

# GENOCIDE MATTERS

Ongoing issues and emerging perspectives

---

Edited by Joyce Apsel and Ernesto Verdeja

 **Routledge**  
Taylor & Francis Group  
LONDON AND NEW YORK

# Transitional Justice and Genocide

*Ernesto Verdeja*

Human suffering on a massive scale is not new. History is littered with accounts of killings, displacement, genocide and other atrocities. However, what are new and noteworthy are efforts to respond to mass atrocities that take seriously the imperative to reckon with the past in some morally satisfactory way. Following a range of mass killings of civilians, including the Holocaust and other genocidal atrocities, along with the transitions from authoritarianism and violent social conflicts in the late twentieth century, new voices and movements emerged demanding that the legacies of large-scale human rights violations be addressed appropriately and thoroughly. The justifications given for these demands are complex; some rest on ethical claims about the importance of human dignity while others argue in more consequentialist terms that unaddressed histories of violence may feed future conflict.

This broad area of research known as “transitional justice” is concerned with the strategies, practices, and theories of social repair and transformation for societies dealing with a recent history of authoritarianism, civil war or massive human rights violations, including genocide. The International Center for Transitional Justice, a leading non-governmental organization (NGO) in this area, defines transitional justice as

a response to systematic or widespread violations of human rights. It seeks recognition for the victims and to promote possibilities for peace, reconciliation and democracy. Transitional Justice is not a special kind of justice but justice adapted to societies transforming themselves after a period of pervasive human

rights abuse. In some cases, these transformations happen suddenly, in others they may take place over decades.<sup>1</sup>

The transitional justice literature has grown enormously over the past three decades, and today constitutes its own interdisciplinary field of research. Scholars from across the humanities, social sciences and law (and even occasionally from the natural sciences and engineering) work on transitional issues in a number of settings, and numerous conferences, journals, books, encyclopedias, and scholarly organizations have developed. There has also been a proliferation of human rights research institutes, non-governmental organizations and national and international organizations devoted to transitional justice.<sup>2</sup> Indeed, some scholars have called this an "industry" composed of its own cadre of consultants, experts, vocabularies, and occasionally problematic reliance on entrenched sources of political and financial power.<sup>3</sup>

Genocide studies scholars have studied post-genocide developments in specific cases, such as the use of international tribunals in former Yugoslavia or Rwanda, but there has been relatively little systematic engagement with the general findings of transitional justice literature.<sup>4</sup> Donald Bloxham and Dirk Moses' important survey of the field, *The Oxford Handbook of Genocide Studies*, provides only a limited assessment of post-genocide reconstruction.<sup>5</sup> Adam Jones' valuable *New Directions in Genocide Research* canvasses a number of topics across cases related to genocide studies, but addresses post-violence justice mechanisms and programs in only one country, Rwanda.<sup>6</sup> However, focusing on limited cases raises certain theoretical problems. By examining the transitional justice challenges of only a subset of cases (those that experienced genocides) rather than systematically analyzing the broader findings of transitional justice research, genocide scholars risk drawing erroneous conclusions about the utility, limitations and interactions of various transitional justice mechanisms. In other words, if genocide scholarship focuses only on one or two post-genocides to understand how transitional justice mechanisms may succeed or fail, it may miss the general patterns that have emerged from research on a much wider range of cases. For instance, genocide studies scholars have shown that Rwanda's *gacaca* courts ("traditional justice" venues) have had limited success in promoting reconciliation, one of the government's stated objectives. The reasons given for these failures varied considerably, but scholars rarely asked: compared to what? Are there other traditional justice mechanisms for mass atrocities that have worked? Are there certain institutional, procedural, cultural or other factors that may give traditional mechanisms greater public resonance? One way of answering these questions would be to compare a set of traditional justice mechanisms and see whether there are general factors – or interactions of factors – that provide insights into their success or failure. Luc Huyse and Mark Salter have done precisely this, comparing traditional justice policies in Rwanda, Mozambique, Uganda, Sierra Leone, and Burundi, with remarkable findings.<sup>7</sup> However, this kind of inclusive comparative work has been missing in genocide studies discussions on post-genocidal societies. Likewise, discussions in the field about the value of trials normally focus on post-genocides (Rwanda, Bosnia, the Holocaust), not on the use of trials during a wider set of transitions in which

countries have grappled with equally systematic experiences of mass violence (in Latin America, Africa, Asia, etc.).

This chapter reconstructs and critiques some of the developments and current research advances in the transitional justice field. The chapter is motivated by the concern that much of the best research in transitional justice and genocide studies remains largely unconnected and “silo-ed” from one another. With a few exceptions – such as Alexander Hinton and Kevin Lewis O’Neill’s work – scholarship advances in one area have gone unnoticed in the other.<sup>8</sup> In some respects, this is not a problem: genocide scholars tend to focus on the specific issue of genocides and mass atrocities, while transitional justice scholars are concerned with how to address the aftermath of different types of mass violence. Naturally, different research communities develop around shared interests and have only partial overlap. However, as genocide studies scholars further investigate the challenges of post-conflict settings and engage in advocacy for the prevention and punishment of genocide, it is crucial to have some understanding of the transitional justice literature. By mapping this literature, this chapter hopes to contribute to furthering useful links and cross-fertilization between the two fields.

This chapter proceeds in several steps. The first section focuses on retributive theories and practices for punishing perpetrators, establishing the rule of law, and reforming the security apparatus. This area of transitional justice has the oldest roots, and is deeply tied to the institutionalization of punishment in the Nuremberg and Tokyo tribunals following World War II and later the United Nations courts in the 1990s. Most recently, the retributive approach has expanded to include so-called “hybrid” tribunals, part international and part domestic prosecution efforts, as well as a variety of novel domestic strategies to address violations. The second section looks at the more recent restorative approach to transitional justice, which underplays the role of punishment in favor of victim-centered strategies and social reconstruction. Restorative approaches emphasize the importance of truth-telling and collective memory, the moral and public acknowledgement of victims and survivors, forgiveness, and reconciliation. State-sanctioned truth commissions are prominent institutional examples of restorative justice, and they often cultivate relations with civil society networks promoting truth and victim recognition. The third section looks at contemporary efforts to connect restorative concerns – especially reparations – with economic development and social justice, as well as addressing the root causes of overt and structural violence. The fourth section highlights a set of empirical constraints that shape the opportunities available for transitional justice.

## RETRIBUTIVE JUSTICE

Modern transitional justice has its roots in prosecution efforts following World War I, when the victorious Western powers sought to hold accountable the leaders of Germany, Austria-Hungary, and the Ottoman Empire. These first attempts were largely failures. The defeated nations were unwilling to confront their

crimes, and the victors had little interest in committing the necessary resources and attention required to ensure that the trials were successful. The Nuremberg tribunal after World War II represents the first 'successful' modern international prosecution of major war criminals, and was followed by a series of trials across Europe. Nevertheless, the Nuremberg example of internationally constituted trials based on international human rights and humanitarian law failed to take hold in the years after World War II. The retributive impulse gained strength in domestic trials, first during the 1970s in Southern Europe, continuing through the Latin American transitions of the 1970s and 1980s, and moving into the 1990s in Eastern and Central Europe after the fall of communism. In virtually all of these cases, trials were seen as state responses to domestic challenges of impunity for human rights violations, and Nuremberg-style prosecutions were considered unfeasible or otherwise inappropriate. Because many of these democratic transitions were the result of negotiations with outgoing elites, amnesties were often important features of the post-transitional landscape. Trials were frequently limited in scope or reach, and it was not uncommon for prosecutions to start and stop fitfully.

The end of the Cold War and genocides in Rwanda and Bosnia and Herzegovina changed much of the landscape. In the 1990s, the United Nations established two international tribunals, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). These new courts were partly chastened responses by the West to its inaction during the genocides, and the courts had limited temporal and territorial jurisdiction. Nevertheless, they represent an important step in placing the law at the center of responses to mass atrocities. Both tribunals have made significant contributions to international law, including the definition of genocide, war crimes, crimes against humanity and violations of the 1949 Geneva Conventions, as well as furthered greater understanding of the concept of intentionality at the heart of genocide. Since their establishment, international human rights law has flourished and moved in several parallel directions.

The clearest example of an international retributive institution is the International Criminal Court (ICC), the first permanent tribunal with near universal jurisdiction to prosecute war crimes, crimes against humanity and genocide (and, eventually, crimes of aggression). The ICC has yet to make major contributions to international law, but given its centrality in the human rights firmament it will likely do so in the near future. We have also witnessed the creation of "hybrid" tribunals that combine, to various degrees, domestic and international jurisprudence and national and international judges. These hybrid institutions include the Special Court for Sierra Leone, the Serious Crimes Panels of the District Court of Dili in East Timor, the War Crimes Chamber in the State Courts of Bosnia and Herzegovina, Regulation 64 Panels in the Courts of Kosovo, the Special Tribunal for Lebanon, and the Extraordinary Chambers in the Courts of Cambodia. Hybrid courts are candidates for contexts where there is little domestic institutional capacity to prosecute major crimes, including legal, forensic, and technical expertise for fair prosecutions, though their records have been mixed.<sup>9</sup> Finally, national courts have

drawn on international law as part of an effort to incorporate international norms into domestic settings. In Belgium, Argentina, and Spain, among other places, national courts and investigative judges have employed principles of universal jurisdiction or expanded conceptions of national jurisdiction (through passive and active personality principles) to prosecute human rights violators.

These tribunals are significantly different from one another, but all are based on the principle of retributive justice, which centers on holding perpetrators accountable for their actions. The retributive approach attempts to distance itself from vengeance by emphasizing the importance of proportionality and procedural and substantive requirements that constrain the actions of the court and provide protections for the accused. For its supporters, retribution distinguishes itself by its basis in the rule of law. This requires a commitment to redress past abuses using generalized, codified and pre-existing standards; the use of formal institutions characterized by impartiality and transparency with a host of due process protections; a commitment to prosecute individuals only for specific crimes for which there is valid evidence; and the power to impose a binding sentence on the defendant that is more than public censure without coercive force.<sup>10</sup>

Over the past decade, a number of countries, mostly in Africa, sought to create alternative mechanisms of punishment that rely, to differing degrees, on "traditional" sources of accountability. Concerned that international courts are too remote, expensive and often irrelevant to the needs of victims and survivors, Burundi, Mozambique, Rwanda, Sierra Leone, and Uganda established a variety of judicial and semi-judicial institutions to address accountability at the local level.<sup>11</sup> Presumably, local efforts are superior to international justice because the former allow local residents a greater stake in the outcome. State officials and local leaders have encouraged these traditional practices as a way of reintegrating former combatants and rebuilding social relations, drawing on complex rituals with extensive community participation. There is enormous variation in these practices and systematic comparative work is still in progress, making definitive conclusions on "what works" difficult. Many of these institutions are often considered forms of "restorative justice" since they may include public confessions and reconciliation practices and focus on social regeneration. Nevertheless, in some cases they also include significant punitive elements as well. Rwanda's *gacaca* system is perhaps the best-known retributive example of this phenomenon. The *gacaca* are part of a system of local justice with roots in traditional forms of conflict resolution. However, the final version was implemented nationally in 2005 and is a highly structured, "top-down" system meant to address the large population of perpetrators who could not be processed by national and international courts. The goal here is to secure greater legitimacy for punishment by grounding retributive practices in cultural norms and mores that resonate with indigenous populations. The results of the *gacaca* experiment are mixed: they have been criticized for politicization, patriarchal values, weak training for local judges, minimal due process protections, inadequate psychological support for victims who testify, and relatively lenient sentences.<sup>12</sup> Nevertheless, given the challenges that post-conflict societies face, some analysts consider the "indigenous turn in justice" a moderate success.<sup>13</sup>

## Justifications and limitations

Supporters of retributive justice offer numerous justifications for trials, of which I will identify only the most salient here.<sup>14</sup> The most common justification is *deontological*: there is a duty that violators be held responsible for their actions – that they receive their “just deserts” – regardless of other possible social benefits of prosecutions.<sup>15</sup> This is a “backward-looking” justification, since the principle is meant to hold regardless of the consequences of punishment and in its strongest formulation allows for little flexibility. Trials also help *individualize* the responsibility of key actors and institutions and thus mitigate the tendency to blame entire ethnic or national groups for harms, and may *curtail demands for vengeance* by redirecting popular calls for accountability into institutionalized, fair proceedings and thus respond to concerns over continued impunity. This is best captured in Nuremberg Chief Prosecutor Robert Jackson’s famous statement that courts help “stay the hand of vengeance.”<sup>16</sup> Trials also generate a *public record* of crimes by collecting and interrogating evidence, thus helping establish some factual baseline of events and crimes. The Nuremberg tribunal amassed millions of pages of evidence of Nazi atrocities that formed the basis of much subsequent historical work on the Holocaust, and the ICTY has generated crucial information on the patterns of violence in Yugoslavia. Lastly, the strongest supporters argue that retributive justice through trials can *deter* future dictators, signaling to them what may happen if they violate the rights of their citizens, and thus promote the rule of law – and in certain instances, reconciliation – in the long term. In contrast to the deontological justification, this is the most explicitly consequentialist and forward-looking argument for trials, and given the relatively few international prosecutions, unsurprisingly the one with least empirical support.<sup>17</sup>

The retributive model receives its strongest support from the international legal community, especially high profile international non-governmental organizations that equate prosecutions, institutional reform and the rule of law with successful transitions and moral reckoning.<sup>18</sup> Trials have also dominated much of the media and popular discourse on transitions, and often take a central role in scholarly discussions on how to deal with massive crimes, particularly in the genocide studies community. Nevertheless, trials face a number of limitations that should give pause before advocating their role as central elements in transitional justice.

Trials have been criticized on several grounds, including their cost, their adversarial structure, their lack of resonance with victims and the broader public, and – for international tribunals – their remoteness from the communities that suffered. These are powerful critiques, but perhaps the strongest criticism is the contention that trials create a misleading portrait of responsibility and guilt. Based on a liberal–legalist framework that individualizes human rights violations and creates stark distinctions between perpetrators and victims, trials reinforce a historical account of rational, autonomous individuals whose behavior and motives are clearly open to legal scrutiny. The complexity of collaboration, bystander responsibility, and broader political and social–psychological dynamics are discarded in favor of legally neat distinctions between violator and victim. For prosecution

skeptics, the result is not so much an incomplete as a distorted account of the history, one where responsibility can be assigned to a relatively small group of perpetrators and broader social and structural issues of complicity are held at bay.<sup>19</sup> Moral scrutiny ends with the final court decision.

The reductive nature of liberal tribunals is manifested in a number of ways. For instance, tribunals provide a limited scope of prosecutions, given that only a certain number of violators can be put on the dock. In confronting massive violations like genocide, this is obviously problematic, since significant coordination and logistical planning may be required for large-scale and systematic killings. In response, international tribunals mostly focus on high-level "intellectual authors" of crimes, such as political and military leaders, rather than subordinate violators. Nevertheless, even with sophisticated legal doctrines like command responsibility and joint criminal enterprise that seek to account for purposeful collective violations, tribunals can at best prosecute only a handful of offenders.<sup>20</sup> Similarly, the demands of procedural due process require that prosecutors focus only on evidence connecting perpetrators to specific crimes, which risks artificially separating events from one another and broader historical patterns of violence. Some observers have gone further, arguing that evidentiary constraints mean that only certain types of "truth" are considered admissible: specifically, those that are directly quantifiable or pass a standard of forensic "objectivity." This may distort witness testimony, as victim witnesses do not always provide information that can easily be assessed using a "true/false dichotomy."<sup>21</sup> Some major trials have allowed extensive victim testimony of suffering that go beyond a defendant's direct responsibility, as in the trial of Adolf Eichmann, but these have been criticized for loose evidentiary and procedural standards. The ICC permits greater victim participation at trial sessions but it still seems to represent an exception to the trend and its results remain unclear. In contemporary trials, witnesses are rarely permitted extensive unstructured accounts of their experiences.

The greatest danger to the use of prosecutions is the risk of their political manipulation. Trials are ritual events insofar as they communicate that certain acts are so terrible that they rise to a level requiring strong moral and legal condemnation. Prosecutions focusing on the most abhorrent violations signal that in the future these acts will not be tolerated and that the state is committed to new norms of human rights. This didactic element is a constitutive part of mass atrocity prosecutions: they teach the nation the wrongness of certain behavior in a theatrical way. But as exemplary public performances of punishment, trials can be and have been used for a variety of political ends. Indeed, in transitions, courts are not independent institutions immune from political pressures. Rather, they sustain the legitimacy of the successor regime, indicating in powerful terms how new leaders distance themselves from the past. It is not uncommon for trials to be employed to generate social solidarity through the persecution of identifiable enemies, or "teach" a civic solidarity lesson about atrocity by scapegoating the accused. In such scenarios, the rule of law, such as it is, risks being undermined through the instrumental use of tribunals.

Ultimately, trials and the retributive framework are based on the assumption that mass atrocities are "ordinary": that is, atrocities are not outside the realm of

RES



understanding or morality but rather are open to analysis using pre-existing legal norms and rules to assess criminal behavior and responsibility. Some of these norms and rules will have to be adjusted, but the general applicability of criminal analytical frames is kept intact. Thus, such examples as the Nazi extermination camps, *Einsatzgruppen* killing teams, and popular participation in mass bloodletting in Rwanda can all, in principle, be approached as legal crimes committed by identifiable perpetrators. Such an analytical perspective raises deep ontological and epistemological questions for those genocide studies scholars who have long debated whether genocide constitutes a qualitatively different kind of evil, one that represents a rupture in our ability to make moral sense of human affairs.<sup>22</sup> These discussions about the nature of evil have a long and sophisticated philosophical pedigree, and I cannot do them justice here. Rather, I suggest that alternative ethical frameworks have surfaced in response, though they are fraught with their own challenges.

## ESTORATIVE JUSTICE

Given the limitations of retributive justice, a number of analysts and practitioners have sought other ways of achieving morally acceptable responses to the past. The main alternative is captured in the concept of “restorative justice,” which refers to policies and measures that seek the comprehensive restoration of social relations. The restorative approach focuses on the needs of victims and broader society rather than the more narrow demand of punishing violators. It frames political violence not only as the violation of the law or an individual’s legal rights, but as a social phenomenon that undermines community well-being. The aim, then, is to restore broken social relations by reconciling former enemies through public and sustained efforts of truth-telling. This includes acknowledging the wrongs committed against victims and – in the stronger formulations of restorative justice – encouraging forgiveness and the psychological and moral transformation of all those affected by the violence. Punishment is not eschewed, but rather subordinated to these goals. As a social-transformative model of justice, then, its remit is broader than the state or individual wrongdoers.<sup>23</sup>

The restorative paradigm has been adopted in a variety of postconflict scenarios, most tellingly through the use of truth commissions (TCs).<sup>24</sup> Originally employed in limited fashion during the Latin American transitions of the 1980s and 1990s, truth commissions have become central tools of transitional justice across the globe. There have been about thirty TCs used since the 1980s as well as a variety of more limited “commissions of inquiry.”<sup>25</sup> Truth commissions are normally sanctioned by the state but differ from trials since they focus on investigating broad-based patterns of abuse rather than individual violations, normally operate for a limited period of time, and publish a final report of their findings upon completion of their work. Unlike trials, TCs cannot hold individuals criminally liable for their actions and rarely have subpoena powers, though in some cases they name perpetrators in their reports as a form of social shaming and thus limited accountability. Most TCs are mandated with providing recommendations on institutional and security

sector reform and reparations, though they do not administer reparations programs. Furthermore, truth commissions may occasionally hold public sessions where victims and others can tell their stories in non-adversarial settings. These have proven to be the most dramatic elements of commissions, and since their original use in South Africa's Truth and Reconciliation Commission have become increasingly common.

The early generation of truth commissions was seen as the best available option where legal amnesties prevented the prosecution of major violators. Given that (retributive) "justice" was impossible, successor elites and civil society groups opted for public "truth," as it was often put at the time. This old debate between justice and truth has been superseded, however, and now it is more common to see commissions and trials operating together in a variety of ways. In Peru, for instance, the truth commission completed its work and forwarded a number of its files to the national prosecutor's office for further investigation and criminal indictments. In Sierra Leone, the commission worked in limited fashion with that country's hybrid court but only after a great deal of debate and tension over how to share information. Nevertheless, the increasing collaboration between trials and truth commissions does not erase their fundamentally different understandings of justice. For TCs, the guiding principle of restorative justice is manifested in the assumption that the public dissemination of the truth focused on victims' stories is the path to reconciliation. Individual stories give greater meaning to understandings of violations and establish counter-narratives that highlight the dignity of victims and survivors. Although forgiveness is not a constitutive part of TCs, confession and forgiveness are often encouraged in public hearings as a form of social catharsis and healing.

## Limitations

The restorative approach has gained wide support from human rights practitioners and advocates for its holistic approach to social reconstruction. At the center of restoration is truth – an accurate understanding of past events, patterns of violence, actors and responsibility. Without an account of the past and "who" was responsible for "what," reconciliation is impossible, for people will not know whom to reconcile with and for what. Thus, the first step of any restorative project is to report and publicize past crimes. Commissions have been at the center of these efforts, and the most successful commissions have employed a variety of investigative techniques including archival research, interviews, and field investigations (such as unearthing mass graves) to provide detailed histories of violence. By combining multiple investigative methods, TCs can often provide comprehensive macro perspectives that are lacking in transitional contexts. Peru's truth commission report documents a 20-year conflict between guerrillas and the state that resulted in the deaths of approximately 70,000 people, nearly three times the previously estimated number. Argentina's commission documented the disappearances of nearly 9,000 people, providing the foundation for future investigations into the military's atrocities against its population. And South Africa's Truth and

Reconciliation Commission detailed thousands of cases of disappearances, torture, and executions that had remained hidden during the apartheid period.<sup>26</sup>

Nevertheless, restorative efforts face some serious challenges. The first concerns the conception of truth at work in restorative justice. In a post-violence setting, any attempt at making sense of the past is fraught with difficulties because of the political and ethical issues involved. Such attempts do not merely catalogue past crimes, but create new historical narratives that place events in culturally intelligible and persuasive interpretive frames. The narratives are established through the selection – and implicit non-selection – of particular facts and people in efforts to create a broader coherent story about political responsibility. Not all politically motivated tortures, murders, and other violations can receive equal attention in these accounts. Some become paradigmatic examples of political atrocities, presenting perpetrators and victims in vivid ways that reinforce general accounts of violence and responsibility. The Nyarubuye Church massacre in Rwanda, in which about 20,000 people were killed, is a case in point. The mass killings carried out by Hutu government forces against unarmed Tutsi and Hutu civilians symbolize the terrible ferocity of the Rwanda genocide and politicide in stark terms; but other atrocities may be downplayed for lack of political salience, questions about perpetrator motivation, or other reasons that do not support the general narrative.<sup>27</sup>

The problem of selection – and thus the problem of constructing historical truths and collective memory – becomes significantly more acute in the context of official truth efforts. Official truth commissions, for instance, are tasked with synthesizing enormously complex historical events into coherent stories while still maintaining “objectivity.” In fact, they are closer to morality plays, “a grand meta-narrative of redemption ... recounting of an epic of collective destruction and rebirth.”<sup>28</sup> Commission reports often sketch a narrative arc that reinforces a three-stage history: an antediluvian period of increasing prejudice, hate and fear, followed by a cataclysmic orgy of violence, and ending in the present, a struggle for reconstructing the basic norms necessary for re-establishing (or in some case, establishing for the first time) a functioning liberal democratic order and reconciling a traumatized people. In practice, the goal of constructing this narrative account may come into tension with the messy reality on the ground, where violence may be multidirectional, victims may also be perpetrators, and local atrocities are not always motivated by the ideological claims of elites and their core supporters.<sup>29</sup> Indeed, recent ethnographic work sharply questions whether official truth-telling adequately captures local realities and notes how problematic or subaltern histories and experiences are written out of the master narrative.<sup>30</sup> Official histories smooth over the complexity of violence, and in the process they function both to delegitimize past actors and legitimize present ones. They are thus irreducibly political tools. Michel Foucault noted, correctly, that all official truths seek to repress aporias and internal inconsistencies, and “if one controls people’s memory, one controls their dynamism. It is vital to have possession of this memory, to control it, to administer it, tell it what it must contain.”<sup>31</sup>

It is also the case that official truth efforts may have little impact on the population, especially those groups associated with the perpetrators. The perceived imposition of a master narrative may generate a host of counter-narratives that deny

past abuses, justify them, or seek to create historical equivalencies – we may have slaughtered your people, but you did the same to us. For instance, the current Rwandan government's refusal to acknowledge atrocities committed by its own forces during and after the genocide has eroded its moral and political capital and strengthened the hand of Hutu genocide deniers and those who argue there was a "double genocide."<sup>32</sup>

In rejecting the retributive impulse behind prosecutions, which are seen as reinforcing social divisions, restorativists instead emphasize the importance of political forgiveness. Part of this emphasis is practical – most truth commissions lack prosecutorial or even subpoena powers and instead rely on other strategies to do their work. Nevertheless, restorativists defend forgiveness on more than practical grounds. Supporters contend that truth-telling, followed by repentance on the part of violators and forgiveness from victims, marks a sharp break with the past and represents a first step along the road to societal reconciliation.<sup>33</sup>

The meaning of forgiveness in post-violence contexts is not fixed.<sup>34</sup> In its most general sense, forgiveness emphasizes overcoming resentment, bitterness and anger, forswearing vengeance, and laying the foundations for a new future without violence. Christian formulations have been particularly influential in transitional justice debates, with their focus on the ontological transformation of perpetrators and victims and the presumed ability of the forgiveness process to promote compassion and generosity.<sup>35</sup> A number of critics have argued that post-conflict forgiveness discourse often masks a form of Western religious expectation on the proper ways to engage with the past (the same criticism of Western imposition, incidentally, is made of international courts and retributive justice). These criticisms miss an important point, however: forgiveness practices are found in a wide variety of cultural contexts and transitional settings, even if their normative foundations differ from one another.<sup>36</sup>

A more central question than whether forgiveness is a foreign imposition concerns whether forgiveness, normally practiced between individuals, can serve as an adequate social response to mass atrocity. Here, the evidence is mixed. The South African truth commission did not formally institutionalize forgiveness, but commission chairman Archbishop Desmond Tutu's endorsement of repentance and forgiveness, as well as his equally strong criticisms of retributive justice, ensured that forgiveness became a dominant norm during the transition and was seen by South Africans as the government's preferred policy. Indeed, several analysts and practitioners have sought to make forgiveness a viable *political* practice that emphasizes transformed relations and social harmony.<sup>37</sup> Nevertheless, a number of critics have noted that top-down political forgiveness programs are potentially coercive. They create a social expectation that victims ought to abandon moral outrage and legitimate anger in favor of political needs for stability and "moving on." In essence, expecting forgiveness – especially in the absence of accountability measures – effectively instrumentalizes victims and robs them of moral agency.<sup>38</sup> One South African survivor of apartheid complained bitterly about the truth commission, stating that it was "trying to dictate my forgiveness."<sup>39</sup> This is not a problem unique to South Africa – similar responses have come from Cambodia, Rwanda, and Argentina, among other places.

REPA

The upshot of political forgiveness efforts is that they may limit legitimate political dissent and reinforce the interests of the new regime, a particular problem in contexts with successor rulers who are already skeptical of democratic pluralism. Calls for widespread forgiveness, similar to calls for deep social reconciliation, often rely on a substantive conception of social solidarity that tends to smooth over pronounced and legitimate differences that are a part of any political order. Political forgiveness theories face a challenge in defining the difference between significant political conflict that may degenerate into renewed violence versus forceful political dissent that is a basic element of democratic discourse. This may be because these theories rarely detail what legitimate post-atrocity politics should look like, and the antagonistic element of politics is lost in favor of consensus.<sup>40</sup>

## REPARATIONS AND DISTRIBUTIVE JUSTICE

Reparations for large-scale violence have a long history, though prior to World War II they were normally understood as payments made by defeated nations to the victors. Those reparations had little normative force – they were not ethical claims, but rather an expected cost of losing a war. After 1945, however, reparations as an ethical acknowledgement of responsibility for abuses gained greater resonance. In particular, West Germany's payment to Israel of about DM3 billion for crimes associated with the Holocaust, including slave labor, persecution and stolen or destroyed property, helped establish the moral underpinnings of reparations. Beginning in the 1960s indigenous groups around the world also mobilized to demand reparations for the legacies of violent colonialism, and African American activists revived calls for reparations from the United States government.<sup>41</sup> Over the past three decades reparations claims have become a fixture of political debates in Eastern and Central Europe, Africa, Latin America, and Asia, and have now become entrenched in transitional justice discourse, though reparations are still relatively rare in practice.<sup>42</sup>

The restorative justice paradigm has long noted the importance of reparations for victims of political violence. In many respects, this is in keeping with its victim-centric focus and general shift away from prosecutions and perpetrator punishment. Nevertheless, recent reparations scholarship and practice has sought to reframe them as part of long-term efforts at economic development and democratization, and thus serve as a means of assisting the consolidation of democracy. Pablo De Greiff argues that reparations can build civic trust and promote the rule of law by recasting victims as citizens with legal rights that must be recognized by the state,<sup>43</sup> with the eventual goal of “normalizing” post-conflict social and political life. With this goal in mind, a substantial literature on material reparations has developed that treats it as a subset of economic development programs.<sup>44</sup> However, reparations retain some distinctions from development programs.

Broadly speaking, reparations are those policies and initiatives that attempt to restore to victims their sense of dignity and moral worth and eliminate the social disparagement and economic marginalization that accompanied their targeting, with the goal of returning their status as citizens.<sup>45</sup> Reparations programs vary

significantly, but can be understood according to how recipients are categorized (collectively or individually) and what type of victim acknowledgment they provide (symbolic or material).

In most cases of large-scale atrocity including genocide and crimes against humanity, violence is directed at some type of group, such as ethnic, religious, national, ideological, political, racial, or economic groups. Frequently, targeted groups span different categories and may contain other transversal categories – such as gender – whose members were the targets of specific types of violation. This broadly collective dimension of violence requires *collective symbolic* reparations for victim groups. Recognizing targeted groups means bringing public attention to the fact that violations were not simply discrete “excesses” but the result of planned strategies of repression (and occasionally extermination) against designated “enemies.” Symbolic recognition of groups, then, means recognizing (a) the way strategies of repression targeted them *as* groups, and (b) the society’s obligation to meet the demands of groups to recognize their experiences and treat them as equal citizens. Commitment to the latter means opposing discourses arguing that groups somehow “deserved” what happened to them because of their group identity or history. Symbolic benefits can be accorded in a number of different ways, including public acts of atonement and official apologies, creating public spaces to pay homage to victims, and establishing museums, monuments, and days of remembrance to preserve collective memory.

*Individual symbolic* acknowledgment consists of the need to recognize victims as individuals and not simply reduce them to an amorphous group of passive, voiceless survivors. This type of acknowledgment includes developing ways of underscoring how oppression and terror affected individuals *as such*; how the term *victims’ experiences* is not simply the aggregate of mostly similar stories but reflects actual, distinct individuals whose lives were changed in personal and profound ways. In other words, it must include sensitivity to the multiplicity of distinct experiences that victims recount. While in practice it is impossible to recognize *all* victims individually in any meaningful sense, individual symbolic recognition emphasizes the importance of remembering that victims are not merely a statistic but actual people who often suffered intolerable cruelties. The suffering of an individual – whoever it may be – will always be more than a symbol of systematic crimes; suffering is always deeply personal, and proper recognition requires attention to this fact. Sensitivity to victims as individuals is an important step to reaffirming their status as human beings and citizens. Without recognition of victims as individuals *and* as equals who deserve respect, it is unlikely that they will secure their status as citizens.

Symbolic recognition – both individual and collective – may be important for helping victims recapture their sense of dignity and self-worth, but symbolic acknowledgment is not enough. In many cases, the devastation wrought by systematic violence and oppression also leaves victims in a position of economic vulnerability, something that cannot be remedied only through symbolic means. Thus, victim recognition also requires a concern with distributive justice.

The *collective material* element of reparatory justice focuses on distributive justice issues. It seeks to provide resources to victimized groups with the aim of creating the material basis and security necessary for them to become full participants in

social, political, and economic life. This provision of resources may take several forms, such as developing programs for housing and employment for groups whose economic condition was directly affected by the violence, as well as health initiatives (psychological and physical) to address the traumas that victims experience. Where victims belong to historically devalued communities whose positions worsened during political violence, provision of resources may require broader infrastructural investments, including better roads, rural education programs, and credit initiatives for economic development. While the specifics of such programs must be tailored to particular contexts, the programs are collective in that they help groups that were targets of violence. All these programs entail the redistribution of economic resources with the goal of enhancing the livelihood of victims. For example, truth commissions in Peru, Guatemala, and El Salvador called for significant investments in public education, housing, employment, and economic development in indigenous areas most affected by the violence.

Finally, there is an *individual material* component to reparations. This too is a form of distributive justice, insofar as it addresses the importance of redistributing resources to victims. However, it places greater emphasis on the autonomy of individuals than the collective dimension discussed above. Certainly, no compensation can substitute for death or torture, and in this sense money – or any reparatory measure – is always insufficient. But compensation can have an impact for economically destitute victims and shows that the state's recognition of victims is not merely an empty symbolic gesture but also a commitment backed by material support. Individualized reparation schemes are varied, but they normally include familial rehabilitation through access to medical, psychological, and legal services, compensation for financially assessable losses, economic redress for harms that are not easily quantifiable, and restitution of lost, stolen, or destroyed property. Guatemala's truth commission strongly recommended that the state create a National Reparations Program to include compensation for serious injuries and losses, psychological rehabilitation initiatives, the restitution of or compensation for stolen or destroyed property, and other measures to be developed in tandem with affected communities. In particular, the commission emphasized the importance of individual reparations, with consideration given to the type of violation, the economic and social status of the victim, and special attention to certain categories of people, such as minors, widows, and the elderly.

Material reparations do face certain challenges. For many survivors, material reparations of any sort do not provide an adequate moral response to their suffering. They may see it as a kind of "blood money" or attempt by the state to wash its hands of future responsibility. But even where reparations are accepted as moral, it is not apparent how we should connect, conceptually, reparatory justice initiatives with general economic development and distributive programs (normally referred to as "development"). While most of society would benefit from an increase in development, there is a question of whether the specifically normative dimension of reparations risks being subsumed under these general distributive programs, clouding the normative distinction between reparative justice aimed at victims *per se* and more general state policies to combat poverty. For many victims, reparations are not simply about financial compensation but also about the moral force of state

acknowledgment, and therefore collapsing reparations into development is normatively problematic. Indeed, what the state may call reparations for victims may be viewed as part of the state's duties to all citizens, allowing the government to build moral and political capital while actually satisfying (or claiming to satisfy) basic obligations.

Part of the difficulty stems from a lack of clarity regarding what, exactly, is meant by development. For some scholars, policy makers and activists, development includes not only narrowly tailored strategies to promote economic growth (the traditional focus), but also a wider host of policies related to institutional, political and social factors that together affect material and psychological well-being. The United Nations Development Programme evaluates development needs according to a broad range of practical opportunities individuals ought to have in order to exercise meaningful rational agency.<sup>46</sup> Peter Uvin, however, argues that development is about strengthening basic human rights: it concerns "the realization that the process by which development aims are pursued should itself respect and fulfill human rights."<sup>47</sup> These somewhat competing theoretical frames result in different policy recommendations.<sup>48</sup> However, there are compelling reasons to tie reparations to development. Rethinking reparations as not only backward-looking devices of commemoration and compensation, but as part of a future-oriented enterprise of economic justice may contribute to working toward the non-repetition of crimes. Often, the structural causes of mass violence persist after formal peace has returned and significant enclaves of economic marginalization and resentment still exist that may ignite future violence. South Africa, Rwanda, Sierra Leone, and Mozambique have all sought, in various ways, to promote development not only for strictly economic reasons but also as a way to curtail the possible return of violence (albeit with mixed success).

In any case, the relation between reparations and development is still under-theorized precisely because so much research and practice conceptualizes "transitional justice" (the period when reparations are supposed to be applied) as a liminal period between the termination of violence and the consolidation of a functioning liberal democratic order.<sup>49</sup> Thus, development questions are seen as better suited to the domain of "ordinary" liberal democratic politics. This conceptual division, neat in theory but problematic in practice, has its roots in liberal assumptions about the sources of mass violence: a breakdown of liberal codes of tolerance, the erosion of the rule of law, and a rise of violent, politicized "ethnic" or other collective identity claims. In this reading, it follows that what is needed is the establishment of constitutional order with a protection for basic liberal rights (the core of the retributive model presented earlier).<sup>50</sup> The move to incorporate development strategies into transitional justice debates forcefully contests some of these basic liberal assumptions about the causes of violence and peace.<sup>51</sup> These efforts to open the transitional justice field are ongoing, but signal a fundamental and welcome rethinking of what societal goals should be. Genocide studies can contribute directly to these debates by highlighting how structural conditions of marginalization can lead to political instability and mass violence. The structuralist theories of Mark Levene, Adam Jones and other genocide scholars, for instance, are well positioned to enrich transitional justice thinking on reparations and development.<sup>52</sup>



## EMPIRICAL CHALLENGES

The previous sections outlined the main parameters of transitional justice scholarship and presented the strengths and limitations of various theoretical paradigms.

However, the options available to transition architects are often limited by specific political, social, and economic constraints.<sup>53</sup> This section presents several factors that affect the viability of transitional justice mechanisms across cases.

The first factor concerns the degree of *institutionalization and legitimacy of the previous regime*. The relative degree of institutionalization and legitimacy of the perpetrating regime affects the likely success of efforts to seek legal recourse for political crimes. Institutionalization means that the regime: ruled through the use of formal and bureaucratic mechanisms, so that different aspects of governance were managed and coordinated by various departments; penetrated civil and political society systematically and deeply; and was generally stable and durable. Institutionalized perpetrator regimes are two-faced, for they assemble complex legal justifications for their actions, bureaucratize violence, and generally rationalize all forms of repression, yet also engage in extra-legal terror against political opponents and the broader population, particularly through the use of secret police, death squads, disappearances, and massacres. Institutionalization often includes extensive legal justifications for crimes through the emergence of a large body of state-security law that justifies state practices, giving legal respectability to a violent state. The upshot may be a large body of law and archival evidence identifying the organization and systematization of state-sponsored violence. The more institutionalized and centralized the terror, the more likely it is that a significant body of documentation delineating the coordination of bureaucracies and security forces will exist. Of course, accessing this information may be difficult, as it was in Argentina, Chile and Guatemala following the removal of their military regimes. However, systematized state terror complemented by a robust body of documentation can facilitate the truth seeking and prosecutorial goals of tribunals, and thus institutionalized regimes are good for trials. Strong and well-documented links between superiors and subordinates illuminate hierarchies of legal (and moral) responsibility, making it more likely that prosecutions will be successful.

Nevertheless, institutionalization can also complicate prosecutions: complex, multilayered systems of repression complicate the criminal-legal understanding of responsibility, especially where there was a wide web of repression implicating numerous bureaucracies and agencies (e.g., as in South Africa and Eastern Europe, in different ways) and enjoying widespread support or at least acquiescence – and thus arguably legitimacy.

An important factor in assessing the viability of accountability measures is the *mode of political transition* between regimes. Transitions that are achieved through a complete victory in war or other radical break with the past give successor elites sufficient political capital to impose trials. The Tokyo and Nuremberg tribunals, as well as successor trials in Rwanda, underscore the wide latitude that victors have in pursuing retribution. Transitions that are negotiated, or “pacted,” make trials less politically viable.<sup>54</sup> Previous elites may still retain enough power to prohibit or

limit prosecutions through the threat of renewed violence. Other transitional justice mechanisms that are less retributive, such as truth commissions and broad reparations packages, may provide an acceptable alternative to prosecutions.

The *independence of the judiciary* strongly affects the likelihood of post-atrocity justice. In pacted transitions the judiciary remains an enclave of prior regime support (such as in El Salvador) and trials are unlikely to secure meaningful justice. Truth commissions may be a preferred alternative. The rise of regional and international judicial fora such as the Inter-American Court of Human Rights and the International Criminal Court, as well as case-specific tribunals, have provided important alternatives to domestic prosecutions. Regardless, the reconstruction of the national judiciary remains the best hope for domestic accountability and a crucial instrument against future impunity.

Benjamin Valentino has shown that genocide and mass killings require a relatively small group of well-organized killers and wider popular support, or at least indifference.<sup>55</sup> In some cases there are comparatively few overt perpetrators and many "beneficiaries," or persons who benefit from violence without necessarily participating in violations. In South Africa, all white South Africans were beneficiaries of the apartheid regime regardless of their political views. In other cases the proportion of perpetrators to beneficiaries is higher. For example, the Rwandan genocide seems to have included the active participation of many Hutu civilians. In Cambodia, the Khmer Rouge did not enjoy wide-ranging support outside their own ranks, and thus there were relatively few beneficiaries of the regime who were not implicated in gross human rights violations.

In all of these cases, tribunals can offer an important, though limited, contribution to accountability. Where there are relatively few overt perpetrators and many beneficiaries, the latter cannot be held legally accountable. A truth commission can serve as an important complement to trials by highlighting that complicity and responsibility go well beyond the narrowly understood notions of criminal liability that are characteristic of criminal prosecutions. In South Africa, the commission investigated the role that business, legal, medical, religious, and other professional communities played in supporting the apartheid regime. Investigations of this sort illuminate the wide support that some repressive states enjoy by morally implicating beneficiaries and countering claims that the latter were ignorant of the state's violence. Nevertheless, even this is insufficient; a robust public sphere open to critical reflection is an important resource for ensuring that state institutions like the judiciary or commissions do not wholly determine complex normative issues of historical memory, responsibility and perpetrator definition. Civil society actors can raise many of the difficult questions of responsibility, such as the moral status of bystanders and beneficiaries, in ways that are not possible through trials and even truth commission investigations.

Transitional justice programs are expensive, and poor countries emerging from a conflict with a devastated infrastructure and weak economy may be unable to pursue these expensive institutional responses, at least not without significant foreign support. *Material, financial, and personnel resources* affect the scope of prioritization and scope of strategies a country can pursue. A trial of a high-level

perpetrator can cost millions of dollars and draw resources away from other pressing needs, including reparations, victim support programs and economic development initiatives. It may be a mistake to reject prosecutions solely on budgetary grounds, but budgetary constraints are real. Cambodia's hybrid tribunal has cost over \$30 million a year since it began operations, and the ICTY and ICTR have cost about \$150 million a year each.<sup>56</sup> Domestic efforts are cheaper, but still expensive: South Africa spent approximately \$18 million a year on its commission, a sum unmatched by any other similar body, and commissioners nevertheless felt their work was underfunded.

Political will is related to these resource issues. Human rights advocates have often found a great deal of rhetorical governmental support for their ambitious projects, only to realize later that the regime has little interest pursuing politically delicate policies. The lack of interest is, unsurprisingly, reflected in the lack of money and resources available for trials, commissions or reparations. Uganda assembled two commissions – in 1974 and 1986 – that were duly ignored by the state, and Ecuador's 1996 commission ended inconclusively after 5 months without producing a report of its findings. Zimbabwe's 1985 state-sanctioned commission, investigating massacres in the Matabeleland, never released its report; the government quashed its publication, claiming the findings would unleash "ethnic conflict."<sup>57</sup> For many years, Cambodia resisted efforts at prosecutions of Khmer Rouge cadres for fear they would reveal extensive connections to the government. And yet political will and sufficient resources are crucial if institutional responses to the past are to succeed. Otherwise, they will amount to nothing more than empty promises.

A final cluster of factors concerns the *salience of specific cultural discourses for furthering justice and reconciliation*. International human rights organizations have developed an enormous literature on "lessons learned" about transitional justice – programmatic reports on justice packages, sequencing and implementation – which together constitute a systematized and highly rationalized body of knowledge whose primary findings are meant to be applied in a variety of contexts. This is partly a result of the general professionalization of the field over the past 20 years, which has received significant financial infusion from the UN, Western countries and various foundations.<sup>58</sup> This process of internationalization and standardization has marginalized local experiences and practices and created a deep disconnect between "expert" and local knowledge, often to the detriment of the latter. Nevertheless, justice and reconciliation are unlikely to have much of an impact if they do not draw from cultural discourses for legitimacy. In South Africa, local leaders frequently called for a collective spirit of *ubuntu*, roughly meaning "humaneness," to emphasize the importance of re-establishing just and meaningful social relations. Northern Ugandans have drawn on *mato oput*, a local reconciliation practice, to solidify community relations and permit former combatants to re-enter society through public expressions of repentance. These practices and others offer deep discursive sources that may feed broader efforts at encouraging reconciliation, understood in culturally relevant terms. Drawing on local discourses may help ensure that reconciliatory efforts will have greater resonance in the population.

## CONCLUSION

This chapter has outlined some of the key developments and theoretical frameworks in the transitional justice literature as a first step toward encouraging genocide scholars to move beyond a handful of cases when examining post-genocide developments. While genocide scholars have often discussed the role of trials after genocide, the general normative and empirical findings of transitional justice – and their applicability to genocide – are rarely explored in any systematic fashion.

There are also contributions that genocide studies can make to transitional justice. Genocide scholars are well positioned to provide historically informed accounts of the past that resist reification of group and actor categories typical of the transitional justice literature. As discussed earlier, transitional justice studies often treat ethnic groups in rather static ways, seeking to end violence through “justice and reconciliation” programs between easily identifiable and stable groups. In the process these studies reproduce the same assumptions of ethnic homogeneity used by perpetrators to justify the conflict in the first place. Genocide researchers can bring further nuance to analyses of how collective identities develop and show how extremist claims of group identity often do not reflect realities on the ground. Researchers can also advance more sophisticated understandings of perpetrator, victim and bystander categories, which are often treated rather reductively in trials. Naturally, these efforts complicate transitional justice programs that employ uniform “lessons learned” approaches across many cases, but they are more empirically accurate and open context-sensitive opportunities for more substantive reconciliation and justice efforts.

Genocide research can also problematize dominant accounts of violence at the heart of mainstream transitional justice literature, which occasionally assumes that mass violence is the product of the erosion (or absence) of standard liberal universalist principles like tolerance, reasoned debate, and the rule of law. Sophisticated studies of the causes and dynamics of violence, including structural and contingent factors in explaining policy radicalization, require of trials and truth commissions more complex understandings of perpetrator intentionality and motives. This has direct consequences for the kinds of histories written in courtrooms and truth commission reports.

The points of interest between genocide and transitional justice research are many, and each field has much to offer the other. Greater knowledge and interaction between the two will enrich our understandings of mass violence and aid in efforts to reckon with terrible pasts.

## NOTES

- 1 International Center for Transitional Justice ICTJ, 2008, “What is Transitional Justice?” Available HTTP: [www.ictj.org/en/tj](http://www.ictj.org/en/tj). Also see N. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon With Former Regimes*, 3 vols, Washington, DC: United Institute of Peace, 1997; R. Teitel, *Transitional Justice*, Oxford: Oxford University Press, 2000.

- 2 See *The Transitional Justice Database* at <http://sites.google.com/site/transitionaljusticedatabase/>
- 3 K. Theidon, "Whose Justice? Global and Local Approaches to Justice," *International Journal of Transitional Justice* 3/3, 2009, 1.
- 4 This is especially evident in articles published in the two main genocide studies journals, *Genocide Studies and Prevention* and *Journal of Genocide Research*. K. P. Apuuli, "Procedural Due Process and the Prosecution of Genocide Suspects in Rwanda," *Journal of Genocide Research* 11/1, 2009, 11–30; R. Wolf, "Judgment in the Grey Zone: The Third Auschwitz (Kapo) Trial in Frankfurt 1968," *Journal of Genocide Research* 9/4, 2007, 617–35; J. Burnet, "The Injustice of Local Justice: Truth, Reconciliation and Revenge in Rwanda," *Genocide Studies and Prevention* 3/2, 2008, 173–94; M. Bergsmo and E. Novic, "Justice After Decades in Bangladesh: National Trials for International Crimes," *Journal of Genocide Research* 13/4, 2011, 503–11; J. N. Clark, "The Crime of Crimes: Genocide, Criminal Trials and Reconciliation," *Journal of Genocide Research* 14/1, 2012, 55–77. Also see V. Dadrian and T. Akçam, *Judgment at Istanbul: The Armenian Genocide Trials*, New York: Berghahn Books, 2012. H. Earl, *The Nuremberg SS-Einsatzgruppen Trial, 1945–1958*, Cambridge: Cambridge University Press, 2009; M. Drumbl, *Atrocity, Punishment and International Law*, New York: Cambridge University Press, 2007; V. Peskin, *International Justice in Rwanda and the Balkans*, New York: Cambridge University Press, 2008. An exception is J. M. Kamatali, "Accountability for Genocide and Other Gross Human Rights Violations: The Need for an Integrated and Victim-based Transitional Justice," *Journal of Genocide Research* 9/2, 2007, 275–95.
- 5 D. Bloxham and A. D. Moses, eds., *The Oxford Handbook of Genocide Studies*, Oxford: Oxford University Press, 2010.
- 6 A. Jones, ed., *New Directions in Genocide Research*, New York: Routledge, 2012. The same point holds for other critical reviews of genocide studies, including: S. Totten and W. Parsons, eds., *Century of Genocide: Critical Essays and Eyewitness Testimony*, New York: Routledge, 2009; D. Stone, ed., *The Historiography of Genocide*, New York: Palgrave Macmillan, 2008; and two issues devoted to "Critical Reflections on the State and Future of Genocide Studies" in *Genocide Studies and Prevention* 6/3, 2011 and 7/1, 2012. Many works in the field that discuss genocide's aftermath are normally limited to analyzing prosecutions in select cases, and rarely examine systematically the broader normative questions raised in post-conflict settings.
- 7 L. Huyse and M. Salter, eds., *Traditional Justice and Reconciliation After Violent Conflict: Learning from African Experiences*, Stockholm: IDEA, 2008.
- 8 A. L. Hinton, ed., *Transitional Justice: Global Mechanisms and Local Realities After Genocide and Mass Violence*, New Brunswick, NJ: Rutgers University Press, 2010; A. L. Hinton and K. L. O'Neill, eds., *Genocide: Truth, Memory and Representation*, Durham, NC: Duke University Press, 2009. Adam Jones' genocide textbook also devotes a chapter to "Justice, Truth and Redress": see *Genocide: A Comprehensive Introduction*, 2nd edition, London: Routledge, 2010.
- 9 E. Higonnet, "Restructuring Hybrid Courts," *Arizona Journal of International and Comparative Law* 23/2, 2006, 347–435.
- 10 M. Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence*, Boston: Beacon Press, 1998.
- 11 L. Huyse, "Tradition-Based Approaches in Peacemaking, Transitional Justice and Reconciliation Policies," in Luc Huyse and Mark Salter, eds., *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, Stockholm: Institute for Democracy and Electoral Assistance, 2008, pp. 1–21; E. Baines, "The Haunting of Alice: Local Approaches to Justice in Northern Uganda," *International Journal of*

- Transitional Justice* 1/1, 2007, 91–114; T. Longman, “Justice at the Grassroots? Gacaca Trials in Rwanda,” in Naomi Roht-Arriaza and Javier Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century: Beyond Truth v. Justice*, Cambridge: Cambridge University Press, 2006, pp. 206–28.
- 12 S. Straus and L. Waldorf, eds., *Remaking Rwanda: State Building and Human Rights after Mass Violence*, Madison: University of Wisconsin Press, 2011.
  - 13 P. Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers*, Cambridge: Cambridge University Press, 2010. Rwanda has also used work and re-education programs, known as the TIG/RCS, to aid the return of released genocidaires into society.
  - 14 E. Verdeja, *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence*, Philadelphia, PA: Temple University Press, 2009, pp. 97–8.
  - 15 J. Elster, *Closing the Books: Transitional Justice in Historical Perspective*, Cambridge: Cambridge University Press, 2004.
  - 16 G. Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, Princeton, NJ: Princeton University Press, 2001, p. 1.
  - 17 H. Kim and K. Sikkink, “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries,” *International Studies Quarterly* 54/4, 2010, 939–63; D. Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory*, Oxford: Oxford University Press, 2001.
  - 18 This is especially evident in the work of Human Rights Watch, Amnesty International, and the International Center for Transitional Justice.
  - 19 See H. Cobban, (2003) “Healing Rwanda: Can an International Court Deliver Justice?” *Boston Review*. Online. Available HTTP: <http://bostonreview.net/BR28.6/cobban.html> (accessed October 5, 2011).
  - 20 A. M. Danner and J. S. Martinez, “Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law,” *California Law Review* 93, 2005, 74–170.
  - 21 M. B. Dembour and E. Haslam, “Silencing Hearings? Victim Witnesses at War Crimes Trials,” *European Journal of International Law* 15/1, 2004, 156.
  - 22 For instance, Z. Bauman, *Modernity and the Holocaust*, Ithaca, NY: Cornell University Press, 1989.
  - 23 J. Braithwaite, *Crime, Shame and Reintegration*, Cambridge: Cambridge University Press, 1989.; E. Kissi, “Moral Ambition within and Beyond Political Constraints,” in Robert Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions*, Princeton, NJ: Princeton University Press, 2001.
  - 24 Occasionally also called TRCs, or truth and reconciliation commissions. M. Freeman, *Truth Commissions and Procedural Fairness*, Cambridge: Cambridge University Press, 2006.
  - 25 The United States Institute of Peace keeps a useful list here: [www.usip.org/publications/truth-commission-digital-collection](http://www.usip.org/publications/truth-commission-digital-collection) (accessed December 9, 2011).
  - 26 Peru *Informe Final de la Comisión de la Verdad y Reconciliación*, Lima, Peru: 2003. Available HTTP: [www.cverdad.org.pe](http://www.cverdad.org.pe) (accessed October 9, 2011); Argentina National Commission on the Disappeared *Nunca Más: Report of the Argentine National Commission on the Disappeared*, New York: Farrar, Straus and Giroux, 1986; South African Truth and Reconciliation Commission, *South African Truth and Reconciliation Final Report*, 5 vols, New York: Grove’s Dictionaries, 1995.
  - 27 J. Meierhenrich, “Topographies of Remembering and Forgetting: The Transformation of Lieux de Mémoire in Rwanda,” in Scott Straus and Lars Waldorf, eds., *Remaking Rwanda: State Building and Human Rights after Mass Violence*, Madison: University of Wisconsin Press, 2011, pp. 283–96.

- 28 M. Osiel, "Ever Again: Legal Remembrance of Administrative Massacres," *University of Pennsylvania Law Review* 1/144, 1995, 275.
- 29 L. A. Fujii, *Killing Neighbors: Webs of Violence in Rwanda*, Ithaca, NY: Cornell University Press, 2009; C. Nordstrom, *A Different Kind of War Story*, Philadelphia: University of Pennsylvania Press, 1997.
- 30 A. L. Hinton, ed., *Transitional Justice*; J. DeShaw Rae, *Peacebuilding and Transitional Justice in East Timor*, Boulder, CO: Lynne Rienner, 2009.
- 31 M. Foucault, "Film and Popular Memory," *Radical Philosophy* 11, 1969, 25; P. Nora, ed., *Realms of Memory: Rethinking the French Past*, New York: Columbia University Press, 1996; D. Stone, "Genocide and Memory," in Donald Bloxham and A. Dirk Moses, eds., *The Oxford Handbook of Genocide Studies*, Oxford: Oxford University Press, 2010, pp. 102–19.
- 32 L. Waldorf, "Instrumentalizing Genocide: The RPF's Campaign Against Genocide Ideology," in Scott Straus and Lars Waldorf, eds., *Remaking Rwanda: State Building and Human Rights after Mass Violence*, Madison: University of Wisconsin Press, 2011, pp. 48–66; J. Pottier, *Re-imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century*, Cambridge: Cambridge University Press, 2002.
- 33 D. Tutu, *No Future Without Forgiveness*, New York: Doubleday, 1999.
- 34 M. U. Walker, *Moral Repair: Reconstructing Moral Relations After Wrongdoing*, Cambridge: Cambridge University Press, 2006.
- 35 M. Volf, *Exclusion and Embrace: A Theological Exploration of Identity, Otherness, and Reconciliation*, Nashville, TN: Abingdon Press, 1996; M. Marty, "The Ethos of Christian Forgiveness," in Everett L. Worthington, ed., *Dimensions of Forgiveness: Psychological Research and Theological Forgiveness*, Philadelphia, PA: Templeton Foundation Press, 1998, pp. 9–28; L. W. Hinson, director, *As We Forgive*, film, Washington, DC: Image Bearer Pictures, 2007.
- 36 D. Philpott, *Just and Unjust Peace: An Ethic of Political Reconciliation*, Oxford: Oxford University Press, 2012.
- 37 P. Digeser, *Political Forgiveness*, Ithaca, NY: Cornell University Press, 2001; T. Govier, *Forgiveness and Revenge*, London: Routledge, 2002; T. Govier, *Taking Wrongs Seriously: Acknowledgment, Reconciliation, and the Politics of Sustainable Peace*, New York: Humanity Books, 2006.
- 38 T. Brudholm, "On the Advocacy of Forgiveness after Mass Atrocities," in Thomas Brudholm and Thomas Cushman, eds., *The Religious in Responses to Mass Atrocity*, Cambridge: Cambridge University Press, 2009.
- 39 W. Verwoerd, "Toward an Answer to Criticism of the South African TRC," in Trudy Govier, ed., *Dilemmas of Reconciliation: Cases and Concepts*, Waterloo, Ontario: Wilfrid Laurier University Press, 2003, p. 246.
- 40 D. Shriver, *An Ethic for Enemies: Forgiveness in Politics*, Oxford: Oxford University Press, 1998. For a sustained critique, see A. K. Hirsch, ed., *Theorizing Post-Conflict Reconciliation: Agonism, Restitution and Repair*, New York: Routledge, 2012.
- 41 A useful general treatment of twentieth-century reparations movements is found in E. Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, Baltimore, MD: Johns Hopkins University Press, 2000.
- 42 J. C. Torpey, *Making Whole What Has Been Smashed: On Reparations Politics*, Cambridge, MA: Harvard University Press, 2006. The UN has also endorsed the importance of reparations. See T. Van Boven, *United Nations Commission on Human Rights: Study Concerning the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Human Rights Violations and Fundamental Freedoms: Final Report*. UN doc. E/CN.4/1990/10, 1990. New York: United Nations, July 8, 1993.

- 43 P. De Greiff, "Repairing the Past: Reparations for Victims of Human Rights Violations," in Pablo De Greiff, ed., *The Oxford Handbook on Reparations*, Oxford: Oxford University Press, 2006, pp. 1–20.
- 44 N. Roht-Arriaza and K. Orlovzky, "A Complementary Relation: Reparations and Development," in Pablo De Greiff and Roger Duthie, eds., *Transitional Justice and Development: Making Connections*, New York: International Center for Transitional Justice, 2009, pp. 170–212.
- 45 E. Verdeja, "A Normative Theory of Reparations in Transitional Democracies," *Metaphilosophy* 37/3–4, 2006, 449–68; also see M. U. Walker, *What Is Reparative Justice?* Aquinas Lecture, Milwaukee, WI: Marquette University Press, 2010.
- 46 United Nations Development Programme, [www.undp.org](http://www.undp.org) (accessed February 23, 2012). The key theoretical justification is found in "capabilities theory." See A. Sen, *The Idea of Justice*, Cambridge, MA: Harvard University Press, 2009.
- 47 P. Uvin, *Human Rights and Development*, Bloomfield, CT: Kumarian Press, 2004, pp. 175–6.
- 48 P. De Greiff and R. Duthie, eds., *Transitional Justice and Development*, New York: International Center for Transitional Justice, 2009.
- 49 T. Carothers, "The End of the Transition Paradigm," *Journal of Democracy* 13/1, 2002, 5–21; P. McAuliffe, "Transitional Justice's Expanding Empire: Reasserting the Value of the Paradigmatic Transition," *Journal of Conflictology* 2/2, 2011, 32–44.
- 50 J. Charvet and E. Kaczynska-Nay, *The Liberal Project and Human Rights: The Theory and Practice of a New World Order*, Cambridge: Cambridge University Press, 2008.
- 51 D. Philpott and G. Powers, eds., *Strategies of Peace: Transforming Conflict in a Violent World*, Oxford: Oxford University Press, 2010; R. Mani, *Beyond Retribution: Seeking Justice in the Shadows of War*, London: Polity Press, 2002; J. Smith and E. Verdeja, eds., *Globalization, Social Movements and Peacebuilding*, Syracuse, NY: Syracuse University Press, 2013.
- 52 M. Levene, *Genocide in the Age of the Nation-State*, 2 vols, London: I. B. Tauris Books, 2005; A. Jones, "Genocide and Structural Violence: Charting the Terrain," in Adam Jones, ed., *New Directions in Genocide Research*, pp. 132–52.
- 53 The empirical literature on transitional justice has grown significantly over the past three years. See B. Gordsky, "Re-ordering Justice: Towards A New Methodological Approach to Studying Transitional Justice," *Journal of Peace Research* 46/6, 2009, 819–37; T. Olsen, L. Payne and A. Reiter, "Transitional Justice in the World: 1970–2007: Insights from A New Dataset," *Journal of Peace Research* 47/6, 2010, 803–9.
- 54 G. O'Donnell, P. Schmitter, and L. Whitehead, eds., *Transitions from Authoritarian Rule*, 4 vols, Baltimore, MD: Johns Hopkins University Press, 1986.
- 55 B. Valentino, *Final Solutions: Mass Killing and Genocide in the Twentieth Century*, Ithaca, NY: Cornell University Press, 2004.
- 56 Extraordinary Chambers in the Courts of Cambodia "How Much Will the Trials Cost?" Available HTTP: [www.eccc.gov.kh/en/faq/how-much-will-trials-cost](http://www.eccc.gov.kh/en/faq/how-much-will-trials-cost); International Criminal Tribunal for the Former Yugoslavia, "The Cost of Justice," available HTTP: [www.icty.org/sid/325](http://www.icty.org/sid/325); International Criminal Tribunal for Rwanda "Budget and Expenses," available HTTP: [www.unicttr.org/BSD/132/Default.aspx](http://www.unicttr.org/BSD/132/Default.aspx) (all accessed January 3, 2012).
- 57 P. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, New York: Routledge, 2010, p. 55.
- 58 C. Bell, "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field,'" *International Journal of Transitional Justice* 3/1, 2009, 5–27.