

REVISITING VICTOR'S JUSTICE: STRUCTURAL SELECTIVITY AND ITS LIMITS

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Abstract

This essay attempts to explain why the critique of the Nuremberg Tribunal as 'victor's justice' still applies to modern-day international courts and tribunals and why victor's justice, to a certain extent at least, is inevitable and structurally embedded within the system. The paper argues that Victor's Justice persists in the modern international criminal law, not due to moral failure or historical sedimentation alone, but because of the selectivity that has become structurally entrenched in the enforcement, political creation, and expressive function of the punishment. It then identifies the structural conditions that render this form of justice inevitable, while also critically engaging with the limits of such inevitability by distinguishing between doctrinal neutrality and political interference. The essay concludes by underscoring that the critique of victor's justice is both inevitable and structurally inherent, necessitating sustained discussion and critique as a prerequisite for meaningful change.

KEY WORDS: VICTOR'S JUSTICE, INTERNATIONAL CRIMINAL LAW, NUREMBERG TRIBUNAL, STRUCTURAL SELECTIVITY, INTERNATIONAL CRIMINAL TRIBUNALS

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I Introduction

International criminal justice is seen as an “emergency tool” to respond to a “particular crisis.”¹ While initially set up for retributive purposes, international criminal justice institutions are best described as “fire brigades” – deployed to respond to particular crises, focusing on immediate accountability rather than long-term systemic issues.² Their responses were limited to certain types of conflicts and crimes, primarily to establish societal peace. Following World War II and the atrocities committed against the Jews during the Holocaust, it was believed that the Allies had made a moral judgement in how they were going to carry out prosecution against the Axis powers through the establishment of two distinct military tribunals: The International Military Tribunal at Nuremberg [‘the Nuremberg trial’] and the International Military Tribunal for the Far East in Tokyo [‘the Tokyo trial’].³ Although these tribunals played a ground-breaking role in establishing accountability for war, there were, and still are claims of the trials, specifically, with regard to the Nuremberg trials, that they were “mere display of ‘victor’s vengeance’ and a ‘self-righteous hypocrisy,’⁴ alleging them to serve as a means to divert the public attention away from the failures of US political and military leadership. Critics labelled the trials as ‘kangaroo court,’ a façade by the Allies that was partial and lacking fairness, “meting out predetermined punishments.”⁵ This display, described as “victor’s justice,” was coupled with objections on the legality of the trials, for example, imposition of laws ex post facto, with the sole purpose of “butchering the losers” in “the conquerors’ kangaroo court.”⁶ In addition to the aforementioned issues, critiques of procedural irregularities and errors were also levied against the trial. This essay specifically discusses “victor’s justice” as a basis for critique (demonstrating how this notion continues to apply to today’s international courts and tribunals dealing with crimes of an international character).

The international criminal justice system has witnessed enormous growth since the time of the Nuremberg Trials. Nevertheless, there are parts of the current international

¹ Carsten Stahn, *A Critical Introduction to International Law* 165 (Cambridge University Press, 2019).

² *Ibid.*

³ Leslie Scheuermann, “Victor’s Justice-The Lessons of Nuremberg Applied to the Trial of Saddam Hussein” 15 *Tulane Journal of International and Comparative Law* 292 (2006).

⁴ William J. Bosch, *Judgment on Nuremberg: American Attitudes toward the Major German War-Crime Trials* 216 (UNCP, 1970).

⁵ *Supra* note 3.

⁶ *Ibid.*

criminal justice that represent bias and are, therefore, not free of bias. For instance, in the case of the Libya Case before the International Criminal Court [‘ICC’], indictees, such as Said Gaddafi and Senussi (the son of Muammar Gaddafi) and the head of Gaddafi’s intelligence service, respectively, were all indicted, but indictees from the opposition were left unindicted.⁷ In addition, the ICC Prosecutor also has the power to proceed proprio motu to investigate criminal acts committed in the aftermath of the Côte d’Ivoire elections, with only former President Laurent Gbagbo being the only indictee, despite evidence indicating that the current President, Alassane Ouattara, has committed criminal acts.⁸ Therefore, with every step the ICC makes toward enhancing its credibility by showing impartiality, it takes two subsequent steps backward each time. This essay, through examples, demonstrates that not only does the critique of victor’s justice still apply to the international courts and tribunals, but also that the same is inevitable; if not fully, at least to an appreciable extent. For this, this essay takes the examples of the International Criminal Tribunal for the former Yugoslavia [‘ICTY’], the International Criminal Tribunal for Rwanda [‘ICTR’], and the ICC primarily.

The essay is divided into four sections. The first section sets the background of the topic by introducing it. Section II shows that the critique of victor’s justice is still applicable to the modern-day international courts and tribunals, and in doing so, it substantiates the arguments with relevant examples. Section III identifies the structural sources that render victor’s justice inevitable, and Section IV delves into the limitations of this inevitability by delineating between doctrinal neutrality and political interference. The last section sums up the essay and concludes that the critique of victor’s justice is inevitable and further structurally inherent, requiring constant discussions and critique to ensure change.

II Victor’s Justice: Structural Sources of Inevitability

In his work ‘Inescapable Dyads,’ Darryl Robinson notes that international criminal law can never be free from ‘tensions and critiques’ because together, they form what he calls an ‘*inescapable* dyad.’⁹ This means it is possible to ‘inevitably advance’ one or more criticisms for ‘any position’ of the international criminal courts.¹⁰ Theoretically, the

⁷ *Prosecutor v. Saif Al-Islam Gaddafi*, ICC-01/11-01/11 (ICC).

⁸ *Situation in the Republic of Côte d’Ivoire*, ICC-02/11 (ICC).

⁹ Darryl Robinson, “Inescapable Dyads: Why the International Criminal Court Cannot Win” 28 *Leiden Journal of International Law* at 323 (2015).

¹⁰ *Ibid.*

criticism of victor's justice is a variant of the broader argument of selectivity.¹¹ Considered the "Achilles' heel of international criminal justice,"¹² selectivity refers to the discretionary nature of international criminal tribunals in enforcement. Selectivity can either be horizontal (situations chosen from a particular period for investigation and prosecution) or vertical (individuals in a situation are differentiated for prosecution).¹³ This section will critically assess whether the criticism of 'victor's justice' is inevitable or not, to what extent it could be avoided, and how feasible that would be.

McCormack asserts that international criminal law is *inherently* and *doubly* selective: first, because the international community has defined a limited number of selective acts as "international crimes" and second, because the international community selectively supports prosecution of a range of situations where the international community is willing to support prosecution is also limited.¹⁴ Considering such inevitable selectivity, we shall note three main reasons for the same: [A] refusal of state cooperation to the institution, [B] political model, and [C] expressive theory of punishment.

Refusal of state cooperation leading to inevitable victor's justice:

The principle of complementarity creates a balanced connection between the international and national systems.¹⁵ The Rome Statute that establishes the International Criminal Court allows the intervention of ICC only when (a) the national courts or States are 'unwilling' or 'unable' to genuinely investigate or prosecute offences or, (b) the situation is of sufficient 'gravity.'¹⁶ Resultantly, the success of international tribunals and courts, including the initiation of the trial, depends on state cooperation. This dependence was exemplified by Rwanda's refusal to hand over suspects or evidence to the Tribunal, thus not cooperating in the prosecution of the Rwandan Patriotic Front.¹⁷ This clear exercise of discretion by the victorious group in the Rwandan episode demonstrates how victor's justice seeps in. Moreover, ICC never acknowledged the Rwandan clergy massacre trial to be a sham.¹⁸ Resultantly, it was not selected for an ICC trial either. Hence, on the

¹¹ Douglas Guilfoyle, *International Criminal Law* 88 (Oxford University Press, 2016).

¹² Elies van Sliedregt, "One Rule for Them - Selectivity in International Criminal Law" 34 *Leiden Journal of International Law* 283 (2021).

¹³ Jonathan Hafetz, *Punishing Atrocities through a Fair Trial: International Criminal Law from Nuremberg to the Age of Global Terrorism* (Cambridge University Press, 2018).

¹⁴ Timothy L.H. McCormack, "Selective Reaction to Atrocity" 60 *Albany Law Review* 681, 683 (1996-1997).

¹⁵ The Rome Statute of the International Criminal Court, 1988, art. 17.

¹⁶ *Ibid.*

¹⁷ Lars Waldorf, "A Mere Pretense of Justice: Complementarity, Sham Trials, and Victor's Justice at the Rwanda Tribunal" 33 *Fordham International Law Journal* 1237 (2010).

¹⁸ *Id.* at 1223.

parameter of reliance on state cooperation, the ICC outshone the ICTR. Even when a trial is initiated, ICC's heavy reliance on state cooperation and lack of police force makes it difficult to get the suspects to attend.¹⁹ This cycle of state non-cooperation has been used to protect the victors from being subjected to trial. Rwanda's non-cooperation was internationally perceived as a decision to protect the victors.²⁰ Its initial refusal to vote against the creation of ICTR was condemned as being discriminatory against victims on the side of the losers. This inclination to selectively protect the victor's interest was condemned by Judge Rosalyn Higgins in *Dem. Rep. Congo v. Rwanda*:²¹

...It must be regarded as a *very grave matter* that a state should be in a position to *shield* from international judicial scrutiny any claim that might be made against it concerning genocide. A State so doing shows the world scant confidence that it would never, ever, commit genocide.

Often, if not always, neighbouring states mimic each other's response strategies. Therefore, when asked to hand over suspects for an international trial, the Democratic Republic of Congo,²² Uganda,²³ and more recently, Kenya²⁴ displayed non-cooperation, just like Rwanda did.²⁵ The Kenyan government was found non-compliant under article 87(7) of the Rome Statute in producing records relating to Mr. Uhuru Kenyatta. Kenya's refusal to cooperate led to the ICC trial Chamber referring the matter to the Assembly of State Parties to the Rome Statute.²⁶ That is an example of victor's justice due to the fact that the victors were not placed on trial for the crimes they committed against the institution by choosing not to cooperate with that institution. On the other hand, there was

¹⁹ Philippe Kirsch, "The International Criminal Court: From Rome to Kampala" 43 *The John Marshall Law Review* at 515, 525 (2010).

²⁰ Thierry Cruvellier, *Court of Remorse: Inside the International Criminal Tribunal for Rwanda* 136-153 (UWP, 2010).

²¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)*, 2006 ICJ Rep 6, 33, 71 (Feb. 3) (Joint Separate Opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma) (emphasis added).

²² The situation in North-eastern Congo was referred to the ICC in 2003, but the individuals who were indicted were not arrested. An arrest warrant had been issued against Bosco Ntaganda, yet he was seen attending events with Congolese ministers. The government's stance was that such freedom for Ntaganda ensured national peace. Ntaganda, however, handed himself over to the ICC but only in 2013, years after the issuance of an arrest warrant in his name.

²³ The Ugandan government escaped ICC jurisdiction by changing its policy. It did so by offering a national trial of those accused from the Lord's Resistance Army.

²⁴ The Kenyan government had shown immense non-cooperation with the ICC. The ICC prosecutor, Fatou Bensouda, had remarked that such non-cooperation is ongoing and would only be getting more serious with time.

²⁵ Victor Peskin, "Caution and Confrontation in the International Criminal Court's Pursuit of Accountability in Uganda and Sudan" 31 *Human Rights Quarterly* 655, 660 (2009).

²⁶ *The Prosecutor v. Uhuru Muigai Kenyatta*, ICC-01/09-02/11 (ICC).

no option for the loser to withhold his/her cooperation and thus the preponderance or bias was against the loser. This example demonstrates conclusively the inevitable application of victor's justice.

Political model as a justification of the inevitability of Victor's justice:

James Meernik, in his work '*Victor's Justice or the Law*,' uses a 'political model' to demonstrate the presence of victor's justice in situations with no decipherable victor.²⁷ Meernik aligns with scholars who advocate the inevitability of victor's justice in international trials. Simultaneously, he cautions that his 'political model' should not be mistaken to be explanatory of a tribunal's working and success *in toto*. Rod Rastan clarifies that the political model, instead, explains the interrelation between *realpolitik* and *ad hoc* tribunals.²⁸ According to this model, international tribunals and courts are always influenced by contemporaneous politics. This, in turn, leads to an inevitable bias in favour of the powers that lead to the creation of such tribunals.²⁹

Meernik presents the example of the ICTY where the powers which lead to the creation of the tribunal primarily included the North Atlantic Treaty Organisation ['NATO'] nations. Notably, this was not the first time when a conflict had resulted in international unrest.³⁰ However, the Security Council chose to particularly establish two tribunals, one of them being the ICTY.³¹ He argues that the NATO nations, being powerful, and because their interests were involved, were able to persuade the Council.³² A resultant bias in favour of establishing powers is inevitable in such cases which includes prosecuting more defendants from the other side, thus giving way to victor's justice.³³ One of the glaring issues fuelling victor's justice concerning the ICTY in Bosnia and Kosovo was its decision to not charge the NATO for its actions that led to civilian casualties during its intervention, such as the bombing campaign.³⁴ The tribunal specifically targeted the Serb leaders and sparingly charged the war crime allegations on others, including NATO

²⁷ James Meernik, "Victor's Justice or the Law? Judging and Punishing at the International Criminal Tribunal for the Former Yugoslavia" 47 *Journal of Conflict Resolution* at 140 (2003).

²⁸ Rod Rastan, "Comment on Victor's Justice and the Viability of ex ante standards" 43(3) *The John Marshall Law Review* at 569, 602 (2010).

²⁹ *Id.* at 575.

³⁰ *Supra* note 27 at 149.

³¹ *Id.* at 148.

³² William Schabas, "Victor's Justice: selecting Situations at the International Criminal Court" 43 *Marshall Law Review* at 537 (2010).

³³ *Supra* note 27 at 145.

³⁴ Robert Cryer, *Prosecuting International Crimes. Selectivity and the International Criminal Law Regime* (Cambridge University Press, 2005).

personnel, despite there being credible information about civilian harm and violations of international law. This has a direct impact on the role that they could play in arresting suspects. Judges in these tribunals are often chosen by the victors.³⁵ This leads to an added bias against the defendants who belong to the losing group.³⁶ Consequently, this also means no prosecution of violators who belong to the side of the victors. In ICTY, this bias is reflected in the greater number of Serbs charged and prosecuted by the tribunal. This also has another dangerous consequence. Powerful states would want to prove to the international community, their commitment to administer justice. As a result, they would undoubtedly exert pressure on these tribunals to prosecute defendants, no matter how unnecessary the prosecution might be.³⁷ Additionally, NATO's overreaching influence was present not only in the creation of the tribunal but also continued with ICTY's reliance on the countries for funding.³⁸ Tribunals would naturally act upon such pressure to please the victors and since the functioning of these tribunals depends on funds provided by the victors, a biased favour of victors is inevitable until the tribunals wind up.³⁹ Several critics and Serbian nationalists denounced the tribunal due to this blatant selectivity.⁴⁰

In addition to this, Albonetti and other scholars note the prosecution of Muslims to be an alleged means of maintaining a degree of ethnic diversity so that bias is not evident.⁴¹ Such politicisation is inevitable. Since victor's justice emanates from this political pirouette, it becomes equally inevitable. An option to avoid such bias could be bringing charges against an equal number of people from both sides. However, one side would always have a greater number of violators since the gravity of crime would be more intense on one side than the other. Therefore, the deflection would be neither feasible nor just. This also substantiates Victor Peskin's argument that it is inevitable to save such tribunals from the critique of victor's justice.⁴²

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Scott Grosseup, "The Trial of Slobodan Milosevic: The Demise of Head of State Immunity and the Specter of Victor's Justice" 32 *Denver Journal of International Law and Policy* 370 (2004).

³⁹ Montgomery Belgion, *Victor's Justice* 25 (Henry Regnery Company, 1949); Danilo Zolo, *Victor's Justice: From Nuremberg to Baghdad* (Verso Books, 2009).

⁴⁰ Michael Parenti, *To Kill a Nation: The Attack on Yugoslavia* (Verso Books, 2002).

⁴¹ Celesta Albonetti, "Sentencing under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offences" 31 *Law & Society Review* 789-822 (1997); Jo Dixon, "The Organizational Context of Criminal Sentencing" 100 *American Journal of Sociology* at 1157-98 (1995); Charles Pruitt & James Q. Wilson, "A Longitudinal Study of the Effect of Race on Sentencing" 17 *Law & Society Review* at 613-35 (1983).

⁴² Victor Peskin, "Conflicts of Justice: An Analysis of the Role of the International Criminal Tribunal for Rwanda" 6 *International Peacekeeping* 128-137 (2000).

Expressive theory of punishment as justification of inevitability of victor's justice:

Feinberg in his essay '*The Expressive Theory of Punishment*' argues that punishment should be in an express form. It is important to expressly communicate to society that certain behaviour was punished because it was both 'morally and legally wrong.'⁴³ 'If war criminals are punished, those who are tempted to commit atrocities in future wars may be deterred from doing so.'⁴⁴

Through the lens of the expressive theory of punishment, victor's justice can be regarded as an unavoidable reality, given that through the act of prosecution, the victors communicate to the international community that conduct which is both morally reprehensible and legally prohibited will not escape sanction. Moreover, retribution also plays an important part in punishment. Michael Davis uses the term 'intrinsic expressionism' to present a connection between punishment and retribution: punishment being a means to pacify victims who have witnessed bloodshed.⁴⁵ In this sense, this also satisfies the victims who have witnessed bloodshed and therefore the prosecution of the violators satisfies the theory of retribution as well. This emphasises that victor's justice is an inherent part of every trial in the international criminal justice system, and therefore inevitable with its reason being traced to the theories of criminal justice.

It is indisputable that victims exist on the side of the losing party, just as they do on the victor's side. However, not prosecuting the violators undermines the broader goal of achieving justice. For instance, in Rwanda, the perpetrators on the victorious Tutsi side were not indicted⁴⁶ despite the evidence⁴⁷: Does this not belittle the justice that was administered by the prosecution of violators from the Hutu side and discriminating victims? The prosecution, be it from either side, expressed moral and legal disgust associated with acts of genocide and mass killing perpetrated against the Hutus. In this context, Wringe argues that since international criminal trials are fundamentally aimed at

⁴³ Joel Feinberg, "The Expressive Function of Punishment" in J. Feinberg (ed.), *Doing and Deserving* at 95-118 (1970).

⁴⁴ Anthony Ellis, "What Should We Do with War Criminals" in Aleksandr Jokic (ed.), *War Crimes and Collective Responsibility: A Reader* at 97 (Blackwell, 2001).

⁴⁵ Michael Davis, "Punishment as Language: Misleading Analogy for Desert Theorists" 10 *Law and Philosophy* at 311, 319 (1991).

⁴⁶ The ICTR has been regarded as an "embodiment of victor's justice" by Rwandans due to its failure to investigate war crimes by RPF despite it being within its mandate.

⁴⁷ *The Secretary-General, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935*, UN Doc S/1994/1405 (Dec. 9, 1994) para. 95; Amnesty International, "Rwanda: Reports of Killings and Abductions by the Rwandese Patriotic Army, April-August 1994", AI Index AFR 47/016/1994 (20 October 1994).

detering the repetition of atrocities as severe as genocide, some degree of victor's justice is inevitable, as it conveys to the global community that such heinous acts will not go without consequence.⁴⁸ It is, however, submitted that this expression of justice would be more empathic if wrongdoers from the victor's side were held accountable for the grave offences they committed. The modern-day international criminal justice system is 'still in its nascent stage,'⁴⁹ and therefore, it will be subject to criticism at all stages of its development. Victor's justice, being one of them, is thus inevitable to a certain extent.

The inevitable nature of victor's justice in international criminal trials can be concluded from the above discussions. However, it is equally important to note that such inevitability is not rigidly absolute.

III Structural Inevitability and its Limitations

One of the bigger questions in this discourse of structural inevitability of Victor's Justice concerns whether it is a direct output of political obstruction or is rooted in the doctrine. A critical distinction must be examined between legal incapacity and political obstruction. Douglas Guilfoyle, in this regard, notes that 'one-sided picture should not be taken and that there have been attempts to prosecute crimes committed by leaders who are still in office.'⁵⁰ To substantiate his claim, he cites the examples of President Al Bashir of Sudan and the case brought against the President and Vice President of Kenya. This underpins whether prosecutions of sitting or powerful leaders meaningfully undermine the critique of victor's justice.

The Rome Statute does not propagate the theme of victor's justice through the test; in fact, the statute provides for various impartiality safeguards throughout the text. Article 27 of the Statute provides for the application of the law to all, irrespective of their official capacity, with no caveat for exemption or reduction for punishment.⁵¹ Similarly, article 42 affirms prosecutorial independence.⁵² The principle of complementarity, often the catalyst for selective enforcement,⁵³ does not focus on the victors themselves and also underpins

⁴⁸ Bill Wringer, "Why Punish War Crimes? Victor's Justice and Expressive Justifications of Punishment" 25 *Law and Philosophy* 159 (2004).

⁴⁹ M. Cherif Bassiouni, *Introduction to International Criminal Law*, 921 (Martinus Nijhoff Publishers, 2012).

⁵⁰ *Supra* note 11.

⁵¹ The Rome Statute of the International Criminal Court, 1988, art. 27.

⁵² *Id.*, art. 42.

⁵³ Yahli Shereshevsky, "Complementarity (Un)Fairness Powerful States and their Ability to Avoid ICC Proceedings by Conducting Domestic Investigations" 23 *Journal of International Criminal Justice* 227-248 (2025).

the unwillingness of the states. These provisions provide a clear image of the doctrinal impartiality followed throughout the text. Consequently, the root of victor's justice cannot be attributed to the bias in the doctrine alone. Still, it must be understood as the outcome of the political environment in which this system operates. These instances prove that the Rome Statute, while not doctrinally designed to embed victor's justice, still the practical applicability of the said provisions poses limitations to the doctrinal neutrality. Arrest warrants issued against President Bashir remained stagnant for over a decade.⁵⁴ While symbolically portrayed progress, it remained unenforced due to the persistent non-cooperation by State and non-State Parties. Similarly, cases against Kenyatta and Ruto collapsed largely due to witness interference, gaps in the evidence and lack of state cooperation.⁵⁵ While the Court's jurisdiction had not been challenged, the exercise of its authority was undermined due to the interference of political power, demonstrating the persistence of victor's justice. These instances depict not the doctrinal failure, but the increasing usage of informal loopholes by the victors to evade the Court.

While the text does not provide ground for such inequality, the Court's dependence on state cooperation for arrests, evidence, and enforcement results in the failure of these prosecutions. The asymmetrical distribution of political power over the domestic proceedings and international institutions automatically leads to biased prosecutions, frustrating the enforcement process. This suggests that victor's justice is bounded, manifestly acutely at the enforcement stage rather than at the level of the doctrine or during prosecutions. While the system provides for the capacity to challenge power, it lacks the capability to overcome the power. Victor's justice is produced recurrently as a product of the interactions between legal institutions and the political realities, aspiring for universal accountability while being shackled by sovereign inequality.

IV Conclusion

The challenge of victor's justice has become an inherent characteristic of criminal systems. With the overt politicisation and biased understanding of justice, the question of whether Victor's justice is inherent is no more pertinent. As observed through the international criminal law cases, contemporary international courts and tribunals have not escaped

⁵⁴ *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09.

⁵⁵ FIDH, "Termination of Ruto and Sang case at the ICC: Witness tampering means impunity prevails over justice again", available at: <https://www.fidh.org/en/region/Africa/kenya/termination-of-ruto-and-sang-case-at-the-icc-witness-tampering-means> (last visited on January 25, 2026).

accusations of victor's justice, yet this shortcoming is largely a reflection of the still-evolving nature of the international criminal law framework. Finding its origins as a historical residue, victor's justice persists as a structural feature, emphasised through selective enforcement, dependence on state cooperation, and expressive function of punishment. This persistence cannot be classified as doctrinal failure alone, given the safeguards present in Rome Statute. Rather, the presence of victor's justice is much better attributed to the interaction of the legal institutions and political realities, arising from the repeated frustration at the stage of enforcement due to asymmetrical power distribution, resistance of the sovereign, and the inability to compel international cooperation.

Victor's justice cannot be claimed as absolute or total, as can be witnessed through the challenge of power, although limited, by issuing arrest warrants to sitting heads of states.⁵⁶ A gradual expansion of system's capacity to challenge power, yet, these developments expose the limits of reform. A complete structural overhaul, wherein the power, enforcement and political will is distributed evenly, while ideal, is unattainable. Instead of signalling a failure, the persistence of victor's justice pushes for sustained academic critique and normative engagement. Continuous critique, instead of structural perfection, remains the most viable mechanism to refine and contest the system, and ensure accountability.

⁵⁶ Shannon Hardy, "Balancing Acts: The Intricacies of Enforcing ICC Arrest Warrants Against Heads of State", *available at*: <https://ohrh.law.ox.ac.uk/balancing-acts-the-intricacies-of-enforcing-icc-arrest-warrants-against-heads-of-state/> (last visited on January 25, 2026).