

## Revenge and Justice

### **Required Reading**

Bloomfield, David *et al.*, eds. *Reconciliation After Violent Conflict*, pp. 97-121.

### **Highly Recommended Reading**

Verwoerd, Wilhelm J. 'Individual and/or Social Justice: Hard choices faced by the South African Truth and Reconciliation Commission', *European Journal of Development Research*, 11 (2), (1999), pp. 115-140.

### **Further Reading**

#### *Revenge*

Govier, Trudy. *Forgiveness and Revenge*. London : Routledge, 2002.

Jacoby, Susan. *Wild Justice: The Evolution of Revenge*. London : Collins, 1985.

Minow, Martha. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 1998.

#### *Prosecutions and Retributive Justice*

Drumbl, Mark A.. *Atrocity, Punishment, and International Law*. Cambridge: Cambridge University Press, 2007.

Peskin, Victor. *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation*. Cambridge: Cambridge University Press, 2008.

Schiff, Benjamin N.. *Building the International Criminal Court*. Cambridge: Cambridge University Press, 2008.

Stover, Eric, and Harvey M. Weinstein, eds. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*. Cambridge: Cambridge University Press, 2004.

Stromseth, Jane E. ed.. *Accountability for Atrocities: National and International Responses*. Ardsley, NY: Transnational Publishers, 2003.

#### *ICTY and ICTR*

Calvo-Goller, Notburga K. *The Trial Proceedings of the International Criminal Court: ICTY and ICTR Precedents*. Leiden, Boston: Martinus Nijhoff Publishers, c2006.

Jones, John R. W. D.. *The Practice of the International Criminal Tribunals for the former Yugoslavia and Rwanda*. Irvington-on-Hudson, NY: Transnational, 2000.

Schabas, William. *The UN international Criminal Tribunals: The Former Yugoslavia, Rwanda, and Sierra Leone*. Cambridge: Cambridge University Press, 2006.

### *Restorative Justice*

- Braithwaite, John. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press, 2002.
- Johnstone, Gerry ed. *A Restorative Justice Reader: Texts, Sources, Context*. Cullompton: Willan Publishing, 2003.
- Johnstone, Gerry and Daniel W. Van Ness, eds. *Handbook of Restorative Justice*. Portland, OR: Willan, 2007.
- McLaughlin, Eugene et al. eds. *Restorative justice: Critical Issues*. London; Thousand Oaks, CA: SAGE in association with the Open University, 2003.
- Sullivan, Dennis and Larry L. Tifft, eds. *Handbook of restorative Justice: A Global Perspective*. London: Routledge, 2006.
- Van Ness, Daniel W., and Karen Heetderks Strong. *Restoring Justice*. Cincinnati, OH: Anderson, 2002.
- Zehr, Howard. *The Little Book of Restorative Justice*. Intercourse, PA: Good Books, 2002.
- Zehr, Howard and Barb Toews, eds. *Critical Issues in Restorative Justice*. Monsey, NY: Criminal Justice Press, Willan, 2004.
- Zernova, Margarita. *Restorative Justice: Ideals and Realities*. Aldershot : Ashgate, 2007.

### *Amnesty*

- Chigara, Ben. *Amnesty in International Law: The Legality under International Law of National Amnesty Laws*. Harlow: Longman, 2002.
- Cobban, Helena. *Amnesty after Atrocity?: Healing Nations after Genocide and War Crimes*. Boulder : Paradigm, 2007.
- Mallinder, Louise. *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide*. Oxford: Hart, 2008.
- O'Shea, Andreas. *Amnesty for Crime in International Law and Practice*. The Hague; London: Kluwer Law International, 2002.

### *The Rwandan Genocide*

- Barnett, Michael. *Eyewitness to Genocide The United Nations and Rwanda*. Ithaca: Cornell University Press, 2004.
- Clark, Philip and Zachary Kaufman, eds. *After Genocide: Transitional Justice, Post-conflict Reconstruction and Reconciliation in Rwanda and Beyond*. London: Hurst, 2008.
- Dallaire, Roméo. *Shake hands with the Devil: The Failure of Humanity in Rwanda*. London : Arrow, 2005.
- Gourevitch, Philip. *We wish to inform you that tomorrow we will be killed with our families: Stories from Rwanda*. London: Picador, 1999.

- Grey, Mary C. *To Rwanda and Back: Liberation, Spirituality and Reconciliation*. London: Darton, Longman & Todd, 2007.
- Keane, Fergal. *Season of Blood: A Rwandan Journey*. London: Penguin, 1996.
- Klinghoffer, Arthur Jay. *The International Dimension of Genocide in Rwanda*. New York, NY: New York University Press, 1998.
- Mani, Rama. *Beyond Retribution: Seeking Justice in the Shadows of War*. Cambridge: Polity Press, 2002.
- Mccullum, Hugh. *The Angels have Left Us The Rwanda Tragedy and the Churches*. Geneva: WCC 1995.
- Melvorn, Linda. *Conspiracy to Murder: The Rwandan Genocide*. London and New York: Verso, 2004.
- Prunier, Gerard. *The Rwanda Crisis, 1959-94: History of a Genocide*. London Hurst, 2004
- Verwoerd, Wilhelm J. *Equity, Mercy, Forgiveness: Interpreting Amnesty within the South African Truth and Reconciliation Commission*. Leuven and Dudley, MA: Peeters, 2007.

### **In-class AV Resource**

*In-class AV resource: 'Healing the Wounds of War' Programme 7: People's Justice (14 February 2002). Gacaca as a form of community justice in Rwanda.*

### **Additional AV Resource**

*In-class AV resource: 'Healing the Wounds of War' Programme 3: Policing The Present (17 January 2002). The challenges of policing and security.*

### **Further AV Resources**

*Into the Light - A Day in the Life Special (UTV, 2006). Documentary on the search for reconciliation in Rwanda and a project by Oxfam to promote it.*

*The Empire Pays Back. (Channel 4, 2005) 60 mins. Documentary on why reparations should be paid for the British Empire and how much this might cost. Presented by Robert Beckford.*

*Tyrants on Trial. (History Channel, 2005) 60 mins. Documentary looking at Saddam Hussein's preparation for his trial and the prosecutions of other political leaders (including Pol Pot, Noriega and Pinochet).*

### **Possible Films**

*Hotel Rwanda. (2004) 121 mins. Directed by Terry George. Based on the story of Paul Rusesabagina, a hotel manager who sheltered over a thousand Tutsis refugees from Hutu militias in Rwanda. Further information, see [www.hotelrwanda.com](http://www.hotelrwanda.com).*

*Hunting My Husband's Killers: A Rwanda Journey. 51 mins. Directed by Ray Tostevin and Jay Knox. The story of Lesley Belinda's return to Rwanda to search for the killers of her husband who was murdered during the genocide. <http://www.purpleflame.com/hmhk/index.htm>*

*Munyurangabo* (2007). 97 mins. [Liberation Day]. Directed by Lee Isaac Chung. The story of a young boy, Munyurangabo, who lost both his parents to the Rwandan genocide.

*Shake Hands with the Devil*. (2004) 90 mins. Documentary following the Canadian Lt. Gen. Roméo Dallaire who returns to Rwanda ten years after he led the ineffectual UN mission to Rwanda during the 1994 genocide.

*Shooting Dogs*. (2006) 110 mins. Directed by Michael Caton Jones. A feature film dealing with the 1994 genocide and filmed on location using many survivors of the genocide as cast and crew.

*Sometimes in April*. (2005) 140 mins. Directed by Raoul Peck. HBO films. The story of two brothers who are divided by the violence of April 1994 in Rwanda.

### ***Vengeance and revenge***

- What does it mean to ‘avenge’ something? What does it mean to ‘revenge’?
- To what extent is vengeance a natural reaction to perceived wrongdoing?
- What happens when revenge goes unchecked?

### ***Different types of justice***

The IDEA handbook (p. 97) outlines four different types of justice:

- retributive (usually through prosecution)
- restorative (often through mediation)
- historical (through both official and non-official initiatives)
- reparative (through symbolic or financial compensation mechanisms)

### ***Retributive Justice.***

#### ***a. Strengths of Retributive Justice***

- It seeks to identify past wrong-doing and punish/prevent/deter future wrongdoing.
- When retributive justice is carried out by the State (through legal prosecutions or other measures) it is usually seen as an alternative to individual vengeance – the State acts on behalf of, and instead of individuals, and has substantial resources to draw on.
- Legal prosecutions are committed to procedural fairness, and are backed by an authoritative legal tradition and supported by a sophisticated justice system
- Legal prosecutions can also vindicate the victims and address their sense of moral outrage and the moral outrage of wider society
- Legal prosecutions challenge impunity and uphold or reaffirm the values/laws of society, this is especially important in societies where the judicial system has failed and widespread abuses have become so prevalent that they have become the accepted norm
- Lustrations and similar disciplinary measures help reform organisations and structures and should prevent future wrongdoing

#### ***b. Weaknesses of retributive justice.***

- Legal due process, on which prosecutions should be based, tend to be slow, relatively expensive, and highly professionalised; in some situations it can be very slow, extremely expensive, and distant from ordinary people.
- Criminal prosecutions usually operate on the basis of individual guilt. They are less suited to wider questions of collective responsibility, and can suggest that wider responsibility is unimportant.
- For criminal prosecutions, the accused is usually presumed innocent, and guilt has to be proved beyond reasonable doubt. This can be especially difficult for some types of crime. Furthermore, vital evidence is often lost during conflicts or deliberately destroyed in the immediate aftermath of conflict, making normal legal standards difficult to maintain.
- In cases of massive wrong-doing and widespread atrocities the legal system may not be able to handle the number of prosecutions and still preserve due process, or it may be economically too demanding or politically disabling to pursue widespread prosecutions.
- It is often easier to prosecute those most immediately responsible for abuses rather than those in power who may be even more responsible.
- Witnesses can be afraid to testify because of what happened in the conflict, especially if they fear a possible return to conflict in the future.
- Lustrations may be politically unfeasible (depending on the peace agreement) or may have negative practical consequences (in terms of losing important technical expertise).
- If prosecutions are perceived as unfair or 'victors' justice' they can be politically destabilizing in the short-term and/or inhibit reconciliation in the longer term.
- Whilst prosecutions should reaffirm the principle of the victim's dignity, in practice prosecutions are not victim-centred and may leave many of the victim's needs unaddressed or only touch on them tangentially. In some cases, the victim can feel that the trial, or a 'not guilty' verdict makes their situation worse.
- Prosecutions can place heavy burdens on victims, and may create possibilities of re-traumatization.
- Prosecutions tend to focus on narrow issues and are not the best way of seeing a whole picture.

## **Amnesty**

Often those in power who have been guilty of abuses will seek to impose an amnesty as a condition of peace agreement and/or their co-operation with a transition. To distract from their own obvious self-interest, and sometimes to make it more attractive to their political opponents, the amnesty may cover offenses by 'both sides' in a conflict. The Salvadoran amnesty of 1993 is a good example of this.

Blanket amnesties have obvious failings.

- They are likely to reinforce rather than challenge a culture of impunity
- They are likely to leave victims with an enduring sense of injustice, a double burden of the initial offence and then a second offence in the granting of amnesty, which is often against the wishes of victims or their families
- International law normally requires that crimes be investigated and prosecuted.

In recent transitions, some countries have tried to reject blanket amnesties, and instead offered selective amnesties, limited amnesties or modified amnesties.

For example:

South Africa (1994) – a selective amnesty based on a number of conditions including disclosure of truth about the wrongdoing and linked to the South African Truth and Reconciliation Commission

Guatemala (1996) – a limited amnesty which excluded crimes like genocide

Northern Ireland (1998) – a modified version of amnesty which allowed for early release on licence for those who have served two years of their sentence.

## **Restorative Justice.**

### *a. Restorative justice Strengths*

- It is usually seen as focused on the party that has been offended against, and is concerned for their needs.

- It seeks to shift the attention from the wrong done to the harm done to the victim and the damage to relationships that arise from this.
- It can build on local practice and cultural traditions, and can integrate with customs and rituals that support its effectiveness.
- It can operate as a supplement to legal prosecutions, or can replace retributive justice for less serious crimes.
- It can be especially effective in helping communities to allow offender to reintegrate back into the communities if they have left it and then wish to return.
- It can address the real and long-term needs of both victims and offenders.
- It tends to be less institutionalised and is often less resource intensive, both in the conduct of hearings and in the usual penalties (where custodial sentences are more an exception than the norm).
- It is usually process-based rather than outcome-based.
- It can address communal and collective wrongdoing.
- It can involve wider democratic participation, contribute to collective skills development, and promote social agreement.

#### *b. Restorative Justice Weaknesses*

- It does not have the elaborate checks and balances of a formal legal system, it is therefore more likely to be open to manipulation by individuals or groups with power or influence.
- The formal training of those involved may be relatively low for the responsibilities they undertake and the powers that they must discharge.
- It is unlikely to be sufficient for serious crimes.

#### **Prosecutions and *gacaca* in Rwanda**

In the aftermath of the genocide in Rwanda, and the slowness of prosecutions, the authorities initiated a bold experiment known as *gacaca*, which has many of the characteristics of community restorative justice. See 'Healing the Wounds of War' Programme 7 for a brief introduction to

*gacaca*. Gacaca ran in parallel with both the ICTR in Arusha (Tanzania) and national trials, which were targeted at more serious cases.

### **Restorative Justice Initiatives in Belfast.**

‘Community Restorative Justice’ initiative in nationalist/republican areas describes the aims of restorative justice as:

‘The ultimate goal of Restorative Justice is not to punish people but to reduce the incidence of socially harmful activity, to promote victim-offender reconciliation and to help create safer communities.’<sup>1</sup>

Aims to:

- Focus on the harms of wrongdoing more than the rules that have been broken.
- Show equal concern and commitment to victims and offenders, involving both parties in the process of justice
- Work towards the restoration of victims, empowering them and responding to their needs as they see them.
- Support offenders while encouraging them to understand, accept and carry out their obligations.
- Recognise that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable.
- Provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate.
- Involve and empower the affected community through the justice process, and increase its capacity to recognise and respond to community bases of crime.
- Encourage collaboration and integration rather than coercion and isolation
- Give attention to the unintended consequences of our actions and programs
- Show respect for all parties including victims, offenders and justice colleagues’

---

<sup>1</sup> See <http://www.restorativejusticeireland.org/wherewework.html> accessed 14 November 2005.

There are similar schemes in Loyalist areas, for example, Greater Shankhill Alternatives, which describes its objectives as:

- 'To work towards the eradication of punishment attacks
- To address anti-social behaviour
- To provide support and guidance to youth at risk
- To promote community discussion about the justice system
- To address areas of weakness and failure within the criminal justice system
- To heal relationships within the community, and between the community and statutory agencies.'

As a way of supplementing a system of judicial retributive justice there is much to be said for such initiatives, especially as an alternative to paramilitary punishment beatings. However, some critics argue that there is a danger that when alternative measures are established in a context where some people do not trust the police or are intimidated from involving them, these community initiatives can become less a restorative supplement to normal retributive justice and more a parallel alternative to it.