

Working through the cinematography of international criminal justice: procedures of law and images of atrocity

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This article addresses legal procedures and the cinematography of film in international criminal justice. The examples range across fiction, documentary, and trial film. The concern is with relations of authority and subjectification within the architecture of the courtroom and before the image. It considers procedures of projection, evidential confrontation and the destruction of the image in the era of the witness.

‘Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live History and literature cannot escape location in a normative universe, nor can prescription, even when embodied in a legal text, escape its origin and its end in experience, in the narratives that are the trajectories that are plotted upon material reality by our imagination.’

Robert Cover¹

‘A semiotics of law studies all the different means by which law is communicated The language of law, however, is only one medium of its transmission. Law is a material presence, a visual structure of everyday life, a heritable form of repetition which comes to constitute in a very real sense part of the nature of things. For a semiotics of law this point is crucial. It is through symbols, its forms of appearance, its phenomenality, its

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1 R Cover, ‘The Supreme Court 1982 Term—Foreword: Nomos and Narrative’ 97 *Harvard Law Review* (1983) 4, 4-5.

emblematisation of persons and of public space that law makes itself felt as the trace of either a legitimate or simply de facto sovereign social power. Its traces are legible in all the surfaces of everyday life; precisely because it is experienced as a system of images, not as a system of rules, law represses, repeats and institutes life.’

Peter Goodrich and Yifat Hachamovitch²

SETTING THE SCENE

International criminal laws have many relations. In this article, we address the encounter of law and film in the context of international criminal justice, and do so cinematographically. We work through a montage of images, making connections and juxtaposing discordant or disparate features of the conduct and form of international criminal law. Procedures of international criminal law, we want to suggest, can be thought in terms of their technological conditions. Trials show films and are undoubtedly recorded, but trials are cinematic because their craft is shaped by what makes cinema possible—its material apparatus and gestures.³

2 P Goodrich & Y Hachamovitch, ‘Time Out of Mind: An Introduction to the Semiotics of Common Law’, in P Fitzpatrick (ed.), *Dangerous Supplements: Resistance and Renewal in Jurisprudence* (Pluto Press, 1991) 159.

3 For the notion of technique, see the jurisprudence of jurisdiction in S Dorsett & S McVeigh, *Jurisdiction* (Routledge-Cavendish, 2012) ch. 3. On relations of film and the apparatus of legal writing to narratives of atrocity and the technique of witnessing, see PD Rush, ‘Dirty War Crimes: Jurisdictions of Memory and International Criminal Law’, in K Heller & G Simpson (eds), *The Hidden Histories of War Crimes Trials* (Oxford UP, 2014) 367. The elaboration of the apparatus in the context of political theory is mostly associated with the work of Michel Foucault and, more recently, Giorgio Agamben. A *dispositif* or apparatus is used by Foucault to name three specific features of the conduct of power and knowledge understood as plural sets of relations: firstly, ‘a thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions—in short, the said as much as the unsaid. Such are the elements of the apparatus. The apparatus itself is the system of relations that can be established between these elements’; secondly, ‘the nature of the connection that can exist between these heterogeneous elements. Thus, a particular discourse can figure at one time as the programme of an institution, and at another it can function as a means of justifying or masking a practice which itself remains silent, or as a secondary re-interpretation of this practice, opening out for it a new field of rationality. In short, between these elements, whether discursive or non-discursive, there is a sort of interplay of shifts of position and modifications of function which can also vary very widely.’ And thirdly, a ‘formation which has as its major function at a given historical moment that of responding to an *urgent need*. The apparatus thus has a dominant strategic function.’ See M Foucault, ‘The Confession of the Flesh’, in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. C Gordon, trans. C Gordon, L Marshall, J Mepham, & K Soper (Pantheon Books, 1980) 194, 194-95. On the ‘cinematic apparatus’ as a historical and cultural form, see S Heath, *Questions of Cinema* (Indiana UP, 1981) 221-35. More recently, see Agamben’s division of the subject of metaphysics into a relation between

Our essay proceeds as follows. The material relations of law and film are taken up in terms of the technical apparatus of international criminal justice and its specific aesthetic forms and conditions. Our first concern is to relate film to law by way of the trial and the viewing space of the courtroom. The procedures of projection and evidential confrontation are considered in the context of jurisprudence, film and courtroom design. Such procedures reconstruct, it is argued, not only formal relations between law, film and their audiences but also the material apparatuses of authority and subjectification. Setting out from the political jurisprudence of David Luban, we take up the examples of *The Stranger* by Orson Welles (1946), as well as the trial of the Nazi leaders by the International Military Tribunal (IMT) at Nuremberg, and the layout of the Extraordinary Chambers in the Courts of Cambodia (ECCC). In these examples, we track not so much what is shown but how the screens of international criminal justice institute relations of law and image. Our second concern is with the legibility of the image—its formulability. Here, we turn to the scenography of witnessing and memory as it gives shape to relations of law and film in terms of a rhetoric of form and formlessness, disappearance and interruption. Our examples are *The Missing Picture* by Rithy Panh (2013) and *Calling the Ghosts* by Mandy Jacobson and Karmen Jelincic (1996). What is remarkable about these two films is the way in which they frame questions of memory and testimony in the aftermath of the crisis of representation: the phenomenon of film and its caesuras provides the medium through which the witness works through the *destruction* of the image and its inheritance. Together, our reading of law and film contributes a jurisography of mourning to the jurisprudence of international criminal law.

To set the scene, we make comment on the *study* of law and film. If such study presents a stable epistemological field, three accounts of relations of law and film can be discerned in the context of international criminal justice.⁴ In one, the analysis is launched by the somewhat startling fact that a legal culture which places such authority in the oral and printed word has nevertheless taken to film with alacrity. In a sense, this is not that different from many areas of contemporary cultural production which have come to rely on the visual for

living being and an apparatus of capture, which is itself a reformulation of the indistinction between *bios* and *zoe* that he formulated in relation to the Holocaust and the bare life of the camps. See G Agamben, *What Is an Apparatus? and Other Essays*, trans. D Kishik & S Pedatella (Stanford UP, 2009) and G Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. D Heller-Roazen (Stanford UP, 1998).

- 4 Of course, the study of law and film precedes the emergence of international criminal law as an institutional and discursive field in the 1990s. The recent return of film as a site from which to launch a critical approach to international criminal law in some ways rehearses the prior jurisprudential lessons of studies of law and film, law and culture, law and humanities.

their transmission (recording, storage, and distribution) practices. In the context of international criminal law, trials are visually recorded as part of the official practice of courts, tribunals, and chambers. Such recordings were initially done by external news organisations with the collaboration of the court, but since the systematisation of international criminal tribunals as a distinctive enterprise, trial recordings have gone in-house. Whether in-house or otherwise, the official visual record of trials is nevertheless constructed cinematically: what is seen on our screens, even when watching a trial from the public gallery, is shaped for presentation to an audience of spectators by editorial decisions, such as the zooming in and out of the camera. Such visual records of trials have become a crucial part of the archive of international criminal justice. Relations of law and film are part of an enterprise given over to the representation of the work of the legal institution, or more precisely the work of the trial.

This has become increasingly the case as the courts and tribunals of international criminal law have turned to their visual records to curate their own films. The International Criminal Tribunal for the Former Yugoslavia (ICTY) not only reconstructed its website to display its role in the spread of international criminal justice since the 1990s, it also produced and made seven films in-house, drawing on the visual records of cases that had been heard in, and decided by, its chambers. These films are now available online through the ICTY website. In part, this has been in line with the increasing importance of 'outreach'. Outreach in this sense brings the trial proceedings to an audience beyond those able to be physically present, both in the conflict country and in other countries. In all this—the visual archiving as much as the curation of films—relations of law and film have been representational.

A second account treats relations as evidential. Films are put together and shown as evidence in international criminal trials, especially by the prosecution. Motion pictures were first used in a court of law in 1929 in the US and in 1938 in England.⁵ The first international criminal trials to use films as evidence were at the International Military Tribunal at Nuremberg in 1945. Generally, film evidence is compiled from several different sources and different footage to form a distinct and new film for use in the trial. At Nuremberg, a number of films were assembled from diverse footage.⁶ At the ICTY, in the Popović trial

5 See AR Michaelis, 'Cinematographic Evidence in Law' 8 *Quarterly of Film Radio and Television* (1953) 186, on the early reception of motion pictures and interestingly for advice to lawyers on cinematographic techniques required for the legal use of film in trials.

6 *Nazi Concentration Camps* (1945) was collated from film shot by the US Army Signal Corps as Allied troops came across primarily labour camps in a range of European countries at the end of the war. It was directed by Ray Kellogg and produced by George Stevens. *The Nazi Plan* (1945) curated film footage from the Nazis' propaganda films. It was assembled by Budd Schulberg and

concerning the Srebrenica genocide, in addition to some 300 witnesses and 5 000 exhibits, a trial video was presented as part of the prosecution's evidence. As Prosecutor Carla del Ponte remarked in her opening address to the trial chamber:

The separation of the women and children from the men and boys in Potocari and their forcible expulsion while the men and boys were detained awaiting execution took place in front of rolling television cameras. It was broadcast around the world as the crimes occurred, and of course you will see much of this video evidence during the course of the trial.⁷

Similarly, at the Extraordinary Chambers in the Courts of Cambodia (ECCC) in the trial against Duch, the prosecution brought forward a number of films to be admitted as evidence. But when a film depicting the discovery by Vietnamese forces of child detainees at S-21 was presented, the Chamber held—after the film had been screened—that the film was superfluous to proving the existence of child detainees and the harsh conditions at the centre, and would not be admitted as evidence.⁸ In all of these examples, the legal question is framed as a matter of relevance and admissibility, and, relatedly, the credibility and reliability of the film footage itself. As with all evidence, the film needs to be certified as appropriate to the purpose of its presentation in court.

A third account implicates law and film in a testimonial relation. Here, rather than film as evidence before a court of law, the storytelling and image-making of the film stands as a witness to atrocity and to what law has not said or cannot say about such experiences. Many of these films, or at least their analyses, join together international criminal law and debates in transitional justice around memory and trauma. Some films are documentary and focus on the work of courts. For example, *The Reckoning* presents the early years of the International Criminal Court and especially the Office of the Prosecutor in a

John Ford. *The Atrocities Committed by the German-Fascists in the USSR* (1946), like *The Nazi Plan*, was created specifically for the trial. On these films, see V Hartouni, *Visualizing Atrocity: Arendt, Evil and the Optics of Thoughtlessness* (New York UP, 2012) ch. 4. For the US films and their production history within the US entertainment complex, see C Delage, *Caught on Camera: Film in the Courtroom from the Nuremberg Trials to the Trials of the Khmer Rouge*, eds and trans. R Schoolcraft & MB Kelly (University of Pennsylvania Press, 2014) parts II and III. An earlier video version of the subject of this book was released: *From Hollywood to Nuremberg: John Ford, Samuel Fuller, George Stevens*, dir. C Delage (2012).

7 'Trial Transcript', *Prosecutor v Popović*, Trial Chamber, ICTY, 21 August 2006, 379, available at <http://www.icty.org/x/cases/popovic/trans/en/060821ED.htm> (last visited 6 February 2018).

8 'Decision on the Vietnamese Film Footage Filed by the Co-Prosecutors and on Witness CP3/3/2 and CP3/3/3', *Co-Prosecutors v Kaing Guek Eav Alias 'Duch'*, Trial Chamber, ECCC, 29 July 2009, available at https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E5_10_5_EN.pdf (last visited 2 May 2018).

way that blurs the boundary between documentary and the exercise of legitimating the work of the Court.⁹ Others have been fictional and have ranged from *Judgment at Nuremberg*¹⁰ to *The Ghost Writer*,¹¹ and across the various stages in the processes of international criminal justice. Yet others have been autobiographical. Despite varying genres, the form taken is testimonial, the task of witnessing atrocity and acknowledging the work of law.

In large part, these varying accounts of relations between law and film in the context of international criminal law remain thematic—whether those themes are those of the legal institution or of the films themselves. Often they engage the crisis of representation that attends modern cultural production, and do so in terms of the relation of film media to (legal) truth. This is important but what is remarkable about the thematic emphasis of much of the study of law and film in international criminal justice is that the cinematic and the lawful have little or no place in them. In this article, we will emphasise that *films* are a particular media-technique through which *images* of law and of atrocity become legible in international criminal justice. Our concern is with the apparatus and craft through which images become formulatable: how do atrocity and law become legible? This for us is a question of cinematography, understood as the writing of cinema.

It is also a question of jurisprudence for jurists. If relations of law and film are evidential, testimonial and representational, then cinematography becomes jurisprudential because it concerns the writing of the lives of law.¹² The writing of law is not so much by reference to a system of rules, policies, and discretions, but rather is a question of how the lives through which various domains of cultural production come to be inscribed and narrated as part of the meaning-making practices of various official and unofficial legal institutions. As a lawful enterprise, international criminal law is built¹³ with images. ‘Law is a material

9 Wouter Werner has provided a systematic and thematic account of the documentary genre in relation to the International Criminal Court: WG Werner, ‘Justice on Screen—A Study of Four Documentary Films on the International Criminal Court’ 29 *Leiden Journal of International Law* (2016) 1043. See also his earlier systematic overview in terms of both modes of representation and the portrayal of victims and their voices: WG Werner, ‘“We Cannot Allow Ourselves to Imagine What it All Means”: Documentary Practices and the International Criminal Law’ 76 *Law and Contemporary Problems* (2013) 319.

10 *Judgment at Nuremberg*, dir. S Kramer (1961).

11 *The Ghost Writer*, dir. R Polanski (2010).

12 PD Rush & O Simić (eds), *The Arts of Transitional Justice: Culture, Activism, and Memory After Atrocity* (Springer, 2013). And more generally on jurisography as the writing of lives lived with law, see A Genovese, S McVeigh & PD Rush, ‘Lives Lived with Law’ 20 *Law Text Culture* (2017) 1.

13 Frédéric Mégret recently reminded us that there is a ‘sense of a discipline not simply “being” but “being built” and, moreover, of these two dimensions being inseparable rather than sequential’: F Mégret, ‘International Criminal Justice as a Juridical Field’ 13 *Champs Pénal* (2016), available at <http://champpenal.revues.org/9284> (last visited 6 February 2018). As in much of his work, he

presence', Peter Goodrich and Yifat Hachamovitch emphasise, 'a visual structure of everyday life, a heritable form of repetition which comes to constitute in a very real sense part of the nature of things'.¹⁴ We have thus come to inherit the writing of the image in the place of international criminal law.

PROJECTION WITH CONFRONTATION

Consider the central importance of the trial for the cultural production of law and the jurisprudence of international criminal law.¹⁵ In a striking metaphor, Antonio Cassese has remarked that the International Criminal Tribunal for the Former Yugoslavia (ICTY)—and by implication the enterprise of international criminal law—'remains very much like a giant without arms and legs—it needs artificial limbs to walk and work.'¹⁶ The image is a common one: in order for law to move, to be animated, it must be augmented—and augmented by something external to it. Cassese's point is also a common one: relations have broken

develops a sociological account (this time indebted to Bourdieu) of the construction of international criminal law as a field composed of habitual practices and knowledges, as well as symbolic capital.

- 14 As a matter of jurisprudence, Peter Goodrich in his recent work has returned jurisprudence to the emblematic tradition of common law: P Goodrich, *Legal Emblems and the Art of Law* (Cambridge UP, 2013). In a more Heideggerian vein with reference to US law, Richard Sherwin has argued that data-visualisation in trials as well as the more general relations of law and film in popular culture are inherited as the arabesques and entanglements of the baroque: R Sherwin, *Visualizing Law in the Age of the Digital Baroque* (Routledge, 2011). And more specifically for a theory of spectatorship and cinematography in the context of law and film scholarship, see A Young, *The Scene of Violence: Crime, Cinema and Affect* (Routledge-Cavendish, 2010).
- 15 'To see the deep roots that legalism and trials have in Western culture', Judith Shklar remarks, 'one need think only of the part which legal imagery plays in literature, in metaphor, and in religious discourse of every kind. The court of love, the court of conscience, the trial of wits, the court of honor, Judgment Day—how much these phrases tell us about ourselves! How many trial scenes appear in drama and novels! How central to our everyday speech and to our imagination is the picture of a contest between diametrically opposed wills, judged according to some general rule! Even fate as we think of it behaves legalistically. The trial, the supreme legalistic act, has served us with an image around which we have structured a vast variety of experiences—ethical, religious, and aesthetic.' JN Shklar, *Legalism: Law, Morals, and Political Trials*, 2nd ed. (Harvard UP, 1986) 181–82. This reminder is given in the context of the didactic impact of the Tokyo War Crimes Trials and the failure of the IMT at Nuremberg to meet the two great ends of the Nuremberg trial, 'its educative force among the spectators, and the rigorous attribution of guilt for specific acts'. Ibid 171. For a recent recuperation of Shklar for our understanding of international criminal law, see S Moyn, 'Judith Shklar versus the International Criminal Court' 4 *Humanity* (2013) 473.
- 16 The quote continues: 'And these artificial limbs are state authorities. If the cooperation of states is not forthcoming, the ICTY cannot fulfil its functions. It has no means at its disposal to force states to cooperate with it. This is to be contrasted with the International Military Tribunals at Nuremberg and Tokyo, which investigated and prosecuted war crimes committed in states held under military occupation by the Allied forces.' A Cassese, 'On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law' 9 *European Journal of International Law* (1998) 2, 13.

down; the institutions of law have no means of enforcement, and no force with which to corral states into complying with its purposes. Relations of authority are disembodied and artificial. This is a matter of the discourse and the administration of international criminal law. When we turn to its jurisprudence, a related lacuna becomes evident: the legal discourse of aims and purposes has ignored or overlooked—but in any case depended on—the institution of the trial.¹⁷ As David Luban has noted, the trial is the centre of gravity for our accounts of international criminal law. Luban explains that the trial conditions the life of international criminal law because, as an institution, it makes possible the expressive activity that anchors—for better or worse—the legal and political role of the enterprise. Trials are narrative-generating events. In this light, Luban offers up norm-projection as the justification that comes into view: ‘trials are expressive acts broadcasting the news that mass atrocities are, in fact, heinous crimes and not merely politics by other means.’¹⁸ International criminal law, he continues:

uses the ceremonial of the trial, rather than the infliction of punishment, as its primary vehicle for expressing moral truth; and the moral truth it expresses is not the moral equality of perpetrator and victim . . . Rather ICL’s moral truth is the criminality of political violence against the innocent, even when your side hates the innocent as an enemy.¹⁹

Albeit overlooked in contemporary discourses of justification, he argues:

Against the bloodshed of mass political violence, the ICL project has little to offer except the dramatic force of legal trials that attach labels like ‘war crimes’, ‘genocide’, and ‘crimes against humanity’. Lacking the authority of world government, these norms build their legitimacy from the bottom up, by the fairness of their proceedings and the moral power they project.²⁰

17 This is less than a matter of its structure of argument. The aims and purposes are conflictual or at best indeterminate, as Martti Koskeniemi demonstrated at the outset of the ICC and in the context of the ICTY: M Koskeniemi, ‘Between Impunity and Show Trials’ 6 *Max Planck Yearbook of United Nations Law* (2002) 1. But even this sophisticated account depends for its demonstration on the institution of the trial and specifically its diplomatic and agonistic structure of prosecution and defence. It is an address to the Prosecutor’s Office at the ICC on how to run trials.

18 D Luban, ‘Fairness to Rightness: Jurisdiction, Legality, and the Legitimacy of International Criminal Law’, in S Besson & J Tasioulas (eds), *The Philosophy of International Law* (Oxford UP, 2010) 569, 576.

19 Ibid 577.

20 Ibid 587-88.

The trial is important because it is an institutional site through which law can animate its narratives and project its truths. The trial is able to craft procedures of (moral) truth. In this way fairness provides the idiom through which the lives of legal institutions become legitimate in response to atrocity and its political relations of amity and enmity.

This is a powerful account of international criminal law and the place of the trial within it. Not least because the idiom through which it works draws attention to relations between ceremony and trial, as well as legal narrative and the media of news broadcasts. Luban relies on these prosthetic supplements to explain how fairness is the message of the procedure of trial for all concerned. Norm-projection is the point of the enterprise and it is only as such that the conduct and ethos of the trial can be known and evaluated.

For all its power, however, the apparatus of projection repeatedly fades away. This fading, we think, has something to do with the recourse to a normative jurisprudence. Yet the apparatus of projection—the ceremonies of the trial and the narratives in the trial—is not only normative, not only a matter of the legitimacy of processes and purposes, truths and messages. It is also, importantly, media-technical. ‘Cinema . . . began with reels, cuts and splices.’²¹ Cameras, projectors and their celluloid reels, screens, the dark rooms and their choreography of light and dark, their reproducibility as well as the modes of enlargement and detail, framing and the exposure rates of projection, close-ups and slow-motion. These and much more provide the material apparatus and craft through which the image comes to mediate relations of law with film.

Consider the role of the technical apparatus of film within *The Stranger*, a film directed by Orson Welles and released in 1946.²² It is set in the aftermath of World War II, the Nazi regime, and its destruction of European Jewry. Approximately two thirds of the way through the film, an agonistic interrogation takes place between Mr Wilson (played by Edward G Robinson), a war crimes investigator with the UN War Crimes Commission, and Mary Longstreet Rankin (played by Loretta Young), the wife of Professor Charles Rankin (the alias of Franz Kindler, played by Orson Welles).²³ The exchange

21 FA Kittler, *Gramophone, Film, Typewriter* (Stanford UP, 1999) 115, and see more generally at 115–82.

22 *The Stranger*, dir. O Welles (1946). The screenplay is by Anthony Veiller (Orson Welles and John Huston making uncredited contributions) and adapted from a story by Victor Trivas. It is the last motion picture released by RKO Radio Pictures. It was re-released on DVD as a Kino Classic in 2013. The complete film can be viewed on YouTube, available at www.youtube.com/watch?v=xev9ejIIFEA (last visited 6 February 2018). For film analysis, see JL Barker, ‘Documenting the Holocaust in Orson Welles’s *The Stranger*’, in KM Wilson & TF Crowder-Taraborrelli (eds), *Film and Genocide* (University of Wisconsin Press, 2012) 45.

23 Scenes 204 to 214 as set out in the shooting script. In terms of the film itself, these scenes begin at the 58th minute of the 94-minute film.

takes place in the study of Judge Longstreet, who is Mary's father as well as a justice of the US Supreme Court. Mary had been summoned to the house and into the study. As she enters, the shooting script instructs: 'Mary, silhouetted in the light from the hallway behind her, stands on the threshold of a dark room. There is no sound except a faint metallic murmur, not instantly identifiable. The sound stops and the room is suddenly lighted.'²⁴ The camera is then reset and the room is shown from Mary's angle as she enters the study. Again the shooting script: 'Wilson stands beside the judge's desk on which is mounted a sixteen millimetre projector, a reel of film, half run. At the opposite end of the room, a portable screen masks the bookcases. The judge, his face lined, rises from his rocker which has been moved to face the screen.'²⁵

The elements of the scene are the lighting and the darkened room and its screen, the projector and the reel of film, and the choreography of the three characters. The investigator and the judge had been watching a motion picture projected on the screen in the judicial study. Unbeknownst to Mary, she has been summoned to watch it and to be interrogated. The overall purpose of the scene within the context of the film's narrative is to force Mary to admit that her husband (Rankin/Kindler) is an escaped Nazi fugitive living incognito as a primary school teacher in a small New England town with a clock tower. But for our purposes here, it is the scenography that is important. Mary is seated in a chair beside a desk on which the projector rests and whirs (see Figure 1). The investigator stands next to her pumping out his questions as if he was cross-examining a hostile witness. The judge, her father, stands silently in the background. *The Stranger* presents the scene largely in close-up, cutting back and forth between the characters arranged around the projector and the film projected on the screen, which itself is inset and framed by the wall on which it is hung. In the darkened room, the projected light flickers at 24 frames per second on the faces of all three characters as well as on the screen.

Four brief scenes from the film-within-the-film that is projected for Mary are also shown to the viewer of *The Stranger*. Two of the scenes are accompanied by Wilson's voiceover and exposition; the other two are simply attended by the whirl of the projector and the flicker of light. Three of them are from *Nazi Concentration Camps*, one of the films prepared for and shown as evidence in the IMT trial at Nuremberg. Faced with the third scene—Wilson explains it is a 'lime pit in which hundreds of men and women and children were buried

24 Scene 207. The scenography of the actual film does not exactly follow the shooting script, but the differences do not make a difference for present purposes.

25 Scene 208.



Figure 1. ‘I’ve been showing your father some films and I’d like you to see them too’: *The Stranger*, dir. Orson Welles (RKO, 1946).

alive’—Mary calls attention to the force of the image in her cross-examination: ‘Why do you want me to look at these horrors?’.

The paternal and bookish study of the Supreme Court judge becomes a viewing space and a place of evidential confrontation. How are they related? *The Stranger* provides a response.

The film continually draws attention to the equipment of projection, screening, and the experience of viewing. In the study, there is a projector. It is physically and visually placed beside Mary as she is questioned by Wilson, the War Crimes investigator. The projector provides the background soundtrack to the scenes in the study. Occasionally during the questioning it is bumped by Wilson—a gesture that contributes to the confronting images as much as the verbal cross-examination—and Mary jumps in fright. Similarly, when the reel has finished whirring, she is startled by the clack-clack of an untethered celluloid reel going round and round. The projector is productive: it is not so much what is shown, but how the film is shown, that generates the shock of the images and the subjectification of their spectators.

The procedure of confrontation is not only conditioned by the apparatus of projection; the projector itself also functions as a continual reminder that

what we are viewing is a film-within-the-film: *Nazi Concentration Camps* is replayed within *The Stranger*. This cinematic device gets much of its tenor from a long tradition of aesthetics. Here it works through the Shakespearean topos of ‘the play’s the thing/Wherein I’ll catch the conscience of the king.’²⁶ Within this tradition, the viewing space is related to a place of evidential confrontation, through the device of the film-within-the-film.²⁷ What comes into view for the jurist viewing *The Stranger* is not only how images become film, but also how legal evidence become a visual-technical regime of legal proof.

In *The Stranger*, we have concentrated on the conduct and form of what happens and what is shown in the study. For international criminal law, however, the visual technical regime shown by *The Stranger* takes place in courtrooms, at the IMT in Nuremberg. As we go on to describe in the next section, the architecture of the courtroom is refashioned in such a way as to turn the viewing space of the court into a cinema in which the primary dispositive is the screen. The effects of this turn towards the screen are significant: an alteration of the modes of judicial authority and of the process of subjectification that attends the procedures through which films are shown as evidence of atrocity.

SCREENS IN A COURTROOM

‘There is an evolving, ever-changing, many-faceted order that binds everything into harmonious parts of the greater whole. Sometimes, the pervading order is violated.’

Dan Kiley²⁸

As strange as it may seem, not only does the normative jurisprudence of international criminal law overlook the trial as the central juridical institution, it also tends to ignore that trials take place in courts and specifically within courtrooms. What happens, then, when film enters the scene and the trial chamber becomes both a set and a cinema?

26 *Hamlet*, Act II, Scene II, lines 581-82, in which Hamlet speaks as if to an audience to prepare them for the play he will stage within the Shakespearean play.

27 The double structure of remediation is productive in the context of law and film in refashioning aesthetic modes for legal procedures. *Hamlet* stages a play-within-the-play. *The Stranger* uses the film-within-the-film. Both partake of what Jay David Boulter and Richard Grusin characterise as ‘remediation’, a term they use to capture the process of refashioning which attends new visual media in the digital era. See JD Boulter & R Grusin, *Remediation: Understanding New Media* (MIT Press, 2000). Their argument is pitched against a presumed modernist cult of ‘the new’, so that we are to understand digitalisation as not so much a break with old forms of media but as a replaying of old modes within new spaces of mediation.

28 D Kiley & J Armjdon, *Dan Kiley: The Complete Works of America’s Master Landscape Architect* (Bullfinch Press, 1999) 8.

In May 1945, at about the same time as Welles was at a UN Conference on International Organisation in San Francisco (as a correspondent and discussion moderator) at which newsreels of the camps were shown,²⁹ the US Office of Strategic Services was asked to assist with building a place in which the case for the US prosecution at the trial could be conducted. Its Presentation Branch had been providing design services for the US War Department. Dan Urban Kiley, at the behest of Eero Saarinen, was drafted in to lead the design team.

At the time, Kiley was working for the US Army Corps of Engineers in Fort Belvoir.³⁰ After the war, he was to become one of the leading modernist landscape architects of the post-war American era. Much of his early work was done with Saarinen, including the iconic Miller Gardens in Columbus, Indiana. Kiley's work was classical in inheritance. However the modernist strand in his work inheres in the insistence on making his designs bleed across classically constituted divisions of space. Marc Treib characterises it as a practice of 'slippage'.³¹ Kiley remarks, significantly for our understanding of courtroom design: 'Man has always made more or less straight lines. I've tried to make the spaces unfold, one into the other, like a walk in nature.'³²

The US wanted a trial of the Nazi leaders in order to tell a story of what happened and to re-establish as well as pay tribute to the order of law. Kiley's initial task was to recommend places where it would take place. The Nuremberg Opera House was mooted. It would stage the trial, Kiley remarked, 'in a very dramatic and thrilling way'.³³ However, as we now know, the *mise-en-scène* would be Courtroom 600 in the Palace of Justice at Nuremberg.

Courtroom 600 had a traditional design. This created problems for the tasks Kiley was given. His redesign had to keep in mind two specific procedural elements of the conduct of this particular trial. One was the audio-visual: in

29 See O Welles, 'Orson Welles Today', *New York Post*, 7 May 1945. His final column for the *New York Post* was written as he was making *The Stranger*.

30 D Kiley, 'Architect of Palace of Justice Renovations', in B Stave & M Palmer with L Frank (eds), *Witnesses to Nuremberg: An Oral History of American Participants in the War Crimes Trials* (Twayne Publishers, 1998) 17.

31 M Treib, 'Dan Kiley and Classical Modernism: Mies in Leaf' 24 *Landscape Journal* (2005) 1, 5.

32 T Bamberger, 'How We've Abandoned Dan Kiley', 16 January 2014, available at <http://urbanmilwaukee.com/2014/01/16/in-public-how-we've-abandoned-dan-kiley> (last visited 10 June 2017).

33 Dan Kiley, quoted in B Katz, 'The Arts of War: "Visual Presentation" and National Intelligence' 12 *Design Issues* (1996) 3, 17. Wagner's opera house in Bayreuth, it can be noted, has been the model for contemporary cinemas, especially the arrangement of the seating so as to provide each person in each individual seat a clear and uninterrupted line of sight of the screen. Its other innovation is the recessed orchestra pit.

addition to providing for the system of simultaneous interpretation,³⁴ the proceedings would be recorded on film. The courtroom would become the set for the film of the trial. It is nevertheless the second element of the trial procedure to which we want to draw attention: the design of the courtroom had to take account of the fact that, as Kiley put it, the trial would 'show charts and movies of atrocities'.³⁵ Lawrence Douglas notes that the International Military Tribunal trial at Nuremberg was the first trial at which films of atrocities were shown as evidence: there is something unprecedented at Nuremberg about the use of graphic film of atrocities as proof of criminal wrongdoing.³⁶ Yet showing a film in court requires a specific form of life, indeed a specific form of legal life. Beyond questions of historical appointment, evidence and proof, what ensues is a transformation of courtroom spaces with an allied refashioning of judicial authority and subjectification.

The fact that film is part of the everyday life of this courtroom is registered in the furnishings and the various additional features that had to be incorporated into the design of Courtroom 600. Projection rooms had to be fitted, apertures inserted high on the walls for a camera to protrude and record, sound control introduced, tripods and camera operators made available. Kiley even purloined plush red seats from a nearby cinema in ruined Nuremberg.³⁷ In addition, a screen had to be set up as a surface onto which to project the images which would become the visual evidence.

Where then to put the screen? Courtroom 600 had been a typical and traditional courtroom before the arrival of the Allies: it placed the judiciary at the front of the courtroom on elevated benches with ornate dark wood and

34 Simultaneous interpretation was invented for the Nuremberg trial. See the demonstration video of the Nuremberg IBM system: Robert H Jackson Center, 'Nuremberg IBM System', 21 February 2009, available at www.youtube.com/watch?v=564W493M7eU (last accessed 19 October 2017). It was designed by the US Military and implemented at the direction of Justice Jackson. On matters of law and sonic technology, see J Parker, 'The Soundscape of Justice' 20 *Griffith Law Review* (2011) 962, especially 979-83.

35 Kiley (1998) 17.

36 L Douglas, 'Film as Witness: Screening *Nazi Concentration Camps* before the Nuremberg Tribunal' 105 *Yale Law Journal* (1995) 449. The focus of the analysis is 'the film's principal constitutive elements—the images and its narration'. Ibid 473. A number of caveats are made to the claim that showing film in trials was unprecedented. First, Douglas notes that photographs had been shown as evidence. Relatedly, we would add that there is a long history in the common law tradition of constructing the truth status of photographs on analogy with documentary evidence which was itself constructed on analogy with oral testimony. In large part, photographs were illustrative. Second, Douglas notes further that films had been used earlier as part of international proceedings but not in trials. And finally, the emphasis is on the crisis of representation in relation to the representation of *atrocities*.

37 Kiley (1998) 20.

panelling. They thus occupied the vanishing point of classical perspective, and all other participants in the procedure were distributed in relation to the elevated authority of the judge. The judge in court had an invisible yet palpable presence by virtue of the genealogy and hierarchy inscribed in the design of the courtroom. This is news to few. The IMT trial was different. Kiley's initial move was to redesign the courtroom and redistribute legal spaces and official personnel within it. He placed the judiciary to one side to make way for a space and surface on which to project the films and other visual evidence such as diagrams and charts. As Telford Taylor, one of the Nuremberg prosecutors, later describes it, the floor at 'the back of the courtroom' was elevated by three steps from the well of the court. 'The wall beyond had a door to the left for the interpreters, and another at the right for the Tribunal. Between was a large blank wall space for display of charts and films.'³⁸

Looking from the public gallery, the prosecution tables are lined up in rows in front of the gallery with each of the Allied teams facing towards a large blank wall space at the other end of the courtroom. The defendants and their lawyers are placed to the left; the judiciary and their secretariat are despatched to the right, facing the defendants as if the primary confrontation is between defendants and judges. And looking straight ahead between judiciary and defendants, is Taylor's large 'blank' wall space.

But the wall is not 'blank.' A screen is placed upon it. It is white, as is the practice of modern screen projection that has to take into account the quality of light both from the images projected, and the ambient light in the courtroom. It's a white screen that takes centre stage (see Figure 2). A number of effects can be noted. First, the placement of the screen displaces the judges from their traditional position of authority. With the redesign of Courtroom 600, the place of judicial authority is put to one side. The films shown become authoritative evidence, by virtue of their palimpsestic relation to the authoritative position of the judiciary in traditional courtroom design: the screen takes over the place where the judge will have been. And, in a sense, the judges become one amongst other spectators. A second effect is that the assembled audience is held to watch what will unfold on the screen. The audience is juridically constituted as spectators, moviegoers. The issue of proof thus becomes one of identification— whether of the defendants, the lawyers, the

38 See T Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (Knopf, 1992) 228-29. A more extensive description of the layout is provided from 224-29. See also the archival photos of the courtroom space, especially the frontispiece (showing the layout of the courtroom and the large blank wall space) and a single photo (on the seventh page of a series of photos following page 130) of the judicial bench with the cameras on tripods positioned to the left of the judicial bench in the corner by the judges' entrance door.



Figure 2. Nuremberg Courtroom 600, with projection screen. Photo by Ed Clark © Getty Images.

judges, the members of the public gallery.³⁹ That is, the central question of proof becomes whether we—the audience, the spectator—turn away from the screen and its images, or are transfixed, held by them. The screen becomes a site of fantasy, and all the more powerful and no less truthful for all that. It is in this way that the discourse of ‘horror’ and ‘shock’ at Nuremberg can be understood and given a place.

When *Nazi Concentration Camps* was shown on 29 November 1945 (the eighth day of the trial), the courtroom is darkened with the chandelier overhead dimmed and casting a glow on the defendants, the reels whir, and the (fixed) camera recording the trial pans from the defendants on the left to the white screen. The courtroom becomes a cinema. As with *The Stranger*, we are viewing a film within a film: film screening is a feature within the courtroom at the same time as it is itself recorded on film. And again, as with *The Stranger*, the projection of a film on the screen is a key feature of an evidential procedure through which to confront the viewer of the film within the film. As Mary will have

39 We could add the viewers of the subsequent trial recording, as well as the viewers of the films shown as evidence. An exception would be the interpreters, who are placed in the courtroom in such a way that they can see the participants in the trial speaking. The interpreters watch the mouths of the speakers in the well of the court.

asked her interrogators: ‘Why do you want me to look at these horrors?’ During the showing of *Nazi Concentration Camps* in the courtroom, Gustave Gilbert, a psychologist, will have watched and recorded in minute detail the facial and other bodily gestures of the defendants.⁴⁰ Cinema is an art of gesture: the bodily comportment of the spectators registers the trauma of identification which conditions narratives of atrocity in international criminal trials.

What we have assayed here with the Nuremberg trial, as much as with *The Stranger*, is to show the ways in which it is cinematography, rather than film per se, that inaugurates relations of law and image in international criminal justice. Within this lawful cinema, trial participants become spectators; the screen becomes the place of authority onto which images are projected as a film; and viewers are subjectified before the films of atrocity and criminal plans of aggression. It is this configuration of the juridical, the architectural and the cinematic that turns evidence and proof into the procedures of confrontation and its various modes of turning to and away from the moving images and their montage.⁴¹

We think this mode of proceeding pertains even in the somewhat more complex situation at the Extraordinary Chambers in the Courts of Cambodia (ECCC).

Clearly, some 60 years later, the arts of technical reproducibility have become much more dispersed. An agreement on the establishment of a special chamber for the prosecution of senior leaders and those most responsible for the crimes committed during the Khmer Rouge period was signed in 2003 between the Cambodian government and the United Nations. One of the pre-conditions for a trial on the part of the Cambodian negotiators had been that the trials were to be held in situ, in proximity to those directly affected by the crimes. When the work to create a space for the ECCC was underway, attention initially turned to the Chaktomuk Hall in central Phnom Penh. This building, designed by Vann Molyvann in 1961 in a combination of traditional Khmer design and European modernism, has over the years been the place for a number of spectacular events. In 1979 it hosted the trial of Pol Pot and Ieng Sary,⁴² and, in 2003, the ceremony at which the agreement establishing the

40 See GS Gilbert, *Nuremberg Diary* (Da Capo Press, 1995) 45–46. For a compelling account of Gilbert’s phenomenology of the agonistic relation between the showing of the film and the defendants watching the film, see Hartouni (2012) 105–10.

41 This is not a response to screening film that is limited to the IMT at Nuremberg. The courtroom design and placement of the screen, as well as its redistribution of official spaces within the courtroom, are also used in the International Military Tribunal for the Far East (or Tokyo War Crimes Trial). See PD Rush, ‘Architecture and Criminal Justice in Japan’ (forthcoming 2018).

42 On the repetition of allegations of ‘show’ from this 1979 trial in the present ECCC trials, see R Hughes, ‘Ordinary Theatre and Extraordinary Law at the Khmer Rouge Tribunal’ 33 *Environment and Planning D: Society and Space* (2015) 714.

ECCC was signed. When the chambers instead had to be located on the outskirts of Phnom Penh and in a former military headquarters, an auditorium was redesigned not only to hold the legal process but also to stage it for an audience.

The courtroom at the ECCC is cleaved in two by a partition composed of a concave window screen framed by wood.⁴³ On one side is the public gallery; on the other is the ‘courtroom proper’. This separation is familiar to us now. At least on the horizontal plane, there are two points vying for authority: either the judicial bench or the serried rows of the public gallery in which sits the Cambodian general public with its significant proportion of self-identified victims.⁴⁴ Each occupies the apex of a perspectival space—they look at each other.

But this arrangement of sightlines is complicated by the numerous screens on which the evidence is shown—not only the small computer screens in front of each legal official, but also on the wood surrounding the transparent partition (for the public gallery). Screens are everywhere (see Figure 3), except in the hands of the spectators, as mobile phones are not permitted inside. The showing of film—as evidence, as testimony—is in this way no longer centred through the cinematic screen that we encountered at Nuremberg; rather the perspectives are dispersed, and the viewing distributed across individualised spaces. In addition, the audience in the public gallery listen (with or without headphones) and see what is going on on the other side of the window that separates the gallery from the chamber proper. The audience sees through a range of screens—either the window, or one of the large screens suspended below the window. Documents, photographs, films and witnesses giving oral testimony are displayed on the small and large digital screens. As at Nuremberg, all participants are held in thrall to the screen. Yet at the ECCC, spectators are, at the same time, homogeneous and heterogeneous: on the one hand, a uniform collectivity sitting together, and on the other hand, a collectivity that is differentiated as individuals by virtue of their relation to personal screens.

As we have shown, it is *not film per se* that alters the conduct and character of international criminal law, but rather the material conditions and technical apparatuses of showing film: projection, screen, and cinema shape procedure, trial, and courtroom. It is only in these conditions, with these apparatuses, that

43 Depending on which side of the partition one is sitting, the window screen is either concave or convex.

44 A population study published in 2009 found that 90 per cent of the population born before 1979, and just over half of those who were born since, consider themselves ‘victims’ of the Khmer Rouge regime. P Pham et al., *So We Will Never Forget: A Population-Based Survey of Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia* (Human Rights Center, University of California, 2009) 2.



Figure 3. Witness testimony with screens at the ECCC. Photo by ECCC/Neth Sok Heng.

film and its images can become formulated as evidence, an index of atrocity and criminal wrongdoing for the trial. Images take place on screen and the places of the screen within the courtroom create the subjective experience of spectatorship—participants come to see themselves in relation to the allegorical gaze of images on screens. Images in place constitute international criminal law as a montage.

REMEDICATION: FILM AS MEMORY

If this article has so far displaced film as the object of study, and done so by refocusing the jurist's gaze on media-technical conditions that make relations between image and law legible, then in the remainder of this article we turn to the memory of crime in the rhetoric of film. What remains is the legibility of the image, its recognisability. It is this issue that our next films—*Calling the Ghosts* and *The Missing Picture*—directly address.⁴⁵ Albeit of different genres and for different intended audiences, both films situate their accounts of witnessing in

45 *Calling the Ghosts*, dir. M Jacobson & K Jelincic (1996); *The Missing Picture*, dir. Rithy Panh (2013).

relation to film and its interruption in the aftermath of atrocity. *Calling the Ghosts* represents and enacts the memory of crime in relation to the emergence of the ICTY. Here the remembrance of traumatic events—the detail and the shock—is framed in terms of the collection of testimonies and what remains of the witness before the evidential procedures of the court. *The Missing Picture*, while contemporaneous with the ECCC, enacts the memory of crime in a situation where film and memory are inextricably interrupted. In this instance, the framing is conducted in terms of relations between the destruction of memories, their substitution by the propaganda films of the Khmer Rouge, and the inheritance of the image in the autobiography of the film-maker and the viewer of his film. *The Missing Picture* is the filmic inscription of a dialectic of disappearance and re-appearance. The two films can be read as a continuation and disruption of the genre of film-within-the-film that we encountered above.

In both our examples, the medium of film becomes a *lieu de memoire*, a veritable scenography of testimony and witnessing. *Calling the Ghosts* is shot on the eve of the ICTY's first case (*Tadić*), and follows two women's memory of the preceding three years. Jadranka Cigelj and Nusreta Sivac are two survivors of the notorious Omarska camp in Prijedor. From the outset, their story inscribes a question of memory and film. Before the title sequence, Jadranka Cigelj is shown in a series of slow moving close-ups, hands to face, all the while accompanied by the melancholic piano and cello of the soundtrack. The first words of the film are hers:

In the beginning, I had the reruns of my own film ... There was a period of self-questioning before me. To stay silent or to speak ... *If I stay silent*, how moral would that be? When I remember the night I was taken out ... my own broken bones start to hurt. *If I speak*, how good is that for me? I would actually have to expose myself.

The film title appears on screen. Nusreta Sivac continues the narration after the film title disappears; speaking of the seizure of power in Prijedor by the Serbs, she says:

I simply didn't realise what was going on. I was in shock. Is such a thing still possible in this century? People taken to camps, I thought that was the past, something that I used to watch in the movies.

The predicament of witnessing is reframed as a spectatorial relation between film and memory. What both the film and the women struggle with is the memory of ethnic cleansing and displacement, detention and death, and specifically crimes of sexual violence committed against them and other women while in Omarska. This is the predicament of testimony: what to put in, what to

leave out, *how to hold on to the silence* while narrating the events. The film represents the women's enactment of this struggle. Jadranka Cigelj remarks: 'In order to expose the crime, you violate the witness.' The women become involved in taking depositions from people who passed through the Croatian Information Centre; they participate in a survivor group with other women who were from the camp. The group tries to talk about other things but find themselves continually returning to their experience of the camp. Some ironically note—when they were in the camp, they didn't talk to each other about what was happening to them.

The Missing Picture is also structured in terms of the testimonial relation between film and memory. Here, it is an image—not quite a picture—that is not simply lost, not quite missing, but one which Rithy Panh, the writer and director, recounts as an experience of a fundamental lack. The original French title is *L'image Manquante*. Again, the predicament of testimony is how to formulate an image of atrocity when the pictures have been destroyed; *how to make legible in film the disappearance* of images. In place of footage representing his family and his experiences during the Khmer Rouge, Rithy Panh resorts to clay figurines sculpted by the artist Sarith Mang. In contrast to the absent family photos, there is an over-abundance of film produced under the auspices of the Khmer Rouge regime, which *The Missing Picture* embeds in its narration. Or to put it in the words of Rithy Panh, 'we understand the Khmer Rouge by watching their footage. Pol Pot forges a reality conformant with his desire. Even nature must conform.' Juxtaposed with this approach, Rithy Panh constructs the tableaux vivants and the clay figures through which to film the missing pictures. More 'still life' than 'nature morte' (see Figure 4).

Film is not only a narrative representation of atrocity that can be and often is presented in the courtroom as evidence, a cinematic version of convicting the accused with their own words. We have seen this before: it is a crucial effect of the projection of film and its procedure of confrontation at Nuremberg, as well as of the role that *The Stranger* gives to the film-within-the-film. Film is also the propaganda, the promoted narrative of a regime. In *The Missing Picture*, it is the Khmer Rouge's propaganda films that remain. For the narrative representation of atrocity, *The Missing Picture* turns to tableaux vivants and clay figurines that enact the loss of parents, brother, childhood, urban spaces, the episodes of a life that is both political and biographical.⁴⁶

46 It is possible to read this resort to the clay figurine and other features of the film as drawing on the tradition of Georges Méliès rather than that which descends from the Lumière brothers. The tableaux vivants and clay figurines work as a kind of pre-photographic image after the era of the photograph and its celluloid and digital extensions in motion pictures.



Figure 4. Clay figurines in front of Khmer Rouge news reel: Rithy Panh's *Missing Picture*.

If both films begin with the imbrication of memory and film in the aftermath of atrocity, they end with a question of *inheritance and responsibility*. The closing words of *The Missing Picture* are:

Of course I haven't found the missing picture. I looked for it. In vain. The political film should unearth what it invented. And so, I make this picture. I look at it, I cherish it. I hold it in my hand like a beloved face. This missing picture, I now hand over to you, so that it never cease to seek us out.

A similar call to inheritance and responsibility closes *Calling the Ghosts*. Jadranka Cigelj and Nusreta Sivic are driving to Den Haag, The Hague, that city of international law, for the opening of the court and the trial of Tadić. Along the way they stop and inspect a carousel of tourist postcards. The voice-over presents Jadranka Cigelj speaking:

While I was on my way to Holland, I thought it wouldn't be a bad idea to send a postcard—that's the only thing I can do—to Prijedor, my town, to the court where I worked until the war broke out . . . and very nicely just say hello to them, to my former friends. Remind them of what awaits those who violate international law.

The movie cuts away to Richard Goldstone speaking at the indictment of Tadić, before returning to the women. There follows a close up of a hand writing on the back of a postcard and Jadranka Cigelj reading out what has been written:

Dear Colleagues . . . Zika, Drasko, Milenko, Slavko, and the rest.
We hope that you will join us shortly in this lovely city.
Your colleagues
Den Haag.

The two women laugh. Gently. The cards are posted.⁴⁷

One of the striking dimensions of both films is the speed with which they proceed. They work in slow motion. In a sense this is the time of both film and of memory. The narrative unfolds episodically, while the enactment of filmic memory unfurls through montage. In *Calling the Ghosts* the smoke of their cigarettes hang in the air, as the women gather to talk about their memories of Omarska and sing plaintive songs. Throughout, the downbeats of a cello provide, with some exceptions, the sonic tempo of the narrative. The close up of hands cradling a clay figurine as it etches the contour of a cheek or paints a black uniform returns again and again throughout *The Missing Picture*. In fact, the tableaux vivants are crafted and filmed as if what is being captured is life at a standstill. And the movie itself is presented in the form of episodes, told in anecdotes in montage. We see the episode of the happy family, a brother singing, and poetry at the dinner table. ‘I remember how sweet life was. Then came the war.’ The death and burial of Rithy Panh’s father is presented as a ‘funeral in words’. There is the scene of the trial of a mother when her child denounces her crime to the local cadre; the anecdote of the starving child who steals corn and is caught by the leader; the episode of the ‘public projection’; the episode of the death of his mother and the anecdote of fishing (‘I wish to be rid of this picture of hunger and suffering so I show it to you’); at the end, two tableaux vivants are intercut with each other: an analytic session, and the unearthing of bodies in a

47 In a postscript, *Calling the Ghost* recalls that the first scheduled witness from Omarska alleging rape had withdrawn her testimony in fear for her safety; and that at the time of the film none of those who had been indicted with war crimes had been apprehended. The film also includes a report by Jadranka Cigelj of her rape and sexual assault in the camp by Zeljko Mejakić. Mejakić was the Chief of Security and de facto Camp Commander in charge of the Omarska camp between May and August 1992. Some seven years after the release of the film, Mejakić surrendered in 2003 in Serbia and Montenegro and was transferred to the ICTY: see *Prosecutor v Mejakić*, ICTY, available at www.icty.org/case/mejagic/4 (last visited 19 October 2017). After the indictments for the Keraterm and Omarska camps in Prijedor, Bosnia and Herzegovina, were consolidated, the ICTY transferred his case to the authorities for the State of Bosnia and Herzegovina: see *X-KRŽ-06/200 Mejakić Željko and others*, Court of Bosnia and Herzegovina, available at www.sudbih.gov.ba/predmet/2440/show (last accessed 1 May 2018). While in prison, in 2013 he was a defence witness in the case against Radovan Karadžić.

village. And dotted throughout is the black and white archival footage, as well as the return of a coloured and moving image of waves washing over the film, the camera.

For both films, the time of atrocity is measured by the meditative, the episodic, and the anecdotal. It is difficult to relate this slow movement of re-enactment, with the time of international criminal law. International criminal law conducts itself in the mode of urgency—the need to act *now*, the demand that something must be done and done now. This is the time of politics as policy. Yet, inside the chambers, time proceeds slowly, allowing for the multiplicity of translation. At the courts and tribunals these two speeds become a metrics of efficiency in trying to balance the demands for speed with fairness. There is the consistent refrain of a need to wrap up, to mark an end, to bring it to a close, to have an end to impunity as much as to all this talk of suffering, to have the final word. Almost as if we have forgotten the urgent demand *with which the enterprise began, the need to represent the judgment of law as much as the need to register the incomprehensible.*

Rithy Panh says: ‘Mourning is difficult. There is no end to the burial.’ A figurine is buried in brown earth, uncovered, then covered again, uncovered and recovered, then the mound forms and the water comes in. Silence. Waves.

SURCEASE AND PALIMPSEST

‘The camera is getting smaller and smaller, ever ready to capture fleeting and secret images whose shock effect paralyzes the associative mechanisms of the beholder.’

Walter Benjamin⁴⁸

In *Calling the Ghosts*, Jadranka Cigelj remarks a border that is crossed by the apparatus of testimony: ‘In order to expose the crime, you violate the witness.’ In *The Missing Picture* the mournful narrator explains: ‘I wish to be rid of this picture of hunger and suffering so I show it to you’. Relations of law and image are inherited as an obligation: ‘This missing picture, I now hand over to you so that it never cease to seek us out.’

There is a long history to the relations of law and film that jurists carry, repeat, and repress. As part of that history, film has come to be a central and proliferating resource of the discourses and institutions of international criminal justice. In this essay, the effort to understand relations of law and film has

48 W Benjamin, ‘Little History of Photography’, in *The Work of Art in the Age of Its Technological Reproducibility, and Other Writings on Media*, eds MW Jennings, B Doherty & TY Levin, trans. E Jephcott et al. (Harvard UP, 2008) 274, 294.

been, for us, both jurisprudential and cinematographic. Beyond all storytelling, we have presented relations as a matter of procedure. Procedure concerns the craft and apparatus—an ensemble of material techniques—through which law comes to conduct itself lawfully and film comes to show itself in images. But what we have witnessed in international criminal justice is an enfolding of lawful procedures which present images of law in terms of trial evidence and a cinema apparatus which presents images of atrocity in terms of witnessing. The writing of law becomes cinematic and the writing of film becomes juridical. What account of international criminal justice and film could inscribe such plural relations? Our concern has been with the legibility of the apparatus of the image in the form and conduct of international criminal law's responses to the event of atrocity.

Before we end, consider then one last example, from the annals of jurisprudence. Lawrence Weschler finds himself at the ICTY tracing the official experience of its first trial.⁴⁹ He is intrigued by how the legal officials—and specifically the President of the Tribunal, Antonio Cassese—endure the stories of atrocity and trauma that are part of their daily examinations of evidence and proof. Over lunch, Cassese tells Weschler that to find refuge from the 'gruesome stories' told in the war crimes trials, he visits the Mauritshuis and looks at the paintings of Vermeer, especially the *Girl with the Pearl Earring* (circa 1665). This 'overexposed and now depleted image' provides relief. As Weschler writes, Cassese 'flees to Vermeer to find surcease.'⁵⁰ If this provides Cassese with a sense of stillness by turning away from the daily dealings with atrocity, Weschler gently notes that Vermeer himself was turning away from the conflicts of his time—the Thirty Years War, the religious wars and fighting faiths of the 17th century. It was within this context of atrocity that he presented paintings that conjure up a peacefulness and serenity.

In Weschler's nuanced story of *Vermeer in Bosnia*, every character is in a constant mode of turning. Cassese the president, Vermeer the painter, and the girl painted. In fact, everybody turns, but whether they turn away or towards that which is in front of them cannot be decided. Even us viewers 'tarrying before the image for a few, breath in-held moments ... would be the ones eventually turning away.'⁵¹

And then Weschler turns to Tadić. As Weschler sits in court during the preliminary hearing in the proceedings against Tadić before the ICTY, he finds himself captured by an image on a TV monitor. Here:

49 L Weschler, *Vermeer in Bosnia: Selected Writings* (Vintage, 2005).

50 Ibid 19, 21.

51 Ibid 20.

Tadić is seated in a sort of aquarium of bulletproof glass, a panoply of high tech gadgetry arrayed all around him and around the various lawyers and judges: instantaneous translation devices, video cameras, and monitors, computerized evidence screens, and so forth.⁵²

Then, for a 'split second', the defendant is caught on camera. Turning, he appears on the monitor which Weschler views. This image of Tadić is frozen in a posture which mirrors the posture of the *Girl with the Pearl Earring* in Vermeer's painting. They are held together, one with the other. One is the palimpsest of the other, and both are turning in relation to the viewer. Thus, faced with the 'invented peace' with its aquarium, Weschler finds himself 'thinking of Vermeer'.⁵³

Weschler is alive to the proliferation of technology that makes possible both the film record of Tadić on trial and the camera obscura of Vermeer's painting. Yet what is missing from this drama of intersubjectivity is the mediation of the apparatus of film. You think you are watching a war crimes trial but you are seeing Vermeer; you think you are reading Weschler's account of the Tadić proceedings when Weschler is in thrall to the 'split second' image of Tadić turning and facing the monitor. And what punctuates the scene and holds the viewer in place is not so much the visual record of the trial, as the apparatus that makes the palimpsest legible—the tv monitor, the sequencing of images displayed on its screen, and the camera zooming in for a close-up of Tadić's face. 'For a startling split second', Weschler muses, Tadić 'looked up at the camera. And then he looked away.'⁵⁴ Both Tadić and Weschler look away from the apparatus of film and break the drama of intersubjectivity.

The performance of law is beset by a comparable dynamic. In the *Prelude to his Vermeer in Bosnia* triptych, Weschler draws attention to the broken promises of identification that international criminal law has narrated and the 'decades-long, at times maddening, halting, vexed and compromised effort to expand the territory of law itself.'⁵⁵ The return to film in the contemporary jurisprudence of international criminal law is caught up in the same effort to expand the territory of law. To that extent, the apparatus through which the procedures of international criminal law become lawful remain unacknowledged, misrecognised if nevertheless legible as cinematic.

52 Ibid 24.

53 Ibid.

54 Ibid 25.

55 Ibid 11.

Our examples of relations between law and film have brought the technical apparatus and craft of both jurisography and cinematography to the fore only to notice that cinema stands in for trial, film stands in for image, evidence stands in for subjectification and its confrontations, Vermeer underwrites the war crimes trial, *Girl with the Pearl Earring* overlays the still image of Tadić. With all these palimpsests and more, we have staged our story of law and film not so much as a disciplinary battlefield, or even a skirmish among forms of critique. We have been content instead to recall the material conditions through which law and film encounter each other on what Weschler describes as the expanding ‘territory of law itself’. Procedures of law and cinemas of the image have been worked through.