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**Article (Published version)  
(Refereed)**

**Original citation:**

Tallgren, Immi (2017) *Come and see? The power of images and international criminal justice*. *International Criminal Law Review*, 17 (2). pp. 259-280. ISSN 1567-536X

DOI: [10.1163/15718123-01702007](https://doi.org/10.1163/15718123-01702007)

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# Come and See? The Power of Images and International Criminal Justice

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## Abstract

What kind of interdisciplinary approaches on images and international criminal justice (ICJ) are there to be explored? What could they bring to scholarship and institutional practice? This article provides a panorama of images and their roles, analysing the power of persuasion and attraction of images and its shadows. The power of images of suffering is discussed in light of critical scholarship on solidarity and humanitarianism. Another kind of power emanates from images by institutions and advocacy where justice is 'seen to be done'. These powers are intertwined; images of suffering derive legitimacy and veracity from the format of their deployment, whereas images of institutional authority fuel on affects and their appeasement in the order the institutions aim at narrating, also by images. Engaging with interdisciplinarity, the article invites critical attention to what happens when images are powerful, and on the subjectivities and hierarchies involved, thereby reaching beyond the images.

## Keywords

International criminal justice – international criminal law – international criminal trials – humanitarianism – solidarity – law and film – law and image

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\* I would like to thank warmly friends and colleagues who provided valuable comments on the draft, the editors of this special section, and the anonymous reviewers.

## 1 What Images, What Power?

And when he had opened the fourth seal, I heard the voice of the fourth beast say, Come and See! And I looked, and behold a pale horse: and his name that sat on him was Death, and Hell followed with him. And power was given unto them over the fourth part of the earth, to kill with sword, and with hunger, and with death, and with the beasts of the earth.<sup>1</sup>

SEE! The Graphic, Terrifying Evidence of the Nazis' Most Fiendish Crimes. SEE! Goering, Hess, Ribbentrop, Streicher, and Other Nazi Arch-Criminals in the Greatest Roundup of Hitlers Brought to JUSTICE in a People's Court.

SEE! The Nuremberg Trials.

Uncut! Full Length! OFFICIAL!<sup>2</sup>

Elem Klimov's 1985 film 'Come and See' features a few tragic days during the Nazi German occupation of the Byelorussian Soviet Socialist Republic. The main character is Florya, a boy who finds a rifle buried in the sand and joins a partisan troop fighting the Nazis. The spectator is carried from sensual visions of nature, humans and animals to destabilising scenes of collective violence against civilians to which no explanation or 'closure' is offered. 'Come and See' is not a film about international criminal justice, but a film on violence, injustice and resistance to them. The film does not contain any trial scenes — unless one wishes to consider the verbal confrontation and subsequent execution of a few Nazis and their collaborators as a most rudimentary court martial. Nevertheless, 'Come and See' serves well as an invitation to reflect on images and their power in international criminal justice. Its plot features scenes of staging and photographing, inviting the spectator to question the very act of taking pictures in the middle of war. Its elaborate scenes of violence come across as ideal 'evidence' of Nazi perpetrators in action that was never quite at hand at the International Military Tribunal at Nuremberg and other World War II (WWII) trials — the Nazi regime having forbidden photography and film. A very concrete role is given to an image, a large framed portrait of Hitler that first appears carried around during the scenes of atrocity, as though the

1 Book of Revelation (chapter 6, verses 7–8), from which the title is derived: 'Come and See' (*Idi i smotri*), a Soviet film directed by Elem Klimov (1985).

2 Advertising for the Soviet film 'Nuremberg: The Trial' in 1947, see Christian Delage, *Caught on Camera* (University of Pennsylvania Press, Philadelphia, 2014) p. 139.

Führer is physically present. In the climax, the portrait becomes annihilated by Florya's enraged rifle shots, each shot turning back the clock in world history and Hitler's life, annulling the notorious historical events of violence that are represented on screen by nonfiction film clips. This is Florya's fantasy of justice, built on the responsibility of one single individual.

A photograph depicts a little girl, her expression introverted and sad, sitting on a bed. It is presented with a text: 'Rape is a war crime and a crime against humanity'. The touring exhibition provided by the International Criminal Court (ICC), 'Justice Matters',<sup>3</sup> features photographs of teenagers with a mutilated face or limb, groups of civilians wandering in the landscape carrying their belongings, a mourning woman, and an aerial photo of what looks like a large refugee camp. These individuals or groups are black and in modest outfits, and their pictures were taken outside, in natural light. The spectator takes them to represent victims or their communities. Other characters in the photographs are primarily white and in their formal attires: judges, staff from the Office of the Prosecutor or Registry, defence counsels at the ICC. They are sitting in windowless high-tech courtrooms facing their screens, moving along the corridors protected by guards, or posing for a group photo inside an office building. The website explains:

The ICC exhibit "Justice Matters", made possible by the City of The Hague and the Government of Switzerland, uses intimate portraits and videos to explore how justice is crucial to survivors of the world's most heinous crimes, and how it matters to the world as we strive together to achieve lasting peace. It also illustrates the daily matters of justice, inside the ICC Courtroom and behind the scenes, to show exactly what it takes to make justice happen.<sup>4</sup>

As these introductory glimpses aim to demonstrate, images and international criminal justice make an enigmatic couple. What could an interdisciplinary approach on images and international criminal justice bring to the scholarship and institutional practice of international criminal justice — the question being set in the somewhat instrumentalising terms of the editors of this special

3 See [www.icc-cpi.int/iccdocs/PIDS/other/JusticeMattersSlideshow-ENG.pdf](http://www.icc-cpi.int/iccdocs/PIDS/other/JusticeMattersSlideshow-ENG.pdf), accessed 15 March 2016, also discussed at the workshop organised by Christine Schwöbel and Robert Knox, *Justice Matters? The Aesthetics and Counter-Aesthetics of International Law*, The University of Liverpool, 28–29 April 2016.

4 See [www.icc-cpi.int/en\\_menus/icc/educational-resources/justice-matters/Pages/default.aspx](http://www.icc-cpi.int/en_menus/icc/educational-resources/justice-matters/Pages/default.aspx), accessed 15 March 2016.

issue? With images, I mean here primarily visual representations, photography, film, television broadcasts, as well as images on what is often called the new media, even if at times I implicitly or explicitly also refer to cognitive, mental images and imagination. 'International criminal justice' refers broadly to the legal and political project and the institutional practices of adjudicating and punishing international crimes. The two feature in a broad range of contexts: investigation of alleged crimes, evidence, news media, documentary practices, remembrance, advocacy for international criminal justice, therapy, art, entertainment, etc. Images and international criminal justice could then be approached by a multitude of different methodological discourses and terminologies. Inside the field of law or close by, the theme could be analysed in light of the procedural norms of evidence and case law of international courts, or the practices and codes of conduct of media and filmmakers. Historiographical methodology would bring different kinds of understandings and discussions, as media and journalism studies, anthropology, cultural studies, international relations scholarship, or social psychology, also would. Amongst these different approaches, there are multiple, and at times conflicting understandings of how to consider, for example, photographic materials, or filmed witness statements, and how to go about their interpretation and analysis. Further, an interdisciplinary theoretical quest by legal scholars may aim for 'a visual approach to law' to 'help us to readdress and reformulate the issues of justice, democracy, sovereignty and the rule of law'.<sup>5</sup> Some scholars critically confront the presupposition of 'the undisputable trustworthiness of the camera's eye' and analyse the relationship of images to both memory and legal and historiographical representations and 'truths'.<sup>6</sup> Others study what comes with the image, connoting it, loading it, 'burdening it with a culture, a moral, and an imagination', as Roland Barthes, among others, has suggested.<sup>7</sup> Yet other

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5 Programme leaflet of the seminar 'Law and Image: Picturing a Theory', Birkbeck, University of London, 5 June 2015. See also Costas Douzinas and Lynda Nead (eds.), *Law and the Image* (The University of Chicago Press, Chicago, 1999); Desmond Manderson (ed.), *Law and the Visual: Transitions, Transformation, and Transmission* (University of Toronto Press, Toronto, 2016); Olivier Corten, 'Droit international et cinéma : quelle méthodologie?', in Olivier Corten and François Dubuisson (eds.), *Du droit international au cinéma* (Pedone, Paris, 2015) pp. 11–25; Peter Rush and Olivier Simić, *The Arts of Transitional Justice* (Springer, New York, 2014).

6 Paul Ricoeur, *Memory, History, Forgetting* (The University of Chicago Press, Chicago, 2004), p. 162. See also Saul Friedlander (ed.), *Probing the Limits of Representation* (Harvard University Press, Cambridge, 1992).

7 Roland Barthes, 'The Photographic Message', in *Image Music Text* (Fontana Press, Waukegan, IL, 1977) 15–31, p. 26.

registers and vocabularies come into play when images are created, produced, distributed, seen and/or addressed explicitly as art, aesthetics, or entertainment, with many different ways to understand what 'art', 'aesthetics', or 'entertainment' means and what comes with it.

My starting point here is a conviction that images have a fundamental importance in international criminal justice, in so many different ways that it is difficult to spell them out explicitly. What matters most may, at first sight, appear to concern images of crimes. As Susan Sontag writes: 'the very notion of atrocity, or war crime, is associated with the expectation of photographic evidence'.<sup>8</sup> She refers to emblematic, often posthumous images, of human remains, mass graves, sites of extermination, representing crimes that are 'shocking and revolting to the common instincts of civilized peoples'.<sup>9</sup> Beyond them, images of and in international criminal justice differ by object, type, media and origin, as well as the context in which they are seen, and why. The same images can 'serve' various purposes and inform different narratives. Beyond forensic images of crime scenes, victims, instruments of crimes and such, or technical images such as satellite imagery, there are 'media' images; newsreels, photographs, reportage either of violence, or of institutional justice, its places and spaces, actors and rituals. Another context of images are communication and outreach materials by the institutional actors of international criminal justice and non-governmental organisations (NGOs). A closely related one is the audiovisual broadcasting of court proceedings, discussed further on. There are also increasingly documentary films on international crimes and trials.<sup>10</sup> There are few fiction films that deal directly with international criminal justice,<sup>11</sup> but there are, of course, plenty of films

8 Susan Sontag, *Regarding the Pain of Others* (Farrar, Straus and Giroux, New York, 2003) p. 83. Roland Barthes analysed the authentication that a photograph confers to its object in *La chambre claire. Note sur la photographie*, Cahiers du cinéma (Gallimard Seuil, Paris, 1980), pp. 129–134. On how little an image can convey (of genocide), see Frank Möller, *Visual Peace* (Palgrave Macmillan, Basingstoke, 2013).

9 Prosecutor Robert Jackson, *France et al. v. Göring et al.* (1948) 2 IMT 242.

10 The WWII trials and the Eichmann trial have been subject to a number of documentaries. For commentary, see e.g., Delage, *supra* note 2; Lawrence Douglas, 'Trial as Documentary: Images of Eichmann', in Leslie Moran et al. (eds.), *Law's Moving Image* (GlassHouse Press, London, 2005) pp. 95–105; Stuart Liebman, 'The Majdanek Trial: The Holocaust on Trial on Film', in Christian Delage and Peter Goodrich (eds.), *The Scene of Mass Crime* (Routledge, London, 2013) pp. 113–128. On more recent practices see e.g., Wouter Werner, 'We Cannot Allow Ourselves to Imagine What It All Means': Documentary Practices and the International Criminal Court', 7 *Law and Contemporary Problems* (2013) 319–339.

11 Such as, e.g., Stanley Kramer's classic, *Judgement at Nuremberg* (1961), *The Storm* by

on violence that have been labelled or could be labelled as ‘international crime’. Some images have become iconographic. Sometimes this happens over time, as with certain images of the concentration camps or the Nuremberg trials.<sup>12</sup> Others may become icons instantly because they fit a certain typology; an expectation of a solemnity or an affect, such as the famous ‘weeping women’ of journalism.

From the multitude of images and understandings of images in and of international criminal justice, I will focus on what I call the power of images, on two aspects of it. The intention is less to cover exhaustively the topic than to demonstrate the variety of directions of questions and interdisciplinary scholarship the theme entices, and engage with the idea of interdisciplinarity throughout the text. In contrast to multidisciplinary where, to quote Jane Rendell: ‘a number of disciplines are present but maintain their own distinct identities and ways of doing things’; interdisciplinarity here refers to research where ‘individuals operate between, across and at the edge of their disciplines and in doing so question the ways they usually work’.<sup>13</sup> With ‘power’ I do not here refer either to political power or physical coercion, but to the power of persuasion or attraction.<sup>14</sup> Much of the power of images relates to emotions, not just to private emotions, but to the social and cultural field of emotions and sociological imagination where ‘personal troubles’ connect ‘to public issues’,<sup>15</sup> forming affective landscapes that shift with changing social and political conditions.

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Hans Christian Schmid (2009), *Hannah Arendt* by Margarethe von Trotta (2012) or *The Prosecutor, the Defender, the Father and His Son* by Iglia Triffonova (2015). Anne Lagerwall, ‘Quand la justice pénale internationale tient le premier rôle’, in Olivier Corten and François Dubuisson (eds.), *Du droit international au cinéma* (Pedone, Paris, 2015) pp. 241–277 lists more films.

- 12 For an analysis the ‘iconic’ photographs of the liberation of the camps, see Barbie Zelizer, *Remembering to Forget: Holocaust Memory Through the Camera’s Eye* (University of Chicago Press, Chicago, 1998).
- 13 Jane Rendell, ‘The Transitional Space of Interdisciplinarity’, in Daniel Hinchcliffe, Jane Calow and Laura Mansfield (eds.), *Speculative Strategies in Interdisciplinary Arts Practice* (Underwing Press, United Kingdom, 2014), p. 1.
- 14 N.B. I discovered Ulrike Weckel’s remarkable article ‘Power of Images: Real and Fictional Roles of Atrocity Film Footage at Nuremberg’, in Kim C. Priemel and Alexa Stiller (eds.), *Reassessing the Nuremberg Military Trials: Transitional Justice, Trials Narratives and Historiography* (Berghahn books, New York, 2012), pp. 221–248 when finalising this text. Weckel uses, to my understanding, ‘power of images’ to refer to the evidentiary power that film materials had (or not) in the various Nuremberg trials.
- 15 C. Wrights Mills, *The Sociological Imagination* (Oxford University Press, Oxford, 2000 [1959]).

The first aspect I address concerns the power of ‘dear delicious pain’, the relationship of images of suffering from ‘atrocities’ or ‘crimes’ and a desired support for international criminal justice. Seeking empathy and commitment to action by images of suffering is a frequent practice of humanitarianism or human rights activism.<sup>16</sup> In international criminal justice, much attention is given to victimhood. The spectator response is expected to be strongly affective, nourishing a moral impulse to join the quest for (international) criminal justice — a reaction of ‘epidermic humanity’.<sup>17</sup> Such an intuitive understanding of the role of images presumes much and omits long-standing scholarship and critique, as I discuss. But I also suggest that the context of international criminal justice differs decisively from humanitarianism. The format of criminal justice renders a concrete meaning and veracity to ‘witnessing’, ‘evidence’ and the narratives of victimisation and responsibility, and may make the power of images in international criminal justice more resistant to ‘compassion fatigue’.<sup>18</sup> The second aspect of the power that I discuss concerns images of international criminal justice itself: court buildings, courtrooms in action, with legal procedures and ceremonies; and the actors in their assigned roles: judges, prosecutors, defence lawyers, victims. What does it look like when international criminal ‘justice is being done’? Why is there so much effort to show it? What happens when some selected images of suffering are brought in and given a role in institutional justice? I then turn to suggest that the power of images has many shadows. In the guise of a conclusion, I invite attention to what happens in the particular context of international criminal justice when images — of suffering or of institutional justice — are powerful, and on the subjectivities and hierarchies of persuasion and attraction involved, thereby reaching beyond the analysis of images as such.

16 For a recent critical questioning, see Carolyn J. Dean, ‘Atrocity Photographs, Dignity, and Human Vulnerability’, *Humanity* (2015) 239–264. See also Daniel Joyce, ‘Human Rights and Mediatization of International Justice’, 23 *Leiden Journal of International Law* (2010) 507–527.

17 See Immi Tallgren, ‘Who Are “We” in International Criminal Law? On Critics and Membership’, in Christine Schwöbel (ed.), *Critical Approaches to International Criminal Law* (Routledge Cavendish, Abingdon, 2014), pp. 71–95. See also Sara Kendall and Sarah Nouwen, ‘Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood’, 76 *Law and Contemporary Problems* (2014) 235–262.

18 See Susan Moeller, *Compassion Fatigue* (Routledge, New York, 1999).



## 2 The Power of 'Dear Delicious Pain'

The horror of Hiroshima holds [...] the attention of my fellowmen, like a lamp attracts a swarm of insects.<sup>19</sup>

Pain, suffering, and horror send captivating messages, but the particular receptiveness to them may be relatively recent. The genealogy of the idea of human solidarity as such is complex, with religious and secular components, striving for a variety of objectives from salvation to revolutionary change.<sup>20</sup> The focus here is on humanitarianism as feeling 'in the hearts and bodies' the good sentiments that first appeared, in particular in the Anglo-American context, as a culture of sensation that assigned great importance to the role of the senses. Eighteenth-century moral philosophers treated sympathy as a sentiment stirred primarily through sight. Although John Locke affirmed that simple ideas of sensation come in through all the senses, he regarded vision as primary and thought of sensory impressions as pictures: 'thought is seeing'.<sup>21</sup> Following Locke, David Hume asserted that morality 'is more properly felt than judg'd of'.<sup>22</sup> Building on Hume, Adam Smith in 'Theory of Moral Sentiments'<sup>23</sup> developed an original theory on imagination and sympathy towards the vulnerable. Its apparent contradiction with Smith's 'Wealth of Nations'<sup>24</sup> condoning

19 Georges Bataille, 'Concerning the Accounts Given by the Residents of Hiroshima', in Cathy Caruth (ed.), *Trauma: Explorations in Memory* (John Hopkins University Press, Baltimore, 1995), pp. 221–235, 232.

20 See e.g., Richard Ashby Wilson and Richard D. Brown (eds.), *Humanitarianism and Suffering* (Cambridge University Press, Cambridge, 2009); Luc Boltanski, *Distant Suffering: Politics, Morality, and the Media* (Cambridge University Press, Cambridge, 1999); Lillie Chouliaraki, *The Ironic Spectator* (Polity Press, Cambridge, 2013); Didier Fassin, *La raison humanitaire* (Seuil/Gallimard, Paris, 2010); Terry Eagleton, *Trouble with Strangers: A Study of Ethics* (Wiley-Blackwell, Chichester, 2009); Jeremy Rifkin, *The Empathic Civilization: The Race to Global Consciousness in a World in Crisis* (Jeremy P. Tarcher Inc/Penguin, New York, 2009).

21 Ernest Lee Tuveson, *The Imagination as a Means of Grace: Locke and the Aesthetics of Romanticism* (University of California Press, Berkeley, 1960) p. 21.

22 David Hume, *A Treatise of Human Nature*, L.A. Welby-Bigge (ed.) (Oxford University Press, Oxford, 1978), Book 3, Section 2, pp. 470 and 475.

23 Adam Smith, *Theory of Moral Sentiments* (W. Straham and T. Cadell, London, 1759).

24 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (W. Straham and T. Cadell, London, 1776).

the 'invisible hand' of arguably 'amoral' commerce started a controversy that continues in current times.<sup>25</sup>

Karen Halttunen discusses how the 18<sup>th</sup> century cult of sensibility redefined pain as unacceptable and eradicable. It thus opened the door to a new revulsion from pain, which, though later regarded as 'instinctive' or 'natural' may in fact be distinctly modern. In the culture of sensationalism, she identifies representations of pain as 'the pornography of pain', 'obscenely titillating precisely because the humanitarian sensibility deemed it unacceptable, taboo'.<sup>26</sup> By the last decades of the 18<sup>th</sup> century the cult of sensibility, with fair portions of 'dear delicious pain', 'a sort of pleasing Anguish'<sup>27</sup> had already begun to raise serious doubts. The sentimentalists were suspected of having the habit of quickly turning from others' misery to contemplate their own sensations. It was suggested that observing suffering encourages the observer to value positively his own condition, out of the reach of pain. Curiously then, the spectatorial sympathy which claimed to demolish social distance, would actually rest on it.<sup>28</sup> Was sensibility to suffering not fuelled by sadism, a pleasure of pain enticed by images, critics asked. Edmund Burke observed how, even though immediate pain or danger are 'simply terrible, at certain distances, and with certain modifications, they may be, and they are delightful'.<sup>29</sup> The desire to show not just the actual violence but the inner feelings of distress of the suffering ones, was met with accusations of voyeurism.

Such and other critiques of 'spectacles of suffering' and their spectators are present throughout the mutations and contexts of the solidarity culture up to

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25 In Lillie Chouliaraki's analysis, the 'Adam Smith problem' becomes the condition of possibility for modern humanitarianism, situating 'the instability of solidarity at the heart of modernity itself', *supra* note 20, p. 10.

26 Karen Halttunen, 'Humanitarianism and the Pornography of Pain in Anglo-American Culture', 100(2) *The American Historical Review* (1995) 303–334, p. 304. For 'war pornography', a critical term to qualify images of violence, see, for example, Jordan Hoffmann, '13 Hours: The Secret Soldiers of Benghazi review – Michael Bay plays politico for the Fox News crowd', *The Guardian*, 14 January 2016, online at [www.theguardian.com/film/2016/jan/14/13-hours-secret-soldiers-benghazi-review-michael-bay-libya-benghazi-attack-2012](http://www.theguardian.com/film/2016/jan/14/13-hours-secret-soldiers-benghazi-review-michael-bay-libya-benghazi-attack-2012), accessed 21 January 2016.

27 Halttunen, *ibid.*, p. 308, references omitted. On the sentimental novels of the 18<sup>th</sup> century, see Gerry Simpson, 'The Sentimental Life of International Law', *The London Review of International Law* (2014) 1–27.

28 Halttunen, *ibid.*, p. 309.

29 Edmund Burke, *A Philosophical Enquiry into the Origin of Our Ideas of the Sublime and Beautiful* (R. and J. Dodsley, London, 1757) p. 14.

our days, as Sontag, Lilie Chouliaraki, Luc Boltanski, Jeremy Rifkin, and Didier Fassin discuss.<sup>30</sup> How is this scholarship relevant for the multitude of images of suffering from violence and injustice that is today labelled as international crimes? I will take three examples. *First*, to start with the most evident one, there is the much discussed paradox of how ‘spectacle of vulnerability’ both builds on the idea of ‘common humanity’ and ‘evokes the language of power, and thus tends to reproduce existing global divides rather than propose bonds of solidarity beyond the West’.<sup>31</sup> This paradox of the common yet divided ‘humanity’ penetrates international criminal justice: socially, economically, geographically, ‘racially’, politically, legally and institutionally, as many critics have pointed out.<sup>32</sup> Yet in international criminal justice, confidence appears to reign in the power of images as part of ‘detailed descriptions of particular varieties of pain and humiliation’<sup>33</sup> that Richard Rorty found necessary for fertilising feelings. The institutionalised ‘Justice Matters’ exhibition presented above is an example of this, sober in comparison. As is known, Rorty argued that solidarity is possible by avoiding an ideology of a common humanity. Instead, he suggested gradually learning to see ‘traditional differences (of tribe, religion, race, customs, and the like) as unimportant when compared to similarities with respect to pain and humiliation’.<sup>34</sup> Rorty’s idea set in the context of today’s international criminal justice brings to the surface the above-discussed dilemmas identified by the 18th century critics of sensibility. Much of the support and interest for international criminal justice — financial and political by the governments, teaching, research, NGOs, activism, media — emanates from locations where human pain and suffering have been distanced from view, to specialised institutions (hospitals, prisons, schools) or homes (poverty, domestic violence, child abuse).<sup>35</sup> The suspicion this raises is whether images

30 Sontag, *supra* note 8; Chouliaraki *supra* note 20; Boltanski, *supra* note 20; Rifkin, *supra* note 20; Fassin, *supra* note 20.

31 Chouliaraki, *ibid.*, p. 29; similarly, Fassin, *supra* note 20, e.g., pp. 326–329.

32 For a compilation, see Schwöbel (ed.), *supra* note 17; see also Immi Tallgren, ‘The Faith in Humanity and International Criminal Law’, in Paulo Amorosa, Monica Garcia-Salmones and Martti Koskeniemi (eds.), *International Law and Religion*, (Oxford University Press, Oxford, 2017) [forthcoming].

33 Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge University Press, Cambridge, 1989).

34 *Ibid.*

35 Arguments with the same core have been made, for example, by Sontag, *On Photography* (Penguin Books, England, 1979); by Halttunen as an explanation for the voyeurism in the 18th century England, *supra* note 26. See also N.L. Whitehead, ‘On the poetics of violence’, in N.L. Whitehead (ed.), *Violence* (James Curry, Oxford, 2004).

of international crimes and victimisation attract interest also because they expose suffering out of view in 'civilized' societies. The exotic aspect would accentuate the inherent ambivalence of humanitarian spectacle that offers, to quote Boltanski, both 'a way of looking which can be characterized as disinterested or altruist' and a way which is 'selfishly, wholly taken up with the internal states aroused by the spectacle of suffering: fascination, interest, excitement, pleasure, etc.'<sup>36</sup> The effect could be strengthened by the 'journalistic custom' of less restraint in showing grievously injured or dead bodies from Africa and Asia, a custom that, Sontag argues, 'inherits the centuries-old practice of exhibiting exotic — that is, colonized — human beings'.<sup>37</sup> 'Their' pain and suffering 'we' are contemplating would then not work in Rorty's sense of expanding 'the ability to think of people wildly different from ourselves as included in the range of "us"',<sup>38</sup> but open a decent (legal, humanitarian) door to what is no longer in sight in 'our' societies.

To contest this, one might argue that crimes of terrorism, in the last 15 years also increasingly directly targeting North America and Europe and their inhabitants, have brought spectacular, war-like violence back to those wealthy and supposedly peaceful societies.<sup>39</sup> Writing this in the street where Salam Abdeslam rented cars for the 13 November 2015 attacks in Paris — in the neighbourhood between the headquarters of the European Union Institutions and the North Atlantic Treaty Organization in Brussels, transformed overnight by the striking military and police presence yet unable to prevent the Brussels attacks in March 2016 — it is nostalgic to read Sontag on how 'horror seems to have vacated Europe, vacated it for long enough to make the present pacified state of affairs seem inevitable'.<sup>40</sup> What does this *end of an era* in its key supporter areas mean for international criminal justice? In the current situation where failures and grievances for different causes appear to multiply and accumulate globally, there is reason to ask whether the globalisation of affects has moved away from the desired 'positive affects' inciting contributions for global justice and humanitarian causes. Instead globalisation may be happening on the front of negative effects, anger, fear, shame, humiliation and resentment,

36 Boltanski, *supra* note 20, p. 21.

37 Sontag, *Regarding*, *supra* note 8, p. 72; see also Wayne Morrison, *Criminology, Civilisation and the New World Order* (Routledge Cavendish, Abingdon, 2006) pp. 177–212.

38 Rorty, *supra* note 33, p. 196. See also Immi Tallgren, 'The Voice of the International: Who is Speaking?', 13 *Journal of International Criminal Justice* (2015) 135–155.

39 Yet a clear majority of civilian suffering caused by both what is called 'terrorism' and 'counter-terrorism' takes place outside 'the developed world'.

40 Sontag, *Regarding*, *supra* note 8, p. 71.

producing a form of alienation that has a potential for violent revenge or retribution instead of justice.<sup>41</sup> The critical questioning of the ‘spectacles of suffering’ thus challenges the ideological narrative of international criminal justice as a global grass-roots project of empathy and solidarity.

*Second*, a strain of critical scholarship on humanitarian communication has its background in the Marxist oriented critique of the market of media technologies and the claim of commodification of suffering.<sup>42</sup> The power of images of violence and victimisation in international criminal justice can and should be addressed also in terms of the political economies informing the supply and demand of such images. International criminal justice is part of the neo-liberal paradigm, and images of violence and victimisation can be approached both as part of marketing and as commodity.<sup>43</sup> In the market of suffering, how do images of victims of international crimes rate and compete: does heart-felt empathy after consumption — and in the pressure of new images of suffering closer to home — turn into general indifference? This is plausible. Yet there are also reasons to suggest that, compared to humanitarian advocacy in general, international criminal justice is more likely to continue attracting attention despite an eventual saturation. It is trivial yet relevant to consider how crime, justice, and punishment have stimulated interest throughout times, through public execution of sentences, news media or entertainment.<sup>44</sup> Images in and of international criminal justice may also have more power than images of poverty or hunger because they figure in a narrative that is more dynamic, interrupting endless suffering. Some individuals are held accountable. Some

41 See Elisabetta Brighi, ‘The Globalisation of Re-resentment: Failure, Denial and Violence in World Politics’, (2015) unpublished paper online at [www.academia.edu](http://www.academia.edu); see also Michael Ure, ‘Resentment/Ressentiment’, 22(4) *Constellations* (2015) 599–613.

42 Emblematic forerunners of this were Adorno and Horkheimer in 1942 with their analysis of the culture industry in times of mass culture, see T.W. Adorno and M. Horkheimer, ‘The Schema of Mass Culture’, in J.M. Bernstein (ed.), *The Culture Industry: Selected Essays on Mass Culture* (Routledge, London) pp. 61–97 (1991) [1942]. Guy Debord’s work has become one of the landmarks for the critics of the inauthenticity of representation, see *La société du spectacle* (Buchet-Chastel, Paris, 1967). See also Nicholas Mirzoeff, *The Right to Look* (Duke University Press, Durham, NC, 2011).

43 See e.g., Christine Schwöbel, ‘The Market and Marketing of International Criminal Law’, in Schwöbel (ed.), *supra* note 17, pp. 264–286; Jodi Dean, *Publicity’s Secret: How Technoculture Capitalizes on Democracy* (Cornell University Press, Ithaca, 2002).

44 See Michel Foucault, *Surveiller et punir* (Gallimard, Paris, 1975); Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression* (Cambridge, New York, 1985) in particular pp. 81–109; David Garland, *Punishment and Modern Society* (Clarendon Press, Oxford, 1990).

victims are shown alive, reconstructing a future. There is closure, or, at least, so it seems. What is more, the presumably neutral and authoritatively regulated format of legal proceedings may render a sense of both veracity and objectivity to images emanating from or relating to international criminal justice.<sup>45</sup> Its images 'derive power from the interpretative and symbolic dimensions surrounding [the] act of seeing'.<sup>46</sup>

This derived power presents an advantage for international criminal justice in my *third* example, the problem of mediation that 'weakens the truth of suffering and may undermine [...] moral commitment'.<sup>47</sup> Are images in and of international criminal justice more authentic, compelling, because they carry an aura of the 'real', if not the 'truth'? One of the alluring and false securities in analysing images is that of a clear-cut separation between fiction versus non-fiction. Not only can images be manipulated,<sup>48</sup> but all images, fiction or not, are of course captured, chosen, limited, produced. Images of non-fiction can be introduced in a fictional film, as in 'Come and See'. Historical events — memories or accounts of them — can be re-enacted or represented anew, as demonstrated and analysed by Joshua Oppenheim and Rithy Panh.<sup>49</sup> A fiction can render a veracity that is as convincing as if it were a non-fiction, as relates the following anecdote told by Klimov, the director of 'Come and See'. In a 'director meets public' session, an elderly German spoke up after seeing the film, presenting himself as an officer of the Wehrmacht who had travelled through all of Poland and Belarus, finally reaching Ukraine: 'I will testify: everything that is told in this film is the truth. And the most frightening and shameful thing for me is that this film will be seen by my children and grandchildren'.<sup>50</sup> In contrast, 'non-fiction' photographs and films can be met with incredulity

45 Compare to discussion on the format and objectivity in journalism, Mariana Valverde, *Law and Order: Images, Meanings, Myths* (Rutgers University Press, New Brunswick, NJ, 2006), pp. 49–52.

46 Paul Messaris, *Visual Literacy* (Westview Press, Boulder, CO, 1994) p. 121.

47 Chouliaraki, *supra* note 20, p. 29.

48 David King, *The Commissar Vanishes. The Falsification of Photographs and Art in Stalin's Russia* (Metropolitan Books, New York, 1997); Alain Jaubert, *Le Commissariat aux archives. Les photos qui falsifient l'histoire* (Bernard Barrault, Paris, 1992).

49 See Joshua Oppenheim, *The Act of Killing* (2012) and *The Look of Silence* (2014); Rithy Panh, *S-21: The Khmer Rouge Killing Machine* (2003). See also Joram Ten Brink and Joshua Oppenheimer (eds.), *Killer Images: Documentary Film, Memory and the Performance of Violence* (Wallflower Press, New York, 2012).

50 See [www.aif.ru/culture/21267](http://www.aif.ru/culture/21267), accessed 18 February 2016. Klimov wrote the scenario together with Ales Adamovich, a partisan as a teenager. Klimov also explains how he was profoundly marked by a book of first-hand accounts of survivors.

when they present incredible images, as was the case for the first images of the concentration camps and holocaust.<sup>51</sup> To push this further, one should not forget how (perhaps) non-manipulated images might show a ‘manipulated’ sequence of events.<sup>52</sup> I will turn next to look closer at the institutions of international criminal justice; both as authoritative frames for the deployment of images of suffering and as sources of images of institutional authority that fuel on affects and their appeasement in the (new or re-established) order the institutions aim at narrating.

### 3 The Power of Visible Justice

[T]he Tribunal relies on the widespread publication of its judicial acts and commentaries thereon for the fulfilment of its mandate. In accordance with the well-known maxim, ‘Justice must not only be done, but must be seen to be done’, it is not enough for the International Tribunal simply to administer international criminal justice impartially and with due regard for the rights of the accused. It must also carry out this activity under the scrutiny of the international community.<sup>53</sup>

But to try him [Demjanjuk] here in the courtroom and over the radio and on the television and in the papers, this has only one purpose — a public relations stunt ... The criminal justice system has a legal purpose ... To educate the public? No, that’s the purpose of an educational system.<sup>54</sup>

Images of international criminal justice today are distributed broadly, in particular by the institutions themselves in their public information and outreach

51 For example, the Soviet film *Nazi Atrocities* showed in New York in April 1945 was met with suspicion, see Delage, *supra* note 2, pp. 47–52.

52 See Julie Cassiday, *The Enemy on Trial: Early Soviet Courts on Stage and Screen* (Northern Illinois University Press, DeKalb, IL, 2000).

53 Antonio Cassese, ‘Foreword by the former President of the International Criminal Tribunal for the former Yugoslavia’, *International Review of the Red Cross* 321 (1997) 602.

54 A character in Philip Roth, *Operation Shylock: A Confession* (Simon & Schuster, New York, 1993) p. 134, discussed by Gerry Simpson, *War Crimes: Volumes I and II* (Ashgate, Aldershot, 2004) p. xxvii.

policies, as well as by advocacy organisations, often international NGOs, and by news media.<sup>55</sup>

Sometimes the visual effect is carefully planned in advance. Consider, for example, how the ambitious architecture of the new ICC headquarters was foreseen to make 'visible to anyone and everyone' that the ICC has 'become a cornerstone of international justice and the modern global civilization by making known to the remotest corners of the world that the most serious crimes do not go unpunished anymore'.<sup>56</sup> Such 'eminence and authority of the ICC'<sup>57</sup> is conveyed also if not primarily by images. But where do institutional strategies of showing 'justice being done' by procedural choices and visual policies meet the actual phenomenology of experiencing justice? How does the experience of seeing that Adam Smith and the sensualists pondered over differ depending on who is seeing: international judges in The Hague, 'the legal capital of the world',<sup>58</sup> or the stereotyped 'locals' in remote areas without internet access?

Despite the frequent use of the word 'spectacle' to describe today's international criminal trials — for different purposes, often with a critical intention — the concrete situation of seeing them may suggest that they are particularly unspectacular, both as images (court buildings with flags, courtrooms, institutional actors in robes, an accused adjusting his tie or the headphones) and as a plot (long sequences, with constant references to documents whose contents are not rendered, verbally and corporally faded representations, the verbal communication diluted by interpretation). In contrast, a few past international trials stand out for their spectacularity. The Nuremberg trials are

55 For the goals of the institutional policies by the ICC, see The Integrated Strategy for External Relations, Public Information and Outreach, online at [www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSW-BOR0307070402\\_IS\\_En.pdf](http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSW-BOR0307070402_IS_En.pdf), accessed 18 February 2016. For the ICTY outreach programme, see [www.icty.org/en/outreach/outreach-programme](http://www.icty.org/en/outreach/outreach-programme), accessed 18 February 2016. See also Janine Natalya Clark, 'International War Crimes Tribunals and the Challenge of Outreach', 9 *International Criminal Law Review* (2009) 99–116; Norman Henry Pentelovich, 'Seeing Justice Done, The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals', 39 *Georgetown Journal of International Law* (2008) 445–495.

56 Statement by H.E. Ambassador Markus Börlin, Vice-President of the Assembly of States Parties, 16 April 2013, online at [www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Documents/pr898/Groundbreaking-Ceremony-ASP-Vice-President-Statement.pdf](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Documents/pr898/Groundbreaking-Ceremony-ASP-Vice-President-Statement.pdf), accessed 18 February 2016.

57 See [www.icc-pi.int/en\\_menus/icc/about%20the%20court/permanent%20premises/the\\_building/Pages/the%20building.aspx](http://www.icc-pi.int/en_menus/icc/about%20the%20court/permanent%20premises/the_building/Pages/the%20building.aspx), accessed 18 February 2016.

58 See Peter J. van Krieken and David McKay (eds.), *The Hague: The Legal Capital of the World* (T.M.C Asser Press, The Hague, 2005).



famous for the use of film in international criminal trials in two ways, to quote Christian Delage: 'presenting motion pictures as evidence in court and filming the trial to make it a historical archive'.<sup>59</sup> Beyond this, the number and rank of the accused simultaneously present, the gravity of the crimes judged and the broad if not unlimited scope of victimisation contributed to the trial being so unique. Not that its historical uniqueness would have saved the reporters from dullness in what *The New Yorker* reporter Rebecca West called 'a citadel of boredom'.<sup>60</sup> Much commentary has been written on the elaborate visual and narrative strategies by the American party in the International Military Tribunal in Nuremberg, starting with the special attention paid to the architecture of the courtroom.<sup>61</sup> Less attention has so far been devoted to the Soviet use of their images of WWII crimes and their images filmed at the Nuremberg trial.<sup>62</sup> Core concerns were the place of the large screen to project the images of the Nazi crimes and the location and lighting of the booth of the accused in a manner that guaranteed good visibility of both the images projected and the accused being faced with the visual evidence of crimes by the Nazi regime.

The audio-visual recording and broadcast of court proceedings were continued if not amplified in the Eichmann trial in Jerusalem.<sup>63</sup> Due to the bitter lessons learned from how 'negative propaganda about the ICTY [International Criminal Tribunal for the Former Yugoslavia] pervaded the former Yugoslavia',<sup>64</sup> it is today normal practice to film international criminal trials and also make them accessible via on-line video streaming, interpreted in local languages.<sup>65</sup> Such an access to international trials, distant from the territories

59 Delage, *supra* note 2, p. 1.

60 Rebecca West, *A Train of Powder* (New York, Viking Press, 1955) p. 3.

61 See Delage, *supra* note 2; Cornelia Vismann, *Medien der Rechtsprechung* (Fischer, Frankfurt am Main, 2011); Lawrence Douglas, *The Memory of Judgement* (Yale University Press, New Haven, 2001). Ulrike Weckel, *Beschämende Bilder* (Frank Steiner Verlag, Stuttgart, 2012) offers a detailed analysis of the various documentary films of the concentration camps and the objectives of confronting the accused and general public with them.

62 See *Filmer la guerre : les Soviétiques face à la Shoah (1941-1946)*, Catalogue de l'exposition (édition Mémorial de la Shoah, Paris, 2015); Weckel, *supra* note 61.

63 See Douglas, *supra* note 10; Sylvie Lindeberg and Annette Wieworka, 'Les deux scènes du procès Eichmann', *Annales HSS*, Nov-Dec 2008 – No 6. Eyal Sivan's and Rony Braumann's film *The Specialist* (1999) is based on the vast archive of audiovisual materials from the trial.

64 FIDH, Victims' Rights before the ICC, Chapter III, Outreach, p. 7, online at [www.fidh.org/IMG/pdf/6-CH-III\\_Outreach.pdf](http://www.fidh.org/IMG/pdf/6-CH-III_Outreach.pdf), accessed 15 March 2016.

65 For detailed and critical study, see Thierry Cuvellier and Christophe Gargot, *Filming War Crimes Trials*, paper written for the Open Society Justice Initiative, May 2010.

of the alleged perpetration, is supposed to serve various objectives, including the broader ideal of transparency of justice. In that sense, broadcasting extends by technological means the (democratic) control of justice that publicity of court hearings is believed to enhance.<sup>66</sup>

Institutional policies and donor-guided programmes of public communication and outreach may easily be pinpointed as either naïve or ‘neo-colonial’ in their representation of international criminal justice. Leaving that critique aside here, there is reason to stress the inherent role of images and communication (visual, verbal, textual, symbolic) in international criminal justice. Put provocatively, they are almost all there is — all that matters. Beyond the eventuality of imprisoning a few dictators and military officials for a number of years and hopefully letting some (even if often far too few) victims feel they had their day at court, as well as nourishing a growing body of law and of international criminal lawyers, it could be argued that the ‘what really happens’ in international criminal justice is valuable for the sake of it being seen as broadly as possible, for it to be known as globally as possible. To put it concisely: clearly all law and legal systems in general are about symbolism and communication, yet international criminal justice reaches the top of that pyramid. This claim could be defended either in terms of criminology or international law. On the front of *criminological theories* on the justification of punishment, few find outspokenly acceptable arguments for the very selective and at times retroactive international criminal responsibility of a very small number of individuals.<sup>67</sup> What remains is currently put in terms of expression of values,<sup>68</sup> or further developed into moral communication, ‘a two-way process that aims to engage, and to solicit an appropriate response from another rational,

66 A critical historical analysis on the requirement of public (and oral) proceedings, see Visman, *supra* note 61.

67 See Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc. S/2004/616, 23 August 2004, § 38.; M. Cherif Bassiouni, ‘Historical Survey 1919–1998’, in M. Cherif Bassiouni, *The Statute of the International Criminal Court: A Documentary History* (Transnational Publishers, Ardsley-on-Hudson, NY, 1998) pp. 1–2. For discussion, see Immi Tallgren, ‘The Sensibility and Sense of International Criminal Law’, 13 *European Journal of International Law* (2002) 561–595; Mark Drumbl, *Atrocity, Punishment and International Criminal Law* (Cambridge University Press, Cambridge, 2007).

68 Building on Joel Feinberg, ‘The Expressive Function of Punishment’, in *Doing and Deserving: Essays in the Theory of Responsibility* (Princeton University Press, Princeton, 1970); see Robert Sloane, ‘The Expressive Capacity of International Punishment: The Limits of the National Law Analogy and the Potential of International Criminal Law’, 43 *Stanford Journal of International Law* (2007) 39–94.

responsible agent'.<sup>69</sup> The expression of values is believed to contribute to feelings of community, solidarity and closure. Similarly, it is *international law's* traditional core role to serve as the allegorical moral backbone, the gentle civilizer of nations speaking truth to power,<sup>70</sup> rather than an effectively functioning, and broadly accessible, problem-solver or form of distributive justice. Acknowledging that images, here in the broader sense of both visual and cognitive images, are (almost) all there is does not necessarily point to a failure, as such. It rather invites a look — in the following section — beyond the current tropes of images which may aim to turn a polysemic opaqueness of different kinds of violence into stable narratives that are ideological in the sense that they provide meaning both for suffering and for 'justice'.

#### 4 Shadows of Power of Images

I can't desert my dead, Jimmy. You are taking your dead to America. Every day ships sail for America laden with dead — dead who are rich, happy and free. But my dead cannot pay their fare to America — they are too poor. They will never know the meaning of riches, happiness and freedom. They have always lived in slavery; they have always been victims of hunger and fear. They will always be slaves, they will always be victims of hunger and fear, even though they are dead. It's their destiny, Jimmy.<sup>71</sup>

At the end of 'Come and See', Florya is consumed by his fantasy of changing the course of history by eliminating Hitler. The decisive role and responsibility Florya accords to Hitler alone echoes discussions on causality and individual responsibility for the 'most serious international crimes' despite the broad span of time, space and destruction involved. Had Hitler not existed or had he violently perished as a baby, the film asks, what would history have become? The causal link between Nazism and WWII figures as the promised land for alternative history, speculative history, hypothetical history, or counterfactual

69 See Anthony Duff, 'Can We Punish the Perpetrators of Atrocities?', in Thomas Brudholm and Thomas Cushman (eds.), *The Religious Responses to Mass Atrocity* (Cambridge University Press, New York, 2009). See also Anthony Duff, *Punishment, Communication, and Community* (Oxford University Press, New York, 2001).

70 See Martti Koskeniemi, *The Gentle Civilizer of Nations, The Rise and Fall of International Law 1870–1960* (Cambridge University Press, Cambridge, 2001).

71 Curzio Malaparte, *The Skin* (The New American Library, New York, 1954) pp. 287–288.

history, the term depending both on the particular approach and the judgment one may want to bring on the exercise.<sup>72</sup> Was the suffering in WWII of Soviet Byelorussia and of the whole world attributable to Hitler? In a Soviet film of 1985, Florya may believe so. But does international criminal justice, to quote Gerry Simpson, 'favour histories that emphasize individual agency over structural causation, and linear arrangements of history over those that tend towards ambiguity or fragmentation'?<sup>73</sup> Is it not the aura of the legally real and visible — witnessed, evidenced, sworn to, documented, broadcast and reached out — that at its best manages to suggest the most palpable yet surreal outcomes in international criminal justice, such as that punishing an individual brings justice to the masses? Visual images are, of course, only part of this. International criminal justice may incite simplified causal narratives where the central role of an individual invites an irresistible *what if*. The contingency of histories on the endless sediments of violence and the randomness by which criminal jurisdiction is exercised on some of them render the representation of the past malleable by judicial decisions. International criminal justice is then also about imagining and valorising particular narratives and in that sense, it is not totally foreign to counterfactual history or fiction. Its power lies in bringing to view suffering of individuals or groups identified, suffering presumably caused by suspects identified, too, all of them becoming characters in a narrative with chronological sequences that can be 'evidenced', to create a beginning and an end. The power culminates in shaping the focus: this is the suffering that gets selected, it passes through the elaborate international criminal justice procedural rites, is purified, and becomes confirmed as worthy of concern. The violence, the struggles and their 'closure' come to figure amongst the international criminal justice imagery, in media, popular culture, memorial art, legal scholarship and historiography. So do the dead and the wounded and their pain and sorrow; and the actors of international criminal justice, too. At the same time, images of 'justice being done' may appear to wipe away both crimes and suffering and complicities not directly visible. Such a power of 'non-fiction' amplified by the format of the criminal trial — where affects are presumably tamed but at the same time called upon in disguise — confronts

72 See Gavriel D. Rosenfeld, *The World Hitler Never Made. Alternate History and the Memory of Nazism* (Cambridge University Press, Cambridge, 2011) pp. 11–12. See also Richard J. Evans, *Altered Pasts: Counterfactuals in History* (Little, Brown, London, 2014); and Ingo Venzke, 'What if? Counterfactual (Hi)Stories of International Law' (Manuscript, 2016, on file with the author). For an example, see Kenneth Macksey (ed.), *The Hitler Options: Alternate Decisions of World War II* (Greenhill, Mechanisburg, PA, 1995).

73 Gerry Simpson, 'Linear Law', in Schwöbel (ed.), *supra* note 17, pp. 159–179.

international criminal justice with a dilemma that also echoes aspects of the one that Annette Wieviorka raised: how to ‘incite reflection, thought, and rigor when feelings and emotions invade the public sphere?’<sup>74</sup>

Another shadow relates to how images of pain and suffering send powerful messages, but the particular receptiveness to them depends on who is suffering and how. This is a well-known dilemma of humanitarian concern.<sup>75</sup> *Bifocality*, here in the sense of seeing simultaneously distinct classes of two, or rather, many worlds, close and far, between which there is not much in common — in wealth, security, health, access to education, information, or technology — is an everyday condition of life with modern media. How is an individual able to see at the same time the parallel lives of opulence and deprivation, and carry on? The question clearly works in different ways, depending on which side of the story one is situated. Beyond the survival of those suffering, and their struggles, anger, anxiety, resentment or resilience, most of the scholarship on images and suffering focuses on the presumed consumers of images at a distance, with the privilege of time and wealth to access images and contemplate. Such spectators are presumably seeking instruments for ‘survival’, too. They need narratives creating a rationality or an escape, and negotiating the intolerable, perhaps eventually by both rejecting and accepting it. Perhaps the darkest shadow of the power of images, which I can only flag here, is then cast by the direction of the power of images. Does this power work outwards, acknowledging injustice and alleviating suffering, or inwards, easing the aches of contemplation? Beyond the familiar and important question on whether the humanitarian affect transforms ‘into effective political action’,<sup>76</sup> it must also be asked what and who remain outside the powerful images in and of international criminal justice. If international criminal justice is also a social practice of demarcation, separating the narratives of suffering that occupy the domain of importance from the profane suffering that remains collective, anonymous, not selected object of the legal rites and visible justice, then the underlying hierarchies — political, criminological, professional, or sentimental — should not be left outside the focus of (interdisciplinary) research. To put it more

74 Annette Wieviorka, *The Era of the Witness* (Cornell University Press, New York, 2006) p. 144.

75 For a religious explanation to an ‘enclave society’, see Bryan S. Turner, ‘Violence, Human Rights, and Piety: Cosmopolitanism versus Virtuous Exclusion in response to Atrocity’, in Brudholm and Cushman (eds.), *supra* note 69, pp. 242–263.

76 And if not, is the frustration over this ‘a guilty and narcissistic preoccupation with what one can do as a first-world intellectual’, failing ‘again to attend to the suffering of others’? Judith Butler, ‘Torture and the Ethics of Photography: Thinking with Sontag’, in *Frames of War* (Verso, London, 2009), p. 99.

bluntly: if international criminal justice is, to quote Gary Bass, bringing 'a sense of order to a violent world',<sup>77</sup> whose sense and whose order is it?

## 5 The End, and New Beginnings

'Come and See' ends in desolation, at least at first sight. A poster fills the screen, informing the viewer that 'the Nazis burned down 628 Byelorussian villages together with all the people in them', making the spectator shiver at the thought of the film's most devastating scenes multiplied by that number. The partisans march into the approaching night, in a silent forest with patches of snow. Florya, the young boy visibly grown old in a few days, is left behind shooting the portrait of Hitler. In the final images, he runs with his rifle to catch up with the troop. The start of the Nuremberg IMT trial is some two years ahead in time. The anxious spectator has no way of knowing whether Florya and his comrades will survive both the war and its cruel aftermath by Stalin. Will they ever come to see the images of what is left of Hitler's regime on the bench for the accused, in Soviet newspapers or in newsreels on the screen of a local cinema?

A more comforting reading of 'Come and See' has to do with the character of Florya. Despite his extreme shock from the violence he witnessed, Florya is not able to fully carry out his fantasy of justice. He cannot bring himself to shoot the baby in the old family photograph. As his mother relays: Florya is a good boy, polite and helpful to everyone. Florya joins the partisans in his youthful excitement. Yet the only time he fires his rifle is at a framed portrait. Florya represents an inner sense of justice and integrity, manifest in his abhorrence from violence and resistance to the impulse of vengeance. Is it not such a sense of justice and 'the value of a single human being'<sup>78</sup> that images in and of international criminal justice would ideally inspire?

I have asked complex questions, some of which remain without answers for the time being. My mission was to call for more interdisciplinary reflection on images and international criminal justice — perhaps to provoke it. As I have pointed out, such reflection at its best remains cautious about a straightforward recourse to the supposed power of images, be it of suffering or of 'justice'. But it also refrains from a stigmatisation of images and their power as

77 Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton University Press, Princeton, 2000), p. 36.

78 The emblematic Judge Haywood rendering the sentence to Nazi lawyers, in Stanley Kramer's *Judgment at Nuremberg*, *supra* note 11.

such.<sup>79</sup> Attempting interdisciplinary research can be turbulent, a struggle between the appeal of new (disciplinary) horizons and ‘the safety of competence and specialism’ of one’s own field, in ‘the fear of inability and the associated dangers of failure.’<sup>80</sup> The researcher may feel that the quest ‘to imagine rather than to apply, to invent rather than copy’<sup>81</sup> risks, at every moment, turning into ‘arbitrary eclecticism, superficial theory-mongering, and sheer intellectual confusion.’<sup>82</sup> Yet, I suggest recognising and embracing the complex role of images in international criminal justice, while minding the traps and delusions. As the final image that remains to puzzle, I propose that of Florya, a combatant choosing not to shoot a baby in his mother’s arms. Even if the baby was Adolf Hitler.

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79 Against the skeptical or even ‘rejectionist’ attitudes to photojournalism, see Susie Linfield, *The Cruel Radiance, Photography and Political Violence* (The University of Chicago Press, Chicago, 2010).

80 Rendell, *supra* note 13.

81 *Ibid.*

82 Clifford Geertz, *The Interpretation of Cultures, Selected Essays* (Basic Books, New York, 1973) p. 88.