International Criminal Justice as a Critical Project

Introduction

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This special issue sprang from an international symposium organized by the Centre d’études sur le droit international et la mondialisation (Studies Centre on International Law and Globalisation – CÉDIM) on June 5-6, 2014 at the Université du Québec à Montréal (UQÀM)\(^1\). The discussed topic was: Empire of Crime? Towards a Critical Analysis of International Criminalisation Processes\(^2\). At first sight, two observations can be drawn from the working hypotheses and the first results presented during this Montreal meeting. First, all participants underlined critical discourses aimed at deconstructing the main narratives behind international criminal justice deployment. Second, all participants analysed the genealogy of these critical discourses and assessed their contribution to a more refined understanding of international criminal justice. Following this conference emerged the idea of considering international criminal justice as a critical project: this is the idea we wanted to put forward in this issue of Champ penal / Penal Field. “Critical project” being an undoubtedly ambiguous expression, we will first seek to elucidate its multiple meanings. Then, we will introduce how each author tackles this “critical project”.

Critical theories are those theories that globally put into question the existing order (Keucheyan, 2010, 8-9, our translation). Taken literally, this definition could encapsulate the international criminal justice project as well as its generalized and near-universal institutionalisation. This project culminated with the Rome Statute of the International Criminal Court (ICC) coming into force on July 1, 2002. What is more critical (in the sense of crucial) than to intend to prosecute and punish chiefs of State and high-ranking military officials who committed a crime defined by the Rome Statute? In doing so, international criminal justice challenges a social order that for too long resulted in impunity for large-scale criminals. Previously, political figures such as Augusto Pinochet, Slobodan Milosevic or Laurent Gbagbo\(^3\) traditionally would not face the risk of criminal indictment. Thus, the attempt (sometimes successful) to put them as well as others on
trial looks like a proper way to shuffle the cards and potentially upset the dominant international order structure. This critical – if not revolutionary – ambition appears theoretically possible. However, it is necessary to recognize that the institutionalisation of international criminal justice has yet to concretely undermine the patterns of domination of our "world-system" (Wallerstein, 2006) and its inherent domination patterns.

Because of this incapacity to serve as a break against power inequalities across the international community, international criminal justice is now in critical condition. Here, the word “critical” is to be understood in its ordinary sense. It relates to anything linked to a crisis or announcing struggles (Rey, 2013, 337). Following two decades of general enthusiasm (Bernard, Scalia, 2013), critiques of international criminal justice now multiply. The many goals set for – the intrinsically political (Koskenniemi, 2002; Mégret, 2001) – international penal institutions are now seem as overwhelming (Saada, 2011; Damaška, 2008). In the academic field, critical approaches are institutionalising, as evidenced by the creation of the Critical Approaches to International Criminal Law network in Liverpool in 2012. We can also note the diffusion of some edited collections summing up these approaches (Schwöbel, 2014). It is in the context of this work-in-progress – from which a research agenda is gradually emerging – that the papers in this issue have been collected/written.

Most researches on international criminal justice work with a set of assumptions that have yet to be put into question. Epistemologically or, more precisely, as a way to determine the relationship between an object of research and the discourses contributing to its construction, the international criminal project has a special relationship with critical theories developed in the 20th century which aimed at public and private institutions that preceded them. National criminal justice institutions were developed, for instance, before Marxist and feminist approaches emerged. These approaches were used to undermine the legitimacy of the criminal system, and, concurrently, to feed the search for alternatives. Similarly, the Third World approaches were constructed on the basis of an international legal order already in place. Their goal was to replace it by a new global architecture. Obviously, Marxism and feminism, among others, preceded the development of the law and institutions of international criminal justice. Those theories have already challenged the common sense carried by the criminal justice system and the international legal order.

In our view, the fact that the international criminal project has emerged after the critical theories has serious consequences on the construction of the international criminal project. From its inception and through its evolution, the international criminal project had to face many existing critical discourses, already developed for pre-existing international and criminal institutions. This is also why the international criminal project is a critical project. Barely born, it must already justify its existence. Academics now need to decrypt strategies built by the actors of this project – judges, prosecutors, lawyers, leaders, diplomats and scholars – to counteract the accusations directed to them. There is now a solid literature on the institutionalisation of ICJ and the focus must rather shift on the analysis of their legitimacy mechanisms, their symbols and their justificatory discourses. Strategies built and implemented by international criminal actors to justify their position are in serious need of consideration: they are an integral part of international criminal justice as a research object. The papers have the generic ambition to address the genealogy of discourses and practices through which international
criminal justice responds (or not) to discourses challenging its legitimacy. Finally, our goal is also to provide to French-speaking readers a stimulating layout of theories generally developed in the English-speaking literature.

This special issue starts with the fundamentals: why do we punish? In this first article, Diane Bernard attempts to justify a new credible and mobilising argument in favour of an international criminal justice project, differentiating herself from radical critical deconstruction. The author notes how the justificatory grounds on which sits any repressive legal system – retribution, prevention and reparation – find difficult application in the international legal system. Inspired by Durkheim\(^9\), she looks into the socio-pedagogical function of the criminal trial. The criminal trial recalls and reinforces the values infringed by the offender. Bernard suggests that the hypothesis of the project of international criminal justice \(\text{(is less instrumental or strictly repressive than signifying \(\text{...}\) or symbolic \(\text{(our translation).}\)}\) This symbolic function is closely linked to faith: to believe – or at least to pretend to believe – in an international community based on shared-values supported by international criminal justice. The response to mass crimes is thus clearly not secular. International criminal justice is rather a mean to reread (“relire”) the events it must deal with, and to link (“relier”) affected communities. The author reminds us that relire and relier are both accepted etymologies for “religious”. She is audaciously considering international criminal justice as a new religion rather than a mere secularised alternative. This new perspective would however be confronted with a number of obstacles, which should not preclude us to study the symbolic dimension of international criminal justice: the symbolic “function” needs to become an assumed “purpose” as are retribution, reparation and prevention (our translation). Diane Bernard explores theoretical, practical, and ethical consequences of this proposition. She suggests that international criminal justice could be developed on other grounds than those prescribed by the Rome Statute (e.g. environmental and economical threats). International criminal project could then be part of a global project with a greater mobilising effect than the sole project of punishing mass criminals.

Following this first contribution on the functions of modern international criminal law, Michael Hennessy-Picard focuses on the tumultuous fate reserved to pirates between the 16\(^{th}\) and the 19\(^{th}\) century. This historical overview persuasively demonstrates how international penalty was used from its outset as an instrument for territorial expansion as well as political and economic purposes. This study is anchored in historical materialism. Whilst pirates were initially vital to ensure primitive accumulation of capital by States, they were soon criminalised and prosecuted as they became an obstacle to international maritime trade deployment. In less than 300 years, pirates went from being key agents for the colonial expansion of European powers to pariahs on land and at sea. Thus, in a first instance (1500-1700), European powers (England, Spain, Portugal, France...) recruited many pirates in order to protect new commercial channels between mainland and the new colonies from enemy fleets. Until the second half of the 17\(^{th}\) century, Hennessy-Picard explains that European piracy performed a regulatory function: it contributes to balance power and prevents one hegemonic power, Spain, to outperform others at sea (our translation). More importantly, pirates are legally recognised. In practice, letters of marque made them agents of the State. This maritime piracy period of glory was however momentary. On the one hand, in economic terms, while the new market developed with colonies stabilised, powerful companies that took charge no longer tolerated the wrongdoing committed by the pirates. On the other hand, colonial peace, signed in
Utrecht in 1713, resulted in a pacification of the maritime corridors. The representations of piracy quickly changed: pirates are now considered criminals. They can be prosecuted and punished by newly constituted national repressive mechanisms. Hennessy-Picard however highlights that the interdiction to trade with pirates in the colonies created a perverse effect as it provided conditions conducive to piracy radicalisation (our translation). Thus began, paradoxically, a golden age-like period for maritime piracy. Unattached and without protection, pirates plunder and kill without discrimination. This is the moment where piracy became synonymous with anti-statism, where the pirate ideology is built as the antithesis of power centralisation (our translation). State repression against maritime piracy would only be organised more than 20 years later. Universal jurisdiction is introduced to allow each and every State to prosecute any pirate. The history of Atlantic piracy reminds us how monopolisation of violence by States is the product of organised criminal practices (our translation). More generally, these observations lead to an analogy with contemporary international criminal justice. Pirates’ contrasted destiny – as former allies turned into embarrassing elements to be dismissed through criminalisation – is somewhat reminiscent of some individuals who were formerly Western powers friends and are now presented as criminals. This persistent critique toward international criminal justice was once again upheld in the context of the opening of the trial against Laurent Gbagbo in The Hague in January 2016...

Following philosophy and history, sociology had to be convened to better understand contemporary practices underlying international criminal justice. In the third article Frédéric Mégret uses Pierre Bourdieu’s grammar in order to propose a genealogy of the international criminal project. International criminal justice is seen as a “field” i.e. as a network or a configuration of objective relationships between positions (Bourdieu, Wacquant, 1992, 72). In Bourdieusian sociology, the concept of field covers a specific social space sufficiently autonomous from other fields. Diverse agents are struggling to acquire and use relevant capital within this field. The concept of field is a heuristic device and does not exist as such in reality. However, empirical observations do reveal strategies and theoretical boundaries. To begin with, Frédéric Mégret considers the conditions for the emergence of the field of international criminal justice. First, this particular field is steeped in the geopolitical context specific to the 1990s. Second, and more importantly, its emergence resulted from a long-term endeavour led by its initial advocates, who came from other fields – diplomatic, academia, military – and shared common objectives, mainly related to the fight against impunity. The success of this project is reflected in the creation of international criminal justice institutions. First temporary – the ad hoc tribunals – and then permanent – the International Criminal Court –, these institutions have led to the development of an autonomous legal field. Specifically dedicated to repressing mass crimes, the field of international criminal justice clearly differs from the fields it has taken roots in, namely those of criminal and international law. It thus differs from the field of national criminal law in leaving out the strict territorial logic. Moreover, international criminal justice oversteps international law’s initial logic, stating that States are the only legal subjects. Progressively, international criminal justice stood out while producing a highly specific way of “knowing” and of designating certain atrocities as “crimes” that is irreducible to other fields. The consolidation of this new field can be explained by its attractiveness. International or criminal lawyers desire to invest this new professional market where they can recycle their previously gained legitimacy. A genealogical analysis helps to identify the nature of the competition between the actors.
of the emergent field: (t)his emphasis on internal “turf battles” is important because it speaks against a certain tendency to see “international criminal justice” (...) as a movement speaking with one voice. Conflicts are many and unprecedented (namely, among others, between internationalists and criminalists, between academics and practitioners, between prosecutors and defence counsels, and more generally between lawyers and politicians). Yet, (f)or each of these rivalries one can detect over time the consolidation of relatively precarious hierarchies. Focusing on these internal struggles is useful to identify the different capitals that allow different actors to appear as legitimate. Rather than weakening it, these struggles strengthen the singularity of the field. This led to the emergence of an elite identifiable by its specific socialisation and increasingly defined professional trajectories. Finally, the field of international criminal justice retains the additional strengthening characteristics of any legal field (Bourdieu, 1986). It therefore claims to objectify or ‘de-sociologise’ any situation (de Lagasnerie, 2016). In other words, it simplifies geopolitical facts into a binary and operational language resting on an innocent-guilty dichotomy. As the author states, contra the original “heroic” style of Nuremberg jurisprudence, international criminal law has become one of the loci of positivist and technical passion. This study outlines the heuristic potential of the field theory in order to better understand international criminalisation processes. The next two contributions use international relations critical theories – Third World approaches and post-colonial studies – to contribute to the decoding of these same processes.

In the fourth contribution, Wilfried Zoungrana first looks into the criticisms that expose the “Eurocentrism” of international law historiography and of international criminalisation processes. However, he believes that something is amiss. He describes Third World approaches as a decentralised and polycentric network of researchers and teachers interested in colonialism, perpetuation of domination, identity, and difference (our translation). Zoungrana shows how this approach was developed in the 1960s around the work of Taslim Olawale Elias and Georges Abi Saab, among others. The pioneers were not really interested in postcolonial criminal justice. For instance, Elias was ambivalent towards customary law. Abi Saab gave shaded support to universal jurisdiction that would allow any State to prosecute any mass criminal. A more radical analysis would come later with the second generation of Third World thinkers. This analysis rests in the work of Said (1980) but, more especially, Anthony Anghie and Bhupinder Chimni (2003). The absence of trials for colonial crimes were exposed by these authors who were however conscious of the potential political, economic or ethnic instrumental attitudes towards any justice initiative. Subsequently, some proponents of these approaches pleaded in favour of an extension of the international criminal justice mandate to collective and political liability. They also pleaded for a real – rather than postulated – universalisation of international criminal justice. Other proponents of the Third World approaches remained sceptical towards the ICC, which is still suspected to reproduce and perpetuate colonial and racist clichés of international law (our translation). These authors expose, on the one hand, the exceptionalism of the ICC – illustrated by the fact there are no prosecution against Western powers. On the other hand, they denounced the false universalism of international criminal justice, which indeed rests on a Eurocentric narrative. Thus, Third World authors value local, negotiated, and collective solutions whether it conflicts with ICC activities or not. This contradiction is highlighted by Wilfried Zoungrana. He acknowledges the dilemma experienced by these authors. On the one hand, nihilism leads authors to reify critique and therefore to avoid any research on alternatives. On the other hand, compromise anxiety evokes the fear of not being able to do better than what we
criticize. Nonetheless, Zougrana invites Third World and postcolonial thinkers to fully contribute to alternative reflections and practices to a penal response to mass atrocities. Anne-Charlotte Martineau seeks to deepen, clarify, and move beyond the critical premise that international criminal justice is a neo-colonial undertaking. Admittedly, the debate between the idealists – those who see the ICC as a universal jurisdiction – and the realists – those who think the ICC is a form of legal imperialism (our translation) – has recently weakened. As a result, pragmatic compromises or interim solutions (our translation) were favoured in order to improve the proper functioning of the Court. However, the colonial issue (...) does not disappear; it only shifts (our translation). The continual shifting of this issue resulted from historiographical controversies (our translation): there is no scientific consensus on the colonial legacy and its contribution to international criminal law history. Therefore, the dominant narrative on colonial legacy, which is often portrayed as linear (Simpson, 2014), is in continuously need of retroactive coherence (Tallgren, 2014, xxviii).

International criminal justice introduces itself as a progressive and objective story (our translation) in order to dodge the colonial issue. Anne-Charlotte Martineau nonetheless proposes to break with this historiography of denial. In this respect, she observes how Western criminal law was introduced in the colonies: early (...) criminal law is seen as a colonisation issue (our translation). In the beginning, the modalities set to introduce criminal law in the colonies relied on a pair of ideas: exclusion (through the implementation of a differentiated legal regime for indigenous criminals) / inclusion (through the will to civilise colonies and their criminal justice system). The need for colonial legal pluralism (Benton, 2002) quickly appeared essential. The need to associate Western law to local actors and practices was indeed common to the different (e.g. French or British) colonial experiences despite their singularities. The author claims that understanding the peculiar relationships between former colonies and any international criminal regulation would allow a better understanding of the relationships between African States and the ICC. Martineau then examines the possibility to develop a postcolonial reading of international criminal jurisprudence. The underlying assumption is that international criminal justice imperialism lies in the construction of its relationships to the Other (our translation). The inclusion / exclusion mechanism once observed in colonial criminal law provides a backdrop for the way international criminal justice treats African cases. On the one hand, their office sits on an effort to westernise Africa through analysing conflicts according to an occidental legal perspective. On the other hand, international criminal tribunals still attempt to take into account some African realities. For example, Martineau relates how the Special Court for Sierra Leone considered the impact of beliefs in magic in its case law11. In other words, Anne-Charlotte Martineau offers a challenge to international criminal justice: to show that colonial legacy may be problematized rather than kept out of sight by counterfactual historiography.

Patricia Naftali anchored her contribution in another stream of critical sociology. It dwells at decoding mobilisations and roles played by law and jurists (Israël, Gaïti, 2003; Sarat, Scheingold, 2006), analysing the “frames” of mobilisation (Contamin, 2009; Snow, 2001) and norm entrepreneurs (Finnemore, Sikkink, 1998; Florini, 1996). Her work is in line with an agonistic perspective: Naftali is interested in deciphering activist struggles rather than celebrating its successes. Yet, this article relates the story of a success, the story of the “right to truth” in transitional and international justice discourses, texts and practices. But this success apparently relies on the ambivalence of the “right to truth”, a militant construction, which has the remarkable but suspect capacity to accommodate a
plurality of causes. The first part of this article explores these heterogeneous mobilisations on the international scene and their crystallisation around the “right to truth” between 1976 and 2001. The Mothers of the Plaza de Mayo in Argentina first used this as a moral imperative, which later was recaptured by local and international organisations as the cornerstone of the fight against impunity. The challenge lies in the articulation of different conceptions of truth and law. In this respect, the author reviews the negotiations which led to the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in December 2006. She underlines many stumbling blocks revealing many tensions between different conceptions of truth. For instance, should the victims’ identities be revealed rather than the ones of criminals? Should amnesty be forbidden or may it contribute to the establishment of truth? Should the implementation of the right to truth be limited to criminal prosecutions or may it be satisfied by non-judiciary mechanisms such as “truth and reconciliation” commissions? Patricia Naftali considers that the legal formalisation of a militant request – here the recognition of the right to truth – appears as a decisive goal for these entrepreneurs. However, the occulted tensions are likely to resurface as soon as the “right to truth” is put forward in favour of a new trial or a new “truth and reconciliation” commission.

In the seventh article, Nour Benghellab also focuses on transitional justice and “truth and reconciliation” mechanism, but relies on another theoretical frame. Her contribution is in line with previous writings studying the processes underlying the construction of nations and their role in history and memory. Benghellab refers particularly to the work of Pierre Nora (1984; 1993) and Benedict Anderson (2006) along with other research more specific to transitional justice. Transitional justice is defined as a process operationalising legal, political, psychological, and moral solutions aiming to conciliate justice, apology, and truth principles for the purposes of national (re)construction (our translation). The author first takes a critical look at the medical and psychoanalytic metaphor widely used in transitional justice discourses. Transitional justice is thus apprehended as a therapeutic process for communities affected by mass crimes. She then analyses this kind of justice as a particularly efficient mechanism in allowing new elites to differentiate themselves from the old ones. This quest for differentiation is achieved through acquisition of symbolic capital to establish and reinforce their new political legitimacy (our translation). This article is based on several documented cases (for instance, of South Africa). These cases confirmed the uncertain nature of the subsequent scarring of the social fabric (our translation) as a goal for transitional justice. If this therapeutic ambition failed though, in which sense is transitional justice successful? According to Nour Benghellab, transitional justice successfully contributed to create the underlying discourse of a nation building mechanism. By selecting the more legitimate narratives and in proposing to decide between competing facts, transitional justice produces a myth, i.e. a lie we consider true (...) an important, a founding lie (Leavitt, 2005, 7, our translation). This mythological function results from the struggles to (re)build a Nation in line with the dominant international order and, thus, the (neo)liberal rule of law. The success of “truth and reconciliation” commissions lies in the capacity of new ruler elites to legitimate the nation-building process through a neoliberal ideology. This does not mean the baby should be thrown out with the bath water. Nour Benghellab rather argues that transitional justice should be considered as neither a primary nor a neutral mechanism to heal social fabric but as a complementary tool (our translation).
Finally, Julien Pieret explores feminism as a critical and activist movement. Feminism particularly invested the international criminal justice arena, and had great success in international criminalisation processes. First, Pieret demonstrates how feminists invested international criminal justice through its legal corpus. As an example, he underlines the spectacular but ambiguous recognition of gender in the ICC Statute. Next, he demonstrates how this movement contributed to implement the legal texts repressing the various form of violence against women. Finally, feminism impacted the very institutions of international criminal justice: international criminal justice appeared as a feminised justice, namely at the ICC. On the international scene, the feminist movement thus succeeded in altering the course of a patriarchal androcentered justice. This assessment, however, contrasts with the more relative impact that the movement previously had on national criminal law. But as always, victory has a cost. Julien Pieret surveyed existing feminist literature on penalty. He compared, on the one hand, the analyses on systems of national criminal justice, and, on the other hand, the analyses on international criminal justice. Whilst the first thinkers on women and penalty (e.g. Smart, 1976, 1989) advised militants against using law in order to deconstruct legal rationality, the latter viewpoint did not seem to cross the domestic / international border. This article illustrates how the most efficient components of the feminist movement embrace a punitive agenda (our translation) in the framework of the implementation of international criminal justice. Three main indicators support this statement. First, there seems to be a widespread belief among feminist authors that traditional theories of punishments may apply at the international level. Second, these authors show reluctance to consider restorative alternatives (rather than criminal trials) in response to mass sexual violence. Third, they seem to disuse normative discourses on the possibility to (re)build a feminine international criminal order... In other words, this paper shows how, in the field of international criminal justice, mainstream international feminist thought is narrowing around a though on crime perspective. In this respect, it contrasts with the growing interest of feminist literature for alternative paradigms to domestic criminal theory (a theory conceptualised... by and for men). Julien Pieret then provides explanations to these bifurcations of feminist thought. In so doing, this article is in line with Patricia Naftali's analyses, in that it focuses as much on what the (feminist) cause does to (international criminal) law than on what law does to this cause (Israël, Gaïti, 2003, 19). Moreover, this article is also in line with Frédéric Mégret’s analyses in considering that capital is necessary to appear as legitimate within a field. The first causes of this side-tracking lie in the feminist movement. The author gives the examples of the exclusivity of legal framing of the cause, the expert position (our translation) adopted by several feminists rather than a more political position, and, finally, international criminal law professional perspectives tampering criticisms. The other causes of these bifurcations of feminist thought lay on specific institutionalisation modalities of international criminal justice: its feminisation, the fact that almost only males are prosecuted, and the fact that alternatives (i.e. “truth and reconciliation” commissions) were developed in parallel.

Relying on differences in order to multiply the viewpoints and to reduce sterile divisions, this is the ambition submitted by Pierre Tounier (2004, 4) in the first editorial of Champ penal / Penal Field. Modestly, this was the driving ambition of this issue. Above all, in bringing these articles together, we wanted to shed a multidisciplinary light on international penalisation processes. The contributions borrowed from philosophy, history, sociology, sociology of social movements, and political science. They used these different
perspectives to approach an international criminal justice perpetually looking for legitimating discourses. This editorial project also stands as a testimony of a new generation of jurists. The fact that Frédéric Mégret, younger than 45 years old, is the eldest contributor says a lot about this generation of authors. Unlike our predecessors, we all chose to study an institutionalised form of justice that no longer stands in a hypothetic future. International criminal justice now being a reality rather than a pipe dream substantially changed the criticisms mounted against it. Furthermore, the scientific casting being gender-equal also differentiates this publication in a disciplinary field still primarily occupied by men. Finally, we must underline that none of us is working or worked in an international criminal institution or a governmental delegation. This also adds to the idiosyncrasy of this special issue: individuals paid by these institutions (or who contemplate being paid in a near future) produce an important part of international criminal literature. A critical stance thus seems unlikely. More importantly, we must point out that the new generation of jurists who contributed to this publication followed a double academic training. They were in contact to critical legal approaches. They thus were able to benefit from the lesson learned from Pierre Bourdieu’s description of jurists: guardians of the collective hypocrisy (1991). They attempted to avoid this assumption. Independently of the risk to frighten the guardians of the social sciences temple with their methodological lightness, this new generation of jurists has an unfettered relationship with legal objects. These young academics do not hesitate to forage from different concepts and paradigms with the aim of creating a critical (de)construction of the law with considerations for modern world realities.

In conclusion, how does this new generation relate to the agendas of critical theories? In other words, how do they globally question the existing social order? How the chronological effects discussed above (international criminal justice subsequent to main critical theories) translate in the analyses gathered in this publication? Are we, to use the distinction advanced by Zoungrana, governed by a nihilist attitude or by an anxiety of compromise? Can we not opt for committed enthusiasm? We outline, without complacency, a provisional assessment of the international criminal justice project and attempt to shape a more legitimate future. Armed with historical or sociological tools suggested by Michael Hennessy-Picard and Frédéric Mégret, we are looking, with Diane Bernard, for a new mobilising and credible basis for international criminal justice rather than (impossible) prevention and/or (deadly) repression. Along Wilfried Zoungrana and Anne-Charlotte Martineau, we address the colonial issue in order to clarify international criminal justice relationships with the global South. Patricia Naftali and Nour Benghellab make us stop concealing the ideological dimension and politisation of the establishment of “truth” and “national reconciliation” mechanisms. With Julien Pieret, we continue the assessment of the feminist movement ambiguous contribution to international criminal justice deployment. This scientific endeavour is a cumulative process. Beyond our differences, it is our hope that this special issue will feed the critical analyses of international criminal justice or, at least, offer some tools to elucidate the meaning of international modern penalty.
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NOTES

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3. We could also mention the various Belgian initiatives in the early 2000s to prosecute some chiefs of State in office such as George W. Bush and Ariel Sharon under its universal jurisdiction. Regarding these cases, see the website operated by Université Libre de Bruxelles' Centre de droit international, which contains near-exhaustive documentation on universal jurisdiction in Belgium and elsewhere; URL [https://competenceuniverselle.wordpress.com/].

4. See its website [http://www.caicl.net].

5. On these theories and their contemporary developments, see Keucheyan (2010).
6. For an example of a Marxist critique of mainstream criminology, see Quinney (1978).
7. For an overview of feminist analysis on penalty, see Parent (1998).
8. On Third World approaches to international law, see Gallié (2012).
10. On the ambiguity surrounding the Western intervention, which led Laurent Gbagbo arrest following the 2010 Ivorian elections, see Bachand (2014).
11. In support of the thesis according to which contemporary international criminal justice maintains colonial criminal law ambivalence, we can refer to Belgian colonial jurisprudence. The fact that cannibalism had, according to local beliefs, some magical virtues was recognised as mitigating circumstances (Revue de jurisprudence du Congo belge, 1928, 155-156, cited by Corten, Schaus, 2009, 355).
12. 10 December 2006, 2716 UNTS 3 (entered into force 23 December 2010).
13. We shall note that Champ Pénal / Penal Field already considered “international criminal justice” and international armed conflicts consequences: on the issue of individual accountability for mass crime, see Digneffe (2005), Guillou (2005), Hubrecht (2005); on the issue of female fighters, see Felices-Luna (2007); on the Congolese situation, see Felices-Luna (2010).
14. The fact that literature on international criminal justice is being written by international criminal justice professionals does not systematically mean that literature is not critical. However, this critique then aimed to improve the research object rather than questions its legitimacy or rationality. See Fulford (2011) and Van den Wyngaert (2011).
15. Even though Bourdieu might have had in mind “the legislators – bureaucrats of the State – and the judges” rather than academics when he used the word “jurist” (Ocqueteau, Soubiran-Paillet, 1996, 19).

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