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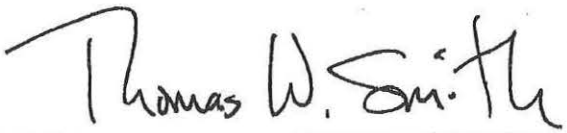

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Which Road to Reconciliation? Justice in the Wake of Human Rights Atrocities

By

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Thesis: One question looms in the wake of genocide. Which road to reconciliation? In this thesis, I examine the concept of reconciliation in both a theoretical and applied manner. By exploring three modern cases of genocide and the reconciliatory methods used in each, I have reached the following conclusion: Though *gacaca* (pronounced ga-CHA-cha), an informal, traditional, tribal form of justice and truth telling, is not a perfect solution to the problems presented by genocidal conflicts, its concept of blending retributive measures and restorative practices can provide a stable platform to promote reconciliation in future post genocidal cases.

The New War

In the Leviathan, Hobbes said that life is "nasty, brutish, and short." And the rising instances of human rights abuses occurring at the dawn of the twentieth century have proven him correct. In 1914, The Young Turk government of the Ottoman Empire sought to expel the Armenian population from its borders. As a result, Turkish forces rounded up an estimated one and a half million Armenians and purged them from their borders, during which time approximately 500,000 Armenian men, women, and children died either as a result of starvation during their forced exile or by the hands of Turkish soldiers. But perhaps the most egregious instance of human suffering in the twentieth century occurred during World War II, when Hitler's Nazi regime murdered six million Jews in an attempt to exterminate the entire Jewish population.

Yet Howard Ball states, "War crimes and genocide are not new twentieth century realities. . . . The world has for centuries experienced war, war crimes, and brutality that have violated the 'conscience' of humanity" (11). Throughout human history, there have been scores

of brutal conflicts. From 431-404 B.C., Greece was in a constant state of war as Athens and Sparta fought against one another for supremacy during the Peloponnesian War, and the major world powers of the twentieth century engaged in a pair of World Wars which left millions dead throughout the battlefields of Europe.

But even though war crimes and genocide are not inventions of the twentieth century, they have become more commonplace in modern conflicts. The chivalrous notion of combat as state versus state or soldier versus soldier has given way to a new form of intrastate warfare targeted against civilian populations, resulting in unspeakable human rights abuses. Since the end of World War II, "there have been at least fifteen major genocides" in which 15 million civilians have been killed (Ball 218-19). And this increase of civilian aimed violence has recently come to be known as the "New War."

Conventional "old wars" generally occur between two or more international actors for the purpose of securing or maintaining sovereignty, with the "rules of war" being defined and mutually agreed upon so that combat is limited to military targets in an effort to limit the loss of civilian lives. For example, the Geneva Convention and subsequent international treaties signed by the major world powers during the "Hague Era" outlined "the conduct of war – the treatment of prisoners, the sick and wounded, and non-combatants …and the definition of weapons and tactics that do not conform to this concept" (Kaldor 24).

New war, however, is intrinsically different. "Until the twentieth century, wars were 'conflicts over political power rather than ideology'" or class identity (Ball 11). The new war focus on the utilization of identity politics – a claim to power "on the basis of labels" like religion or ethnicity – in contrast to the geo-political or ideological goals" of old wars (Kaldor 6). Battles are not fought between opposing nation states; rather, the fighting is internalized between

opposing groups within the state. Categorically, these conflicts are essentially civil wars; however, their primary aim is different from that of conventional civil wars. Achieving political control is no longer the end, but rather a means to facilitate the extermination of a different group or class of society. That is to say, that new war conflicts rely on the seizure of power to facilitate the annihilation of a minority group within the state.

As used in the new war, group identity is exclusive rather than inclusive. In the case of Rwanda for example, the national identity splintered into an ethnic conflict between the Hutu and Tutsi tribes. Rwanda's President, Juvenal Habyarimana, a Hutu, was losing popularity in Rwanda due to attacks from the Rwanda Patriotic Front (RPF), a small rebel group of Tutsi refugees based in Uganda. Seeking someway to secure his power, Habyarimana devised a campaign that linked the Tutsis to the RPF. As a result, tensions between the two tribes increased and eventually escalated into a genocidal conflict in which over 800,000 Rwandans, mostly Tutsis, were killed. This type of exclusivism drives a wedge between the populations by creating an "us versus them" attitude that directs violence against the civilian populations associated with the groups. Kaldor notes that

> the new warfare borrows from counterinsurgency techniques of destabilization aimed at sowing 'fear and hatred'. The aim is to control the population by getting rid of everyone of a different identity (and indeed of different opinion). Hence the strategic goal of these wars is population expulsion through various means such as mass killing, forcible resettlement, as well as a range of political, psychological and economic techniques of intimidation. . . . At the turn of the century, the ratio of military to civilian casualties in war was 8:1. Today, this has been almost

exactly reversed; in the wars of the 1990's the ratio of military to civilian casualties is approximately 1:8. (8)

These genocides present a difficult task for the international community. The biggest problem, however, is not how to end the bloodshed, for all wars reach an eventual end through one means or another. But the major dilemma is preventing the hostilities from flaring up again, because these genocidal conflicts tear apart the social fabric of the communities in which they occur. What is to be done with those who are responsible for the genocide? And what justice is there for the victims? Scholars and laymen alike have tried to answer these questions, but which road is the right one to follow? Are there multiple paths that lead to the answer? Or for that matter, is there any answer at all?

Truth, Justice, & the Reconciliatory Ways: an Introduction

One question that looms in the wake of genocide is how to achieve reconciliation, but what exactly does the word "reconciliation" mean in the context of present day reconciliation theory? It seems an easy enough term to describe, yet there is abundant deliberation amongst scholars as to what it entails. Often in post genocidal discussions, reconciliation is partnered with words like truth, justice, and mercy, and lately, the pairing of reconciliation and religion has "gained widespread currency in political discourse" (Little 69). Therefore, before discussing the different methods of reconciliation, it is necessary to identify and define its essential components.

Truth

Truth, the evaluation and public dissemination of information pertaining to crimes committed during warfare, is vitally important in the reconciliation process because it produces a factual account of events, as well as a therapeutic means of understanding. Truth gives victims the opportunity to know what happened to them, but most importantly, it aids in understanding *why* things happened. If truth is concealed from victims, the reconciliatory process is unachievable, and "conflict will never be resolved" (Lederach 28). If there is no truth, then there is no accountability; without accountability, there is no justice; and without justice, there can be no reconciliation.

Justice

Justice is an attempt to compensate the victims of a crime – in this case, civilians whose human rights have been violated through abuses by their own government and/or fellow countrymen – by holding offenders accountable for their actions. Justice therefore "represents the search for individual and group rights, for social restructuring, and for restitution" (Lederach 29). Without justice there is no resolution, and victims are forced to stomach yet another distasteful helping of injustice. The need for justice is as equally important to the reconciliation process as the need for truth, because without justice and accountability, "the brokenness continues and festers" (Lederach 28). Modern theorists agree that justice is a vital step in achieving reconciliation, but a debate exists among modern reconciliation theorists over the

question of how to achieve justice for victims while balancing the demand for "individual accountability" with "social harmony" (Little 65).

Reconciliation

When intertwined with religion, reconciliation becomes synonymous with forgiveness, implying that the victims and violators can only reach a resolution through discussion of the crimes committed, repentance of wrongdoings, and an act of mercy by the victim. But is reconciliation the "end-state toward which practices of apology and forgiveness aim? Is it a process of which apology and forgiveness are merely parts? Or is it something altogether independent of apology and forgiveness" (Dwyer 81)? Some would argue that forgiveness is totally irrelevant to the process of reconciliation. Instead, some form of punishment for offenders is necessary to provide a sense of justice to reconcile the animosity within society. This division between punishment and forgiveness has led to the formation of two prominent schools of thought for achieving justice, and ultimately reconciliation, which have come to be known as restorative and retributive justice.

Accountability: The Debate between Punishment & Forgiveness

According to the PFI Centre for Justice and Reconciliation's online resources, restorative justice can be described as a "systematic response to wrongdoing that emphasizes healing the wounds of victims, offenders, and communities caused or revealed by criminal behavior." In one restorative model proposed by David Little, the offender is given the opportunity to confess

the crimes he has committed. His act of remorse is intended to alleviate the resentment within the community; and as a result, the community becomes apt to forgive the offender on the basis of his remorse, thus leading to a state of harmony. Additionally, John Paul Lederach of the United States Institute of Peace describes his vision of restorative justice as the following:

> First, in overall sense, reconciliation promotes an encounter between the open expression of the painful past, on the one hand, and the search for the articulation of a long-term interdependent future, on the other hand. Second, reconciliation provides a place for truth and mercy to meet, where concerns for exposing what has happened and for letting go in favor of new relationship are validated and embraced. Third, reconciliation recognizes the need to give time and place to both justice and peace, where redressing the wrong is held together with the envisioning of a common, connected future. (31)

In each account, "healing and restoration would be out of the question" without the relationship of remorse and forgiveness (Lederach 28). Proponents argue that "restorative justice defines crime interpersonally and focuses on future reconciliation and the restoration of relations between victim and perpetrator, and with the society at large" (Little 66). Hence, seeking a peaceful alternatives like reforming criminals should be the principal focus in order to deter future violence, not "imposing penalties for individual wrongdoing as an end in itself" (Little 68).

The emphasis in Retributive Justice, on the other hand, is to hold offenders accountable through legal means of punishment in an attempt to compensate victims for the sufferings they have endured. As Howard Ball states, "Justice for victims of genocide . . . is achieved when the alleged war criminal is in the dock, or preferably, dead (224). Punishment as a means of

accountability is an essential component of retributive justice because it "reasserts the rule of law over those who have abused power and engaged in serious rights violations" (Popkin, Bhuta 101). Apology and forgiveness may still exist during the process; but in retributive justice, "reconciliation and forgiveness are conceptually independent, even if they often go together" (Dwyer 90).

Detractors claim that retributive justice prolongs animosity within the community by promoting an atmosphere in which individuals are singularly focused on revenge and settling past scores rather than encouraging social harmony; and if left unchecked without the "benefit of impartial adjudication," the cycle of violence would continue (Little 69). But proponents assert that this is not the case because the punishment would be "determined and administered according to judicial rules and procedures" by an external arbiter like and international tribunal (Little 66). By prosecuting offenders, "collective guilt is avoided" and placed solely upon the guilty offender; the victims' suffering is acknowledged; and an "accurate historical record of the nature of and responsibility for the crimes committed" is constructed (Ball 224).

Theories like these have provided the international community with an arsenal of peace. Retributive measures like criminal tribunals have been used to prosecute war crimes in Bosnia; Latin American nations like Chile have instituted "blanket amnesties" for all human right violators; and African traditional methods of justice like *gacaca*, a combination of truth commission, public forum, and judiciary, have been used in conjunction with international criminal tribunals in Rwanda. But have any of these methods helped to alleviate the suffering? This is a difficult question to answer, for how can anyone determine with any certainty whether or not reconciliation has occurred? Genocidal conflicts affect an immeasurable number of victims, making it impossible to quantify results on a person-by-person basis.

Reconciliation in Practice: The Cases of Chile, Rwanda, & Bosnia

The most plausible way to try and answer this question is to use case studies to compare the different methods applied in post genocidal societies of similar nature and use qualitative analysis to reach a subjective conclusion. In the following sections, the first two cases of Chile and Bosnia explore the use of amnesty and criminal tribunals. While the final case of Rwanda suggests that neither of the individual methods presented in the first two cases are practical by themselves. Rather, the restorative practice of amnesty in conjunction with the retributive application of criminal tribunals can provide a reasonable means of reconciliation that satisfies the requirements of truth and justice while providing an atmosphere where forgiveness, and ultimately reconciliation, can be achieved.

Chile

On September 11, 1973, a coup d'etat led by Augusto Pinochet overthrew the democratically elected government headed by Salvador Allende, a member of the socialist Unidad Popular party. As a result, Pinochet seized power and replaced the former democratic system with a military dictatorship which lasted for 17 years until Chile's formal return to democracy in 1990. During those 17 years, Pinochet's military junta set out to eliminate the remnants of the oppositional socialist party in an effort to maintain control of Chile's government. Former Allende government officials, their supporters, and even their family members were subjected to a brutal nightmare of both civil injustice and human rights abuses.

The primary objective of Pinochet's new regime was to remove all remnants of the previous government. Shortly after September 11, 1973, Pinochet's new administration issued decrees that former members of the ousted Unidad Popular government cede their positions, and in some cases report to their local police stations where they were to submit to arrest. Throughout the country, the vast majority of remaining officials proceeded to relinquish their positions "without any problem" and in a "formal fashion" (Report 1: 130). As a result, the newly instituted junta in Santiago "unified political, administrative, and military power in themselves and parceled out the national territory among the different branches of service," giving the military and police force unbridled authority to maintain order throughout the nation (Report 1: 130). With this new found power, the newly created military controlled junta set its sights on removing any and all opposition to its authority.

Those officials who either submitted to arrest or relinquished their positions were rounded up and sent to detention centers located within the newly created military districts. Initially, political prisoners were "relocated to army bases, police stations, jails, and the garrisons of the investigative police" where they were temporarily held and interrogated before being sent off to one of the larger "detention sites" (Report 1: 132). Before and during their interrogations, prisoners were subjected to beatings and humiliation. In most cases, arrests were made publicly so the detainees' families and neighbors were witness to the event, producing a sense of embarrassment for the prisoner. In some cases, possibly dependent upon the former political position held by the individual, the humiliation of the public arrest would be coupled with beatings in order to send a message to the members of the community who still might be sympathetic to the former Unidad government (Report 1: 133). The public shame, however, would prove to be a minor inconvenience compared to the brutal fate which most political

officials and sympathizers eventually encountered after their transfer to one of the larger prison camps set up throughout the country.

The largest and most infamous of these camps was located at National Stadium in Santiago, which held up to as many as 7,000 prisoners according to estimates from the Chile Information Project ("Derechos Humanos en Chile"). For those unfortunate enough to be held at one of the large camps, torture, fear, and death were everyday occurrences. Prisoners were denied food and water for days, immobilized for extended periods, beaten, raped, "held under water, foul smelling substances, or excrement to the brink of suffocation," or shocked by electrodes during interrogations (Report 1: 133). CIA intelligence reports compiled during Pinochet's tenure described disposed corpses from camps as "showing signs of torture and mutilation" ("CIA Activities in Chile"). The mother of prisoner Euginia Ruiz-Tagle, saw the body of her son and described its condition saying, "An eye was missing, the nose had been ripped off, the one ear visible was pulled away at the bottom, there were very deep burn marks as though done by a soldering iron on his neck and face, his mouth was all swollen up, there were cigarette burns, and judging from the angle of the head, his neck was broken, there were lots of cuts and bleeding" (Report 1: 140). This type of violence, however, was not limited to the walls of the prison camps.

The Report of the Chilean National Commission on Truth and Reconciliation cites hundreds of instances of Chilean citizens being murdered outside of the prison camps. One such instance occurred on September 13, 1973 when 15 year old Juan Fernando Vasquesz Riveros was killed during a police raid. The Report compiled the following account of the incident:

> At about 5:30pm, before the curfew in Santiago (which began at 6:00pm), [Juan Fernando Vasquesz Riveros] was walking by in the street just as a police squad

> was raiding the union office at the Ferriloza company. Without even giving any orders to halt, police proceeded to shoot at him. In a wounded condition he was taken to the Jose Joaquin Agueirre Hospital, where he died on September 15 as a result of an "abdominal bullet wound" (1: 170).

Additionally, thousands of sympathizers disappeared without a trace during Pinochet's dictatorship, "never to be seen alive again" (Ball 219). The disappearances, which became so commonplace that they gave rise to the phrase *los desaparecidos* (the vanished), occurred at the prison camps as well as villages and towns throughout Chile.

These disappearances caused an immeasurable amount of grief for the victims' families because the truth about what happened to their loved ones was deliberately concealed from them. Arrests were denied by government officials; visitation was refused; deaths were concealed; and wealthier families were extorted into depositing money into government accounts, yet their loved ones were not released (Report 1: 143). As a further act of cruelty, some officials told inquiring relatives that their loved ones were "alive and free on bail" when in reality they had been executed and buried days earlier (Report 1: 142). But the final injustice happened in 1978 when the Pinochet controlled government instituted Decree Law No. 2191 which granted amnesty "to those who had committed criminal actions while the state of siege was in effect," thus shielding offenders from future prosecution of human rights violations (Report 1: 89). Since its enactment, there have been numerous attempts to repeal the law; but for the most part, the "blanket amnesty" has created a cycle of impunity that has hindered the search for justice in Chile.

In 1990 Pinochet stepped down and "handed over power to the democratically elected government of President Patricio Aylwin" ("Discreet Path"). During the power transfer, the new government attempted to deal with past human right violations by establishing the Rettig

Commission to investigate cases of disappearances and torture (Popkin, Bhuta 112). In most cases, the commission was successful in its attempt to "document the fate" of victims; but unfortunately, the commission did little to "reveal the truth" about those responsible for the violence because the amnesty law prevented the Rettig and other independent truth commissions from fully investigating all the details of human rights abuses (Popkin, Bhuta 114). As a result, "the mourning period" has never ended for some families because the truth has been concealed and the guilty have escaped justice (Report 2: 790).

In Chile, reconciliation has been stalled for the past two decades because truth, accountability, and justice have been undermined at the highest levels of government. Vital information which might implicate former officials has been deliberately concealed, making it virtually impossible to hold anyone accountable for any crimes committed during Pinochet's tenure. Attempts have been made to prosecute human rights violators, but the most prevalent action taken by the Chilean courts has been to "impose forgetting" by dismissing charges against human rights violators (Popkin, Bhuta 99). In nearly every case brought before it, the Chilean Supreme Court has continued to uphold the amnesty law, and "successive democratic governments have been unwilling to annul [it]" because of the possible disturbances ensuing trials might pose to national stability (Popkin, Bhuta 114). The international community, however, has recently tried to break this cycle by indicting Pinochet on charges of human rights violations.

In 1998, General Pinochet was preparing to return to Chile from a trip to London; but shortly before his departure, he was indicted for human rights abuses committed during his tenure as president and faced extradition to Spain. The indictment came as a result of lawyers and NGOs (non-governmental organizations) acting on behalf of victims in Chile; but

specifically, the hearings were initiated on the grounds that Spanish citizens had been murdered during in Chile during Pinochet's leadership ("Baltasar Garzón"). Using the principle of "universal jurisdiction," Judge Baltasar Garzón demanded that Pinochet be arrested and transported to Spain "pursuant to the European Convention on Extradition" (Bianchi 98). At first, the British Court of Appeal rejected the extradition request citing that Pinochet's status as head of state "entitled him to immunity under the State Immunity Act of 1978" (Popkin, Bhuta 113). Spain appealed the verdict to the House of Lords which "reversed the lower court's ruling by a 3-2 decision," stating that "a former head of state is not entitled to immunity for such acts as torture, hostage taking, and crimes against humanity committed while he was in office" (Bianchi 100). But Pinochet escaped prosecution in 2002 when the Chilean Supreme Court ruled he was "too ill to undergo trial" ("Chile: Pinochet Escapes Justice"). However, Sebastian Brett of The Observer recently reported that the Chilean appeals court unexpectedly revoked Pinochet's immunity from prosecution in June of 2004. As of the time of this writing the court's rationale has not be disclosed, but the decision shows that the need for truth and justice in Chile still exists. For now at least, the door to justice is open, for the revocation of Pinochet's amnesty may also lead to the prosecution of other human rights violators. But with Pinochet's appeal on the horizon and the Chilean Supreme Court's penchant for upholding the amnesty decree, the door may once again be slammed shut.

Irregardless of how the Pinochet case unfolds, the fact remains that the blanket amnesty has only hindered the reconciliation process in Chile. Granted, it was instituted in by former government officials under the guise of protecting themselves from prosecution as well as concealing the truth about their crimes; but even if a blanket amnesty was instituted by and impartial entity and the truth fully exposed, the fact remains that this type of amnesty completely

removes all accountability. So how can there be any reconciliation for victims if their torturers are allowed to walk free as if nothing ever happened? I would argue that there cannot be, because blanket amnesties subvert the "human need for justice" (Little 65). And amnesty without any means of legal recourse "moves on too quickly" and asks too much of victims (Lederach 28). It cuts off all avenues to justice and forces victims to accept what has happened, and then move on with their lives as if nothing ever did happen. And that is the problem, because crimes of rape, torture, and murder do not just disappear with a decree or the stroke of a pen. The pain lingers and psychological wounds fester. And if these injuries are not addressed and dignity is not fully restored, victims are "unlikely to be reintegrated into society" (Popkin, Bhuta 101). Therefore, another means of reconciliation which aims to provide justice for victims should be explored.

Bosnia-Herzegovina

Due to the complex nature of the Balkan Wars and the nature of this study, it would not be feasible to narrate the entire circumstances of each individual war. As such, the following section will focus solely on the Serbian campaign in Bosnia where the majority of ethnic cleansing occurred. However, it should be stated that Bosnians, Croats, and paramilitary groups like the Mujahidin committed and have been indicted for human rights abuses as well.

After the death of its Communist Party leader, Tito, in 1980, the collapse of the Communist system in 1989, and the subsequent secession of Slovenia and Croatia, the nation of Yugoslavia fractured into a series of smaller, independent republics – the largest being the republic of Serbia. This series of events, coupled with an ailing economy created an unstable,

"revolving door" for politicians. Desperate to preserve or expand what power they had, politicians were forced "to curry public support to stay in office" (Hauss 166). For a majority of them, the most effective way to do this was to rely on nationalistic rhetoric. With public opinion and morale fluctuating, doctrines of ethnic and religious superiority proved to be a more effective means of dealing with the socio-economic problems burgeoning inside the newly formed territories, rather than dealing with the issues directly. As Hitler had done in Germany, Croatian, Serbian, and Bosnian leaders embraced nationalism, using race and religion as their scapegoat from political death.

Slobodan Milosevic was one politician who greatly excelled at this practice. He began his political career as a member of the Communist Party, and "by the mid-1980's had quietly risen to the top of the party hierarchy in Serbia" (Hauss 166). Shortly after becoming the president of the Serbian party in 1987, Milosevic visited the town of Kosovo Polje in the autonomous region of Kosovo in which Albanians comprised the majority of the population. According to Dr. Veljko Vujacic, while Milosevic was speaking to a group of Serbians who had gathered to "communicate their grievances," police officers, a majority of whom were ethnic Albanians, attempted to disperse the crowd by beating them with batons (Vujacic). Witnessing this, Milosevic proclaimed, "From now on, no one has the right to beat you!" which immensely elevated his standing among the Serbian population (Vujacic).

Over the course of the next few years, Milosevic continued his nationalistic campaign in an attempt to "take control of [Yugoslavia] and become the next Tito" (Hauss 166). But with the dissolution of Yugoslavia, Milosevic grasped for control of Serbia instead. Upon his confirmation as President, Milosevic continued his policy of nationalism in attempt to unite the Serbian populations scattered throughout the former Yugoslavia and gain greater territorial

control. In a disturbingly brilliant fashion, Milosevic engineered a series of media campaigns aimed at portraying the Serbs as victims of past aggressions. As Mary Kaldor states

> It was Milosevic who was the first to make extensive use of the electronic media to propagate the nationalist message. . . . Through mass rallies he legitimized his hold on power. The victim mentality often characteristic of majorities who feel themselves minorities was nurtured with an electronic diet of tales of 'genocide' in Kosovo, first by the Turks in 1389 and more recently by the Albanians, and of the holocaust in Croatia and Bosnia-Herzegovina interspersed with current developments. In effect, the Serbian public experienced a virtual war long before the real war was to take place – a virtual war that made it difficult to distinguish truth from fiction so that was became a continuum in which the 1389 battle of Kosovo, the Second World War and the war in Bosnia were all part of the same phenomenon. (39-40)

With his campaign a success, Milosevic took full advantage of the political instability lingering throughout the republics, and he was able to motivate the minority Serb populations in the neighboring republics to organize on behalf of Serbia proper. What followed was a series of bloody territorial wars between Serbia, Croatia, and Bosnia which redefined the nature of "ethnic cleansing."

One of the primary goals of the Serb campaign in Bosnia was to "establish ethnically homogenous territories which would eventually become part of Serbia" (Kaldor 33). To do this, the Serbian government instituted a policy of ethnic cleansing to remove all traces of the Bosnia Muslims. Bosnian men, women, and children were either killed en masse in their homes and villages by Bosnian-Serb paramilitary squads or detained in prison camps, where they were

subjected to numerous forms of physical and mental torture. But the genocide committed against the Muslims was not carried out in the impersonal, efficient manner like the Nazi death camps. Rather, the violence in Bosnia was meted out with a sadistic flair. The Serbian military's (JNA) Department of Psychological Operations devised a plan to crush the Muslims' morale, desire for battle, and will by "raping women, especially minors and even children, and killing members of the Muslim nationality inside their religious facilities" (Kaldor 56). And when this plan went into action, it gave the Bosnian-Serb forces license to carry out all manner of degrading and perverse torture.

"Muslims had been buried alive;" children were killed in front of their parents; and in one particularly disturbing case, it was documented that a man had been "forced to eat the liver" of his murdered grandchild (Ball 129). Additionally, thousands of Muslim men and boys were summarily rounded up and executed, with the largest number of casualties occurring in the UN created "safe haven" of Srebrenica where Serbian forces murdered an estimated 7,000 Bosnians ("Bosnian Serbs admit to Srebrenica"). Reports from UN peacekeeping forces described the Serb forces a being "proud" of crimes they committed; and as one Dutch peacekeeper stated, "I didn't get the feeling that they were doing it out of anger of revenge, more for fun" (Ball 136).

But as heinous and psychologically damaging as the mass slaughter of Bosnian Muslims was, the use of rape as a means of ethnic cleansing has become the hallmark of the Serbian campaign. So much so, that its methodical and rampant use in Bosnia led to the establishment of rape as a crime against humanity. And during the Serbian campaign, Caroline Kennedy-Pipe notes that rape was used in the following five ways:

> In the first, the rapes were committed before the fighting actually broke out. Individuals would target villages, terrorize the inhabitants and loot and rape.

> During the second pattern, rapes, some apparently opportunistic, occurred in conjunction with invasion. Women were raped either in empty houses or gang-raped in public. In a third pattern, women were raped while in detention: here gang rapes were common and many of the rapes were accompanied by torture. During the fourth pattern, attacks occurred in so called 'rape camps'. This pattern was marked by frequent rapes with an alleged strategy by the captors to impregnate as many as possible with 'Chetnik' babies. In a fifth pattern, women were forced into makeshift 'brothels' to entertain troops and 'after they had served their purpose more often killed than released.' (73)

The sexual horrors Bosnian women were forced to endure have been documented in numerous UN reports. In 1995, the Office of the United Nations High Commissioner for Human Rights released the following report on the Bosnian situation:

> Methods of rape, i.e. technologies, are such that they are probably unprecedented in history. Serb soldiers raped women and girls in their homes in front of the families and husbands. In some cases, women and children were gathered in special premises (schools, sports centres and the like) where they were raped and tortured for days or weeks, and killed afterwards. Rapes were committed both by individuals and by groups. Many women testified that they had been raped by several men, who took turns.
>
> Rapes were accompanied by different additional forms of psychological torture: victims were regularly forced to swallow sperm, some of the victims were raped by many criminals (some of them over 300 times), criminal violence frequently took place in the presence of the family members of the victim, victims were

killed after rape, while most of the raped girls of seven years of age (who were always raped in the presence of their parents) passed away afterwards.

In light of the human rights abuses that occurred, the UN Security Council adopted resolution 827 in 1993 which created International Criminal Tribunal for the former Yugoslavia to investigate and prosecute "serious violations of international humanitarian law" in the former Yugoslavia. Shortly thereafter in 1995, representatives from Croatia, Bosnia, and Serbia signed the Dayton Agreement, which formally ended the Balkan conflict at which time the ICTY began issuing its indictments.

According to the ICTY's official website, nearly 80 indictments – the most recent of which came in May of 2004 – have been served since the war's end against high-ranking military and government officials like Slobodan Milosevic and Ratko Mladic to common soldiers like Mirjan Kupreskic. To date, over 30 cases have been completed with sentences ranging from three years to life imprisonment. However, a number of key trials like Milosevic's are still underway or pending appeal. But despite its apparent effectiveness in bringing war criminals to justice, the use of the ICTY has met with skepticism from many Yugoslavs.

The tribunal's main objective has been to prosecute individuals in order to "ensure that there is no Serbian or Croatian or any other collective guilt;" yet as Tim Judah notes, many Yugoslavs are still very skeptical of the process ("The Fog of Justice"). According to Dr. Thomas Smith, one of the main reasons for concern has been the lack of indictments against NATO for the bombing campaigns in Serbia which killed approximately 500 civilians (Smith, "Re: Draft Revision"). Though the ICTY did examine the cases, the Prosecutor ultimately did not initiate indictments on the grounds that civilians were not the intended targets. Rather, their

deaths were ruled to be accidental, which "suggest[ed] a certain amount of 'politics' almost inevitably" among Yugoslavs (Smith, "Re: Draft Revision").

Moreover, many of the indicted were considered 'homeland heroes' at war's end, meaning when indictments were announced, the corresponding population complained that they were being unfairly persecuted (even though the tribunal has indicted Bosnians, Serbs, and Croats). In addition, the polarizing nature of the indictments has been a dangerous affair for liberal Serb politicians who have cooperated with ICTY investigations. During an apparent coup to regain control of the government and end cooperation with the ICTY, nationalist supporters assassinated Premier Zoran Djindjic, claiming he was "a Hague traitor" ("The Fog of Justice").

But the negative social and political impacts are not the only obstacles that international tribunals face. In cases like Yugoslavia an estimated 20,000 to 50,000 persons have been suspected of committing human rights abuses, there is no realistic way to investigate, indict, and prosecute so many individual cases (Wald 1124). Thus, tribunals have not been "generally concerned with the larger historical picture or with the needs of survivors" as a whole because they are forced to focus solely on the most prominent cases (Roht-Arriaza 485). They can only provide a limited amount of justice on a case by case basis; and though they have succeed in eliciting some measure of truth during the process, the information is by and large related only to the specific case in question, which may not involve the majority of victims overall. And this has been one of the major setbacks of tribunals; they attempt to provide truth and justice, but they are unable to achieve it on a large enough scale.

Despite the skepticism amongst the Yugoslav communities, the ICTY has "filled a critical void that none of the national courts were prepared or able to fill" in Yugoslavia (Wald 1125). It has indicted a number of prominent figures like Milosevic and produced a number of

convictions, rather than allowing war criminals to live out the rest of their days in "relative comfort" immune from judgment (Neuffer 390). As a result, the tribunals have helped victims "put a face on evil" (Smith, "Moral Hazard" 178). In a way, international entities like the ICTY take a step in the right direction, but international tribunals by themselves can only do so much to elicit the truth and provide legal accountability. If the reconciliation is to ever be achieved, something more must be done in order to provide truth and justice to a larger number of victims.

Rwanda

The war between the Hutu and Tutsis stems back to Rwanda's colonial period. Ethnically, the two groups differed with the Hutu being of Bantu origin and the Tutsi being Nilotic. But culturally, the two tribes were very similar. They spoke the same language and practiced the same traditional beliefs. But the Belgians viewed the two tribes as distinct entities, and even went so far as to "produce identity cards classifying people according to their ethnicity" ("Rwanda: How the Genocide Happened"). Of the two tribes, the Belgians regarded the Tutsis as superior; and as such, Tutsis received greater opportunities for socioeconomic advancement during Belgian rule.

But in the 1950s, Belgium's colonial authority began to fade; and as Rwanda's independence loomed, political parties emerged, defining themselves "along ethnic lines" (Neuffer 89). With Belgium's withdrawal from Rwanda in 1962, the Hutus – who constituted a majority of the population – gained political control from the Tutsis. Once in power, the Hutus completed the cycle of prejudice by discriminating against their former Tutsi masters. And

throughout the years leading up to the war in 1994, the Tutsis were "portrayed as the scapegoats for every crisis" ("Rwanda: How the Genocide Happened").

As noted earlier, In 1994, Rwanda's Hutu president was losing popularity in Rwanda due to attacks from the Rwanda Patriotic Front (RPF) based in neighboring Uganda. Seeking someway to secure his power, Habyarimana devised a campaign that linked the Tutsis to the RPF. Though there had been a clash between the Hutu and Tutsi in 1959 resulting in the death of 20,000 Tutsis, the subsequent years leading up to 1994 were relative free from violence. But Habyarimana's ploy had begun to re-intensify the ethnic rivalry between the two tribes; and when his airplane was shot down in 1994, it set off a brutal massacre in which 800,000 Tutsis and their moderate Hutu supporters were heinously murdered within the span of 100 days.

It is not clear who exactly shot down the president's plane, but immediately after his death, accusations mounted that the RPF was responsible. Shortly thereafter, recruits were dispatched throughout the country to carry out a retaliatory strike against the Tutsis. In less than two days, Hutu fighters managed to "dispose of most of the 'priority targets' – the politicians, journalists, and civil rights activists;" but the killing in Rwanda was not done in a high tech, efficient manner (Prunier 242-243). Instead, the majority of the killings occurred "largely by machete", which the Rwandans called a panga (Gourevitch 4). In an excerpt from The Rwanda Crisis, Gerard Prunier describes the some of the horrors that occurred during the "machete genocide."

> The killings were not in any way clean or surgical. The use of machetes often resulted in a long and painful agony and many people, when they had some money, paid their killer to be finished off quickly with a bullet rather than being slowly hacked to death with a panga. Sexual abuse of women was common and

> they were often brutally killed after being raped. Babies were often smashed against a rock or thrown alive into pit latrines. Mutilations were common, with breast and penises being chopped off. In some cases, they became part of macabre rituals. . . . At massacre sites, corpses, many of them children, have been methodically dismembered and the body parts stacked neatly in separate piles. . . . In some cases, militiamen tried to force women to kill their children in order to save their own lives. Some people were burnt alive as their relations were forced to watch before being killed themselves. In other cases the Interahamwe told families that if they would kill a certain relation the rest of the family would be spared. (255-257)

Keith Richburg of the Washington Post said, "It's one of those apocryphal stories you always hear coming out of Africa, meant to demonstrate the savagery of 'the natives.' You heard them all, but never really believed" (xiii). Yet it was happening in Rwanda; "people were dying at three times the rate of the precision organized Nazi death camps (Gourevitch, 4). But in Rwanda, the killings were not carried out by the government alone. Ordinary citizens banded together to form a group which they called the *Interahamwe*. As Paul Magnarella notes, "Some women, including young girls in their teens, were participants in the carnage, hacking other women and children, and sometimes even men, to death (20).

In July, the RPF took control of the capital city of Kigali, causing the Hutu controlled government to collapse. As a result, nearly 2 million Hutus fled to Zaire. With millions on the run and the recent arrival of UN peacekeeping forces, Rwandans set about the task of recovering from the murderous madness that swept across the nation. As in the former Yugoslavia, the UN instituted International Criminal Tribunal for Rwanda to investigate and prosecute individuals

suspected of human rights abuses. At war's end, over 100,000 suspects had been detained in Rwanda; but instead of relying solely on the ICTR, Rwandans tried to alleviate the judicial bottleneck by using a traditional system of justice they called *gacaca*, which means "on the grass" (Packer 59).

Procedurally, the *gacaca* tribunals differed greatly from the ICTR. Village elders and "people of integrity" were chosen from each community to serve as judges on panels which consisted of 19 members each (Packer 61). There were no prosecutors or defense counsels, and the hearings were conducted in an informal manner with defendants, their accusers, and witnesses personally describing their version of the events. Jurisdiction was divided between the ICTR and the *gacaca* tribunals on the basis of four categories. Category 1 cases consisted of the organizers and supporters of genocide, as well as rapists; Category 2 cases involved murder, but not leadership of killers; Category 3 cases consisted of crimes that resulted in injury; and Category 4 cases included offenses against property (Packer 61). Since the tribunals were a complement to the ICTR, they only had jurisdiction in Category 2 through 4 offenses. In Category 1 cases, judgment was deferred to the ICTR; but in all other legal matters, the local tribunals had total authority.

The idea behind the system was that every Rwandan was affected by the war in some way; therefore, everyone needed to be involved in the reconciliation process. *Gacaca's* purpose was to bring communities together so every victim could have a chance to publicly testify on their own behalf to expose the truth of the genocide. Once the facts were established and guilt was determined, the panels could then impose sentence upon the guilty. But the tribunals were not strictly retributive in nature; if an offender showed remorse and made a full, public confession, his sentence could be substantially reduced or possibly commuted to time served

(Packer 61). As a result, the tribunals were able to promote mercy and forgiveness without sacrificing justice and accountability.

Though *gacaca* was able to bring communities together and provide truth and justice to a larger number of victims, many observers are still skeptical about its effectiveness. Detractors point out the "obvious procedural deficiencies" like the lack of formal counsel and prosecution, and the fact that the "judge and jury [are] one and the same" (Packer 62). And critics warn that *gacaca's* de-proceduralized nature has been plagued by "low standards of evidence" based on hearsay and conjecture. (Packer 62) Granted, *gacaca* does have its share of problems; but irregardless of these flaws, the thinking behind *gacaca* shows promise. It aims to provide truth and justice to a greater number of victims, while promoting a spirit of mercy and forgiveness. It offers hope and a reason for all parties involved to participate; and as long as there is hope for all involved, there is hope for reconciliation.

Conclusion

Though I do believe that reconciliation is possible, I do not think that it will ever be possible for societies to reconcile in the ideal, restorativist way. Rather, reconciliation should be thought of from a realistic point of view. In restorative theory the primary emphasis is on forgiveness, but how can anyone be expected to forgive or forget atrocities like murder, torture, or rape? They cannot be forgotten, and they will not be forgotten so long as the victims live. It is one thing to attempt to lessen the divide in society, but it is "quite another to come to love one's torturer" (Dwyer 97). As such, reconciliation in the most ideal use of the term is

unattainable. However, forgiveness should not be fully removed from the process altogether; but it should remain a secondary component of the process.

As I stated earlier, truth and justice should be the primary concerns. If the requirements of both are met, then the victim is free to exercise their option to "reconcile" on their own accord. The main concern is that the process be allowed to take place in a natural fashion, so that the victim can continue to heal in whatever way they choose. Truth can be cathartic, and should therefore never be impeded. And though it can be argued that truth can act as two-edged sword by both healing wounds and opening up news ones, I would argue that when paired with impartial, legal justice, the danger of retaliation can be sufficiently blunted by the judicial process. Whatever animosity full disclosure might cause, the trial process will alleviate it.

In every war, both old and new, there has always been a central figure or figures responsible for orchestrating the violence. As such, they bear the brunt of the blame. Therefore, whatever harmful knowledge is discovered during the truth process, its effects will be lessened as a result of the individual accountability created by the trial phase. Through the pursuit of justice, "collective guilt can be avoided;" the victims' suffering can be acknowledged; and an "accurate historical record of the nature of and responsibility for the crimes committed" will be constructed (Ball 224).

But how should the reconciliation process be carried out? I have explored a few of the options like amnesty and international criminal tribunals in the previous cases; but one problem with a majority of modern reconciliation theory is the fact that it is too focused on finding one specific way to achieve reconciliation. I would argue that this approach is flawed because there is no "perfect" method to achieve reconciliation. Rather, both restorative and retributive

measures should be used in conjunction with one another to provide a more adequate sense of truth and justice in order to facilitate the healing process.

No single method will work by itself. As I stated in the Chile section, the blanket amnesty has done nothing but hinder the reconciliation process in Chile. And in the former Yugoslavia, the ICTY's attempt at justice has been too inept to be of any use on a large scale. Some might argue that the lack of truth and justice in these cases has not caused the hostilities to flare up again, meaning reconciliation must be underway. And yes, some semblance of reconciliation may be at work, but it is partial at best. Therefore, the best that can be hoped for is a continued existence of shallow loathing as opposed to deep-seated hate.

As I said, I am not advocating any single method as being the best. Instead, I am trying to focus on the positive and negative aspects from each of the methods in the cases I have examined in order to find a *better* way. Amnesty by itself offered nothing; the ICTY achieved some measure of truth and justice on a limited scale; whereas Rwandan *gacaca* tried to meet somewhere in between. Of these three cases, Rwanda showed the greatest promise because it did not rely on only one way of thinking. It employed both restorative and retributive techniques in an attempt to solve its post genocidal problems. And though *gacaca* is not a perfect solution, its concept of blending retributive measures and restorative practices can provide a stable platform to promote reconciliation in future post-genocidal cases.

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