

SYMPOSIUM ON INTERNATIONAL CRIMINAL LAW'S CRITICAL AFTERMATHS

ABOLITIONIST GEOGRAPHY: DISRUPTING ICL THROUGH PRO-PALESTINE
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The invitation to consider the “critical aftermath” of international criminal law (ICL) and “what happens next?” raises, for us, the suggestion of a new possibility emerging from the ruins—not only the ruins of atrocity, but also of law’s response to atrocity. Yet ICL, we suggest, is lying in wait: it remains a powerful and violent actor, poised to activate and reinforce the prominence and monopoly of carceral justice, even out of the ruins. To counteract the dominance of carceral justice, we suggest learning from the tradition of abolition geography. By this we mean engaging in an act of “reconstruction place-making,”¹ whereby we mix our labor with the world and (re)make the world by bending the “narrative arc” toward freedom.² More specifically, we seek to embrace an abolitionist geography by offering a conception of countercultural visions of justice, drawing from a vignette of the worldwide movement of university encampments for Palestine. With this, we contribute to deepening reflections on a counterculture of international justice rooted in epistemologies of Black feminist and abolitionist praxis.³

Where to Begin: “Wake Work” and Abolitionist Placemaking

Our writing exists “in the wake”⁴ of atrocities that render certain racialized people and communities as *excludable* and/or *extractable*. We adopt the idea of people as “excludable” from Christina Sharpe, who writes on Black exclusion “from social, political, and cultural belonging; our abjection from the realm of the human.”⁵ Ultimately, exclusion manifests as a “group differentiated vulnerability to premature death.”⁶ The Palestinian struggle remains a paradigm for this type of exclusion. Palestinian life “in the wake” means being “the flesh . . . the bodies, to which anything and everything can be and is done.”⁷ Yet responding to these atrocities with ICL—“a carceral system, which responds to mass atrocities by holding some individuals criminally responsible for these events and then,

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¹ RUTH WILSON GILMORE, [ABOLITION GEOGRAPHY: ESSAYS TOWARDS LIBERATION](#) 481 (2022).

² *Id.* at 490.

³ Valentina Azarova et al., [Towards a Counterculture of International Justice](#), 22 J. INT’L CRIM. JUST. 403 (2024).

⁴ CHRISTINA SHARPE, [IN THE WAKE](#) (2016).

⁵ *Id.* at 14.

⁶ GILMORE, *supra* note 1, at 472.

⁷ SHARPE, *supra* note 4, at 16.

generally, imprisoning those individuals”⁸—is to respond with making individuals “extractable.” Through imprisonment, individuals are extracted from communities, and in turn have their “resource of life—time” extracted from them.⁹ This extraction via the carceral system of imprisonment is also fundamentally linked to structures of exclusion and premature death. Such carceral institutions are not a neutral response to crime but are firmly interwoven in neoliberal governance tactics that seek to manage vulnerable communities rather than meet their needs.¹⁰

The ICL project risks further exclusion and extraction of Palestinian people already vulnerable to death from settler-colonialism and militarism. ICL not only permits settler colonialism; it then also disproportionately criminalizes those already vulnerable through a carceral system that deploys selective impunity along racialized lines.¹¹ This exclusion sits within a progressive narrative arc of ICL, which involves a well-rehearsed “accepted history”:¹² a “moment” at Nuremberg, inertia during the Cold War, rapid acceleration and development in the 1990s, and finally the fortification of ICL’s claim to be the “legitimate hand of justice” in response to atrocities.¹³ This fortification has occurred despite a burgeoning field of critique (and now, invitations to consider what happens “after critique”¹⁴ or in the “critical aftermath”). Yet being in “the wake” and engaging in “wake work” invites us to imagine alternatives to this carceral system. As “the wake” is a site of artistic production, resistance, and consciousness, it allows us to offer anti-carceral responses that reduce the hegemonic claims of ICL as the “legitimate hand of justice.”

One way to offer this alternative and to understand such anti-carceralism is by mapping a geography of the times and places where abolitionist approaches and possibilities occur.¹⁵ Ruth Wilson Gilmore engages this method through the prism of abolition geography that reveals the totality of carceral systems by linking multiple sites of carceralism and anti-carceralism: from the First Intifada in Palestine, to the anti-gang injunctions in Oakland, to decolonial education in Guinea-Bissau and Cape Verde. In connecting these spaces, she makes visible the underlying social, economic, and political factors that cause harm and maintain racialized and social inequalities, while proposing alternative systems that promote community well-being and accountability.¹⁶

Following Gilmore, we see abolition as more than (merely) eliminating prisons; it is a deliberate maneuver toward transformative justice. As Mariame Kaba explains it, this transformative justice paradigm focuses on healing, accountability, and restitution over retribution.¹⁷ Thus, for countercultural visions of justice, abolitionism offers frameworks that undermine ICL’s carceral commitment to punitive logic by emphasizing collaborative and non-punitive approaches.¹⁸ By reframing justice in this way, we present abolitionism to ICL as envisioning a society which foregrounds structural violence and prioritizes resolving injustice via accountability, prevention, and restorative practices over punishment.

⁸ Sophie Rigney, *Building an Abolition Movement for International Criminal Law?*, 22 J. INT’L CRIM. JUST. 211, 211 (2024).

⁹ GILMORE, *supra* note 1, at 474.

¹⁰ See ALEX S. VITALE, *THE END OF POLICING* (2017).

¹¹ For more on race, ICL’s selective impunity, and abolitionism, see Rigney, *supra* note 8.

¹² Sarah Nouwen, *Justifying Justice*, in *THE CAMBRIDGE COMPANION TO INTERNATIONAL LAW* 327, 340 (James Crawford & Martti Koskeniemi eds., 2012).

¹³ ANGELA Y. DAVIS ET AL., *ABOLITION. FEMINISM. NOW.* 50 (2022).

¹⁴ Michelle Burgis-Kasthala & Barrie Sanders, *Contemporary International Criminal Law After Critique: Towards Decolonial and Abolitionist (Dis-)Engagement in an Era of Anti-Impunity*, 22 J. INT’L CRIM. JUST., 127 (2024).

¹⁵ See GILMORE, *supra* note 1.

¹⁶ *Id.*

¹⁷ MARIAME KABA, *WE DO THIS ‘TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE* 59 (2021).

¹⁸ See Sophie Rigney, *From Punishment and Extraction, to Healing and Repair: International Criminal Law, Prisons, and the Possibility of Freedom Places*, AUST. FEM. L. J. (forthcoming) (on file with the authors).

An Abolitionist Vignette: University Encampments for Palestine

Despite the desperate urge to shout, I contained my emotions, making my movements subtle, almost stealthy, as if I was awakening a loved one, or picking a flower. I feared, coming off too forceful could discourage those I tried to convince to show up to the solidarity rally, to care. But once their feet came to a comfortable stop, my words were clear, contextualizing the dispossession, colonization, and genocide of the Palestinian people. It felt like being in a real “class of the Middle East”; a class in the open-air, public, no tuition, no violence, no neoliberal nonsense; its only tuition was care, commitment, compassion, *radical love*.¹⁹

This dispatch by Sanan Moradi from the student encampment for Palestine in Oregon—with its articulation of how the encampments “contextualized” the atrocities against Palestine and then engaged with “radical love” to address the situation—exemplifies the ways abolitionism has operated in praxis in these encampments. While the number of encampments is difficult to state with confidence, at least 188 sites of university encampments were established worldwide,²⁰ reaching every continent.²¹ These encampments sit within a longstanding and transcontinental tradition of student-organizing for anti-war, anti-apartheid, and national and international liberation.²² Dispatches from various encampments show how students understood, vernacularized, and activated pro-Palestinian support while exposing the tentacles between settler-colonial violence, the military-industrial complex, and how neoliberal institutions are complicit in the production and trade of arms and fossil fuels.²³

The practices of the encampments show how abolitionism was embodied in these spaces. Those in the encampments engaged in practices including readings, discussions, teach-ins, and unofficial graduation celebrations. The encampments thus became “sites of pedagogy,” specifically “student-led pedagogies of action, protest, disruption and insurgence, love and care, pedagogies of peace and encircling pedagogies.”²⁴ These pedagogies frequently centered on abolitionist thought.²⁵ Just as Gilmore notes the decolonial pedagogy of Amílcar Cabral as an abolitionist example of “reconstruction place-making,”²⁶ the pedagogies of the encampments “articulated possible futures”²⁷ and made visible other forms of justice. The “pedagogies of care” practiced at the encampments also extended beyond typical pedagogical methods. For example, shared meals and resources provided for the needs of all participants.²⁸ In a time of genocide—which has included fundamental attacks on Palestinian culture—encampments practiced (and thus protected) Palestinian culture through communal meals of maqluba and teaching participants how to dance the dabke.²⁹ Similarly, many encampments held shared Shabbat dinners,³⁰

¹⁹ Sanan Moradi, *Intervention — “Fieldnotes from the Palestine Solidarity Encampment: Affect, Resisting Apathy, and What (Else) Can Be Learned from The Matrix,”* ANTIPODE (Aug. 5, 2024) (emphasis in original).

²⁰ *A Global Map of Encampments and Demands*, STUDENTS FOR GAZA (last visited Nov. 13, 2024). However, this is likely a significant underestimate—for example, this count only listed three sites in Australia, but (from the authors’ count) there were at least thirteen university encampments in Australia.

²¹ Matthew Impelli, *Israel Protests Reach Antarctica*, NEWSWEEK (May 1, 2024).

²² Anahid Nersessian, *At the UCLA Encampment*, LONDON REV. BOOKS (May 23, 2024); see also Elliot Dolan-Evans & Giles Fielke, *These Ignorant Students and Their Emancipatory Politics: What Universities Can Learn from the Protests Against the War in Gaza*, ABC (May 20, 2024).

²³ Ananya, *A Re-education: Student Reflections on Campus Protests*, LSE BLOG (Aug. 8, 2024).

²⁴ Jane Kenway & Katie Maher, *Are Student Encampments Sites of Pedagogy and Learning?*, EDURESEARCH MATTERS (May 27, 2024).

²⁵ Amir Marshi, *Liberation Pedagogy at the People’s University for Gaza*, MICH. Q. REV. (Sept. 2024).

²⁶ GILMORE, *supra* note 1, at 483.

²⁷ *Id.*

²⁸ Pedro Mármol & Noor Jurkovic, *We Keep Us Safe*, PUB. BOOKS (Oct. 15, 2024).

²⁹ The SoCal for Palestine Coalition, *Decolonized Worldmaking: Campus Encampments for Civic Engagement*, 130 RADICAL TEACHER 20 (2024).

³⁰ *Id.*

demonstrating that Judaism and Zionism are not necessarily concomitant. Many encampments were run through democratic or consensus decision making.³¹ The experience has been described by one participant as follows:

What remains for us is the beauty that we created within the encampment. We hold on to the lessons learned through the art, food, conversations, and mutual care . . . We learned that belonging to a community meant being hopeful and empowered to work for a collective good, to take risks for justice. We learned that to genuinely belong to a community is to love and be loved.³²

In these ways and others, encampment participants attempted to (re)make the world in ways that bend toward freedom. Participants both imagined, and sought to embody and make real, a world of peace, justice, and decolonization in Palestine.

Drawing on these efforts, we suggest that ICL scholars, activists, and practitioners in a time of “aftermath” should endeavor to understand, critique, theorize, and embrace the abolitionist imagination of the student encampments. While ICL is structured by individualism, selectivity, racialized criminalization, and the exclusion and extraction we discuss above, the student encampments, in contrast, are structured by solidarity and imagination of a better world.³³ We highlight two key aspects of the university encampments: first, their emphasis on the structural causes of the most recent atrocities in Gaza; and second, their calls for financial divestment from military structures. In each of these aspects, the university encampments can be described as abolitionist praxis that serves as an alternative to the carceral commitments of ICL.

Exposing Structural Violence and Settler-Colonialism

As we know from various critiques of ICL, the discipline and its institutions offer a narrow (state-focused, punitive, and carceral) understanding of justice and injustice, which obfuscates the structural causes of atrocities.³⁴ In contrast, abolitionist praxis dislodges itself from an orientation around the state and instead reconfigures around communities. Moreover, it does not just consider the atrocities themselves, but also the conditions that cause them. The encampments demonstrate this: rather than obfuscating the structural causes of atrocities, as ICL does, they have emphasized these causes, specifically militarist capitalism and the ongoing “slow violence” of apartheid and settler-colonialism in Palestine.

For students within these encampments, the genocide in Gaza and the liberation of the Palestinian people resonated with other struggles for justice. Connected struggles that were brought to the fore included movements against excessive police surveillance of Black and Brown people, carcerality and borders, apartheid, global economic inequalities, extraction and exploitation of Indigenous people and their lands, and the military industrial complex. One particular example is the encampment at Wits University (the first encampment in South Africa), which referenced that country’s “own legacy of apartheid” in contextualizing solidarity with Gaza, and in so doing epitomized the possibilities of traversing the temporal and spatial boundaries between struggles past, present, and beyond. Another example includes the emphasis that Australian encampments have placed on the connections between Indigenous justice struggles against the violence of settler-colonialism in Australia and the similar struggle in Palestine.³⁵

³¹ Commons Librarian, *Protest Camps: Tips for Set Up & Strategy*, THE COMMONS: SOCIAL CHANGE LIBRARY (2024).

³² Mármol & Jurkovic, *supra* note 28.

³³ See also Rigney, *supra* note 18.

³⁴ See Rigney, *supra* note 8.

³⁵ Jaala Ozies & Udaya Shanmugam, *Keeping the Fire Burning: Collective Resistance, Sharing Culture, Creating Community and Speaking Truth to Power*, INDIGENOUSX (Sept. 26 2024).

Such collective alternative realities can be juxtaposed with both the stark individualism inherent in carceral practices, and the silence around settler-colonialism evident in the practices of ICL. Consider what has occurred at the International Criminal Court (ICC) with respect to Palestine. In May 2024, the prosecutor of the ICC announced that his office was seeking arrest warrants against leaders of Hamas and officials of the state of Israel for “war crimes and crimes against humanity committed on the territory of Israel and the State of Palestine (in the Gaza strip) from at least 7 October 2023.”³⁶ The charges are partial and emphasize some alleged crimes, while others—including genocide and apartheid—are not included.³⁷ While we are not advocating for *more* charges, the omission of these atrocities shows ICL’s continued preference to focus on the spectacular over the structural.³⁸ Ultimately, the operations of the ICC in the situation of Palestine demonstrate “how international criminal law brings some situations into its remit but delays, denies, and obfuscates other situations.”³⁹ In our view, it is specifically due to the carceral nature of ICL that it fails to address the complexity of settler-colonial violence in Palestine, and the complexity of social relations in the wake of atrocity; ICL’s carceral nature demands a narrative consistent with the accountability of a particular individual, and therefore the broader context falls from view.

*“Disclose! Divest! We Will Not Stop; We Will Not Rest”*⁴⁰

Encampments have not typically emphasized appeals to ICL as a key demand.⁴¹ Instead, the focus of encampments has been to embrace the Boycott, Divestment, and Sanctions (BDS) campaign, which has gained traction since 2005 “as a form of non-violent pressure on Israel.”⁴² Similar to the anti-apartheid boycott movement against apartheid South Africa, the BDS movement uses the tools of withdrawing funds, support, and legitimacy from the state of Israel. In this vein, many of the encampments have demanded their own universities disclose and divest from relationships with Israel and from military companies.⁴³ As articulated by the encampments in Australia, students are “deeply disturbed by the partnerships that many of our universities hold with weapons companies,”⁴⁴ and they hold a vision of universities as “institutions of education and learning” rather than as an extension of “the weapons industry that brings death and destruction to our world.”⁴⁵

³⁶ See Statement, ICC Prosecutor Karim A.A. Khan, *Applications for Arrest Warrants in the Situation in the State of Palestine*, INT’L CRIM. CT. (May 20, 2024). The arrest warrants were issued more than five months later, in November 2024.

³⁷ Sophie Rigney, *Transformative Justice – Abolition and International Criminal Law*, OPINIO JURIS (Sept. 11, 2024).

³⁸ See Michelle Burgis-Kasthala & Barrie Sander, *Carceral Internationalism in the Situation of Palestine After Critique*, OPINIO JURIS (Sept. 9, 2024).

³⁹ Rigney, *supra* note 37.

⁴⁰ This became a common chant at university encampments, calling for university administrators to disclose and divest from investment in military funding and support for Israel.

⁴¹ There have been some examples of encampments appealing to ICL, like students at the University of Melbourne who sought to refer the then vice chancellor of the University to the ICC. See TRT World, *Students Taking Australian University to ICC Over Gaza Genocide*, YOUTUBE (Oct. 23, 2024).

⁴² *What Is BDS?*, BDS: EQUALITY, JUSTICE, FREEDOM (last visited Jan. 27, 2025).

⁴³ See, e.g., Students for Palestine Australia, *Statement from 11 Palestine Solidarity Encampments*, OVERLAND (May 17, 2024); The LSESU Palestinian Society, *Assets in Apartheid: LSE’s Complicity in Genocide of the Palestinian People, Arms Trade, and Climate Breakdown* (2024); Nersessian, *supra* note 22.

⁴⁴ *Students for Palestine Australia*, *supra* note 43.

⁴⁵ *Id.*

This focus on BDS has meant that the encampments emphasized the political economies of warfare and violence. After all, as Noura Erakat reminds us, BDS “is rooted in economic logic.”⁴⁶ By exposing the constellation of institutions, actors, and networks that perpetuate the oppression of the Palestinians, BDS is a productive accountability lens for structural harm. This can serve as an inspiration for alternative forms of accountability and justice, in the sense of a countercultural vision of justice, away from the carceral commitments of ICL.

Conclusion

Connecting the Palestinian struggle to other movements unsettles the exception discourse that characterizes the question of Palestine in international legal and human rights practices. Such utilization of the language of rights surpasses the commitment to the advancement of human rights as a freedom project.⁴⁷

As Gilmore writes, there is a formidable challenge “to keep the entirety of carceral geographies—rather than only their prison or even law-enforcement aspects—connected, without collapsing or reducing various aspects into one another.”⁴⁸ The vignette of student encampments for Gaza is an attempt to keep these carceral and anti-carceral geographies mapped and so connected. These encampments show how an abolitionist praxis of justice can be understood, embodied, and activated. The encampments provide an alternative “reconstruction place-making” that engages with how structural, racialized, and colonial violence is seen and unseen. Although ICL remains, in our view, an actor poised to act to reinforce its own claim to *be* justice, the pro-Palestinian encampments are an epistemic source of transformative justice, offering a powerful alternative to the carceral approach of ICL. In considering “what happens next?” these encampments open further possibilities for different pathways for emancipatory futures for Palestinians.

⁴⁶ Noura Erakat, *BDS in the USA 2001–2010*, MIDDLE E. RSCH. & INFO. PROJECT (Summer 2010).

⁴⁷ Shaimaa Abdelkarim, *Space-Making “After Rights”: Carcerality, Rights-Claims, and the Practice of Freedom*, 28 INT’L J. HUM. RTS. 1394 (2024).

⁴⁸ GILMORE, *supra* note 1, at 478.