

UNIVERSITY COLLEGE DUBLIN

European Master's Degree in Human Rights and Democratisation
2013/2014

International Criminal Tribunals as Theatres of Justice

On their Use of Historical Narratives and Dramatic Devices

Author: Zoé Vautard
Supervisor: Dr. Graham Finlay

TABLE OF CONTENTS

Introduction

1. What Goals Exactly Do International Criminal Tribunals Pursue?

1.1. The Retributivist and Consequentialist Theories of Punishment

1.1.1. Retributivism

1.1.2. Consequentialism

1.2. International Criminal Tribunals Aiming at International Peace and Security

1.2.1. Beyond Retributivism: A Wide Range of Expectations

1.2.1.1. Ad Hoc Tribunals and the Necessary Reference to International Peace and Security

1.2.1.2. Diplomatic Conference, ICC and Restorative Justice

1.2.2. International Criminal Tribunals as Peace Building Institutions

1.3. Limited Endorsement of Consequentialist Goals by the Tribunals

1.3.1. Deterrence and Retribution as Primary Goals

1.3.2. International Peace and Security as a Goal of International

Sentencing

1.3.2.1. Integration of UN's Rhetoric within Justifications for Punishment

1.3.2.1. Impacts on Sentence Allocations: Expression of Remorse as a Mitigating Factor

1.3.2.3. Retribution as Working for Peace and Security

1.3.3. Establishing the Truth and Setting Up a Historical Record

1.3.4. No Real Recognition for the Didactic Function

2. Some Views on what can Achieve Courtrooms' Theater and Storytelling

2.1. Authority of the Law

2.2. Courtrooms' Storytelling, the Legal Filter and Historical Records

2.2.1. Shaping the Historical Record by Following a Legal Argumentation

2.3. Storytelling and Internalization of Principles

2.3.1. The Illustrative Propensities of Stories

2.3.2. Internalizing Principles by Confronting the Past

2.4. Theatricality, Drama and Social Catharsis

3. Theatre and Storytelling Trends in the Current International Criminal Tribunals

3.1. The International Criminal Tribunal's Affirmative and Legitimate Authority

3.2. Various Trends of Recounting the Past

3.2.1. The Prosecutions' Storylines

3.2.1.1 ICTY: a Crime-Base Evidentiary Approach of the Past

3.2.1.2. The International Criminal Tribunal for Rwanda: the Large Historical Backdrop

3.2.2. The Defence's Counterattack

3.2.2.1. A Breach in the Chain of Responsibility

3.2.2.2. Tu Quoque and Necessity Defence: Reframing the Prosecution's Narrative

3.2.2.3. The Indeterminacy Technique: Undermining the Prosecution's Historical Evidences

3.2.3. Drama and Performances in the Courtrooms

3.2.3.1. Staging the Pain of the Victims?

3.2.3.2. Emotive Repentances?

4. Stories, Drama and International Criminal Tribunals' Objectives

4.1. Retribution

4.2. Deterrence

4.3. Building a Historical Record

4.4. Theatricality, Storytelling and Reconciliation

4.4.1. Confronting the Conflict

4.4.2. Where Theatricality Lacks: Impacts on Reconciliation

4.4.2.1. Expressing Remorse

4.4.2.2. Hearing Victims

5. Conclusion

ABSTRACT

The tendency of war crime tribunals to be carried out in a dramatic fashion has often give rise to many criticisms. These Tribunals came under fire for using dramatic settings in order to attempt to write definitive historical accounts on war crime violations or to provide victims with some closure. The criticisms made were primarily in regard to the Holocaust trials established in Nuremberg or in Israel as these marked a tremendous step forward in punishing mass atrocities by the perpetrators. In this thesis, we will speculate as to whether these criticisms could apply to the current International Criminal Tribunals: the International Criminal Tribunal for Ex-Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Court (ICC). This analysis will lead us to draw three different observations thus highlighting how traditional criticisms cannot apply to new international war crime tribunals. Firstly, if these Tribunals endorse extralegal aspirations, these take a different shape than the one pointed out by the traditional critics. Secondly, some aspects of theatricality or use of history can be identified in the Tribunals. However, it is worth noting that these do not seem to be carried out solely in order to achieve ideological and extralegal goals. In actual fact, they appear to be necessarily present in the trials dealing with mass atrocities. Thirdly, these scenographical and historical settings could turn out to be inappropriate in terms of the Tribunals achieving the extralegal goals they endorsed.

2014

International criminal tribunals as theatres of justice : on their use of historical narratives and dramatic devices

Vautard, Zoé

<https://doi.org/20.500.11825/466>

Downloaded from Open Knowledge Repository, Global Campus' institutional repository