retributive and restorative justice. Through a critical discursive perspective, I examine the proceedings in which ICC discourse reinforces powerful logics about justice. I continue to engage with discourses that construct victims and contribute to the criminal justice framework. Concluding with the observation that language creates opportunities to generate meaningful change, I urge the re-examination of the international justice model that the ICC imposes.

The International Criminal Court and the Role of Victims

“The ICC, governed by the Rome Statute, is the first permanent, treaty based, international criminal court established to help end impunity for perpetrators of the most serious crimes of concern to the international community” (International Criminal Court 2014).

The twentieth century is marked by some of the most heinous crimes in history. Violations of international law and unspeakable atrocities created a desire within the international community to hold accountable the individuals most responsible (International Criminal Court 2014). While previous *ad hoc* tribunals and courts had been developed to address the crimes of World War II and the former Yugoslavia and Rwanda, a permanent and overarching international criminal court was sought to prosecute perpetrators of the worst crimes. A conference held in Rome addressed this issue and led to the development of the *Rome Statute*.

The ICC was established by the *Rome Statute* on July 17, 1998, and entered force on July 1, 2002. As of April 2014, 122 states have ratified the *Rome Statute*, and another thirty-one countries have signed but not ratified. The Court addresses the most serious international crimes—namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression. The ICC is considered only as a court of last resort, meaning that all other justice mechanisms must be exhausted before the ICC can pursue a case. The Court is made up of three chambers: pretrial, trial, and appeals and is composed of four organs, or official bodies: Presidency, Judicial Divisions, Office of the Prosecutor, and Registry. The ICC is located in The Hague. As of this writing, the ICC has twenty-one open cases in eight different situations,

including Sudan, the DRC, the CAR, Kenya, Libya, Cote d'Ivoire, and Mali (International Criminal Court). Since the *Rome Statute* went into effect in 2002, the ICC has seen two convictions, and proceedings against twenty-six persons are ongoing.

The ICC defines a victim as “a person who has suffered harm as a result of the commission of a crime within the jurisdiction of the court.” (International Criminal Court 2014). Signatories to the *Rome Statute* are “Resolved to guarantee lasting respect for and the enforcement of international justice” (Preamble). As the first permanent, treaty based organization, the Court seeks international justice in an unprecedented way. Article 68(3) of the *Rome Statute* offers the possibility for victim participation in legal proceedings:

Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

The Court's innovative approach to justice, in an effort to balance retributive and restorative justice, includes the possibility for victims to participate. In doing so, the Court must define victims and determine procedures for participation.

ICC Logics of Justice

The Court's inclusion of victims is parcel to its claim to operate on the principles of restorative justice, alongside a retributive framework. Specifically, the ICC claims to balance retributive and restorative justice. “It is this balance between retributive and restorative justice that will enable the ICC not only to bring criminals to justice but to help victims themselves rebuild their lives” (International Criminal Court 2014).

The victim is central to the Court's efforts to balance retributive and restorative frameworks of justice, and the Court uses this model to legitimize itself. In *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism* Kamari Maxine Clarke (2009) offers a critical assessment of the International Criminal Court. Clarke describes the participation of victims as “circumscribed in particular, and often prescriptive ways” (2009:105). Not only do victims submit an application to participate in the proceedings, but they must also provide evidence that they are, indeed, a victim. The judges are responsible for accepting or rejecting applications. Clarke concedes, “the figure of the victim exists as a necessary precondition for imagining the legitimacy of the international reach of the court” (2009:109). Findlay and Henham (2003) suggest that justice mechanisms either reflect a retributive or restorative model, and the model is exhibited through practices and outcomes. The attempt to balance retributive and restorative justice mechanisms is central to the construction of victims by the ICC.

Sagan (2010) notes that victimhood is central to the structure and discourse of international criminal law. However, the criminal justice system, operating in part through a retributive model, marginalizes victims by excluding them from proceedings (O'Hara 2001). In the criminal justice system, real victims are those who are not in any way responsible for what happened to them (Loseke 1999). The problem with eliminating responsibility for being harmed is that the victim is often constructed without agency. While this creates a much simpler picture of the victim-offender relationship, it also results in an exclusion of the victim's needs from the justice process. Victims are portrayed as passive in the criminal justice system (Madeira 2012). They may be injured as a result of exclusion from legal proceedings, which

can then become a traumatic experience for them. Additionally, Clarke (2009) notes that the authority of justice-making excludes victims. Through a focus on the perpetrator, the victim is absent from court decision-making (2009: 109). In these ways, international criminal law and the criminal justice system often marginalize victims.

Claire Garbett (2013) shows that victims are categorized and repositioned into ICC proceedings. She concludes that lack of integration of victim participants affects how victims perceive of justice through the ICC and suggests that there is a “lack of clarity” for the participation of the victim, that the judgment does not recognize harms sustained by the victims, and the legal judgment does not reflect the construction of truth (207). Garbett’s analysis of victims in the ICC highlights the alienation that victims perceive from Court proceedings. Ralph Henham (2004) identifies the largely symbolic attention aimed at the concerns of victims as opposed to concrete attention for their concerns (204). The Court may only make claims about the concerns of victims rather than aiming to include their concerns in definitive ways. Claims about victims concerns are central to the Court’s efforts to incorporate restorative justice.

Restorative justice seeks to repair harm and restore communal relationships (Zehr 1990). The needs of victims and perpetrators are included in the process of justice because both are seen as “stakeholders” (Zehr 1990). Restorative justice models incorporate all stakeholders. However, “human rights principles and procedural norms in international criminal trials are interpreted in ways that reinforce the predominant political ideology informing the international criminal justice process” (Henham 2004: 206). The predominant political ideology is retributive justice.

In retributive contexts, victims may be marginalized, but they often assert power and inclusion in other ways. As Madeira suggests, “Legal forums that are less willing to integrate victims in legal proceedings can retard reconstruction and inflict further wounds by adding insulting exclusion to injury. But victims have learned that they are far from powerless when faced with unfavorable judicial practices” (2012:8). Victims, then, may be included or excluded in various ways within legal proceedings. Previous research has explored victim-participation in ICC proceedings, including examination of the discourses involved (Clarke 2009, Funk 2010, Pena and Carayon 2013, Sagan 2010). Much of this research points to the procedural difficulties victims have in exercising their rights. Marcus Funk highlights the “subtle messages delivered during the victim-application process that trigger unjustified expectations” (2010:120). In many ways, the role of the victim in legal proceedings is complex and uncertain.

Although much of the research suggests that ICC proceedings reflect challenges for victim participation in retributive justice frameworks, a Critical Discourse Analysis (CDA) of the ICC can examine the ways in which discourse reproduces these ideologies. CDA is a theoretical perspective and methodological framework according to which language, texts, and talk reproduce or reinforce dominant ideologies and power relations (Van Dijk 1993). A CDA of the ICC can reveal how language creates the shortcomings of victim participation. In addition to highlighting the positioning of victims as a result of ICC discourse, acknowledging these discourses also provides an outlet for reconsidering the role of victims in international criminal justice.

This Study: Discourses of The ICC that Construct Victims

While the ICC has been examined through multiple lenses, the research lacks an analysis of the Court’s discourse. A critical discourse analysis (CDA) of the ICC can illuminate its cultural logics, which ground difficulties for victims that others have documented. In this paper, I examine the discourses that determine the construction and participation of victims in the ICC. Through a CDA, I offer a detailed contribution for future research on victim participation in the ICC and for research concerning the ways in which language functions to reproduce

ideologies and to construct individuals and actions.

CDA examines dominance and inequality through texts and talk and explains the relationships between language and broader social relations and processes (Van Dijk 1993). Fairclough (1992) concludes that discourse contributes to sustaining or restructuring power relations. Fairclough also argues that discourses sustain relations of power but have the potential to resist them. In these ways, discourses may serve to dominate or to resist.

Research Methods

This study uses web documents and materials available on the ICC website. The data reflects the construction of victims by the Court as outlined primarily through the booklet for *Victims Before the International Criminal Court: A Guide for the Participation of Victims in the Proceedings of the Court* and also on the ICC webpage for victims (International Criminal Court 2014).

The website provides a booklet, *Victims Before the International Criminal Court: A Guide for the Participation of Victims in the Proceedings of the Court*, that offers information about victims in the International Criminal Court. The document serves as the primary body of information regarding victims and victim participation. The data accounts for the guidelines established for victim participation in ICC proceedings and information regarding victim participation and reflects the discourse of the ICC in regards to victims. This represents only a fraction of available discourses for examining victim participation in Court proceedings but allows for a critical engagement with ICC discourse. I discerned noteworthy abstraction, modality, nominalization, process type analysis, and metaphors, which are some of the basic focal points of discourse analysis, outlined below.

Abstraction occurs when information or details about an event or process are replaced by generalizations (Machin & Mayr 2012). Characterized by vagueness, abstraction serves to conceal certain aspects and highlight others. Levels of abstraction are monitored by examining the absence of processes or participants and through the use of ambiguous concepts and metaphors. These mechanisms distract the audience/reader from the actual processes that occur.

Modality encodes the author's claims about possibility and probability of actions (Wood & Kroger 2000). Modality is expressed through auxiliary verbs, such as *must, will shall, can, and may*. The use of these verbs can express high modality, indicating certainty, or low modality, expressing uncertainty or lack of commitment. "Modals indicate the author's commitment to the truth of a statement or necessity" (Machin & Mayr 2012). Modality is key when defining and explaining opportunity and possibility.

Nominalization is the representation of verb processes as nouns (Machin & Mayr 2012), or the transformation of an action verb into a noun. Nominalizing a verb transfers the action from the participant, or subject, and the verb then becomes the subject. This can be used to conceal agents and simplify complex processes. Nominalization removes all sense of agency from the act, and therefore, excludes individuals from the action. Additionally, nominalizations can function as new participants, in which case the process becomes an actor in itself. The ICC discourse uses nominalization to remove victims from the process of participating.

This CDA incorporates an analysis of Halliday's process types (2014). Six types of process are identified in Halliday's model: material, mental, relational, verbal, existential, and behavioral. Material processes express actions, or the process of 'doing,' while mental processes include perception, affection and cognition. These two processes are expressed through ICC discourse of victim participation.

Finally, Lackoff and Johnson describe metaphor as the structuring of a conceptual system that gives meaning of one concept in terms of another (1980). Metaphors help us to understand the incomprehensible. Metaphors reveal the fundamental values in a culture, but are often imposed by powerful actors (157). The ICC uses a metaphor of balance to describe victim

participation, and as we shall see, the metaphor is key to their marginalization.

Marginalizing Victims

The ICC marginalizes victims, minimizing their position within court proceedings. First, I will examine text from the ICC website's primary introduction to victims in the court. The title of the page is "Victims and witnesses" and is found under the "Structure of the Court" tab:

For the first time in the history of international criminal justice, victims have the possibility under the Statute to present their views and observations before the Court.

Victim participation is articulated in abstract terms. The prospect of a 'possibility' is vague in that we cannot be sure of whether victims may or may not be allowed 'to present their views and observations before the court', nor is the forum in which one might 'present views and observations' clearly defined. Indeed, what does it mean to present views and observations? It is unclear what the victim has the possibility to do and what that possibility is dependent upon. We see here, immediately following information about victim participation, that the Court puts parameters around victims' ability to participate:

However, it will be up to the judges to give directions as to the timing and manner of participation.

After explaining the "great innovation" of participation, however abstractly, the ICC reaffirms its dominance over the victim. Therefore, the Court asserts the framework through which it achieves justice. Additionally, the judges decide when and how victims will participate, and in this way, the Court is able to include or exclude victims through the discretion of the judges.

The booklet explains how the Court works and the rights that victims have at the ICC.

This booklet contains explanations regarding what the ICC is, the role of the victims and how they can participate in its proceedings.

These excerpts reveal that victims are secondary to the Court. Because the booklet is about victims, we might ask why these sentences are constructed around the Court. We also see claims of authority to position victims within a particular framework. The booklet reinforces the ICC's power to construct and control victims and justice. By offering to explain 'the role of the victims and how they can participate in its proceedings', the ICC places victims in specific roles and determines how they can participate in 'its proceedings,' referencing the possession of the proceedings, and, therefore, the ownership of justice, by the Court and not the victims. Through these sentence structures, victims are marginalized from justice processes and put in their place by the Court.

Agency and Denying it

The way that victims are constructed in the ICC denies them agency. The acceptance and rejection of victim participation applications allows for the ICC to deny individuals of victimization and determine who can and cannot participate. Alongside the authority of judges to make decisions about who can and cannot participate, judges decide how and when victims may participate. The judges call the shots and set limits on victim participation. In addition, the ambiguity and uncertainty that defines victim participation limits the ability of victims to act as agents in the Court. In this way, victims receive the ICC and justice, but are unable to actively participate as influential agents. The following selection is from the webpage that describes victim participation in the ICC:

Participation before the Court may occur at various stages of the proceedings and may take different forms.

This text continues the pattern of abstract references to participation is. Participation ‘at various stages’ and ‘may take different forms’ is ambiguous. At what stages? In what forms? The ICC discourse reveals a low modality, using the verb ‘may’, expressing the lack of commitment by the ICC in regards to victim participation. This selection foregrounds participation but conceals the act of participating. Additionally, ‘participation’ has been nominalized. Nominalization dismisses the original actor, which, in this case, is the victims. Instead of noting how victims participate – where they would be active – their *participation* is active. Victims are removed from participating and are left out of the process, rather than being included as agents who participate.

Moreover, ‘before the court’ asserts the priority of the Court proceedings over victim participation, so we can see that participation becomes a structure itself, which is secondary to Court proceedings. ‘Before the Court’ is an orientational metaphor. ‘Before the court’ asserts the priority of Court proceedings over victim participation. Additionally, the orientational metaphor that victims present their views ‘before the Court’ serves to emphasize that the ICC is ultimately in charge and victims are secondary. Some alternatives to this would be ‘victims participate with the Court’ or ‘victims are included by participating in the Court’.

The following section, also from the booklet for victim participation, aims to promote victim participation and features the outcomes and possibilities for victims to play a significant role in justice. However, a careful examination demonstrates contradictions.

By presenting their own views and concerns to the judges, victims are given a voice in the proceedings that is independent of the Prosecutor. This will help the judges to obtain a clear picture of what happened to them or how they suffered, which they may decide to take into account at certain stages in the proceedings.

The first two sentences address victims differently from the previous selections of texts. They seem to address the desires and concerns of victims, as they are ‘given a voice,’ and they are able ‘to help the judges obtain a clear picture,’ and it seems that the Court is leaning towards a projection of restorative justice, where the victim might be able to contribute to the outcome. But what we see here is an appealing introduction followed by an abstract clause that administers no certainty for the victim. Furthermore, it is the judges of the ICC who will examine each application and decide whether or not the applicant is entitled to participate in ICC proceedings and at what stages:

Does it appear that the person has suffered harm? It will be up to the judges of the ICC to establish what types of harm will qualify...

We can see that victim participation relies on the decisions of the judges. Initially, the applicant must be accepted or rejected as a victim. This is based on the *appearance* of harm, and the opinion of the judges as to which harms constitute victimization. In this way, victims may be excluded from the processes of justice. The denial of an individual as a victim prevents that individual from any participation in ICC proceedings, thus, rendering them without agency.

The following are the criteria the judges will consider when deciding whether a victim can participate at a particular stage in ICC proceedings:

Do the judges consider that the victim’s personal interests are affected at that point in the proceedings?

Do the judges consider that it is appropriate for the victim to present his or her views and concerns at that particular point in the proceedings?

Here, it is apparent that the judges are responsible for victim participation in the court. The judges decide whether or not a victim has personal interests in the proceedings and whether or not 'it is appropriate for the victim to present his or her concerns.' The abstractions here indicate that something is being hidden. For victims, it means that their ability to participate-their agency- is dependent upon judges whose interests lie in the continuation of court proceedings for the outcome of prosecuting perpetrators. After all of the judges' decision-making, the action is left not for the victims but for the legal representative:

Participation of victims in the proceedings takes place in most cases through a legal representative, who presents the views and concerns of the victims to the court.

We see here that the legal representative '*presents*' but victims are represented through processes that do not require action. In addition, victims *have* 'views and concerns,' – in relation to these implied behavioral processes they are inactive.

A further analysis of verb usage throughout the booklet reveals the abstraction of participation and the lack of agency of the victims. The consistent nominalization of participation contributes to the lack of agency attributed to victims, as victims do not participate; participation occurs. The abstraction is apparent through the verb processes that describe participation. The uncertainty of any occurrence is exhibited by modal verbs, such as 'may' and 'can.' Whereas legal representatives 'participate,' and judges 'obtain,' 'decide,' and 'balance,' victims do not act but receive. They are patients who are 'given a voice,' 'things happen to them,' 'they suffer,' and 'are deeply affected.' Victims are represented through mental processes, while others are described through material processes.

A Problematic Balancing Act

The balance metaphor cited earlier is central to the ICC's construction of victim and reveals the logics about justice that the ICC reproduces. In the service of balancing retributive and restorative justice, the ICC sets limits on victim participation. Victims are marginalized from the justice process and denied agency. This is apparent through the concluding sentence from the text on the page "Victims and Witnesses," which is found under the "Structure of the Court" tab:

It is this balance between retributive and restorative justice that will enable the ICC to not only bring criminals to justice but also to help the victims themselves rebuild their lives.

This remark relies heavily on presupposition and furthers abstraction. Presupposition, in many cases, is deeply ideological, and reflecting on assumptions in a text can be revealing (Machin and Mayr 2002:153). Here, the ICC refers to the 'balance between retributive and restorative justice.' First, it is presupposed that the reader knows what retributive and restorative justice are, how they are different, and how they can be balanced. Second, the text assumes that it is possible to balance these two models for justice, and that the ICC is capable of maintaining this balance. The abstraction refers to 'enable the ICC to...bring criminals to justice' and 'to help the victims themselves rebuild their lives.' How does the balance 'enable the ICC to bring criminals to justice' and in what ways can the ICC 'help the victims themselves rebuild their lives?' This sentence does little to explain victim participation, but it does promote the ICC through communication of agreeable outcomes. The ICC does not proceed, anywhere, to explain victim participation in concrete terms.

Balance holds a positive connotation. While the reader may not understand retributive or restorative justice, the word *balance* indicates something good. The ICC is marketing itself

as fair, stable, and impartial. Furthermore, we can think of justice metaphorically, *balance* as symbolizing a scale, relating to justice, where we seek equilibrium. If there is an injustice, which disrupts the balance, then the ICC calibrates the scale to achieve justice. The ICC uses this structural metaphor, in which a concept is conceived in terms of another, in describing a ‘*balance*’ of retributive and restorative justice. This metaphor implies that justice is a scale and thus it must be balanced.

In fact, this entire selection can be analyzed as a balance. We see that the ICC is caught in a balance, or something more like a tension, between retributive and restorative justice. While the beginning highlights victim participation, the text is filled with abstractions about what that means so as not to privilege victim participation after all. Additionally, discursive mechanisms such as nominalization and low modality assert the dominance of the Court and its control over victim participation and justice. Wherever victim participation is recognized, it is either abstract, followed by a reinforcement of the Court’s criminal justice framework, or functions as a tool that the ICC can use to *balance* justice. With the introduction of victims into the ICC, we can see that the ICC reproduces certain logics about justice, logics that do not require victims.

Throughout the booklet, the ICC and its proceedings are central to achieving justice while victims are marginalized. The logic is that justice occurs through the ICC, and that victims, their rights and participation, are secondary or otherwise play an insignificant role in justice:

The purpose of the proceedings is to ensure that allegations of serious crimes are investigated, prosecuted, and, if the accused is proved guilty, punished in accordance with the Rome Statute (6).

In this particular text, the logic of the court is relatively transparent, and it highlights the retributive and criminal justice frameworks that prevail in the ICC. Within the proceedings, as clearly stated, victim participation is not required to achieve the desired outcome.

Other text displays the positioning of victims to serve the purposes of the Court rather than the Court orienting justice around the victims. This is apparent in “Box 5: Main differences between being a participant and appearing as a witness” from the booklet (10). In this table, which compares ‘victim as a participant’ and ‘victim as a witness,’ we can examine the difficulty in maintaining a balance of retributive and restorative justice models. On the participant side, we recognize that participation is ‘voluntary,’ and victims participate based on their own interests, whereas victims who are witnesses do not volunteer, and the purpose of these victims is to ‘serve the interests of the Court’. This clearly demonstrates a retributive justice framework, where the Court recognizes victims as a means to an end. Participation is possible ‘when considered appropriate by the Judges.’

Note that victims as witnesses ‘always testify in person,’ as they ‘serve the interests of the Court.’ Interestingly, as suggested earlier as well, victims as participants are only able to participate through a legal representative. We might ask why this is the case; victims who participate for their interests are unable to be physically involved in the justice process through personal appearance, whereas victims as witnesses serve the interests of the Court and, therefore, appear in person. Once again, the ICC seems less concerned with victim participation than with the Court proceedings, which is indicative of a retributive model.

There is, however, a section in the booklet, where at first glance, it seems that the victim plays a larger role in the court, which describes what victims might expect from participation. However, the final sentence of this section only furthers the abstraction of victim participation:

This may lead to having an impact on the way proceedings are conducted and in the outcomes.

It is not clear what is meant by ‘impact,’ and what kind of impact might occur. The vagueness

of the proceeding conduct and outcomes demonstrates a reduced likelihood that victim participation will impact the proceedings and outcomes of the ICC. The use of 'may' in the first paragraph is indicative of this unreliability. The abstraction of victim participation contributes to the problematic balancing act of the ICC.

Conclusion

The ICC's effort to centralize victims is commendable. In a video posted on the webpage about victims, entitled, we learn that the Court impacts a significant number of people and communities. Through the Office of Public Counsel for Victims and outreach programs, the ICC seems to address the concerns of victims and seeks to aid in the process of participating.

However, while the ICC claims to put victims at the center of proceedings, the discourse demonstrates otherwise. Victims are marginalized from the proceedings and denied agency. The ICC's claims to put victims at the center are in the effort to balance retributive and restorative justice. The balance, however, is problematic, as the discourse reproduces a retributive model of justice. Some scholars argue that retributive and restorative justice are not incompatible. In fact, Daly (2002) contends that efforts towards restorative justice create a space in which discourse can challenge the criminal justice framework. She argues that retributive and restorative justice are not opposites—telling the myth of restorative justice may work to reform the justice system. Victims recognize their marginalization from criminal justice proceedings, but they also realize that courts open a space for change. “As a result, victims have helped to transform courts into new types of discursive spaces, dissolving traditional forms of legal authority” (Madeira 2012: 58).

Discourses concerning the role and agency of victims in the ICC reproduce institutional neglect and disempowerment. Understanding how these discourses marginalize victims may reveal opportunities to transform discourses to better include victims. The ICC attempts to create a space for justice in which victims are central. While the discourse marginalizes victims and denies agency, an understanding of the discourse highlights the complexities of justice and require us to rethink how we treat victims and how we seek justice.

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