

# Breaking the Cycles of Hatred

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## *Memory and Hate: Are There Lessons from Around the World?\**

As we settle into this new century and this new millenium, it is time to take stock. I do not think this era will be remembered particularly for its wars, its mass atrocities, even its genocides. Sadly, these are not so distinctive in the history of humankind, although the emergence of technologies of destruction and mass media does seem to deepen the horror. What I think, and hope, is distinctive of this age is the mounting waves of objections and calls for collective responses to mass violence. Notably, people have turned to the language and instruments of law, casting genocides and regimes of torture as subjects for adjudication, a framework of human rights, reparations, and truth-telling. After the September 11 terrorist attacks in New York and Washington, D.C., calls for international adjudication rivaled public discussions of military responses.

I recently served on an international commission on Kosovo that reported to the United Nations in the fall of 2001. In the course of that work, I met with the ambassadors to the United States from Albania, Macedonia, and Croatia. In the most emphatic terms, they placed the establishment of an independent and operational judiciary in Kosovo as the highest priority—for peace and stability in the region. Yet I know from my informants in Kosovo how remote and challenging this task is. Not only is there a profound shortage of trained individuals; there is barely an agreed-on set of legal rules. And there are such high levels of distrust across the lines of ethnic division that many people think it is

\*Gilbane Fund Lecture, Brown University, October 19, 1999. Thanks especially to Nancy Rosenblum, the community at Brown University, Laurie Corzett, and Sandra Badin for assistance, and to Jesse Fisher for assistance with the first lecture. This draws on Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998).

futile to even bring cases involving Serbs before judges of Kosovar Albanian identity—and vice versa. Petty crime and organized crime are both rampant. Property disputes are profound. To establish an operational court system that can secure the respect of the people is indeed the crucial first step for rebuilding the nation, but to call it difficult is to drastically understate the problem.

We complain a lot in this country about too much of human life becoming the subject of legal disputes. Yet, on the global scale, extending law to deal with collective violence is a vital step toward making a better world. Someone once said that a civilization progresses when what was once viewed as a misfortune comes to be seen as an injustice. I think the world's civilizations progress when horrors that were once seen as beyond human response become targets for international criminal tribunals, reparations, and truth commissions. Don't get me wrong: I'm deeply skeptical about the ability of any of these legal forms. Yet, they represent genuine efforts to do something in response to horror, something that does not repeat violence but instead seeks to condemn it, and end it.

In this essay, I will focus on memory and hatred, and in particular whether there is anything to be learned from the growing use of innovative legal practices in response to mass violence. Genocide, mass rapes, forced disappearances, and that ghastly antiseptic phrase "ethnic cleansing" each signal how animosity toward a group can either ignite or fuel horrific harms. Mass violence—even the seemingly isolated crimes of hatred directed at particular groups—has many ingredients, but invariably one is the dehumanization of a group of people who become the targets of violence and abuse. Cycles of violence sometimes then make perpetrators and their supporters victims of new waves of vengeful responses. How those who survive understand and remember what happened can have real consequences for the chances of renewed violence.

This essay will address criminal trials—conducted internationally and domestically—against perpetrators of mass violence; and about reparations, truth commissions, and nongovernmental advocacy organizations, which are each prominent responses to contemporary mass atrocities. But before delving into these issues, let me emphasize this: the search for a mode of response is profoundly doomed, because nothing after the event can be adequate when

—your son has been killed by a police order to shoot into a crowd of children

- your brother who struggled against a repressive government has disappeared and left only a secret police file
- your niece watches militia members assault and murder her father
- you have been dragged out of your home, interrogated, and raped by police
- whole peoples have had their life chances taken away by others.

Lawrence Langer, a scholar of the Holocaust, observes, “the logic of law will never make sense of the illogic of genocide.”<sup>1</sup> Of course he is right. Legal responses are no more adequate than any others.

But inaction is worse. In the absence of a collective response to mass atrocity, victims lack the basic acknowledgment of what happened that is essential for mental health and political integrity. In the absence of a collective response, the dehumanization preceding and accompanying the violence is left uncondemned and uncorrected. In the absence of collective responses, individuals are left with what some describe as either too much memory or too much forgetting.

There’s an old Russian proverb: “Dwell on the past and you will lose an eye. Forget the past and you will lose both eyes.”<sup>2</sup> Dwelling on the past, for victims of hatred and abuse, can lead to depression, disassociation, hopelessness; or the tendency to blame entire groups and the fantasy, or reality, of revenge.

For victims and survivors, failure to deal with the incidents wreaks its own damage: painful secrets can lead to a freezing of individuals’ capacities to love and act. Unaddressed trauma can produce wounded attachments to devastation itself and contribute to what psychologists call the intergenerational transmission of trauma. Failing to remember hurts bystanders, too, because then they do not face their own choices about action and inaction nor redress the boundaries between groups that helped give rise to the atrocities. In the absence of collective responses to violence, perpetrators and their supporters may seem—unacceptably—like victors or people who got away with it. As French philosopher Jean Baudrillard put it, “Forgetting the extermination is part of the extermination itself.”<sup>3</sup> But with societal response, perpetrators may also become targets of new intergroup hatreds. Thus, some people will always remember what happened, but if there are no collective efforts to remember, a society risks repeating its atrocities by failing to undo the dehumanization that laid the groundwork for them.

The question, then, is not whether to remember, but how.

Two kinds of responses, in particular, are not sufficient to guide social

action: The first is vengeance. A sense of vengeance is understandable, even justifiable, after one has been wronged. Indeed, it is the wellspring of the moral notion that motivates justice. As philosopher Jeffrie Murphy puts it: "A person who does not resent moral injuries done to him . . . is almost entirely a person lacking in self-respect."<sup>4</sup>

Yet vengeance can unleash a response beyond proportion, beyond reason, beyond justice. Laurel and Hardy episodes offer a humorous gloss to the sadly widespread pattern of destructive retaliation. Even a trivial slight triggers a less trivial response, and sets in motion escalating tweaks, punches, and waves of destruction.

Dr. Martin Luther King, Jr., noted that "Hate for hate only intensifies the existence of hate and evil in the universe. If I hit you and you hit me and I hit you back and you hit me back and so go on, you see, that goes on ad infinitum. It just never ends. Somewhere somebody must have a little sense . . . [and] . . . cut off the chain of hate, the chain of evil."<sup>5</sup>

In a remarkably similar vein, Polish Solidarity activist Adam Michnick surprised his colleagues by opposing a purge of communist collaborators from state-run enterprises after the fall of communism. He explained that the logic of revenge is "implacable. First there is a purge of yesterday's adversaries, the partisans of the old regime. Then comes the purge of yesterday's fellow oppositionists, who now oppose the idea of revenge. Finally there is the purge of those who defend them."<sup>6</sup> The thirst for revenge is implacable. It cannot guide responses to mass violence.

Even if revenge could be confined to a response commensurate with the harm, what is to be done when the harm itself defies human scale, when it is grotesque torture, mass killing? No just response can be administered in kind. For by retaliating, you become what you hate.

Transcending the temptation to retaliate is a way of describing the second, inadequate kind of response to broad-scale violence. This alternative is forgiveness. Let me acknowledge that it is admirable. But it is often unachievable, and it cannot be ordered.

Forgiveness involves the one who was wronged in renouncing resentment, stepping out of the wave of repeating rage, and welcoming the wrongdoer into the circle of humanity, reconnection, and even reconciliation. By forgiving the wrongdoer, the victim recognizes their common humanity and breaks the cycle of revenge. One who forgives can avoid the self-destructive effects of holding on to pain, grudges, and victimhood. The act of forgiving can reconnect the offender and the victim, and establish or renew a relationship. It can recognize or prompt contrition. People can forgive while still expecting and demanding pun-

ishment, but sometimes forgiveness means forgoing punishment. Official forgiveness usually means amnesty, exemption not only from punishment but also from communal acknowledgment of the harms and the wrongs. Public forgiving also risks public forgetting. Once the public apology is performed, the government—and the community—may well assume that the topic is closed and no more need ever be said about it.

So here are the problems with forgiveness. Many, perhaps most people, find it difficult or impossible to forgive. Perhaps the philosopher Benjamin Spinoza—himself an object of hatred for many in his time—was right when he said that “Hatred is increased by being reciprocated, and can on the other hand be destroyed by love.”<sup>7</sup> But loving one’s enemies is a very difficult task; it cannot be forced or commanded. I myself find it difficult to forgive the driver who cut me off on the highway this morning. Where the violations are brutal, severe, and intimate, it can be a new assault to expect the victims to forgive. Individuals respond uniquely and differently to horror. Their responses are among the last powers of selfhood they have retained. To demand different ones may be yet another form of degradation and denial of their very being. Fundamentally, forgiveness must remain a choice by individuals; the power to forgive must be inextricable from the power to choose not to do so. It cannot be ordered or pressured. Forgiveness requires the individual’s own reach to embrace the wrongdoer. Forgiveness cannot be arrogated from the survivors without inflicting a new victimization. As human rights activist Aryeh Neier warns, when governments or their representatives “usurp the victim’s exclusive right to forgive his oppressor,”<sup>8</sup> they fail to respect fully those who have suffered.

If vengeance risks a ceaseless rage that should be tamed, forgiveness requires a kind of transcendence that cannot be achieved on command or by remote control. So, as I have come to see it, the search is for responses to collective violence that etch a path between vengeance and forgiveness.

I have encountered inspiring examples of individuals who have walked that path. Jadranka Cigelj is one. She was raped, repeatedly, after being abducted and confined for months in a gruesome detention camp in Bosnia. After international media exposed the camp, she was released, and essentially crawled her way, starving and devastated, home. She began to talk with other survivors, and decided to gather their stories to submit to the International Criminal Tribunal for the former Yugoslavia. Her prior training as a lawyer no doubt influenced her sense that this would be an appropriate response. She described how she had initially

been filled with hatred and a desire for revenge. But she met an eighty-six-year-old woman whose fourteen family members had been murdered, and she had to bury them all with her bare hands. That woman said to Jadranka: "How can you hate those who are so repulsive?" And Jadranka reflected, "I realized that the people I was directing my hatred toward were not worth that; they were only machines for murdering people. . . . [Y]ou realize what is important is to work toward a way to hold these people responsible and punish them. Then one day you wake up and the hatred has left you, and you feel relieved because hatred is exhausting, and you say to yourself, 'I am not like them.'"<sup>9</sup> Her efforts succeeded in generating the first indictments for rape as a crime of war. The focus on prosecution, punishment, and documentation of victims' stories can offer a way past revenge, for some people, in some times and places. But must individuals be so extraordinary as to forge this path? Or can collective efforts create armatures for pain and structure paths for individuals to move from grief and pain to renewal and hope?

Collective efforts, notably growing in legal idioms during the past fifty years, include criminal prosecutions, reparations, and truth commissions. Each has strengths and weaknesses in forging a path between vengeance and forgiveness. Of course, there are other paths: the creation of artistic memorials; stripping former officials of their pensions and offices; developing educational programs for children and for the entire society; declaring days of commemoration. With criminal prosecutions, reparations, and truth commissions, there is a special emphasis on accountability and truth-telling. It remains to be seen whether alone or together they can also help particular societies build stable democracies or a climate conducive to human rights. But they each offer forms of collective memory, carrying the chance—just the chance—of rebuilding societies rather than stoking hatreds.

## Prosecutions

As horrific as was the Great War near the start of the twentieth century, World War II introduced violence and degradation of human beings both on a scale and in a form that defied comprehension. Winston Churchill and Joseph Stalin each urged summary execution of the Axis leaders. Nonetheless, the Allies decided to hold trials and in so doing, establish a body of international legal rules. The rules aspired to recognize human rights with institutions sufficiently strong to enforce them. What emerged was an international military tribunal, empowered to

prosecute major war criminals of the Axis countries for crimes against peace, war crimes, and crimes against humanity.

The invention of a tribunal composed of judges from each of the four major Allied powers departed from a prior military court involved in enforcing the laws of war. The category, crimes against humanity, lacked much definition and precedent. The tribunal itself tried to confine its prosecutions of crimes against humanity to those committed in conjunction with a war of aggression, and to norms announced in prior treaties against such wars, but still, the norms and procedures for the Nuremberg and Tokyo trials departed from the past. Indeed, the Nuremberg trials are widely credited with establishing the conclusion that there is no injustice in punishing defendants who knew they were committing a wrong condemned by the international community, even in the absence of an international law specifically prohibiting their behavior. The Nuremberg trials also elevated international law so that it clearly takes precedence over claims of state authority and obligation to obey the law of any one state.

It is a bold vision, but the Nuremberg and Tokyo trials were imperfect means to advance it. Charged at the time as victors' justice—exempting the Soviets and the other Allies from their wartime abuses—the trials also involved highly limited, even selective prosecution. An initial group of only twenty-four defendants stood in for the thousands who caused the deaths of more than 20 million and the unspeakable suffering of many more. The Tokyo trials generated charges of ethnic bias when its sentences seemed more severe than those issued at Nuremberg.

The Cold War put proposals for a permanent international criminal tribunal in the freezer. Nongovernmental organizations emerged as chief advocates for the vision of individual human rights, superior to any state's authority. Some national courts pursued criminal prosecutions and civil liability actions arising from human rights violations. Yet, for many, no response other than international criminal trials could signify the full vision of international human rights enforcement. But no international response followed mass murders in Cambodia, South Africa, Kurdistan, China, the Soviet Union, or elsewhere in the decades after World War II.

Finally, more than forty years after the Nuremberg and Tokyo trials, the United Nations Security Council authorized first the International Criminal Tribunal for the former Yugoslavia and then the International Criminal Tribunal for Rwanda. In both instances, critics viewed these actions as intentionally weak gestures, following more dire failures of international groups to stop the violence they now sought to address. Ad

hoc and temporary, the international tribunals nonetheless stirred hopes for accountability and human rights enforcement in many quarters. The UN Security Council faced head-on the issue of what law should govern, and authorized the new tribunals to resort to the domestic law of the affected nation to fill any gaps in international law. Because these tribunals emanate from an international institution rather than the victors' military command, they achieve more legitimacy. At the same time, their operations and success are buffeted by ongoing domestic and regional strife.

Thus, the tribunal addressing the former Yugoslavia operated amid ongoing peace negotiations with potential targets of prosecution, and then in the midst of a war in Kosovo. The indictment of Serb leader Slobodan Milosevic by itself symbolized the ascendance of law as a response to violence and terror. The tribunal for Rwanda addressed the genocidal destruction of some 800,000 people while domestic trials seemed to some to commit new rounds of revenge, with tens of thousands turning out to watch the executions of twenty-two convicted after superficial trials by the Rwandan courts of genocide.

Given restrictions on freedom of the press in the former Yugoslavia and technological devastation in Rwanda, the most likely audiences for both tribunals exist outside the nations most affected by the violence. Despite slow progress, cumbersome procedures, and widespread uncertainty about their effectiveness, the tribunals have impressively generated credible documentation and condemnation of atrocities. Even with inevitable selectivity in prosecution, at best trying a small percentage of those actually involved in collective violence, the tribunals help create official records of the scope of the violence and its participants; afford public acknowledgment of what happened and its utter wrongfulness; and produce some convictions with punishment for individuals—each fulfilling the commitment to hold individuals, rather than whole peoples or nations, responsible for violence. As one Bosnian commented, “It is important that the Serbs know who is a war criminal and who isn’t. . . . Otherwise, this world will think it is all of us.”<sup>10</sup>

The aspiration to a rule of law, rather than a rule of power, explains in part the movement to establish a permanent International Criminal Court, which 120 nations—but not the United States—endorsed. Despite early active support, the United States declined endorsement chiefly because of fears that our military personnel serving abroad could face criminal charges driven by political motives;<sup>11</sup> the UN Security Council retains too much control over prosecutorial decisions, and ambiguities over the def-



initions of crimes of aggression and the jurisdiction of national courts remain. But the existence of a permanent court could wrest the prospect of prosecutions from ad hoc politicized deliberations, and provide a focal point for crucial investigative work of the kind that a French team recently undertook in Kosovo, locating the murdered bodies of men who disappeared early in the recent war.

It would be too much to expect that international criminal prosecutions would effect deterrence. Instead, the tribunals and their work offer rituals of accountability, defying impunity and public acknowledgment, defying forced forgetting. International tribunals and news accounts of their unfolding work also remind bystanders to take action to prevent the circumstances in which tyrants mobilize ordinary people to destroy others.

Enforcement by third-party national courts can also have this effect, as the indictment and extradition procedures for former Chilean president Augusto Pinochet suggest.<sup>12</sup> Simply the act of detaining General Pinochet in England, pending an extradition hearing triggered by an indictment by a Spanish prosecutor, thrust Chile under international scrutiny. With indictments pending in Belgium, Germany, France, Switzerland, as well as Spain, the moral condemnation of Pinochet's human rights abuses grew. These European developments at the same time exposed how much the culture of fear and the conspiracy of silence about murders and torture persisted and forestalled the transition to democracy in Chile, much less enforcement of human rights there. When the United States declassified thousands of documents in the summer of 1999, disclosing U.S. knowledge of human rights abuses and a desire to uncover the truth, the failure of a truth-seeking process in Chile since its supposed transition to democracy became even more blatant.

But then, by 1999, the demand for justice within Chile grew. And the Chilean Supreme Court stepped in and boldly declared that the amnesty law secured by Pinochet does not cover the cases of disappearances. This symbolic achievement ended the impunity of the Right Wing while offering some concrete hope of answers for families of the disappeared. Suddenly, many things that seemed impossible have now become possible. Some twenty-five military officers have been arrested, real investigations are now underway in the nation, and the Supreme Court even agreed to allow an interrogation of Pinochet in conjunction with potential domestic prosecutions.<sup>13</sup> Chileans now are beginning to face their past and, as a result, shape their own future.

## Reparations

Reparations offer another response, often following long advocacy by survivors and negotiation with representatives of the wrongdoers. Reparations may take the form of monetary payments, or the return of stolen homes, art, or the bones of loved ones. Reparations may also involve explicit apology, the creation of memorials, and other gestures of restorative justice. Since World War II, Germany made payments of some \$13.7 billion to assist the fledgling state of Israel alongside payments to individuals.<sup>14</sup> After decades of debate over the internment of Japanese Americans and Japanese citizens in the United States during World War II and the seizure of their properties and businesses, the U.S. government authorized the Civil Liberties Act of 1988. Its grant of \$20,000 for each survivor of the camps and its explicit apology strikes some as too little, too late. Nonetheless, these steps, combined with the public movement and public testimonies about the internment, have offered a form of acknowledgment and response without expecting survivors to forgive. The victory for remaining survivors was bittersweet. Perhaps its most remarkable legacy is the subsequent response of some Japanese Americans to open discussions with Native Hawaiians about possible reparations for the land and authority that Japanese immigrants took.

The symbolic gesture and the struggle for it give victims a chance to reclaim their dignity and their history. But at the heart of reparations is the paradoxical search to repair the irreparable. Once paid, compensation may wrongly imply that the harms are over and need not be discussed again. Money can never remedy nonmonetary loss, however, and the fight over money carries the risk of trivializing the harms. Even restitution cannot restore the lifetimes that were lost. Yet sometimes modest requests for reparations can express the dignity of the survivors with scrupulous effort to avoid implying an actual remedy. Many South Africans simply requested tombstones for their lost relatives. One South African woman asked only that the bullets be removed from her vagina where they remained lodged from the time she was shot repeatedly by Apartheid police while hanging wash on a line. Reparations can meet burning needs for vindication without unleashing vengeance.

Perhaps, ironically, reparations without apologies seem inauthentic, and apologies without reparations seem cheap. Apologies are most meaningful when accompanied by material reparations; and reparations are most meaningful when accompanied by acknowledgment of their

inadequacy in the effort to apologize and make amends. Yet taken separately, and, especially, taken together, apologies and reparations offer responses to mass atrocity that demand recognition of wrongs done without obliging survivors to forgive.

### Truth Commissions

A notable, third development in response to mass violence is truth commissions. It is an unfortunate term for those who have read George Orwell. Nonetheless, commissions of inquiry can expose and document torture, murders, and other human rights violations that would otherwise be denied and covered up by repressive regimes and their successors. The Brazilian report, *Brasil: Nunca Mas*, documented 144 political murders, 125 disappearances, and over 1,800 other incidents of torture following a risky, surreptitious investigation led by religious groups and journalists. The enormous public reception, making the report a best-seller, contributed largely to the decision of President José Sarney to sign the United Nations Convention Against Torture in 1985.

Other inquiries have taken more public forms, collecting testimony from survivors and issuing public reports tracing the causes of violence. The most dramatic and impressive example is South Africa's Truth and Reconciliation Commission (TRC). The negotiated peaceful transition of power after Apartheid included a promise to create a process for granting amnesty to participants in the past conflicts. The first democratically elected parliament then created the TRC. It included a committee to receive applications from individuals seeking amnesty. Although many doubted that anyone would come forward, over 9,000 individuals did apply for amnesty. The statute made grants of amnesty contingent upon full disclosure, demonstration of a political rather than a self-serving motive, and means commensurate with that political motive. The applications and cross-examined testimony have answered many questions about who did what, when, and how on behalf of the Apartheid government and on behalf of the resisting liberation groups. The amnesty process remains the most controversial feature of the TRC. Fewer than 400 of the 9,000 applicants satisfied the conditions for amnesty. Especially difficult—politically, and as a choice of how to spend precious resources—remain decisions by the chief prosecutor over whether to indict individuals whose applications were denied.

But perhaps more important to the TRC was its human rights commit-

tee, designed to collect testimony from survivors of violence on all sides of the conflicts. Over 22,000 offered statements. Many appeared in public hearings that were broadcast around the nation. Offering unassailable evidence of the human rights violations denied for so long by members of the Apartheid government, this process also gave voice to survivors of violence and offered concrete and symbolic occasions for reconciliation between individuals on different sides of the conflicts. The commissioners also held hearings to examine the roles of entire societal sectors, such as the medical profession, the judiciary, the business community, and the media, in enabling and benefiting from Apartheid.

Yielding a five-volume report as well as memorable national broadcasts of live testimony, the TRC indicated a mode of accountability without retribution, a focus on individual responsibility, and also an assessment of larger social forces. The language of reconciliation offended many who sought retribution, however. The TRC's own recommendations for monetary reparations remain merely paper suggestions. It is economic redistribution that remains the biggest unaddressed issue there, and a reparations strategy could still emerge.

Father Mxolisi Mapanbani told the following story, which became a touchstone for South Africa's Truth and Reconciliation Commission. Once, there were two boys, Tom and Bernard. Tom lived right opposite Bernard. One day, Tom stole Bernard's bicycle and every day Bernard saw Tom cycling to school on it. After a year, Tom went up to Bernard, stretched out his hand and said, "Let us reconcile and put the past behind us." Bernard looked at Tom's hand. "And what about the bicycle?" "No," said Tom. "I'm not talking about the bicycle, I'm talking about reconciliation." The barriers to reconciliation are huge, as depicted in a political cartoon showing the TRC chair, Archbishop Desmond Tutu uttering "oops" as he surveys a map that took him to an abyss between one land mass marked "truth" and another marked "reconciliation."

Still, the power of speaking and testifying was exhibited time and again at the TRC. Lucas Baba Sikwepere, blinded by the Apartheid-era police officer known as the Rambo of the Peninsula, commented after testifying at the TRC: "I feel what has been making me sick all the time is the fact that I couldn't tell my story. But now I—it feels like I got my sight back by coming here and telling you the story."<sup>15</sup> And Cynthia Ngewu, mother of one of the individuals known as the Guguletu Seven, commented: "This thing called reconciliation . . . if I am understanding it correctly . . . if it means this perpetrator, this man who has killed Chris-

tian Piet, if it means he becomes human again, this man, so that I, so that all of us, get our humanity back . . . then I agree, then I support it all."<sup>16</sup>

The commission's work was insufficient in and of itself to produce national reconciliation. But it offered avenues for individuals to reach toward it while also correcting the national narrative and memory. Consider the following three stories from the TRC: they are hopeful and disturbing. This tempered assessment of the TRC's contributions must remain open to debate and assessment as the nation proceeds and as people within and beyond South Africa consider what the TRC accomplished.

First, there is the story of Amy Biehl. Amy Biehl was a white American who went to South Africa to work in the townships. She was murdered in a gross incident of group violence committed by young men in the township. Her parents, in shock and grief, went to South Africa to try to understand what happened. They have since devoted their time and resources to assisting people in the township where the murderers grew up, creating schools, art programs, and small industry. Amy's killers were prosecuted and convicted by the local criminal court. They then applied to the TRC for amnesty. The Biehls attended the hearings, and did not object to amnesty. They found for themselves a path if not to forgiveness, then away from vengeance. They turned with remarkable devotion to try to eradicate the conditions of racial hatred and economic privation that produced their daughter's murderers.

Second, General Magnus Malan, army chief and later defense minister for the Apartheid government, faced prosecution for charges of gross human rights violations. Charged with authorizing an assassination squad that mistakenly killed thirteen women and children in 1987, Malan survived a nine-month trial and was found not guilty in 1996. Then, in 1997, Malan volunteered to speak before the TRC. He expressly did not seek amnesty but instead seemed to want the chance to tell his own story. He acknowledged cross-border raids he had authorized; he described how he had set up a covert unit to disrupt Soviet-backed liberation activities. He denied that he had himself approved assassinations or atrocities. He also made clear that he opposed the TRC itself, and viewed it as a witch-hunt. But he said that he came forward to take moral responsibility for the orders he had given and to make his story part of the official record. He said, "I have come here to tell you my story and to face your judgment . . . I shall be content if what I am saying may spur the slightest understanding of former adversaries. I shall rejoice if my efforts can contribute in the minutest sense toward reconciliation and if

all soldiers may obtain moral amnesty. . . . It is understanding and forgiveness we really seek, not legal pardons.”<sup>17</sup>

Then, there is the far more troubling story of Jeffrey Benzien, who applied for amnesty for actions committed as a security police officer in the 1980s. Initially, he gave vague statements, but, like all amnesty applicants, he faced the possibility of cross-examination by his own victims. Under Ashley Forbes’s close questioning, Benzien calmly testified how he had developed a particular method for torturing individuals taken into custody. He demonstrated it through a simulation with a volunteer during the hearing. Called the “wet-bag” technique, the torture method involved forcing the suspect face down on the floor with hands handcuffed behind the back, then Benzien would sit on the individual’s back, place a wet cloth bag over the prisoner’s head, and twist it around the neck so the individual would start to suffocate. When the body became slack, Benzien would release the bag, and thus stop just short of killing the prisoner in time to continue the interrogation.

A survivor of Benzien’s methods, Tony Yengeni, asked “What kind of man uses a method like his one of the wet bag, on other human beings, repeatedly listening to those moans and cries and groans, and taking each of those people very near to their deaths?” Benzien replied that in hindsight, he saw that what he had done was wrong, but at the time he thought he was working to rescue South Africa from a communist movement and to protect his family’s freedoms. Some observers thought he reenacted the role of manipulator even during the hearing, when he goaded his questioners into recalling what he alleged as their friendship and conviviality.<sup>18</sup>

At the time of his application, Benzien was still employed as a policeman. Should this man remain free from punishment, still in a position of power? When he was then granted amnesty, many in South Africa and around the world understandably had bitter things to say about the TRC.

## No Closure

Contemporary responses to mass atrocities lurch among the rhetorics of law (punishment, compensation, deterrence); history (truth); theology (forgiveness); therapy (healing); art (commemoration and disturbance); and education (learning lessons). None is adequate and yet, by invoking any of these rhetorics, people wager that social responses can alter the emotional experiences of individuals and societies living after mass violence. Perhaps, rather than seeking revenge, people can rebuild.

As public instruments shaping public and private lives, legal institutions affect the production of collective memories for a community or nation. Social and political decisions determine what gives rise to a legal claim. Not only do these decisions express views about what is fair and right for individuals; they also communicate narratives and values across broad audiences. Whose memories deserve the public stage of an open trial, a broadcast truth commission, or a reparations debate? What version of the past can acknowledge the wrongness of what happened without giving comfort to new propaganda about intergroup hatreds?

Research across a wide range of academic disciplines has produced a new consensus about human memory. It turns out that recollections are not retrieved, like intact computer files, but instead are always constructed by combining bits of information selected and arranged in light of prior narratives and current expectations, needs, and beliefs. Thus, the histories we tell and the institutions we make create the narratives and enact the expectations, needs, and beliefs of a time.

Two seeming paradoxes emerge. Our memories are constructed but no one person can choose how; our memories are not simply retrieved but neither are they free floating, entirely manipulable to present interests.

Failure to remember, though, can impose unacceptable costs. Failure to remember, collectively, triumphs and accomplishments diminishes us. But failure to remember, collectively, injustice and cruelty is an ethical breach. It implies no responsibility and no commitment to prevent inhumanity in the future. Even worse, failures of collective memory stoke fires of resentment and revenge. Michael Ignatieff offered this explanation of the conflicts surrounding the former Yugoslavia:

[T]he past continues to torment because it is not the past. These places are not living in a serial order of time but in a simultaneous one, in which the past and present are a continuous, agglutinated mass of fantasies, distortions, myths, and lies. Reporters in the Balkan wars often observed that when they were told atrocity stories they were occasionally uncertain whether these stories had occurred yesterday or in 1941, 1841, or 1441.

He concludes that this "is the dreamtime of vengeance. Crimes can never safely be fixed in the historical past; they remain locked in the eternal present, crying out for vengeance."<sup>19</sup>

The twentieth century will not be remembered as unique because of mass atrocities, but it may be remembered for the creation of interna-

tional human rights tribunals, reparations, and truth and reconciliation commissions. No human institutions are perfect. International criminal trials are marred by political wrangling, selective prosecution, the limits of discoverable and admissible evidence and the dangers of politicized justice; domestic trials may be put on hold indefinitely precisely where terror has been most effective. Reparations risk trivializing atrocities and focusing on money when money can never redeem the past. Truth commissions may be too tepid, too ineffectual, even while gathering stories of too-often silenced survivors. Remaining questions, which will be addressed in later essays, include: What other responses can society bring to survivors and also prevent new rounds of hatred? Can laws usefully prevent or diminish the dehumanization of particular people that contributes to gross human rights harms—or do laws governing hate crimes and hate speech make things worse? Is there anything to be learned by comparing public responses to intergroup violence with responses to intrafamily violence? Have we learned anything about how to react to and remember violence so that the sum total of hatred diminishes, rather than increases?

We each may not have control over what we come to remember, but we each can play a role in shaping what we work to recall. I remember a story about a cynical young man who came to a town determined to discredit the local sage, a man renowned for his wisdom. The youngster decided to summon all the inhabitants and hold a bird in his hand, and say, “Wise man, is the bird dead or is the bird alive?” If the sage responded that the bird was dead, he would open his hand and let the bird fly away. If the sage replied that the bird was alive, then the young man would choke it to death. With all the people in the town assembled, and bird in hand, the young man called out, “Wise man, is the bird dead or is he alive?” The wise man wisely responded, “The fate of that bird is in your hands.”

The fate of our fate *is* in our hands. Especially for those of us who feel we are bystanders in a world of atrocities, we have a challenge. We find a flawed, only partly remembered world; we can and must have a hand in what we come to remember so we can transform the future that awaits.

## NOTES

1. Lawrence L. Langer, *Admitting the Holocaust* (New York: Oxford University Press, 1995), p. 171.



2. Quoted in Philip Perlmuter, *Legacy of Hate: A Short History of Ethnic, Religious, and Racial Prejudice in America*, rev. ed. (Armonk, NY: M. E. Sharpe, 1999), p. xi.

3. James E. Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven, CT: Yale University Press, 1993), p. 1 (quoting Baudrillard).

4. Jeffrie G. Murphy, "Introduction," in Jeffrie G. Murphy and Jean Hampton, *Forgiveness and Mercy* (New York: Cambridge University Press, 1988), p. 16.

5. "Loving Your Enemies," speech delivered by Dr. Martin Luther King, Jr., at Dexter Avenue Baptist Church, Montgomery Alabama, Nov. 17, 1957.

6. Quoted in Lawrence Weschler, "A Reporter at Large," *New Yorker* (December 10, 1990), p. 127.

7. Benjamin Spinoza, *The Ethics Part III—On the Origin and Nature of the Emotions* in Spinoza, *Ethics*, G.H.R. Parkinson, ed. and trans. (Oxford, UK: Oxford University Press, 2000), p. 197.

8. Quoted in Susan Jacoby, *Wild Justice: The Evolution of Revenge* (New York: harper and Row, 1983), p. 117.

9. Quoted in Gayle Kirshenbaum, "Women of the Year: Jadranka Cigelj and Nusreta Sivac," *Ms. Magazine* (January/February 1996): 67–68.

10. Quoted in Elizabeth Neuffer, "Elusive Justice: It Will Take an International Court to Deter War Criminals," *Boston Globe* (December 29, 1996): Sec. D, pp. 1–2.

11. As one of his last acts in office, President Clinton sought U.S. endorsement; this is one of many policies of the former administration that President Bush has rejected.

12. Thanks to Sebastian Jerez for research on Pinochet.

13. See Sebastian Rotella, "Chilean Military Faces Ghosts of Pinochet Regime," *Los Angeles Times* (October 19, 1999): A1; Clifford Krauss, "Chilean Military Facing Reckoning For Its Dark Past," *New York Times* (October 3, 1999): 1. See also Editorial, "Chile Finds Life After Pinochet," *Chicago Tribune* (October 5, 1999): 14.

14. Abby Ellin, "Media Business," *New York Times* (December 5, 2001): C7. Roy Brooks, Introduction, in Roy L. Brooks, ed., *When Sorry Isn't Enough* (New York: New York University Press, 1999), p. 9.

15. Testimony before Human Rights Committee of the South African Truth and Reconciliation Commission, quoted in Antji Krog, *Country of My Skull* (Johannesburg, South Africa: Random House, 1998), p. 31.

16. Quoted in id., p. 109.

17. Suzanne Daley, "Apartheid-Era Defense Chief Defends Role in Ordering Raids on Neighboring Countries," *New York Times* (May 8, 1997): 16.

18. "Burying South Africa's Past: Of Memory and Forgiveness," *Economist* (November 1, 1997): 21–23.

19. Michael Ignatieff, "The Elusive Goal of War Trials," *Harper's* (March 1996); reprinted in "Articles of Faith, Index on Censorship," *Harper's* (September/October 1997): 15–17.