After Mass Atrocity: Pragmatism and Foresight in the Pursuit of Post-Conflict Justice

by Jeffrey M. Bernstein
Norman Paterson School of International Affairs, Carleton University

This essay evaluates the logic of international criminal justice for post-conflict states. Specifically, it questions whether transitional justice is peace-promoting or conflict- inducing. It posits that the immediate, post-conflict political transition is the critical moment for instituting durable peace. Policy-makers and human rights advocates would therefore be wise to temper their well-meaning, yet potentially destabilizing, calls for justice in the service of peace. In assessing this tension, the relative merits and shortcomings of both amnesties and prosecutions will be discussed. Ultimately, transitional justice must address the victims of mass atrocity through a "forward-looking" paradigm.
"The views and opinions expressed herein are those of the author and do not necessarily reflect those of any institutional affiliation."

The community has just emerged from a devastating, traumatizing episode of mass atrocity. People who lived side-by-side peacefully, for years, turned upon each other with machetes, axes and guns, brutally murdering neighbours, friends and loved ones with indiscriminate passion and fury.

But it is now time to rebuild; to lay the foundations for post-conflict peace between perpetrators and their victims. With the memory of such crimes still seared into individuals' and the collective's conscience, how can belligerents return to neighbours? How might crimes be reckoned with—both to achieve "closure" and to avoid a return to violence?

Jeffrey Bernstein is a Master's Candidate in Conflict Analysis and Resolution at the Norman Paterson School of International Affairs (NPSIA), Carleton University in Ottawa, Canada. He is an avid global traveler and has previously interned in the Future of Peace Operations Program at The Henry L. Stimson Center in Washington, DC. Jeffrey currently serves as Project Officer on the genocide prevention file of Canadian General and Senator Roméo Dallaire. His graduate thesis work proposes a counterfactual humanitarian intervention in Darfur, Sudan to explicate fully the value and feasibility of military responses to genocide and mass atrocity crimes. Jeffrey holds an Honors Bachelor's degree in Political Science and History from the University of Toronto.

Although the above account is fictional it is not exceptional. Grappling with reconstructive transitions after the scourge of mass violence and war is a problem continually faced by affected communities, human rights advocates, and the international policy- makers whose job it is to promote sustainable peace. Frequently bandied to confront such challenges is the insistence that justice mechanisms be implemented to counter impunity and facilitate reconciliation amongst belligerents.

The maxim "there can be no peace without justice,"[1] while sounding superficially convincing, is a matter of extensive debate. A core assumption of this statement holds that justice, through a variety of legal mechanisms, *causes* peace. In fact, while both are surely desirable it is unclear whether peace and justice are always compatible. At the heart of the debate, and the subject of this essay, is a fundamental tension regarding the effectiveness of amnesties or prosecutions as justice-reckoning and peace-promoting strategies in post-conflict societies. The cardinal focus of this discussion concerns the *consequences* of assessing punishment for the non-defensive use of force in the uncertain wake of conflict; though this has obvious implications for long-term peacebuilding, the critical challenge is the consolidation of peace in the immediate aftermath of violent conflict.[2]

This paper raises the important, yet inadequately addressed, question of whether applying international criminal justice to post-conflict zones is peace-promoting or conflict-inducing. The paper will explore the relative merits and shortcomings of both amnesties and prosecutions as broadly representative of international criminal justice mechanisms—while leaving the expository accounting of alternatives, such as truth-telling commissions, for future analysis—contending that post-conflict transitions must, primarily, be forward-looking; take into account the nature of the conflict and its termination; and consider the desires of the affected population for which the transition should be contextually shaped. Although human rights advocates are well-meaning in the demand of justice for victims of mass atrocity, blind allegiance to retributive rule of law norms risk undermining the ultimate goal of transitional justice efforts; the prevention of war.[3]

This paper consists of six sections. The first identifies international law's posture in response to mass atrocities and

the apparent injunction to punish human rights abuses. Section two highlights initial considerations on "guilt" and the limitations of prosecutorial justice. Section three discusses some of the purported benefits of trials while the fourth section examines the pragmatic logic of amnesties. The fifth and sixth sections, which include the concluding arguments for forward-looking, transitional justice solutions, offer thoughts for alternative strategies, discuss varying interpretations of "justice," and pose some difficult questions to be considered as the debate moves forward.

A Duty to Prosecute?

Justice, in the post-conflict context, is often narrowly and retributively understood as the pursuit of criminal prosecutions against war criminals. This view demonstrates a tendency to assign accountability for mass atrocities to individuals, and has inherent limitations. It also suggests the growing belief that impunity for perpetrators of massive human rights and humanitarian law violations is intolerable, and that some acts simply require justice. Indeed, after bearing witness as largely silent observers to the Holocaust—the worst human atrocity committed in historical memory—the international community confirmed, in 1948, the fundamental tenet of international humanitarian law: "that genocide, whether committed in time of peace or in time of war, is a crime under international law which [the Contracting Parties] undertake to prevent and punish."[4] Furthermore, the prohibition against genocide and other criminal violations of fundamental human rights norms is recognized as jus cogens or universally-peremptory, "a rule of international law so fundamental to the legal order that it cannot be set aside or suspended, even upon the express consent of states."[5]

Moreover the United Nations Security Council, acting under Chapter VII of the UN Charter, reinforced the *jus cogens* rule by establishing the international criminal tribunals for both the Former Yugoslavia (ICTY) and Rwanda (ICTR)—a clear acknowledgment that perpetrators of mass atrocity, in addition to posing an obvious threat to their own states and citizens, threaten the peace and security of the international community as a whole. Some critics, however, have strongly denounced a symbolic concern for human rights violations as merely an act of appeasing the international community's moral conscience in

the face of true inaction. Criticizing the creation of the ICTY, Princeton University Professor of Politics and International Affairs Gary Bass has argued that "the establishment of the Hague tribunal was an act of tokenism by the world community, which was largely unwilling to intervene in ex-Yugoslavia but did not mind creating an institution that would give the appearance of moral concern."[6]

Just Desserts

Critically, pursuing individual prosecutions leaves untouched other actors who may have been complicit in crimes, whether by direct participation or passive acquiescence.[7] Indeed, this inability to prosecute all perpetrators, known as *selectivity*, remains a serious deficiency which prosecutorial advocates continue to confront. Selectivity raises important concerns related to the criminalization of guilt. The question of whether it is reasonably productive to target individuals for criminal culpability, in lieu of forcing entire groups to confront their own involvement, remains the subject of much debate in the post-conflict justice literature. Some scholars have suggested that the focus on individualizing guilt may even contribute to mythologizing collective innocence.[8] Furthermore, the supposed desirability of assigning guilt says nothing of its practical limitations. In some cases, major human rights violations may have been societally-endemic, involving thousands of people. For example, it was estimated that every Hutu family in Rwanda had at least one member directly involved in the 1994 genocide.[9] Complicating the assignment of blame even further, Hannah Arendt wrote, while observing the unfolding Nuremberg trials in 1946: "For these crimes, no punishment is severe enough...[t]his guilt, in contrast to all criminal guilt, oversteps and shatters any and all legal systems."[10]

No doubt, the move to hold individuals accountable for their crimes reflects not only the desires of human rights advocates and proponents of the rule of law, but also those of the victims of these "radically evil" acts. Notwithstanding the purported peace-promoting goals of post-conflict justice,[11] as well as the general reversion from the vindictive, punitive style of justice promoted in 1944 by United States (U.S.) Secretary of the Treasury Henry Morgenthau, Jr., to deal with a soon-to-be-occupied Germany, raw emotion quite naturally may demand punishment to the fullest extent of the law. Moreover, the

retributive impulse often may be balanced by a well-meaning, yet naïve extrapolation from post-trauma psychology, suggesting that "neither victims nor perpetrators will be able to live with the other until the crimes are acknowledged and some punishment, compensation, or sign of remorse is given."[12] Though this inclination may satisfy (some) victims' call for punishment or even the ostensible need (by some) for psychological reconciliation, little evidence exists to suggest that prosecutorial justice, in itself, is peace-promoting.[13]

Trials and Errors[14]

Trial advocates often point to two goals of prosecutorial justice: the advancement of peace through either *preemption* or *deterrence*.[15] Preemption is the act of physically removing from society dangerous war criminals who may threaten future violence. Some trial supporters have even argued that mere indictments of alleged war criminals are often enough to popularly-stigmatize them, force their retreat from public life, and thus preempt the disruptive threat they pose to post-conflict transitions. The moral high-ground is often evoked in discussion of a preemptive approach: "Publicly vindicating human rights norms and ostracizing criminal leaders may help to prevent future atrocities through the power of moral example to transform behavior."[16] Though these behavioral and normative transformations described by proponents of preemption may seem fantastically hopeful, the alleged preemptive benefits of "naming and shaming" -- at least in the short-term – may, in fact, be realized with equal effect through public investigative, or truth-telling, commissions. This argument assumes the second goal mentioned above, namely that perpetrators can be deterred.

Trial advocates, like former ICTY prosecutor Payam Akhavan, suggest that in the rational cost-benefit calculations that represent elites' deliberate political choices, the signal that society does not tolerate war crimes, and the mere threat of indictment, are suffice to deter potential criminals from acting with impunity.[17] In addition to the individualized targeting of war criminals by prosecutorial justice, an important outcome that supporters champion is the (ostensible) societal norm-dissemination of human rights "that operates to prevent aberrant contexts by instilling 'unconscious inhibitions against crime'."[18] Yet, this socialization of international human rights norms may be better accomplished by focusing on

institutions, rather than individuals. Admittedly, an institutional approach largely puts the onus of the perpetration of mass atrocity crimes on institutional deficiencies instead of the hateful ideology and fear-mongering of criminal actors; an argument that returns to the unresolved debate surrounding individual versus collective criminal culpability. Professor of Law and Dean of Harvard Law School Martha Minnow has argued that truth commissions may be more effective than trials in deterring future human rights abuses by targeting institutional weaknesses, rather than individual perpetrators; however, causality challenges persist.[19]

Unfortunately, these hyperbolic claims ignore the fundamentally adversarial nature of trials. Journalist Helena Cobban writes that it was, "the broader political context of *strategic restraint* toward Germany [within which] the Allies organized the Nuremberg Trials; an exercise designed, in the words of Chief Prosecutor Robert Jackson, to 'stay the hand of vengeance' much more than to extend it."[20] This fact informs one of the more-critical elements in predicting the shape of post-conflict justice initiatives and the potential durability of peace: the existence of "spoilers," or those individuals able to undermine the political transition. Accordingly, the outcome of conflict can greatly impact peace and justice initiatives. Where the old regime is defeated decisively through military victory, and no longer poses an obstacle to post-transition politics, perpetrators are more likely to be put on trial by the victors; however, this policy may be complicated by the victors' own implication in, and responsibility for, serious human rights abuses.[21] Absent a decisive military victory, there exists "a fundamental contradiction between negotiating a settlement with someone and subjecting that person to trial for war crimes."[22] Consequently, what should be done when negotiations are required and perpetrators maintain sufficient spoiler capacity to influence and disrupt the post-conflict transition?

Amnesties: The Pragmatic Evil

While the pursuit of justice through criminal prosecutions may appear to be a laudable and logically appropriate objective, unyielding faithfulness to vindictive emotion may run counter to what Jack Snyder and Leslie Vinjamuri describe as the "logic of consequences."[23] This realist view of post-conflict justice concedes that in the interest of preventing future atrocities, politically-expedient, yet morally-

repugnant, bargains to contain the power of spoilers will often be a necessary evil. In fact, the promise of amnesty may be "the *only* way" a negotiated settlement to a "deep-seated conflict can be effected."[24] In accordance with political reality, "justice does not lead; it follows."[25] Therefore, political bargaining should be employed, when necessary, to develop strong institutions through which rule of law norms may be actualized. Amnesties have a highly effective track record in curbing abuses when implemented credibly and are therefore an important instrument in the policy toolbox for achieving post-conflict stability.[26]

As mentioned above, without a decisive military victory, the pursuit of criminal prosecutions is often both difficult and dangerous. In the context of negotiated transitions where enforcement power is relatively weak, pragmatic bargaining through the offering of amnesties "may be an indispensable tool in getting perpetrators to relinquish power and desist from their abuses."[27] Snyder and Vinjamuri highlight that truth commissions "have most often been the choice of states whose stability depends on the cooperation of still-powerful potential spoilers."[28] However, Snyder and Vinjamuri also suggest that truth-telling mechanisms are most likely to succeed when they offer "political cover for amnesties," supported by a strong, reformist coalition that can undertake the strengthening of judicial institutions as part of a comprehensive strategy based on the logic of consequences.[29] In that vein, perpetrators of mass atrocities may be invaluable allies in the search for post-conflict peace; requiring, as Snyder and Vinjamuri argue, the need to exercise prosecutorial discretion.

Most observers agree that deterrence is a worthy objective. They disagree, however, on the means used to achieve deterrence. An approach that values amnesties as a peace-promoting instrument recognizes that deterrence requires neutralizing potential spoilers, strengthening a human rights norm-advancing coalition, and improving the domestic administrative and legal institutions that are needed to implement justice predictably over the long run.[30] Importantly, distinguishing pragmatic, amnesty-granting advocates from apologists of human rights violators is important. While the latter defend morally-reprehensible behavior, the former advance their position to contain the spoiler capabilities of perpetrators and to create the political pre-conditions for strengthening state institutions.

"Amnesty should therefore be recognized as a legitimate tool when it serves the broader interest in establishing the rule of law": the cessation of conflict and prevention of future abuses.[31]

Moving Forwards, Not Backwards

Analyzing the end goals of post-conflict justice forces us to ask what justice means to particular societies and whether there is a single answer to that question. Perhaps the extraordinary investments made in international transitional justice mechanisms would have a stronger rehabilitative effect if spent on domestic capacity-building, such as reforming a society's political and legal framework. Alternatively, funds could be spent rebuilding even more-basic institutional functions of the state devastated by conflict. Of course, this assumes that funds are fungible, and that increased development funding would lead to better outcomes. Considering many of the criticisms leveled at the international development community, it is far from certain that throwing money at post-conflict societies that lack the institutional capacity to absorb such handouts is practical or even wise.

It is nonetheless difficult to dismiss outright alternative targets for aid when looking at the considerable investments the international community has made in relatively high-cost, low-efficiency transitional justice mechanisms used to "recalibrate" post-conflict societies. Helena Cobban has calculated that the "per-case" completion cost at the ICTR is approximately US$42 million.[32] Over US$2 billion has been spent on purely international tribunals with little discernible impact on domestic peace and justice outcomes.[33] A comparison of investment in these international tribunals to the entire US$331.6 million of overseas aid invested in Rwanda's 8.8 million people in 2003, [34] raises the question of "how much less human misery might the citizens of Rwanda [and Burundi] have known if ICTR's budgets instead had been spent on supporting economic and social stabilization programs in one or both of those countries."[35] Similarly, if the approach taken to redress mass atrocity was a preventive paradigm, "one might be more concerned about arms sales and oil embargoes, economic development and education programs," rather than narrow, retroactive and retributive criminal justice measures.[36]

Looking again at Rwanda, even while accepting the importance of procedural justice to transitional societies, some observers have

argued that rather than spending millions on an international tribunal located outside of the country (Arusha, Tanzania), a more prudent strategy for strengthening the rule of law would have been to provide greater international support for institutionalizing a better judicial process within Rwanda.[37] The country's current *gacaca* courts, which have raised the concern of international human rights groups on the legality of Rwanda's traditional form of local community justice and its inadequate protection of witnesses, might have been constructively addressed – at a projected per-case cost of US$581[38] - by the millions in international investment that instead went towards carrying out the tribunal in neighboring Tanzania. Above all, well-meaning advocates of liberal justice would be better-advised to target their external pressure and assistance on resolutely "future-oriented tasks" such as training police and military personnel in human rights practices along with, "improved human rights monitoring of field operations, reform of military finances and military justice, and punishment of new abuses once the reforms are in place."[39]

Just for Whom?

It is fundamental to recognize that different groups have different goals for criminal justice. Moreover, "individual conceptions of 'justice' differ from person to person, place to place, and time to time."[40] Beyond this difficulty of defining justice is the reality that within a single conflict there may exist multiple actors whose perspectives may be fundamentally different; local actors within the post-conflict state, external states, and the international community who may have been bystanders or perpetrators, contributing to the violence through their actions or omissions. Under this scenario, if the appropriate mechanism for confronting mass atrocity crimes depends upon the pursuit of specific goals, "Who has the authority to set these goals?"[41] Advocates of Western-liberal notions of individual rights and responsibilities often have been quick to lean on countries that indicate a desire to address post-conflict justice differently from the West's impressive Judaeo-Christian legal traditions and history. It seems presumptuous for those who have not suffered extraordinary persecution to determine for those who have which form of transitional justice should be implemented.

The post-conflict justice literature is rife with dichotomous explanations for why some

strategies should be pursued over plausible alternatives; however, the worth of these strategies must be evaluated based on their forward-looking contribution towards conflict termination, rather than backward-looking strategies "based on rigid rule-following."[42] Professor of Government at Washington University in St. Louis James Gibson has suggested that certain "types of justice are fungible -- [and governments] should be cognizant that the denial of one form of justice can be compensated for with another form of justice."[43] Building on this assertion, while prosecutorial justice may satisfy the emotional desire for retribution, amnesties or more distributive forms of justice may serve as appropriate substitutes. This nuanced recognition appears to be missing from the justice debate particularly at the international level. At minimum, more innovative alternatives should not be ruled out because of a slavish deference to a myopic view of justice.

Looking beyond a political treatment of the implications of post-conflict justice on the maintenance of peace, critical questions from a number of perspectives are central to the current debate on post-conflict justice and peace; what effect does international humanitarian law have on the pursuit of justice; how much space for political nuance does the law afford when it is manifestly known that a morally-repugnant "deal with the devil" may be required to ensure peace; and are amnesties extended to perpetrators of genocide and crimes against humanity illegal? These are difficult questions that warrant continued debate. Ironically, while the moral argument for transitional justice is often the one *least*-often made, perhaps the best case for justice is that it should be pursued when possible because it is the *right* thing to do. Nonetheless, what is desirable must be followed by a resolute commitment *to not let the good become the enemy of the possible*.

---

[1] Benjamin B. Ferencz, former Nuremberg prosecutor, cited in David Mendeloff, "Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?" *International Studies Review* 6, 3 (2004): 360.
[2] Mendeloff: 362. Mendeloff correctly points out the failure within the post-conflict justice literature to disaggregate between the short- and long-term elements of peacebuilding. He claims that the truth-telling [used interchangeably by Mendeloff with truth-seeking to represent, more broadly, various justice mechanisms] literature "conflates analytically distinct concepts—peace and democracy, peace and reconciliation, war prevention and

the prevention of human rights abuses during war."

Moreover, he argues that "evidence and logic do not support the claim that formal truth-telling mechanisms will have a discernable impact in consolidating peace in the short-term." As Stephen John Stedman (2002) posited, the immediate aftermath of conflict likely is the single most-important determinant of long-term peace and stability; thus, "the impact of truth-telling mechanisms in the short-term consolidation of peace is almost certainly negligible, if not irrelevant" (356).

[3] Ibid, 362.

[4] *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, entered into force 12 January 1951 (emphasis added). According to the International Committee of the Red Cross, 141 states had ratified the convention by the time of writing (April 2010): http://www.icrc.org/IHL.NSF/INTRO?357?OpenDocument.

[5] John H. Currie, *Public International Law*, 2nd ed. (Toronto: Irwin Law Inc., 2008), 175, 583, 586.

[6] Gary J. Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000), 207.

Jack Snyder and Leslie Vinjamuri offer a different, yet similarly-damning, assessment: "In neither case [the ICTY or ICTR] did their trials deter subsequent atrocities or contribute to bringing peace in the region. Indeed, in the former case, the democratization and pacification of the Yugoslav successor states likely occurred despite the tensions provoked by the tribunal and not because of it. More generally, neither the Yugoslavia nor the Rwanda tribunals has had a demonstrable effect on reducing atrocities globally or on altering the calculations of combatants in conflicts in East Timor, Chechnya, Sierra Leone, or other war sites." Snyder and Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies for International Justice," *International Security* 28, 3 (Winter 2003/04): 20.

[7] Laurel E. Fletcher and Harvey M. Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation," *Human Rights Quarterly* 24, 3 (2002): 579-80. Fletcher and Weinstein describe three categories of actors "selected out" of trials: unindicted perpetrators who, somehow, may have profited from conflict; external states that may have contributed to the violence through their actions or omissions; and bystanders [taken, I believe, to include individuals, states, and regional/international instruments or organizations] who neither participated actively in fomenting violence nor intervened actively to end the horrors.

[8] Ibid., 580. Fletcher and Weinstein offer a defense for pursuing collective justice: "The proposition that if everyone is guilty then no one is guilty, ignores the possibility that holding everyone responsible for past atrocities

may force a nation to come to terms with its past as well as to lay the groundwork for true reconciliation" (601). However, it is unclear how, exactly, this reckoning process may cause the purportedly-desirable goal of national reconciliation.

Or, as Mendeloff has written: "Most of the world and the Germans themselves still hold 'Germans' collectively guilty for the crimes of World War II, not individual Nazis (Buruma 1994; Ignatieff 1996: 117). Far from being dangerous, it has led the German people to confront their own culpability and to make amends to victims. It is far easier for societies to shirk their collective responsibilities if they have individual scapegoats," 368.

[9] Roy Licklider, "Obstacles to Peace Settlements," in *Turbulent Peace: The Challenges of Managing International Conflict*, eds. Chester A. Crocker and Fen Osler Hampson with Pamela R. Aall (Washington, DC: United States Institute of Peace Press, 2001), 712.

[10] Hannah Arendt to Karl Jaspers, 17 August 1946, in their *Correspondence, 1926-1969* (New York: Harcourt Brace, 1992), Lotte Kohler and Hans Saner, eds., p. 54, cited in Bass, 13.

[11] David Mendeloff, "Sixteen Purported Peace-Promoting Effects of Post-Conflict Justice (Trials and Truth Commissions)" (lecture handout, INAF 5200W: Peacebuilding and Reconstruction, Carleton University, Ottawa, ON, 17 March 2010).

Mendeloff has compiled an impressive list of sixteen oversimplified, conflated, and purported effects of post-conflict justice: 1. Deter future violence/human rights abuses; 2. Physically remove war criminals from society (trials)/ incapacitate spoilers; 3. Encourage political moderation; 4. Discourage political extremism; 5. Prevent vigilante justice/retributory violence; 6. Promote inter-group reconciliation; 7. Establish accurate historical record; 8. Promote psychological healing of victims; 9. Promote justice for victims; 10. Promote respect for human rights/human rights norms/rule of law; 11. Promote democracy; 12. Strengthen international human rights norms; 13. Reform institutions responsible or complicit in crimes; 14. Legitimize new regimes; 15. Rebuild criminal justice system (trials); 16. Promote morally-responsible behavior.

[12] Licklider, 711.

I describe this frequently-espoused view as "naïve" because of the hypothetically, as-legitimate argument that "the only way that people live together, whether in families or states, is to forget the things that divide them, [and] that truth is elusive and in the mind of the beholder...." (712). Like many of the arguments and debates found throughout the post-conflict justice literature, there lacks sufficient empirical evidence to prove, conclusively, the superiority of one side or the other.

[13] This has not prevented the unreasoned defence of international criminal justice mechanisms by some scholars, notably Payam Akhavan. To be sure, Akhavan's unduly optimistic reading of the empirical evidence appears in direct contrast with more prevalent and critical observations that international tribunals are, at best, one tactic within a range of available tools that may have some value in very specific contexts and situations. More likely, however, the benefits of trials are largely overstated. See Fletcher and Weinstein; Mendeloff.
[14] This title has been borrowed from Snyder and Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies for International Justice," *International Security* 28, 3 (Winter 2003/04): 5-44.
[15] Mendeloff, 361.
[16] Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Atrocities?" *American Journal of International Law* 95, 1 (January 2001): 10.
[17] Ibid., 12.
[18] Ibid.
[19] Eric Brahm, "Truth and Consequences: The Impact of Truth Commissions in Transitional Societies," (unpublished MS), 32, 34. See Martha Minnow, *Between Vengeance and Forgiveness: Facing History After Genocide And Mass Violence* (Boston: Beacon Press, 1998).
[20] Helena Cobban, *Amnesty After Atrocity? Healing Nations After Genocide and War Crimes* (Boulder, CO: Paradigm Publishers, 2007), 205.

Notwithstanding the apparent foresight of the Allies in not imposing a similarly vindictive, punitive settlement to WWII—as was done in the aftermath of WWI and widely pointed to as a fundamental grievance motivating Hitler's Nazism—it is illogical to point to Nuremberg as a shining example of retroactive justice, at least from the perspective of deterrence. Indeed, the true "demonstration effect" that can be cited is *when there is a will to kill, a way will be found to do it with minimal or non-interference from the international community*.

Aside from the oft-cited genocides since Nuremberg, the myriad examples of post-WWII mass atrocities should silence the uncritical defenders of international criminal justice's deterrent (non-)effect: the massacre, by Indonesia, of several hundred thousand ethnic Chinese (mid-1960s); the slaughter and forced starvation of more than one million black Christians by the Sudanese government (since late 1960s); the slaying, again by Indonesia, of 100,000 East Timorese (1975-99); the forced starvation of approximately one million Ethiopians by their government (mid-1980s); the murder of 100,000 Kurds in Iraq (1988-89). J. L. Holzgrefe, "The Humanitarian Intervention Debate," in J.L. Holzgrefe and Robert O. Keohane, eds. *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*

(Cambridge: Cambridge University Press, 2003), 47.
[21] Brahm, 35.
[22] Licklider, 712.
[23] A fundamentally realist approach to international policy-making, the logic of consequences "assumes that actors try to achieve their objectives using the full panoply of material, institutional, and persuasive resources at their disposal." Opposing "the logic of appropriateness," the social constructivist analysis of norm-governed political order advanced by Martha Finnemore and Kathryn Sikkink (1998), Snyder and Vinjamuri posit that "[n]orms may facilitate or coordinate actors' strategies, but actors will follow rules and promote new norms only insofar as they are likely to be effective in achieving substantive ends, such as a reduction in the incidence of atrocities" (13).
[24] Cobban, 207.
[25] Snyder and Vinjamuri, 6. See also Stephen John Stedman, "Spoiler Problems in Peace Processes," *International Security* 22, 2 (Fall 1997): 5-53.
[26] A notable exception to this was in Sierra Leone, when the Lomé Accords offered an amnesty to Foday Sankoh, the still-powerful leader of the Revolutionary United Front (RUF), and a power-sharing deal that left Sankoh's rebels in key positions to continue plundering the country's diamond mining industry. Far from being a demand to discontinue their predatory practices of domination and to stop impinging transitional peace and the rule of law, the RUF saw the accord as an opportunity to further entrench their behaviour. When Sankoh's view of the settlement was challenged, his rebels renewed their civil war against the government and civilians, thus highlighting the difficulties of enforcing an amnesty without credibility and "the importance of removing perpetrators from positions of arbitrary power as the price of gaining amnesty." Snyder and Vinjamuri, 35.
[27] Ibid., 12. Nonetheless, while amnesties may minimize the backlash from past perpetrators, due consideration must be paid to address the potential backlash from those who demand sterner justice for human rights violators and are prepared to take action to correct justice's perceived failings. Snyder and Vinjamuri, 32.
[28] Ibid., 31.
[29] Ibid., 12-15.
[30] Ibid., 13.
[31] Ibid., 14.
[32] Cobban, 209.
[33] Jane Stromseth, David Wippman and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law After Military Interventions* (Cambridge: Cambridge University Press, 2006), 307.
[34] Cobban, 209.

[35] Ibid.
[36] Miriam J. Auckerman, "Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice," *Harvard Human Rights Journal* 15 (Spring 2002): 95.
[37] Snyder and Vinjamuri, 27. See José E. Alvarez, "Crimes of State/Crimes of Hate: Lessons from Rwanda," *Yale Journal of International Law*, 24, 2 (Summer 1999): 365-483.
[38] Cobban, 209.
[39] Snyder and Vinjamuri, 44.
[40] Mendeloff, 367.
[41] Auckerman, 42.
[42] Snyder and Vinjamuri, 44.
[43] James L. Gibson, "Can Truth Reconcile Divided Nations?" in *Conflict Prevention and Peacebuilding in Post-War Societies*, eds. T. David Mason and James D. Meernik (New York: Routledge, 2006), 190. I have used Gibson's idiom differently than he intended, where my focus centres on distributive, forward-looking justice rather than procedural or retributive justice. Gibson wrote: "Some types of justice are fungible; procedural justice may even substitute for the failure to achieve distributive justice."