

SYMPOSIUM ON INTERNATIONAL CRIMINAL LAW'S CRITICAL AFTERMATHS

FEMINIST DREAMS OF JUSTICE

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Inspired by the symposium editors' call to reclaim and reimagine some or all of the space that is currently populated by international criminal law (ICL), we take this opportunity to engage in what we are calling feminist dreaming—that is, we seek to reimagine accountability as it *could be*, viewed through a feminist lens. Drawing on the work of standpoint feminists, such as Nancy Hartsock, we examine how the punitive mindset has taken hold from the top down, with little regard for or consideration of what those most acutely harmed, who are often women, want. Instead, international actors, often elites educated in the West, have mandated a certain ideal of justice from above through legal principles like the duty to prosecute. This focus on punishment narrows the lens through which “justice” is perceived and administered. It imposes a single perspective—that of a supposedly uniform global community—on affected communities, preempting other forms of justice that may have greater healing potential, including those with restorative or redistributive aims. In this sense, ICL can be seen as inflicting a form of epistemic violence.¹ Instead of inquiring into, and respecting, the perspectives of victims, survivors, and their broader communities, it seeks to impose a viewpoint: only punishment will produce justice. This contribution takes a small step toward reimagining justice under the international legal order.² We employ a standpoint feminist lens to first surface some of the harms ICL inflicts and then suggest a course correction that centers the voices of the most marginalized—in other words, we begin feminist dreaming.

Part I

Standpoint theories build on an insight offered by Karl Marx and Friedrich Engels in their class analysis: that truth is best understood through the lens of the marginalized.³ Feminist thinkers further developed standpoint theory by adding the insight that the positionality of women, much like that of other marginalized groups, provides a “standpoint” from which we can gain a deeper appreciation for the socio-political context

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¹ Terrell Carter & Rachel Lopez, *If Lived Experience Could Speak: A Legal Method for Repairing Epistemic Violence in Law and the Legal Academy*, 109 MINN. L. REV. 1, 27–37 (2024) (describing various forms of epistemic violence inflicted by the law).

² Although the field of transitional justice adopts this framing in theory, in practice, many more resources have been devoted to criminal accountability in recent years than to other modalities of transitional justice, such as truth commissions, reparations, and lustration. See, e.g., Philip Alston, *Criminalizing Human Rights*, 15 J. HUM. RTS. PRAC. 660, 661 (2023).

³ Donna Haraway, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, 14 FEMINIST STUD. 575, 578 (1988) (“Marxist starting points offered a way to get to our own [feminist] versions of standpoint theories . . .”).

of oppression.⁴ This “situated knowledge” is honed, because in order to survive under conditions of oppression, the oppressed must have a deep understanding of the practices of the oppressor.⁵ Consequently, by examining the world from a feminist standpoint, we open a window into how social order is constructed and maintained in a way that *depends* on oppression in order to preserve patriarchy.⁶ As Nancy C. M. Hartssock has put it, these feminist standpoints help to develop “a critique of domination.”⁷ Standpoint feminists writing in a range of disciplines have thus argued that there is immense epistemic advantage to engaging in scientific inquiry from the perspective of the lived experiences of women.⁸ Black feminists have deepened this analysis by theorizing about the “interlocking nature of race, gender, and class oppression,” and showing how patriarchy interacts with other systems of oppression to subordinate poor Black women through “the simultaneity of oppression.”⁹

Standpoint feminism can help inform a critique of international law’s preference for criminal punishment by revealing all the ways in which this carceral default strips women of their choice, agency, and voice. In this context, Nancy Jecker offers the useful insight that Western concepts of justice start from an “ideal justice” (or the “just man” in Plato’s conception of it) and work backward, asking what does “ideal justice” look like and when does it fall short of that “ideal.”¹⁰ From this conception of justice, certain doctrinal precepts are derived, which are meant to guide us toward “ideal justice.”

International law reflects this approach to “justice.” It frames criminal punishment as “ideal justice” and produces legal doctrine to ensure punishment’s primacy in the hierarchy of possible responses to mass violence. By way of example, the United Nations has identified criminal prosecution as a “pillar” of transitional justice—labeling this pillar “justice.”¹¹ Reflecting criminal punishment’s position in the hierarchy, the international community has adopted a set of rules that force this carceral understanding of justice on those who have experienced the most acute forms of injustice. Treaties, such as the Geneva Conventions and the Convention Against Torture, require state parties either to prosecute persons suspected of criminal violations of those conventions or to extradite them to a state willing to prosecute.¹² Furthermore, beginning in the 1990s, scholars and advocates have argued that there is a duty to prosecute a wide array of serious violations of international human rights under customary international law.¹³ Although some scholars have resisted this move,¹⁴ the duty to prosecute has reached almost sacrosanct status among proponents and practitioners of ICL, particularly with the creation of the International

⁴ Tracey Bowell, *Feminist Standpoint Theory*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY (last visited Nov. 29, 2024) (“Feminist standpoint theorists argue that the epistemic and political advantages of beginning enquiry from within women’s lived experiences are not limited to providing a truer account of those lives, but of all the lives and socio-political relations within which those lives are enmeshed.”).

⁵ Haraway, *supra* note 3, at 581, 583–84.

⁶ SANDRA HARDING, *WHOSE SCIENCE/WHOSE KNOWLEDGE?* 127 (1991).

⁷ Nancy C. M. Hartssock, *Comment on Hekman’s “Truth and Method: Feminist Standpoint Theory Revisited”: Truth or Justice?*, 22 SIGNS 367, 368 (1997).

⁸ Bowell, *supra* note 4.

⁹ Patricia Hill Collins, *Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought*, 33 SOC. PROBS. 14, 19–21 (1986).

¹⁰ Nancy S. Jecker, *The Role of Standpoint in Justice Theory*, 41 VALUE INQUIRY 165, 165–67 (2007).

¹¹ GUIDANCE NOTE OF THE SECRETARY-GENERAL: TRANSITIONAL JUSTICE: A STRATEGIC TOOL FOR PEOPLE, PREVENTION AND PEACE 16 (2023); GUIDANCE NOTE OF THE SECRETARY-GENERAL: UNITED NATIONS APPROACH TO TRANSITIONAL JUSTICE 3–4 (2010).

¹² Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Art. 146, Aug. 12, 1949, 6 UST 3516, 75 UNTS 287; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 7(1), Dec. 10, 1984, 1465 UNTS 85.

¹³ Diane Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991); Diane Orentlicher, *Settling Accounts Revisited: Reconciling Global Norms with Local Agency*, 1 INT’L J. TRANSITIONAL JUST. 10, (2007).

¹⁴ Carlos S. Nino, *The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina*, 100 YALE L.J. 2619 (1991).

Criminal Court (ICC) dedicated to “end[ing] impunity” for international crimes.¹⁵ This duty presumes that criminal punishment is the ideal form of justice and that its absence connotes injustice.¹⁶ Yet, those who have suffered the most egregious human rights violations often favor other forms of justice, such as those with restorative and redistributive aims.¹⁷

Furthermore, in criminal proceedings the law frames which perspectives are amplified, often centering the perpetrators of crimes rather than those who suffered harm. Specifically, the need to establish *actus reus* and *mens rea* means that the acts and thoughts of the accused, who historically are mostly men, take center stage. While victims may testify at trial, the interventions of those who have suffered the most acute harm are time limited and constrained by the rules of criminal procedure.¹⁸ For example at the ICC, victims who want a voice must apply to participate.¹⁹ Court officials decide whether to grant their request and, if so, the time, place, and manner of their participation.²⁰ More troubling still, as Leila Ullrich has highlighted, because the ICC is portrayed as marking a shift to “justice for the victims,” the Court relies on victims to legitimize its existence, cultivating “victims” through its outreach activities.²¹ Moreover, the Court has an incentive to amplify the voices of those victims who identify criminal punishment as satisfying their justice needs, quieting those who prefer other justice alternatives.

Part II

If we take standpoint feminism as the point of departure, a different set of priorities and goals might emerge. Rather than adopting and operationalizing criminal punishment as the ideal form of justice, standpoint feminists would posit that those who have survived extreme repression and state violence are uniquely situated to analyze the social relations and structures that enabled that violence and repression.²² Critically, these insights are derived not just from the lived experience of oppression, but rather through the process of resisting that oppression and reflecting collectively on the experience.²³ Standpoint feminism would thus reposition survivors, who are frequently women, as “experiential experts” about what is needed to repair the fabric that holds a society together.²⁴ From the experiences and knowledges of such survivors a set of principles that inform what accountability ought to look like could be developed.

¹⁵ [Rome Statute of the International Criminal Court](#), pmb., July 17, 1998, 2187 UNTS 90.

¹⁶ This is somewhat ironic given that international criminal law is often critiqued as being selectively enforced.

¹⁷ John Van Kesteren, [Public Attitudes and Sentencing Policies Across the World](#), 15 EUR. J. CRIM. POL. RES. 25, 44 (2009) (“The analytical results first confirmed that males tend to be somewhat more punitive than women, independently of other factors.”); see generally Andrea J. Miller et al., [Gender and Forgiveness: A Meta-analytic Review and Research Agenda](#), 27 J. SOC. CLINICAL PSYCH. 843 (2008). But see Mara Revkin & Kristen Kao, [No Peace Without Punishment? Reintegrating Islamic State “Collaborators” in Iraq](#), 71 AM. J. COMP. L. 989, 1018 (2024) (“We found that women were in fact less likely to allow the reintegration of former Islamic State collaborators by 6 percentage points on average.”)

¹⁸ See, e.g., Assembly of State Parties to the Rome Statute of the International Criminal Court, [Rules of Procedure and Evidence](#), Rule 72, ICC-ASP/1/3 (Sept. 3–10, 2002).

¹⁹ See, e.g., *id.*, Rule 89(1) (“In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber.”).

²⁰ *Id.* (providing that the Court will “then specify the proceedings and manner in which participation [of the victim] is considered appropriate”).

²¹ LEILA ULLRICH, [VICTIMS AND THE LABOUR OF JUSTICE AT THE INTERNATIONAL CRIMINAL COURT: THE BLAME CASCADE](#) 71–72 (2024).

²² [Bowell](#), *supra* note 4; [Jecker](#), *supra* note 10, at 169.

²³ Sandra Harding, [Introduction](#), in [THE FEMINIST STANDPOINT THEORY READER: INTELLECTUAL AND POLITICAL CONTROVERSIES](#) 8 (Sandra Harding ed., 2004); Rachel López, [Participatory Law Scholarship](#), 123 COLUM. L. REV. 1795, 1800–01 (2023).

²⁴ See generally Rachel López, [Experiential Expertise in Law: What Lived Experience Can Teach](#), 104 B.U. L. REV. __ (forthcoming 2025).

To that end, we engage in feminist dreaming, taking inspiration from Robin Kelley’s powerful concept of “freedom dreaming.”²⁵ Kelley exhorts those yearning for revolution to “tap the well of our own collective imaginations,” and develop new visions so we can understand *both* what we want to knock down *and* what we want to build. Freedom dreaming (and for us feminist dreaming) is not about envisioning utopian abstractions divorced from reality, it is a call to action. In Kelley’s words: “It is not enough to imagine what kind of world we would like; we have to do the work to make it happen.”²⁶ Imagination is the first step in dreaming. However, imagining alone is not enough; it must lead to a set of actionable strategies for transforming the real world into the imagined one. While Kelley’s notion of freedom dreaming emerged from the insights of Black radical thinkers of the twentieth century dreaming of liberation, it applies more broadly to other struggles against oppression, emphasizing that such struggle must involve both bold imagining and concrete action and thus transcends the binaries of ideal versus material, and collective versus individual.

Feminist dreaming, like freedom dreaming, reminds us of the radical transformative power of loving our fellow human beings, and urges us to both imagine and actualize a world where all human beings have the resources and agency to “fully realize our humanity.”²⁷ What might this mean in concrete terms for justice and accountability in the wake of war and oppression? Standpoint feminism instructs us to ground any answer to this question in the lived experiences of the most oppressed. Amia Srinivasan reminds us:

Feminism is a movement. In it there have always been, always are, those for whom power remains elusive—those who have still not won, those for whom winning so far means surviving. It is these women, at the sharp end of power, to whom the rest of us must turn, and then, turning, follow.²⁸

Accordingly, feminist dreaming about justice and accountability must foreground the views, experiences, and priorities of the victims of injustice, who are almost always “at the sharp end of power.” This resonates with Kelley’s insight that we must pay close attention to “the best interests of the poorest, most insulted, most despised, most abused woman on earth,” since that woman’s experience is a barometer for the condition of all women.²⁹ But how then does the experience of one woman motivate a transnational feminist movement?

Verónica Gago provides us with a method she calls “feminist internationalism.”³⁰ This movement seeks to transform societies by connecting struggles across borders to promote collective resistance of local and global systems of oppression. To facilitate feminist internationalism, Gago encourages us to engage in “situated thinking,” that is, seeking to understand each woman’s situation as “an image of the world,” and from these individual situations build a collective understanding that is rooted in the lived experiences of the most marginalized women, who are often situated in the Global South.³¹ This collective understanding can only emerge through sustained dialogue to develop a set of commitments and demands that advance the needs and interests of women writ large. But, as Black feminists underscore, these types of conversations are often not possible within formal power structures or institutions.³² Feminist internationalism does not rely on structures from above, but instead builds its own spaces for dialogue and action. Critically, these spaces must invite disagreement and contestation, because, as Sarah

²⁵ ROBIN D.G. KELLEY, [FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION](#) (2002).

²⁶ *Id.* at 187.

²⁷ *Id.* at 198.

²⁸ AMIA SRINIVASAN, [THE RIGHT TO SEX: FEMINISM IN THE TWENTY-FIRST CENTURY](#) 179 (2021).

²⁹ [KELLEY](#), *supra* note 25, at 139.

³⁰ VERÓNICA GAGO, [FEMINIST INTERNATIONAL: HOW TO CHANGE EVERYTHING](#) (Liz Mason-Deese trans., 2020).

³¹ *Id.* at 4.

³² [FEMINIST CONVERSATIONS ON PEACE](#) 5 (Sarah Smith & Keina Yoshida eds., 2022).

Smith and Keina Yoshida highlight in their edited volume, *Feminist Conversations on Peace*, feminist understandings of peace are “plural, multi-sited and contested.”³³

Applying these insights to the context of accountability, any transnational feminist movement must ground its agenda in visions of justice that emerge from dialogue among women who have struggled to confront mass injustices, particularly those associated with war and repressive, patriarchal regimes. From collective understandings of oppression facilitated through dialogue, these movements can both identify the social structures, laws, and power dynamics that led to harm, and develop the instruments and processes needed to redress it.

What then can we, as privileged feminists embedded in Western academic institutions, do to support this vision of feminist dreaming in practice? The first step is to push for a redistribution of resources to facilitate the creation of spaces and fostering of dialogues needed for feminist dreaming. Those who have been most harmed by atrocity often have the least time and fewest resources to devote to dreaming. Here, the international community has a limited role to play by ensuring that resources exist to create safe spaces and to compensate women who participate in processes meant to facilitate feminist dreaming for their time and expertise. In this capacity, the international community should only play a supportive role with the ultimate goal being a move toward self-determination by collectives over how resources are allocated and used.

A second step for feminist dreaming to reach its full potential in the context of accountability and justice is an inversion of power. Instead of the locus of power being at the international level, decision making about what processes and resources are needed after atrocity must be re-located to communities where the greatest harms have been felt. At the same time, despite this local focus, redistribution of power will necessarily depend on cultivating a solidaristic network of feminist activists across the globe in line with the feminist internationalism envisioned by Gago. Some governmental and non-governmental organizations are already investing resources in connecting victims of international crimes. For instance, Human Rights Watch has supported meetings between the Chadian victims who brought Hissène Habré to trial in Senegal and victims of crimes in the Gambia.³⁴ We suggest that similar collective gatherings could be facilitated to foster feminist dreaming about justice and accountability rather than to impose a punitive vision of justice.

In closing, feminist dreaming requires a re-orientation of the international legal order toward “situated justices”—that is, conceptions of justice situated in the experiences and expertise of those “at the sharp end of power.”³⁵ To dream, we must wake up to the reality of global epistemic oppression, and commit to movements like feminist internationalism that relocate power through transnational dialogue and action.

³³ *Id.*

³⁴ Louise Hunt, *One Year on, Victims of Gambian Dictator Demand Justice*, THE NEW HUMANITARIAN (Jan. 18, 2018).

³⁵ SRINIVASAN, *supra* note 28.