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The Comfort of International Criminal Law

Abstract

This paper examines the the changing relationship between the disciplines of international criminal law (ICL) and international human rights law; I particularly focus on the associations of the former with comfort and the latter with discomfort. It appears that a shift may be taking place in that ICL is being refashioned from a field enforcing human rights law to one which has assumed an entirely independent status. Indeed, ICL appears to be crowding out international human rights law. The inquiry begins with the question whether ICL is becoming the preferred discursive framework for practitioners, academics, and politicians. A contemporary desire for certainty over contention, action over discourse, and simplicity over complexity is revealed; in short, a preference for comfort over discomfort. The second half of the paper is dedicated to highlighting some of the concerns attached to this preference and suggesting possible techniques for addressing these concerns. Employing the idea of 'discomfort', I refer to the relevance of (a) Michel Foucault's Ethics of Discomfort, (b) Judith Butler's idea of the Language of Discomfort, and (c) draw on Franz Kafka's literary exploration of the Comfort in Discomfort. The ideas culminate in an invitation to relearn the comfort in discomfort of contention, discourse and complexity in international law.

Introduction

International Criminal Law (ICL) has taken the world by storm. In the past decade, it has emerged as a term with which one may associate a number of successes: ICL can be qualified as a separate and distinctive area of international law; several institutions are dedicated to its cause, including the International Criminal Court in The Hague and various tribunals; a catalogue of crimes has been identified as (almost) universally recognised in an international legal order; and, awareness for ICL as a mechanism for responses to crises on a global scale has never been stronger. Yet, while ICL is going from strength to strength, one may wonder what this implies for the other international law discipline, which also deals with projects of humanitarianism on a global scale, namely human rights law: Could ICL have become the favoured discipline for practitioners, academics and policy-makers? And, if so, what do we make of this development?

There appear to be a number of signals suggesting that international criminal law is no longer complementing, rather increasingly *supplanting* international human rights law.[1] In my view this could be a turn prompting concern. Despite human rights law having, some would say many, limitations, one of its most significant attributes is that it has developed a distinct area of self-reflection, of critical approaches. Importantly, there is a critique apparent *within* the discipline. Seemingly, a dialectic between human rights critique and its more mainstream projects has evolved. Although the grounds which led to such self-reflection in human rights law (commitments to universality in view of a pluralistic world, the moral tone adopted, the hypocrisy of 'Western' states in their rhetoric for human rights protection, to name but a few) are much the same in international criminal law, ICL is a field of international law which is confident, charging ahead, with much fewer apparent anxieties. The lack of critique means that significant shifts which have taken place through the rising prominence of the discipline are not questioned in a way which goes beyond an effectiveness critique. The deeper problems, which question the assumptions on which the field rests, are left out of the debate. What may, for

[1] There is a separate debate on the relationship between ICL and international humanitarian law. See Anderson (2009) for this debate.

instance, be lost by individual responsibility crowding out state responsibility? What becomes of humanitarian projects if our primary focus is on the punitive instead of the restorative? And how is the understanding of humanitarian projects altered if the highest good is to fight impunity?

Rather than being an accolade of human rights law, this is an attempt to demonstrate what ICL can learn from the mistakes human rights law has made, its inner anxieties, and its attempts at integrating the sense of complicity and interrogation of its premises into the discipline itself.

I begin with an enquiry into the shifting relationship between ICL and human rights law. I particularly focus on groups of individuals who are causing this shift, namely practitioners, academics, and politicians (a rather inelegant, yet for these purposes seemingly appropriate, categorisation) in order to learn something of the appeal of ICL. In its straightforward message and aversion to contention, ICL has become a comforting language with which to address crises and to articulate humanitarian projects. This however raises some concerns, *inter alia* regarding the interests of stakeholders, the potential for hegemony, simplification, show trials. In order to address the concerns attached to the preference for comfort, I aim to introduce the appeal of discomfort. For this, I take inspiration from Michel Foucault's *Ethics of Discomfort*, which can be understood as an intellectual restlessness; Judith Butler's idea of the *Language of Discomfort*, which encourages an exegesis of existing law; and Franz Kafka's literary exploration of the *Comfort in Discomfort*, which provides a liberation from the search for solutions within the law. The ideas culminate in an invitation for relearning the comfort in discomfort of contention, discourse and complexity in international law.

International Criminal Law and Human Rights Law – From Complementing to Supplanting

The primary distinction between the two disciplines is that human rights law predominantly concerns rights of individuals vis-à-vis the state, state accountability, while ICL imposes responsibilities directly on individuals for the perpetration of the most serious crimes, individual accountability. The common understanding of the relationship between the two fields is, as Theodor Meron explained in a lecture in 2011, that international criminal law's purpose is to enforce international human rights (Meron 2011). *Prima facie,* human rights law could be regarded as providing the substance and ICL as providing the enforcement:

> [P]arts of international criminal law have developed […] to respond to egregious violations of human rights in the absence of effective alternative mechanisms for enforcing the most basic of humanitarian standards. (Cryer et. al. 2010, p.13).

This understanding suggests that the two fields complement one another. In strongly simplified terms: international human rights law requires an enforcement mechanism for the most serious rights violations and international criminal law requires substance as to the nature of the most serious rights violations. According to this narrative, ICL emerged from human rights law and is dependent on it. Some view the two as distinct but complementing fields (seemingly Meron's view above), and others subsume ICL under human rights law (Engle 2012).

How does this understanding of the relationship between ICL and human rights law sit with the following two statements? In an article from 2009, Kenneth Anderson declared that '[t]he rise of international criminal law has been one of the remarkable features of international law since 1990' (Anderson 2009). In the same year, David Kennedy claimed in an interview that 'the heyday of human rights has passed' (Kennedy 2009a). These two observations, in conjunction, could suggest that ICL is on the rise while human rights law is in decline. This suggests a different relationship to the one stated above; it indicates that ICL may in fact be outstripping or even supplanting human rights law.

International criminal law and human rights law overlap in their role as benchmarks for the Good and Bad in the world, for the humanity or inhumanity of actions, for the responsibility or irresponsibility of regimes or their rulers. Both fields concern projects of humanitarianism.[2] International criminal law has seemingly assumed prominence at the expense of human rights law when it comes to such projects. Human rights law was the benchmark for the noted binaries of the 1990s, but now, it appears, ICL has become part of the routine vocabulary to describe global injustices.[3] In a short period, ICL went from a phase Frédéric Mégret dubbed the 'indifference' phase to a 'normalisation' phase, meaning the prosecution of international crimes became normality, (Mégret 2005); arguably, ICL has now entered a 'prioritisation' phase, where ICL is being prioritised over other possible projects of humanitarianism.

I have selected three examples to provide an initial flavour of this trend. First, the response to the so-called Arab Spring by the international community has been predominantly couched within international criminal law terminology and institutions. Notably, the UN Security Council's very first resolution in regard to the Libyan uprising referred the situation to the International Criminal Court (UN 2011). It was a signal that the path to peace was considered first and foremost to lie in the accountability of Libyan leaders. As will be discussed below, the concerns for peace may of course have been predominantly rhetorical; yet, even if this is so, it is interesting to note that the preferred rhetoric is one of individual, rather than state, accountability.

The recent Kony 2012 movement bears further witness to the global consciousness of the role of ICL as a mechanism to address injustice. In March 2012, a video by the NGO Invisible Children, circulated by posting and reposting on social-networking sites Facebook and Twitter, went viral (Kony 2012). The video called for the arrest of Lords Resistance Army leader Joseph Kony, against whom the ICC had issued an arrest warrant in 2005 (ICC 2005). Millions of people were informed that injustices inflicted on Ugandan children could and should be addressed by arresting Kony. Although human rights law and international criminal law are conflated in the video, the predominant rhetoric is one of 'crimes', 'individual accountability', and 'punishment'.

One could interject here that this trend is only apparent in very particular crises, i.e. where there is a clearly identifiable *hostis humanis generis* (enemy of mankind) who is seemingly responsible for widespread crimes (Werner and Nouwen

[2] Humanitarianism here refers to the natural meaning of humanitarianism (as opposed to its interpretation in international humanitarian law), as social actions or movements of kindness, empathy, and sympathy.

[3] Ruti Teitel goes even further than this, stating that the parameters of ICL extend to a now emergent 'global rule of law'. Teitel (2002).

2010; Starr 2007). In human rights terms, these would often be attributed to civil and political rights. However, recent events appear to give strength to the notion that ICL is crowding out human rights law, even in instances concerning the human rights classification of socio-economic rights. As reported at the beginning of May 2012, a group of Greek activists submitted paperwork to the ICC in which they accused the Greek government of genocide – the third event selected to demonstrate the flavour of the named trend. The group of activists assert that the austerity measures instituted by the Greek government are propelling individuals into poverty, couples are deciding not to have children, and others are committing suicide due to their economic conditions (BBC 2012). It is notable that these activists chose ICL's terminology – genocide – and its principal institution – the ICC – to articulate their grievances. Such a story would previously most certainly have been lodged as a complaint of human rights violations and, if successful, would possibly have reached the European Court of Human Rights.[4]

In order to examine the prioritisation of ICL beyond the merely anecdotal, the following takes a closer look at the individuals who may be prompting the rise and rise of ICL. The technique I apply is one which follows from the premise that international law is a social practice, or rather, as Martti Koskenniemi would say, an argumentative practice: international law is 'made' by those individuals who use the language of international law to explain their actions (Koskenniemi 2001; Koskenniemi 2005; Kennedy 1987). The spotlight is thus on the political and/or personal struggles.

International Law Practitioners

Legal practitioners in this categorisation includes all lawyers, also judges, and activists who employ the law as a means of achieving a particular end in a project; for example for their client to win a case or for their charity to prompt public opinion to sway in a particular direction. The premise is that practitioners make decisions about law and principles on the basis of their usefulness (Kennedy 2000). Arguably, ICL is, for practitioners' purposes, more useful than human rights law.

'Human rights lawyer' was for a period of time an elusive profession. Since there is no world human rights court, lawyers draw from domestic, at times regional, case law and may appeal to the respective institutions. In its 'heyday', there was an apparent disjuncture between the available legal mechanisms and the human rights promise to respond to injustices in the world. Although there were vast rights catalogues, they were and still are very much dependent on ratification and their translation into domestic legal systems. While debates on universalism and particularism were raging in law faculties, human rights practitioners found themselves with a very limited toolbox.

ICL on the other hand has provided lawyers involved in projects of global injustice with a growing body of case law and, most importantly, with a permanent international court. Practitioners who previously derived their legal tools from human rights law found that international criminal law supplied certainty where human rights law was nebulous and slippery. One example of such slipperiness in (European) human rights law is the (in)famous *margin of appreciation*. As Robert Cryer *et al*

[4] Admittedly, it is difficult to distinguish between influences which are causing the prioritisation of ICL (agents of change) and influences which are symptomatic of it (products of change). This applies to all three examples above.

explain, ICL on the other hand requires 'that the law be strictly construed and that ambiguity be resolved' (Cryer et. al. 2010, p. 14).

Human rights law arguably became too narrow for practitioners. The state-individual relationship was too limited and too complex an approach. Particularly for activists, minded of getting a simple message across to potential supporters, reference to ICL is a simple and modern concept. It pinpoints an enemy and the solution to the wrong-doing. One cannot fail to see the appeal for NGOs such as Invisible Children. The Kony 2012 movement worked on the basis of a simple message on a global social sphere, 'The Power of Simplicity' as the NY Times stated (NY Times, 2012). In comparison, human rights law is a much more complicated idea. It requires the medium of the nation state; a state which is omnipresent. States are both the violators of human rights and providers of the remedy. In view of globalisation and internationalisation, an idea which today appears outdated. Although ICL, particularly the ICC regime, is strongly dependent on state cooperation, and the old strongholds of the Westphalian order (sovereignty, non-intervention, and equality), it is perceived as stretching a hand past state borders and state institutions directly to the individual. In a nutshell, international criminal lawyers could therefore be regarded as the 'doers' while human rights lawyers are the 'talkers'.

International Law Academics

Turning to the academics researching and teaching ICL: as stated above, when international criminal law first came on the scene, it was identified as a discipline of enforcement. International criminal lawyers were largely engaged in procedural legal questions. Much was, and still is, written about evidentiary challenges, self-representation, and the sort.[5] But, the more these academics thought about the international aspects of criminal law, the more they found they also had something to say about universal morality. After all, there was a particular criminal law perspective to be adopted on universal understandings of genocide, crimes against humanity, war crimes, and most recently the crime of aggression. The more such academics engaged with substantive questions, the more a distinct identity around the idea of 'international criminal lawyer' evolved. This identity, it appears, is very much attached to a self-understanding of legitimately making pronouncements on universal and absolute moral standards – with certainty.

International criminal lawyers have, in comparison to their peers from other areas of international law, great confidence. This confidence in its success is seemingly partly due to the field's accepted history (Nouwen 2012, p. 328). From Nuremberg to Rome is a historical trajectory of less than sixty years, beginning with the recognition of individual criminal responsibility for atrocities and culminating in its manifestation in a global multi-lateral treaty and the establishment of a standing international criminal court.

Perhaps this confidence can in part also be drawn from the original understanding of international criminal lawyers as 'enforcers' of human rights law. International lawyers, including international human rights lawyers, have a long-standing anxiety about the legitimacy of their field predicated on ontological uncertainties. However, as the 'enforcers' of human rights law, ICL seemingly does not have this same concern. As Dino Kritsiotis observes in regard to the ICC, it 'possesses remarkable powers' (Kritsiotis 2012, p. 261): from issuing arrest warrants

[5] See back issues of the *International Journal of Criminal Law* and *Criminal Law Forum*.

against sitting heads of state to obliging parties of the Statute to cooperate. There are of course crucial elements within ICL which fall short of enforcement mechanisms as they would be known from domestic legal systems. Most notably, the enforcement of arrest warrants is, under Art. 59(1) Rome Statute, dependent on local executive mechanisms. Nonetheless, the ICC, the Prosecutor, and the Statute itself are tangible legal vehicles for enforcement at the international level. Notwithstanding similar trends in human rights law and international humanitarian law, ICL has become an exceedingly technical field of study, one in which the experts have in a very short space of time acquired and developed specialised knowledge, principles and terminology.

Moreover, some academics formerly dedicated to the study of human rights or general public international law have found themselves drawn to international criminal law simply because there is a *demand* for it. The rise in demand of and for ICL is partly driven by the commercialisation of education which has coincided in Europe with the growth of ICL. Given that higher education institutions are often no longer able to secure funding from their respective governments, fee-paying students drive the education market. The students decide which courses they would like to 'consume'. A 2009 UNESCO report notes 'In the early 21st century, higher education has become a competitive enterprise' (UNESCO 2009, p.7). The dominance of ICL in current affairs has prompted a desire of curious and global-minded students to study the principles and institutions of the field, creating a demand. Concurrently, external funding projects are supporting ICL projects. With its sensationalist and catchy language and its palpable enforcement mechanisms, ICL projects are particularly suitable for receiving funding from bodies dedicated to impact, policy proposals, and global reach. Against this background, research and teaching centres dedicated to ICL are appearing at various institutions in the world, particularly those formerly committed to research and teaching of human rights.[6] The 'training' of professionals in ICL has proved a further lucrative endeavour for said centres.[7]

Politicians

Moving on to politicians and their increased reference to ICL: the politicians I am interested in here are those who represent, or declare to represent, the interests of a substantial number of people in a particular territory. When do they refer to ICL where they would previously have referred to human rights law?

The useful rhetoric for convincing voters or subjects of a particular strategy or decision naturally varies through history. In the early 2000s, following the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) and during the ratification period of the Rome Statute, ICL was very much in tune with the demands of the time, the *Zeitgeist*, according to Nouwen (Nouwen 2012, p. 329). Societal demand prior to the end of the Cold War and prior to 9/11 was directed towards keeping checks on supposed rogue states. Human rights lawyers had acted on behalf of those who were underprivileged in the courtrooms – situations in which the state

[6] E.g. the Grotius Centre for International Legal Studies www.grotiuscentre.org; Irish Centre for Human Rights, NUI Galway http://www.nuigalway.ie/human_rights/.

[7] http://www.grotiuscentre.org/training.aspx; the T.M.C Asser Institute states on its website that their 'customized programmes' are 'demand driven' http://www.asser.nl/Default.aspx?site_id=1&level1=13692&level2=13747.

had violated individual rights. However, with terrorism placing the spotlight on non-state actors the previous emphasis on state responsibility shifted to individual responsibility. Arguably, this sense of the need for accountability of individuals was sharpened by the end of the 2000s. Even the global financial crisis, we are told, occurred due to a few individuals acting irresponsibly. Today it seemingly carries much more political weight to refer to international crimes rather than to capricious human rights violations. Referring to international crimes indicates action and certainty. Sensationalism and glamour have added to ICL's potential to sway public opinion. ICL's vocabulary is highly evocative: it is a vocabulary of crisis and disaster, engaging descriptions such as 'evil', and the 'worst of the worst', and purporting to be the authority for crimes of rape, torture, and genocide. But it is not only symbolism and rhetoric; there is also a very real institution to which the perpetrators can be sent to stand trial.

Following a cursory analysis of the groups of individuals who are causing a shift away from human rights law to ICL, we learn something of the appeal of ICL. There are three benefits which ICL appears to have over human rights law: (a) it is certain where human rights is contentious; (b) it advocates action and decision-making where human rights law foregrounds discourse; and (c) ICL necessarily relies on a simple message where human rights law relies on complexity. In its simple message and aversion to contention, ICL has become a comfort.

Before turning attention to specific concerns related to the named developments, let me first address a potential objection to the statement that ICL is supplanting human rights law in a way which is fostering an uncritical discipline. It may be argued that the supplanting of human rights with ICL is inaccurate due to the few recognised international crimes vis-à-vis the many rights recognised in human rights law. Human rights law, one may argue, remains the dominant benchmark, rhetoric and tool for projects of humanitarianism because it has more extensive rights catalogues. In response to this objection, one may contend that contemporary projects of humanitarianism appear to be, more or less neatly, subsumed under the available crimes of ICL. A pertinent example is that of the Greek austerity measures named above. In this situation, the group had the option to appeal to the civil-political rights to life, or the right to be free from inhuman and degrading treatment; in socio-economic terms, the rights to housing and the right to food come to mind. Yet, the activists chose the possibly more sensationalist language of ICL to get their message across. The appeal of the simplicity of ICL becomes evident yet again.

Concerns

Several concerns and worries regarding this possible trend towards the comfort of ICL have already become apparent from the above. In this section, I try to bring the concerns into focus. A further disclaimer is necessary: the below points merit more rigorous study than is possible here. Stylistically, and normatively, the mentioned concerns are therefore predominantly phrased as questions. I first order the concerns around the three legal professions and then turn attention to three central concerns of human rights critique which apply analogously in ICL.

International Law Professionals Again

In terms of legal professionals, two worries in particular appear important: the issue of show trials, and the role of the prosecutor of an international tribunal or court. The

term 'show trial' is employed in criminal justice to describe a trial in which the outcome is already known from the onset, often even before the individual is brought before the relevant court. It is a term employed as a form of critique of the lack of and/or the farcical nature of justice. The fact that a 'not guilty' verdict is a rarity in international criminal justice hardens the concern about the prevalence of show trials. International criminal justice seemingly knows only two outcomes: amnesty or guilty. Those who do not appear in the courtroom are provided an amnesty; they are highly unlikely to be tried and acquitted. Individuals accused of crimes who appear in the courtroom will almost certainly be found guilty. This is notwithstanding those situations in which charges are not confirmed; as happened recently at the ICC when Pre-Trial Chamber II dismissed the Prosecutor's application for arrest of Sylvestre Mudacumura (ICC 2012).

The acquittal of two Croatian generals (ICTY 2012a) and the retrial and consequent acquittal of former Kosovo Prime Minister Ramush Haradinaj (ICTY 2012b) in November 2012 at the ICTY deserves mention here. Although acquittals, the impartiality of the judges was questioned on the grounds that the UN were only interested in finding Serbs guilty. The plot thickened with Justice Sow's sensational interview on the Charles Taylor trial at the Special Court for Sierra Leone (New African 2012). Sow, who served as alternate judge for Trial Chamber II, spoke out following the summary judgment against Charles Taylor on 26 April 2012. He read out a Dissenting Opinion, expressing his 'worry [is] that the whole system is not consistent with all the values of international criminal justice' and that 'the whole system is under grave danger of just losing all credibility, and I'm afraid this whole thing is headed for failure.' While he was speaking, the three other judges left the courtroom, his microphone was cut, and 'what appeared to be a metal grate' was lowered over the glass of the public gallery. The comments were moreover struck from the official record (Easterday and Kendall 2012). A majority of the Trial and Appeals Chambers of the Court later sanctioned him for his 'misconduct'. In the interview from November 2012, Justice Sow speaks of 'the secret plan concocted by the other judges of Trial Chamber II to reduce me to silence'. In his opinion, the prosecution did not prove beyond reasonable doubt the guilt of Charles Taylor. The presumption of innocence, the standard of proof pertaining to beyond reasonable doubt, and the principle of *in dubio pro reo* were all 'trampled underfoot in the Charles Taylor trial' (New African 2012). Sensational words coming from a judge from the very bench which had previously delivered a *unanimous* decision.

The trial is arguably a theatre stage in which everyone's part has been predetermined. Trials in international tribunals and at the ICC have become public – and global - spectacles, headline news, as experienced recently with the Lubanga trial in March 2012 and the Charles Taylor trial in April 2012. There are a number of points of departure for a show trials critique; one regards the criminal justice principles expressed by Justice Sow. A further point of departure regards the shortcomings of trials to establish the 'truth'. In his path-breaking article from 2002, Martti Koskenniemi claimed that international criminal law trials could not live up to the expectation of expressing the truth of a complex series of events; instead political motives are foregrounded (Koskenniemi 2002). The context, which in procedural terms is determined by the available evidence, is therefore closed off to discussion once and for all – after the trial, there is only one narrative and therewith only one available 'truth'. Of the historical literature on show trials, which cannot be dealt with in full here, it appears appropriate to single out Hannah Arendt's commentary on the Eichmann trial. She employed the term 'show trial' as a form of critique of the Israeli

authorities in their trial of the Nazi Adolf Eichmann, who, according to Arendt, was essentially a puppet in the political manoeuvre of Prime Minister David Ben-Gurion (Arendt 1963/2006, p.4). Certainly, Eichmann's criminal trial was not about determining the guilt or innocence of the accused; or indeed the truth.

The potential for show trials within international criminal justice raises all manner of worries about ICL: is the presumption of innocence principle – the so-called cornerstone of criminal law – upheld if the verdict is a foregone conclusion? Is the role of the defence team restricted to a plea of more favourable outcomes in the sentencing? Are others, even entire populations, who bear responsibility exculpated if one individual is brought to trial? Is there an issue of scapegoating? Will the prosecution have to become increasingly sensationalist in order to satisfy the expectation of gruesome and monstrous crimes? And finally, does the disproportionate focus on the wrong-doer and his/her person and personality overshadow the plight of the victims?

Considering the role of the prosecutors in their predetermined character as the virtuous counter-part to the accused, there is a plain concern about potential showmanship: another aspect of a 'show' trial. Not only is the relevant prosecutor on a global stage; in the absence of a state or head of state, he or she is moreover speaking on behalf of the international community (Arendt 1963/2006, p.4). The former Chief Prosecutor of the ICC, Luis Moreno-Ocampo, was criticised for misjudging his role on several occasions. For example, following the Prosecutor's failure to comply with two Orders of Disclosure of Trial Chamber I regarding intermediaries, the same chamber ordered the release of Thomas Dylo Lubanga, claiming the Prosecutor had overstepped his powers, and should need to be informed that his responsibilities 'do not give him license, or discretion, or autonomy to disregard judicial orders…' (ICC 2010, para 24). Moreno-Ocampo was often interviewed and filmed for various projects of humanitarianism, whether ICC public relations videos (ICC Institutional Video), or a cameo in the Kony 2012 video (Kony 2012). A documentary film titled 'Prosecutor', in which Ocampo plays the starring role, must be mentioned here. The trailer begins with a description and image of 'the man in the white suit' who has come to a Congolese village by helicopter (Prosecutor 2010). The concerns regarding the role of the Prosecutor include: has the criminal law paradigm of the presumption of innocence been replaced with a presumption of guilt? Is showmanship self-serving (to the individual or the institution) rather than serving justice? Should the concerns of the 'international community' be represented by one individual with wide-ranging powers? Is the symbolic nature of the white male hero entrenching existing stereotypes which contribute to imbalances and the perpetuation of conflict, regardless of the new Prosecutor being black and a woman? In sum, is symbolism overriding substance?

As stated above, it seems that the role of the socially and globally-minded lawyers has shifted from defending the individual against the state to prosecuting individuals on behalf of the international community. In view of this near certitude of a guilty verdict and in view of the novelty and glamour associated with criminal law prosecution, a certain appeal is attached to changing camps: from Defence to Prosecution. Karen Engle has rightly expressed her surprise at this shift, given how critical the human rights movement previously was of criminal justice systems. Engle invites readers to recall that Amnesty International's early campaigns of the 1960s were to a great extent directed towards *releasing* political prisoners (Engle 2012). *Amnesty*, not fighting impunity, was the primary objective. There is no denying that

the global face of humanitarian projects of the present day is the Prosecutor of the ICC who most certainly fights impunity rather than advocates amnesty.

International Law Academics Again

There is an onus on academics to be independent observers and critics of legal practitioners and politicians. However, in ICL, academics are increasingly becoming stakeholders in the success of the discipline. As Sarah Nouwen recently observed, the underlying message of fighting impunity is so much taken for granted that a critical engagement with it would not only border on sacrilegious, but also a hindrance to *doing something* about the situation at hand (Nouwen 2012). What then seems to be missing is the discomforting, yet necessary, culture of introspection, doubt and reflection.

So long as academics respond to the market by supplying ICL teaching (and this author is no exception), they are arguably pursuing a particular self-interest. The consumers in this market are largely students, rather than criminals. The number of students interested in ICL has risen exponentially. Specialised ICL courses have been established, particularly in The Netherlands, on a large scale to meet this new demand. We are of course to a certain extent all bound up in making our disciplines appear attractive and interesting, but it appears that there is a real fear that a critical engagement with ICL could either undermine the entire area of international law, give the impression of being in favour of violence, or at the very least spoil the glow of success for others. It is therefore tempting to become complicit in making the discipline appear more relevant, to focus on the detail rather than that which informs the discipline at large. For example, rather than discussing the ICTY's *Tadic* case as a foregone conclusion in which the ICTY simply *had to* assume jurisdiction, it is tempting to go down the technical and absolutist route instead. *Tadic* is henceforth taught as a case which determined the jurisdiction of the ICTY through the *principle of jurisdiction* (ICTY 1999). Most recently, this simple self-confirmation of jurisdiction was repeated at the Special Tribunal for Lebanon (STL): 'The Trial Chamber confirmed the Special Tribunal for Lebanon's jurisdiction to try those accused of committing the 14 February 2005 attack and connected cases…', a press release on the website of the STL notes (STL 2012). What good fortune for the chambers, office of the prosecutor and registry that the principle of jurisdiction, implemented by the trial chamber, did not allow for the argument of the Defence to prevail that they had been instituted in their respective roles on the back of a lack of jurisdiction! What was a foregone conclusion and justification has, by a simple use of legal terminology, become a general principle of jurisdiction, to be applied in ICL for future cases.

It was already mentioned above that there is a very real concern about the lack of critique within the discipline. The principal form of critique coming from within the discipline is whether the project of ICL is too idealistic. In essence, this is an effectiveness critique. ICL is particularly considered as lacking in cost-effectiveness. It is, for example, often lamented that after 10 years of the existence of the ICC and a billion dollars, only one trial has been completed. The response to this deficiency in efficiency is one of strengthening enforcement mechanisms. For example, it would then be suggested that the Prosecutor must be provided with greater powers, or that there should be a more extensive catalogue of crimes, or that corporations should also be made accountable under ICL. Effectiveness critique is commonly voiced in conjunction with an argument for growth. The argument for growth sets out that

humanitarian projects can be perfected if ICL grows in scope. Notably, effectiveness critique in conjunction with a growth argument are two elements invoked by a typically neo-liberal form of critique.

What is left out of sight are the very important concerns for hegemony, bias, gender, and ideology. With its self-referential patterns of critique, ICL and its community risk exclusions of the wider context in which ICL lies. What of, for example, the underlying political-economic forces? What of the historical context? What of the pre-existing biases in terminology which appear through the extrapolation of criminal law to the international sphere?

It appears that ICL is following the same pattern as international human rights law in regard to its fear of critique. Reflecting back on his critical piece *Spring Break* from 1985, David Kennedy writes about the difficulties of expressing uncertainties in human rights law in the mid-1980s: 'To write about moral ambiguity risked sacrilege' (Kennedy 2009b, p. 9). Today, moral ambiguities in human rights law, and in the human rights movement, are an inherent feature. Given the overlapping histories of the two disciplines, one would hope that ICL can learn from the developments in human rights law.

Politicians Again

The primary concern for political actors is that they utilise ICL as a mechanism of regime change (or conversely of legitimising regimes) under the pretence of humanitarianism. Politicians are expected to speak about legal mechanisms. We are experiencing the height of legalisation of all current affairs as well as the height of judicialisation (Teitel 2011, particularly chapter 3). Issues previously reserved for political *ad hoc* decision-making have been criticised for lacking accountability and transparency, and have consequently been brought within the realms of law. The despot's accountability has shifted from political negotiations and compromises to the courtrooms. A shift from diplomacy to justice, as Geoffrey Robertson observed (Robertson 1999, p. 374). The issuance of arrest warrants thus arguably circumvents the political decision as to responsibility. Adam Branch has written about the depoliticisation of victims in situations before the ICC. He observes that depoliticisation occurs by the diminution of political avenues: victims are instructed that their only political options are mediated by international law (Branch 2007). Such depoliticisation is in itself a political act.

ICL's attraction also lies with its associations with sensationalism and glamour – particularly apt tools for influencing public opinion. ICL has come to be viewed as the material of blockbuster Hollywood films, travelling to obscure places, attending networking parties in The Hague, tax-free income, and speaking multiple languages (Skouteris 2010, Chapter 4). In view of the seriousness of the subject-matter, it appears peculiar that ICL has evidently become so glamourised. In 2010 this glamour was furnished with added sparkle when supermodel Naomi Campbell and actress Mia Farrow travelled to The Hague to provide evidence in the Charles Taylor trial. From a political perspective, the glamour is borne out of a self-important screen of benevolence by the Western States. Kenneth Anderson wrote in 2009 that ICL is a '[r]egime of order based around altruism' (Anderson 2009, p. 333). According to him, International Criminal Law and the court are efforts by the 'stable' world, as he calls it, to provide a 'service' to the 'unstable' world. The narrative is that the Global North does not in any way benefit from ICL and its institutions but is financing the discipline for humanitarian efforts. The appeal of this narrative for political purposes

is undeniable. It so happens that ICL is a singularly useful mechanism for inspiring and goading regime change: it ensures the delegitimation of the individual, and their regime. If David Cameron announces that Syrian President Bashar al-Assad has committed war crimes, he has with very little effort delegitimised the ruler and the entire regime. Is it not tempting for politicians to utilise the ICC and the 'ICC system' for similar political coups? Particularly if politicians can claim that the concern is purely for humanity, not for politics?

It is not only a one-sided narrative of advantage. As Sarah Nouwen and Wouter Werner remark in an excellent article which 'does justice to the political', political actors can benefit just as much from the politics of international criminal justice as they can suffer under it. Werner and Nouwen explain that the self-referral of the situation in Uganda to the ICC could be understood as a ploy by the Ugandan government to defeat the rebel movement, the Lord's Resistance Army, by prompting their labelling as 'enemies of mankind' (Werner and Nouwen 2010). The Ugandan government arguably used the ICC as an enforcer of its own political expediency, delegitimating an opposition group, rather than as a mechanism for achieving global justice. The hegemonial aspects behind prosecuting an individual in a Western-inspired criminal justice system are therefore not limited to a simple Global North-Global South dichotomy. Actors both in the Global North and the Global South can benefit from the politics of the ICC.

Applying Human Rights Critique to ICL

In addition to, and overlapping with, the named concerns for the legal professions, one can refer to certain prominent debates in human rights law which seem to apply to ICL, yet are only rarely allowed to surface. Human rights law, in its aim to identify global moral standards, has been struggling with issues of universality, hegemony and exploitation. Although ICL also aims to articulate global moral standards from a particular viewpoint and with particular political players, these concerns are not apparent - or at least not as apparent – in mainstream critique.

The debate concerning universalism and particularism (or cultural relativity) has been crucial to the doubts and re-engagements inherent in the discipline and movement of human rights law (Donnelly 1984; Perry 1997; Shih 2002). In ICL, the concern for the tension between universalism and particularism has been localised merely sporadically in such questions as afrocentricism or complementarity. It appears that this crucial discourse is excluded from mainstream critique and only appears occasionally on the fringes of, or outside of, the discipline. Closely related to the issue of universalism is the debate on hegemony. In human rights law, the origins and history of human rights as well as their use as a rhetoric for empowerment and disempowerment are questioned: is human rights law inherently hegemonic because human rights emerged from Western Enlightenment ideas? Is it a European/Western law forced onto 'the other'? How is the legal language complicit in possible hegemonic aspirations? Again, the concern for hegemony is not apparent in the mainstream critique of ICL. Is this area of law, which aspires and makes a claim to being global, not also predicated on a European/Western idea of criminal justice? Further, is the language employed not one which is gendered? Do the African signatory states to the Rome Statute really primarily have 'fighting impunity' in mind, or is it also a hope for recognition by the powerful West? Is it significant from the

perspective of colonialism that all the cases and situations before the ICC are African? Many similar questions can be raised. One may find hints to these questions in the ICL literature; but there appear to be merely islands of research rather than a body of literature.

Finally, we turn to exploitation – an aspect of hegemony. In human rights law, a critical and respected body of scholarship, also discussed at institutional level, examines relationships of exploitation in the international sphere. The discourse considers both the role of human rights in addressing relationships of exploitation, and (maybe more importantly), the complicity of human rights in these relationships. In her piece on the 'Bottom Billion', Susan Marks reminded us that poverty is not simply a 'condition' of today's world. It is due to a relationship between the rich and the poor. To put it crudely, the rich are rich *because* the poor are poor. International institutions, trading relationships, law, individuals, groups, are all part of the system which is causing the growing disparities in the world (Marks 2009). Let us then remind ourselves of Kenneth Anderson's statement that ICL is a '[r]egime of order based around altruism' (Altruism 2009, p. 333). The rationale is that the Global North does not benefit from ICL and its institutions; rather it is financing the discipline for humanitarian efforts. It does not take a committed realist to observe that this sounds naïve, at best. The rich and politically stable, as Anderson calls them, have evidently benefited from the current political, economic and legal arrangements in the world – at the expense of the unstable and poor. So it appears unlikely that they would assist in establishing a legal system which does not, at the very least, maintain the current power arrangements. Such mechanisms could be referred to as 'screens for informal imperialism' (Tully 2008, Chapter 5), or simply as mechanisms of systematic exploitation. At present, the literature in ICL is one-sided; it forgets to consider the complicity of ICL in injustices in the world.

Addressing the Concerns

Following this rather glum assessment of ICL, let us think about how to address these problems. It was already identified above that the attraction for certainty over contention, action over discourse, and simplicity over complexity is due to a choice between comfort and discomfort. Where ICL represents comfort, human rights law represents discomfort. We have learned that there are certain downsides to choosing comfort over discomfort. In the next section, I aim to encourage an engagement with discomfort. It is in essence an invitation for debate, contention, openendedness, introspection and self-criticism. All these are discomforting terms, but at the same time crucial means of criticism and, ultimately, progression.

As regards mechanisms and techniques of discomfort, ICL has something to learn from human rights law. Human rights law has clear limitations itself and the proposal here is not to go back in time and to ignore ICL and return to the prominence of human rights. Rather, it appears that ICL can learn from the mistakes made in human rights; it could also adopt some of its modesty. As David Kennedy stated recently:

> Modern human rights professionals are often the first to know and to admit the limits of their language, their institutional practices, their governance routines. They know there are darker sides, they weigh and balance and think shrewdly and practically. (Kennedy 2012, p. 22).

How has human rights practice managed to make this transition, partly at least, into admitting limitations and complicities? I propose that this is due to an ability to address the discomfort of tensions and ambiguities. I have found Foucault's work on the *Ethics of Discomfort*, Judith Butler's idea of the *Language of Discomfort* and Franz Kafka's allusion to *Comfort in Discomfort* particularly helpful for not only critiquing comfort (which I began above), but more importantly for embracing discomfort.

An Ethics of Discomfort

Michel Foucault introduced the term an 'ethics of discomfort' in a short essay, composed as a review of Jean Daniel's *Ere des ruptures* (Foucault 2002). The essay was titled 'For an Ethics of Discomfort' and discusses Daniel's book concerning the history and vicissitudes of the post-World War II French Left. He praises Daniel's book for its 'quest for those subtler, more secret, and more decisive moments when things begin to lose their self-evidence' (Foucault 2002, p. 443). Ultimately, he is talking, not about history and how it is composed and told, but rather about an intellectual restlessness, a ceaseless discomfort with one's own presumptions – a model for intellectual pursuits (Roach 2012, p. 47). He ends on a powerful paragraph in which he refers to Maurice Merleau-Ponty's teaching of the essential philosophical task: an incessant discomfort with that which one takes most for granted. As a phenomenologist, Merleau-Ponty was particularly interested in 'perceptions', and how they inform our interaction and engagement with the world (Merleau-Ponty 1969). Foucault states that one should remind oneself

> never to consent to being completely comfortable with one's own presuppositions. Never to let them fall peacefully asleep, but also never to believe that a new fact will suffice to overturn them. (Foucault 2002, p. 448).

Let us apply this to ICL: in regard to humanitarian projects, we should exercise a discomfort with our presuppositions. For example, in regard to the value of individual criminal responsibility, which underlies the entire subject of ICL. Have we let the presupposition fall peacefully asleep that this is the most useful form of responsibility for the international sphere? What if we question this focus on the individual *within* the discipline of ICL? This takes us down an uncomfortable path of considering whether the focus on the individual may cause us to forget more social aspects of responsibility. What were the circumstances under which the individual acted? Who and what caused those circumstances?

Foucault also warns us

> never to imagine that one can change [presuppositions] like arbitrary axioms, remembering that in order to give them the necessary mobility one must have a distant view, but also look at what is nearby and all around oneself. (Foucault 2002, p. 448).

From this we learn that there is a reason for our presuppositions; they cannot be overturned like arbitrary axioms, because they provide us with a certain truth, a particular kind of comfort. And in order to shift these presuppositions we must make the effort to take both a view from the distance – one from international law, or social justice – *and* look at that which is nearby – the technicalised ICL with which we are comfortable. We must learn to contextualise our presuppositions. For ICL, this type of contextualisation may for example be a more critical view on the history of the discipline: how has it emerged from the colonial project and how is it complicit in the modern-day trajectory of this colonial project? Alternatively, it may be a more critical view of the political-economic forces, both existing and constructed by international institutions (Krever 2012).

> To be very mindful that everything one perceives is evident only against a familiar and little-known horizon, that every certainty is sure only through the support of a ground that is always unexplored. (Foucault 2002, p. 448).

These words are useful in reminding us of our partiality, of our place within a particular familiar culture, state, legal system, even on a smaller scale, within a particular area, family, and institution. ICL is confident in its global reach, yet a little more modesty would be desirable in order to live up to its aims of inclusion, awareness, and morality.

> The most fragile instant has its roots. In that lesson, there is a whole ethic of sleepless evidence that does not rule out, far from it, a rigorous economy of the True and the False; but that is not the whole story. (Foucault 2002, p. 448).

As I understand it, these sentences remind us that we repeatedly draw on certain resources in order to come to our conclusions of True and False, of Guilty and Not Guilty. But, we must remember that the evidence we gain for the assessment of True and False is constantly shifting, 'sleepless'. All our assessments are down to interpretation, subjectivity and (selective) memory. And even that is not the whole story. What an *Ethics of Discomfort* then nurtures in us is an intellectual scepticism in seemingly established truths. This assists us in learning to embrace contention, discourse, and complexity.

A Language of Discomfort

Judith Butler's idea of the *Language of Discomfort*, is akin to Foucault's *Ethics of Discomfort*. Her particular approach is one of 'language' and rhetoric – an aspect crucial to the study of any area of law. We can learn from her approach that complexity must be mirrored in language, that there is no use in glossing over plurality with simplifications. In a piece in the *New York Times*, Butler claimed that 'difficult language can change a tough world'. That language which challenges common sense can 'help point the way to a more socially just world' (quoted in Olson and Worsham 2000). She proposes that open-endedness and tensions can best be articulated in a language which reflects this, and this language will necessarily be a difficult one, an intellectual challenge. ICL has often made recourse to the need for clarity and certainty – ideas of criminal law which have been extrapolated to

international law. It is common to encounter discontented statements about the need for more clarity: 'The discipline of international criminal law has long suffered from a deficit of clarity with regard to many of its legal concepts' (Bohlander 2009, p. 517). However, international criminal law must take into account the tensions in a project which is committed to universality and norms with a global reach.

Embracing the difficult language of a universal idea of criminal justice means looking the limitations in the eye. This is a hard lesson to learn. In David Kennedy's language, this may involve addressing the costs as well as the benefits (Kennedy 2012, p. 24). It is, as Butler notes a process of 'undergoing something painful and difficult: an estrangement from what is most familiar' (Olson and Worshom 2002, p. 734). Butler refers to Adorno's *Minima Moralia* in which he discusses the painfulness of passing through difficult language. Yet, the pain is essential if we are not to take the constituted social world, not only as familiar, but as natural for us (Adorno 1951/2006). In its language and aspiration to grasp moral complexity in a few pages of a statute, ICL is – to use its own language – guilty as charged in this regard. More than that, a deeper engagement with the language of ICL could bring the humanity or inhumanity of the situation more into focus. It assists our sense (meant literally here) of reality - an idea of the bodily and mental pain, the smells, the sounds, the feel of human suffering. For as Immi Tallgren notes, it is the making comprehensible of the uncomprehensible which attracts us so to ICL:

> The seemingly unambiguous notions of innocence and guilt create consoling patterns of causality in the chaos of intertwined problems of social, political, and economic deprivation surrounding the violence. (Tallgren 2002, pp. 593, 594).

Again, we must call our presuppositions into question – this time from a slightly different angle to Foucault's. Foucault speaks of our perceptions and Butler speaks about manifestations of perceptions in language. Butler also warns that calling a presupposition into question 'is not the same as doing away with it; rather, it is to free it from its metaphysical lodgings'. This will help us understand the political interests, the power relations, which put it in its place. What metaphysical notion was utilised for the term in order for it to serve a particular political aim? (Butler 1993).

Interrogation of presuppositions through the intellectual exercise of *exegesis* is required. Exegesis calls for a critical evaluation of the constituting statutes of the Court and tribunals, and of case law. It would mean asking what the political aims could have been in that particular time and at that particular place. This is not, as one might assume an elitist undertaking; it is, I believe, in fact the opposite: it requires humility and, in a Lacanian sense, the de-centering of the subject (Lacan 1968). This does not only apply in view of that which has been done, it also applies to any attempts at change in the future. Butler states in regard to radical social change:

> [A]s we approach the problem of what to change and how to change, we are already within the confines of a language, a discourse, and an institutional apparatus that will orchestrate for us what will or will not be deemed possible. (quoted in Olson and Worsham 2002, p. 740).

But this does not, for her, mean reiterating the existing power regime. It could be seen as exploiting the existing structures and language of the law for something new.

Butler claims that this will then lead to a radical crisis for established power – it is not 'liberation', but it is 'critical subversion', a 'radical resignification' (quoted in Olson and Worsham 2002, p. 741).

Comfort in Discomfort

I draw on Franz Kafka's literary exploration of the *Comfort in Discomfort* in order to not have to end on discomfort. Kafka teaches us that there is no comfort in the 'illusion' of comfort. We live in a pluralistic society; a global law is going to be messy. Rather than trying to achieve consensus, the perfect all-encompassing treaty, the absolutist and holistic overview of what is Good and what is Bad, we should rest in the knowledge that the messiness opens up avenues of discourse. Kafka's protagonists are constantly searching for a *solution* in the law, a way of resolving their plight. However, there is no solution, no-one knows where it may lie. It is a fruitless and disheartening endeavour. But, this does not mean we are stuck; on the contrary, it empowers us.

Rather than working closely with Kafka's texts, I rely on the *feelings* evoked through reading Kafka. The desire for universality, for a definitive answer to Evil in the world is very much about a prevailing consciousness, a mindset, of international lawyers (Koskenniemi 2007). Reading Kafka can assist in altering this mindset. In his works, the limitations of law are laid bare. The realisation of limitations 'evokes experiences of frustration, exhaustion, and interference in a way that challenges the image of power derived from more theoretical approaches' (Bennett 1991, p. 73). We learn from these experiences of frustration that there is no way back. After delving into and facing the complexities of law, there is no more pretence that it is in fact all quite simple and certain.

Three of Kafka's most famous works are *The Metamorphosis*, a novella about Gregor Samsa, a travelling salesman, who wakes up one morning to find himself transformed into a beetle (Kafka 2005); *The Trial*, which describes the arrest and prosecution of Joseph K, a senior bank clerk (Kafka 2000); and finally, *The Castle*, in which the protagonist, K., a land surveyor, tries to gain access to the authorities governing a village (Kafka 2000). All three stories concern futile and hopeless attempts at standing against a system but also the undying belief in the correctness of that system borne in the protagonist.

Kafka's works can be understood in light of the necessity of coming to terms with *chaos* rather than *cosmos*. The experiences of discomfort which are triggered by reading Kafka's descriptions of law are brought to the fore as experiences that do not offer relief in the law. Rather than acting as a redemptive force, public authority and the law are described as arbitrary and complex. Reading Kafka can be useful in highlighting that relief cannot necessarily be provided by the authorities or even simply outside of oneself. In the *The Metamorphosis*, Gregor Samsa, as a beetle, hopelessly tries to communicate with his family; in *The Trial*, Joseph K attempts to find out the nature of the crime he has allegedly committed; and in *The Castle*, K. strives to understand the mysterious bureaucracy governing the village from the castle. The reader is frustrated at the futility of the protagonists' endeavours. This feeling of frustration and recognition of futility of a system are the sentiments that draw us out of our comfort zone. Indeed, law mostly only gives the impression of relief but rarely delivers on this. In *The Trial*, Joseph K. is arrested by state wardens and brought before a court. He seeks relief in the state system since 'justice is postulated as *possibly* present'; unfortunately for Joseph K., justice also 'continues to

be absent' (Straus 2007, p. 383). Justice 'morphs into an endless series of interpretations of the law controlled by a powerful but inaccessible interpreter (Straus 2007, p. 385).'

If we are looking to ICL for the response to our questions on humanitarian projects, we will also face frustration. We need to turn our attention to understanding the conditions and relationships which have caused the problems spurring the relevant humanitarian project. And these may lie outside of ICL; they may lie in a better understanding of political economy (Krever 2012), of criminology (Rothe and Mullins 2009), of psychology (Starr 2007). The recognition of law as open to interpretations, as political, and messy, helps us understand that we are simply consoling ourselves with preferences of certainty over contention, action over discourse, and simplicity over complexity. And, although it may be comforting to have simple responses to complex questions, it also means a retreat from reality. We learn then that contention, discourse, and complexity have liberating properties. Thus, it is more progressive to seek to understand and to embrace discomfort. And this allows us to take *comfort* in discomfort.

It is important to note that ICL is here to stay. A suggestion for reverting to an exclusively human rights approach would not be realistic. And the alternatives to ICL, say the assassination of the wrong-doer or their immunity seem less desirable than a flawed ICL. Moreover, an embracing of discomfort in ICL may lead us to a renewed look at the potential for human rights law, international humanitarian law, and other areas of study (post-conflict studies, transitional justice studies, criminology, political theory), to complement one another.

Conclusion

Recent events in current affairs – the so-called Libya Uprising, the unrest in Syria and the Kony 2012 movement, among others – have highlighted the predominant place which international criminal law has assumed in the global public consciousness. The benchmark for legitimate regimes, for legal and illegal acts in the international sphere, even for Good and Bad acts, appears to be dominated by ideas of criminal responsibility, arrest warrants, and the decisions of the Prosecutor of the International Criminal Court.

The above has traced, admittedly in breadth rather than depth, an increasing trend towards comfort (ICL) at the expense of discomfort (human rights). This has notably been a critique of international human rights as much as it has been a critique of international criminal law. Both areas of international law are biased yet often claim to be neutral and universal; both disciplines in some ways contribute to an increase in the suffering at the same time as they claim to be addressing precisely this; and both are areas strongly driven by a fairly small group of professionals who have many privileges which they have an interest in maintaining. However, the human rights debate, although itself often problematic, has become sophisticated and self-critical. ICL on the other hand has become overly confident and glamorised.

ICL then has something to learn from human rights. To assist with this (re)learning in ICL, I have suggested the technique of finding comfort in discomfort. This has required four steps: (1) identifying that which is comforting (certainty, action, simplicity); (2) identifying that which we find discomforting (contention, discourse, complexity); (3) exploring the limitations of that which we find comforting (*inter alia* show trials, hegemony, exploitation), and lastly (4) understanding

mechanisms for moving beyond these limitations in embracing an *ethics* and a *language of discomfort* and, ultimately, to find *comfort in discomfort*.

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